

EP 8/2018

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NO.1

IN THE HIGH COURT OF SIERRA LEONE
(GENERAL CIVIL DIVISION)

GENERAL PARLIAMENTARY ELECTIONS FOR CONSTITUENCY 121, WESTERN URBAN
DISTRICT IN THE WESTERN AREA OF THE REPUBLIC OF SIERRA LEONE
HELD ON THE 7TH DAY OF MARCH 2018

THE PETITION OF ABDUL MUNIRU LANSANA OF CONSTITUENCY 121, WESTERN URBAN
DISTRICT, OF THE REPUBLIC OF SIERRA LEONE WHOSE NAME IS SUBSCRIBED.

BETWEEN

ABDUL MUNIRU LANSANA
11 KISSY BROOK OFF BLACK HALL ROAD
FREETOWN

PETITIONER

AND

AHMED MANSARAY
3 WRIGHT STREET
KANIKAY
FREETOWN

1ST RESPONDENT

AND

THE NATIONAL ELECTORAL COMMISSION
TOWER HILL
FREETOWN

2ND RESPONDENT

AND

THE NATIONAL RETURNING OFFICER
THE NATIONAL ELECTORAL COMMISSION
TOWER HILL
FREETOWN

3RD RESPONDENT

AND

THE REGIONAL COMMISSIONER
THE NATIONAL ELECTORAL COMMISSION
WESTERN URBAN DISTRICT
TOWER HILL
FREETOWN

4TH RESPONDENT

COUNSEL:

M.MEWA ESQ, I KANU ESQ, J KALLON ESQ, JJ CAMPBELL ESQ, FOR THE PETITIONER

A.S. SESAY ESQ, B KOROMA ESQ, R.A. NYLENDAR ESQ, FOR THE 1ST RESPONDENT

B.E.T. CUMMINGS ESQ, FOR THE 2ND 3RD, 4TH RESPONDENTS

JUDGEMENT DELIVERED ON THE 31ST DAY OF MAY 2019

The Petitioner filed a Petition against the Respondent in respect of the General Parliamentary elections for constituency 121 Western Urban District in the Western Area of the Republic of Sierra Leone held on the 7th of March 2018.

The Petitioner in the said Petition dated the 9th day of April 2018 prays for the following reliefs:

- i. A Declaration that AHMED MANSARAY of the ALL PEOPLE'S CONGRESS was not duly elected or returned as Member of Parliament for constituency 121 aforesaid.
- ii. A declaration that **ABDUL MUNIRU LANSANA** being second in line, be declared or returned as Member of Parliament for Constituency 121.
- iii. The election of the 1st Respondent as Member of Parliament be declared null and void.
- iv. An interlocutory injunction restraining all statutory and other Authorities and/or Officials from swearing in the said **AHMED MANSARAY** as member of Parliament or taking up his seat in parliament until the hearing and determination of this petition.

✓
Trial in this matter was conducted by way of affidavit evidence pursuant to section 35 sub section (1) of The Election Petition Rules 2007 which clearly state.

"subject to this rule, all evidence which would otherwise have been given viva voce at the trial of an election petition shall be by affidavit evidence."

THE PETITIONER'S CASE

The pith and substance of the petitioner's case is that the 1st Respondent is in flagrant violation of **Section 76 sub Section 1 b of the constitution of Sierra Leone Act No.6 of 1991**. M. Mewa Esq, Learned Counsel for the Petitioner argued that the 1st Respondent was in Public service under twelve months at the time of the elections in March 2018. He relied on paragraph 6 of the affidavit in support of the application sworn to by the 1st Respondent and placed reliance on exhibit AML3 which is a pay slip indicating that the 1st Respondent collected salary up to December 2017. Counsel submitted that the case of **ROGERS WRIGHT ALRSL SERIES 1937-49** is significant in this case in that, it shows that where a candidate is disqualified by law to contest an election, if he does and wins such election is void abinitio. He also referred to the case to **SAM MCARTHY AND**

ANSU LANSANA, in support of his argument. Counsel further argued in his reply that no administrative proceedings can oust the proceedings of the High Court. As regards **Section 63 of the Public Election Act 2012**, he stated that the Petitioner is not precluded from invoking the jurisdiction of the High Court where there is an infringement of a constitutional provision.

CASE FOR THE 1ST RESPONDENT

Learned Counsel for the 1st Respondent A.S. Sesay Esq, argued that the Petitioner had the opportunity to object to the nomination of the 1st Respondent but he failed to do so. He stated that such failure shows that he slept on his right and is therefore prevented from approaching the court. He referred to Section 63 of The Public Elections Act No. 4 of 2012 to argue that the procedures laid down for objection to a candidacy are clear. He submitted that the objection under section 63 of the Public Elections Act 2012 and section 76 (1) of the constitution cannot be treated separately. He further submitted that the fact that the Petitioner did not object to the nomination prior to the instant objection raised in court by way of petition shows that the Petitioner has acquiesce to the entire process and the election of the 1st Respondent.

ISSUES FOR DETERMINATION

The petition hinges exclusively on the provisions of section 76 1 (b) of the constitution of Sierra Leone Act No. 6 of 1991. It state.

"No. person shall be qualified for election as a member of parliament".

(b) if he is a member of any commission under this constitution, or a member of the Armed Forces of the Republic or a Public Officer, or an employee of a Public corporation established by an Act of Parliament, or has been such a member, officer or employee within twelve months prior to the date on which he seeks to be elected to parliament."

The said provision is very clear and unambiguous. It means persons who fall within the said category in terms of employment are disqualified from serving as Member of Parliament. In essence they cannot be nominated for elections as Members of Parliament. Exhibit AML2 is a National Social Security and Insurance Trust Member Contribution Statement, showing that the 1st Respondent whose social security number is **W3101196801260053** was an employee of **Nassit** and collected salary up to December 2017. Such evidence has not been controverted in any way. The institution the 1st Respondent worked for is clearly established by an Act of Parliament.

That fact that the 1st Respondent is a public officer is unquestionable. This is a fact that has not being controverted.

The argument that the petitioner slept on his right is untenable for the purposes of this petition. Section 63 of the Public election Act of 2012 merely state the mode of objection that ought to be raised to the candidacy of any contestant. It does not preclude the petitioner or any person from filing a petition in the High Court. Where there is a grave constitution infraction as in the instant case, the petitioner is not and cannot be prevented from raising such so as to prevent the continuation of such violation. The Constitution is sacrosanct and its provisions must be respected and obeyed at all times. It should not be slaughtered or mutilated in whatever circumstance. It is the grund norm from which every other law derives its authority or legitimacy.

In the matter of re an election petition and **RE ROGERS-WRIGHT (CIVIL CASE NO. 318/48 ALR)** judgement delivered on 6th December 1948, it was held that where a contestant is disqualified by virtue of any statute even where he wins, such elections shall be declared void by reason of the undue return of a disqualified person. I wholehearted endorse the said position of the law and apply same mutatis mutandis.

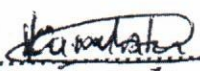
I shall also mention the case of **HONOURABLE MOHAMED SALISU A. ALWA'U AND PEOPLES DEMOCRATIC PARTY V ABBAS M. YAKUBU AND OTHERS** CA/K/EP/SHA/30/2003-Weekly Reports of Nigeria 26th January 2004, to buttress the fact that once an Aspirant or Respondent as in the instant case is disqualified by virtue of a legislation, his election ought to be declared void abinitio.

In essence where such disqualification exists there is noting the court can do other than to declare the 1st Respondent's election null and void abinitio.

It is relevant to underscore the fact that in parliamentary election political parties in particular and the contestants should know that they are under a duty to ensure that candidates are in full compliance with the laws relating to the election.

As I have stated, the evidence that the 1st Respondent was an employee of Nassit, an institution created by statute, and that he received salaries at the time of his nomination is overwhelming and uncontroverted. He is in flagrant violation of Section 76 Sub Section 1 b of the Constitution. In the circumstance I order as follows:-

1. That the 1st Respondent was not duly elected or returned as Member of Parliament for constituency 121 Western Area of the Republic of Sierra Leone.
2. That the petitioner **ABDUL MUNIRU LANSANA** is declared Member of Parliament for constituency 121 aforesaid.
3. The election of the 1st Respondent as Member of Parliament for constituency 121 aforesaid is null and void.
4. The 1st Respondent shall pay salary, allowances, emoluments received as Member of Parliament into the consolidated fund within Thirty days of this order and evidence of such payment shall be submitted to the Master and Registrar of the High Court.
5. The Master and Registrar shall forward receipt of such payment to the court.
6. Costs of this petition is to be borne by the 1st Respondent and such to be taxed.

SIGNED: 

HONOURABLE JUSTICE KOMBA KAMANDA J.