

EP 4/2018

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NO.2

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

GENERAL PARLIAMENTARY ELECTIONS FOR CONSTITUENCY 127, WESTERN URBAN
DISTRICT IN THE WESTERN AREA OF THE REPUBLIC OF SIERRA LEONE
HELD ON THE 7TH DAY OF MARCH 2018
THE PETITION OF JOHN TELSON JOHN OF CONSTITUENCY 127, WESTERN URBAN
DISTRICT, OF THE REPUBLIC OF SIERRA LEONE WHOSE NAME IS SUBSCRIBED.

BETWEEN

JOHN TELSON KOROMA
65 GEORGE BROOK
11 KISSY BROOK OFF BLACK HALL ROAD
FREETOWN

- PETITIONER

AND

SIRAJIN MUNIRR ROLLINGS KARAMA
11 SMART LANE
NEW ENGLAND
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. 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 Petition against the Respondent in respect of the General Parliamentary elections for constituency 127 Western Urban District is for the following reliefs:

1. That the election of MR. SIRAJIN MUNIRR ROLLINGS KAMARA of the ALL PEOPLES CONGRESS be declared null and void.
2. Determination that MR. SIRAJIN ROLLINGS KAMARA of the ALL PEOPLES CONGRESS was not duly elected or returned as member of parliament for constituency 127 aforesaid.
3. An interlocutory injunction restraining all statutory and other authorities and/or officials from avoiding MR. SIRAJIN MUNIRR ROLLINGS KAMARA of the ALL PEOPLES CONGRESS from taking up his seat in parliament until the hearing and determination of this application.

Learned Counsel for the petitioner M.Mewa Esq. relied on the various affidavits sworn to by John Telson Koroma on the 17th August 2018 and those sworn to by Serie Vamboi and J. Fobbie to argue that the 1st Respondent perpetuated violence by leading a gang who assaulted and intimidated his supporters. He relied on paragraphs 4, 5, 6, 7, 8, of the affidavit of the petitioner in which he narrated graphic acts of violence

perpetuated by the 1st Respondent. The Petitioner also relied on a police medical report marked exhibit C which contains a report of assault against the 1st Respondent and some of his supporters. The petitioner also averred that there was wide spread malpractices and that a recount was ordered in cases where RRForms were not produced. Counsel argued that in the instant application RRForms were not exhibited by NEC which shows that the Petitioner's complaint is justifiable. He emphasised that the RRForms were never given to them.

The 1st Respondent in his reply denied the allegations. Learned Counsel for the 1st Respondent relied on the affidavits of Sirajin Munirr Rollings Kamara, Denis Abioseh Dove, all sworn to on the 31st October 2018. He also referred to the affidavits of Hawa Conteh and Mahoney Ansue. He urged the court to discountenance the allegation of assault on the basis that it was not pleaded in the petition. He relied on order 21 rule 10 of the High Court Rules 2007. Counsel further argued that there is no evidence of an incident report, neither is there evidence that the 1st Respondent was charged to court

As regards malpractices and irregularities complained of, the Respondent denied the allegations contained in the Petition. Counsel referred to Section 88 and 89 of the Public Elections Act 2012 to submit

that the Petitioner was present throughout the counting of ballot papers but did not raise any objection neither did he call for a recount. Also counsel argued that paragraph 8 of the affidavit in support of the petition filed by the Petitioner is baseless on the grounds that, the alleged Mammy Queen who was referred to as involving in malpractices was never reported to the police.

The 2nd , 3rd and 4th Respondents relied on the affidavits sworn to by Mahoney Ansu and Hawa Conteh on the 21st September 2018. They completely deny the allegations set out in the Petition. Learned Counsel for the 2nd , 3rd and 4th Respondents B.E.T Cummings Esq. argued that the 2nd Respondent conducted a recount in polling centres 16183, 16192, 16194 and 16191 and that there were no variations between the original result and that, the candidate was present and satisfied with the process. As regards, the allegation of missing RRForms Counsel argued that there is no such evidence and therefore submitted that the burden of proof is on the petitioner through concrete evidence to show that there were missing RRForms.

In my view, the petition contains two main allegations which are, electoral malpractices involving irregularities and intimidation to wit violence. The petitioner averred that there were noticeable irregularities

to wit: a hundred percent (100%) turn out at Dwarzack Community Centre and St. Augustine Primary School, a recount of the results which were inconsistent with those of the RRForms. Are these averments touching and concerning irregularities substantial so as to change the complex of the elections, in terms of the overall results? The Respondents in their affidavits have completely denied the allegations contained in the petition.

The general trend in election petition matters which are a specie on its own, is that he who alleges infractions, malpractices has the burden to prove his case. In the instant case the Petitioner through legal submissions and arguments stated that some RRForms were not given to him or in some other cases he refused to sign same on grounds of irregularities. If that is the allegation as in the instant case, it behoves a statutory body NEC to produce documents in their custody so as to rebut the allegations of the petitioner. It is not just enough for them to rely on the normal trend that the petitioner who alleges must prove by producing documents that may not be in his custody. A statutory body upon whose trust reliance is placed to manage free, fair and credible elections should not be partisan but more interested in the justice of the case than in its outcome.

The petitioner placed heavy reliance on the issue of violence and intimidation which he stated prevented his voters from voting and or causing others to vote for the 1st Respondent. There is evidence of violence and intimidation perpetrated by the 1st Respondent and his agents which is narrated in paragraphs 5, 6, 7, 9, 10 of the affidavit of the petitioner. This is corroborated by the police medical report. In these paragraphs the Petitioner averred that ***"the 1st Respondent led a gang of thugs who assaulted one Madam James, centre manager of the Sierra Leone Peoples Party. He then removed every representative of the Sierra Leone Peoples Party from the polling station and barricaded himself inside the polling station with his thugs. He also turned the attention of his thugs on me and I was also brutally assaulted"***. These are very serious allegations. In my view, the Respondent did not sufficiently controvert the allegations of wide spread violence and intimidation. Counsel for the Respondents unsuccessfully attempted to controvert such evidence by stating that 1st Respondent was not charged to court. It must be noted that the issue of charging an individual to court is purely the prerogative of the state and that is the police. Failure to charge the 1st Respondent to court does not in any way show that the Petitioner and his supporters were not

assaulted or intimidated. The evidence of intimidation resulting to assault against the 1st Respondent is overwhelming. Such conduct is reprehensible and regarded as a cause for an election result to be declared void. This is recognised by section 147 of The Public Elections Act 2012. It provides.

“where on an election petition or in a prosecution for an election offence under this Act, it is shown that the offence committed in

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reference to the election for the purpose of proposing or procuring the election of a person has so extensively prevailed that it may be reasonably supposed to have affected the result his election, if he has been elected shall be declared void by the court in addition to any other penalty that may be imposed by the court.”

In view of the complaint of intimidation and assault by the 1st Respondent on the day of the elections, the court also took judicial notice of the conduct of the 1st Respondent in the court room. During the trial, he interrupted the proceedings by insisting that the Court Registrar should call him Honourable. He was arrogant and belligerent. Such conduct inside the court room speaks volume about the conduct of the

1st Respondent in general. I must state that the court have always maintained that the evaluation of the evidence at any given stage is the sole function of the trial court that had the privilege of seeing, hearing and assessing witness and his demeanours as he testifies. This position of the law was affirmed in the case of **SALAKO V ALAO 1994 8 NWLR (P.T. 360) 47**. However in an election petition case that only requires affidavit evidence, the conduct of the parties, who may have sworn to an affidavit, must be considered seriously.

The Court also takes judicial notice and is not oblivious of the level of violence that is normally perpetuated by persons associated with political parties before during and even after the elections.

It is relevant to underscore the fact that a position of a member of parliament is a coveted and highly respected one. Those who aspire for same must be persons of impeccable character who should not adore violence or other anti-social behaviour. It is therefore imperative that the court sends a strong message that violence and intimidation as shown by the conduct of the 1st Respondent and his agents could not be tolerated in a peaceful and democratic society.

In the instant case based on the evidence, there was wide spread intimidation and violence perpetrated by the 1st Respondent and his agents or thugs which clearly affected the generality of the result in constituency 127. These unlawful acts may have either forced voters to vote in favour of the 1st Respondent or prevented them from voting. In

view of this unwarranted action of the 1st Respondent and taking into consideration the precedent laid down by the High Court in the case of

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and others and particularly the justice of the case I order as follows:-

1. That the election of **SIRAJIN MUNORR ROLLINGS KAMARA** the 1st Respondent is declared null and void.
2. That the Petitioner **JOHN TELSON KOROMA** be declared winner of the General parliamentary elections for constituency 127 Western Urban District in the Western Area of the Republic of Sierra Leone held on the 7th March 2018.
3. Each party to bear its costs.

SIGNED: 

HONOURABLE JUSTICE KOMBA KAMANDA J.