

IN THE HIGH COURT OF SIERRALEONE

GENERAL CIVIL DIVISION

GENERAL /PARLIAMENTARY ELECTIONS FOR CONSTITUENCY 111
WESTERN RURAL DISTRICT IN THE WESTERN AREA OF THE REPUBLIC
OF SIERRA LEONE HELD ON THE 7TH DAY OF MARCH 2018

BETWEEN

REV. HORACE E. VINCENT - PETITIONER

1 VINCENT DRIVE

ROKEL VILLAGE

FREETOWN

AND

JOHN SATTY KARGBO - 1ST RESPONDENT

DEEP EYE WATER

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, and C. Sawyer

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 May 2019

The Petitioner Reverend E. Vincent contested in the March 7th, 2018 Parliamentary and General Election as a Parliamentary Candidate for the Sierra Leone People's Party in Constituency 111 Western Rural District and the National Returning Officer in the said Elections declared John Satty Kargbo as being duly elected Hon. Member of Parliament for Constituency 111 Western Rural. The Petitioner thereafter filed a Petition in this regard dated the 20th day of April 2018 against the 1st Respondent.

The Petitioner herein avers among other things that on the Day of polling there were irregularities, vote buying and 1st Respondent colluding with National Electoral Commission's Staff.

The Petitioner therefore wants this Honourable Court to declare that John Satty Kargbo was not duly elected as a Member of Parliament and the said election be declared null and void.

The 1st Respondent on the other denies each and every allegation of fact contained in the Petition.

By virtue of Section 78 (1) a of the Constitution of Sierra Leone Act No. 6 of 1991 " The High Court of Sierra Leone shall have jurisdiction to hear any determine any question whether –

(a) Any person has been validly elected as a Member of Parliament
"

This Trial is to be heard and determined by Affidavit Evidence in line with Section 35 of the Election Petition Rules 2007.

The Petitioner deposed to Affidavit in support of the Petition herein dated the 10th day of September 2018. In same, the Petitioner sworn inter alia that he contested the 7th of March 2018 General Elections as a Parliamentary Candidate of the Sierra Leone People's Party. That the Election was marred with fraud as the 1st Respondent was seen giving monies and drinks to Staff of the National Electoral Commission. The Petitioner further said his vehicle was damaged, upon the instruction of the 1st Respondent, by his supporters, herein exhibited as HRV 1. Petitioner further exhibited that due to the massive over voting at Polling Centre no. 15096 at Yams Farm, NEC nullifies the result for Presidential but failed to do same for Parliamentary, herein exhibited as RHV2. The Petition ended up by deposing that if not for the said malpractices, intimidation and disorderly behaviour he would have won the election. The Petition therefore pray in aid for the said election to be nullified.

The sworn Statement of the Petitioner herein was supported by the Witness Statements of Tommy Stevens exhibited as RHV3, Mohamed Jabati exhibited as RHV4, Benedict Joseph Pratt exhibited as RHV 5, Amara Goddin Brima exhibited as RHV6 and Matta Martin exhibited as RHV7. I shall not pay any heed to Statements which are not in the form of Affidavits, but to look at the Petitioners Affidavit and exhibits attached thereto. Counsels for the Petitioner relied on the cases of Morgan and Others v. Simpson and another (1974) 3 All ER 722 and Gunn and others and Sharpe and others (1974) 2ALL ER1058. In the Morgan case, above, the Court declare an election result 'invalid because of irregularities'. I can draw a parallel here, the Petitioner exhibited RHV 2, where NEC cancelled votes cast for Presidential at Polling Centre 15096 but failed to cancelled same for Parliamentary.

Granted Parliamentary and Presidential are separate elections, but the elections were conducted the same day, so what should have been wise by NEC, was to ensure the cancellation runs across at Polling Centre 15096 Yams Farm. The fraud detected by NEC at this Polling Centre, I humbly submit, there is no way it can be disconnected from Parliamentary because, no doubt there were different boxes to cast vote, though separate and distinct, but they were located in the same room.

The 1st Respondent on his part filed an Affidavit in Opposition dated the 21st day of September 2018 in which he denied the allegations and averments contained in the Affidavit of the Petitioner herein. Alieu Kargbo deposed to an Affidavit dated the 21st day of September 2018 in support of the case of the 1st Respondent. Mariama Mohamed Kamara deposed to an Affidavit in Opposition dated the 21st September 2018 in support of the case of the 1st Respondent. Ahmed Deen Kamara deposed to an Affidavit in Opposition dated the 21st day of September 2018 in support of the case of the 1st Respondent. Abdulai Bangura deposed to an Affidavit in Opposition dated the 21st day of September 2018 in support of the case of the 1st Respondent. Aminata Kargbo of N0. 44 New York Junction, Yarms Farm, Western Area of the Republic of Sierra Leone deposed to an Affidavit in Opposition in support of the case of the 1st Respondent. Mohamed John Conteh of N0. 11 Market Road, Rokel in the Western Area of the Republic of Sierra Leone, deposed to an Affidavit dated the 24th day of September 2018 and the Exhibit attached thereto. Isha Kamara of N0. 48 Upper White Tank, Rokel, in the Western Area of the Republic of Sierra Leone deposed to an Affidavit in Opposition dated 24th day of September 2018 and Exhibit of her Voter I.D Card marked as 'IK 1'. Counsels for the 1st Respondent availed this Court with several legal persuasive authorities in defence of the case of the 1st Respondent. The following cases and authorities: Imar v. Malarima (1999) 3 NWLR 545, Law on the Burden of Proof by Justice

Arijit Pasayat, Babba v. Tafashiya (1999) 5 NWLR 469, Parliamentary Election, Representation and the Law by Caroline Morris, Wulgo v. Bukar (1999) 3NWLR 539, Alalade v. Awodoyin (1999) 5 NWLR 529, Remi v. Sunday (1999) 8 NWLR. Upon a very close perusal and appraisal of these persuasive authorities cited, each placed the burden on person alleging malpractices, over voting and irregularities, to prove same. Let me say that in the Affidavit evidence deposed to by the Petitioner herein, I am satisfied and I do believe in its credibility and authenticity.

In relation to the beautiful legal argument canvassed by the Counsel for the 2nd, 3rd and 4th Respondents, I shall pay no heed because his clients has not submitted any Affidavit in reply, so I am left with no option but to act with what is before me.

In the determination of Election Petition I humbly submit that the issue of miscarriage of justice in the electoral process, over voting, vote- buying at a Polling Station lies on the head of the Petitioner. I hereby say the burden does not shift. Reference can be drawn to a Criminal Trial for example where the Prosecution must prove the case of the Accused beyond reasonable doubt. This is a Standard principle of Law in the realm of criminal prosecution in the Commonwealth of nation's world-over. In the case of Alhaji Musa Dikko Kalgo v. Abdulai Magaji Kalgo and others (1999) LPELR -6527(CA), it was established by the Court that allegation of electoral malpractice should be prove by the Petitioner. I humbly submit the said allegation has been proved by the Petitioner because the Petitioner has produced in evidence document showing NEC cancelled the Presidential election in the Centre in issue.

The Petitioner herein has satisfied me and made out a case that the 7th March 2018 General Election was marred with Fraud, the 1st Respondent giving money and drinks to the National Electoral Commission Staff at Benevolent Centre, at Polling Station Centre Number 15095, ballot stuffing at Maranathan School at Deep Eye

Water, over voting at Faith Secondary School Polling Centre Number. 15096 at Yams Farm Ward 391.

I submit the allegations contained in the Affidavit in Support of the Petition deposed to by the Petitioner dated 10th day of September 2018 has been proved on a Balance of Probability. The 1st Respondent merely denied without evidence in rebuttal which a matter of must.

This judgment, in my humble submission, must really serve as a precedent because Democracy is a civilized Political practice wherein people must be given the free choice to elect their leaders. But to indulge in violence and intimidation must certainly not guarantee any person seat in our House of Parliament. The Petitioner was directly targeted by the 1st Respondent on the day of polling. This must stop in this Country as violence in Election must have no place in our history

I hereby in the circumstances entered Judgment for the Petitioner and I make additional orders thereto.

- 1- This Honourable Court affirms and uphold the Petition filed by the Petitioner dated the 20th day of April 2018
- 2- In accordance with Section 78(1) (a) of the Constitution of Sierra Leone Act N0.6 of 1991, the Election Result returned in favour of John Satty Kargbo by the National Returning Officer, National Electoral Commission, Tower Hill, Freetown, as Member of Parliament Constituency 111 , following the 7th March 2018 General/Parliamentary Election is declared null and void by this Honourable Court
- 3- There is a case of vehicle damage against the 1st Respondent, accordingly the 1st Respondent must be investigation and charged by the Police for Malicious Damage of the vehicle of the Petitioner. I advise the Petitioner to report to the Police

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 RHEV2, Horace Vincent 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 111 Western Area.

5- No order as to costs

Stevens J.

Dated- -----

Signature -----

31-5-2019

