SC NO. 3/2011

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

P.C. DR. ALPHA MADSERAY SHERIFF II - PLAINTIFF

AND

1. ATTORNEY-GENERAL & MINISTER OF JUSTICE - 1ST DEFENDANT
2. MINISTER OF LOCAL GOVERNMENT - 2ND DEFENDANT
3. NATIONAL ELECTORAL COMMISSION- 3RD DEFENDANT

CORAM:

HON. JUSTICE U.H. TEJAN-JALLOH C.J.

HON. JUSTICE S. BASH-TAQUI JSC

HON. JUSTICE P.O. HAMILTON JSC

HON. JUSTICE V.A.D. WRIGHT JSC

HON. JUSTICE M.E.T. THOMPSON JSC

DR. BUBUAKIE JABBIE ESQ. FOR THE PLAINTIFF

L.M. FARMAH ESQ. & O. KANU ESQ. FOR THE DEFENDANTS

RULING DELIVERED ON 30th JULY, 2012

U.H. TEJAN-JALLOH CHIEF JUSTICE

The Plaintiff herein by an Originating Notice of Motion has invoked the original jurisdiction of the Supreme Court to interpret the Constitution pertaining to certain provision in the Originating Notice of Motion and grant the declarations thereof pursuant to *Section 127 of the Constitution.*

BRIEF BACKGROUND TO THE ORIGINATING NOTICE OF MOTION

On the 12th August, 2006 the Plaintiff Dr. Alpha Madeseray Sheriff was elected as Paramount Chief of Biriwa Chiefdom Bombali District. Consequent upon his election and his installation as Paramount Chief tribal and factional dispute erupted in the Chiefdom, culminating in his suspension as Paramount Chief and the appointment of an Administrative Investigation by the Provincial Secretary North into his conduct and performance as Chief. Following the report of the administrative investigation; His Excellency the President appointed a Commission of Inquiry under the Chairmanship of Mr. Justice Fofanah High Court Judge under *Government Notice No.166 dated 19th May, 2009. Pursuant to Section 25(1) of Cap 60; Laws of Sierra Leone.* With the following terms of references:

> *"To determine whether his conduct has been of a kind subversive of the interest of good government".*

Pursuant to the submission of the Commission Report to the President, the Plaintiff was removed as Paramount Chief of Biriwa Chiefdom.

At this stage, let me observe that on the 15th June, 2011 this Court refused the Plaintiff interlocutory application to the Orders of Mandamus and injunction pending the determination of the Motion. This simply means, therefore, that if this Court declines or refuses the declarations prayed for it will adopt the decision in the interlocutory application in this Ruling and will order accordingly.

ORIGINAL JURISDICTION AND DECLARATION

As I said earlier, this action is brought under the original jurisdiction of the Supreme Court and the relevant provision herein in *Section 124 of the Constitution. Section 124(1)* states:

> *"The Supreme Court shall save as otherwise provided in Section 122 of this Constitution have original jurisdiction to the exclusion of all other Courts.*
>
> *(a)In all matters relating to the enforcement or interpretation of any provision of this Constitution;*
>
> *(b) Where any question arises whether an enactment was made in excess of the power conferred upon or any other authority or person by law or under the Constitution".*

From the above, it merely seems to me that it is the Supreme Court which has the jurisdiction to entertain such matter in 124(a) & (b). *Sec. 127 (1) states:*

> *"A person who alleges that an enactment or anything is or done under the authority of that or any other enactment is inconsistent with or is in contravention of a provision of this Constitution may at any time bring an action in the Supreme Court for a declaration".*

It appears to me, that the above provisions are relevant to this action, as they are the provisions under which the Plaintiff can invoke the original jurisdiction and as well as enforce the *Constitution* by declaring *Section 25 (1) of Cap 60 of the Laws of Sierra Leone* inconsistent with *Section 72 (4) of the Constitution.* Indeed *Section 171(15)* is the *grandnorm* and the Supreme Law of the land and any

provision found inconsistent with it "shall to the extent of that inconsistency be null and void."

INTERPRETATION OF SECTION 25(1). OF CAP 60 OF THE CONSTITUTION SECTION 72(4) OF THE CONSTITUTION. SECTION 19 OF CHIEFTAINCY ACT 2009.

In addressing the Interpretation of the above provisions, I shall confine myself to the two rules of interpretation namely the literal and the purposive rules.

The literal rule of interpretation is to suggest the application of the basic and simple method of interpretation of a statute thereby giving legal efficacy to the statute.

See *Tindele C.J. in the Sussex Prarage Case (1844) 11 CL & F 85.* had this to say-"If the words of a statute are so plain and unambiguous then no more is necessary than to expound them in the sense. The words in themselves in such a case best declare the intention of the law giver".

The Court usually takes a positive approach to the intention of the law giver. *Lord Simmons in Major and St. Mellons Rural District Council 1952 A.C.189 P. 191* said: "We sit here to find the intention of Parliament and of Ministers and carry it and we do this better by filling the gaps and making sense than opening it to destructive analysis. "Coming home, the literal rule of interpretation was adopted by *Livesey Luke C.J. (deceased) in Chanrai and Co. vs Palmer 1970 - 71 ALR (SL) 391 at 404"* when he said:

"In my judgment if the words used in a statute are Plain and unambiguous the court is bound to construe them in their ordinary sense having regard to the context."

However, if the words in a statute are in themselves misleading then the purposive rule will apply to examine the context, the subject matter, the purposes, scope and the background of the legislation, see ***Pepper v Hort 1993 1 ALL ER. 42.*** I hasten to add that in some cases there is not much difference between the literal and purposive approach to interpretation. In this case, it is clear to me that the provisions of the statute and constitution which call for interpretation are clear, plain and unambiguous. I shall apply the literal approach in considering the declaration prayed for by the Plaintiff in this *Originating Notice of Motion.*

THE MAIN ISSUE

Dr. Jabbie submitted that the *Section 25 (1) of the Provinces Act Cap 60 of the Laws of Sierra Leone* is inconsistent with *Section 72 (4) of the Constitution 1991 Act No. 6 1991 and Sec. 19 of the Chieftaincy Act 2009.*

Sec. 25 (1) states:

"The Governor in Council may upon the receipt of a report from the Provincial Commissioner that the conduct of any chief has been of a kind subversive of the interest of good government appoint a Commissioner to inquire into the matter and may also in his discretion appoint one or more assessors to such Commissioner and every such Commissioner shall have the same powers as a Commissioner appointed under the Commission of Inquiry ordinance or any ordinance substituted."

It is obvious to me that *Section 25(1)* specifically refers to the appointment of the Commissioner and its powers. It seems to me, that these powers under *Section 25(1)* are identical with the powers pursuant to Commission of Inquiry Ordinance as, amended by *Section 148 of the Constitution.*

Section 72(4) states:

> *"A Paramount Chief may be removed from office by the President for any gross misconduct in the performance of the function of his office if after a public enquiry conducted under the chairmanship of a Judge of the High Court or Justice of Appeal or Justice of the Supreme Court, the Commission of Inquiry makes an adverse finding against the Paramount Chief and the President is of the opinion that it is in the public interest that the Paramount Chief should be removed."*

As I can see, the above provision is silent on the appointment of a Judge or Justice as Chairman of the Commission and it is in contrast with *Section 25 (1)* which clearly makes provision for the appointment of a Commissioner. *Section 72(4)* in the main makes provision for the removal after "an adverse finding against a Paramount Chief".

If I understand Dr. Jabbie's submission clearly, a submission which was vigorously canvassed by him, is that *Section 72(4)* of the Constitution has by implication repealed *Section 25(1) of Cap. 60 of the Laws of Sierra Leone and secondly Section 19 of the Chieftaincy Act 2009 expressly repealed Section 25(1) of Cap.60 of the Laws of Sierra Leone.*

In dealing with this submission, I shall first go on to deal with the doctrine of the interpretation of statute generally, as far as it is germane and relevant to the submission. I shall start by referring to Maxwell on Interpretation of statute, twelfth edition page 191 on implied repeal. It states:-

> *"A later statute may repeal an earlier one either expressly or by implication is not favoured by the courts. For as much..... therefore earlier and later statute can reasonably be construed in such a way that both can be given effect to, this must be done. If as with all modern statute the later act contain a list of earlier enactment which it expressly repeals an omission from a particular statute from the list will be a strong indication of an intention not to repeal the statute".*

This principle is also recorded in Craies on statute 7th edition page 366, It states:

> *"That where two statute or acts in question are inconsistent the latter will be read as having impliedly repeal the earlier act, unless they are plainly repugnant to each other effect cannot be given to both of them at the same time. In other words when read and interpreted together they cannot produce the same intention and result Also a special act cannot be repealed by a general act."*

The proposition of law on implied repeal was laid down as far back as the 19th century in the case of Westharm Church Warden v. Fourth City of Montreal Building Society 1892 which was quoted with approval in the Supreme Court case of ***All Peoples Congress v. Nasmus & Others S.C. 4/96*** unreported: "is the later act so inconsistent with or

repugnant to the provisions of the earlier act that the two cannot stand together?"

In the ***Privy Council case of Canada Southern Railway Company v. International Bridge Co. 1883 A.C. 723. The Privy Council*** stated thus:-

> *"Where two acts of a legislature are to be read together the court must construe every part of each of them as if it has been contained in one act unless there is some manifest discrepancy making it necessary to hold that the later act has to some extent modified something found in the earlier act."*

In my judgment, however, before coming to the conclusion that the "later act to some extent modifies something found in the earlier act" the court must be satisfied that the two acts cannot be read together. Further, the court usually leans against implied repeal.

After a careful analysis of passages in Maxwell and Craies and the authorities, I dare say I am influenced by this principle as I consider it relevant to the issue at hand, and I shall adopt it and apply it to this ruling.

Coming now to the issue of *Section 25(1) of Cap. 60 being inconsistent with Section 72(4) of the Constitution.*

On perusal of *Section 72(4),* it is obvious that this *Section of the Constitution* is silent on the appointment and does not make provision for the appointment of Chairman/Commissioner of the Enquiry into the

conduct of the Plaintiff. To give effect to such an appointment Parliament has not enacted the law envisaged by *Section 72(5) of the Constitution* at the time of the appointment of Chairman/Commissioner. In this case the President has to look elsewhere and in this regard *Section 25(1) of Cap 60* came into play and had to be read together with *Section 72(4) of the Constitution* to fill the gap and to lend and accord credence to the appointment of the Chairman/Commissioner of the Enquiry.

Dr. Jabbie further submitted that *Section 25(1) of Cap 60* is inconsistent with *Section 147 of the Constitution* dealing with the appointment of Chairman of Commission, *Section 147* should have been invoked to give effect to *Section 72(4) of the Constitution.* With respect I profoundly disagree. *Section 147* is a general provision dealing with the appointment of Chairmen for Commissions of Enquiry generally, whereas *Section 25(1) of Cap 60 and Section 72(4) of the Constitution* combined deal specifically with the appointment and other matters pertaining to Chieftaincy.

It is trite that general acts or provision does not impliedly, repeal a special Act or Provision. *See Craies on Interpretation of Statute Supra Page 366.* And the case of ***Kutnar vs. Philips 1891 2QBD 267*** which was quoted with approval in ***Aberdeen Suborban Tramways Company vs Aberdeen Cooperation 1927 SC683***. The converse is however true that a statute enacted on a subject containing general terms and a later statute is enacted on the same subject with restriction and condition on the general term, the later special statute is deemed to have impliedly repeal the former or general statute. Again *see Craies on the Interpretation of Statute Supra 373.* I dare say this is not the case here.

As regards express repealed *Section 25 of Cap 60 by Section 32 of the Chieftaincy Act 2009.* My short answer is that the Commissioner pursuant to *Section 25(1) of Cap 60* was appointed on the 19th of May, 2009, whereas the *Chieftaincy Act* came into operation on the 10th September, 2009 some four months after the appointment of the Commissioner. And so the *Section 19 of the Chieftaincy Act* dealing with the appointment is of no moment here.

It seems to me, therefore, that the framers of the Constitution must have anticipated lacunae in the *Constitution* generally and in their wisdom enacted a transitional provision as part of the new *Constitution* i.e. the 1991 Constitution which included the existing law in *Section 170* of the *Constitution* i.e. laws and orders which were in existence before the promulgation of the *1991 Constitution.*

The existing law in *Section 176 of the Constitution* is define as follows:

> *"Act, rule regulations under of such instrument made in pursuance or continuing in operation under the existing Constitution and having effect as part of the laws of Sierra Leone or any part thereof immediately before the commencement of this Constitution or any Act of Parliament of the United Kingdom or Her Majesty in Council....."*

I note from the definition the Laws and Orders referred to are not only limited to Sierra Leone but include acts and orders of the United Kingdom.

Section 177(1&2) of the Constitution went on to state how and when the existing law will operate. *Section 177(1) states:*

> *"The existing law shall not withstanding the repeal of the Constitution of Sierra Leone 1978 have effect after the entry into force of this Constitution as if they had been made pursuance of this Constitution and shall be read and construed*

with such modifications and adaptations qualifications and exceptions as may be necessary to bring them in conformity in this Constitution".

Section 177(2) states:

"Where any matter fail to be prescribed or otherwise provided for under this Constitution or by other authority or person is prescribed or provided for or under an existing law (including any amendment to any such law made under this Section) or is otherwise prescribed or provided for immediately before the commencement of this Constitution by or under the existing Constitution the prescription or provision shall as from the commencement of this Constitution have effect with such modification, adaptation, qualification and exception as may be necessary to bring it into conformity with this Constitution by Parliament or by as the case may be require by the authority or person".

In my view, the existing law through the transitional provision act as an auxiliary provision which gives fillip to the *Constitution* when there are issues which called for the interpretation and implementation of the *Constitution* and in this respect the existing law fills the gap and closes any vacuum which exist in the *Constitution* - as no *Constitution* is perfect.

In my judgment, therefore, *Section 25 of Cap 60* has not been repealed either expressly or by implication by the *Constitution* or by *Section 32 of the Chieftaincy Act, 2009.* I hold, therefore, that *Section 25(1)* is not void for inconsistency. Indeed within the context of the existing law *Section 25(1)* was suitably applied to the appointment of the Chairman of the Commission. *Section 19* of the Chieftaincy Act can only

repeal it after it had come in to operation which was well after the appointment of the Chairman of the Commission.

In conclusion, taking all the circumstances of this matter in to consideration, I feel bound to hold that there has not been any infraction or violation to warrant the interpretation with a view of vitiating the commission's report and the events thereafter leading to the removal of the Plaintiff as Paramount Chief of Biriwa Chiefdom.

In the result this Court cannot grant the declarations prayed for. The Originating Notice of Motion is dismissed.

.....

HON. JUSTICE U.H. TEJAN-JALLOH – C.J.

I AGREE:.....

HON. JUSTICE S. BASH-TAQI - J.S.C.

I AGREE:.....

HON. JUSTICE P.O. HAMILTON – J.S.C.

I AGREE:.....

HON. JUSTICE V.A.D. WRIGHT – J.S.C.

I AGREE:.....

HON. JUSTICE M.E.T THOMPSON – J.S.C.

REF: CJ/HJ