

IN THE COURT OF APPEAL OF SIERRA LEONE

ALUSINE BANGURA & OTHERS

- APPELLANT/APPLICANT

vs.

SLPP CHAIRMAN AND LEADER & OTHERS

- RESPONDENT/RESPONDENT

S.Banja Tejan-sie for the Applicants

U Koroma for the 2nd-6th Respondents

CORAM:

JUSTICE Reginald Sydney FYNN

- JA

JUSTICE Alusine S. SESAY

- JA

JUSTICE Allan B. HALLOWAY

- JA

RULING DELIVERED ON 7th April 2017

Reginald Sydney Fynn JA

1. This application is by Notice of Motion dated 24th March 2017 and it seeks several orders including:
 - I. An Injunction Interim and Interlocutory restraining the SLPP National Conference scheduled to take place in Kenema from the 21st to the 23rd April 2017 or any other date pending the hearing and determination of appeal filed.
 - II. An Interlocutory Injunction restraining the 1st and 2nd Defendants/Respondents from summoning any meeting of the National Executive Council of the SLPP geared towards conducting organizing or supervising flag-bearer elections or any elections pending the hearing and determination of appeal filed.
2. The application is supported by three affidavits sworn to by one Victor Sheriff several exhibits are attached and will be referred to as may have been found necessary.

The 2 through 6th Respondents have filed an affidavit in opposition to the motion and they have also raised a preliminary objection. The affidavit in opposition is dated 5th April 2017 and is sworn to by Abass Chernoh Bundu. It has several exhibits attached to it also.

The Preliminary Objection

3. We will first address the preliminary objection raised by the respondents before anything else. The preliminary objection is that on the face of the application in the title, the appellant has included the words and I quote “In the Matter of Section 35 of the Constitution of Sierra Leone Act No. 6 of 1991”. This, the respondent contends takes this matter into the realm of constitutional enforcement and or interpretation. The respondent submits that because of this mention of the constitution the exclusive original jurisdiction of the Supreme Court as provided for in S.124 ought to have been invoked instead of an application to this court. The respondent submits therefore that this court lacks the jurisdiction to hear the application.
4. In his reply to this issue the appellant /applicant submits that the mention of the constitution was but a reference to put in full context the nature and perspective in which the reliefs prayed for are being sought. The appellant submits further that on a close look at the reliefs prayed for none of them asks the court for the enforcement or interpretation of the constitution of Sierra Leone.
5. This court is an appellate court it has jurisdiction to hear appeals and the matter before us clearly discloses an appeal which is exhibited as VS5. The matter has not come to us as a court of first instance. It comes to us after a full hearing by the court below and a full blown judgment in favour of the respondents who now raise this preliminary objection. The preliminary objection and the submissions made in support of it have been silent on the process below and its result one can only surmise that if the respondents are correct that all that went on below is of no moment and is as if it never happened.
6. We are of the opinion that the processes before the court below leading to these before us as well as these proceedings themselves are all well placed and regular. We are comforted in this opinion by the considerations and conclusions of the Supreme Court in the case of **Alusine Bangura & Others vs. The Chairman of the SLPP & Others Civ /App 17/2017**. In that case though the Hon Justice EE Roberts JSC in his opinion had this to say “*This surely relates to Section 35(2) of the Constitutionindeed Section 124 of the constitution confers jurisdiction to this court in respect of all matters relating to the enforcement and interpretation of the constitution. This court therefore has jurisdiction to hear and determine this matter*” This notwithstanding the Justices were unanimous in their conclusion that “*It is the view*

of the court that disputes about the manner in which a political party's election is held is best heard and tried in the High Court"

7. We have concluded therefore that the mention of the Constitution does not necessarily mean that there must be an immediate resort to the Supreme Court. We hold that the title of an action such as this one can legitimately refer to the constitution without intending to invoke the exclusive original jurisdiction of that the apex court.

The Interlocutory Injunction

8. Counsel on either side have made submissions on the American Cyanamid Case which the Appellant's have submitted is the leading case on Interlocutory Injunctions. The appellant submits that the said case prescribes a test which a court considering a request for an interlocutory injunction should be guided by. The test counsel submits includes the consideration of the following questions: i) Are there serious questions to be tried? ii) Whether damages would adequately compensate for any loss suffered in the absence of an injunction iii) where does the balance of convenience lie? And iv) Will an injunction be in the public interest?
9. The respondents counsel has argued that the American Cyanamid case is merely persuasive. He submits that the American Cyanamid case should not be taken "hook line and sinker". He submits that the court should rely on the case of **Alhaji Sam Sumana vs. Victor Bockarie Foh** . Counsel argued that in that case +the Supreme Court favoured an order for speedy trial under O35 R5 of the High Court Rules of 2007 to an interlocutory injunction.
10. We are of the opinion that the Supreme Court did not in the Alhaji Sam Sumana case depart from the American Cyanide case. Rather, the scope and application of the principles of said case were expanded to cover varying situations and circumstances

Are there serious questions to be tried?

11. Mr Tejan-sie has referred us to Exhibit VS3 and VS5 in the affidavit in support of the application. The former (VS3) is the Originating Summons filed in the court below and it sets out the reliefs sought below. The latter (VS5) is the Notice of Appeal to this court and it discloses the grounds of appeal and the reliefs sought. He submitted further that the appellants are members of the SLPP who aspire to vote and to be voted for at the forth coming SLPP convention. However to qualify to vote one has to be a delegate which the appellants are not. He submits that the appellants are not delegates because their rights have been violated. He then raised the issue of irregularity in internal elections of the SLPP. He submitted that there existed "parallel lists" in 39 constituencies where "parallel elections" were conducted using two separate sets of rules. The respondents by accepting one of those lists and

rejecting the other he submitted had disenfranchised all the members in the rejected list. Some “117 would be “delegates or more he submitted had their rights violated.

12. Mr. Tejan-sie also referred to the ruling of the Hon Justice D B Edwards JA and submitted that there was a disregard of the Political Parties Act No 3 of 2002 particularly section 24 thereof. He maintained that the SLPP internal elections were conducted without conforming with the Political Parties Registration Commission (PPRC) mandate or direction.
13. We have perused the affidavits in support of this application. The appellants allege serious violations of their democratic rights. We note the alleged issue of “parallel list” and the alleged disenfranchisement of would be delegates. We are satisfied that this appeal raises very serious issues and we so hold. In **Jabbie V Sierra Leone's People's Party and others (SC.MISC.APP. 1/2011) [2011] SLSC 02 (28 February 2011)**; a finding that the issues raised were “serious and substantial” provided the basis for the court to grant an injunction to hold a party convention.

The balance of convenience

14. Either side has argued that the balance of convenience weighs in their favour. Mr Tejan Sie for the appellant applicant argues that the role of the respondents who are the officials of the SLPP is the facilitating of policy and programs to ensure that all the members have access to an even playing field. He argues that the respondents have many other tasks they would be engaged in whilst the injunction is in force. He argues that once the application is disposed of the party and the respondents who are its principal officials will return to convention and flag bearer elections guided by the outcome of these proceedings. On the other hand he argues that if the flag bearer elections were proceeded with without the conclusion of this matter the applicants and the court will be left with an action which is futile in its purpose. This he submits is inconvenience which is irreparable.
15. The respondent argues on the contrary that over 700,000 people will be impacted by an injunction just to please the three appellants. He argues that of 117 only 39 are being questioned. The greater number remains intact and unchallenged. He submits that an injunction will unduly inconvenience those who have not challenged the process and who are in the majority.
16. If an injunction is not granted and the respondents are left to proceed with the convention as planned and flag bearer elections using the contested rules and the court finds in the appeal for the appellant, would it not become harder to undo the level of compounded irregularity which would have been reached?

17. We are of the opinion that being in the minority does not in and of itself mean that the majority should always prevail and especially where it is found to be acting outside accepted procedure or plainly in an unfair or oppressive manner. Being in the majority certainly should not mean that the majority cannot be questioned and made to account for a line of action which it may have adopted. At this stage we have not considered whether the majority acted correctly or not. It is enough that questions have been raised about certain actions.
18. The present proceedings may be seen as an act of calling the majority to account. It is immaterial that the action has been brought by only a small number of members. It is more important that they are members of the SLPP and that the questions which they have raised are not frivolous. Whilst they have the right to raise questions and call the majority into account these courts will surely not allow them to disrupt the activities of the party on a merely frivolous and vexatious question. The more important issue to decide therefore would be whether the questions raised are weighty enough to justify an injunction; if the questions are weighty enough then the consideration of whether three members can be entitled to an injunction on the proposed activities of 700,000 becomes pale in contrast.

Damages

19. We are satisfied also that the nature of the violations alleged and the rights which stand to be lost if an injunction were not granted are such as may not be adequately compensated by damages. We also note the undertaking made by the appellant to provide compensation for the respondents in the event an injunction is found to be wrongly granted.

General & Conclusion

20. We note that there has been an attempt whilst this matter is pending before us to expel the applicants from the party. Is this in the hope that this will rob them of their standing in the matter? Exhibit VS11 is dated 28th March 2017 and attached to it is a document dated 25th March 2017 and excerpts from it reads as follows:

“6.....Mr John Oponjo Benjamin and Mr. victor Sherriff lodged objections to the PPRC on 20th and 21st March 2017 respectively

7.....that unless the said plaintiffs /Appellants withdraw all court matters forthwith or by 29th March 2017 the latest they are expelled from the party” .

Neither side has given this issue much attention in their submissions. Whilst this matter may be pursued further in the hearing of the appeal proper it has not passed without our notice. For the present purpose it is sufficient to note that this appears to us oppressive and intolerant conduct. The jurisdiction of the court should not be

ousted in a compulsive and coercive manner. Every citizen in any and every circumstance has the right to resort to litigation and seek the aid of the courts if a wrong is perceived. To punish a citizen for exercising that right to litigation is prima facie oppressive and such a practice ought to be roundly condemned and discouraged as we now do.

On the forgoing considerations we now make the following orders and give the following directions:

- I. An Injunction Interlocutory is granted restraining the SLPP National Conference scheduled to take place in Kenema from the 21st to the 23rd April 2017 or any other date pending the hearing and determination of the appeal filed on terms appellants /applicant gives an undertaking to pay damages to the respondent for any loss sustained by reason of the injunction if it should turn out that the said respondent ought not to have been restrained.
- II. This appeal is ordered to be expedited and our Registrar shall have the records settled no later than 14th April 2017
- III. The Appellant shall file written submissions no later than 21st April 2017
- IV. The Respondents shall file written submissions no later than 28th April 2017
- V. Oral hearing is fixed for 2nd May 2017. This court stands adjourned to said date.

..... **The Hon. Mr. Justice Reginald Sydney Fynn JA**

.....**The Honorable Mr. Justice Alusine Sani Sesay JA**

.....**The Honourable Mr. Justice Allan Baami Halloway JA**