

C.C 242/12

2012

B No. 21

IN THE HIGH COURT OF SIERRA LEONE

CIVIL DIVISION

IN THE MATTER OF THE CONSTITUTION OF THE PEOPLES' DEMOCRATIC PARTY

AND

IN THE MATTER OF A PETITION FOR THE CANCELLATION OF THE RESULTS OF ELECTIONS OF THE NATIONAL EXECUTIVE COMMITTEE OF THE PEOPLES' DEMOCRATIC PARTY

BETWEEN:

ABDULAI KAMARA

- 1ST PETITIONER

ALPHA OMEGA DARAMY

- 2ND PETITIONER

AND

GIBRILLA KAMARA

- 1ST RESPONDENTNATIONAL EXECUTIVE COMMITTEE OF THE PDP - 2ND RESPONDENT

COUNSEL:

G K THOLLEY ESQ for the Petitioners

A B SANGARIE ESQ for the Respondents

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

JUSTICE OF APPEAL

JUDGMENT DELIVERED THE 16 DAY OF OCTOBER, 2012

1. On 11 September, 2012, the Petitioners herein filed a Petition against the Respondents, seeking certain reliefs, two of them being that the election to the National Executive Committee (NEC) of the Peoples' Democratic Party (PDP) held on 2 September, 2012 in the Kambia District be declared null and void; and that the NEC of the PDP be restrained from exercising or purporting to exercise administrative powers of the PDP. The Petition was accompanied by an affidavit deposed and sworn to jointly by both Petitioners on 11 September, 2012, and to which was exhibited the party's Constitution.
2. Nominations of Presidential aspirants and Parliamentary aspirants commenced on 4 October, 2012, and PDP's slot was sometime last week. I

suspect that this is why Petitioners instructed their Solicitor to file the Notice of Motion dated 24 September, 2012. And this is why this Application has been heard and determined speedily. In this Application, the Petitioners ask that Injunctions be granted restraining both 1st and 2nd Respondents from acting or purporting to act as the Party Leader-elect, and as the NEC of the PDP pending the hearing of the Petition; and for an Order that the Petitioners continue to act in their respective capacities as Interim Leader and Interim Financial Secretary of the party respectively, pending the hearing of the Petition. The Petitioners also ask that the Costs occasioned by this Application, be paid by the Respondents.

3. The Application is supported by the joint affidavit of both Petitioners, Abdulai Bangura and Alpha Omega Daramy, deposed and sworn to on 28 September, 2012. The date this affidavit was sworn should of itself, render the Notice of Motion irregular, as the date is given as 24 September, 2012, 4 days preceding the date the affidavit was sworn. According to our Rules and Practice, all Motions should be supported by affidavit unless otherwise Ordered by the Court. This means that an affidavit should always accompany, and should be sworn on or before the date the Notice of Motion comes into existence. Sometimes, lawyers do forget this Rule of Practice in order to give the impression that their Applications had been prepared, and perhaps filed on date prior to the date they were actually filed. The irregularity is compounded further in this case, by the date of hearing printed on the face of the Motion paper: it is given as Wednesday 26th September, 2012. How could a Notice of Motion supposedly dated the 24th, but actually filed the 28th be heard on the 26th? Had it not been for the fact that I have noted that the copy in my file bears the date 28 September, 2012, and that the first hearing before me was on 3 October, 2012, I would have had no hesitation in striking out the Application for irregularity.
4. To return to the Petitioners' affidavit, they deposed that 1st Petitioner was the Interim Leader of the PDP, and that there had been procedural errors perpetrated by certain members of the party in collaboration with persons whom they reasonably believed were not members of the party during the party's elections to its NEC. This was why the Petition had been filed. They were informed by certain members of the party that the


505

Respondents were about to assume the party's day-to-day administration notwithstanding the existence of the Petition. Therefore, unless the Respondents were restrained by this Court, they might have taken certain actions which might have been detrimental to the party's chances of winning the forthcoming elections. They did not elaborate further on the '*certain actions*', which is what the Court would have expected, and would expect. If you ask the Court to exercise its coercive powers before an action is finally determined, you should at least set out what exactly you wish to stop happening. The Court cannot issue vague Injunctions. It can only restrain the doing of specified things or acts. They deposed further that Damages would not provide adequate compensation for any loss that the party might suffer as a result of the actions of the Respondents. *W*

5. The only documents exhibited to the affidavit are the Petition and the Memorandum and Notice of Appearance Entered on behalf of the Respondents. Since the Petitioners had alleged in the Petition that the 1st Respondent was not a member of the party, and that there were irregularities in the election of the National Treasurer, I directed Mr Tholley to assist the Court, by producing for its inspection the membership records of the party. So far, he has not been able to do so, but the Respondents have, through the affidavit of the 1st Respondent, to which I shall return soon, exhibited the 1st Respondent's membership card, and he, the 1st Respondent, has also deposed that because of the irregularities in the election of the National Treasurer, that election was cancelled. However, notwithstanding its absence from the documents exhibited to the 1st Petitioner's affidavit, I allowed Mr Tholley to refer to the party's Constitution in order to clarify the manner in which membership could be proved. He could not find the answer in the Constitution. Article 6 of the party's Constitution provides the method by which one could become a member of the party, but not how such membership could be proven. On the whole, the Petitioners' affidavit is extremely weak, and most inadequate to support the Orders they crave.
6. As I have said above, the Respondents have filed an affidavit in opposition deposed and sworn to by the 1st Respondent. It fills in all the gaps found in the Petitioners' joint affidavit. The 1st Respondent has exhibited to it as G1, a copy of his membership card 033 issued by the

party; and, a list of the outgoing, or rather, of former members of the NEC, which list is headed by the 1st Petitioner, with the 2nd Petitioner named as Financial Controller, and the 1st Respondent as National Organising Secretary, thus giving the lie to the claim made by the Petitioners in their joint Petition that 1st Respondent was not a member of the party. The 1st Respondent also deposed that both himself and the 2nd Respondent collectively, have endorsed the 1st Petitioner's candidacy to contest the Parliamentary election in Constituency 108, as shown in exhibit G5. Other documents, going to show that the 1st Respondent is not only a member of the party, but has participated in the affairs of the party, are also exhibited, but need not be referred to, specifically. The sum total of what the 1st Respondent had to say in that affidavit was that the Petitioners allegations of wrong-doing on the part of the Respondents were untrue. Where there were irregularities in the elections, such as that for National Treasurer, that election was cancelled.

7. Notwithstanding what I have said above, I should now consider firstly, whether the Petitioners have shown that there is a serious issue which ought to be tried, and if I so decide, then I should also consider the balance of convenience, and the question of whether damages will adequately compensate the Petitioners and/or the party if the Injunctions sought were refused. I shall go no further than quote what I said in another case involving arguments about membership of a Union, and repeated in my recent Judgment in the case of CC162/10 - JACKSON v HAJA ALARI COLE & ANOR Judgment delivered 9 October, 2012. In the latter case I said, inter alia: "*In the case of C.C. 305/08 OSMAN KAMARA v The Former Executive of the Motor Drivers and General Transport Workers Union & others - Judgment delivered 7 October, 2008, on an Application for an Injunction argued by Counsel for the Plaintiff in this matter, I set out the principles applicable where a Plaintiff seeks an Interlocutory Injunction, and I stand by those principles. There, I said inter alia at paragraphs 21&22: "The principles enunciated in the AMERICAN CYANAMID case are still applicable: the Plaintiff must establish that he has a good arguable claim to the right he seeks to protect; the Court must not attempt to decide this claim on the affidavits; it is enough that the Plaintiff shows that there is a serious issue to be tried; if the Plaintiff satisfies those tests, the grant or*

refusal of an Injunction is a matter for the exercise of the Court's discretion on the balance of convenience. The White Book tells us also that "where neither side is interested in monetary compensation and the decision on the Application for an Injunction will be the equivalent of a final Judgment.....the Court should not grant an Interlocutory Injunction...merely because the Plaintiff is able to show a good arguable case, and the balance of convenience lies in granting an Injunction; instead, the Court should assess the relative strength of the parties' cases before deciding whether the Injunction should be granted..... In deciding where the balance of convenience lies, the principles the Court should bear in mind are: first, is whether damages would be a sufficient remedy; if so an Injunction ought not to be granted. Damages may also not be sufficient if the wrong is a) irreparable, or b) outside the scope of pecuniary compensation, or c) if damages would be difficult to assess. It will be, generally, material to consider whether more harm will be done by granting or by refusing an Injunction. I must also consider whether, the granting of an Injunction is the only way the Plaintiff could seek to enforce the requirements of the provisions in the Union's Constitution, relating to the holding of elections. The Plaintiff must also give an Undertaking as to Damages" 

8. Having considered all of the affidavit evidence before me, and the arguments of Counsel, I have come to the conclusion that the Petitioners have not shown that they have a good arguable claim to the right they seek to protect; nor have they shown together or individually, that there is a serious issue which ought to be tried. I am not satisfied that they have done this. Their grievances, if any, could have been forwarded to, and could have been dealt with by the Political Parties Registration Commission, pursuant to the provisions of Section 36 of the Constitution of Sierra Leone, 1991 and Section 6 of the Political Parties Act, 2002 as amended. I need not therefore go on to consider the other criteria for the granting or refusal of an Injunction. The Petitioners ought not to have brought this Application in view of the evidence produced by the Respondents, which evidence must have been available to them as well. Their attempt to deceive and mislead the Court has come to nought. The penalty for doing so is a Costs Order.

9. I ORDER that the Petitioners' Application dated 24th September, 2012 but filed on 28th September, 2012 be DISMISSED for lack of merit. The Petitioners shall pay the Costs of this Application, such Costs to be Taxed if not agreed.

mlle.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE