

CIV/APP 13/2000

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

All Peoples Congress
Abdul F. Serry Kamal
Victor B. Foh
Dr. Jengo Stevens
Edward M. Turay

APPELLANTS

AND

The Speaker of Parliament
The Ad Hoc Committee of Parliament on Absenteeism
The Hon. John Gaiva Labor
Acting Chairman
The Clerk of Parliament
The Chief Electoral Commission

RESPONDENTS

Mr. F. Serry Kamal for the Appellants
Attorney General and J.A. Farmer for the Respondents

Judgement delivered on:

Thursday 10th January, 2002

TOLLA THOMPSON J.A. (Presiding)

JUDGEMENT

My Lords

This is an appeal against the ruling of Massallay J. delivered on the 14th August 2000 refusing leave to the appellants to apply for an Order of Certiorari against the expulsion of the appellants by the Speaker and the Ad Hoc Committee of Parliament on ground of absenteeism.

The grounds of appeal are:

1. That the learned trial judge misdirected himself in holding that the Sierra Leone Parliament is not an inferior court or tribunal to the High Court therefore the High Court cannot supervise it.
2. That the learned trial judge misdirected himself in holding that the purport of the applicants application is requesting the High Court to enquire into parliament own internal proceedings.
3. That the learned trial judge acted on wrong principles in arriving at his decision.
4. That the decision is against the weight of evidence.

Background

On a Private Member's Motion, moved by the Hon. Gaiva Labor and seconded by Hon. Williams Jusu pursuant to Section 77(e) of the 1991 Constitution of Sierra Leone Act No. 6 of 1991 and intendem with Standing Order 77 of the Sierra Leone Parliament, Parliament approved the setting up an Ad Hoc Committee which for the purpose of this appeal I shall refer to as the Committee to investigate and report on the persistent absenteeism from plenary Parliamentary sitting within the second and the current third session of the first Parliament of the Second Republic of Sierra Leone. The Chairman of the Committee was the Hon. Gaiva Labour who moved the motion.

At the end of the investigation, the Committee reported and recommended to parliament that seven members namely the Hon. Abdul Serry Kamal, Hon. Victor B. Foh, Hon. Jengo Stevens, Hon. Edward Turay (Appellants herein); Hon. Dr. Augustine E. Stevens, Hon Dr. John Karefa Smart and Hon. Abdulai Bundu Kamara should vacate their seats in Parliament with immediate effect. The Speaker subsequently declared their seats in Parliament vacant.

The issue in the court below

It is against this background that the appellant moved the High Court for leave to apply for an order of Certiorari against the Speaker and the Committee of Parliament. At the hearing of the application the arguments proceeded on the Attorney General's Preliminary Objection to the Jurisdiction of the High Court to entertain the application, relying on Section 94(1) and (2) of the 1991 Constitution Act No. 6 of 1991, which I shall henceforth refer to as the Constitution, that it was not open to the appellants to apply for leave for an order of Certiorari to quash the order of the Speaker of Parliament based on the report of the Committee on Absenteeism.

The learned judge found favour in the argument of the Attorney General and refused the application for leave.

The learned judge in arriving at his ruling relied on Section 134 of the Constitution and said at Page 206 Lines 5-10 of the record:

"In my view once Parliament is not an inferior court or tribunal to the High Court, the High Court cannot supervise Parliament as it does Magistrate Courts, Local Courts, Administrative bodies, Professional bodies exercising judicial or quash judicial powers".

And at Line 23 Page 206 to Lines 7-9 Page 207 of the record he went on to state the Provision of the Section 94(2) of the 1991 Constitution and concluded:

"The purport of this application is in essence requiring this High Court to enquire into Parliament's own internal proceedings"

It is these salient parts of the learned judge's ruling that has precipitated this appeal before us.

The Argument

Arguing the appeal Mr. Serry Kamal learned counsel for the appellant submitted that the appellant came to the High Court under section 78 of the Constitution of Sierra Leone for leave to apply for an Order of Certiorari against the Respondents. The respondent's Counsel took an objection under section 94(2) of the Constitution of Sierra Leone for leave to apply for an Order of certiorari against the respondents.

Mr. Serry Kamal said section 170(4) of the Constitution preserves the existing law, therefore the learned trial judge ought to have granted the application. Continuing his argument he said the learned trial judge did not listen to him because of section 94 of the Constitution and submitted that this section regulates the internal procedure of Parliament. Membership of Parliament is regulated by section 77 of the Constitution.

Finally he submitted with some degree of force that the composition of Standing Order 77(c) includes the Speaker and other member of Parliament. The report of the Committee showed that the Hon. Gaiva Labour acted as Chairman. He had no legal authority to do so. In support of this submission he cited the case of in the matter of J.T. Dixon 2 SLIR 1962. Page 67 at Page 69 and the case of Newns v. Macfoy 1960-61 1 SLLR Page 232.

In reply Mr. Farmer learned counsel for the respondent submitted that the learned trial judge applied the correct principles of law. Parliament is not inferior to the High Court and therefore the High Court cannot supervise Parliament. Continuing his argument he said that Section 134 of the Constitution is not applicable to Parliament consequently the High Court has no jurisdiction to entertain the matter.

Finally he submitted that Sections 77(e) and 80 do not apply to the instant case. This is not an Election Petition therefore the appellants cannot come to court.

In answer to Mr. Farmer's reply, Mr. Serry Kamal submitted that the Committee was an adjudicating authority and therefore section 134 of the constitution applies.

Finally he urged the Court to set aside the ruling of the learned trial judge and invoke section 31 of the Court of Appeal Rules and grant the Order for Certiorari quashing the report of the Committee of Parliament.

It is evident that the learned trial judge declined to assume jurisdiction because as he puts it:

"Parliament is not an inferior court or tribunal, the High court cannot supervise Parliament as it does the Magistrate Court etc".

It is obvious to me therefore, that the grounds of appeal (except Ground 4) and the summary of the argument canvassed by learned counsel for the appellants and the respondent revolve around the all-important point of jurisdiction. Jurisdiction in my view must be taken to establish the validity of the application before the learned trial judge.

Jurisdiction (of the Court)

Let me start by saying that every citizen of this country reserves the right to commence an action in our courts if he thinks that his right under the Constitution has been infringed. The issue whether the action will succeed is another matter.

The general principle-governing jurisdiction is that the court has no jurisdiction to deal with hypothetical or academic question not grounded on reality or facts. The ambit or compass of the question intended to be dealt with in exercise of the judicial powers in this country is vested in the 1965 Court Act and the 1991 Constitution and does not extend to hypothetical questions, or issues.

Lord Sumner in Russian Commercial and Industrial Bank v. British Bank (1921) A.C. 438 Page 452 had this to say on this point:

"The question must be real and not theoretical. The person raising it must have real interest to raise it and must be able to secure a proper opponent i.e., someone presently existing who has the true interest to oppose the declaration sought".

If a Constitution of a country states that the court has no jurisdiction in certain matters it is impossible for the court to assume jurisdiction on such matters. The court is incompetent. See Ohene Moore v. Akessey Taye 2WACA 43 at Page 46. Therefore the court cannot arrogate to itself power which the constitution, the source of its power has excluded from it.

It follows therefore that no court exists for the purpose of indulging in what from the start would be completely wasteful and useless exercise. All courts in every part of the civilized world are jealous of their jurisdiction as well as their powers and are unwilling to indulge in any exercise which will bring about ridicule or contempt. See *Rv. Hutching* 1891 6QBD 300 at Page 304.

Exclusion or Ouster of the jurisdiction of the court does not terminate with but also covers the inherent jurisdiction of the court. Therefore if a court has no jurisdiction there cannot be anything inherent in the court, *"you cannot put something on nothing and expect it to stay there. It will collapse"*. Per Lord Denning in *Macfoy v United Africa Co. Ltd.* (1962) AC 152 at 160.

Generally since the point on jurisdiction is so important and fundamental it can be raised at any stage of the proceedings either in limine or the pleadings or on a motion supported by an Affidavit and when it is raised it is the duty of the court to satisfy itself that it has jurisdiction before proceeding with the substantive matter. See *Ohene Moore v. Akese* 2 WACA Supra.

The issue

What appears to me to be the issue in this appeal is whether the learned trial judge erred in law in refusing to entertain the application for leave to apply for an Order of Certiorari relying on sections 94 and 134 of the Constitution. And in dealing with the issue I shall refer to the Provisions of the Constitution and the Standing Orders of parliament as far as they are relevant to this appeal.

The Constitution

The Constitution of Sierra Leone Act No. 6 of 1991, which came into force on The 1st of October 1991, is now the grundnorm of this country. Section 171(15) of the Constitution states:

"This Constitution shall be the Supreme Law of Sierra Leone and any other law found to be inconsistent with any provision of the Constitution shall be to the extent of the inconsistency be void and of no effect".

Section 170 gives us the run down of the Laws of Sierra Leone which include the Constitution, Laws made by or under the authority of Parliament Orders, Rules Regulation and other Statutory instrument made by any person or authority pursuant to the powers conferred by this constitution or any other law emphasis mine, the existing law and the Common Law.

Section 77(e) of the Constitution states:

"A Member of Parliament shall vacate his seat in Parliament if he is absent from sitting of Parliament for such period and in such circumstances may be prescribed in the rule of procedure of parliament".

I may not be wrong to assume that the Rules of Procedure referred to 77(e) above are to be found in Standing Order 77(1) and 77(2) (a, b, c, and d).

Standing Order 77(1) states:

"Any Member who for good cause is prevented from attending a sitting of Parliament shall inform the Speaker in writing as early as possible of his inability to attend.

Standing Order 77(2) states:

- (a) Any Member who without good cause during any session is absent from sitting of Parliament on a number of days amounting to an aggregate period of thirty days shall vacate his seat, and the cause thereof.
- (b) For the purpose this order the expression good cause shall mean any urgent and pressing business which in the opinion of the Committee shall constitute a reasonable excuse for such absenteeism and shall include ill health illness in a Member's immediate family, domestic affiliation absence on official delegation from the house or otherwise representing a government abroad, every such cause shall be substantiated by such evidence by witnesses affidavit medical certificate or otherwise as the Committee shall in the circumstances of each particular case consider requisite".
- (c) The Committee shall consist of the Speaker and such other members as shall be nominated by each party on the basis of one representative for every fifteen or part thereof its number in the house.
- (d) If the Committee referred to in Sub Paragraph (c) reports that the member has been absent for the period specified in Sub-Paragraph (a) without good cause the Speaker shall declare his seat vacant".

It is obvious to me that the Provisions of the above Standing Order were invoked to remove the Appellants from Parliament.

The contention of the Respondent both here and in the Court Below is that the action of the Speaker and the Committee is protected by Section 94(2) of the Constitution, which states:

"Notwithstanding any thing to the contrary in this Constitution or any other law contained, no decision order or direction of Parliament or any of its Committee or Speaker relating to the rules of procedure of Parliament or to the application or interpretation of such rules or any act done or purported, to have done by Parliament or by the Speaker under the rules of procedure shall be inquired into by any court".

The word "purported" is defined in the Oxford Advanced Learners Dictionary as "claimed" reported or assumed to be the case "as for example the document purported to be an official statement". Therefore it is my view that the use of the expression "act done or purported to have been done" is all embracing. It includes those acts claimed or assumed to have been done under the rules and procedure of Parliament.

For the words "shall be inquired into by the courts" to have any meaning and escape from any obscurity it must be clear that the decision taken, act, or act purported to have been done by Parliament, its Committee, Speaker were done under the rules of procedure of parliament. Therefore it seems to me that any matter which begins and terminates within the four walls of Parliament cannot be enquired into by the Court. See Stockdale v Hansard [1837] 3 state trials (NS) 876: Bradlaugh v Gosset 12QBD 274.

Mr. Serry Kamal's complaint is that the Committee was not properly constituted as stipulated by Standing Order 77(2) (c). The Speaker of Parliament was not a Member. The report showed that Hon. Gaiva Labour acted as chairman and so whatever decision taken by the Committee is of no moment.

From its habitat, it cannot be disputed that Standing Order 77 is a product of legislative drafting, and Order 77(2) (c) which deals with membership of the Committee clearly stipulates that the Committee shall consist of the Speaker etc. There is no evidence that it has been amended by Parliament to exclude the Speaker from membership. See Vide So 77(2)(c) It is therefore absolutely vital that the membership of the Committee must strictly comply with the Standing Order 77(2)(c). It is a matter of strictissima juris..... that the Speaker of Parliament must be a member. If peradventure I am said to be wrong in the view that I have expressed. I am fortified in the view by the definition of "shall" in a Dictionary of Modern Legal usage by Bryam Gerner:

"The word 'shall' ordinarily denotes language of command. In legislation this over worked auxiliary verb invariably denotes an imperative rather than futurity when it appears in drafting"

Again Section 2(5) of the English Road Traffic Act 1962 provides:

"That a Constable requesting any person to provide a specimen of urine for analysis shall offer to supply to him part specimen".

The English Court of Appeal in interpreting "shall" in the above section in the case of Rv. Price (1964) 2 RD P. 176 held that the offer must be more or less simultaneous with the request.

It is therefore clear to me that Parliament must have misconstrued the Provision of the Standing Order 77(2)(c) and was in error when it nominated the members of the Committee to the exclusion of the Speaker. In other words without the Speaker the Committee was not properly constituted. It follows that the report cannot be a report of the Committee as prescribed by Standing Order 77(2)(c) consequently the action by the

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Speaker declaring the seats of the Appellants vacant (based on the report) is not protected by Section 94(2) of the Constitution.

What then is the position where acts or decisions of our Parliament as in this case fall outside the confines of Section 94(2)? Are these acts or decisions insulated from the probing lenses of the court? To help me answer these questions I shall refer to the dicta of eminent jurists and decided cases.

In *Rv. St. Olive District Board* 1857 E & B Page 529. It was held "where jurisdiction is lacking or wrongly assumed any purported decision would have no validity".

In *Rv. Northinberland Compensation Appeal Tribunal Exparte Show* 1952 IKB page 338 Lord Denning had this to say at Page 346 thereof:

"No one has ever doubted that the Court of Kings Bench can intervene to prevent a statutory tribunal from exercising the jurisdiction which Parliament has conferred on it. The Court of Kings Bench has an inherent jurisdiction to control all inferior tribunal not in an appellate capacity but in a supervisory capacity. This control extend not only seeing that the inferior tribunal keeps within their jurisdiction but seeing that they observed the law".

The case which has now become the locus classicus on the point of exceeding the term is the *Amisminic v Foreign Compensation Commission* 1969 2 WLR 969.

The case goes like this:

"Section 4(4) of the foreign compensation act 1950 provides that the determination by the commission of any application made to them under this act shall not be called in question in any court of law. It was held by the House of Lords that if the word determination in section 4 (4) of the act of 1950 should not be construed as including everything which purported to be a determination but was not a determination because the commission had misconstrued the provision of the order:

Defining its jurisdiction accordingly the court was not precluded from inquiring whether or not the order of the commission was a nullity."

Lord Wilberforce further stated:

"Just as it the duty of the court to attribute autonomy of decision to the tribunal within the designated area so the counterpart of the autonomy is that the court must ensure that the limit of the area laid down are observed."

This principle is not only confine to Statutory Tribunal. In some jurisdiction it has been extended to unlawful action by Parliament and the case I am about to refer to is most

instructive on this point. It is from the Cook Island. Article 9 of the United Kingdom Act Bill of Right Act 1688 is part of the law of Cook Island.

"It provides that the proceedings of Parliament shall not be questioned in any Court and more significantly the constitution itself has a similar provision. In an unreported decision 2nd February 2001. The Court held that the Hon. Ngerelina Puna Speaker of Parliament had been removed improperly from Parliament because the Deputy Speaker who was in the chair voted for the motion when the Constitution denied a deliberate vote to the Presiding Officer in this case the Deputy Speaker though the House had earlier passed a motion allowing the Presiding Officer to vote".

The Court went on to state that "while it agreed; that it was prohibited from questioning the proceedings of Parliament it is now well established that this does not apply when Parliament acts unlawfully and contrary to the Constitution. In support of this decision, reference was made to the Zimbabwe Supreme Court decision in the case of Smith vs. Mutasa 1990 1LRC 87 and Rabasi vs. Committee of Privileges (Cook Island) 1994 CA Page 156. In both cases the courts found that the Committees exceeded the powers vested in them by Parliament and the Constitution and both court affirmed the words of Berwick CJ in the Australian case of Cormack vs. Cope 1974 131 CLR where he said"

"Whilst it is true the court will not interfere in what I would call the intra-mural deliberative activities of Parliament, it has both a right and a duty to interfere if the constitutionally required process of law making is not properly carried out".

Coming home in case F. PP Newns & Another vs. H.J. Macfoy and Others SLLR 1960-61 Page 232:-

The first appellant who was the acting Governor of the time recognised the 2nd appellant as Mende Tribal Headman for Bonthe pursuant to Section 2(2) Tribal Administration (Colony) Ordinance which provides.

"The Government may in his discretion recognise any person as the Headman of any Member of a tribe resident in or temporarily staying in Freetown who had previously had a recognised Tribal Headman. The Ordinance was extended to Bonthe by the Tribal Administration (colony) (Bonthe Sherbro) Order in Council (PN 13 of 1959) the Respondent commenced a suit challenging the validity of the Acting Governor's action (AFFP News) on the ground that the second appellant was not a Mende. They argued that any person in Section 2(2) meant any person belonging to the tribe for which the Acting Governor is recognising a headman. The trial judge accepted the argument and held that a member of a different tribe could not lawfully be recognised as a tribal headman. The appellants appealed to the Court of Appeal. The Court is dismissing the appeal held that the Supreme (now High) Court had jurisdiction to decide whether or not the Acting Governor's action was within the power conferred on him (2). That the word any person in Section 2(2) of the tribe for which a headman is being recognised".

Ames then Ag. President of the Court of Appeal in his judgement at Page 333 among others, had this to say, which I consider most pertinent to this appeal. *"Mr. Smythe for the appellant argued that the power conferred upon the Governor by Section 2(2) was an administrative power and that the Supreme Court had no jurisdiction to entertain the claim. I do not agree with the argument. It misses the purposes of the suit. The claim did not require the court to enquire into the manner of the exercise of the governors power whether it has been exercised well or otherwise, but to declare whether or not what was done was within the power conferred upon him"*.

These principles as established by the above authorities, which I have enumerated, are founded on good sense and justice. I am persuaded by them.

I shall now bring into focus section 134 of the Constitution, which I consider germane to this appeal.

Section 134 States:

"The High Court of Justice shall have supervisory jurisdiction over all inferior and traditional court in Sierra Leone and any adjudicating authority emphasis mine in the exercise of its supervisory jurisdiction shall have power to issue such direction writs and orders including writs of habeas corpus and orders of certiorari, mandamus and prohibition as it may consider appropriate for the purposes of enforcing or securing the enforcement or its supervisory power".

Allow me to digress a little to react to the view expressed by the learned trial judge that *"Parliament is not an inferior court or tribunal to the High Court, Local Courts, Administrative bodies, Professional bodies"*. I profoundly agree with this view. The High Court can neither supervise nor interfere with Parliament in the performance of its duties, but with the greatest respect to the learned trial judge if in the performance of these duties, Parliament does not act in accordance with the Constitution it is the job of the Court to intervene to say so loud and clear.

Perhaps what might have prompted the learned trial judge to express this view are the provisions of section 93(6) and section 95. Section 93(6) gives Parliament the power to punish for contempt and section 95 gives Parliament the power to enforce the attendance of witnesses, production of document, issue of commission and request for witnesses abroad. This is a far cry from Parliament exercising the powers of the Court.

Coming back to Section 134 of the Constitution, from the wording of the provision it sounds general and in effect, gives the High Court supervisory power over inferior courts and adjudicating authorities.

In the case of Seaford Court States Limited vs. Asher 1912 ICH 158 Denning LJ said:

"We do not sit here to pull the language of parliament and of Ministers to pieces and make nonsense of it. That is any easy thing to do and is a thing to which lawyers are too often prone. We sit here to find out the intention of Parliament and of Ministers and carry it out and we do this better by filling in the gaps and making sense of the enactment then by opening it up to destructive analysis".

To my mind the Constitution did not give the Speaker absolute power to declare vacant the seat of a Member of Parliament. Section 77(2)(d) contains these words "if the Committee's reports that the Member has been absent for a period specified..... without good cause Speaker shall declare his seat vacant" These words import a condition attached to the valid exercise of the power given to the Speaker to declare a seat vacant. It also imposes an obligation on the Committee to investigate or inquire into the matters and circumstances of the Members absence, followed by a report and recommendation, before the Speaker can exercise his power to declare the seat of a Member vacant.

In this case under my pen. Can the Speaker legally declare the seat of the appellants vacant based on the Committee's report? I opine not, for the simple fact the Committee was not properly constituted and the report cannot be a report Committee as envisaged by Standing Order 77(2)(c).

In view of the numerous authorities cited. It seems to me that the Committee was incompetent to undertake such an exercise. What the Committee did was not within the powers conferred by Standing Order 77. I therefore hold that the application for leave pursuant to Section 134 of the Constitution was proper. The learned trial judge ought to have entertained the application.

In the result the appeal is upheld. The ruling of the learned trial judge is set aside.

In his submission, Mr. Serry Kamal learned counsel for the appellant urged the Court to invoke Rule 31 of the Court of Appeal Rules, which states.

Rules 31 states:

"The Court may from time to time make any order necessary for determining the real question in controversy in the appeal and may amend any defect or error in the record of appeal and may direct the Court below to enquire into and certify its finding on any question which the Court thinks fit to determine before final judgment in the appeal and may make any interim order or grant any information which the Court below is authorised to make or grant and may direct any necessary enquiries or accounts to be made or taken and generally shall have as full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Court as a Court of first instance and may rehear the whole case or may remit it to the Court below to be reheard, or to be otherwise dealt with as the Court may direct".

In the light of the conclusion which I have reached this Court can eminently invoke rule 31 of the Court of Appeal Rules 1985 and grant the appellants' application for leave to ~~take~~^{appeal for} an order for certiorari.

The Court also makes the following orders:

1. The Clerk of Parliament furnishes the appellants with:-
 - (a) record of proceedings dated 11th July 2000,
 - (b) the order of the Speaker of Parliament expelling the appellants from Parliament,
 - (c) the order paper of 1st July 2000.
2. That the Chief Electoral Commissioner should not send any list of new members of Parliament until the final determination of this matter.

I make no order as to cost.

I agree
I agree

1st July 2000
A. M. Banerjee S. M.
Sub. Secretary J. A.

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CIV. APP. NO. 13 / 2000

IN THE COURT OF APPEAL FOR SIERRA LEONE

**BETWEEN: ALL PEOPLES CONGRESS
ABDUL F. SERRY-KAMAL
VICTOR B. FOH
DR. JENGO STEVENS
EDWARD M. TURAY**

-- APPELLANTS

AND

**THE SPEAKER OF PARLIAMENT
THE AD HOC COMMITTEE OF PARLIAMENT ON ABSENTEEISM
BY HON. JOHN GAIVA LABOR – ACTING CHAIRMAN THE
CLERK OF PARLIAMENT
THE NATIONAL ELECTORAL COMMISSION**

-- RESPONDENTS

CORAM:--

HON. MR. JUSTICE M.E.T. THOMPSON -- J.A.
HON. MR. JUSTICE A.N.B. STRONGE -- J.A.
HON. JUSTICE PATRICIA MACAULAY -- J.A.

A.F. Serry-Kamal, Esq., for Appellants,

The Attorney-General and Minister of Justice for Respondents,

JUDGMENT DELIVERED THIS 10TH DAY OF JANUARY 2002

A.N. BANKOLE STRONGE, J.A.

MY LORDS,

I have had the privilege of reading the Judgment of my Lord, the presiding Judge, The Hon Mr. Justice M.E.T. Thompson. I concur in his analysis and conclusions of the issues involved in this appeal and I wish to add my own humble views which I consider to be merely supplementary to what he said. I shall content myself with indicating some of the considerations which have induced me to concur in the Judgment of my learned friend.

The questions raised by this Appeal are of great importance since they concern the Constitution of the State to wit, the Constitution of Sierra Leone, 1991, Act No. 6 of 1991. They also concern the standing orders of the Sierra Leone Parliament. To a large extent the issues raised in the arguments before this court turn on an analysis of the relevant sections of the two documents earlier mentioned.

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This Appeal arose from a decision of the High Court dated the 14th August, 2000, on a Judge's summons brought by the applicants therein, now Appellants, against the Respondents.

By that Judge's Summons, The Applicants, now Appellants, sought the following orders of the High Court:--

1. Leave to apply for an order of certiorari to quash the order of the Speaker of Parliament based on, and, of the report of the Ad Hoc Parliamentary Committee on absenteeism by Honourable John Gaiva Labor, Acting Chairman.
2. An order staying the aforesaid order based on, and, of the report of the Ad Hoc Committee on absenteeism pending the hearing and determination of this application.
3. That the Chief Electoral Commissioner be ordered not to send any list or lists of new members of Parliament until this matter is disposed of.
4. That the Clerk of Parliament be ordered to make available to the Applicants the record of proceedings of Parliament for Tuesday, 11th July, 2000, the Order of the Speaker expelling 7 (seven) members of Parliament and the Order paper for that day.

The Application was supported by several Affidavits. There is the Affidavit in support of the Judge's summons sworn to by Abdul Franklyn Serry-Kamal, Esq., on the 26th July, 2000. There are also the Affidavits of Victor Bockarie Foh, Jengo Stevens and S.A.T. Koroma. All three sworn on the 26th July, 2000. There is also the Affidavits of Momoh Samura sworn on the 31st day of July, 2000 and the supplemental Affidavit of Abdul Franklyn Serry-Kamal sworn on the 7th day of August, 2000. Accompanying the Application is the statutory statement pursuant to rules of the High Court 1960 as amended and dated the 26th day of July, 2000. To the Affidavit of Abdul Franklyn Serry Kamal, sworn on the 26th of July, 2000 are attached three (3) Exhibits, to Wit:--

Exhibit "A", a copy of the Sierra Leone Gazette (Extra Ordinary Vol. CXXVII No. 13) for Wednesday, 21st February, 1996 showing the final list of candidates put up by each of the political parties. In that list the Deponent Abdul F. Serry Kamal is fifth in order in list for the All People's Congress. Exhibit B. A copy of the report of the Parliamentary Committee on absenteeism signed by Hon. John Gaiva Labor as Acting Chairman. In that report the said committee was composed of fourteen (14) members with Hon. John Gaiva Labor of the Sierra Leone People's Party (S.L.P.P.) acting Chairman; Exhibit "C", copy of a letter written by the Deponent, A.F. Serry-Kamal, addressed to the Clerk, Parliament of Sierra Leone Tower Hill, Freetown, and dated the 18th July, 2000. In this Exhibit, Exhibit "C". The Clerk of Parliament was requested to furnish Mr. A.F. Serry Kamal with a certified true copy of the record of proceedings and the order paper for the 11th July, 2000.

To the Affidavit of Victor Bockarie Foh are attached ten (10), Exhibits to wit, Exhibit "A" a copy of the Sierra Leone Gazette Vol. CXXVII, No. 13 for Wednesday, 21st February, 1996.

showing the final list of candidates put up by each of the political parties. In that list the Deponent, Victor Bockarie Foh is second in order.

Exhibit "B", a copy of the report of the Parliamentary Committee on absenteeism signed by Hon. John Gaiva Labor as acting Chairman. In that report the said Committee was composed as stated earlier. Exhibit "C" a copy of the order paper of the Sierra Leone Parliament for Thursday 11th November, 1999. That Exhibit Exhibit "C", mentions, inter alia, A private member's motion proposed by Hon. John Gaiva Labor with seconder Hon. William A. Jusu. The motion reads:-

"BE" IT RESOLVED":

"That pursuant to Section 1 © of Section 77 of the Constitution of Sierra Leone, (Act No. 6 of 1991) and in tandem with standing order 77 of the Standing Orders of the Sierra Leone Parliament this Honourable House approve the formation of a committee to investigate and report on the persistent absenteeism from plenary parliamentary sittings within the second and the current Third Sessions of the First Parliament of the Second Republic of Sierra Leone". Exhibit "D", a copy of a petition by the deponent, Victor Bockarie Foh, to the Honourable Speaker of Parliament, the Honourable Deputy Speaker of Parliament, the Committee on absenteeism – All members and the Honourable members of Parliament. In that petition the petitioner, Hon. Victor Bockarie Foh attempts to explain and excuse his absence from plenary sittings of Parliament. Exhibit "E" is a copy of the report of the Parliamentary Committee on absenteeism referred to earlier. Exhibit "F" is a copy of a letter written by the Deponent, Victor Bockarie Foh, addressed to the Hon. Speaker of Parliament dated 12th October, 1999. By that letter the Deponent requests that he be allowed to resume his Parliamentary duties.

Exhibit G¹ is identical with exhibit "F". Exhibit G² is a memorandum from the Solicitor-General to the Secretary to the President, dated 10th September, 1999. By that letter the Solicitor-General advises, inter alia, that all those granted free and absolute pardon (those convicted) for activities or crimes connected with the AFRC/RUF Junta have no conditions attached to their release and can resume duty. Exhibit "H" is a letter from the deponent Victor Bockarie Foh, addressed to the Honourable Speaker of Parliament, dated 27th February, 2000, requesting that he be paid all arrears of salaries during the period of his incarceration as he did not lose his seat in Parliament. Exhibit "J" is a copy of notice of Appeal by the deponent, Victor Bockarie Foh, to the Registrar of the Court of Appeal for Sierra Leone regarding his conviction and sentence by the High Court. Exhibit "K" is a copy of the Standing Orders of the Sierra Leone Parliament. There are no exhibits attached to the Affidavit of Jengo Stevens.

To the Affidavit of S.A.T. Koroma are attached three exhibits to wit, exhibit "A" which is a copy of a petition on behalf of the All People Congress (A.P.C.) by the deponent to the Hon. Speaker of Parliament on the Declaration of the seats of its members of Parliament vacant and dated 13th July, 2000; Exhibit B1, copies of two letters dated 20th December, 1999, and 10th December, 1999 respectively, to the Speaker of Parliament reporting on the medical condition of Hon. Edward Turay. Exhibit "C" is a copy of an undated letter written by the deponent to the Chief Electoral Commissioner, National Elections Commission. In that letter, Alhaji S.A.T. Koroma urged the Chief Electoral Commissioner not to take any "Decision for replacement of members of Parliament..." from the list of the All Peoples Congress (APC) without reference to that party. The final Affidavit is that sworn to by

Abdul Franklyn Serry-Kamal on the 7th August, 1999. In that Affidavit the deponent confirms that Victor B. Foh was a member of parliament.

The following facts are established from the Affidavit evidence referred to above:

1. That all four (4) of the Applicants, namely, Abdul F. Serry Kamal, victor B. Foh, Dr. Jengo Stevens and Edward Turay, were at the material time members of the Sierra Leone Parliament, representing the All Peoples Congress (A.P.C).
2. That an "Ad Hoc" Committee of Parliament was appointed to investigate and report on the persistent absenteeism of MP's during parliamentary sittings of the Second and Third Session of the First Parliament of the Second Republic of Sierra Leone. The following were members of the Committee:-

1.	Hon. John Gaiva Labor	S.L.P.P.	Acting Chairman
2.	Hon. Victor L. Thomas	SLPP	Member
3.	Hon. E.O.K. Tholley	SLPP	"
4.	Hon. William Jusu	SLPP	"
5.	Hon. Dr. Raymond Kamara	U.N.P.P.	"
6.	Hon. A.T. Sembu Forna	UNPP	"
7.	Hon. Dr. Chernor Jalloh	UNPP	"
8.	Hon. Ibrahim N'Jai	P.D.P.	"
9.	Hon. U.S.A. Kargbo	PDP	"
10.	Hon. Alimamy Lahai	P.C.	"
11.	Hon. Abu Kongoba	PC	"
12.	Hon. A.F. Serry Kamal	A.P.C.	"
13.	Hon. Catherine L. Kamara	N.U.P.	"
14.	Hon. A.O.D. George	N.U.P.	"

3. The said Ad Hoc Committee in pursuance of its mandate purported to exercise its duties by virtue of section 77 (1) (e) of the Constitution of Sierra Leone (Act No. 6 of 1991) which reads:-

*7 (1) A member of Parliament shall vacate his seat in Parliament
(e) If he is absent from sittings of Parliament for such period and in such*

circumstances as may be prescribed in the rules of procedure of Parliament;

And: Section 77 (1) and (2) (a) of the Standing Orders of the Sierra Leone Parliament section 77 (1) reads:-

- (1) Any member who for good cause is prevented from attending a sitting of Parliament shall acquaint the Speaker in writing as early as possible of his inability to attend and the cause thereof.
- (2) (a) Any member who, without good cause during any session, is absent from the sitting of parliament on a number of days amounting to an aggregate period of thirty days shall vacate his seat.

The Ad Hoc Committee of Parliament also purported to perform its mandate by virtue of Section 94 (1) and (2) of the Constitution of Sierra Leone (Act No.6 of 1991). Section 94 (1) and (2) read:--

94(1) Subject to the provisions of this Constitution, Parliament may regulate its own procedure, and in particular make, amend and revoke standing orders for the orderly conduct of its own proceedings.

(2) Notwithstanding anything to the contrary in this Constitution or in any other law contained, no decision, order or direction of Parliament or any of its committees or the Speaker, relating to the rules of procedure of Parliament, or to the application or interpretation of such rules, or any act done or purporting to have been done by parliament or by the Speaker under any rules of procedure shall be inquired into by any court.

4. The said Ad Hoc Committee unanimously resolved, "as far as the terms of the investigation and the provisions of the Constitution and the Standing Orders of Parliament are concerned, that the following members shall vacate their seats in Parliament with immediate effect and that the Speaker of Parliament, pursuant to S.O. 77(d) shall declare their seats vacant in a plenary sitting of the House, Section 77(d) reads:

"If the Committee referred to in sub-paragraph © reports that the member has been absent for the period specified in sub-paragraph (a) without good cause, the Speaker shall declare his seat vacant".

5. The members whose seats where the subject matter of the Ad Hoc Committee's investigation and report were as follows:--

- | | | |
|----|----------------------------|------------|
| 1. | Hon. Dr. John Karefa Smart | - U.N.P.P. |
| 2. | Hon. A.F. Serry- Kamal | - A.P.C. |
| 3. | Hon. Victor B.Foh | - A.P.C. |
| 4. | Hon. Dr. Augustine Stevens | - D.C.P. |

5. Hon. Dr. Jengo Stevens - A.P.C.
 6. Hon. Edward Turay - A.P.C.
 7. Hon. Abdulai Bundu Kamara - U.N.P.P.
6. The Hon. A.F. Serry- Kamal was one of the members of Parliament to be investigated and was appointed a member of the Ad Hoc Committee when not nominated by his party, the All People's Congress. (A.P.C). In the statutory statement pursuant to the rules of the High Court 1960 as amended, the relief sought by the Applicants is:-

"That the applicants desire leave to apply for an order of certiorari to remove into this Honourable Court for the purpose of being quashed the decision of the Speaker of Parliament and the report of the Parliamentary Committee on absenteeism by Hon. John Gaiva Labor, M.P., Acting Chairman."

GROUND ON WHICH THE RELIEF IS SOUGHT:--

1. That the Parliamentary Committee on absenteeism by the Honourable John Gaiva Labour, M.P., Acting Chairman was not properly constituted contrary to Standing Order 77 2 ©.
2. The aforesaid Committee acted in breach of the principles of natural justice thus depriving the applicant of a fair hearing.
3. That the decision to expel the Applicants from Parliament was not properly passed as a motion of Parliament contrary to Standing Order 76 (1-5).
4. That the committee had no power to investigate the matter of absenteeism alleged to have occurred in the Session of Parliament that Session having expired.
5. The Committee acted in excess of jurisdiction.
6. The decision to expel the Honourable members was in breach of the Lome Peace Agreement (Rectification) Act No. 3 of 1999.

The above contain the matters which were before the High Court and upon which that Court made a Ruling on the 14th day of August, 2000. The Applicants argued forcefully in accordance with the aforesaid Affidavits and the statutory statement already reproduced earlier in this Judgment. The learned Attorney-General and Minister of Justice opposed the application equally forcefully on the ground of lack of jurisdiction. The learned Attorney-General and Minister of Justice argued that by virtue of section 94(1) and 94(2) of the constitution of Sierra Leone the High Court lacks jurisdiction to entertain the Application. He also relied on the provisions of the standing orders of Parliament. The learned Attorney-General and Minister of Justice appears to concede at page 196 of the records that "The Court has power under section 134 of Act No.6 of 1991 to grant the reliefs sought "But that by virtue of section 94(2) that power is ousted." He argued that the High Court was being

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asked to do certain things which section 94(2) expressly forbids the Court to do. In the ruling which is complained of the learned trial Judge held:--

"The purport of this application is in essence requiring this High Court to inquire into Parliaments' own internal proceeding though Mr. Serry-Kamal is of the view that section 94 (2) is of no moment to this Application, the Application is refused"

In substance the learned trial judge concluded that the High Court lacked jurisdiction to entertain the application. Read Literally, section 94(2) of the constitution of Sierra Leone would deprive the Courts of this country including the superior courts of their powers of review exercisable by means of certiorari. But was the learned Trial Judge correct in his analysis and determination of the issues put before him.

Parliament could not have intended a tribunal or adjudicating authority of limited jurisdiction to be permitted to act outside the scope of its jurisdiction. If, as in this case, the Tribunal or adjudicating authority was improperly Constituted, thereby lacking authority, certiorari would issue.

See the case of

**RE CHELTENHAM COMMISSIONERS
1841 – A.E.R. 1835 TO 1842 REPRINT AT P.301**

In this case there was provision in the rating act excluding certiorari. It was held that a question in the cause having been decided by a Court which was improperly Constituted, the clause prohibiting certiorari did not operate and the decision of the Sessions would be quashed. The constitution of Sierra Leone gives the High Court supervisory Jurisdiction over all "inferior and traditional courts in Sierra Leone and any adjudicating authority, in all matters in which habeas corpus, and orders of certiorari, mandamus, and prohibition or an injunction is sought." Vide, Section 134 of the Constitution.

I must say at once and with emphasis that this judgment is not enquiring into:-

A decision, order or direction of Parliament or any of its committees or the Speaker, relating to the rules of procedure of Parliament, or to the application or interpretation of such rules, or any act done or purporting to have been done by Parliament or by the Speaker, under any rules of procedure (emphasis mine).

Nor should this judgment be understood to be doing so. A considered reading of section 94(2) of Act No. 6 of 1991 is that no Court shall inquire into:

- (A) A decision, order or direction of Parliament relating to the rules of procedure of Parliament.
- (B) A decision, order or direction of any of the Committees of Parliament relating to the rules of procedure of Parliament.
- (C) A decision, order or direction of the Speaker relating to the rules of procedure of Parliament.

- (D) The Application or interpretation of such Rules.
- (E) Any act done by Parliament or by the Speaker under Any rules of procedure.

The over-riding consideration therefore is that Parliament, committees of Parliament, and the Speaker of Parliament must observe and act in accordance with the rules of procedure of Parliament. Where any of these bodies so act, no court shall inquire into their actions. Also the Application or Interpretation of such Rules cannot be inquired into by any court.

THE GROUNDS OF APPEAL ARE:

1. The learned Trial Judge misdirected himself in holding that the Sierra Leone Parliament is not an inferior court or tribunal to the High Court, therefore the High Court cannot supervise it.
2. **PARTICULARS OF MISDIRECTION**
 1. In my view since Parliament is not an inferior court or tribunal to the High Court the High Court cannot supervise Parliament as it does the Magistrate's Court, Local Court, Administrative Bodies, Professional Bodies exercising judicial and quasi-judicial powers. Where leave is granted the usual practice is to apply for a rule nisi calling on the Respondents to show cause why the order should not be made absolute and the case is really fought on this issue. The penalty for disobedience is attachment for contempt. Can this be applicable to Mr. Speaker? The Court does nothing in vain. The 1991 Constitution to obviate a constitutional crises between the High Court and Parliament made provision under section 94(2) which the learned Attorney-General based his objection on and submitted that the Court's jurisdiction is ousted.
 2. The learned Trial Judge misdirected himself in holding that the purport of the applicant's application is requiring the High Court to inquire into Parliament's own internal proceedings.

PARTICULARS OF MISDIRECTION

"The purport of this application is in essence requiring this High Court to inquire into Parliament's own internal proceedings. Though Mr. Serry-Kamal is of the view that section 94(2) is of no moment..... This Application is refused.

3. The learned Trial Judge acted on wrong principles in arriving at his decision.
4. The decision is against the weight of the evidence.

4. RELIEF SOUGHT FROM THE COURT OF APPEAL

1. That the said order of the High Court be set aside.

2. Leave to apply for an order of certiorari to quash the order of the Speaker of Parliament based on, and of the report of the Ad Hoc Parliamentary committee on absenteeism by Honourable John Gaiva Labor, Acting Chairman.
3. An order staying the aforesaid order based on and of the report of the Ad Hoc Committee on absenteeism pending the hearing and determination of this Application.
4. That the Chief Electoral Commissioner be ordered not to send any list or lists of new members of Parliament until this matter is disposed of.
5. That the Clerk of Parliament be ordered to make available to the Applicants the record of proceedings of Parliament for Tuesday, 11th July, 2000, the order of the Speaker expelling 7 (seven) members of Parliament and the order paper for that day.

To my mind the issues to be considered are the following:-

- A. Has the High Court Jurisdiction to entertain and determine the matter that was put before it.
- B. If the answer to (A) above is in the affirmative, what remedies can be granted by this Court.

As to the question of whether the High Court has jurisdiction to hear and determine the Application that was put before it, various statutory provisions have to be considered:-

Section 94(1) and (2) of the Constitution of Sierra Leone, (Act No. 6 of 1991) has as its marginal note, "Regulation of procedure in Parliament." For ease of reference I again reproduce section 94(2) of the said constitution:-

94(2):- "Notwithstanding anything to the contrary in this constitution or in any other law contained, no decision, order or direction of Parliament or any of its Committees or the Speaker, relating to the rules of procedure of Parliament, or to the application or interpretation of such rules or any act done or purporting to have been done by Parliament or by the Speaker under any rules of procedure, shall be inquired into by any court." As stated earlier, the various bodies and entities mentioned in section 94(2) are only protected from judicial inquiry when they act in accordance with the rules laid down by Parliament. There is no such protection from judicial inquiry or review where any one of the bodies or entities referred in the said section act outside of the rules laid down or in violation of such rules.

It is abundantly clear that the Ad Hoc Committee of Parliament which investigated and reported on the persistent absenteeism of MP's during the Parliamentary sittings of the Second and Third Sessions of the first Parliament of the second Republic of Sierra Leone was improperly Constituted. Section 77(2) © of the standing Orders of the Sierra Leone Parliament reads:-

77(2)©:-- The Committee shall consist of the Speaker and such members as shall be nominated by each party on the basis of one representative for every fifteen or part thereof of its number in the house.

The evidence before this Court are the following uncontroverted facts:--

- (A) That Hon. John Gaiva Labor of the S.L.P.P. acted as Chairman of the Committee. That Hon. Gentleman was not the Speaker nor the Deputy Speaker. The evidence before this court also is that the Speaker was not a member of the Committee and did not take in its deliberations contrary to Section 77 2(c) of the standing orders of Parliament.
- (B) That the All Peoples Congress (A.P.C) was not consulted to nominate a representative to the committee as is required by Section 77 (2) (c) of the standing orders of Parliament.

What then is the effect of the non-compliance by the Ad Hoc Committee with the Rules laid down by Parliament. It is my considered opinion that the irregularity in the Constitution of the Ad Hoc Committee goes to jurisdiction. See the case of:

R. V. Cole, EX.P. SUMA
1964- 66 A.L.R. 484

In this case, an adjudicating authority, to wit, a Magistrate's Court lacked jurisdiction and its decision was quashed. "Where an adjudicating authority takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before issues are determined".

By so acting the Ad Hoc Committee cannot avail itself of the protection in section 94(2) of the Constitution of Sierra Leone (Act No. 6 of 1991). That Committee acted in violation of the rules of Parliament and all of its actions can be inquired into or reviewed by a Court of law. Section 134 of the Constitution of Sierra Leone 1991 (Act No. 6 of 1991) reads:--

Section 134:-- The High Court of Justice shall have supervisory jurisdiction over all inferior and traditional courts in Sierra Leone and any adjudicating authority, and in the exercise of its supervisory jurisdiction shall have power to issue such directions, writs and orders, including writs of Habeas Corpus, and orders of Certiorari, Mandamus and Prohibition as it may consider appropriate for the purpose of enforcing or securing the enforcement of its supervisory powers.

To adjudicate means, to decide on, settle, determine, pronounce on, or give a ruling on. An adjudicating authority means therefore, a body exercising power to decide on, settle, determine, pronounce on or give a ruling on a particular sphere or activity. The Ad Hoc Committee of Parliament that purported to exercise it's duties by virtue of sections 77 and 94(1) of the Constitution of Sierra Leone (Act No. 6 of 1991)

was therefore acting as an adjudicating authority. Its decision as contained in its report referred to earlier is subject to the supervisory jurisdiction of the High Court.

Under the general powers of the Court of Appeal for Sierra Leone as contained in Rule 31 of the Court of Appeal Rules, 1985, Public Notice No.29 of 1985, this Court may rehear the whole case or deal with it as this court may direct.

In the premises I will allow the Appeal and make the following orders:--

1. That the order of the High Court dated the 14th day of August, 2000 be set aside.
2. That the Clerk of Parliament is hereby ordered to furnish the Appellants / Applicants with the under-mentioned documents (within three (3) days herein).
 - (a) The record of proceedings of Parliament for Tuesday, 11th July, 2000.
 - (b) The order of the speaker expelling seven (7) Members of Parliament.
 - (c) The order paper for Tuesday, 11th July, 2000.
3. That the Appellants / Applicants, are hereby granted leave to apply for an order of Certiorari to quash the order of the speaker of Parliament based on, and of the report of the Ad Hoc Parliamentary Committee on absenteeism chaired by the Honourable John Gaiva Labor as Acting Chairman.
4. That the Chief Electoral Commissioner is hereby ordered not to send any list or lists of new Members of Parliament until the final determination of this matter. There shall be no order as to costs.


Hon. Mr. Justice A.N. Bankole Stronge

Justice of Appeal.