

IN THE HIGH COURT OF SIERRALEONE

GENERAL CIVIL DIVISION

GENERAL /PARLIAMENTARY ELECTIONS FOR CONSTITUENCY 120 IN
THE WESTERN AREA OF THE REPUBLIC OF SIERRA LEONE HELD ON
THE 7TH DAY OF MARCH 2018

BETWEEN

TENNISON HINDOLO SANDY - PETITIONER

18 BROOK DRIVE, KISSY BROOK

FREETOWN

AND

HONOURABLE MOMOH KAMARA - 1ST RESPONDENT

MEMBER OF PARLIAMENT

ALL PEOPLE'S CONGRESS

THE NATIONAL ELECTORAL COMMISSION – 2ND RESPONDENT

TOWER HILL

FREETOWN

NATIONAL RETURNING OFFICER - 3RD RESPONDENT

NATIONAL ELECTORAL COMMISSION

TOWER HILL

FREETOWN

THE REGIONAL COMMISSIONER – 4TH RESPONDENT

THE NATIONAL ELECTORAL COMMISSION

WESTERN URBAN DISTRICT

FREETOWN

Counsels for the Petitioner – J. K. Lansana, I. Kanu, A. K. Koroma, J. J. Campbell, and C. Sawyer and I.F. Sawaneh

Counsels for the 1st Respondent- L. Dumbuya, A. Macauley, B.Koroma

Counsel for the 2nd, 3rd, and 4th Respondent – D. E. Taylor

Before the Hon. Mr. Justice Mohamed Alhaji Momoh-Jah Stevens J.

Judgment dated the 31st day of May 2019

The Petitioner herein, Tennison Hindolo Sandy, was a Parliamentary Candidate for the Sierra Leone People's Party on the 7th March 2018 General / Parliamentary Elections for Constituency 120 Western Urban District of the Republic of Sierra Leone, filed Petition dated the 20th day of April 2018 against Honourable Momoh Kamara of the All People's Congress.

The Petitioner herein avers that the 1st Respondent herein had not resigned from his job in the requisite time as stipulated in the Public Election Act 2012 , as the 1st Respondent was the Principle and Proprietor of the Grace Community High School, Moyiba, Kissy, Freetown and even in November 2017 he was receiving salary from the Consolidated Fund thereof.

The 1st Respondent filed an Answer dated the 17th day of May 2018 and he denied the allegations contained in the Petition herein.

This Honourable Court gave direction that this trial shall be by Affidavit Evidence.

In the Affidavit in lieu of oral evidence sworn and deposed to by the Petitioner dated the 10th day of September 2018, the Petitioner stated, among other things that 'the 1st Respondent is a serving Teacher in the Sierra Leone Teaching Service who doubled at the

same time as Primary and Secondary School Teacher, failed to resign his post a year ahead of the Elections of the 7th March 2018. The Petitioner exhibited Salary Paying Slip wherein the 1st Respondent was receiving salary at the Moyiba Community Educational Centre between 2014 to April 2018. The exhibited paying slip in support thereof marked as Exhibit THS 3.

The 1st Respondent on the other hand by an affidavit in Opposition sworn to on the 20th September 2018 denied that he was receiving salary as he has since resigned and in this respect exhibited MK 2, which is a Letter of Resignation as a Teacher of the Moeba Community Education Centre, addressed to the Permanent Secretary, Ministry of Education, Science and Technology dated the 24th February 2017, also Exhibit MK3 which is a Letter of Resignation as a Principle of Grace Community High School, Moeba Town Freetown, dated 27th February 2017. Further, Exhibit MK4 which is the pin code and salary voucher, Exhibit MK5 which is evidence of payment of salary from September 2016 to 31st January 2017.

The other witness relied upon according to the Counsel for the 1st Respondent is Ebenezer Freeman Sesay who sworn to an Affidavit stating that there was no violence, vote buying or malpractice at the Constituency in issue.

In his presentation to the Court Lead Counsel for the Petitioner J.K. Lansana canvassed the Court that they relied on the entirety of the Affidavit in lieu of Oral Evidence dated the 20th September 2016 but with specific emphasis on paragraph 5(d) of the said Affidavit which concerns the continuous receiving of salary by the 1st Respondent from the Consolidated Fund between 2014 up to April 2018 and at the same time urged the Court to discontinuance Exhibit AMK 3 as it is of no essence because to write a letter of resignation is one aspect and to continuing receiving salary is another aspect.

Lead Counsel for the 1st Respondent canvassed this Court on the 10th day of May 2019 inter alia, that the matter the Petitioner is complaining of ought to have been brought before 5pm on Nomination Day as Section 63 of the Public Election Act 2012 makes it very clear. Besides, Counsel for 1st Respondent noted that the service of his client had been terminated by Exhibit AMK 3 which is a Letter of Resignation addressed to the Permanent Secretary at the Ministry of Education dated the 27th day of February 2017 and that the 1st Respondent is in compliance with Section 76(1) b of the 1991 Constitution of Sierra Leone. Counsel for the 1st Respondent further stated that the claimed by the Petitioner that the 1st Respondent continue receiving salary is of no moment. Counsel for the 1st Respondent ended up by saying that they relied on the entirety of the Evidence by way of Affidavit and urged the Court to dismiss the Petition.

Counsel for the 2nd, 3rd, and 4th Respondents did not comply with the direction of this Court to file an Affidavit in response to that of the Petitioner, however, I granted special leave to Counsel to make a submission. Counsel for 2nd, 3rd, and 4th Respondents relied on Section 63 of the Public Election Act 2012 and therefore urged the Court to dismiss the Petition. I will not pay heed to Counsel in this respect because there is no sworn Affidavit from his clients.

Counsels for the Petitioner cited further two persuasive legal authorities. In Re An Election Petition and In Re Rogers-Wright December 6th 1948 (Civil Case NO. 318/48), where it established by the Court that 'any lawyer or doctor currently or previously debarred from practising not eligible for election into Legislative Council'.

The other Legal authority cited by Counsel representing the Petitioner is the Nigeria case of Alwa'u v. Yakubu (2004) 4 W.R.N. In this case two principle of law was established by the Court, First 'no person shall be qualified to be elected a member of the House of Assembly if a person employed in the Public Service of the

Federation has not resigned or retired from such employment thirty days before the date of election'. Second, an 'unreliable letter of resignation should not be allowed to form the basis of withdrawal of service'.

Counsels representing the 1st Respondent further submitted seven persuasive legal authorities in aid of the case of their client. First, the case of Imar v. Malarima (1999) 3 NWLR, where it was established inter alia by the Court, that the person alleging electoral offences has the onus and burden of proof. Second, 'Parliamentary Elections, Representation and the Law' by Caroline Morris, where a similar proposition of law was noted as in the case of Imar. Third, 'Law on Burden of Proof 3rd Edition 2018' by Justice Arijit Pasayat of the Supreme Court of India (Retd.), the Learned Judge also expresses an analogous principle of Law regarding the proof of electoral offences as in the Nigeria case of Imar, that the strict burden lies on the Petitioner. Fourth, the case of Wulgo v. Bukar (1999) 3 NWLR, here again the Court put the Petitioner to strict proof of what he is alleging about the Elections. Fifth, the case of Babba v. Tafashiya (1999) 5 NWLR, where 'an appeal was dismissed by the Court, and the Court stated that the only way one can questioned the lawfulness of some of the votes cast at an election is to tender in evidence all the Forms used and witnesses called to testify thereto'. Sixth, the case of Alalade v. Awodoyin (1999) 5 NWLR, the Court drew an analogy between the requirement in the Standard of Proof in Civil, which is Balance of Probabilities and Burden of Proof in Criminal, which is proof beyond reasonable doubt, and in the circumstance dismissed the appeal as the Court is not satisfied with the standard established by the Petitioner. Seventh, the case of Remi v. Sunday (1999) 8 NWLR, where it was stated among other things that the Court of first instance is bound by the pleadings before it.

I have a duty under Law to evaluate the evidence before this Honourable Court on a balance of probabilities. The question is did

the 1st Respondent continue to receive salary after he resigned from the Teaching Service, the answer is in the Affirmative as exhibited in THS 3. This is the area that was not controverted at all by the 1st Respondent. In law they say he who assert must prove. The Petitioner went in search and produced in evidence 'Paying Slip' of the 1st Respondent up to April 2018. In the English case of R V. Leatham (1861) 8 Cox C.C. 498 at p. 503 regarding the admissibility of evidence, it was held "it matters not how you get it, if you steal it even, it would be admissible in evidence". I submit humbly THS 3 is admissible. The Letter of resignations written by the 1st Respondent run contrary to his intention. If you say you have resigned, you must washed hands completely. You cannot claimed to resign from the Teaching Service and at the same you are receiving salary. It is also no defence to say the Petitioner must have objected on Nomination Day in line with Section 63 of the Public Election Act 2012, I disagree because they say who 'seeks equity must do equity', also 'he who comes to equity must come with clean hands'. The hands of the 1st Respondent were not clean because he knows that he was not doing the right thing, but nevertheless went on doing it.

I therefore agree with, and affirmed the Petition of the Petitioner herein and I accordingly entered judgement in favour of the Petitioner.

I hereby make the following orders, in addition to Section 78(1) a of the 1991 Constitution of Sierra Leone which gives jurisdiction to the High Court to hear and determine whether any person has been validly elected as a member of Parliament, as follows

- 1- I hold that the said 1st Respondent has not been validly elected as a Member of Parliament for Constituency 120 Western Area of the Republic of Sierra Leone because the said Momoh Kamara was receiving salary up to April 2018 contrary to Section 76(1) b of the 1991 Constitution of Sierra Leone Act NO.6 of 1991.

- 2- This Honourable Court orders that in line with Section 78(1) b of the 1991 Constitution of Sierra Leone, the seat of Honourable Momoh Kamara of the All People's Congress is declared vacant because the said Momoh Kamara acted contrary to Section 78(1) b of the 1991 Constitution, as being a person receiving salary from the Consolidated Fund failed to resign in good faith twelve months before the 7th March 2018 General/Parliamentary Elections.
- 3- This Honourable Court orders that the said Election of Momoh Kamara of All People's Congress, Constituency 120, Western Area, is declared null and void by virtue of Section 78(1) a of the Constitution of Sierra Leone Act NO. 6 of 1991.
- 4- This Honourable Court orders the 1st Respondent to pay back the monies he has been receiving as salary from the date of the said purported resignation, into the Consolidated Fund immediately, otherwise is a case for the Anti-Corruption Commission to prosecute.
- 5- Now therefore in line with the "Sierra Leone Gazette published by Authority dated Tuesday, 10th April 2018 that deals with 'Declaration of Results For The Ordinary Members of Parliament Elections held on the 7th March 2018'" exhibited and marked THS 2, Tennison Sandy of the Sierra Leone People's Party having secured the second highest vote in the said Elections, is hereby declared Honourable Member of Parliament for Constituency 120 Western Area.
- 6- No order as to costs

Stevens J.

Dated 31-5-2019

Signature [Handwritten Signature]