

**IN THE SUPREME COURT OF SIERRA LEONE
(CIVIL DIVISION)**

IN THE MATTER OF A PETITION AGAINST THE ELECTION OF HIS EXCELLENCY DR. ERNEST BAI KOROMA AS PRESIDENT OF THE REPUBLIC OF SIERRA LEONE AS PER THE DECLARATION OF THE RESULT OF THE PRESIDENTIAL ELECTIONS OF 17TH NOVEMBER, 2012 BY THE CHIEF ELECTORAL COMMISSIONER AND NATIONAL RETURNING OFFICER, DR. CHRISTIANA A.M. THORPE IN TERMS OF SECTIONS 32(1), 33, 36, 45(1), 49(1), 122(3) 124(1)(A) AND 127(1) (AMONG OTHERS) OF THE CONSTITUTION OF SIERRA LEONE, ACT NO.6 OF 1991; OF SECTIONS 51(3), 52(2), 55, 94, 161(1), 162 AND 168(2) (AMONG OTHERS) OF THE PUBLIC ELECTIONS ACT NO.4 OF 2012; AND THE ELECTION PETITION RULES, STATUTORY INSTRUMENT NO.7 OF 2007.

IN THE MATTER FURTHER OF SECTIONS 74, 85, 87, 91, 92, 93 AND 147 (AMONG OTHERS) OF THE PUBLIC ELECTION ACT NO.4 OF 2012 AND ALSO OF THE *QUICK REFERENCE GUIDE FOR POLLING AND COUNTING 2012: PRESIDENTIAL, PARLIAMENTARY AND LOCAL COUNCIL* ISSUED BY THE NATIONAL ELECTORAL COMMISSION.

IN THE MATTER FURTHERMORE OF SECTIONS 35(4) AND 76(1)(H) (AMONG OTHERS) OF THE CONSTITUTION OF SIERRA LEONE, ACT NO.6 OF 1991; OF SECTION 14(1) OF THE POLITICAL PARTIES ACT, NO.3 OF 2002; AND OF SECTION 44(2)(D) (AMONG OTHERS) OF THE PUBLIC ELECTIONS ACT, NO.4 OF 2012.

IN THE MATTER STILL FURTHERMORE OF SECTION 55(1) OF THE PUBLIC ELECTIONS ACT NO.4 OF 2012; OF ORDER 3, SUBRULES 2(1) & (5) OF THE HIGH COURT RULES 2007, CONSTITUTIONAL INSTRUMENT NO.8 OF 2007; OF RULE 98 OF THE SUPREME COURT RULES, PUBLIC NOTICE NO.1 OF 1982; AND OF SUBRULE 5(4) (AMONG OTHERS) OF THE ELECTION PETITION RULES, STATUTORY INSTRUMENT NO.7 OF 2007.

BETWEEN:

- | | | |
|--|---|---------------------------------------|
| 1. John Oponjo Benjamin
National Chairman & Leader,
Sierra Leone Peoples Party (SLPP)
15 Wallace-Johnson Street,
Freetown | - | 1 st Petitioner/Respondent |
| 2. Julius Maada Bio
Presidential Candidate &
Flag bearer (SLPP 2012)
15 Wallace-Johnson Street,
Freetown | - | 2 nd Petitioner/Respondent |
| 3. Dr. Kadi Sesay (Mrs.)
Vice-Presidential Candidate &
Running Mate (SLPP 2012)
15 Wallace-Johnson Street,
Freetown | - | 3 rd Petitioner/Respondent |

And

*Certified True and
Correct Copy of the
Original herof
[Signature]
[Stamp]*

1. **Dr. Christiana Thorpe** - 1st Respondent/Applicant
National Returning Officer
Chief Electoral Commissioner/
Chairperson
National Electoral Commission
OAU Drive,
Tower Hill,
Freetown.
2. **National Electoral Commission** - 2nd Respondent/Applicant
(NEC)
OAU Drive,
Tower Hill,
Freetown.
3. **Victor Bockarie Foh** - 3rd Respondent/Applicant
National Secretary-General
All Peoples Congress (APC)
Old Railway Line,
Brookfields,
Freetown.
4. **All Peoples Congress Party** - 4th Respondent/Applicant
Old Railway Line
Brookfields
Freetown

CORAM:

HON. JUSTICE U.H. TEJAN-JALLOH	- CJ
HON. JUSTICE P.O. HAMILTON	- JSC
HON. JUSTICE V.V. THOMAS	- JSC
HON. JUSTICE V.A.D. WRIGHT	- JSC
HON. JUSTICE V.M. SOLOMON	- JA

COUNSEL:

Berthan Macauley Jnr., S.K. Koroma, Alpha Jalloh, J.M. Fornah-Sesay, Ernest Beoku Betts, R.A. Nylander and Miss J. Wellington for the 3rd and 4th Respondents/Applicants

Ms. G. Thompson for 1st and 2nd Respondents/Applicants

Dr. Bu-Buaki Jabbi, E.A. Halloway, S. Banja Tejan-Sie, A.Y. Brewah, J.K. Lansana, E.N.B. Ngakui, H.M. Gevao, S.S. Thomas and A.B.S. Sangarie for Petitioners/Respondents.

RULING DELIVERED ON THE 14th DAY OF JUNE, 2013

1. The first Petitioner/Respondent is the leader of the Sierra Leones Peoples Party and the second and third Petitioners/Respondents were unsuccessful candidates in the presidential election held on the 17th November, 2012. They lodged the Election Petition dated 30th day of November, 2012 seeking that the election was invalid and Ernest Bai Koroma was not duly elected.
2. On the 14th December, 2012, the Solicitors for the 1st and 2nd Respondents/Applicants filed a Notice of Motion seeking, inter alia, the following orders;
 - (i) That the Petitioners/Respondents have failed to comply with Rule 6(1) of the Election Petition Rules 2007, in that no notice signed by the Petitioners/Respondents or on their behalf giving the name of a legal practitioner authorized to act as their agent has been filed.
 - (ii) That the Petitioners/Respondents have failed to comply with Rule 12(1) of the Election Petition Rules 2007 in that the Election Petition together with a Notice of compliance with Rule 14 of the aforementioned rules has not been served on the 1st and 2nd Respondents/Applicants within 5 days or at all.
 - (iii) That the Petitioners/Respondents have failed to comply with Rules 13 of the Election Petition Rules 2007 in that no affidavit of time, place and manner or service of the Petition has been filed within three days of service of the Petition or at all.
 - (iv) That the Petitioners/Respondents have failed to comply with Rule 14(1) of the Election Petition Rules of 2007 in that the Petitioners/Respondents have failed to give security for payment of all costs, charges and expenses which should be in the form of a deposit of the sum of Le1,000,000 as stipulated in Rule 14(2) of the Election Petition Rules 2007.

- (v) That the Petitioners have wrongly and unlawfully joined the 1st and 2nd Respondents/Applicants as parties to the action without any legal provision for the joining of the 1st and 2nd Respondents/Applicants as parties to an election petition.
- (vi) That the Petition was not filed within 7 days as stipulated in Section 55 of the Public Elections Act 2012 and Rule 5(1) of the Election Petition Rules 2007.

3. On the 13th December, 2012 the Solicitor for the 3rd and 4th Respondents filed a Notice of Motion seeking, inter alia, that the petition be struck out for contraventions of the following provisions to wit:-

1.
 - a. that the Petition was not filed in the Supreme Court within seven (7) days of the declaration of the results of the Presidential elections held on the 17th November, 2012, contrary to the Public Elections Act, 2012, Section 55(2) and the Election Petition Rules, 2007, Rule 5(1), which said declaration was made on the 23rd of November, 2012.;
 - b. that at the time of the presentation of the Petition, the Petitioners/Respondents herein did not, severally, give security for the payment of costs, charges and expenses which may become payable by them to any witness summoned on their behalf or to any of the respondents herein contrary to Election Petition Rules 2007, Rule 14(1);
 - c. that the Petitioners/Respondents, severally, have failed to give security in the form of deposit in the sum of Le1,000,000.00 and by recognizance of that same amount entered into by two sureties nor by payment of deposit money in lieu of any such recognizance contrary to Election Petition Rules 2007, Rule 14(2);

- d. that the Petitioners/Respondents did not serve the Petition herein personally on the 3rd Respondent/Applicant, contrary to Election Petition Rules 2007, Rules 12(1), having regard to the fact that the 3rd Respondent/Applicant had not appointed an agent or given an address for service nor had the Petitioners/Respondents obtained an order under Election Petition Rules 12(3) for service on the 3rd Respondent other than as provided in the said Election Petition Rules, 2007, Rule 12 (1);
 - e. That the Petitioners/Respondents did not serve the Petition herein on the 4th Respondent/Applicant within five days of the presentation of the Petition, contrary to Election Petition Rules, 2007, Rule 12(1), having regard to the fact the 4th Respondent/Applicant had not appointed an agent or given an address for service during that five day period nor had the Petitioners/Respondents obtained an order under Election Petition Rules, 2007, Rule 12(3) for service other than as provided in the said Election Petition Rules, 2007, Rule 12(1); and
 - f. that the Petitioners/Respondents did not serve the 3rd Respondent/Applicant nor the 4th Respondent/Applicant with the notice of compliance with the Election Petition Rules 2007, 14(1), as to the giving of security for costs, within five days of the presentation of the Petition, contrary to Election Petition Rules, 2007, Rule 12(1).
2. Further and/or in the alternative, that this Honourable Court do make an order striking out paragraph 7 of the Petition, which is in the following terms:-
- (7) That at the Presidential election on the 17th of November, 2012 the sitting Chairman and Leader of the 4th Respondent political party, notwithstanding the provisions in Sections 35(4) and 76(1) (h) of the national Constitution and subsection 14(1) of the Political Parties Act, 2002, contested as its Presidential Candidate and was ultimately declared winner thereof by the 1st Respondent.

In that the matters complained thereof, to wit, the nomination of the said Chairman and Leader of the 4th Respondent political party, can no longer be the subject of adjudication by the Supreme Court as the same is statute barred having regard to The Public Elections Act, 2012, section 47(2) in that no objection had been lodged by any of the Petitioners/Respondents in the Supreme Court of Sierra Leone, within seven days of the publication by way of Government Notice No.449 dated the 15th of October 2012 and published in the Sierra Leone Gazette Vol. CXLIII dated the 22nd of November, 2012, a notice of the nomination showing the full names, address and occupation of each presidential candidate, including the Chairman and Leader of the 4th Respondent Political Party, with the stipulated particulars.

3. That the Honourable Court do make an order staying all further or other proceedings in the Petition pending the hearing and determination of this application except in relation to this application herein.
4. Any other order that this Honourable Court may deem fit and just.
5. That the costs of this application be costs in favour of the 3rd Respondent/Applicant and 4th Respondent/Applicant.
4. Hearing of the substantive Petition was fixed for Wednesday 17th April, 2013 and Counsel for 3rd and 4th Respondents sought leave to amend his Notice of Motion dated 13th December, 2012 in two aspects, namely, in order 1(a) on the 4th line by replacing "Section 55(2)" with "Section 55(1)". Further, by adding an additional ground 1(g), to the first Order sought in the Notice of Motion in the following manner:-
(g) that the successful candidate at the Presidential Election, the subject matter of the Petitioners/Respondents' petition herein dated the 30th of November, 2012 HIS EXCELLENCY DR. ERNEST BAI KOROMA was not made and is not a party to the said Petition dated 30th of November, 2012.

Counsel for the Petitioners/Respondents and Counsel for the 1st and 2nd Respondents/Applicants had no objection and the amendments were accordingly allowed and to take effect immediately.

5. The Court then asked Counsel for the petitioners to proceed with his preliminary objection against the Notice of Motion dated 13th December, 2012 on behalf of the 3rd and 4th Respondents/Applicants. Lead Counsel Bu-Buaki Jabbi Esq argued that the 3rd and 4th Respondents/Applicants lacked locus standi on the basis that they had not filed an answer to the petition. We heard arguments from both sides on the preliminary objection and adjourned to the 18th April, 2013 for ruling.
6. At the resumed sitting on the 18th April, 2013, we overruled the objection and stated, inter alia, that locus standi of a Respondent in an election petition is not dependent on the filing of an answer. That Rules 7 and 8 of the Election Petition Rules 2007 (hereinafter called "the Rules") require the Respondent to file a signed notice appointing a legal practitioner to act as his agent or state that he intends to act for himself.
7. It is now proposed to examine the various complaints raised by Counsel for the Respondents/Applicants. They are 5 in respect of Counsel for the 1st and 2nd Respondents/Applicants and 8 in respect of Counsel for 3rd and 4th Respondents/Applicants. Consequently, we propose to set out the arguments in respect of the 1st and 2nd Respondents/Applicants to be followed by the reply by Counsel for the Petitioners/Respondents, after hearing Counsel for the 3rd and 4th Respondents/Applicants.

Miss Thompson commenced her arguments as follows:- The first complaint is that the Petitioners/Respondents have failed to comply with Rule 6(1) of the Rules in that no notice signed by the Petitioners/Respondents or on their behalf giving the name of a legal practitioner authorized to act as their Agent has been filed.

She stated that the Petitioners/Respondents did not leave a notice signed by them or on their behalf or the name of a legal practitioner to act on their behalf at the Supreme Court Registry as required by Rule 6(1) of the Rules. She contended that an endorsement of the Petition did not fulfill the conditions of the sub-rule. She said that the sub-rule is specific and does not provide an alternative to such a notice. She supported her submissions by the cases of Paramount Chief R.B.S. Koker v. Paramount Chief Abu Baimba III (1962) 2 SLLR 55 and Manfred O. Cole v. Marcus Chamberlin Grant (1962) 2 SLLR 41. She said that it was held in these cases that the Rules were mandatory and non-compliance with them resulted in the striking out of the petition.

8. Counsel's second complaint is that the Petitioners/Respondents have failed to comply with Rule 12 of the Rules in that the Petition and the notice of compliance should be served contemporaneously on the Respondents. The notice of compliance was served on the 14th December, 2012 and the date of the service was after the Notice of Motion filed on behalf of the Respondents. She drew the attention of the Court to the fact that the petition is dated 30th November, 2012 and the receipt of payment is dated 5th December, 2012. There is an affidavit filed on behalf of the Petitioners/Respondents sworn to on the 15th day of December, 2012 to which was attached two handwritten receipts marked Exhibits B1 - B3, one of which is for the sum of Le1,000,000.00 for costs. Counsel then argued that as far as Rule 12(1) of the Rules is concerned, even if it is accepted that the petition is dated 30th November, 2012 the Petitioners/Respondents are out of time by nine (9) days to file a notice of compliance.
 9. The third complaint is that the Petitioners/Respondents have failed to comply with Rule 13 of the Rules, that is, no affidavit of time, place and manner of service of the petition has been filed within three days of service of the petition.
- Counsel submitted that Rule 13 of the Rules requires the Petitioners/Respondents within 3 days of service of the petition to file with the Master by or on behalf of the Petitioners, an affidavit of the time, place and manner of service of the action. She

stated that this was not done by the petitioners themselves or their agents on their behalf.

10. The fourth complaint is that Petitioners/Respondents have failed to comply with Rule 14(1) of the Rules in that they have failed to give security for payment of costs, charges and expenses which should be in the form of a deposit of the sum of Le1,000,000/00 as stipulated in Rule 14(2) of the Rules.

She complained that the Rule 14(1) prescribes that at the time of the presentation of the petition the Petitioners/Respondents shall give security for the payment for costs, charges and expenses. It does not say 3 or 5 days after the presentation and that presentation here refers to filing which includes bringing the documents, sealing them, paying for them and a receipt issued. She argued that filing cannot be by installments and has to take place in one day and in one act. She reiterated that the petition is stamped 30th November, 2012, the two handwritten receipts are dated 3rd December, 2012 and 5th December, 2012, as shown in Exhibits B1 - B3 in the affidavit in opposition by Brewah and others. B1 is a receipt for Le1,000,000/00 as security for costs, B2 which is dated 5th December, 2012, is a Government of Sierra Leone receipt for Le1,000,000/00, B3 dated 3rd December, 2012, was issued by Mr. Thomas of the Supreme Court Registry. She further submitted that payment for security as required under Rule 14(1) was not done. She then referred to Rule 14(2) of the Rules and said that payment was not done at the time of presentation of the petition, and it followed that the Rule 14(1) was not obeyed. She informed the Court that this ground is linked with the objection, that the petition was not filed within 7 days as required by Rule 5 of the Rules.

She submitted that the Rules are strictly interpreted by the Court and where they have not been complied with, the petitions have been struck out.

She referred us to paragraph 4(c) of the affidavit in opposition of Brewah and others sworn to on the 18th December, 2012 on behalf of the Petitioners/Respondents where it

is averred that there had been effective compliance by the 5th December, 2012. She stressed that the Rules are either complied with or not complied with and there is nothing like effective compliance. She stated that statutes are either mandatory or directory and where they are mandatory they have to be complied with. Compliance is absolute and is not qualified. The Petitioners/Respondents' attempts to say that by 5th December, 2012, they have effectively complied, appear to qualify compliance which is mandatory. She urged the Court to hold and declare the petition filed as invalid and void for contravention of the Rules.

Miss Thompson finally submitted that Rule 98 of the Supreme Court Rules is not applicable in the instant case as there are specific provisions both in the Public Elections Act 2012 (hereinafter called "The Act") and the Rules. She asked that the Court declare that the Petition filed is invalid and void for the several infractions and contraventions.

11. After the close of the arguments by Counsel for the 1st and 2nd Respondents/Applicants, Counsel for the 3rd and 4th Respondents/Applicants was invited to commence his arguments. He referred the Court to the Notice of Motion dated 13th December, 2012. He indicated that subject to the direction of the Court, he proposes to argue sub-grounds A and B together, B and C together and D, E and F together. We heard him on all these complaints some of which are identical to those argued by Counsel for the 1st and 2nd Respondents/Applicants relating to Rules 5, 6, 12, 13 and 14 of the Rules and Section 55 of the Act. Counsel for the 3rd and 4th Respondents/Applicants comprehensively demonstrated the several respects in which the Rules have been contravened and not complied with by reference to the several affidavits in support and opposition of the application before the Court in the light of the relevant law. He emphasized that the Election Petition was not served on the 3rd Respondent, Victor Bockari Foh, personally nor was an order of court obtained for service on him in any other way.

12. Apart from the various contraventions of the Rules, the 3rd and 4th Respondents/Applicants seek an order (Order 1(g)) to strike out the whole of the petition on the ground that the sole successful candidate at the Presidential Election was not made a party in the petition. The second order prayed for in the Notice of Motion filed on behalf of the 3rd and 4th Respondents/Applicants seek to strike out paragraph 7 of the petition. Both of these reliefs that the 3rd and 4th Respondents/Applicants seek will be dealt with by Justice Valesius V. Thomas, JSC as part of this decision of the Court to strike out the petition.
13. Lead Counsel, Bu-Buaki Jabbi Esq. informed the Court that their response to the two Notices of Motion of the Respondents/Applicants will be dealt with in two stages, the first stage will be in response to the Notice of Motion on behalf of the 1st and 2nd Respondents/Applicants and the second stage will be on the submissions on behalf of the 3rd and 4th Respondents/Applicants. The first stage would be done by Sulaiman Banja Tejan-Sie Esq. and the second by himself.
14. Counsel Sulaiman Banja Tejan-Sie Esq. stated that Counsel for the 1st and 2nd Respondents/Applicants had raised four procedural complaints for striking out the petition for non-compliance with the Rules, namely, 5(1), 6(1), 12, 13 and 14. He commenced his arguments against striking out the petition on the ground of failure to file the petition within 7 days. He referred to Section 55 of the Act and Rule 5(1) of the Rules. He referred to these provisions and drew the Courts' attention to Rule 5(4) of the Rules, which provides that on the presentation of the petition the original shall be sealed and shall then be deemed to be issued. He submitted that in computing time for the purpose of Rule 5(1) of the Rules, reference should be made to Section 39(1)(a) and (b) of the Interpretation Act 1971 and further argued that the test adopted and applied in *Daniel Sankoh v. Alhaji Tejan-Kabba* S.C. 1/2002 (unreported) is correct. He contended that Section 39(1)(a) simply states that in computing time reckoned by days from the happening of an event, the day on which the event happens should be excluded. Section 39(1)(b) shows the days that are excluded. He referred to Rule 98 of the Supreme Court Rules 1982 and said that Order 3 rule 3(2) of the High Court Rules 2007 is consistent with Section 39(1)(a) of the Interpretation Act.

He further referred to Order 3 rule 2(1), 3(2)(2) and 3(2)(5) of the High Court Rules 2007 especially rule 2(5) and submitted that excluding Saturday and Sunday and counting from the date after the results were declared, Friday 30th November, 2012 was the 5th day.

15. Regarding the payment of filing fees Counsel referred the Court to Rule 47(2) of the Rules and opined that it is not a prerequisite. He confirmed that these fees are to be paid under Rule 47 but payment is not a condition precedent under Rule 5(1) of the Rules. He cited the case of Thomas Nelson-Williams v. Cyril Rogers-Wright (1962) 2 SLLR page 58. At page 61 of the Report, there is an admission that filing fees were not paid. In the instant case there is evidence that the petition was filed and payment was made. In order to illustrate that payment was effected, he referred the Court to Exhibit "AMJ2", "AMJ3" and "AMJ4" which are paying-in-slips attached to the affidavit of Alpha Jalloh. He also referred to paragraph 4(b) of the affidavit in opposition by Brewah, Musa and Sangarie sworn to on the 18th December, 2012. He further submitted that by presentation of the petition and affidavit in support, sealed and issued in the Registry of the Supreme Court with the various payments effected on the 3rd and 5th December, 2012, the Petitioners/Respondents had complied with Rule 5 of the Rules and Section 55(1) of the Act. He argued that the case of Nelson-Williams v Rogers-Wright is inapplicable in the instant case. Regarding the breach of Rule 6(1) of the Rules, that is, no notice signed by the Petitioners giving names of their agents had been filed, he referred to the petition and the affidavit in support and opined that since the petition was issued directly through their Solicitors Brewah and Co., that is in Exhibit "BF2", they had in fact complied with the Rule.

16. Mr. Banja Tejan-Sie mentioned that Counsel for the 1st and 2nd Respondents/Applicants had relied on cases of M.O. Cole v. Grant and PC. R.B.S Koker v PC. Abu Baimba III and said that these were cases relating to the election of members of the House of Representatives under the 1961 Constitution and when they are examined it would be found that they started in July, 1962 and 13th August, 1962. He pointed out that the decisions of Grant and Brewah were decided by Bankole Jones

J. sitting as a High Court Judge and that the latter case went up to the Court of Appeal. He submitted that the Petitioners by suing as they did and issuing the petition and affidavit directly by their solicitors, Brewah and Co., instead of by themselves they were invoking Rule 98 of the Supreme Court Rules and relying on Order 6 Rule 5(1) of the High Court Rules. Thereby, they were in fact stating on the petition the name and address for service of the legal practitioner authorized by them to act as their agent as required by Rule 6(1) and (2) of the Rules. In support he cited the case of Moses Kondowa Director SL/IDA v. Aureol Tobacco Company Misc. Appl. 7/93 at page 5.

17. He contended that the only issue raised outside of the Rules by the 1st and 2nd Respondents/Applicants is the requirement of Section 55(1) of the Act. Finally, on this point he submitted that cases relied upon by Counsel for the 1st and 2nd Respondents/Applicants are inapplicable.
18. Counsel referred the Court to Rule 53 of the Rules dealing with situations where there are no relevant election petition rules and submitted that Order 2(1) of the High Court Rules 2007 can be conveniently applied in those cases and non-compliance should be treated as irregularity and not nullity. As regards Rules 12, 13 and 14 of the Rules he referred the Court to paragraph 7 of the affidavit of Abu B.S. Sangarie sworn to on the 15th December, 2012. As regards Rule 98 of the Supreme Court Rules 1982 and Rules 52 and 53 of the Rules he relied on paragraphs 3, 4(c) and 5 of the affidavit in opposition by Brewah and others sworn to on the 18th of December, 2012. He read out paragraph 4(c) which reads as follows:- "that by 5th December, 2012 the Petitioners had complied with security for costs". On the question on procedural or formal Rules he submitted that the basis of the objections of the 1st and 2nd Respondents/Applicants of non-compliance with Rules 5(1), 6(1), 12, 13, 14 of the Rules are all merely directory in force or effect and are not mandatory by virtue of Rule 98 of the Supreme Court Rules 1982, Rules 52 and 53 of the Rules and Order 2(1) of the High Court Rules 2007. He further submitted that by invoking Rule 98 of the Supreme Court Rules 1982 and by virtue of Rule 53 of the Rules and Order 2(1)(i) of the High Court Rules 2007, failure to comply with these Rules "shall be treated as

an irregularity and shall not nullify the proceedings". He referred to the case of Montreal Railway Company v. Normadin (1917) AC page 170.

19. On the question of the 4th complaint Counsel pointed out that Rule 14 of the Rules is akin to Rule 19 of the House of Representatives Election Rules 1960. He referred to the affidavit of Roland Young, sworn to on the 14th December, 2012 exhibited in the supplemental affidavit in opposition by Abu Sangarie sworn on 22nd April, 2013 and referred thereon as Exhibits "B and B5". He further referred to Rules 52 and 53 of the Rules; Rule 98 of the Supreme Court Rules 1982 and Order 2 rule 1 of the High Court Rules 2007 and submitted that non-compliance with Rule 13 and 14 does not nullify the proceedings.

20. It is Counsel's view that the previous Election Petition decisions can be distinguished from the instant case in the following respects:-

Firstly, they were decided under 1961 Constitution, secondly, they were under the House of Representatives Election Rules 1960, Laws of Sierra Leone and thirdly, all of them were decided when we had Parliamentary system of Government as opposed to the present Presidential system of Government under the 1991 Constitution. Fourthly, they all deal with election of members to the House of Representatives as opposed to election of a President of Sierra Leone. Counsel emphasized that all the previous election decisions or authorities relied on by Counsel for the 1st and 2nd Respondent/Applicantss concern Parliamentary Election under the Colonial House of Representatives Election Petition Rules Vol. 6 of the Laws of Sierra Leone. In his view, these were determined by a restricted constituency electorate as opposed to the national electorate that elects a President of Sierra Leone under Section 42(2)(a) of the Constitution of Sierra Leone 1991. He added that there has been a progressive evolution in our statutes and regulations from strict adherence to procedural technicalities to emphasize on substantive justice since the Court of Appeal decision in P.C. Tamba M'Briwa v. P.C. Dudu. S. Bona (1963) 3 SLLR 9 followed by the decision in 1993 of Moses Kondowa, Director SL/IDA v. Aureol Tobacco Company and culminating in the enactment in the Rules and High Court Rules 2007.

Counsel reinforced his submission that none of the Rules relied on by Counsel for the 1st and 2nd Respondents/Applicants expressly provide the effect of non-compliance. He asserted that the President and Vice-President represent all voters and all constituencies in Sierra Leone and cited the case of George Bush v. AL Gore Jnr. 531 vs 98/2000.

21. Bu-Buakie Jabbi Esq lead Counsel for the Petitioners/Respondents in dealing with the alleged contraventions of the election petition rules stated that there was a failed attempt to pay the required filing fees when the petition was presented for filing on the 30th November, 2012 but that payment was effected on Monday 3rd December, 2012. He referred to Section 55(1) of the Act, Section 39 of the Interpretation Act 1971, various Election Petition Rules together with the High Court Rules 2007 and submitted that the petition was not presented out of time. He further submitted that the various Election Petition Rules mentioned in the complaints of the Respondents/Applicants are merely directory and not mandatory, and that in any event judges have wide discretionary powers in construing Rules of Court as distinct from provisions of statutes. He further submitted that service of the petition was effected within a reasonable time.
22. Election Petitions are not new in Sierra Leone and our Law Reports are replete with several decisions on the interpretation and application of various statutory election provisions. These decisions make interesting reading and to my mind are stern warnings to litigants and practitioners who engage in the election petition exercise. The office of President has been with us for some time now and indeed Parliament enacted the Presidential Elections Act in 1995 and its provisions were in force until it was repealed by the Electoral Act 2002. The latter Act was amended by the Electoral Laws (Amendment) Act 2002 – Act No.5 of 2002. These Acts have now been repealed by the Public Elections Act 2012 which is the current principal Act supported by the Rules. These two enactments contain provisions for the Presidential Election. Let me digress a little and say that it is an acknowledged fact, that a National Constitution is the most important national document in several countries and Sierra

Leone is not an exception. Our National Constitution, *inter alia*, contains the functions, powers and duties of the President and these attributes deserve to be described as the shaft and hub upon which the Constitution operates. Therefore, it is my view that an election to such a high office ought to occupy its rightful position by a separate enactment. There has been a Presidential and Vice-Presidential Act 1952 for the past 61 years in India. This Act contains salient aspects of the elections of these two offices. Thus in the case of Mithilessa v. Venkatakam and Other (1989) Law Reports page 1 Commonwealth (Const) it was held that the Act was exhaustive in Section 18 and provides the grounds on which the election of the candidate returned as President or Vice-President could be declared void. The grounds are as follows, firstly, if it was established that the offence of bribery or undue influence had been committed at the election by the returned candidate himself, or by any person with his consent, or secondly, if it was established that the election had been materially affected by any of the three grounds thereby provided or thirdly if it was established that the nomination of any candidate had been wrongly rejected or the petition failed to set out in a succinct and clear narrative form all the facts necessary to enable the Respondent and the Court to understand the Petitioner's case. Consequently, it was unnecessary for the Court to examine whether the issuing of the whip by any Political Party amounted to undue influence had been committed by the 1st Respondent.

23. Equally, in the Republic of Nigeria there are specific statutory provisions dealing with the election of President. It is the Electoral Act 1982 and unlike our provisions under the Public Elections Act 2012 and the Election Petition Rules 2007 which are silent on many points, the Nigeria Electoral Act provides specifically that elections shall not be invalidated by reason of non-compliance with Part II of the Act, if it appears having cognizance of the question that the election was conducted substantially in accordance with the provisions of the said Part II. The Supreme Court of Nigeria examined the relevant provisions in the case of Ibrahim v Shagari and Others (1985) LRC (Const) Law Report of the Commonwealth page 1. The Court found there was no substance or merit in respect of the matters in law and in fact of the petition of Shagari and dismissed his petition.

24. In May 2012 Parliament enacted the Public Elections Act 2012 which contains Section 55. That Section is ipsissima verba Section 40 of the Electoral Act 2002 repealed. Section 55(1) provides the right of a citizen to challenge in a presidential election the validity of that election by petition to the Supreme Court. By this conferment, the Supreme Court is empowered to hear and determine the validity or otherwise of a presidential election and also to make orders, interlocutory or final, in the course of hearing the petition. This jurisdiction also enables the Supreme Court in the absence of a specific Presidential Election Rules to invoke and use the Rules.

25. The Respondents/Applicants by Notice of Motion both dated 13th December, 2012 applied for orders that the petition dated the 30th day of November, 2012 be struck out for failure to comply with Section 55(1) of the Act and Rules 5(1), 12, 13 and 14 of the Rules.

Section 55(1) provides that a person who is a citizen of Sierra Leone and has lawfully voted in a Presidential Election may challenge the validity of that election by petition to the Supreme Court within seven (7) days after the declaration of the result of presidential election. Rule 5(1) on the other hand states unless otherwise provided by any enactment a petition shall be presented within seven (7) days of the declaration of the result of that election to which the petition relates. The controversy between the two parties is that the Respondents/Applicants allege that the Petitioners/Respondents have not complied with either Section 55(1) of the Act or Rule 5(1) of the Rules in their petition dated and stamped on the 30th November, 2012. Our view is that the petition was filed out of time.

26. That Rule 5(4) of the Rules requires that on the presentation of the petition, the original shall be sealed by the Master and it shall be deemed to be issued. That provision would seem to have been followed. But Rule 6(1) provides that on presenting a petition, the petitioners shall leave at the Registry a notice, signed by themselves or on their behalf giving the name of a legal practitioner, who they authorize as their agent or stating that they act for themselves as the case may be. In either case they shall give an address for service which shall be within five miles of

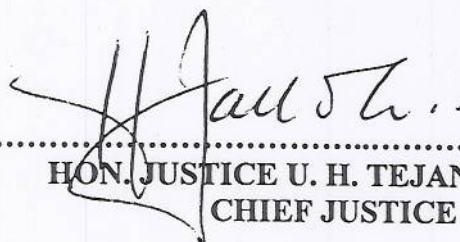
the Registry in Freetown. It is the contention of the Respondents/Applicants that this notice was not given. The Petitioners/Respondents argued that it is sufficient if the said notice was endorsed on the petition. That provision is clear, unequivocal and specific that it is a separate notice and not an endorsement that is required on the petition. We agree with the submissions of the Respondents/Applicants on this point and disagree with the submissions of the Petitioners/Respondents.

27. Furthermore, Rule 12(1) of the Rules provides that within 5 days of its presentation the election petition together with notice of compliance with Rule 14(1) of the Rules as to the giving of security of cost shall be served on all the Respondents. The affidavit evidence before this court is that only the petition and affidavit in support was served on Priscilla Leigh instead of on the 1st and 2nd Respondents and on Isha Badamasie instead of 3rd and 4th Respondents. The notice of compliance was only filed on the 19th December 2012. In the case of the 1st Respondent/Applicant, an affidavit of time, place and manner of service of the Petition was filed within 3 days. No affidavit was filed by the Petitioners in respect of the 3rd and 4th Respondents. In respect of the 3rd Respondent/Applicant he was not personally served on the 10th of December, 2012. Service was effected on one Isha Badamasie on the 10th December, 2012 allegedly in respect of the 3rd and 4th Respondents/Applicants. Payment for security of cost etc was only made on the 5th December, 2012 as evidenced by the Government of Sierra Leone receipt, Exhibit "B2" in the affidavit of compliance.

28. It is our view that the several complaints of non compliance with the Election Petition Rules have been justified by affidavit evidence in support of the application to strike out the petition filed. The failure to comply with Section 55(1) of the Act and the Rules is fatal as previous decisions of the Courts of Sierra Leone on Election Petition Rules clearly indicate. We do not think that because some of these decisions were made pursuant to the House of Representatives Election Petition Rules of 1960 or are decisions of the High Court and Court of Appeal is of any relevance. The relevant question is whether these earlier decisions indicate the intention of the legislature which enacted the current statutory provisions and Election Petition Rules. Clearly

these Rules are mandatory and not directory. We are of the view that because they are mandatory, they ought to be strictly complied with and not to be qualified by expressions such as substantial and/or effective compliance. The cases of Montreal Street Railway Co. v Normadin (1917) AC 170 and Moses Kondowa, Director SL/IDA v. Aureol Tobacco Co. MISC. APP 7/93 that were cited by Counsel for the Petitioners/Respondents in answer to the complaints of non-compliance with the Rules do not justify or explain the said contraventions.

29. We do find that the Petitioners/Respondents have failed to comply with several of the Election Petition Rules and accordingly we strike out the petition with cost to the Respondents/Applicants to be taxed if not agreed.


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HON. JUSTICE U. H. TEJAN-JALLOH
CHIEF JUSTICE

I AGREE:.....
HON. JUSTICE P.O. HAMILTON - JSC

I AGREE:.....
HON. JUSTICE V.V. THOMAS - JSC

I AGREE:.....
HON. JUSTICE V.A.D. WRIGHT - JSC

I AGREE:.....
HON. JUSTICE V.M. SOLOMON - JA

20 Certified True and
Correct Copy of the
Original heretofore.
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