

CIV.APP NO. 106/2020

IN THE COURT OF APPEAL OF SIERRA LEONE

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE 1991 (ACT NO. 6 OF 1991) PART IX (COMMISSION OF INQUIRY) SECTIONS 147-149 (INCLUSIVE)

IN THE MATTER OF CONSTITUTIONAL INSTRUMENT NO. 64 OF 2018

AND

THE COMMISSION OF INQUIRY (EXAMINATION, INQUIRY AND INVESTIGATION) NOTICE (1) 2018 (JUSTICE BIOBELE GEORGEWILL COMMISSIN OF INQUIRY)

BETWEEN:

Abdul Ignosis Koroma - APPELLANT
Railway Line
Teko Road
Makeni

AND

The Attorney-General & Minister of Justice - RESPONDENT
Law Officers Department
3rd Floor, Guma Building
Lamina Sankoh Street
Freetown

CORAM;

HON. MRS. JUSTICE FATMATA BINTU ALHADI JA (PRESIDING)
HON. MR. JUSTICE KOMBA KAMANDA JA
HON.MRS JUSTICE TONIA BARNETT JA



ADVOCATES :

ADE MACAULEY ESQ

R.B.KOWA ESQ

APPELLANT

RESPONDENT

JUDGEMENT DELIVERED ON THE 18TH DAY OF SEPTEMBER 2023

BACKGROUND

The President of Sierra Leone by Constitutional Instrument No. 64 of 2018 pursuant to Section 147 of the Constitution of Sierra Leone, Act No. 6 of 1991 set up the Justice Biobele Georgewill Commission of Inquiry with the said Judge as Chairman and Sole Commissioner.

The terms of reference of the Commission of Inquiry known as COI were laid down in Section 4 of the aforementioned Constitutional Instrument thus:

A, To examine the assets and other related matters in respect of;

i. Persons who were President, Vice President, Ministers of State, Deputy Ministers; and

ii Heads and chairmen of Boards of Parastatals, Departments and Agencies within the period from November 2007 to April 2018.

b. To inquire into and investigate whether assets were acquired lawfully or unlawfully

c. To inquire into;

i Persons who were President, Vice President, Ministers, Ministers of State, Deputy Ministers; and

ii Heads and chairmen of Boards of Parastatals, Departments and Agencies within the period from November 2007 to April 2018

d. To ascertain as to whether the Persons referred to in paragraphs a –c

i Maintained a standard of life that which was commensurate to their official emoluments



- ii Owned or were in control of pecuniary resources or property disproportionate to their official emoluments or there is evidence of corruption, dishonesty or abuse of office for private benefit by them
- iii. Collaborated with any person in respect of such corruption, dishonesty or abuse of office
- iv. Acted willfully or complacently in such a matter so as to cause financial loss or damage to the Government, Local Authority or Parastatal, including a Public Corporation
- v. Acquired directly or indirectly financial or material gains fraudulently improperly or willfully to the detriment of the Government, Local Authority or Parastatal. Including a Public Corporation, statutory Commission, Body or university of Sierra Leone
- vi. To inquire into and investigate any persons or matter as may from time to time be referred to the Commission by His Excellency, the President.

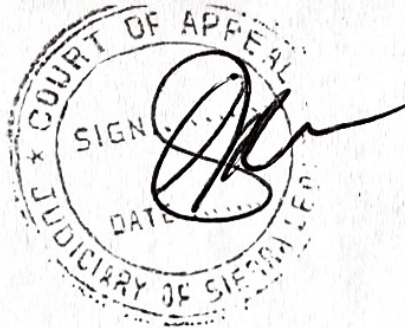
The Appellant thereafter being dissatisfied with the findings, conclusions and recommendations of the Sole Commissioner filed a Notice and grounds of appeal on the 22nd day of December, 2020.

The Appellant's appeal is based on Ten (10) grounds which are summarized as thus:-

1. The Hon. Justice Biobelle Georgewill erred in law and acted in violation of section 150 of the Constitution of Sierra Leone, Act No. 6 of 1991, when he proceeded to conduct the commission of Inquiry without the "rules regulating the practice and procedure" of all commissions of Inquiry to be prescribed by the Rules of Court Committee through a constitutional instrument, as provided for under section 1509 aforesaid.
2. The adoption by the Hon. Sir Justice Biobelle Georgewill of the Practice Direction formulated by the three Sole Commissioners of Constitutional Instruments No. 64, 65 and 67 of 2018 is unconstitutional and an improper arrogation and usurpation of the functions reserved for the Rules of Court committee in section 150 of the 1991 Constitution of Sierra Leone. Which provides that "Subject to the provisions of this chapter, the Rules of Court Committee shall by Constitutional Instrument, make rules regulating the practice and procedure of all Commissions of Inquiry".



3. Hon. Sir Justice Biobelle Georgewill erred in Law when he impermissibly acted beyond the scope of his Terms of Reference and purported to find the appellant guilty of a criminal offence when he specifically “found the appellant guilty” for the offence of “failing to declare his assets”, an offence provided for under the Anti-Corruption Act 2008 (as amended) and which is exclusively in the domain of the Commissioner of the Anti-Corruption Commissioner was in no way cloaked with the power to indict, prosecute and find the Appellant herein guilty or any other person of interest for the offence of failing to declare assets as required by the Anti-Corruption Act of 2008 (as Amended).
4. The Sole Commissioner of Commission of Inquiry Constitutional Instrument No. 64 of 2018 erred in Law when he held in volume one (1) of his report that Ministers of Government of which the Appellant was, should bear ultimate responsibility and be held accountable for the affairs and finances of the Ministry they headed.
5. That the Sole Commissioner erred in holding that “in Law once a prima facie case has been made out, personal rebuttal evidence from the persons of interest is mandatory because without it all the allegations purported by prima facie evidence become duly established by the state”.
6. The adverse findings of the Hon. Justice Biobelle Georgewill contained in Chapter Two of Volume One (1) of his report on Commission of Inquiry Constitutional Instrument No. 64 of 2018 dated March 2020 relating to the “Sale of Shares in Sierra Rutile Company (SL) Ltd” are against the weight of the evidence presented. The facts and evidence adduced and available to the Hon. Justice Biobelle Georgewill, sitting as Sole Commissioner during the proceedings of Commission of Inquiry No. 64 did not support his specific findings.
7. That the finds and recommendations against the Appellant contained in Volume One (1) of the Hon. Justice Biobelle Georgewill report on Commission of Inquiry Constitutional Instrument No. 64 of 2018 dated March 2020, relating to the Investigation of the activities of the Ministry of Mines

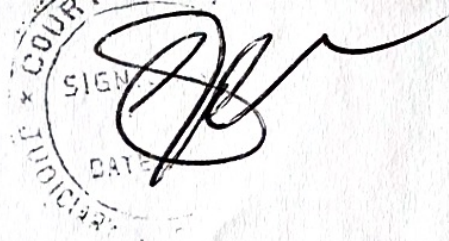


and Mineral Resources and the National Mineral Agency are against the weight of the evidence adduced before the said Commissioner.

8. The adverse findings of the Hon. Justice Biobelle Georgewill contained in Volume Two (2) of his report on Commission of Inquiry Constitutional Instrument No. 64 of 2018 dated March 2020, relating to the Appellant's property situate at Railway Line, Teko Road, Makeni in the Northern Province of the Republic of Sierra Leone are against the weight of the evidence presented.
9. The testimony and report of CW2, Olu Campbell, which the Learned Sole Commissioner relied on in reaching his findings and recommendations that the appellant's landed property located at Railway Line, Teko Road, Makeni in the Northern Province of the Republic of Sierra Leone and valued at Le6,400,000,000. Having been found to be well beyond and far above and therefore not commensurate with, his legitimate means of incomes, allowances and other earnings and shall be forfeited forthwith to the Government of Sierra Leone are unreliable and unsafe.
10. That by failing to publish the complete five (5) volume report of the Hon. Justice Biobelle Georgewill, Commission of Inquiry Constitutional Instrument No. 64 of 2018, section 149(2) of the 1991 Constitution of Sierra Leone has been violated as a partial publication of a Commission report is not a publication of the whole report for the purposes of section 149(2) of the 1991 Constitution of Sierra Leone.

ANALYSIS OF THE EVIDENCE AND LAW

I shall deal with grounds 1 and 2 as they relate to the same issue bordering on jurisdiction. The Appellant herein contended that the sole commissioner by sitting, drafting, adopting practice Directions and conducting the proceedings cloaked himself with jurisdiction he did not have and is in blatant violation of Section 150 of the Constitution of Sierra Leone Act No. 6 of 1991 in view of the fact that the Rules of Court Committee ought to have drafted rules upon which the proceedings of the Commission would have operated upon. Counsel for the Appellant A. Macauley Esq. argued that the Commissioner had no right to direct how the Commission should function by way of inventing rules of procedure. He therefore submitted that the conduct of the sole commissioner to arrogate unto himself the powers conferred



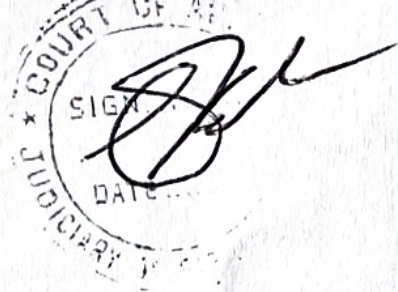
on the rules of Court Committee is a blatant violation of Section 150 of the Constitution and manifest that the said Commissioner lacks jurisdiction to proceed with the Commission of Inquiry herein.

Conversely, Counsel for the Respondent R.B. Kowa Esq. submitted that the inaction of the Rules of Court Committee to comply with the provision of Section 150 of the Constitution does not in any way suggest or mean that the Commission lacks jurisdiction to give practice Direction as to the conduct of proceedings at the Commission of Inquiry. Counsel also submitted that it is wrong and untenable to say that Section 147 of the 1991 constitution is inoperative until section 150 is effected by the Rules of Court Committee. He relied on the case of ALL PEOPLES CONGRESS V NASMOS AND MINISTRY OF SOCIAL WELFARE, YOUTH AND SPORT SC NO. 4/96 unreported to further argue that in the absence of any rules in such circumstances, the High Court Rules apply. He further relied on Chapter 54 of the Laws of Sierra Leone 1960 as amended to submit that where there are no rules in force, the existing Law must apply.

Counsel further invited the Court to take judicial notice of the various Commissions of Inquiry set up from 2007 – 2017 where there were no rules made by the Rules of Court Committee but they were proceeded with. He referred to C I No. 1 of 2008 which set up the Commission of Inquiry into the Recent Disturbances involving Koidu Holding Mining Company and Koidu Community and C.I No. 16 which set up The Commission of Inquiry (The Hanci-Maps Adoption). The Justice Bankole Thompson Commission of Inquiry of 2009 to investigate the attack and allege rape at the Sierra Leone People's Party Office etc.

As regards grounds 1 and 2, they deal with the issue of jurisdiction of the Sole Commissioner which is fundamental in all judicial processes. Where it is proven that the Commission lacks jurisdiction however good the proceedings were conducted amounts to a nullity”.

I have perused the provision of Section 150 of the Constitution of Sierra Leone Act No. 6 of 1991 and also Section 147 of the said Constitution, it is obvious that Section 147 is operative on its own and cannot be tendered useless simply because Section 150 is inoperative. The case of ALL PEOPLES CONGRESS V NASMOS AND MINISTRY OF SOCIAL WELAFRE, YOUTH AND SPORT SC No. 41/96 unreported is very instructive on this point of Law. Also the aforesaid position of the



Law has been dealt with by this Court in the case of COI no. 18/2022 EMMANUEL BERESFORD OSHOBA COKER V ATTORNEY GENERAL AND MINISTER OF JUSTICE unreported judgment delivered on the 2nd day of November, 2022 and the case of DR. DONALD BASH TAQI COI App 52/2020.

I have also taken judicial notice of the Commission of Inquiry in 2008 and 2009 referred to herein by R.B. Kowa Esq. which went ahead in the absence of Section 150 of the Constitution.

In view of the reasons I have advanced herein the appeal based on Grounds 1 and 2 are hereby dismissed as they lack merit.

As regards Ground 3, it is now well settled in our jurisdiction that Commissions of Inquiry cannot be equated to criminal trials. The burden and standard of proof are quite distinct. In a criminal trial the burden is beyond reasonable doubt. Lord Sankey's dictum in WOOLMINGTON V DPP 1935 AC 462 (HL) is very instructive and forms the bastion of all criminal trials. Lord Sankey laid bare this position of the Law when he opined "Throughout the web of the English Criminal Law a golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner guilty --- No matter what the charge or where the trial, the Principle that the Prosecution must prove the guilt of the prisoner is part of the Common Law of England and no attempt to whittle it down can be entertained."

The distinction between a Commission of Inquiry and other judicial processes is well articulated in the case of M.A. KHARAFI AND SONS LIMITED V ATTORNEY GENERAL OF THE GAMBIA, GCA CIV.APP 046/2019 that 'a Commission of Inquiry does not adjudicate between the state and a person who appears before it; but it carries out an investigation into the issues and matters that are within its terms of reference as per the legal instrument that established it. Its report submitted to the Executive Branch of Government, is neither a judgment, neither an order which is capable in itself of being executed as perceived by the Law".

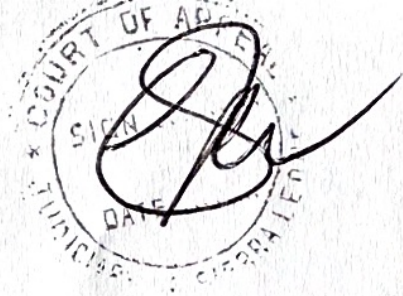
It is obvious that the Commission of Inquiry is not a criminal trial where the accused must take a plea. The Commissioner therefore has no jurisdiction to convict or find the interested party guilty. Such power to convict are only vested in the bench that sits in its criminal or quasi criminal jurisdiction and not in the sole Commissioner.

* COURT *
SIGN. _____
DATE _____

In the circumstance the Appeal on Ground 3 is allowed and the said conviction by the sole Commissioner is squashed.

On Ground 4 the Sole Commissioner held that the Appellant was liable for acts done at the Ministry of Mines at the time when he was serving as Deputy Minister in that Ministry. The Appellants contends that, that is the wrong position on the Law on the basis that the Appellant personally did not commit the infractions referred to. Counsel for the Respondent on the other hand referred to Section 62 of the Constitution which provides “Where any Minister has been charged with responsibility for any department of Government, he shall exercise general direction and control over that department, and subject to such direction and control, the department shall be under the supervision of a Permanent Secretary, whose office shall be a Public Officer”. I have perused the records of proceedings and realize that the Appellant was a Minister at the time of some of the infractions complained of and as head of the Ministry he cannot escape responsibility or liability when he had all the authority to stop those infractions. This ground of appeal is untenable and therefore dismissed.

As regards grounds 5,6 and 7 they are inter related in that the Appellant argued that the facts and evidence available do not support the specific findings. I have perused exhibit P1-11 which is an offshoot of the audit report. It clearly shows that there was very serious lack of compliance issues. Such were well articulated by the sole commissioner as found in pages 26 unto 28. The evidence adduced by CW1 –CW19 clearly show that procedures were not followed by the Appellant and other officials of the Ministry of Mines. The evidence show that lack of compliance further led to misappropriation of public funds. The issue of lack of accountability was also addressed by the sole commissioner. With the evidence adduced , it came out clear from the findings of the commissioner that the Appellants joint enterprise with officials of the aforesaid ministry led to acts of corruption, maladministration ,abuse of office and lack of accountability .I have perused the records particularly in cross examination as well. The allegations against the Appellant and other persons of interest involving the sale of shares in Sierra Rutile Company (SL) Ltd and subsequent dealings were not controverted in any way material to this case . With such preponderance of evidence how then could the Appellant suggest or say the facts and evidence do not support the findings made by the sole commissioner? Such assertion by the Appellant is misplaced. The Appeal on grounds 5,6, and 7 are weak and are therefore dismissed.



I shall also deal with ground 8 and ground 9 because they deal with the same subject matter and they are interrelated dealing with the weight to be attached to the evidence and the issue of competence. As regards the issue of competence of the valuer, it is important to note that such does not depend on the academic qualification alone of the valuer. The position of the law on this issue was well dealt with in the case of **STATE OF HIMACHAL PRADESH .V. JAI LAL**, 1999 CRI LJ 4294 (SC) India, where it was held that an expert evidence has to be shown that the expert is skilled and has adequate knowledge of the subject. In essence over reliance on paper qualification may be irrelevant. There is uncontroverted evidence that the valuer Olu Campbel has been performing this role for about 35 years. I also take judicial notice that the said valuer has been appearing in various courts performing the role of a valuer and appraisal. I have looked at the entire evidence before the court and did not see anywhere referring to the valuer as a discredited witness.

I have also considered the fact that the Appellant presented evidence of the valuer he employed to challenge the evidence of Olu Campbel. Counsel for the Appellant A. Macauley esq argued that they submitted both the market value and the value of the res at the time of the construction. He also argued that the sole commissioner did not consider the housing allowance as stated in page 2724, 2725 and 2726 of the records.

It is important to note that the legal burden of proof placed on the prosecution and or the accuser does not shift even in Commissions of Inquiry. However, when serious allegations of unexplained wealth are made, the person against whom the allegations are made, as in the instant case, bears the evidential burden, to show that the wealth or res which is subject of the said litigation was acquired lawfully and not by funds obtained illegally. I have perused the records and the findings of the sole commissioner and it is clear that the Appellant made attempts to justify his means. In pages 2724, 2725 and 2726 of the records the housing allowances, salaries and other benefits enjoyed by the Appellant as a Deputy Minister were not commensurate to the massive structure he built at Railway Line Teko Road, Makeni which is subject matter of these proceedings. Appellant's attempts to justify his acts were not sufficient to discharge the evidential burden. Those facts were all before the sole commissioner and were adequately considered by him as clearly articulated in his report and findings.

As regards ground 10, the Appellant's contestation is based on the fact that certain portions of the report were not published. The question I need to ask is whether this

ground of appeal in itself without more is tenable in law. Throughout the arguments and submissions counsel has not shown how the missing information affected the Appellant . I have also looked at the records and the proceedings in this court and have not seen any application in respect of missing records. This ground of appeal also fails .

Having considered the entire appeal herein, I hereby order as follows :

- 1) That the appeal is dismissed based on grounds 1,2,4 ,5,6 .7,8,9 and 10 .
- 2) That the findings, recommendations of the sole commissioner against the Appellant are upheld.
- 3) The costs of this appeal be borne by the Appellant and such to be taxed if not agreed.



HON. JUSTICE KOMBA KAMANDA JA

HON.MRS JUSTICE FATMATTA BINTU ALHADI (PRESIDING)

I agree 

HON.MRS JUSTICE TONIA BARNETT

I agree .. 