

FRIDAY THE 11TH DAY
OF NOVEMBER 2016

BEFORE THE HON. MR.
JUSTICE ALLAN B. HALLOWAY JA

7

Case called

- Petitioner/Applicant ~~present~~; A. Showers Esq. for the Petitioner/Applicant present.
- Respondents present
- H. M. Gevao Esq., U. N. Koroma Esq., E. S. Abdulai Esq., P. Squire Esq., J. Kallan Esq. and Y. I. Langson Esq. for the 1st Respondent present.
- D. E. Taylor Esq. for the 2nd, 3rd and 4th Respondents present.

RULING

The Application herein made ex parte for and on behalf of HAJA NASARATU JALLOH, the Petitioner/Applicant herein by notice of motion dated the 27th September 2016, is for an order that this Court enlarges the time within which the Petitioner/Applicant herein shall serve the Petition herein dated 18th July 2016 on NAVO KAI KAI, NATIONAL ELECTORAL COMMISSION, THE NATIONAL RETURNING OFFICER and THE KAILAHUN DISTRICT RETURNING OFFICER, the Respondents herein or that in the alternative this court holds service of the said Petition already effected on the Respondents as regular and hereby extends time within which the Respondents herein may file a reply to the said Petition.

The said Application is supported by the affidavit of HAJA NASARATU JALLOH sworn to on the 27th September 2016, to which is annexed Exhibit 'HNJ1' being the Petition herein dated the 18th day of July 2016, Exhibit 'HNJ2' being a compliance and notice of compliance, a receipt of presentation of Petition and recognizance as security for costs, the same being documents showing compliance with Rule 14 of the ELECTION PETITION RULES 2007 and Exhibit 'HNJ3' being a medical report of MR. ADEWALE SHOWERS dated the 30th August 2016, on an examination of him done on the 23rd July 2016.

On the 29th September 2016, this Court heard A. SHOWERS ESQ. of Counsel for the Petitioner/Applicant ex parte on the Application aforesaid and on the 13th October 2016 ruled on the issue of whether or not the said Application is one which can properly be made ex parte. This Court was of the view that the ELECTION PETITION RULES 2007 in its entirety does not make any provision for such Applications as the one herein to be made, let alone for the same to be made ex parte. But Rule 53 of the ELECTION PETITION RULES aforesaid provides howsoever that, when no provision is made by the said ELECTION PETITION RULES, the procedure practice and forms

from time to time in force in the High Court in so far as they can conveniently be applied shall be in force in relation to the Trial of Election Petitions under the PUBLIC ELECTIONS ACT 2012. This Court was of the view further that assuming that the HIGH COURT RULES 2007 could have conveniently be applied in the circumstance, Order 8 rule 3(1) of the HIGH COURT RULES aforesaid stipulates that except where an application by motion may properly be made ex parte, no motion shall be made without previous notice to the Parties affected thereby but the court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make an order ex parte on such terms as to costs or otherwise and subject to such undertaking if any as it thinks just and any party affected by such order may apply to the court to set it aside. This Court held the view that the Application herein is not one which can in accordance with any rule be properly made ex parte without hearing the other parties whose rights may be affected. Moreover this Court held the view further that it was not shown and therefore it could not be satisfied that the delay which might be caused by proceeding in the ordinary way, that is by hearing the other parties whose rights may be affected would or might have entailed irreparable or serious mischief. This Court held the view that in the circumstance it would not determine the Application herein ex parte and would proceed to hear the other parties whose rights may be affected.

Having read the notice of motion herein dated the 27th September 2016 and the affidavit of HAJA NASRATU JALLOH, sworn to on the 27th September 2016 together with the Exhibits annexed thereto in support of the Application herein and having heard A. SHOWERS ESQ. of Counsel for the Petitioner/Applicant, and having further heard H. M. GEVAO ESQ. of counsel for the 1st Respondent and having also heard D.E. TAYLOR ESQ. of Counsel for the 2nd, 3rd and 4th Respondents and having heard all the submission made by the parties respective counsels, considered the same and further considered the Application aforesaid, this Court finds undisputedly and from the facts as presented herein that, the Petitioner/Applicant herein did not comply with Rule 12(1) of the ELECTION PETITION RULES 2007, the same which provides as follows:

' within five (5) days of its presentation, an election petition together with notice of compliance with rule 14 of the said rules as to the giving of security for costs shall be served on all the respondents named in the petition.'

This court refers to paragraphs 7 to 9 inclusive of the affidavit of HAJA NASRATU JALLOH aforesaid and from the facts as contained herein, the Petition herein was presented on the 18th July 2016. There seems to be no question that the same was not presented within the time limited by Rule 5(1) of the ELECTION PETITION RULES aforesaid which stipulates that the election petition shall be presented within seven (7)

days of the Declaration pursuant to the PUBLIC ELECTIONS ACT 2012 unless otherwise provided by any enactment. A. SHOWERS ESQ. of Counsel for the Petitioner/Applicant asserted that the said Petitioner/Applicant could not comply with Rule 12(1) of the ELECTION PETITION RULES aforesaid because her Solicitor ADEWALE SHOWERS fell ill during the said period and could not make an Application for substituted service. A. SHOWERS ESQ of Counsel for the Petitioner/Applicant submitted that the inability of ADEWALE SHOWERS, the Petitioner/Applicant's Solicitor to serve the said Petition dated 18th July 2016 within the stipulated time set by the ELECTION PETITION RULES aforesaid should not prejudice the Petitioner/Applicant and in this regard relied on the case between GATTI and SHOOSMITH (1939) ALL E R at page 918 where it was held that a mistake by Counsel in advising his client as to the time within which an appeal could be brought was sufficient ground to justify the Court in extending the time.

Notwithstanding the fact that in the present case the Petitioner/Applicant's non compliance with Rule 12(1) of the ELECTION PETITION RULES aforesaid was not due to a mistake by her Solicitor, but as she claims, due to her Solicitor's illness, it is pertinent though to consider her claim aforesaid and determine whether or not the case between GATTI and SHOOSMITH cited above is applicable in the circumstance. It should be re-iterated that the said Petitioner/Applicant asserted in paragraph 9 of her affidavit aforesaid that ADEWALE SHOWERS her solicitor fell ill during the said period and could not make an application for substituted service of the said Petition dated 18th July 2016. This Court holds the view that the said assertion could be interpreted to mean that Rule 12(3) of the ELECTION PETITION RULES aforesaid was not invoked by the Solicitor for the Petitioner/Applicant by reason of his illness. Rule 12(3) aforesaid provides as follows:

'Except where a Respondent has named an agent or given an address for service in which case, service of the Petition may be by delivery to the agent or leaving it at the agent's address for service, service of the Petition must be by personal service on the Respondent unless a Judge, on an application made to him not later than eight days after the Petition is presented and supported by an affidavit showing what has been done, is satisfied that all reasonable effort has been made to effect personal service and to cause the matter to come to the knowledge of the Respondent, in which case the Judge may order that what has been done shall be considered sufficient service subject to such condition as he may consider reasonable.

This Court finds from the facts as presented herein, nothing disputing that ADEWALE SHOWERS the Petitioner/Applicant's Solicitor fell ill, subsequent to the presentation of the Petition on the 18th July 2016. This court finds further that from the contents of Exhibit 'HNJ3' being the medical report of MR. ADEWALE SHOWERS dated the

30th August 2016 and annexed to the affidavit of HAJA NASRATU JALLOH aforesaid, the said MR. ADEWALE SHOWERS, Solicitor for the Petitioner/Applicant herein, was declared ill on the 23rd July 2016, the fifth (5th) day after the presentation of the Petition herein on the 18th July 2016. If as stated above, the Petitioner/Applicant's assertion that, her solicitor fell ill during the period aforesaid after the presentation of the Petition herein on the 18th July 2016 could well be interpreted to mean that rule 12(3) of the ELECTION PETITION RULES aforesaid was not invoked by reason of the said illness, it is envisaged then that, it should have been asserted herein that, all reasonable effort had been made to effect personal service of the Petition herein dated 18th July 2016 and to cause the matter to come to the knowledge of the Respondents herein as is stipulated in Rule 12(3) aforesaid. I find from the facts as presented herein no such assertion and nothing to show that, any attempt was made by the Petitioner/Applicant's Solicitor or his clerk or the Petitioner/Applicant herself, to effect personal service of the Petition herein dated 18th July 2016 as required by Rule 12(3) aforesaid within five (5) days of its presentation as required by Rule 12(1) of the ELECTION PETITION RULES aforesaid. It follows that, if this were the case then an Application pursuant to Rule 12(3) aforesaid was never in contemplation in the circumstance. The Court finds from the facts as presented that no attempt whatsoever was made by the Petitioner/Applicant to have the Petition dated 18th July 2016 served in accordance with and in compliance with the ELECTION PETITION RULES aforesaid. From the facts as contained in paragraph 10 of the affidavit of HAJA NASRATU JALLOH aforesaid it was only after the illness of ADEWALE SHOWERS, the Solicitor for the Petitioner/Applicant, that a successful attempt was made to serve the Petition herein dated 18th July 2016 on the Respondents herein for the very first time. In this regard, this Court holds the view that the illness of ADEWALE SHOWERS, the Solicitor for the Petitioner/Applicant could not have been the reason why the Petition herein dated 18th July 2016 was not served on the Respondents herein including the 1st Respondent within five (5) days of its presentation as required by rule 12(1) of the ELECTION PETITION RULES aforesaid. This Courts holds the view further that by reason that the Petitioner/Applicant herein has not in any way shown that the said Petition herein dated the 18th July 2016, was not served on the Respondents herein within five (5) days aforesaid by reason of her Solicitor's illness, the case between GATTI and SHOOSMITH cited above is inapplicable to the Application herein in the circumstance.

A. SHOWERS ESQ. of Counsel for the Petitioner/Applicant admitted that indeed the ELECTION PETITION RULES 2007 is silent on the granting of the orders sought in the Application herein and in particular does not make any provision for an enlargement of time but referred however to Rule 53 of the ELECTION PETITION RULES aforesaid which provides as follows:

where no provision is made by these rules, the procedure practice and forms from time to time in force in the High Court so far as they can conveniently be applied, shall be in force in relation to the trial of election petitions under the PUBLIC ELECTIONS ACT 2012....'

A. SHOWERS ESQ. submitted that by virtue of Rule 53 aforesaid the HIGH COURT RULES 2007 should apply in the circumstance and in particular order 3 rule 5 of the same gives this court unfettered discretion to extend time or abridge the period within which a particular act should be done and in this case and by virtue of Order 3 rule 5(1) of the HIGH COURT RULES 2007, the orders sought herein could be granted. Order 3 rule 5(1) provides as follows: -

'The court may on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorized by these rules or by any judgement, order or direction to do any act in any proceedings.'

This court holds the view that assuming that the HIGH COURT RULES 2007 can conveniently be applied in the circumstance, the pertinent question requiring an answer is whether or not Order 3 rule 5(1) aforesaid would avail the Petitioner/Applicant herein, prompting this Court's discretion to grant the orders sought herein. This Court finds from and construes that, from the very wording of Order 3 rule 5(1) aforesaid, that it can only extend or abridge the period within which a person is required or authorized by the HIGH COURT RULES 2007 or by any judgement, order or direction to do any act in any proceedings, Order 3 rule 5(1) aforesaid does not in any way give this court a discretionary power to extend or abridge the period within which a person is required or authorized by the ELECTION PETITION RULES 2007 or any other enactment to do any act in any proceedings. This Court holds the view that if it would have to exercise its discretion to extend or abridge the period within which a person is required or authorized by the ELECTION PETITION RULES 2007 to do an act, it could only do so within the context of the ELECTION PETITION RULES aforesaid and not within the context of the HIGH COURT RULES 2007. In this regard this Court holds the view that Order 3 rule (5(1) of the HIGH COURT RULES 2007 would not avail the Petitioner/Applicant herein, prompting this Court's discretion to grant the orders sought herein in favour of the said Petitioner/Applicant.

This court holds the view that, the above when put in another way and or on its construction, Order 9 rule 1 of the HIGH COURT RULES 2007 stipulates that the HIGH COURT RULES 2007 applies generally to Petitions by which civil proceedings in court are begun. but that in the case of Petitions of any particular class, the

12
application of the HIGH COURT RULES aforesaid, to such Petitions are subject to special provisions made by the HIGH COURT RULES aforesaid relating to Petitions of that class or by any other enactment. Simply put, this court holds the view that if the HIGH COURT RULES 2007 does not make special provision or rules relating to the Petition herein dated the 18th July 2016 and annexed to the affidavit of HAJA NASRATU JALLOH marked Exhibit 'HNJ 1', which the HIGH COURT RULES 2007 does not do, then only the provisions of the ELECTION PETITION RULES 2007 would apply in the circumstance herein, meaning thereby that Order 3 rule 5(1) of the HIGH COURT RULES 2007 cannot be conveniently applied herein to grant the orders sought herein by the Petitioner/Applicant herein.

This Court holds the view that from the above, it follows that it is only the ELECTION PETITION RULES 2007 which would apply in the circumstance and in relation to the Application herein. As stated above, Rule 12(1) of the ELECTION PETITION RULES aforesaid stipulates that the Petition herein dated 18th July 2016 should be served on all the Respondents named therein within five (5) days of its presentation and that Rule 12(3) of the said Rules stipulate that if the said Petition cannot be personally served on the Respondents herein and in particular the 1st Respondents herein within the time limited by Rule 12(1) aforesaid by reason that all reasonable effort has been made to effect personal service and to cause the matter to come to the knowledge of the Respondent herein to no avail, then an application for substituted service of the said petition must be made to a Judge within eight (8) days of the presentation of the Petition. Undisputedly the said Rules 12(1) and 12(3) aforesaid have been breached by the Petitioner/Applicant herein and it is as a result of this, that the said Petitioner/Applicant seeks the grant of the orders prayed for herein. This Court finds that the said Rules 12(1) and 12(3) aforesaid are mandatory and the time limits within which the acts stipulated therein are to be done, fixed. This Court finds further that nowhere in the ELECTION PETITION RULES aforesaid does it require that a Petitioner can make an Application as the one herein or that this Court is empowered to grant an order extending or abridging the time within which an act as stipulated in the ELECTION PETITION RULES 2007, is required to be done.

This Court holds the view that the Courts are bound to apply the above rules very strictly and that unless or until it is so stipulated in the ELECTION PETITION RULES aforesaid for the Courts to extend or abridge time within which an act is required to be done, the Courts are bound to keep within the time limits stipulated therein. In the case between H.M. KANAGBO, W.L. SHERMAN, A.B. FOFANA, H.M. MORIBA and M.J. KAMANDA BONGAY EP 27/62, Civil Appeal 14/62 in the Court of Appeal where the case between LIVERPOOL BANK and TURNER (1860) 30L.J Ch. 379, 380 and 381 was cited and in which case LORD CAMPBELL said:

'No universal rule can be laid down for the construction of statutes as to whether mandatory enactments shall be considered directory only or obligatory, with a implied nullification for disobedience. It is the duty of the courts of justice to try to get at the real intention of the legislature, by carefully attending to the whole scope of the statute to be construed.'

In the case of H.M. KANAGBO and others cited above, the relevant rule stipulated that the Petitioner or his agent shall, immediately after notice of the presentation of a petition shall have been served, file with the master an affidavit of the time and manner of service thereof. So when in that case service was effected on June 22nd and an affidavit of service filed on July 3, the Court held that the same hardly suggests 'immediately after' by virtue of the fact that the said rule is obligatory and means what it says and that 'immediately after' means immediately after in the circumstance of the case. The principle aforesaid enunciated in this case was followed amongst others in the case between TAMBA S. M'BRIWA and DUDU B. BONA Civil Appeal 21/62 in the court of Appeal and the case between MANFRED ONIKE COLE and MARCUS CHAMBEGLA GRANT E.P. 5/62 in the Supreme Court. In the case between JOHN OPONJO BENJAMIN, JULIUS MAADA BIO, DR. KADI SESAY (MRS.) and DR. CHRISTIANA THORPE, NATIONAL ELECTORAL COMMISSION, VICTOR BOCKARIE FOH, ALL PEOPLES CONGRESS PARTY, SC. NO. 4/2012 in the Supreme Court of Sierra Leone where the complaint was for non-compliance with Rule 12(1) of the ELECTION PETITION RULES 2007 together with several other complaints of non compliance of several other rules as contained in the ELECTION PETITION RULES aforesaid and the PUBLIC ELECTION ACT, 2012, the Petition therein was struck out as prayed for by the respective Solicitors for the Respondents therein. In that case U.H. TEJAN JALLOH, CHIEF JUSTICE as she then was, had this to say:

'Clearly these Rules are mandatory and not directory. We are of the view that because they are mandatory, they ought to be strictly complied with and not to be qualified by expressions such as substantial and/or effective compliance.'

A. SHOWERS ESQ. of Counsel for the Petitioner/Applicant submitted that the intentions of the legislature to impose short time limits as contained in Rules 12(1) and 12(3) aforesaid is to ensure that disputes concerning election of the peoples representatives are settled expeditiously and without undue delay, a submission which this Court fully upholds. A. SHOWERS ESQ. further submitted that notwithstanding the legislature's intention aforesaid, concern must be given to the public interest in hearing disputes arising from the election of peoples Representatives, subjecting same to fair trials and determination of such on its merits, rather than have the same dismissed on preliminary issues like non-compliance with the Rules as in this case.

Relying on the submission aforesaid and in support of the Application herein to grant the orders sought herein, A. SHOWERS ESQ. relied on the case between MOSES KONDOWA, THE DIRECTOR SL/IDA and AUREOL TOBACCO COMPANY, AYO WILLIAMS Misc. App 7/93 in the Court of Appeal of Sierra Leone where GELAGA-KING JA as he then was, had this to say,

'In my judgment, the provision of Section 145(2) of the CONSTITUTION OF SIERRA LEONE 1991 do not mean and cannot mean that the practice and procedures of the courts must be regulated in such a manner so as to defeat its ultimate purpose which is to ensure that justice is dispensed in a fair, organized, simple, speedy, effective, civilized and just manner. Rules of Court were never meant and were never intended to be used as instruments of oppression and injustice. It is for this laudable reason that it has been the practice in commonwealth jurisdictions that whenever the court is satisfied that substantial injustice requires its own regulation to be waived or any slip to be remedied, it will interfere for that purpose and dispense with the strictness of its rules, except where a matter is directly regulated by an act of Parliament or Decree as the case may be'

Clearly the instant matter does not involve non-compliance with the Rules of practice and procedures of the Courts of Sierra Leone. It involves non compliance with a Constitutional Instrument arising out of an enactment and passed by Parliament pursuant to a power given to an authority by an Act of Parliament, the same which seems to be an exception to the rule propounded by G. GELAGA-KING JA in the case above, that the courts will intervene and dispense with the strictness of its rules if satisfied that substantial justice requires its own regulation to be waived or any slip to be remedied. In this regard and following the decision of the Supreme court in the case between JOHN OPONJO BENJAMINE & OTHERS and DR. CHRISTIANA THORPE & OTHERS cited above, this Court holds the view that the case between MOSES KONDOWA & ANOTHER and AUREOL TOBACCO COMPANY & ANOTHER cited above, is inapplicable and cannot be relied on in order for this court to ignore non-compliance with Rules 12(1) and 12(3) of the ELECTION PETITION RULES aforesaid and grant the orders sought herein.

A SHOWERES ESQ. also in support of the Application herein and the grant of the orders sought herein relied on the case between GERTRUDE NAKABIRA LUBEGA and HON. MUYANJA MBABAALI Misc. Cause No. 008 of 2016 UGHCCD 52 in the High Court of Uganda at Masaka, where it was held that the court should exercise its discretion to extend the time within which to file an Election Petition based on the principal arguments that the Applicant was prevented from filing an election Petition in time against the Respondent due to inadvertent oversight of her former Counsel and on the argument that an Election Petition concerns the Public interest and it is

just and equitable that any allegation of electoral malpractice is subjected to a fair trial and determined on merits.

As stated above and from the facts as presented, the Petitioner/Applicant did not give any reason whatsoever for her non-compliance with Rule 12(1) of the ELECTION PETITION RULES aforesaid requiring service of the Petition herein dated 18th July 2016 within five(5) days of its presentation. Clearly non-compliance aforesaid was not due to a mistake or to an inadvertent oversight of the Solicitor for the Petitioner/Applicant. All what the Petitioner/Applicant claimed was that her non-compliance with Rule 12(3) of the ELECTION PETITION RULES aforesaid requiring the filing of an Application for substituted service of the said Petition dated 18th July 2016 within eight(8) days, if personal service of the said Petition could not be effected was due to her Solicitors illness. In this regard this Court holds the view that the case between GERTRUDE MAKABIRA LUBEGA and HON. MUYANJA MBABAALI cited above is inapplicable to the circumstance herein and cannot be relied on in order for this court to ignore non-compliance with Rule 12(1) and Rule 12(3) of the ELECTION PETITION RULES aforesaid and grant the orders sought herein.

As regards the Courts decision in the case between GERTRUDE MAKABIRA LUBEGA and HON MUYANJA MBABAALI cited above, that the court should exercise its discretion to extend the time within which to file an Election Petition based on the argument that an Election Petition concerns the Public interest and it is just and equitable that any allegation of electoral malpractice should be subject to a fair trial and determination of it on its merits, it should be re-iterated that Rules 12(1) and 12(3) aforesaid are mandatory provisions contained in the ELECTION PETITION RULES 2007 and nothing contained in the said Rules or in the ELECTION PETITION RULES aforesaid or in any other enactment gives this court discretion to extend or abridge time within which an act is required to be done in accordance with Rule 12(1) and Rule 12(3) aforesaid. As stated above, this Court had held the view earlier that it is bound to apply the above rules very strictly and that unless or until it is so stipulated in the ELECTION PETITION RULES aforesaid for the Courts to extend or abridge time within which an act is required to be done, the Courts are bound to keep within the time limits stipulated therein. The case between H.M. KANAGBO & others and M.J. KAMANDA BONGAY cited above was referred to. This Court earlier as stated above, upheld the submission made by A. SHOWERS ESQ. of Counsel for the Petitioner/Applicant that, the intentions of the legislature to impose short time limits as contained in Rules 12(1) and 12(3) aforesaid was to ensure that disputes concerning election of peoples representatives are settled expeditiously and without undue delay. Having this in mind, this Court holds the views that if it were to start extending time limits amidst the legislature's intention aforesaid, the consequences will be counter productive to ensuring the legislatures intentions of speedy trials of Election petitions.

10
This court holds the view that the legislatures intentions of imposing strict application of the said rules are also to ensure that all affected parties who are aggrieved by the conduct of an election, come to Court speedily and within certain time limits so that their issues are expeditiously dealt with without the Courts being bugged down with Applications for extension of time and thereby preventing the smooth running of the business of Government. This court holds the views further that it would be a bad and dangerous precedent to start entertaining and granting extensions of times within which certain acts are required to be done on issues of Election Petitions. If the courts were to do this, one envisages a situation where, for the whole period within which an elected representative would have to serve its people, the business of running Government would be marred by Election Petitions.

In the circumstance, the case between GERTRUDE MAKABIRA LUBEGA and HON. MUYANJA MBABAALI cited above is inapplicable in the circumstance and cannot be relied in order for this Court to ignore non-compliance with Rules 12(1) and 12(3) of the ELECTION PETITION RULES aforesaid and grant the orders sought herein. Moreover it should be pointed out that the case between GERTRUDE MAKABIRA LUBEGA and HON. MUYANJA MBABAALI cited above was a decision of the High Court of Uganda, a Court which has concurrent jurisdiction as this Court, which is not bound by decisions of that Court. It stands to reason that if this Courts were to uphold the decision of the case between GERTRUDE MAKABIRA LUBEGA and HON. MUYANJA MBABAALI cited above, then it would be deviating from the decision of the Supreme Court in the case between JOHN OPONJO BENJAMINE & others and DR. CHRISTIANA THORPE & others cited above, in breach of the fundamental principle of 'STARE DECISIS' which stipulates that this court must abide by and is bound to follow the decisions of the higher courts, they being the Appeals Court and the Supreme Court.

By reason of the above, the grant of the order for this court to enlarge the time within which the Petitioner/Applicant herein shall serve the Petition herein dated 18th July 2016 on NAVO KAI KAI THE NATIONAL ELECTORAL COMMISSION, THE NATIONAL RETURNING OFFICER and THE KAILAHUN DISTRICT RETURNING OFFICER, the Respondents herein or the grant of the order that this Court holds that service already effected on the said Respondents though effected out of time be considered regular is hereby REFUSED.

All that remains to be addressed is the fact that having refused the said orders sought on the face of the Notice of Motion dated 27th September 2016, this Court is left with a Petition herein dated 18th July 2016 and the determination of its status to the proceedings herein, the pertinent question being, should this Court strike out the said Petition. In his ^{Prayers} ~~submissions~~ herein H. M. GEVAO ESQ. of Counsel for the 1st

Respondent has asked for the said Petition to be struck out, the same which was not done by way of a separate and distinct Notice of Motion or Summons from the one filed herein as was done in the case between JOHN OPONJO BENJAMINE & others and DR. CHRISTIANA THORPE & others cited above. Should this Court in the circumstance only consider this issue of striking out the said Petition dated 18th July 2016 by addressing same pursuant to a separate Application filed in that regard. This Court holds the view that should this question be answered in the affirmative, it envisages that the arguments would substantially be the same as the ones contained herein, the same which would entail substantial costs and this Courts waste of time particularly so when, even if an application to strike out the said Petition dated 18th July 2016 were refused, the said Petition would still be worthless considering this Courts ruling herein refusing to grant the orders sought above. This Court holds the view that having ruled as above it is consequential that the said Petition dated 18th July 2016 be struck off. Moreover the same could be struck off as a further or other order as was prayed for herein on the face of the Notice of Motion dated 27th September 2016 aforesaid. Accordingly it is hereby ordered as follows: -

1. That the Petition herein dated the 18th July 2016 and annexed to the affidavit of HAJA NASRATU JALLOH sworn to on the 27th September 2016 and marked Exhibit 'HNJ 1' is hereby STRUCK OUT.
2. That Respondents herein are awarded the cost of the proceedings herein, the same which shall be borne by the Petitioner/Applicant herein to be taxed if not agreed upon.
3. That the Notice of Motion dated 4th October 2016 is hereby struck off the records

AB Halloway JA

HON. MR. JUSTICE ALLAN B. HALLOWAY JA

Delivered this 11th day of November 2016