

IN THE HIGH COURT OF SIERRALEONE

GENERAL CIVIL DIVISION

GENERAL /PARLIAMENTARY ELECTIONS FOR CONSTITUENCY 116 IN
URBAN WESTERN AREA OF THE REPUBLIC OF SIERRA LEONE HELD
ON THE 7TH DAY OF MARCH 2018

BETWEEN

EMMANUEL SAHR GBEKE - PETITIONER

18 WHYSE MOORE STREET

PORTEE

FREETOWN

AND

HON. HARIYATU ARIANA BANGURA - 1ST RESPONDENT

ABDULAI LANE

PORTEE

FREETOWN

THE NATIONAL ELECTORAL COMMISSION – 2ND RESPONDENT

TOWER HILL

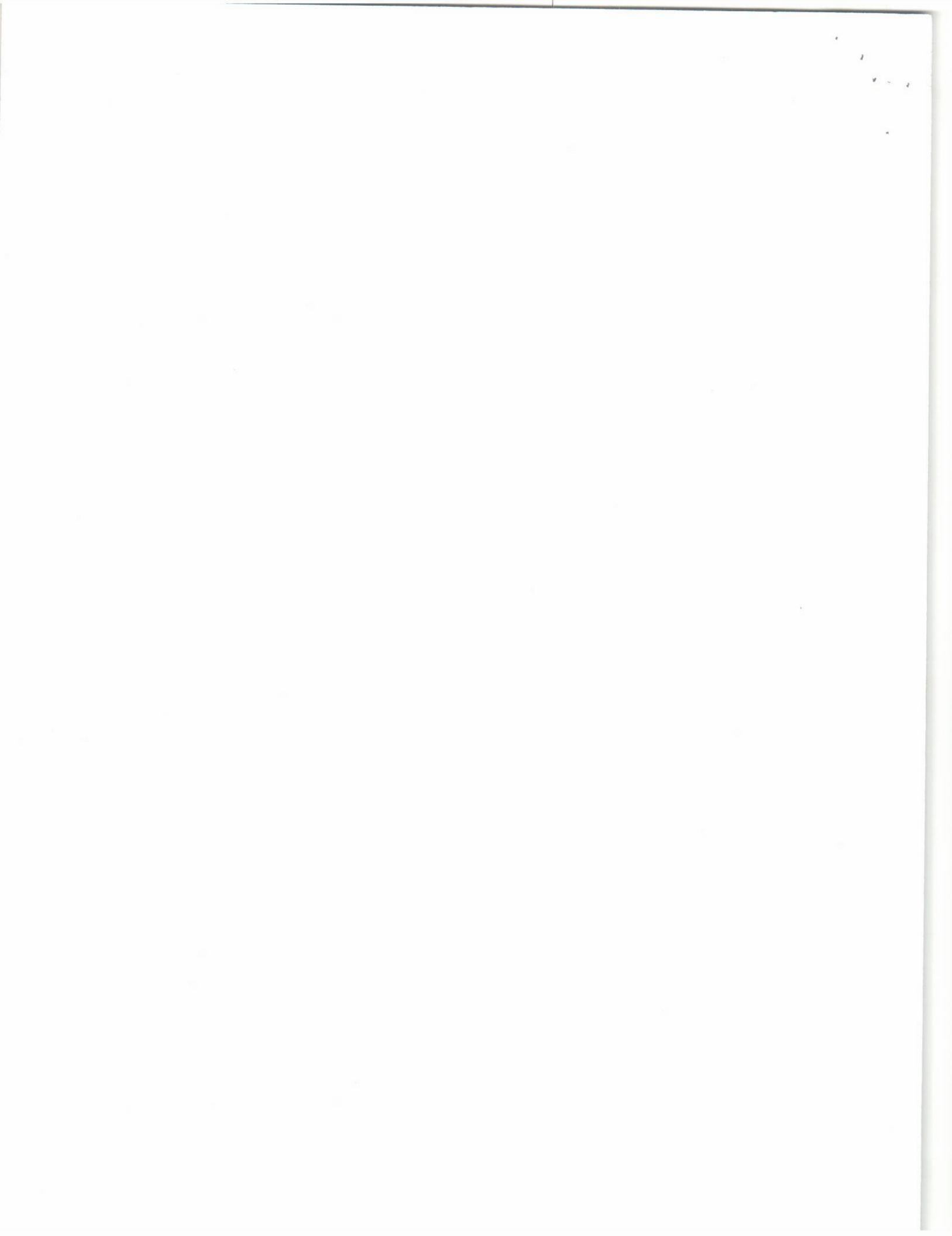
FREETOWN

NATIONAL RETURNING OFFICER - 3Rd RESPONDENT

NATIONAL ELECTORAL COMMISSION

TOWER HILL

FREETOWN



THE REGIONAL COMMISSIONER

– 4TH RESPONDENT

THE NATIONAL ELECTORAL COMMISSION

WESTERN URBAN DISTRICT

FREETOWN

Counsels for the Petitioner – I. Kanu, J. J. Campbell, C. Sawyer and I.F. Sawaneh

Counsels for the 1st Respondent- A. Macauley and B.Koroma

Counsel for the 2nd, 3rd, and 4th Respondent – D. E. Taylor

Before the Hon. Mr. Justice Mohamed Alhaji Momoh-Jah Stevens J.

Judgment dated the 31st day of May 2019

The Petitioner herein, Emmanuel Sahr Gbeke, stood as a Parliamentary Candidate for the Sierra Leone People's Party in the 7th March 2018 General / Parliamentary Elections for Constituency 116 Western Urban District of the Republic of Sierra Leone, filed Petition dated the 24th day of April 2018 against the 1st Respondent herein, Hon. Hariyatu Ariana Bangura.

The Petitioner herein avers that the 1st Respondent herein being a worker of the Anti-Corruption Commission had not resigned her position from the said Commission and she was receiving salary within twelve months from the Consolidated Fund, and nevertheless stood as a Parliamentary Candidate in the 7th March 2018 General/Parliamentary Elections for the All People's Congress and was returned by the National Returning Officer as duly elected Member of Parliament, Constituency 116, Western Urban.

By virtue of Section 35 of the Election Petition Rules 2007, this trial shall be conducted by Affidavit evidence.

The Affidavit in Support of the Petition, dated the 10th September 2018, the Petitioner deposed inter alia that it came to his knowledge

that the 1st Respondent did not resign her position as an employee of the Anti-Corruption Commission twelve months prior to the General /Parliamentary Election of 7th March 2018. The Petitioner further deposed that the 1st Respondent received salary up to the 23rd March 2018 and in this regard exhibited –ESG 8. The Petitioner further submitted GSG 10 giving official information of the 1st Respondent from the Anti-Corruption Commission.

The 1st Respondent on the other denied every allegation made in the said Affidavit of the Petitioner , in the Affidavit in Opposition deposed to by herself dated the 20th September 2018 and stated that among other things that she had resigned 6th day of March 2017, and exhibited HAB 3 in that respect.

Lead Counsel for the Petitioner, J.J Campbell Esq. made legal submission in Court in support of the Petition dated the 10th day of September 2018 deposed to by the Petitioner herein. Counsel for Petitioner briefly stated that the 1st Respondent must be disqualified as a Member of Parliament because she was still receiving salary up to the 23rd April 2018 as exhibited in ESG 8 from the Consolidated Fund contrary to Section 76 (1) (b) of the 1991 Constitution of Sierra Leone.

Lead Counsel for the 1st Respondent, A Macauley Esq. also made legal submission in support of the Affidavit in Opposition deposed to by the 1st Respondent herein. According to A. Macauley, they relied on the Affidavit deposed to by the 1st Respondent and all the Exhibit attached thereto since they are vehemently opposing the Petition. Counsel for 1st Respondent discountenance the entire exhibits in the Affidavit in Support of the Petition deposed to by the Petitioner as there is nothing showing from same that the 1st Respondent was receiving salary up to April 2018. Mr A. Macauley further stated that the purpose of Section 76() b is to step down a year before the Election and his client step down on the 6th March 2017. A. Macauley epitomised his objection in three areas: First, the 1st Respondent did

not offend the provision of Section 76 (1)(b) of the 1991 Constitution. Second, The Petitioner did not object to the Candidature of the 1st Respondent, because under Section 63 of the Public Election Act 2012 an objection must be made by the Petitioner before 5pm on Nomination Day and you do not come to Court as a first instance. The third point is, this Court lacks jurisdiction to interpret Section 76(1) (b) of the 1991 as it is case for the Supreme Court. A. Macauley eventually requested for the matter to be transferred to the Supreme Court. I however overruled A. Macauley for this matter to be transferred to the Supreme Court since this Honourable Court has jurisdiction to hear and determine this Petition.

Counsel for 2nd, 3rd and 4th Respondents, made reference to Section 63 of the Public Election and stated the procedure for objection to a Parliamentary Candidate. I will not listen to Counsel because his clients 2nd, 3rd, and 4th Respondents failed to file Affidavits in reply.

Counsel for the Petitioner cited further the case of In Re An Election Petition and In Re Rogers-Wright December 6th 1948 (Civil Case NO. 318/48), where it established by the Court that 'any lawyer or doctor currently or previously debarred from practising not eligible for election into Legislative Council'. Also the case of Alwa'u v. Yakubu (2004) 4 W.R.N. In this case two principle of law was established by the Court, First 'no person shall be qualified to be elected a member of the House of Assembly if a person employed in the Public Service of the Federation has not resigned or retired from such employment thirty days before the date of election'. Second, an 'unreliable letter of resignation should not be allowed to form the basis of withdrawal of service'.

Counsels representing the 1st Respondent submitted to this Court a document entitled ' 1st RESPONDENT SUBMISSION' signed by Counsel himself dated the 10th day of May 2018.

For me the issue for determination is very clear and unambiguous. From the evidence and exhibits cited it is clear that the 1st Respondent did resign prior to the election. But the question is was it a genuine resignation, for me the answer is in the negative. For this I reference Exhibit ESG 8 which clearly indicates that the 1st Respondent did receive salary from the Consolidated Fund up to the 23rd day of April 2018, after she has written a purported letter of resignation. That by itself I humbly submit is a criminal Offence.

In the English case of R V. Leatham (1861) 8 Cox C.C. 498 at p. 503 regarding the admissibility of evidence, it was held by the Court, "it matters not how you get it, if you steal it even, it would be admissible in evidence". I will not border to ask the Petitioner how he got the said Exhibit ESG 8 but to receive same in evidence as it qualifies the standard of admissibility of evidence. I also agree with the position of the Court in the Alwa'u case cited above and here say that the Letter of Resignation Written by the 1st Respondent was a deceitful Letter because she continues to receive salary from the Consolidated Fund up to the 23rd April 2018.

The Constitution of Sierra Leone Act NO. 6 of 1991 is the Supreme Law of this Country pursuant to Section 171(15) thereof, and I quote; 'this Constitution shall be the supreme law of Sierra Leone and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency be void and of no effect'.

I submit humbly, if Section 63 of the Public Election Act 2012 was not complied with, has no effect in view of Section 78 (1)a of the 1991 Constitution of Sierra Leone, which gives jurisdiction to this Honourable Court to hear and determine persons who are validly elected as Members of Parliament. So, it follows, nothing can stop a claimant from contesting the election of someone returned duly elected, just after the said declaration because of the supremacy of

the Constitution of Sierra Leone which do not place any limit on a claimant in that regard. If I give credence now to Section 63 of the Public Election Act 2012, I here say 'Equity would have been used as a cloak for fraud'.

In the light of the evidence before the Court I hereby enter Judgment in favour of the Petitioner and I make further orders thereto, as follows:

- 1- The 1st Respondent has not been validly elected as a Member of Parliament for Constituency 116 Western Urban, Western Area of the Republic of Sierra Leone because the said Hariyatu Ariana Bangura was receiving salary up to 23rd April 2018 contrary to Section 76(1) b of the 1991 Constitution of Sierra Leone Act N0.6 of 1991.
- 2- This Honourable Court orders that the 7th March 2018 General/Parliamentary of Hariyatu Ariana Bangura of the All People's Congress, Constituency 116, Western Area, is declared null and void in line with Section 78 (1) a of the Constitution of Sierra Leone Act No.6 of 1991. as being a person receiving salary from the Consolidated Fund failed to resign in good faith twelve months before the 7th March 2018 General/Parliamentary Elections
- 3- This Honourable Court orders the 1st Respondent to pay back the monies she has been receiving as salary from the date of the said purported resignation, into the Consolidated Fund immediately, otherwise is a case for the Anti-Corruption Commission to prosecute.
- 4- Now therefore in line with the "Sierra Leone Gazette published by Authority dated Tuesday, 10th April 2018 that deals with 'Declaration of Results For The Ordinary

Members of Parliament Elections held on the 7th March 2018 exhibited and marked ESG 3, the Petitioner herein, Emmanuel Sahr Gbokie of the Sierra Leone People's Party having secured the second highest vote in the said Elections, is hereby declared Honourable Member of Parliament for Constituency 116 Western Area.

5- No order as to costs

Stevens J.

Dated 31-5-2019

Signature [Handwritten Signature]