

IN THE HIGH COURT OF SIERRALEONE

GENERAL CIVIL DIVISION

GENERAL /PARLIAMENTARY ELECTIONS FOR CONSTITUENCY 108
WESTERN RURAL DISTRICT IN THE WESTERN AREA OF THE REPUBLIC
OF SIERRA LEONE HELD ON THE 7TH DAY OF MARCH 2018

BETWEEN

AHMED JOSEPH KANU - PETITIONER

13 CAMPBELL TOWN ROAD

LUMPA WATERLOO

AND

HONOURABLE KEMOKOH CONTEH - 1ST RESPONDENT

MEMBER OF PARLIAMENT

ALL PEOPLE'S CONGRESS

THE NATIONAL ELECTORAL COMMISSION – 2ND RESPONDENT

TOWER HILL

FREETOWN

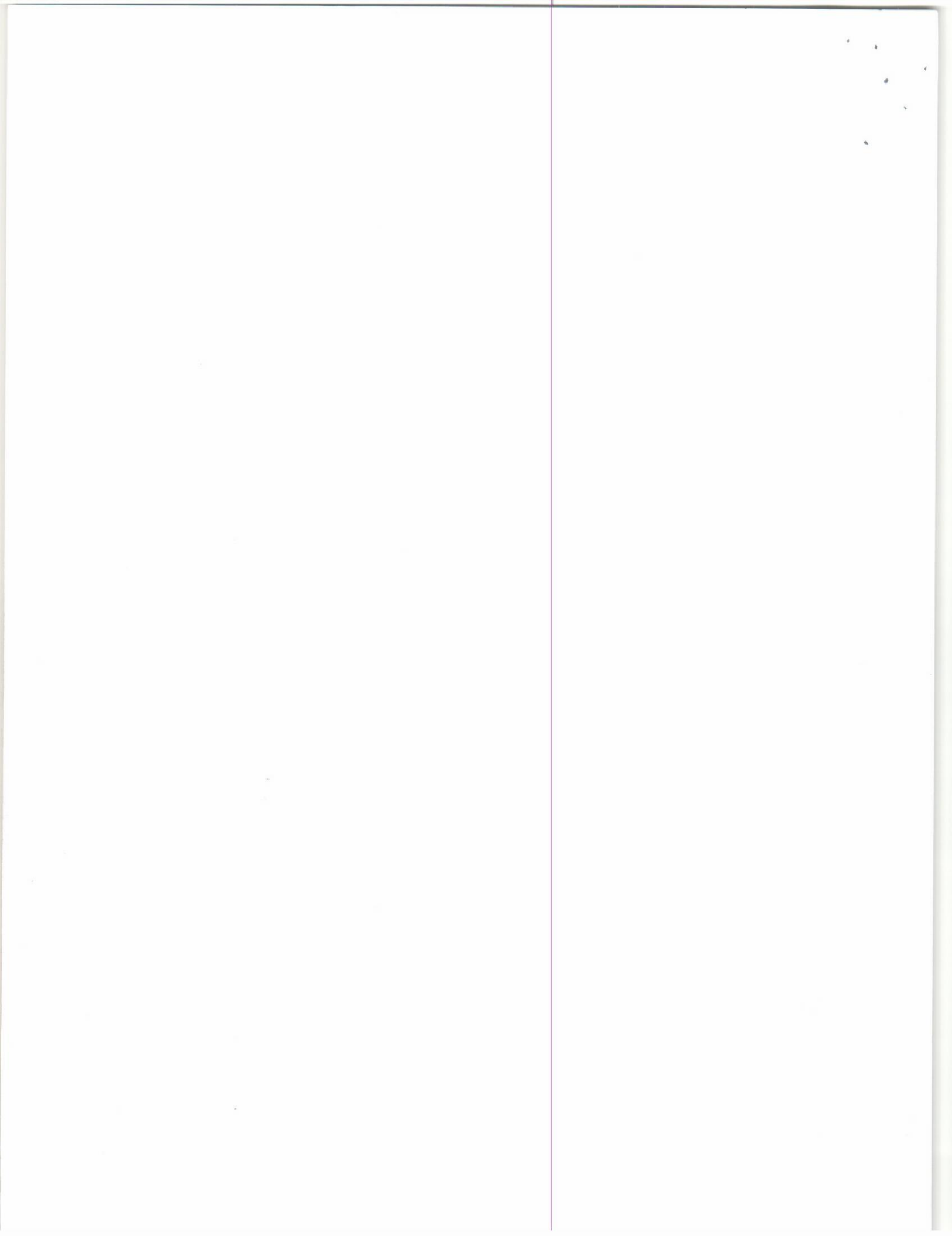
NATIONAL RETURNING OFFICER - 3Rd RESPONDENT

NATIONAL ELECTORAL COMMISSION

TOWER HILL

FREETOWN

RETURNING OFFICER WESTERN RURAL DISTRICT – 4TH RESPONDENT



C/O DISTRICT ELECTIONS OFFICE
NATIONAL ELECTORAL COMMISSION
FREETOWN

Counsels for the Petitioner – J. K. Lansana, I. Kanu, J.J. Campbell, C. Sawyer, J.M. Jengo, T. E. Bundor and I. Sawaneh

Counsels for the 1st Respondent- A. S. Sesay, A. Macauley, B. Koroma, S. Bah, Z. A. Kanu

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 filed Petition herein dated the 18th April 2018 and stated that he was a candidate of the Sierra Leone People's Party on the 7th March 2018 General/Parliamentary Elections for Constituency 108 Western Area and the National Returning Officer, National Electoral Commission returned Honourable Kemokoh Conteh as duly elected Member of Parliament of this Constituency in issue.

The Petitioner says that the said election must be declared null and void for the following reasons; That the 1st Respondent sent men to his house with machetes, sticks and stones to loot, vandalize and assault persons in his house, that he the petitioner was attacked and assaulted by the 1st Respondent on the 2nd March 2018, that the National Election Watch Observers at Bassa Town polling station in the very constituency were related to the 1st Respondent, that the Petitioner and his supporters were intimidated by the 1st Respondent and his supporters and the 1st Respondent gave Twenty Thousand Leones to persons to vote for him at various stations.

In Answer, the 1st Respondent denied all the allegation in the Petition and in fact avers that the election was free, free and

peaceful with both local and international observers endorsing as such.

This Petition was assigned to me for hearing and determination on the 15th April 2019. Notices were served for hearing. On the 3rd day of May 2019, Lead Counsel for the 1st Respondent enquired whether a ruling on a case to be stated to the Supreme Court is ready. Lead Counsel for the Petitioner, J.K. Lansana informed the Court the Judge ruled against the matter to be sent to the Supreme Court. A.

Macauley in turn informs the Court that if there was a ruling against the said application for the matter to be stayed, then he wants to inform the Court that a copy of the said ruling was not served. I personally perused the file but I did not see any ruling staying this Petition and I directed that we were going on with the Affidavit hearing.

According to J.K. Lansana lead Counsel for the Petitioner, they are relying on the entirety of the Affidavit filed for and on behalf of the Petitioner herein, and as he put it, Affidavit evidence is recognised by our jurisprudence.

But A. Macauley, raised a preliminary objection. That the Affidavit is a purported Affidavit as all the form and content are absent and further referencing Order 31 Rule 1 sub rule (6) of the High Court Rules 2007.

J. K. Lansana on the hand relied on Order 31 Rule 4 of the High Court Rules and in fact stated the Affidavit in Opposition has already been filed in reply by the 1st Respondent.

Counsel representing the 2nd, 3rd and 4th Respondents wants this Court to give him the opportunity to make legal submission and also questioned the Affidavit in lieu of oral evidence in the case of the Petitioner.

Counsel A. Macauley ended up calling on this Court to discountenance the said Affidavit and cited a case authority in respect of same.

I ruled that the Affidavit hearing must go on.

Another Counsel in the team of Lawyers representing the 1st Respondent, B. Koroma moved the Court and indicated that they are relying on the Affidavit of the 1st Respondent sworn to on the 21st day of September 2018 with Exhibits attached thereto, the Affidavit of Alpha Sheriff Gbla sworn to on the 21st day of September 2018 together with Exhibits attached thereto and the Affidavit of Osman Perry sworn to on the 21st day of September 2018 with Exhibits attached thereto.

In the case of the Petitioner, the Petitioner deposed to an Affidavit evidence in lieu of oral evidence dated the 10th day of September 2018. The Petitioner stated inter alia that his house was damaged on the 27th February 2018 by supporters of the 1st Respondent and photographs are produced in support of the said destruction and that there was threat and intimidation to his supporters causing many of his supporters to flee the constituency in issue. The Petitioner maintained that the content of his Affidavit are true and correct and to the best of his knowledge in support of the Petition filed for hearing and determination.

A witness for the Petitioner Madam Mabinty Sesay made a witness statement dated the 10th day of September 2018 and maintained that she witnessed 1st Respondent led thugs of the All People's Congress party known as Red Army to the house of the Petitioner, looted and vandalized the house of the Petitioner.

Another witness for the Petitioner Basiru Barrie made a Statement dated the 10th September 2018 stated that he witnessed the 1st Respondent leading gangs to the house of the Petitioner and same was damage.

Another eye- witness of the Petitioner made a statement on the 10th day of September 2018 in the person of Abass Sam Kanu maintaining that there was intimidation of supporters of the Petitioner most of whom fled the said Constituency and also saw people damaging the house of the Petitioner led by the driver of the 1st Respondent.

David Kai Matturi made statement on the 10th of September 2018 in favour of the Petitioner stating that the 1st Respondent was dishing out liquid money to people to vote for him on the date of the election. I shall not lay any weight to Witnesses Statements which are not deposed to in the form and nature of an Affidavit. I shall instead carefully examined the Affidavit deposed to by the Petitioner and exhibits attached thereto.

The Petitioner wrote several letters which were marked as follows:

1. A Letter addressed to the Commissioner, Human Rights Commission, requesting to investigate incidence of Violence in Waterloo during the 2018 General Elections , marked Exhibit A.J.K 5
2. A Letter addressed to the National Security Coordinator , Office of National Security dated the 2nd March 2018 complaining the LUC E-Division against Candidates and members of the Sierra Leone Peoples Party in Waterloo, marked as Exhibit AJK 6
3. A Letter addressed to the Inspector General of Police dated the 3rd March 2018 complaining of civilians in police uniform intimidating him, marked as Exhibit AJK 7

That is the case of the Petitioner I see from documents filed in this Court.

Counsels for the Petitioner relied on two cases as persuasive legal authorities: Morgan and Others v. Simpson and another (1974) 3 All ER 722 and Gunn and others and Sharpe and others (1974) 2 All ER 1058. In the Gunn's case, ante, it was held by the Court inter alia "... they were substantial and as such to be likely to affect the result

of the election, since they had resulted in more than half the voters who had sought to vote at the polling station being disfranchised and thus prevented from voting for the petitioners. It followed that the election could not be said to have been conducted substantially in accordance with the law as to elections ... the election of the respondents should therefore be declared void". In simple terms the Court in that case declared the election of the respondent null and void because of the conduct of the respondents preventing the credible voters of the petitioners to cast their votes.

The 1st Respondent on the hand deposed to an Affidavit in Opposition dated the 21st September 2018 denying every allegation made by the Petitioner. The 1st Respondent attached as Exhibit KC 1, a copy of Certificate as being duly elected Member of Parliament.

Osman Perry also deposed to an Affidavit in Opposition in support of the 1st Respondent dated the 21st day of September 2018. A copy of his identification card is attached and marked OP1.

Alpha Sheriff Gbla also deposed to an Affidavit in Opposition dated 21st September 2018 in support of the 1st Respondent and exhibited a copy of his voter identification card.

In Law it is said he who assert must prove. In evaluating the evidence it is clear that the house of the Petitioner was partially destroy, herein exhibited as AJK 3. It is really clear that the Petitioner wrote several letters complaining of destruction to his house, intimidation and violence but nothing tangible was done by way of investigation or reply. Institutions like the Police, Office of National Security and Human Rights Commission, I advise must look into these kinds of complaints if they do come in the future Elections.

Sierra Leone, I submit is a Country governed by the Rule of Law and Constitutionality, therefore any breach of the law must be addressed forthwith precisely and concisely.

The National Electoral Commission has not done any justice to both the Petitioner and 1st Respondent to reply either in support or in opposition, therefore I am left with no alternative but to adjudicate with what is before me.

I see a clear case of destruction to the property of the Petitioner, violence and intimation orchestrated by the 1st Respondent and his supporters on the Petitioner, thereby preventing credible and potential voters in a huge form, from casting their votes in favour of the Petitioner.

From the evidence adduced before me, the case of the Petitioner has been established on a balance of probability to warrant a cancellation of the said result declared by the National returning Officer in favour of Hon. Kemokoh Conteh, Constituency 108, Freetown. I am guided and satisfied with the principle of law established in the case of Gunn and others v. Sharpe and others, referenced earlier, and for this reason I agree that the Petitioner's house was vandalised by the 1st Respondent and his men, violence and intimidation perpetrated by 1st Respondent as his men against the Petitioner and his supporters causing most of these supporters to flee Constituency 108 less than a week to the March 7th 2018 General/Parliamentary Elections.

I am of the firm conviction that those who believe in the destruction of houses, directly perpetrating violence on supporters of political opponents less than a week to the Elections, causing most of these supporters to flee from their constituency and consequently preventing them to vote, must be disqualified as manifested by the 1st Respondent herein and his followers. A mere denial by the 1st Respondent and his witnesses herein on Affidavit evidence is not sufficient because I submit a corroborative evidence is required in rebuttal. Even a defence of alibi was not founded in the Affidavits of the 1st Respondent and his witnesses.

I hold that the Petitioner has established his case on a Balance of Probability and I accordingly entered Judgment for the Petitioner.

I hereby make additional orders to this Judgment:

- 1- This Honourable Court accepts and affirmed the Petition herein filed by the Petitioner dated the 18th day of April 2018
- 2- In accordance with Section 78 (1) (a) of the Constitution of Sierra Leone Act NO. 6 of 1991, this Honourable Court declares that Hon, Kemokoh Conteh has not been validly elected as Member of Parliament
- 3- The Election Result which returned Hon. Kemokoh Conteh as Member of Parliament duly elected, by the National Returning Officer, National Electoral Commission, is declared null and void by this Honourable Court
- 4- 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 Parliament Elections held on the 7th March 2018" exhibited and marked AJK 1, Ahmed Kanu 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 108 Western Area.
- 5- No order as to costs.

Steven J.

Dated -----

31-5-2019

Signature ----



