

KOROMA v. MAYOR, ALDERMEN, COUNCILLORS and CITIZENS
OF FREETOWN

SUPREME COURT (Cole, Ag. C.J.): August 31st, 1964
(Civil Case No. 162/64)

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- 10 [1] **Civil Procedure—declaratory action—plaintiff's interest—action im-**
pugning subordinate legislation—plaintiff with substantial interest
may maintain action although public rights involved: In declaratory
proceedings challenging the validity of subordinate legislation, if the
plaintiff has a substantial interest in the proceedings that will be
sufficient to give him standing and he need not join the Attorney-
General as a party or prove special damage although public rights
or public duties are in question (page 105, lines 28–36).
- 15 [2] **Civil Procedure—declaratory action—plaintiff's interest—action in-**
volving construction of statutory provisions governing representative
body—elected representative may maintain action: An elected repre-
sentative on a local government body who institutes declaratory
proceedings necessitating the court's interpretation of statutory pro-
visions governing the body to which he is elected and the persons
he represents has a substantial interest in the proceedings entitling
20 him to institute them without joining the Attorney-General as a party
(page 105, line 38—page 106, line 10).
- 25 [3] **Civil Procedure—parties—action for enforcing public rights—special**
damage suffered by plaintiff—meaning of special damage: Special
damage sufficient to entitle a party to maintain an action to restrain
interference with a public right or compel the performance of a
public duty, without joining the Attorney-General as a party, is loss
measurable in pecuniary terms which arises from an injury distinct
in character from the inconvenience suffered by other members of the
public (page 105, lines 22–25).
- 30 [4] **Civil Procedure—parties—action for enforcing public rights—when**
Attorney-General is necessary party: In an action to restrain inter-
ference with a public right, whether committed or threatened, or to
compel the performance of a public duty, the Attorney-General is
a necessary party except (a) where interference with the public
right is at the same time an interference with some private right or
is a breach of some statutory provision for the protection of the
35 plaintiff and (b) where special damage is suffered over and above
that suffered by the general public though no special private right
is also interfered with (page 105, lines 13–21).
- 40 [5] **Civil Procedure — parties—action involving public rights—construc-**
tion of document or statute sought—plaintiff with substantial interest
need not join Attorney-General: Where the construction of a docu-
ment or statute is required of the court, if the plaintiff has a
substantial interest in the proceedings that will be sufficient to give

- him standing and he need not join the Attorney-General as a party or prove special damage although public rights or public duties are in question (page 105, lines 28-36).
- [6] Civil Procedure—parties—declaratory action involving public rights—action involving construction of statutory provisions governing representative body—elected representative may maintain action without joining Attorney-General: See [2] above. 5
 - [7] Civil Procedure—parties—declaratory action involving public rights—subordinate legislation impugned—plaintiff with substantial interest need not join Attorney-General: See [1] above. 10
 - [8] Civil Procedure—parties—improper party—action defective for want of parties—objection to be taken in pleadings, by preliminary objection or at trial: An objection that an action is defective for want of parties should be taken as soon as possible and this may be done either in the pleadings or by way of preliminary objection; but being an objection in point of law it may be raised at the trial (page 105, lines 4-9). 15
 - [9] Civil Procedure—parties—plaintiffs—declaratory action—action involving construction of statutory provisions governing representative body—elected representative may maintain action: See [2] above. 20
 - [10] Civil Procedure—parties—plaintiffs—declaratory action—subordinate legislation impugned—plaintiff with substantial interest may maintain action although public rights involved: See [1] above. 20
 - [11] Civil Procedure—pleading—objections—action defective for want of parties—objection to be taken in pleadings, by preliminary objection or at trial: See [8] above. 25
 - [12] Constitutional Law—legal officers—Attorney-General—necessary party to action for enforcing public rights: See [4] above.
 - [13] Constitutional Law—legal officers—Attorney-General—not necessary party to action seeking construction of statute or document though public rights involved: See [5] above. 30
 - [14] Constitutional Law—legal officers—Attorney-General—not necessary party to declaratory action by elected representative involving construction of statutory provisions governing representative body: See [2] above. 35
 - [15] Constitutional Law—legal officers—Attorney-General—not necessary party to declaratory action impugning subordinate legislation: See [1] above. 35
 - [16] Injunction—enforcement of public rights—local government body improperly constituted—discretion of court to hold back injunction expecting voluntary compliance with law: Where a court has declared that a local government body is not properly constituted because one 40

of its members has not been elected in accordance with the relevant statutory provisions, the court may nevertheless refrain from granting an injunction restraining the body from functioning until it is properly constituted if the court considers it to be a responsible body which would respect the decisions of the courts (page 112, lines 36-39).

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- [17] **Local Government—aldermen—aldermen of City of Freetown to be elected from both elected and appointed councillors:** Vacancies in the offices of aldermen on the Freetown City Council should be filled by election from among both elected and appointed councillors (page 111, lines 7-9).
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- [18] **Local Government—aldermen—alderman of Freetown ward not to be elected from councillors for another ward:** An alderman to represent a ward of the City of Freetown on the City Council should be elected from among the elected councillors for that ward or, failing such an election, from among the appointed councillors, but not from among the elected councillors for another ward (page 111, line 35—page 112, line 7).
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- [19] **Local Government—constitution—council improperly constituted if member's election contravenes relevant statute:** A local government council is not properly constituted if the election of one of its members is not in accordance with the relevant statutory provisions (page 112, lines 8-15).
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- [20] **Local Government—constitution—Freetown City Council—alderman for one ward not to be elected from councillors for another ward:** See [18] above.
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- [21] **Local Government — constitution — Freetown City Council properly constituted if alderman and three elected councillors represent each ward:** A ward of the City of Freetown may lawfully be represented on the City Council by an alderman and three elected councillors and the Council will not be improperly constituted by reason only that there are not four elected councillors to represent a particular ward (page 110, lines 20-26).
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- [22] **Local Government—constitution—number of appointed members on Freetown City Council:** The number of appointed members of the Freetown City Council at any one time may exceed six provided that not more than six of them are serving in their capacity as councillors and two of them are Africans (page 111, lines 12-17).
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- [23] **Local Government—legal proceedings—injunction—local government body improperly constituted—discretion of court to hold back injunction expecting voluntary compliance with law:** See [16] above.
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- [24] **Local Government — legal proceedings — proceedings against local government body—who may maintain proceedings—elected representative may maintain declaratory action involving construction of statutory provisions governing body to which elected:** See [2] above.

[25] **Local Government—representation—Freetown ward lawfully represented on City Council by alderman and three elected councillors:**
See [21] above.

The plaintiff brought an action against the defendants for declarations regarding the membership and constitutionality of the Freetown City Council and an injunction.

The plaintiff was an elected member of the Freetown City Council. The defendants were the Corporation of the City of Freetown. The plaintiff contended that each of the city wards should be represented on the council by four elected councillors and that two wards were not so represented. He claimed declarations that the existing representation of wards on the Council was unconstitutional and *ultra vires*, that the Council so constituted was unconstitutional and *ultra vires*, that appointed members on the Council should not exceed six and that the election as alderman for one ward of an elected councillor for another ward was unconstitutional, *ultra vires* and void. He also claimed an injunction restraining the defendants from continuing to function unconstitutionally or until the Council was properly constituted. The defendants contended that four councillors were not required to represent each ward and that the existing representation of wards on the Council, and the Council itself, were not unconstitutional; that appointed members might exceed six; and that the election of the alderman was not unconstitutional, *ultra vires* or void. They submitted that the plaintiff was not competent to bring the action without joining the Attorney-General as plaintiff.

Statutes construed:

Freetown Municipality Act (Laws of Sierra Leone, 1960, *cap.* 65), s.8:

The relevant terms of this section are set out at page 112, lines 11-12.

s.9: The relevant terms of this section are set out at page 110, lines 31-36.

s.10: The relevant terms of this section are set out at page 107, line 6—page 108, line 13.

s.11: The relevant terms of this section are set out at page 108, line 26—page 109, line 4.

s.12: The relevant terms of this section are set out at page 109, line 36—page 110, line 5.

s.15(5) The relevant terms of this section are set out at page 109, lines 7-9.

s.28: The relevant terms of this section are set out at page 106, lines 21-28.

s.29, as amended: The relevant terms of this section are set out at page 106, lines 29-38.

s.50: The relevant terms of this section are set out at page 112, lines 19-22.

Interpretation Act, 1961 (No. 46 of 1961), s.29(1):

The relevant terms of this section are set out at page 112, lines 25-35.

- 5 *E. L. Luke* for the plaintiff;
 Okoro-Idogu for the defendants.

COLE, Ag. C.J.:

By his statement of claim, as amended, the plaintiff claims:

10 “(i) A declaration that the East, Central and West Wards should be represented in the Council by four elected members each.

 (ii) A declaration that the present representation of the wards (i.e. East four, Central three, and West three) by elected mem-
 15 bers in the Council is unconstitutional and *ultra vires*.

 (iii) A declaration that the Council as at present constituted is unconstitutional and *ultra vires*.

 (iv) A declaration that appointed members in the Council should at no time exceed six.

20 (v) A declaration that the election of Mr. A. D. Wurie as Alderman for the West Ward is unconstitutional, *ultra vires* and void.

And the plaintiff also claims an injunction restraining the defendants from continuing to function unconstitutionally or
 25 until the Council is properly constituted.”

The defendants deny:

 “1. That there should be representation on the Council by four councillors in respect of each ward.

30 2. That the present representation of the wards by elected members on the Council is unconstitutional.

 3. That the Council as at present constituted is unconstitutional.

 4. That the number of appointed members on the Council may not exceed six.

35 5. That the election of Councillor A. D. Wurie as Alderman for the West Ward is unconstitutional, *ultra vires* and/or void.”

40 In the course of his closing address learned counsel for the defendants submitted, *inter alia*, that the plaintiff was not competent to bring this action without joining the Attorney-General as plaintiff. He contended that the interests affected in this matter are those of the public at large and where the rights of the public were affected,

their interests being vested in the Crown, the Attorney-General, being an officer of the public, should have brought the action or at least he should have been joined as plaintiff. As I understand the authorities, an objection that an action is defective for want of parties should be taken as soon as possible. The point may be raised on the pleadings or a preliminary objection taken. Neither course was taken by the defendants in this case. The objection, however, being one in point of law, it was open to the defendants to raise it at the trial even though not pleaded. I therefore allowed learned counsel for the defendants to raise and argue the point. I shall at once dispose of this point. In 30 *Halsbury's Laws of England*, 3rd ed., at 310, para. 570, the following is stated:

"In an action to restrain interference with a public right, whether committed or threatened, or to compel the performance of a public duty, the Attorney-General is a necessary party, except (1) where the interference with the public right is at the same time an interference with some private right, or is a breach of some statutory provision for the protection of the plaintiff, and (2) where the special damage is suffered over and above that suffered by the general public, though no special private right is also interfered with."

"Special damage" appears to mean loss which is measurable in pecuniary terms and which arises from an injury which is distinct in character from the inconvenience suffered by other members of the public. A study of the very long line of decided cases on the point seems to show that this principle of law is more applicable to cases of public nuisance and other wrongful forms of interference with amenities enjoyed by the public as a whole. It would appear that where the validity of subordinate legislation, or possibly, of administrative acts of local authorities, is challenged in declaratory proceedings or where the construction of a document or statute is required of the court, the court does not require that the plaintiff, to establish his standing, should prove special damage or otherwise join the Attorney-General as a party. It is sufficient to give the plaintiff *locus standi* in such cases if he has a substantial interest in the proceedings. All that the plaintiff must show is that he is one whose interests are affected sufficiently to enable him to sue.

In this action certain acts of the defendants are being called in question necessitating an interpretation by the court of certain statutory provisions governing the defendants. The plaintiff is a member of the City Council of Freetown (which I shall hereafter

call "the Council") representing the Central Ward under and by virtue of the provisions of the Freetown Municipality Act (*cap.* 65) (hereinafter referred to as "the Act"). He owes a duty to the electorate in the ward which he represents to see that that ward is well and truly represented on the Council in accordance with the Act and also to see that the provisions of the Act are substantially complied with. He is not a mere busybody but someone whose interest, in my view, is so substantial as to enable him to institute these declaratory proceedings without joining the Attorney-General as plaintiff. The contention of learned counsel for the defendants in this regard, therefore, fails.

What should be the numerical strength of elected members on the Council representing each of the East, Central and West Wards of the city of Freetown *as councillors*? The plaintiff contends that it should be four. The defendants deny this contention. In order to arrive at an answer which would in my view be correct, it is necessary to consider the relevant provisions of the Act. Section 8 of the Act provides that the Council shall consist of the mayor, aldermen and councillors both elected and appointed.

Section 28 and 29 of the Act provide:

"28. On such date after the coming into operation of this section as the Minister may by Order declare, all members of the Council shall retire and there shall be held a general election of the elected members of the Council in accordance with the provisions of this Act and thereafter an election to fill vacancies caused by the retirement of those elected members whose term of office has expired shall be held annually on the first day of November."

"29. Whenever a vacancy has occurred among the elected members of the Council, otherwise than by retirement or expiration of terms of office, the Council with the prior approval of the Electoral Commission shall appoint and notify to the Town Clerk the day for the holding of an election to fill such vacancy:

Provided that where the vacancy is caused by the death or retirement of an elected member whose unexpired term of office is less than six months an election to fill the vacancy shall not be held unless the Council so directs."

These sections, in my view, provide for—

- (i) a general election of elected members of the Council;
- (ii) an annual election to fill vacancies caused by the subsequent

retirement of elected members of the Council whose terms of office have expired;

(iii) bye-elections to fill vacancies among elected members of Council occurring subsequently otherwise than by (ii) above.

Section 10 of the Act provides:

“Subject to the provisions of section 28 the Central Ward, East Ward and West Ward of the City shall each elect four persons to the Council as Councillors thereof. Such persons shall hold office for three years and shall then retire but shall be eligible for re-election:

Provided that—

(a) those Councillors who are elected at the first general election held after the coming into operation of this section and who are not subsequently elected to be Aldermen under section 11(1) shall retire as follows—

(i) one of such Councillors elected for each Ward shall retire after holding office for one year;

(ii) one of such Councillors elected for each Ward shall retire after holding office for two years; and

(iii) one of such Councillors elected for each Ward shall retire after holding office for three years,

but shall in each case be eligible for re-election. The order in which such Councillors shall retire shall be in accordance with the number of votes they receive at the election, the Councillor with the lowest number of votes retiring after one year and the Councillor with the next highest number of votes retiring after two years.

(b) those Councillors who are elected at the first general election held after the coming into operation of this section and who are subsequently elected to be Aldermen under section 11(1), (hereinafter in this section referred to as Aldermen) shall retire as follows—

(i) the Alderman who received the lowest number of votes at his election as Councillor shall retire after holding office for two years;

(ii) the Alderman who received the next highest number of votes at his election as Councillor shall retire after holding office for four years; and

(iii) the Alderman who received the highest number of votes at his election as Councillor shall retire after holding office for six years,

but shall be eligible for re-election.

5 (c) in the event of it being impracticable to determine the order of retirement of any Councillor or Alderman as provided in the preceding provisos, the order of retirement shall be determined by the casting of lots in such manner and at such time and place as the Council shall direct; and

10 (d) in the event of the death or retirement of any elected Councillor, other than a Councillor who has been elected to be an Alderman, before the expiration of his term of office any person elected to fill the vacancy so caused shall hold office only for the unexpired period of the deceased or retiring Councillor's term of office and shall then retire but shall be eligible for re-election:"

15 In my view, the combined effect of ss.10, 28 and 29, is that soon after the coming into operation of s.28 of the Act there was to have been held a general election for the purpose of electing four persons as councillors for each of the East, Central and West Wards. The councillors so elected should serve on the Council and retire in the manner set out in proviso (a) to s.10 of the Act.
20 An annual election was by s.28 of the Act to be thereafter held to fill vacancies caused by any such retirement and bye-elections were to be held to fill vacancies caused by any cause other than that of any such retirement. Since, however, the Council was to consist not only of councillors but also of a mayor and aldermen the Act
25 then proceeded to make provision for this in s.11 which states:

"(1) The Councillors shall as soon as practicable after the first general election held after the coming into operation of section 28 of this Act hold a meeting and shall elect three
30 of their number to be Aldermen. One such Alderman shall be elected from the Councillors returned for each ward and shall represent the Ward for which he has been returned.

(2) After the election of Aldermen, the Councillors and Aldermen shall elect a fit person from among the Aldermen and Councillors or persons qualified to be elected as Councillors
35 to be the Mayor of the City of Freetown.

(3) Whenever thereafter the office of Mayor shall become vacant, the Council shall elect one of their number or any person qualified to be elected as a Councillor to be the Mayor.

40 (4) Any Alderman or Councillor elected at any time to the office of Mayor shall not thereby be deemed to have vacated his office of Alderman or Councillor as the case may be.

(5) Notwithstanding the provisions of section 15(5) the election of three Councillors to be Aldermen as provided in sub-section (1) of this section shall not be deemed to create any vacant seat in the Council."

This section should be read with sub-s. (5) of s.15 of the Act which provides:

"(5) Except as provided in section 11(5) the seat of a nominated or elected Councillor shall become vacant if he is elected to the office of Alderman."

As I understand these provisions, out of each set of four persons elected as councillors for each of the East, Central and West Wards at the general election held after the coming into operation of s.28 of the Act the Council was to elect one as alderman to represent the respective wards which returned them. Such election of aldermen would normally have created a vacancy in the number of elected councillors in respect of each ward, necessitating the holding of bye-elections in accordance with s.29 of the Act to fill those vacancies to bring the number of elected councillors to four in respect of each ward, but for the provisions of sub-s. (5) of s.11 of the Act.

What then is the combined effect of sub-s. (5) of s.11 and sub-s.(5) of s.15 of the Act? In my view it is this: The election of the first three aldermen from amongst the elected councillors created no vacancy among the elected councillors calling for any bye-election as required by s.29 of the Act. In other words although four persons had been elected to the Council as councillors at the general election in respect of each of the East, Central and West Wards in accordance with s.10 of the Act, from the moment an election of the first three aldermen took place in accordance with sub-s. (1) of s.11 of the Act the Council became constituted, as regards aldermen and elected councillors, by an alderman and three councillors in respect of each of the East, Central and West Wards. On the subsequent retirement of an alderman, or if he dies or resigns or otherwise vacates that office, a vacancy would occur to be filled in the manner provided by s.12 of the Act. This section is as follows:

"Whenever a vacancy shall occur in the office of Alderman representing one of the Wards of the City either by the death or resignation of the holder thereof, or otherwise, or whenever such a vacancy shall be about to occur owing to the expiration of the term of any Alderman's appointment, the Council shall elect one of the persons holding office as Councillor to be an

Alderman and represent the Ward in respect of which there is, or is about to be, a vacancy. Such person so elected shall hold office as Alderman for six years as from the date of his election or the occurrence of the vacancy whichever is the
 5 later and shall then retire but shall be eligible for re-election."

Where the councillor elected by the Council to fill the vacancy so caused is an elected councillor, the seat of such elected councillor becomes vacant to be filled in the manner laid down by s.29 of the Act. With respect to both learned counsel for the plaintiff and
 10 defendants, I do not agree that sub-s.(5) of s.11 of the Act was meant to be interim. Its effect was intended to be lasting, not transient. The sub-section clearly says that no vacant seat in the Council shall be deemed to have been created by the election of the first three aldermen. If there occurred no vacancy, as the Act says,
 15 by such an election, what is there to be filled then or thereafter? In my view nothing. I have no evidence before me when s.28 of the Act was brought into operation. Both sides, however, agree that the general election referred to in that section was held on November 1st, 1957, when four persons were elected councillors in
 20 respect of each of the East, Central and West Wards. It would appear that soon after the general election the requisite first three aldermen were elected by the Council and thereafter the three wards had an alderman and three elected councillors representing each of them. This state of affairs I find to be in keeping with the spirit
 25 and letter of the Act. In the circumstances declarations (i) and (ii) sought by the plaintiff fail.

I shall now deal with declaration (iv). Section 9 of the Act empowers the Governor-General acting on the advice of the Cabinet to make appointments of certain persons as councillors to the Council.
 30 It provides:

"The Governor in Council may appoint six persons, not less than two of whom shall be Africans to the Council as Councillors thereof. Such persons shall hold office during the
 35 Governor's pleasure for a period not exceeding three years as the Governor may direct but shall be eligible for reappointment on retirement."

It should be noted that on appointment such persons hold office as *councillors*. This is very important. Section 12 of the Act,
 40 quoted *in extenso* above, provides that where a vacancy occurs in the office of an alderman the Council should elect one of the persons "holding office as Councillor to be an Alderman." Sub-section (5) of

s.15 of the Act provides, *inter alia*, that the seat of a nominated councillor becomes vacant if he is elected to the office of alderman. My interpretation of these provisions is that the Governor-General acting on the advice of the Cabinet is empowered to appoint not more than six persons at any one time to the Council with the status of councillors. Of these not less than two must be Africans. Vacancies in the offices of aldermen on the Council should be filled by election by the Council from among both elected councillors and councillors appointed under s.9 of the Act. Where an appointed councillor is elected an alderman there would occur a vacancy amongst the appointed councillors which may be filled by an appointment made under s.9 of the Act. In those circumstances the possibility exists for the number of persons appointed under s.9 of the Act to exceed six at any one time on the Council. This would be covered by law so long as the number of appointed persons *in their capacity as councillors* on the Council at any one time does not exceed six and not less than two of them are Africans. The plaintiff's claim in this regard also fails.

With regard to declaration (v), there is no dispute that Mr. A. D. Wurie was an elected councillor on the Council representing the East Ward. There is also no dispute that on May 11th, 1964, about 16 days before the commencement of these proceedings, Councillor A. D. Wurie was elected by the Council to fill a vacancy in the office of Alderman for the West Ward. It is this election that the plaintiff by declaration (v) has challenged on the ground that it is unconstitutional, *ultra vires* and void. I cannot understand the point about the election being unconstitutional. There has been no evidence before me showing any irregularity connected with the election or that the Council at the time of holding the election was not properly constituted. In the absence of such evidence I am bound to hold that at the time of the election the Council was properly constituted. Was the election *ultra vires* and therefore void? The answer to this question turns on the interpretation of sub-s.(1) of s.10, s.12 and sub-s.(5) of s.15 of the Act. These sections have already been set out in full above. It seems to me that by these sections, it is the paramount intention of the legislature that pre-eminently an alderman representing any particular ward should be elected from among the elected councillors for that particular ward. Where the Council finds it difficult or otherwise is unable to do so then an appointment could be made by election from among the councillors appointed under s.9 of the Act. I find it difficult to

imagine that the legislature ever intended that a councillor returned for one ward should represent on the Council an entirely different ward in the capacity of an alderman. It is therefore my considered view that the election of Mr. A. D. Wurie, an elected councillor for the East Ward, as Alderman for the West Ward cuts right across the spirit and intention of the Act. I therefore declare his election *ultra vires* the Act and therefore void and of no effect.

With this declaration it follows that the Council as constituted on and from May 11th, 1964 was not in accordance with the Act. Section 8 of the Act states that—

“The Council shall consist of the Mayor, Aldermen and Councillors elected and appointed as hereinafter provided.”

Having held that the election of Mr. A. D. Wurie as Alderman for the West Ward was not in accordance with the Act, it follows that the Council as at present constituted is unconstitutional. I therefore grant declaration (iii) sought by the plaintiff. In making this declaration I have taken into consideration s.50 of the Act which provides:

“50. No act or proceeding of the Council or of a committee shall be questioned on account of any vacancy in their body or on the ground that a Councillor or Alderman to be elected or appointed has not been elected or appointed” and also the provisions of sub-s. (1) of s.29 of the Interpretation Act, 1961, which are as follows:

“Where under any enactment any board, commission, committee or similar body, whether corporate or unincorporate, is established, then, unless the contrary intention appears, the powers of such board, commission, committee or similar body shall not be affected by—

(a) any vacancy in the membership thereof;

(b) the fact that it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member thereof, or

(c) the fact that there was any minor irregularity in the convening of any meeting thereof.”

Finally, I shall not at this stage grant the plaintiff the injunction sought. I refrain from doing so at this stage on the ground that I do consider the Council a very responsible body which would respect the decisions of the courts of this State. With this hope in mind I shall only grant the plaintiff liberty to apply.

Order accordingly.