

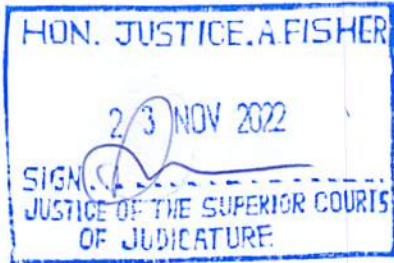
Neutral Citation Number Misc. App. 1/21 C1 General and Civil Division

Case No: cc 1/2021

IN THE HIGH COURT OF SIERRA LEONE  
HOLDEN AT FREETOWN  
GENERAL AND CIVIL DIVISION

Law Court Building  
Siaka Stevens Street  
Freetown

Date: 23 November 2022



Before:

THE HONOURABLE MR JUSTICE FISHER J

Between:

Alfred Peter Conteh  
(Suing by his Attorney Rashid Santigie Sesay)

Plaintiff

-and-

Dr Ernest Bai Koroma  
Alhaji Osman Foday Yansaneh  
All Peoples Congress Party  
Political Parties Registration Commission

1<sup>st</sup> Defendant  
2<sup>nd</sup> Defendant  
3<sup>rd</sup> Defendant  
4<sup>th</sup> Defendant

.....  
JM Jengo of Counsel for the Plaintiff

AM Jalloh SK Koroma, L Dumbuya, A Macauley, MN Kamara, AS Sesay of counsel  
for the 3<sup>rd</sup> defendant.

Hearing dates: 6 October 2022, 7<sup>th</sup> October 2022, 17<sup>th</sup> October 2022

.....  
APPROVED JUDGEMENT  
.....

I direct, that copies of this version as handed down may be treated as authentic

THE HONOURABLE MR JUSTICE FISHER J

**The Honourable Mr Justice Fisher J:**

1. On the 28<sup>th</sup> day of April 2022, I gave final judgement in this matter, which judgement was meant to resolve the issue of democracy in the 3<sup>rd</sup> defendant, All Peoples Congress party. It was a detailed judgement which addressed all the relevant issues in the case and directions and orders were given with respect to several matters, which had to be complied with. This court is not aware of any appeals with respect to the said judgement neither is it aware of any orders from a higher court overturning this judgement.
2. It is rather unfortunate, though not surprising that the parties have returned to court blaming each other for breaches of the judgement, on the one part and non-cooperation by the other party on the other hand. It is equally unfortunate that some unsavoury elements on both sides of the feuding parties have resorted to blaming the courts for their inability to comply with a simple legal judgement which has taken tremendous strides to assist in solving the political issues before it. The court is now left in the unenviable position of attempting to resolve a political dispute not of its own making, when it had given a clear judgment on the legal issues in dispute, which it expects ought to have been complied with.

**The role of the courts in adjudicating political disputes.**

3. The traditional role of courts is to adjudicate upon disputes which may involve political disputes within the framework of the law. Political parties are a permanent fixture of our body politik and to that extent they have a place within the laws of Sierra Leone by virtue of the provisions of

section 35 (2) of the Constitution of Sierra Leone, Act No 6 of 1991, which provides as follows:

*"35. (1) Subject to the provisions of this section, political parties may be established to participate in shaping the political will of the people, to disseminate information on political ideas, and social and economic programmes of a national character, and to sponsor candidates for Presidential, Parliamentary or Local Government elections.*

*(2) The internal organisation of a political party shall conform to democratic principles, and its aims, objectives, purposes and programmes shall not contravene, or be inconsistent with, any provisions of this Constitution.*

4. The above provisions clearly stipulate that political parties cannot act as they feel or act in accordance with the notion of political expediency. They may in circumstances act in accordance with what they consider to be politically expedient, but such political expediency must conform with the law, although they both do not always sit comfortably together. Where the activities of political parties fail to conform with the law or democratic values, such a political party risks sanctions as set out by law in the political parties Act 2002.
5. Where there are allegations of non-compliance with court orders by a political party and such allegations are justifiable, it represents a fundamental assault on the rule of law and democratic principles and the public interest demands that action, including punitive action is taken by the courts to ensure its orders are not flouted with impunity.

### The application

6. By way of a notice of motion dated the 26<sup>th</sup> day of September 2022, the 3<sup>rd</sup> defendant party, seeks an order that the plaintiff/contemnor be committed to the Correctional centre, central prisons, Pademba Road, Freetown, for the alleged contempt of the orders of the court, dated the 28<sup>th</sup> day of April 2022, in the following manner:
  1. "That by paragraph 90(10)(6) this honourable court ordered that "in order to achieve unity within the party, decisions of the ITGC shall be by simple majority".
  2. That the plaintiff/contemnor being the chairperson of the ITGC has on diverse days been making and publishing decisions in the name of the ITGC without seeking and/or obtaining the approval of the ITGC.
7. The 3<sup>rd</sup> defendant also prayed for an order rescinding or quashing all decisions made and /or published by the plaintiff/contemnor without the consent and or approval of the ITGC or by its simple majority as ordered by the court.
8. In support of the notice of motion is the affidavit in support sworn to by Alpha M Jalloh, sworn to on the 26<sup>th</sup> day of September 2022, with seventeen exhibits attached. I have read in full the affidavit in support. As this is a contempt of court application, the 3<sup>rd</sup> defendant has deposed to facts which it considers amount to breaches of the orders of the court in its judgement dated 28<sup>th</sup> day of April 2022. It is necessary to set out in summary the alleged breaches relied upon.

1. That the plaintiff/contemnor has been making and publishing decisions without seeking and /or obtaining the consent of the ITGC or a simple majority of the committee as ordered by the court.
2. That in violation of the said judgement, by a press statement dated the 10<sup>th</sup> day of June 2022, the plaintiff/contemnor unilaterally suspended all standing committees duly constituted by the ITGC and stated that all correspondence and donations should be directed to him, even though the ITGC had unanimously elected its secretary and head of secretariat and assigned such task to him. Exhibit AMJ8 is exhibited as proof of the press statement of said elections.
3. That in disregard of the said judgement of the court and the APC constitution, the plaintiff/contemnor in a press statement dated 4<sup>th</sup> August 2022 unilaterally and without support of a simple majority of the ITGC, purported to reinstate what he described as *"disenfranchised and returnees to the APC party"* wrongly claiming that it was done to resolve all unresolved membership issues as directed by the judgement. The said press release was exhibited as exhibit AMJ9.
4. That in disregard to the said judgment and the APC Constitution 2022, the plaintiff/contemnor by a press statement dated 13<sup>th</sup> September 2022 and without the support of a simple majority, of the ITGC the plaintiff/contemnor unilaterally and without support of the ITGC by a simple majority, purported to appoint district and

Constituency chairmen of the 3<sup>rd</sup> defendant. A copy of the said letter is exhibited as Exhibit AMJ10.

5. That there is a memo dated 12<sup>th</sup> September 2022 authored and published by the plaintiff/contemnor without the approval of a simple majority of the ITGC. This memo is exhibited as Exhibit AMJ11.
6. That there is also shown a letter dated 1<sup>st</sup> August 2022 authored and signed by the plaintiff/contemnor regarding his unilateral, unlawful and purported appointment of members of the ITGC to oversee various districts in the country without the knowledge and or approval of the required simple majority of the ITGC. A copy of the letter is produced and marked as exhibit AMJ12.
7. That the plaintiff/contemnor has unilaterally purported to appoint ward chairmen of the 3<sup>rd</sup> defendant without the knowledge and approval by simple majority of the ITGC.
8. That the ITGC convened a properly constituted meeting and elected 24 members of the Transition Interim independent elections management committee and submitted the list to the PPRC while the plaintiff/contemnor appointed other persons and submitted a list of those appointed to the chairman of the TIIEMC thereby causing unnecessary stalemate in the process. All of this was done without the consent or approval of the ITGC.
9. In summary, the matters stated above are relied upon as proving that the plaintiff/contemnor is in breach of the judgement of the court. The deponent, Mr AM Jalloh swore to other factors which he considered necessary to set out the alleged contempt in context.

10. The additional contents of the affidavit in support, are set out below in order to give greater clarity to the effect of the alleged contempt. In summary, he swore to the following facts:

1. That the actions of the plaintiff/contemnor complained above have seriously undermined the ITGC's efforts to carry out the tasks stipulated in the aforementioned judgement and the APC 2022 Constitution in a timely manner disrupted the general operations of the APC during the ongoing voter registration.
  2. That the district chairmen appointed by the plaintiff/contemnor have been engaged in disrupting meetings geared towards the voter registration exercise.
  3. That in his capacity as the legal representative, he had admonished the plaintiff/contemnor to desist from carrying out unlawful actions in violation of the said judgement to no avail.
  4. That by letter dated the 20<sup>th</sup> and 25<sup>th</sup> July and 22<sup>nd</sup> September 2022, he had informed the plaintiff/contemnor about violations of the court judgement and had requested the intervention of the 4<sup>th</sup> defendant to resolve the issues.
  5. That following a meeting held at the PPRC an advisory note was issued which advised the plaintiff/contemnor that decisions must be by a simple majority of the ITGC. The plaintiff/contemnor disregarded the advisory note.
11. The plaintiff/contemnor filed an affidavit in opposition which was sworn to by the plaintiff/contemnor on the 13<sup>th</sup> day of October 2022, with six exhibits attached. In view of the fact that the affidavit in opposition is

a response to the allegations of contempt against him, I consider it necessary to set out albeit in summary form, the relevant portions of the affidavit in opposition that will form the basis of this Judgement. In summary, he swore to the following facts:

1. That the according to the judgement of the court, the ITGC was to constitute 21 members of which he later became the chairman.
2. That the essence of the committee was to manage the affairs of the 3<sup>rd</sup> defendant party, thereafter, leading to a smooth transition after the national convention.
3. That since the inception of the operations of the committee, Mr Alpha Jalloh (the deponent of the affidavit in support) had made it a point of duty of ensuring that the desired goals were not met for reasons best known to himself.
4. That he had told Mr Jalloh after the committee was formed that many members of the 3<sup>rd</sup> defendant had raised issues about his legality and those of other members, giving the fact that they have been executive members and he had downplayed the issue and had advised that whatever decision was taken in committee in which they were present would not be void or voidable. That he then did all in his power to get him and the others removed in a bid not to dent the image of the ITGC and at that point, Mr Jalloh and others decided to see him as a threat to their political aspirations.
5. That after such issues were raised, even though the committee had started operating peacefully, in a bid to make tremendous progress, he informed a number of persons not to attend meetings



anymore, forgetting the fact all that was needed for a meeting to be held was 1/3 of the committee members.

6. That on the 18<sup>th</sup> day of May 2022, at meetings, the issue of former members of the defunct executive deemed as the 12 that were petitioned by members of the APC on the grounds that they were defunct executive members and as such they should not serve in the ITGC. The legal representative advised that we allow them to remain in the committee as decisions that would be arrived at by the committee will not be void but they will be voidable should there be any challenge.
7. That in opposition to paragraphgraph 6 of the affidavit in support, sub committees were indeed formed for the smooth running of the operations of the committee but as time went on Mr AM Jalloh instigated other members not to listen to anything he said as he does not have rights and powers of a typical chairman and that all matters touching the judgements was only his and his alone to interpret.
8. That in opposition to paragraphgraph 7, he affirms that decisions by the ITGC has been done by simple majority in pursuit of unity. That by necessity, certain pronouncements were reached without voting as the consensus members were either in majority, unanimous or non-committal in favour of the said agenda item.
9. That in response to paragraphgraph 8 of the affidavit in support dated 26<sup>th</sup> September 2022, the ITGC took into consideration the principle of paragraphgraph 90.10.6. The ITGC reached decisions mentioned below through a meeting held on the 20<sup>th</sup>July 2022, in

which all decisions in the agenda were unanimously voted for by all members present at that meeting. A copy of the said minutes were exhibited.

10. In opposition to paragraph 9 of the affidavit in support dated 26<sup>th</sup> September 2022, it is worth noting that the legal advice of the legal representative in paragraph 9 above influenced some of the behaviours of the committee members and as chairman of the ITGC and someone who stands to bear the bulk of the blame if things don't go well and having confirmed series of mal-administrative behaviours, it was necessary to suspend all standing committees for the following reasons:

1. Two members of the committee Hon Aaron Koroma and Hon Abdul Kargbo confronted the Sierra Leone Ministry of Defence in their official capacity as members of the ITGC without the consent of the ITGC.
2. The unilateral decision of Hon Abdul Kargbo to remove the APC party cards printing machine from the IT room to an undisclosed location for security reasons, which was a reason he disbelieved, and a letter dated 2<sup>nd</sup> August 2022 was served on him to which he sent no response. The machines are still with them. A copy of the letter was exhibited.
3. Donations to the party for bye elections were not reported to the ITGC. The money was never given to the ITGC or accounted for accordingly.
4. That in response to paragraph 10 of the affidavit in support, exhibit APC 2, dispelled all claims of unilateral

decision making and affirms that all decisions were made in accordance with paragraph 90(10)(4) as required by the judgement.

11. That in response to paragraph 11, he relies upon Exhibit APC 2 at paragraph 72 of the judgement which provides the following "that there should be no vacuum in the party". The press release dated 13<sup>th</sup> September 2022, emanated from a meeting on the 20<sup>th</sup> day of July 2022 and that decision was not unilateral, as they gave all those members of the ITGC, excluding those members representing the various organs of the party, the opportunity to serve as interim district chairmen, on the basis of advice given by Mr AM Jalloh that only chairmen were removed and not the rest of the executive members including their deputies who he claimed were still legitimate and should run the affairs of the party in those capacities and they refused to accept those positions. The assignment was exhibited as APC 4.
12. That in response to paragraph 14 no such appointments were made by him. The interim district chairmen were running the party in the absence of elected executive members of those districts.
13. That in opposition to paragraph 16, he was not informed of any such meeting and was he was therefore not aware of any such meeting summoned by the majority of 12. The advise given by Mr Jalloh was wrong and the unilateral decision to appoint all 24 members through illegitimate means has led to the stalemate.
14. That the national voter registration process was a nationwide success and it was the Hon Abdul Kargbo on the advice of Mr AM

Jalloh which led to the shutting down of the Committee's approved source of communication, which led to a communication gap. A query was sent to Hon Abdul Kargbo and a copy sent to the 4<sup>th</sup> defendants PPRC. A copy of the said query was exhibited as exhibit APC5.

15. That the district chairmen were appointed based on a meeting held by the committee chaired by himself as chairman of the ITGC that was boycotted by the 12 upon the sole advice of the legal representative who has in diverse ways exhibited allegiance to the so-called block of 12 former executive members of the APC, of which he is proudly counted to be.

16. That in response to paragraph 19, he concedes that some advice was given to him by the legal representative to the committee, but he considers that the advice was not given with the aim of justly interpreting the ruling for the general good of the 3<sup>rd</sup> defendant APC party. As proof of his assertion, he relied upon paragraph 11, a position that has now been dismissed by the PPRC in their final ruling on the rules of the lower-level election. The PPRC ruling is exhibited and marked as exhibit APC6.

17. That the PPRC was informed of their allegation and issued an open advice to the ITGC which effectively referred them to the court to seek interpretation. Certain members of the ITGC suggested that they go back to the court to seek clarification and instead of doing so Mr Jalloh has been smearing his name.

18. That the PPRC advice was not a legal position but a mere opinion that was clearly established by the Commission. That the needful

was not spelt out by the PPRC and an opinion or advise on this case could equally be misconstrued as contemptuous.

19. That the blanket amnesty that Mr Jalloh complained about was done in compliance with the judgement of the court and the same was not done unilaterally.

20. That he will continue to emphasise that the correct thing to do by the legal representatives as recommended by all, including the big six was to go and seek clarification of what is seemingly illegal when the logical argument of always having 21 man present at all times. There is a need for a quorum to determine a simple majority present at any meeting.

21. That as chairman of the ITGC, he has done all that is possible to operate within the confines of the judgement of the court and the 2022 constitution, which is why he was surprised when a decision was taken by Mr Jalloh organised a meeting and resolved to change solicitors to file contempt proceedings against him without his knowledge and approval. In that regard, he avers that no such resolution was passed by the ITGC and any such resolution claimed to have being passed by the ITGC is not to his knowledge as interim chairman of the ITGC.

22. That after the adjournment of the matter and the judge had ordered that his solicitor file an affidavit in opposition, he went to the party office to have access to the exhibits that were to be used in the affidavit, himself and some members of the ITGC came under attack by some thugs and when he carried out an

investigation, he was reliably informed that they were acting on the instructions of Mr Alpha M Jalloh and Hon Abdul Kargbo.

23. The types of conduct contained in paragraph 32 had been the normal routine of Alpha Jalloh to make sure that efforts to bring the 3<sup>rd</sup> defendant on a good footing is not achieved by himself as interim chairman of the ITGC and his team members and he has continuously stated to his hearing that he will do all that is possible to not allow him to do his work giving the fact that if he succeeds in putting the 3<sup>rd</sup> defendant on the right footing as he has out to do his political carrier and that of his cabal will be overshadowed.

24. That he is reliably informed by key party stakeholders and he verily believes that the singular conduct of Mr Alpha M Jalloh to change and appoint a solicitor for and on behalf of the 3<sup>rd</sup> defendant when he knew fully well that he hasn't the capacity to progress matters and is one of the strategies that he has embarked on to delay the speedy progress and unification of party members that that is being carried out by the ITGC under his chairmanship.

25. That the interest of justice will be best served if the orders prayed for are refused.

12. Mr Jalloh filed an affidavit in reply which he swore on the 17<sup>th</sup> day of October 2022, with a number of exhibits attached, totalling four. It is pertinent to consider the contents of the affidavit in reply, as they are germane to the issues being considered. They can be summarised as follows:

1. That in reply to paragraphgraphs 6,7,8,9 and 10 of the affidavit in opposition, he avers that the assertions of the plaintiff/contemnor are a complete distortion of the facts in relation to members who were petitioned.
2. That at the first meeting the plaintiff/contemnor unilaterally asked members of the committee representing the women's league, youth league and diaspora to leave the meeting as he held the view that there was a challenge to their membership of the committee and he had objected to the same on the basis that the issue was a matter for the courts and that the injunction only related to positions previously held.
3. That by paragraphgraphs 7 and 8 the plaintiff/contemnor has made admissions of unilateral decisions to remove members from the ITGC and to adopt a 1/3 requirement for meetings without approaching the court or getting the simple majority decision as required by the judgement. The understanding of the judgement in paragraph 8 of his affidavit is in gross contravention of the basic hallmark of the judgement which requires that all actions taken must be in a bid to foster unity within the party.
4. That in reply to paragraph 10 of the affidavit in opposition, the plaintiff contemnor sees himself as the sole authority of the ITGC.
5. That in reply to paragraphgraphs 11 and 12 of the affidavit in opposition, he is informed by Hon Abdul Kargbo that the meeting was attended by less than the simple majority of the committee members because it was deliberately summoned by the chairman at a time when parliamentary sitting was in progress. A majority of

the committee members advised the chairman not to proceed with the meeting as it was not expedient to meet whilst Parliament was in session, but the plaintiff/contemnor insisted.

6. That in reply to paragraph 13, the plaintiff/contemnor has admitted he took a unilateral decision to suspend all committees which were unanimously voted for by the ITGC in disobedience to the approved judgement by not allowing the ITGC to take a simple majority decision.
7. That in reply to paragraph 14 of the said affidavit in opposition, he is informed by Hon Abdul Kargbo that it is a false allegation that a complaint was made about their conduct at the ministry of defence. Their supporters were arrested by police and military personnel and they went to the ministry in the capacity as Members of Parliament not as ITGC members.
8. That in response to paragraph 15 of the said affidavit in opposition, he is informed by Hon Abdul Kargbo that the contents are untrue, baseless and defamatory and smirks of malice and potential perjury that such an important allegation was never brought to the ITGC for a decision. No proof of the allegations have been provided by the plaintiff/contemnor.
9. That in reply to paragraph 16 of the said affidavit, he is informed by Hon Abdul Kargbo, that the said donation was never meant for the ITGC but for the shareholders of Tonkolili. The donor had insisted that the donation was not meant for the ITGC, after Hon Chernor Bah had advised that the donation be made at the party office.



10. That in reply to paragraph 17 the judgement stipulates at Article 90.10.4 that membership issues relating article 10 must be dealt with prior to the NDC and membership issues that fall within article 13(f) and (g) should be resolved at the NDC, the chairman unilaterally re-admitted people without reference to Article 13(f) and (g) and the approved judgement.
11. That in reply to paragraph 18 of the affidavit in opposition, it was the view of the other members of the committee that ideas must be tabled, discussed and a consensus reached, or voting done to arrive at a simple majority and not by imposition of district chairmen.
12. That in reply to paragraph 20, the appointment of the chairmen was neither discussed in a meeting nor a decision reached by simple majority in line with the approved judgement.
13. That in reply to paragraph 21, a meeting of the ITGC was summoned and in the absence of the chairman, the committee is empowered to elect a chairman from amongst itself to chair a meeting. The decision for members of the ITGC to nominate one member only to the TIIEMC and the plaintiff/respondent unilaterally appointing 4 members was taken at a meeting attended by only 7 committee members of the 9 appointed by him, at a time when 8 of the members were in parliament debating the Public Elections Bill. The ITGC members were expected to have complied with the advisory statement of PPRC dated 5<sup>th</sup> August 2022, which was not complied with.

14. That in reply to paragraph 22, it was a decision held by the ITGC and having secured the simple majority required, to foster efficient and inclusive decision making by the ITGC.
15. That in reply to paragraphs 23,24,25 notwithstanding the urge by the plaintiff/contemnor for him to see the judge, he considered it professionally wrong to do so without the solicitors for the plaintiff contemnor being present and the appropriate method of approaching the court was to file papers seeking the clarifications they are now seeking.
16. That the court gave specific orders in the judgement having regard to the prayers of the plaintiff and based on a previous ruling of this court that allowed other members of the executive to participate in the ratification of the APC constitution and by extension, executive members not enjoined can participate, so as to prevent a vacuum in the party.
17. That the PPRC sent an advisory note to the committee in which it was clearly stated that simple majority is 11 or more members. The PPRC had also advised that all decisions taken by less than 11 members be reversed and that the plaintiff/contemnor did not have any right to readmit any body into the party. The plaintiff contemnor continued to make appointments against the said advise.
18. That in reply to paragraph 26 of the affidavit in opposition, the plaintiff/contemnor refused to comply with the advise of the PPRC on the basis that the advisory statement was not legal and was a mere opinion, notwithstanding the statutory and regulatory functions of the PPRC.

19. That in reply to the paragraph 27, he avers that the plaintiff/contemnor granted a blanket amnesty against the spirit and intent of paragraph 90.10.4 of the judgement and article 13(f) and (g) of the constitution. The PPRC did make the issue clear at page 3 of its advisory statement.
20. That in reply to paragraph 28, the plaintiff/contemnor is making a clear admission by granting an amnesty that contravenes the judgement and without the approval of the ITGC.
21. That in reply to paragraph 29 of the affidavit in opposition, he is informed by Hon Abdul Kargbo that the chairman used the quorum for NAC when in reality, the ITGC is not a creature of the APC 2022 constitution but that of the court by virtue of paragraph 90.10.6 of the said judgement of April 2022.
22. That in reply to paragraphs 30 and 31 of the said affidavit in opposition, the repeated disobedient actions and admissions made by the plaintiff contemnor, are clear indications of his knowledge of the judgement in particular on the issue of the simple majority.
23. That in reply to paragraphs 32 and 33 of the affidavit in opposition, the allegations against him are baseless, scandalous untrue, malicious and defamatory.
24. That in reply to paragraph 34, the decision to institute contempt proceedings came from the ITGC and by following the requirements of the approved judgement owing to several disobedient actions of the plaintiff/contemnor. Copies of the minutes of the ITGC approvals dated 5<sup>th</sup> and 22<sup>nd</sup> September 2022 are exhibited.

25. That it will be in the interest of justice if the affidavit in opposition be discountenanced as it is designed to waste the court's time when the disobedience is continuing even after service upon him of the contempt proceedings.

13. Having set out the relevant facts as contained in the affidavits, I consider it necessary to deal with some of the issues raised in the exhibits attached to the affidavits.

The 3<sup>rd</sup> defendant's affidavit and exhibits in support.

14. I shall deal with the relevant exhibits which are germane to the consideration and determination of the issues raised in this application.

15. Exhibit AMJ7 - The minutes of the meeting which formed sub-committees and standing committees are set out in this exhibit. The said meeting was held on the 18<sup>th</sup> May 2022. There were twenty members of the committee present at that meeting. One was absent on health grounds. At that meeting the sub committees were formed.

16. Exhibit AMJ 8. - This is the press statement referred to at paragraph 9 of the affidavit in support. The release mentions alleged interference and interruptions into the work of the ITCG by members nominated by the main opposition leader in parliament. The said press release relied upon paragraphs 75, 75(1), 90(10), 43, 60, 67, 71 and 83 of the judgement of the 28<sup>th</sup> April 2022 and further reads *"Their indescribable spectacle of disrespect and frequent insults to other senior members of the committee left me with no option but to take the following actions to ensure a timely and effective delivery of our mandate"*. The release is signed by the plaintiff contemnor.

17. **Exhibit AMJ9** - This is a press release dated 4<sup>th</sup> August 2022 which is also signed by the plaintiff contemnor. The said press release refers to the issue of unresolved membership and claimed that *"it was resolved that an unconditional reinstatement for all disenfranchised members and returnees to the APC be granted as ordered by the court and we so do."*
18. **Exhibit AMJ10** - This is a press release dated 13<sup>th</sup> September 2022 which is signed by one Chernor Sesay, member of the ITGC - APC, chairman east district. The said press release refers to the court judgement dated 28<sup>th</sup> April 2022 and a resolution of the ITGC dated 20<sup>th</sup> July 2022.
19. **Exhibit AMJ11** - This is a memo from the plaintiff/contemnor dated 12<sup>th</sup> September 2022 to all interim district chairmen in relation to the account of funds donated for the voter registration. The memo refers to the following points in the second paragraph: "That the chairman of the ITGC is therefore authorising all district interim chairmen to investigate all monies donated to the party in their respective districts and take appropriate action against those who have done so".
20. **Exhibit AMJ 12** - This is a letter dated the 1<sup>st</sup> day of August 2022, signed by the plaintiff/contemnor asking all members of the ITGC to oversee the affairs of the various districts and to send their acceptance by a particular date. The letter further threatened replacement of those who do not send an acceptance.
21. I have carefully considered all of the issues in this case. There are a number of issues that the court needs to address which can be summarised as follows:

1. The preliminary issue on the appointment of the new firm of solicitors in place of Ady Macauley Esq.
2. The judgement of the 28<sup>th</sup> day of April 2022 and to provide any clarification where and if necessary.
3. The allegations of contempt against the plaintiff/contemnor and any sanctions to be imposed where the court takes the view that there has been contempt of its orders.
4. The way forward in resolving complex issues of non-compliance with court orders in a political matter, where the court is mainly concerned with enforcement of the law having regard to the justice of the case and where the parties in the case are more concerned with what is politically expedient even at the extent of non-compliance with the rule of law.

#### The preliminary issue

22. I have heard arguments from counsel with regard to the appointment of new solicitors. The central issue I have to consider and determine is whether there has been compliance by the plaintiff/contemnor with the judgement of the 28<sup>th</sup> day of April 2022. It is noted that the plaintiff/contemnor is a member of the ITGC and decisions of the ITGC should be by a simple majority as expressed in the judgement at paragraph 90.10.6. The plaintiff/contemnor has argued at paragraph 30 and 31 of the affidavit in opposition, that he did not take part in the decision to file an application for contempt against him, using a new firm of solicitors. There is a difficult legal conundrum to be considered which is twofold:

1. Firstly, whether the ITGC can issue contempt proceedings against the chairman of the ITGC when the decisions taken by the Chairman of the ITGC for which he faces contempt proceedings arguably were on behalf of the ITGC itself?

2. Whether the participation of the plaintiff/contemnor would have amounted to a conflict of interest in the proceedings of the ITGC.

23. I have decided not to deal with this issue at this stage and I shall return to deal with it subsequently whilst subsuming the same into the wider considerations of the judgement.

#### The judgement of the 28<sup>th</sup> day of April 2022

24. The said judgement was written in plain english in a bid to ensure there would be no misunderstanding about its contents. The issue that was determined in that case was the legality of the 1995 APC constitution. The contents of the judgement need no clarification as the orders were clear in what was required of the parties in the case. Further, the relevant provisions of the APC 2022 constitution was fully considered. Notwithstanding there appears to be a fundamental misunderstanding of the role of the courts in such matters that are considered "political matters" which need to be clarified.

#### The APC constitution 2022.

25. As a political party, the APC is governed by its 2022 constitution, which was adopted pursuant to an order of this court, following the grant of leave to conduct an emergency national delegates conference for the purpose of adopting the said constitution and the law of this country as set out in the Constitution of Sierra Leone, Act No 6 of 1991 and the

Political Parties Act 2002. The said APC 2022 constitution is published in the Sierra Leone gazette as a matter of law. The preamble to the said constitution reads as follows:

*"NOW THEREFORE we the members of the All Peoples Congress..... hereby make, enact, and give the following constitution to ourselves for effective administration of our party and the promotion of its ideals, aims and objectives."*

26. With respect to the supremacy of the party constitution, Article 5 of the Constitution in chapter 1, makes the following provisions:

*" Subject to the provisions of the Constitution of Sierra Leone and other existing national laws, this constitution shall be supreme, and its provisions shall have binding force on all members, organs and other bodies of the party".*

27. Two fundamental issues arise out of the above. Firstly, a political party and its members are bound by the constitution of the country, in this case Act no 6 of 1991 and all other national laws. Secondly, a political party is bound by the provisions of its own constitution, all laws and court orders and must follow it at all times regardless of political expediency or sentiments.

28. Consequently, when a court makes an order in a case involving a political party, it is only enforcing the law and the party constitution for which the parties who are members of the party before it have agreed to be bound. The court not interfering in the internal affairs of a political party but enforcing the law of the land and the law of the political party to which they themselves have agreed to be bound. The court has a



sacred duty to uphold the law and this court would not act contrary to that sacred duty under any circumstances.

29. At paragraph 88 of the Judgement, I said the following:

*"In my judgement, the plaintiff was fully entitled to pursue this action in the light of the blatant undemocratic practices carried out by the now defunct executive".*

30. In the light of the fact that the plaintiff who pursued an action against the 3<sup>rd</sup> defendant on the grounds of undemocratic action is now being accused of acting undemocratically, the court now has to carefully consider the issues raised and to consider whether as a matter of law and fact that plaintiff/contemnor is in contempt of the orders of this court.

#### The law on contempt of court

31. The power of the court to punish for contempt is set out firstly in the Constitution of Sierra Leone, Act No 6 of 1991. Section 120 (1)(5) provides:

*"(5) The Superior Court of Judicature shall have the power to commit for contempt to themselves and all such powers as were vested in a court of record immediately before the coming into force of this Constitution."*

32. By virtue of section 120(4), The High Court of Justice together with the Supreme Court and the Court of Appeal, constitute the Superior courts of Judicature. In addition to these constitutional provisions, the High Court Rules 2007 makes provisions for adjudicating on contempt applications. Order 51 sub rule 1 of the said rules provides that the power of the court to punish for contempt may be exercised by an order of committal. Further Order 51 rule 1 subrule 2 provides as follows:

(2) An order of committal may be made by the Court where contempt of court-

(a) is committed in connection with-

(i) any proceedings before the Court;

(ii) criminal proceedings;

(iii) proceedings in an inferior court;

(b) is committed in the face of the Court, or consists of disobedience to an order of the Court or a breach of an undertaking to the Court; or

(c) is committed otherwise than in connection with any proceedings.

33. However, a committal to prison is not the only way by which the courts are empowered to deal with breaches of its orders, which amount to contempt. Order 51 rule 8 of the High Court Rules 2007, allows the court to impose a fine or require the contemnor to give security for good behaviour, in relation to the orders for committal.

#### The issues for the court.

34. There are two issues: (a) has the claimant proved that the defendant/contemnors are in contempt of court? (b) If so, what sanctions, if any should be imposed? I would consider these issues in turn.

#### Issue (a) Liability for Contempt of court

35. In my previous ruling on the issue of contempt of court of Alhaji Osman Foday Yansaneh, the former secretary general of the 3<sup>rd</sup> defendant party, I had this to say on the issue at paragraph 9:

*"In a democratic society such as Sierra Leone, all citizens are equal under the law and all are subject to the law. It is integral to the rule of law, and to the fair and peaceful resolution of disputes, firstly, that orders made by the court must be obeyed, unless and until they are set aside or subject to successful challenge on appeal, and secondly, that a mechanism exists to enforce orders made by the court against those who breach them. In this jurisdiction, that mechanism is provided by the law of contempt".*

*36. In terms of the relevant legal principles in establishing substantive contempt, the judgement of the High Court in FW Farnsworth v Lacy 2013 EWHC 3487 (Ch) is relevant. This case establishes the following:*

- 1. The burden of proof is on the applicant to establish the contempt and the standard of proof is to the criminal standard. The applicant has to satisfy the court that the alleged contempt have been established beyond a reasonable doubt.*
- 2. A person is guilty of contempt by breach of an order only if all of the following factors are proved to the relevant standard which can be shortly set out as follows:*
  - a. Having received notice of the order, the contemnor did an act prohibited by the order or failed to do an act required by the order, within the time set by the order;*
  - b. He intended to do the act or failed to do the act, as the case may be;*

- c. *He had knowledge of all the facts which would make the carrying out of the prohibited act or the omission to do the required act, a breach of the order.*
- d. *The order must be unambiguous.*

37. At paragraph 11 I had this to say:

*"Thus, to establish liability for contempt of court, an applicant to commit must prove each of the following elements to the criminal standard:*

- 1. having received notice of the order, the defendant did an act prohibited by the order;*
- 2. he intended to do the prohibited act;*
- 3. he had knowledge of all the facts which would make the carrying out of the prohibited act a breach of the order.*
- 4. The act constituting the breach must be deliberate rather than merely inadvertent, but an intention to commit a breach is not necessary.*

38. I went further to say at paragraph 13:

*"The essence of civil contempt is disobedience to a court order. It is not only the applicant but the court - and, I would add, the public - which has an interest in deterring disobedience to its orders and in upholding the rule of law. See The Secretary of State for Transport and High Speed Two (HS2) Limited v Elliot Cuciurean at 2020 EWHC 2614 (Ch)[9]-[11]; see also the same case at first instance: [2020] EWHC 2723 (Ch), at [9]-[20]."*

### Issue (b) Sanction for contempt of court

39. At paragraph 14 and 15 of that judgement, I had this to say:

*"14. Generally, there is no tariff for sanctions for contempt of court, because every case depends on its own facts. This was the position in the Court of Appeal in the case of Longhurst Homes Ltd v Killen [2008] EWCA Civ 402, [14] (Hughes LJ). Further, as Lord Justice Jackson remarked in JSC BTA Bank v Solodchenco [2011] EWCA Civ 1241, The sanction for contempt of court "has nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed". "in some cases the sanction provides an incentive for belated compliance, because the contemnor may seek a reduction or discharge of sentence if he subsequently purges his contempt by complying with the court order in question.*

*15. It follows therefore that upon a review of the relevant authorities there are key general principles that the court must have regard to. These can be shortly stated in the following terms.*

- 1. The court has a broad discretion when considering the nature and length of any penalty for civil contempt. It may impose: (i) an immediate or suspended custodial sentence; (ii) an unlimited fine; or (iii) an order for sequestration of assets;*
- 2. The discretion should be exercised with a view to achieving the purpose of the contempt jurisdiction, namely (i) punishment for breach; (ii) ensuring future compliance with the court's orders; and (iii) rehabilitation of the contemnor;*

3. *The first step in the analysis is to consider (as a criminal court would do) the culpability of the contemnor and the harm caused, intended or likely to be caused by the breach of the order;*
4. *The court should consider all the circumstances, including but not limited to: (i) whether there has been prejudice as a result of the contempt, and whether that prejudice is capable of remedy; (ii) the extent to which the contemnor has acted under pressure; (iii) whether the breach of the order was deliberate or unintentional; (iv) the degree of culpability; (v) whether the contemnor was placed in breach by reason of the conduct of others; (vi) whether he appreciated the seriousness of the breach; (vii) whether the contemnor has cooperated, for example by providing information; (viii) whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea; (ix) whether a sincere apology has been given; (x) the contemnor's previous good character and antecedents; and (xi) any other personal mitigation;*
5. *Imprisonment is the most serious sanction and can only be imposed where the custody threshold is passed. It is likely to be appropriate where there has been serious contumacious flouting of order of the court;*

#### Mitigation and penalty

16. On the issue of mitigation and penalty, I had this to say at paragraph 16-18 of the said judgement:

*16. The purpose of contempt proceedings are twofold. Firstly, it upholds the authority of the court by punishing the contemnor and deterring others. Such punishment is nothing to do with the dignity of the court*

*and everything to do with the public interest that court orders should be obeyed. As Norris J remarked in Commissioners for her Majesty's Revenue and Customs v Munir 2015 EWHC 366 (Ch).*

*"A contempt of court is not a wrong done to another party in litigation. It is an affront to the rule of law itself and to the court". The message given by the court is loud and clear. If you breach orders of the court, you do so at your peril and you face imprisonment for doing so."*

*17. Secondly, the contempt jurisdiction, provides an incentive for belated compliance because the contemnor may seek a reduction or discharge of sentence if he subsequently purges his contempt by complying with the court order in question.*

*18. As I pointed out above, Order 51 rule 8 makes provisions for the appropriate penalty for contempt. A sentence of imprisonment should only be imposed if a custodial sentence is justified. The court may also impose an unlimited fine or order sequestration.*

#### The 3<sup>rd</sup> defendant's pleaded case of contempt.

17. The 3<sup>rd</sup> defendant has relied upon the matters set out at paragraph 7 above. I shall address these wholistically. At the heart of the complaint is the allegation that the plaintiff/contemnor is making and publishing decisions without seeking and /or obtaining the consent of the ITGC or a simple majority of the committee as ordered by the court. The issue of simple majority has to be considered.

#### Simple majority

18. At paragraph 90.10.6, I was very particular that the aim of the judgement was to ensure that there was unity within the party and to

that extent, the decisions of the ITGC had to be by a simple majority. I had gone further to make this point:

*"Due to the mistrust and bickering amongst members of the party coupled with an atmosphere of suspicion amongst the members with various factions emerging, the composition of the committee has been carefully chosen to ensure that much needed unity in the APC party is achieved."*

19. It is against this background that the composition of the ITGC was carefully chosen. They were given the mandate of administering the affairs of the party for a limited time until fresh elections were held. At paragraph 73, I went further in the following terms:

*"It is noted that there a larger number of party organs and bodies in the new 2022 APC Constitution. Every one of these organs and bodies will not be incorporated into the transition Committee for obvious reasons. I have however given careful thought to the composition of the transition Committee, on account of the deep mistrust amongst members of impropriety which I have experienced in this court during the proceedings."*

20. Most importantly, I re-echo what I said in paragraph 74 of the judgement:

*"A political Party as I have ruled in previous rulings is an unincorporated association that is made up of its membership. All members of a political Party cannot possibly be a part of the transitional Committee, but it is recognised that the Party belongs to its members and these members are located across the country. They are however represented in parliament by members of parliament. The members of parliament are therefore key*



*stakeholders, who have a duty to ensure that their Party which is owned by the members they represent, is democratically positioned in the country, by ensuring a democratic governance structure is in place."*

21. It was with these thoughts in mind that the composition of the ITGC, as set out in paragraph 75 of that judgement was chosen. The clear intention behind the composition of the ITGC was to ensure that all parts and regions of the party would be represented at every decision making concerning the affairs of the party, until such time as elections are held to choose new elected representatives. It would be absurd if members from one or two regions in the ITGC representing only a few party members were to take decisions on behalf of the entire party simply because they were the only ones present at a particular meeting. The simple and plain interpretation of the judgement is that any decision as set out in paragraph 90.10.6 must be a decision of the ITGC as a body, which is comprised of 21 members and the majority of those members of the ITGC must agree on any decision in the name of the ITGC by a simple majority of those members of the ITGC and not by those present.

22. Simply forming a quorum from those present at a meeting would not achieve the unity needed in the party and would in any event be undemocratic, as such a quorum might, unilaterally chosen, would not achieve representation from all regions of the party as envisaged by the judgement. That was precisely why I did not prescribe a quorum of members present for the ITGC but worded paragraph 90.10.6 in the way I did. A decision of the ITGC would only be valid where a majority of the membership of the entire ITGC has voted one way or the other and the majority of those votes have been counted and recorded in the minutes.

23.I do not accept nor was it the intention or spirit of the judgement that the absence of members at a meeting should be a reason to simply proceed with the business of the ITGC based on the numbers of those members present. In the modern era of the 21<sup>st</sup> century, meetings can be conducted via zoom or even whatsapp and the indication of members of the ITGC having received the agenda, as to which way they choose to vote on any issue can be communicated by electronic means, where necessary even in their absence at the meeting. A meeting where a decision is taken which does not involve every member of the ITGC who there in a representative capacity, is null and void and has no legal effect and is in any event contrary to the judgement of 28<sup>th</sup> April 2022.

24.Having said that I am mindful of the claims made by the plaintiff contemnor that certain members nominated by their respective nominees, in particular the Honourable members of parliament, were boycotting meetings and in those circumstances the plaintiff/contemnor felt compelled to proceed in their absence. In my judgement, this was where the plaintiff/contemnor went wrong. He was invested with authority by an order of this court. Where he feels he is unable to carry out the orders of this court as mandated, through no fault of his, his duty was to return to the court to seek further guidance or in fact report the conduct of others who were making it difficult for him to continue. He cannot simply as it were, take the law into his own hands by claiming the right to proceed with the meeting, even where the court from which his mandate was given did not give him any such authority.

25.A similar issue arises with respect to a press statement dated the 10<sup>th</sup> day of June 2022, in which the plaintiff/contemnor unilaterally suspended all standing committees duly constituted by the ITGC. Exhibit

AMJ7 clearly shows a meeting was held by the ITGC in which 20 members were present and one was absent with an excuse on medical grounds. This is an issue I need to deal with.

26. It has not gone unnoticed that in that meeting 20 members of the ITGC were present and only 1 was absent owing to ill health. All members present, represent the majority of members of the ITGC with only one absent. The records clearly show that a vote was taken and members were elected to the serve in various capacities. The absence of the one member would not have made a difference to the outcome of decision-making process as from all indications before the court, the votes appeared to be unanimous. I am therefore prepared to accept that the meeting and the outcome are the legitimate decision of the ITGC. A decision that was taken by a body of twenty out of the twenty-one members cannot be simply unilaterally overturned by one person, even if that person is the interim chairman.

27. A similar situation arises with respect to exhibit AMJ8, which is the press release dated 10<sup>th</sup> June 2022, in which the plaintiff/contemnor, laments at the actions of certain individuals who he claims have maliciously interfered into the work of the ITGC by non-cooperation and frequent unwarranted disruptions from members nominated by the main opposition leader in parliament. As a consequence, he claims he took a number of actions on the basis that he is left "with no option but to take the following actions to ensure a timely and effective delivery of our mandate". These actions he took which included:

- a. Suspension of all standing committees until further notice to ensure smooth flow of the ITGC's operations and members of the

ITGC and non-members of the ITGC will perform demanding tasks of the APC.

- b. The general public and members of the APC are to direct all correspondence, donations and entreaties to the chairman (himself).
- c. That the general public and supporters of the party should direct all donations, fees and gifts to the ITGC.
- d. All fees, dues and other gifts should be delivered to the ITGC.

28. With respect to these decisions, he relies upon paragraph 75, 90(10), 43,60,67,71 and 83 of the judgement. I must state that there is nowhere in the judgment at paragraph 75 in which the court had directed that all standing committees be suspended. It is wholly absurd for the court to have established the ITGC and then in the same breath direct the suspension of all sub committees. The court never ordered any sub committees to be established.

29.Paragraph 75(1) only permits the plaintiff/contemnor to nominate 9 persons to serve on the committee. Further, the court never ordered non members of the ITGC to perform tasks of the 3<sup>rd</sup> defendant APC. The task of managing the affairs of the APC was given to a properly constituted ITGC. To rely upon the said paragraph 75 to institute changes to the judgement of the court is not permissible and is contemptuous of the judgement of the court. Further, Paragraph 75(1) of the said judgement did not at any time direct correspondence and donations to be forwarded to the chairman of the ITGC. This is clearly a distortion of the judgement and an invention of the plaintiff/contemnor.

30. Similarly, paragraph 90(10) did not direct at any time the payment of fees, dues, and financial gifts to the ITGC. This is again a distortion of the judgement. Paragraph 90(10)(5) ordered that the audit firm to be appointed provide a declaration of the party's income to the ITGC and not dues donations and fees from party members and members of the public. When there has been an attempt to misrepresent the judgement of the court in a manner wholly inconsistent with the judgement, it is contemptuous of the orders of the court.

31. In relation to paragraphs 43,60,67,71 and 83 these paragraphs make no mention of the matters referred to in exhibit AMJ8. There is no mention of gifts and donations being ordered by the court to be paid to the ITGC. It is clearly a misrepresentation of the judgement and clearly designed to legitimise an illegitimate action by the plaintiff/contemnor by giving it a thin veneer of legality when he fully knows that no such orders were given in the judgement. This kind of action is wholly contemptuous of the court and brings the entire administration of justice into disrepute.

The press statement resolving all unresolved members issues. Exhibit AMJ 9

32. Mr Jalloh in his affidavit at paragraph 10 had complained that one of the actions upon which he relies upon to show the contempt of the plaintiff contemnor of the orders of the court are set out as above at paragraph 7(3) of this judgement, in relation to the resolution of membership issues. Mr Jalloh had complained that the plaintiff/contemnor in a press statement dated 4<sup>th</sup> August 2022 unilaterally and without support of a simple majority of the ITGC, purported to reinstate what he described as "disenfranchised and returnees to the APC party" wrongly claiming that it

was done to resolve all unresolved membership issues as directed by the judgement.

33. This is a serious issue which requires me to go back to the judgement. As I have pointed out above at paragraph 27 of this judgement, when a court makes an order in a case involving a political party, it is only enforcing the law and the party constitution for which the parties who are members of the party before it have agreed to be bound. In the case the APC has adopted its 2022 constitution. It is necessary for me to go back to the said judgment at paragraph 58, 59 and specifically paragraph 60. I will now reproduce the said paragraphs for ease of reference:

*"58. As I have previously alluded to above, on the 9th day of August 2021, I granted a variation to my earlier injunction and ordered the 3rd Defendant to hold an emergency delegates conference for the purpose of adopting a new constitution and to deal with unresolved membership issues.*

*59. On the issue of unresolved membership issues, I did order that the 3rd defendant deal with all unresolved membership issues at the emergency National delegates conference. This they failed to do in contempt of the orders of this court. I had cause to order that they go back and make a determination as to how they intend to deal with the issue, following on from which a press release was issued by the 2nd defendant alluding to the fact that unresolved membership issues would be dealt with at the next National delegates conference.*

*60. In the light of the coming into force of the 2022 constitution and my judgement that the current executive is now defunct, by reason of their illegal assumption of office, the decision by the defunct executive to*

*resolve all outstanding membership issues at the National delegates conference is null and void by reason of their illegality and would be contrary to the 2022 constitution now in force. In those circumstances, I shall make a number of orders dealing with the issue of unresolved membership in the final orders that I give".*

34. Consequent upon the above, in the final orders that I gave, at paragraph 90(10)(4), I stated those orders in the following manner:

*"The ITGC shall have overall responsibility for manning the affairs of the Party until the National delegates conference when their mandate would expire. To that extent, the ITGC shall be responsible for:*

*Resolving all unresolved membership disputes within the Party, prior to the National delegates conference in accordance with Article 10 of the 2022 constitution and ensuring that those membership disputes that are required to be dealt with at the National delegates conference pursuant to article 13 (f) and (G) of the 2022 Constitution are resolved at that conference by its inclusion on the agenda.*

35. By the above Paragraph 90(10)(4), the ITGC was ordered to resolve all membership issues in accordance with the said orders and they were specifically directed to do so in accordance with Article 13(f) and (G) of its own constitution of 2022. They were simply required to follow the court order. Having regard to the fact that there was no majority decision on this issue as evidenced by a lack of minutes of the same, the press release of the 4<sup>th</sup> August 2022, cannot stand. The ITGC even if duly constituted cannot approve an "unconditional reinstatement for all disenfranchised members, let alone the chairman acting alone. For the

avoidance of doubt, the said articles of the APC 2022 constitution provides as follows:

**Article 13: RESIGNATION, SUSPENSION, EXPULSION, FORFEITURE AND RE-APPLICATION FOR MEMBERSHIP.**

36. The said constitution is very clear in terms of the manner in which membership of the party is lost. Article 13 f provides as follows:

*"Whenever a person cease to be a member of the Party through resignation, expulsion, or forfeiture of membership, the person may reapply for membership of the party subject to the provisions of chapter 2 of this constitution.*

37. Article 13 g of the said constitution provides:

*"The decision to readmit a person shall be made by the national delegates conference."*

38. Article 2 of the 2022 constitution provides in Article 9(a)(iv) that a person is eligible for membership of the party, where he has "applied in the proper form and paid the requisite fees prescribed by the party". This is separate and distinct from those persons who were previously members of the party and lost their membership through one of the modes prescribed in Article 13. It was for this reason that in the absence of the party secretariat pending the election of new executive members, the ITGC was given the task to deal with such membership issues in accordance with article 10 of the 2022 Constitution, to wit (Re - enrolment and register of members), that was the limited role given to the ITGC, to register and enrol those members who had paid for membership and whose membership had not been regularised by the



defunct executive. The ITGC even where duly constituted had no mandate to proceed beyond what was ordered by the court, in terms of registration and enrolment of members. The Interim chairman had no authority to take such a decision having regard to the court order which only gave them a limited role in this regard.

39. Notwithstanding, the plaintiff/contemnor has in his affidavit in opposition at paragraph 15 has alleged that the Hon Abdul Kargbo has removed the APC party cards printing machine from the IT room to an undisclosed location. He has admitted to moving the printer to another location for security reasons. Mr Jalloh in his affidavit in reply has simply dismissed the claims. A printing machine is not an equipment that can be removed from the party office without someone being aware of who was responsible for the movement.

40. I have no reason to disbelieve what the plaintiff contemnor has averred in his affidavit. In the circumstances, Hon Abdul Kargbo is ordered to return the printing machine to the APC party office or make arrangements for a replacement, forthwith. Further, the ITGC is ordered to set up a 5 person sub-committee, forthwith, who shall be appointed by simple majority, that is tasked with dealing with all membership issues in accordance with Article 10 of the APC 2022 Constitution, up until the National delegates conference.

41. The provisions of Article 13 (g) are clear and unambiguous and require no clarification. The decision to readmit a person falling into the category of persons who had lost their membership through one of the specified modes can only be taken by a National Delegates Conference as provided for in the APC 2022 constitution. It was for this reason I ordered that

the issue of readmission must be included on the agenda of the National Delegates Conference. The press release dated 4<sup>th</sup> August 2022, correctly identified the facts that the ITGC was ordered to deal with membership issues in accordance with Article 10 of the Constitution. There was therefore no need for the ITGC to consider matters that fall outside of the mandate given to it and the decision to do so by the chairman is clearly ultra vires the powers of the ITGC and beyond the authority of the chairman acting alone. He had no authority either as a matter of the APC constitution or the orders of this court to have acted as he did and the said press release is null and void and of no effect.

42. Similarly with respect to article AMJ10, the plaintiff/contemnor as chairman alone had no authority to initiate or appoint interim bodies serving in the capacity of executive members of the APC. For the avoidance of doubt, the role of the ITGC is only an interim role to ensure there is no vacuum in the party. The ITGC is only a temporary body constituted to Mann the affairs of the party with the principal aim of ensuring the party goes to a national delegates conference as quickly as possible. They are not NAC, or NEC or any other principal organ of the party neither can they perform the roles of the principal organs of the party, which roles are exclusively reserved for elected executive members of the party.

43. The chairman has no such authority to appoint interim chairmen singularly. It should be noted that this was exactly the kind of conduct he took issue with then he filed his claim. The decision to appoint interim chairmen is not lawful and the illegality is made worse by the fact that the ITGC did not take the said decision. There cannot be a situation where unelected persons are acting as elected representatives upon the

appointment by a person who has no such mandate to appoint such persons. This decision by the plaintiff/contemnor to again appoint interim chairmen is again null and void.

44.A similar situation also arises with respect to exhibit AMJ 11 and 12.

There is no such authority given to the ITGC or the interim chairman acting alone to appoint such chairmen and in the absence of such authority, the decision in itself is null and void as are any actions of the appointed interim chairmen.

45.The decision by the interim chairman to question the membership of the ITGC is equally null and void. He has no mandate to question the appointees to the ITGC when they were so appointed to serve by order of the court.

46.I also need to mention the letter dated 5<sup>th</sup> August 2022, in which the PPRC clearly set out the law in its advisory note and its commentary on the court order is wholly accurate. I shall also deal with the letter from Mr Jalloh dated 25<sup>th</sup> July 2022, in relation to the TIIEMC. I shall now proceed to deal with this issue.

#### The Transitional interim independent Elections Management Committee.

47.This is provided for in Article 82 f of the 2022 Constitution, with a membership of twenty-five (25) to be appointed by NAC. At paragraph 69 of my judgement, I dealt with the issue of the appointment of the TIIEMC in this manner:

*"69. Sub paragraph (f) provides for a transitional interim independent elections management Committee, with a membership of 25 appointed by NAC. For the reasons given above, there is no legitimately constituted*

*NAC and they cannot in turn appoint members of the TIIEMC. The court would have to determine the issue in due course"*

48. At paragraphs 90(10),(13), (14) and (15), I dealt with the TIIEMC in these terms:

*13. There is hereby established in accordance with the 2022 APC constitution, a Transitional Interim Independent Elections Management Committee, (TIIEMC) whose Chairman shall be the Chairman of the APC Party Constitutional review Committee.*

*14. The ITGC shall appoint the membership of 25 persons of the TIIEMC, save for the Chairman.*

*15. The TIIEMC shall oversee and conduct the first set of elections within the Party, ie ward constituency, district and regional in accordance with Article 82 (g,h,i) of the 2022 APC Constitution, the rules of the elections promulgated by the ITGC and subject to supervision by the 4th defendant PPRC and the general control of the ITGC.*

49. The ITGC was therefore under a legal duty as directed by this court to appoint the 24 persons to serve on the TIIEMC. There has been no agreement on that issue which has served to further delay proceedings. There are no minutes of meeting demonstrating that the ITGC has met and deliberated on the issue or in fact reached a decision on the issue. Mr Jalloh at paragraph 16 of his affidavit averred that the ITGC did hold a properly constituted meeting at which 24 members were elected and the list of names submitted to the PPRC. The plaintiff/contemnor also appointed other persons and submitted a list to the chairman of the TIIEMC.

50. At paragraph 21 of the affidavit in opposition, the plaintiff/contemnor, averred that he was unaware of any such meeting called by a group of members of the ITGC on the 26<sup>th</sup> September 2022. He averred that it was agreed at the 20<sup>th</sup> June 2022 meeting that each member of the ITGC was given the opportunity to nominate one nominee to serve in the TIIEMC.

51. I have considered Exhibit APC2 attached to the affidavit in opposition and noted that at that meeting there were only 8 members out of 21 that were present at that meeting. No decision at that meeting can be considered as legitimate. In the circumstances and in the light of the obvious disagreement between the ITGC members as to the appointment of members to the TIIEMC, this court will give further orders with regard to appointment of the members of the TIIEMC, in accordance with Article 82 of the APC Constitution 2022.

52. It is rather disappointing to note that a body like the ITGC which is charged with manning the affairs of the party to which all members belong, is unable to agree on the persons to be appointed to a very important body that pave the way for the national delegates convention. In the circumstances, the ITGC would have to appoint the members to serve on the TIIEMC, subject to the orders I shall subsequently give.

The preliminary issue raised by the plaintiff/contemnor.

53. The plaintiff contemnor has complained that the decision to instruct a new firm of solicitors to issue contempt proceedings against him was not taken by a properly constituted ITGC. Following the judgement of the 28<sup>th</sup> day of April 2022, the ITGC has been stated was ordered to take

decisions by a simple majority. A change of solicitors was effected. The plaintiff/contemnor has challenged the said change of solicitors.

54. Mr Jengo argued that a decision such as to solicitors or to initiate contempt proceedings, is a decision that ought to be taken by simple majority as ordered by the court in its judgement of 28<sup>th</sup> April 2022. Mr Sesay for his part argued that 12 members of the committee agreed to change solicitors and initiate contempt proceedings. Having regard to my earlier comments, that decision cannot stand. Order 59 rule 1 of the High Court Rules 2007 provides as follows:

*1. (1) A party to any cause or matter who sues or defends by a solicitor may change his solicitor without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are lodged and served in accordance with this rule, the former solicitor shall, subject to this Order be considered the solicitor of the party until the final conclusion of the cause or matter, whether in the Court of Appeal or Supreme Court.*

55. The party in this case is the 3<sup>rd</sup> defendant who was represented by Mr Macauley. That party is subject to an order of court, which requires it to take decisions by a simple majority. In view of the fact that the decision to initiate contempt proceedings or to change solicitors was not taken by a simple majority as ordered by the court, the decision to initiate proceedings by half the members of the ITGC cannot be one that was taken by the ITGC. The effect of that failure is that the decision to initiate proceedings cannot stand. However, Order 51 rule 3, gives the court wide powers to consider contempt applications and make orders for committal on its own motion.

56. The court would proceed to consider the contempt application of its own volition, notwithstanding the decision to do so by the 3<sup>rd</sup> defendant being considered void. The decision to change solicitors is equally void in the light of the decision not having been taken by simple majority as required by the court order. Mr Macauley remains the solicitor on record for the purpose of these proceedings.

57. Order 59 rule 3 does not advance the 3<sup>rd</sup> defendant case any further.

### Disposal

58. I have painstakingly had cause to review the issues raised by both parties in this ruling. What is rather troubling is that my findings reveal that those charged with the responsibility of managing the affairs of a party they all belong to and for which they have a common interest have ignored those common interests in favour of narrow parochial interest which does a massive disservice to the country in terms of democracy and also to their own party and its members that they claim to love so much and whose interests they seek.

59. The ITGC must understand and reflect that they alone are responsible for the state of readiness of their party to contest the next general elections. The future of their party is in their hands and blaming the courts or other institutions is an exercise in futility. The court has done its best to ensure that they comply with the law and their own constitution and where there is a failure to do so, the court would enforce the law.

60. As an added measure, I have come to the conclusion that enforcement of the rule of law is at the apex of dispute resolution particularly in political disputes. Notwithstanding, there is room for alternative dispute

resolution as part of the legal framework for enforcement. To that extent the involvement of the Peace Commission is necessary to ensure that the parties respect the rule of law and settle their political differences in a democracy, peacefully for the good of the country. The parties have proven that they are unable to settle their differences amicably and if left alone, lawlessness and chaos will prevail. A multi-faceted approach is therefore needed from different institutions of the State to achieve peace within the party.

61. Section 12 (1) of the INDEPENDENT COMMISSION FOR PEACE AND NATIONAL COHESION ACT, 2020, provides:

(1) The function of the Commission is to undertake measures to prevent, manage and resolve conflicts, to build, promote and maintain sustainable peace in Sierra Leone and to advise the Government of Sierra Leone on all aspects of conflict resolution and peace.

62. The Executive Secretary of the Peace Commission is therefore mandated to work with the ITGC and the TIIEMC, in accordance with the provisions of section 12 of the Act and to ensure that the parties show respect for the rule of law by complying with all court orders and to initiate a peaceful resolution of any dispute within the framework of the law that may occur prior to and including the national delegates conference.

63. To that extent the ITGC shall cooperate with efforts made by the Peace Commission by ensuring that the Peace Commission is involved in all meetings of the ITGC and the TIIEMC.

64. I find that the plaintiff/contemnor is in contempt of the orders of this court, particularly so as he has distorted should several areas of the judgement of the 28<sup>th</sup> April 2022 by making references to orders that



were plainly not given by me. I shall deal with the sanction for contempt later on in this judgement. However, I also note that whilst the plaintiff/contemnor has his own faults and by his own actions, he has put himself in the position he now finds himself. He could have avoided this situation in which he finds himself by simply coming back to court to report the situation in which he found himself unable to cooperate or to report breaches of the orders, which he has now done in the affidavit in opposition.

65. In so far as this court is concerned, its orders must be obeyed and will be obeyed. In relation to the ITGC, it shall not be disbanded. The order was for the ITGC to man the affairs of the 3<sup>rd</sup> defendant party and that they will continue to do with punitive sanctions for any subsequent breaches. In that light this court would order as follows:

1. Any member of the ITGC who feels they are unable to continue to serve on the ITGC for one reason or the other, should resign their position by writing to the secretary to the ITGC within 24 hours of this ruling, in any event, no later than 4 pm on Thursday 24<sup>th</sup> November 2022.
2. Where a member resigns from the ITGC, the party that nominated that member should provide a replacement within 24 hours of the resignation, in any event not later than 4pm on Friday 25<sup>th</sup> November 2022.
3. Any member who fails to resign their appointment from the ITGC shall be construed as wishing to continue to serve on the ITGC and by extension, their continued service on the ITGC would

constitute an undertaking to this court that they will abide by the court order, and the APC 2022 constitution.

4. Where a member continues to serve on the ITGC and breaches the court order, that member would be held in contempt of court of the courts own volition and I must make it clear that further breaches of the orders of this court, where proven, would be punished with imprisonment.

66. Having regard to all the issues raised, this court will make the following orders:

1. The plaintiff/contemnor is found guilty of contempt of the orders of this court.
2. The decisions unilaterally taken by the plaintiff/Contemnor in relation to following are hereby quashed.
  - a. All decisions taken without a simple majority vote of the ITGC.
  - b. The press statement dated the 10<sup>th</sup> day of June 2022, in which the plaintiff/contemnor unilaterally suspended all standing committees duly constituted by the ITGC.
  - c. The press statement dated 4<sup>th</sup> August 2022 unilaterally issued by the plaintiff/contemnor without a simple majority of the ITGC purporting to reinstate what he described as "disenfranchised and returnees to the APC party" wrongly claiming that it was done to resolve all unresolved membership issues as directed by the judgement.

- d. The unilateral decision taken by the plaintiff/contemnor without a simple majority of the ITGC in a press statement dated 13<sup>th</sup> September 2022, purporting to appoint district and constituency chairmen of the 3<sup>rd</sup> defendant.
  - e. The letter dated 1<sup>st</sup> August 2022 authored and signed by the plaintiff/contemnor regarding his unilateral, decision to appoint members of the ITGC to oversee various districts in the country without the knowledge and or approval of the required simple majority of the ITGC and the appointment of ward chairmen of the 3<sup>rd</sup> defendant without the knowledge and approval by simple majority of the ITGC.
3. With respect to appointments to the TIIEMC, I shall vary the previous order and make the following orders.
- 1. The chairman of the Transition Interim Independent Elections Management Committee, shall submit a list of seven names who shall be members of the 3<sup>rd</sup> defendant APC party of good standing for at least five years to the ITGC within 72 hours of this ruling, in any event not later than 4pm on Monday 28<sup>th</sup> November 2022, for ratification by the ITGC.
  - 2. The Interim Chairman of the ITGC shall submit a list of seven persons, to the secretary to the ITGC, who shall be members of the 3<sup>rd</sup> defendant APC party of good standing for at least five years, within 72 hours of this ruling, no later than 4pm on Monday 28<sup>th</sup> November 2022.

3. The leader of the 3<sup>rd</sup> defendant APC party in parliament shall submit a list of seven persons (not necessarily members of parliament), who shall be members of the 3<sup>rd</sup> defendant APC party of good standing for at least five years, within 72 hours of this ruling, no later than 4pm on Monday 28th November 2022.
4. The diaspora region of the 3<sup>rd</sup> defendant APC party shall nominate one person who shall be a member of the 3<sup>rd</sup> defendant APC party of good standing for at least five years, within 72 hours of the date of this order, in any event no later than 4pm on Monday 28th November 2022.
5. The National Women's congress of the 3<sup>rd</sup> defendant APC party shall nominate one person shall be a member of the 3<sup>rd</sup> defendant APC party, of good standing for at least five years, within 72 hours of this judgement, no later than 4pm on Monday 28th November 2022.
6. The National young Congress of the 3<sup>rd</sup> defendant APC party shall nominate one person who shall be a member of the 3<sup>rd</sup> defendant APC party of good standing for at least five years, within 72 hours of this order, no later than 4pm on Monday 28th November 2022.
4. The ITGC shall hold a meeting to ratify the appointments to the TIIEMC no later than Wednesday the 30<sup>th</sup> November 2022 for the purpose of this ratification, a vote is not required.

5. The interim chairman of the ITGC shall submit the ratified list of appointees to the chairman of the TIIEMC and the PPRC no later than 4pm on Friday the 2<sup>nd</sup> December 2022.
6. The chairman of the TIIEMC and all appointed members shall ensure the conduct of the lower-level elections within 45 days commencing from Monday 5<sup>th</sup> December 2022 and all such elections shall be completed under the supervision of the PPRC no later than the 19<sup>th</sup> day of January 2023.
7. The ITGC shall make available all APC party resources to the TIIEMC and all party offices, to enable it to meet its mandate.
8. The ITGC shall ensure the conduct of the national delegates conference under the supervision of the PPRC no later than the 29<sup>th</sup> January 2023, to elect a new executive and a flag bearer.
9. All previous orders of the 28<sup>th</sup> April 2022, not varied by this order, remains in force.
10. All decisions of the ITGC must be by a simple majority of all members of the ITGC present or absent at the meeting, save for the meeting ordered by this court for the purpose of ratification of appointees to the TIIEMC as set out at paragraph 54(3)(4) above. To that extent the following shall apply.
  1. The chairman shall summon a meeting in consultation with the secretary.
  2. The secretary shall circulate notice of the meeting to all members by whatever means necessary, at least 24 hours before the meeting is scheduled to take place.

3. All members shall vote on any decision to be taken by the ITGC by whatever means they have at their disposal.
  4. The secretary shall record the number of votes cast with respect to every decision in the minutes of meeting.
11. The mandate of the ITGC in Paragraph 90(10) of the judgement of the 28<sup>th</sup> day of April 2022, is varied by the following new paragraphs:
1. The ITGC shall have overall responsibility for manning the affairs of the Party until the National delegates conference when their mandate would expire. To that extent, the ITGC shall be responsible for:
    - a. Ensuring that all lower level elections are conducted by the TIIEMC and supervised by the PPRC within 45 days commencing from Monday 5<sup>th</sup> December 2022 and all such elections shall be completed under the supervision of the PPRC no later than the 19<sup>th</sup> day of January 2023.
    - b. Resolving all membership issues in accordance with Article 10 of the of the APC 2022 Constitution, prior to the national delegates conference no later than the 20<sup>th</sup> day of January 2023.
    - c. The holding of the first National delegates Conference after the APC 2022 Constitution no later than the 29<sup>th</sup> January 2023, which shall be supervised by the chairman of the 4<sup>th</sup> defendant PPRC.

d. Holding regular meetings at least once a week, in accordance with paragraph 54(3)(10) above.

12. The interlocutory injunction I granted on the 18<sup>th</sup> day of November 2022, is hereby lifted.

13. With respect to the contempt of court by the plaintiff/contemnor, I have to assess the seriousness of the breach of the orders of this court. Whilst the breaches are serious, I am satisfied that there are many mitigating factors that mitigate against a sentence of immediate imprisonment. In any event the conduct of the plaintiff/contemnor is deserving of some punishment on his part, particularly with regard to the deliberate distortion of portions of the judgement in a bid to aid his disobedience of the court orders. In that regard, the plaintiff/contemnor shall pay a fine of nLe50,000.00, with an alternative of 30 days imprisonment which shall be suspended for seven days on condition that he swears to and files a sworn affidavit to the court undertaking to comply in future with all orders of the court, no later than 4pm on Wednesday the 30<sup>th</sup> November 2022.

14. There shall be no orders as to costs.

HON. JUSTICE A. FISHER  
23 NOV 2022  
The Hon Mr Justice A Fisher  
SIGN  
JUSTICE OF THE SUPERIOR COURTS  
OF JUDICATURE