

CIV,APP.7/2004

IN THE COURT OF APPEAL FOR SIERRA LEONE

BETWEEN:

CONTINENTAL COMMODITIES AND SERVICES COMPANY LIMITED - APPELLANT

AND

THE ATTORNEY-GENERAL AND MINISTER OF JUSTICE - RESPONDENT

CORAM:


Hon. Justice Sir John Muria JA (Presiding)
Hon. Justice A.N.B. Stronge JA
Hon. Justice U.H. Tejan-JallohJA

HEARING: 2 November 2005
JUDGMENT: 17 March 2006

Advocates:

*A.F. Serry-Kamal Esq. for the Appellant
E. Roberts Esq. for the Respondent;*

JUDGMENT

Delivered this 17th day of March 2006 

MURIA JA: "Where a Commission of Inquiry makes an adverse finding against any person, which may result in a penalty, forfeiture or loss of status, the report of the Commission of Inquiry shall, for the purposes of this Constitution, be deemed to be a judgment of the High Court of Justice and accordingly an appeal shall be as of right from the Commission to the Court of Appeal." (Section 149(4), Constitution).

It is the interpretation of this provision of the Constitution that is central to the determination of this appeal.

Background

To appreciate the nature of the appeal, let me set out the brief background to this case. Following complaints of irregularities over the allocation and disposition, and encroachment of both private and State lands, the Government set up a Commission of Inquiry (COI), with the following terms of reference –

- (i) To enquire and make appropriate recommendations on the present laws relating to the allocation and use of state lands.
- (ii) To examine the extent of state land granted or leased with a view to finding out lapses in the procedure relating to the appropriation of state land.
- (iii) To ascertain whether there are any persons or organizations in possession of any state lands without proper grant or authorization.
- (iv) To determine the extent of compliance by the grantee of state lands with the conditions of his or her grant.
- (v) To examine the extent of environmental degradation that has occurred as a result of the granting and leasing of state lands.
- (vi) To ensure that in carrying out this exercise consideration will be given to the recent report of the National Commission for Unity and Reconciliation (NCUR) in so far as it relates to the granting and leasing of state lands.
- (vii) To investigate the possibility of transferring the administration of state lands to local authorities.
- (viii) To make appropriate recommendation to arrest the lapses brought about in line with the findings.



The Commissioner, Hon. Justice Marcus-Jones, was appointed by His Excellency the President on 27th October 1998 and soon thereafter conducted the Commission of Inquiry. Despite the set back in its work due to the rebel invasion of Freetown in January 1999, the Commission concluded its work and published its findings and recommendations in its "Report on the Mrs. Justice Laura Marcus-Jones Commission of Inquiry on the Leasing and Sale of State Lands in the Western Area, 1999". A Government White Paper (GWP) was subsequently prepared as a result of the Report of the COI. The Government White Paper was published in October 2000, more than six months after the Commission of Inquiry Report was presented to His Excellency, The President.

High Court

Following the publication of the Commission of Inquiry Report, and more particularly, the Government White Paper, the respondent instituted proceedings by way of an Originating Notice of Motion in the High Court to set aside the sale and purchase of the land at 28 Wallace Johnson Street, Freetown and to cancel the Deed of Conveyance over the said property made between the Government of Sierra Leone and the appellant on 16th September 1993 and take possession of the said property. The High Court heard the application and granted the order setting aside the transaction leading to the sale and purchase of the Government property at 28 Wallace Johnson Street and canceling the grant/Deed of Conveyance made between the parties over the said property.

Court of Appeal

The appellant, being aggrieved by the High Court's decision appealed to Court of Appeal on four grounds, namely:

1. The whole proceedings were null and void and in that the Respondent herein proceeded by Originating process which was ab initio void.

2. The learned trial Judge misdirected himself when he held that he could not interfere with the process by which the decision was arrived at since it is deemed to be a judgment.
3. The learned trial Judge erred in law in that having found that there was no express forfeiture, granted the orders prayed for in the motion.
4. The decision is against the weight of the evidence.

As it will become apparent, the grounds of appeal raise both procedural as well as substantive issues of law. For the purpose of dealing with the issues raised, it will be convenient to deal with ground two of the appeal first.

The contention by Mr. Serry-Kamal of Counsel for the appellant is that the Commission of Inquiry Report made no "adverse finding" against the appellant. Consequently the appellant saw no need to exercise his right of appeal; and did not do so, against the Commission's findings. The adverse comments were raised in the Government White Paper and Mr. Serry-Kamal conceded that. Counsel, however, argued that the Government White Paper was not a Report of the Commission of Inquiry under Section 149 of the Constitution and could not be deemed to be a High Court judgment under subsection (4) of Section 149 of the Constitution. Mr. Roberts of Counsel for the respondent was adamant that the Commission of Inquiry Report made an adverse finding against the appellant, referring to page 116 of the Record of Appeal where it is stated:

"The internal working of the Ministry is not healthy either. Allocation of State Land to Applicants is not always equitable. Procedures used could vary with applicants. The Commission looked at the File of Continental Commodities and Services Limited, File No. SLD10/64 Vol.6T

on a Commercial Lease for 21 years; lease effective from 15th October, 1986.

The only File available was a Temporary File but the Commission was told vital files got missing now and again. In 1993, this property was sold. The Report made before sale says Commercial lease have been sold before.

Specifically however the valuation, Recommendation and Approval on this Application for freehold title, were all done so quickly, 13th – 14th September 1993. On 14th September, 1993 the Director was instructed by the Permanent Secretary to Communicate this Approval to the Applicant with Dispatch'. I would call this applicant a very special Applicant."

That is the '*adverse finding*' referred to by Counsel for the respondent. Having read the conclusion and the summary of suggestions and Recommendations in the Commission of Inquiry Report, it is hardly surprising to see the basis of Mr. Serry-Kamal's vehement contention that there was no adverse finding against the appellant in the Commission of Inquiry Report. The passage referred to was part of the comments by the learned Commissioner on the manner in which State Land had been administered. It was not an '*adverse finding*' by the Commission against the appellant. An '*adverse finding*' entails a decision or a determination or a pronouncement which is unfavourable to a person by a tribunal or a body charged with the task of making a decision on a matter. In the present case, we agree with Counsel for the appellant that there has been no adverse finding against the appellant in the Commission of Inquiry Report.

The Government White Paper

The Commission of Inquiry Report was published in December 1999 but was actually submitted to His Excellency the President in January 2000. The Government White Paper was prepared and issued by the Government in

October 2000, more than six months after the Report of the Commission of Inquiry was furnished to the President. The Government White Paper contained detailed adverse comments regarding the appellant and manner in which it came to acquire the property at 28 Wallace Johnson Street, Freetown. The status of a Government White Paper had already been decided by this Court in *Matilda Victoria Sesay v Attorney-General and Minister of Justice* (4th June 2004) C.A. Misc.App.7/2004, where it was held that a Government White Paper does not form part of the Report of the Commission of Inquiry and that the right of appeal under section 149(4) is against an adverse finding in the Report of the Commission of Inquiry and not against adverse statements contained in the Government White Paper.

It would not be correct to regard the Government White Paper as forming part of the Report of the Commission of Inquiry for the purpose of section 149(4) of the Constitution.

Section 149(4) of the Constitution

The wording of Section 149(4) of the Constitution is set out at the beginning of this judgment. It will be observed that Section 149(4) of the Constitution expressly provides that the report of the Commission of Inquiry shall for the purposes of this Constitution be deemed to be a judgment of the High Court and an appeal lies as of right from the Commissioner to the Court of Appeal.

The words "*for the purpose of this Constitution*" used in the subsection are deliberately chosen by the draftsman of the Constitution. They denote the purpose of and limitation of that provision. It must be understood that the Report of Commission of Inquiry shall be deemed to be a judgment of the High Court for the purpose of the Constitution and not for all purposes. Had the intention of the provision been to deem the Report a judgment of the High Court for all purposes, the draftsman would have plainly said so. The purpose of the subsection is to deem the Report which contains an adverse finding against a person, to be a

judgment of the High Court and to accord the aggrieved person the automatic right of appeal to the Court of Appeal. The Constitution recognizes that, as a result of an adverse finding in the Report against a person, certain legal consequences may well flow from the Report, such as penalty, forfeiture or loss of status.

It will also be observed that the Constitution does not provide for the manner in which such legal consequences may be pursued. Thus the procedure for enforcing the adverse finding of the Commission lies, not under the Constitution, but elsewhere. Section 149(4) simply provides that for the purpose of the Constitution, where an adverse finding against any person is made by the Commission in its Report, that Report is deemed to be a judgment of the High Court, and that the aggrieved person has a right of appeal against it. That is all that section 149(4) permits.

How is the Report to be enforced?

In the present case, the respondent sought to enforce the Report of the Commission of Inquiry by issuing an undated Originating Notice of Motion against the appellant claiming, *inter alia*:

1. An order setting aside the transaction leading to the sale and purchase of Government property situate lying and being at 28 Wallace Johnson Street, Freetown and or canceling the grant/Deed of Conveyance made between the Government of Sierra Leone and the Defendant/Respondent herein dated 16th day of September 1993 and registered as N0.855/93 in volume 472 at page 30 in the Book of Conveyances kept in the office of the Registrar-General in Freetown pursuant to the Findings, Report and Government White Paper of the Mrs. Laura Marcus-Jones Commission of Inquiry of 1999 on the Leasing and Sale of State lands in the Western Area.

2. An order for immediate possession to the Plaintiff/Applicant and/or an order to immediate re-enter the said Government property situate lying and being at 28 Wallace Johnson Street, Freetown.

The contention by Counsel for the respondent is that the orders sought were to give effect to the adverse findings of the Commission of Inquiry relating to the property situate, lying and being at 28 Wallace Johnson Street, Freetown. The Report of the Commission, argued Counsel, is a judgment of the High Court and thus the application to the High Court was merely to realise or give effect to the Report/Judgment.

With regard to the argument advanced by the respondent, we are in agreement with Mr. Serry-Kamal that section 149(4) of the Constitution does not give the respondent the right to bring an action such as that taken in this case to enforce the Report of the Commission nor the manner by which the respondent instituted the proceedings. We further agree, as contended for by Counsel for the appellant, that the appropriate procedures are to be found elsewhere, namely, under the Commission of Inquiry Act (Cap.54) as amended. It is quite clear that Section 7(2), (3) and (4) of the Act set out the machinery whereby the Report, whether it is deemed to be a judgment of the High Court under Section 149(4) or not, of the Commission of Inquiry may be enforced. Section 7(2), (3) and (4) of the Act are as follows:

7. (2) Upon the receipt of such report, if it appears to the President that any person has acquired assets for himself or in the name of any other person in an unlawful manner or is responsible for any irregularity or malpractice resulting in any financial loss to the Government of Sierra Leone or to any local authority or corporation, or any other body whatsoever, the President may, on the advice of the Cabinet, make an Order-

- (a) requiring such person to make good the financial loss to the Government of Sierra Leone, or any local authority or corporation or any other body as the case may be;
- (b) forfeiting to the Government of Sierra Leone or any local authority or corporation or any other body as the case may be, all or any part thereof of the assets of such person, whether or not such assets are in his name.

(3) Any Judge if the High Court shall, upon application by the Attorney-General and Minister of Justice, make such Order or Orders as may be necessary for the purpose of giving full effect to the Order for forfeiture of assets made by the President under sub-section (2) hereof, and shall in particular but without prejudice to the generality of the foregoing where necessary, order any person to execute such instrument as may be necessary for enabling any assets situated outside Sierra Leone to be vested in the Government of Sierra Leone, or any local authority or corporation, or any other as the case may be.

(4) Any Order made under sub-section (2) may include provision for vesting the assets or any part thereof or the property in such assets or part thereof in a department of Government, a local authority or corporation or any other body as the case may be and, in particular, the Order may direct-

- (a) in the case of assets lodged in a bank, the Manager or a person in charge of the bank in which the assets are lodged shall pay the assets into the Consolidated Fund, or any bank account as the case may require;

- (b) in the case of assets in the form of stocks, shares, debentures, bonds or choses-in-action, the responsible officer concerned shall register them as required or necessary, in the name of the Government of Sierra Leone or any local authority or corporation, or any other body as the case may require.
- (c) in the case of assets in the nature of immovable property the Administrator and Registrar-General shall remove the name of the person or that of any person in whose name the property is registered, from the Register and register forthwith such property in the name of the Government of Sierra Leone or any local authority or corporation, or other body as the case may be, and the property shall vest forthwith in the Government of Sierra Leone or local authority or corporation, or other body (as the case may be) as from the date of such Order.

By those provisions, it is obvious that the power to enforce the findings and recommendations of the Commission of Inquiry as contained in the Report, is vested in the President. An order of forfeiture in this regard may be made by the President and the High Court is obliged to enforce such order of forfeiture. Despite the obvious procedure laid down under the Commission of Inquiry Act, the respondent chose to enforce the findings and recommendations of the Commission of Inquiry by coming to Court by way of Originating Notice of Motion purporting to have the right to do so under Section 149(4) of the Constitution. Such a procedure is wrong. There is no known authority for the manner in which the respondent sought to repossess the appellant's property in this case. Beside the procedure set out in section 7(2), (3) and (4) of the Commission of Inquiry Act, there are also rules governing the procedure for seeking the order of

forfeiture of land. Proper procedures must be followed, especially where a person's right to his property is sought to be taken away from him.

We are of the opinion that the learned trial judge erred in law in his apparent acceptance that the appellant was entitled to enforce the Commission's finding by way of an originating notice of motion under section 149 (4) of the Constitution. We further feel that His Lordship erred in law in not addressing his mind to the proper procedure that ought to be followed where the respondent seeks to take enforcement actions in respect of the findings and recommendations of the Commission of Inquiry.

Other matters were also urged upon us by Counsel for the appellant. These include the irregularity of the originating notice of motion. We do not need to deal with those matters since in our judgment the proceedings ought not to have been instituted in the manner it was brought, and consequently, the order granted by the High Court to set aside the Conveyance of the property concern between the Government and the appellant ought not to have been made. There is no basis both in law and in practice for granting that order in this case. That order must be set aside.

For the above reasons, the appeal is allowed and the Order of the High Court dated 27 February 2004 is set aside.

Order: Appeal allowed

Order of the High Court dated 27 February 2004 set aside.

Stronge JA:

I agree:

..... A.B. Stronge

Tejan-Jalloh: JA:

I agree:

..... Tejan-Jalloh