

IN THE SUPREME COURT OF SIERRA LEONE

SC. MISC. APP. NO. 6/93A & B

BETWEEN:-

T H E S T A T E

- APPLICANT

AND

THE HONOURABLE MR. JUSTICE F.C. GBCW, JUDGE

- RESPONDENT

EX PARTE

JULIUS SPENCER  
DONALD JOHN  
ALFRED PAYITIE CONTEH  
MOHAMED BANGURA  
ALUSINE KARGBO BASHIRU

- APPLICANTS

AND

IN THE MATTER OF AN APPLICATION BY JULIUS SPENCER, DONALD JOHN, PAYITIE CONTEH, MOHAMED BANGURA AND ALUSINE KARGBO BASIRU FOR ORDERS OF MANDAMUS PROHIBITION AND CERTIORARI AND OTHER CONSEQUENTIAL ORDERS AND DIRECTIONS

AND

IN THE MATTER OF A RULING MADE THE 3RD DAY OF DECEMBER, 1993 BY THE HONOURABLE JUSTICE F.C. GBOW, JUSTICE IN THE HIGH COURT OF SIERRA LEONE IN CRIMINAL INFORMATION DATED THE 19TH DAY OF OCTOBER, 1993 FILED IN THE FREETOWN HIGH COURT

BETWEEN:-

T H E S T A T E

AND

JULIUS SPENCER  
DONALD JOHN  
ALFRED PAYITIE CONTEH  
MOHAMED BANGURA  
ALUSINE KARGBO BASIRU

AND

IN THE MATTER OF AN APPLICATION UNDER SECTIONS 28(3), 424 & 125 OF THE CONSTITUTION OF SIERRA LEONE ACT NO. 6 OF 1991

AND

IN THE MATTER OF ALLEGED CONTRAVENTIONS OF SECTION 23(1), (4) & (5) (B) OF THE SAID CONSTITUTION AND SECTION 25 THEREOF

CORAM:-

HON. MR. JUSTICE S. BECCLES-DAVIES - AG. C.J. - PRESIDING  
HON. MRS. JUSTICE A.V.A. AWUNOR-RENNER - J.S.C.  
HON. MR. JUSTICE S.C.E. WARNE - J.S.C.  
HON. MR. JUSTICE E.C. THOMPSON-DAVIS - J.S.C.  
HON. MR. JUSTICE G. GELAGA-KING - J.S.C.

Garvas J. Betts Esq., with him S.E. Berewa Esq., N.E. Browne-Marke Esq., and Jesse Gooding Esq., for the Applicants.  
N.D. Tejan-~~olo~~ Esq., D.P.P. with him G. Atiba Davies (Ms.), C.V.M. Campbell Esq., A.F. Serry-Kamal Esq., and Valesius V. Thomas Esq., of Counsel for the State/Respondent.



BECCLES DAVIES, AG. C.J.:-

On 12 January, 1994 we granted leave to the applicants to apply for the orders of Mandamus, Prohibition and Certiorari respectively. They have now applied for these orders.

### The History

The applicants were arraigned on 17 November 1993 before Gbow J, on a nine count indictment dated 19, October 1993. They were charged with the following offences:-

- i. Seditious publication
- ii. Publishing Defamatory Libel
- iii. Publishing False Reports likely to injure the reputation of the Government of Sierra Leone
- iv. Knowingly publishing a false defamatory libel
- v. Publishing a false report likely to disturb the public peace.

### The Application

After the 1st applicant's plea to the first count of the indictment had been recorded by the learned trial Judge, Mr. Betts applied to make certain submissions pursuant to section 28 (3) of the Constitution of Sierra Leone 1991, ("the Constitution") and in the words of the learned Judge "humbly invited the Court of its own motion, to refer the several questions raised to the Supreme Court of Sierra Leone for a pronouncement". The issues raised by Mr. Betts were that -

1. The defence were being denied a fair hearing contrary to section 23 (1) of the Constitution in view of the extensive pretrial publicity of the facts involved in the trial.
2. The accused were being presumed to be guilty of the offences with which they were charged and that that presumption had arisen consequent upon the wide pretrial publicity in the media contrary to Section 23 (4) of the Constitution.
3. The contravention of section 25 (1) of the Constitution. That section provides:-



"Except with his own consent, no person shall be hindered in his enjoyment of his freedom of expression, and for the purpose of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, freedom from interference with his correspondence, freedom to own, establish and operate any medium for the dissemination of information, ideas and opinions, and academic freedom in institutions of learning:

Provided that no person other than the Government or any person or body authorised by the President shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever".

4. Section 28 (1) and (3) of the Public Order Act contravened section 25 (1) of the Constitution. I have already set out section 25 (1) of the Constitution in 3 above. Section 28 (1) of the Public Order Act 1965 states:-

"On the trial of an offence of libel against sections 26 or 27, the accused having pleaded such plea as hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefits that the said matters charged should be published; and to entitle the accused to give evidence of the truth of such matters charged as a defence to such charge it shall be necessary for the accused in pleading to the said charge, to allege in writing the truth of the said matters charged in the manner now required in pleading a fair comment and justification to an action for a defamation and



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further to allege in writing that it was for the public benefit that the said matters charged should be published and the particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published to which plea that prosecutor shall be at liberty to reply generally, denying the whole thereof"

Section 28 (3) provides:-

"The matter charged in the alleged libel complained of by such charge shall be presumed to be false, and the truth thereof shall in no case be inquired into in the absence of such plea as mentioned in subsection (1)".

The basis of the alleged contravention is the Ex-Officio information on which the accused were being tried, the proofs of evidence and all those matters pertaining to the trial.

5. Section 28 (1) and (3) of the Public Order Act set above, contravens Section 23 (1), (4) and 5 (b) of the Constitution. Section 23 (1), (4) and (5) (b) provide -

"(1) Whenever any person is charged with a criminal offence he shall unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(4) Every person who is charged with a criminal offence, shall be presumed to be innocent until he is proved, or has pleaded guilty:

Provided that nothing contained in ~~and~~ done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection, to the extent that the law in question imposes on any person charged on aforesaid the burden of proving particular facts.



(5) Every person who is charged with a criminal offence-

(a) .....

(b) shall be given adequate time and facilities for the preparation of his defence"; .....

Provided that nothing contained in or done in authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question prohibits legal representation in a Local Court".

6. The contravention of Section 11 of the Constitution which provides:

"The press, radio and television and other agencies of the mass media shall at all times, be free to uphold the fundamental objectives contained in this Constitution and highlight the responsibility and accountability of the Government to the people".

Mr. Browne-Marke, (representing the 5th accused) adopted Mr. Bett's submissions on the alleged contraventions of the Constitution

#### The Judge's Ruling

The learned judge declined Mr. Betts' humble invitation for a reference of the alleged contraventions to this court for its decision.

His reasons for refusing the request fall under five main headings, namely:-

- i. The application(request) ought to have been made under section 28 (1) of the Constitution.
- ii. Section 127 was more germane to the issues raised.
- iii. The availability of other remedies under section 28 (2) (b).
- iv. The application was not properly before him.
- v. Even if there were any infringements of the accused's fundamental rights, they did not occur in the proceedings before the court.



Section 28 (1) of the Constitution under which the judge had declared as appropriate to counsel's request provides:-

"Subject to the provisions of sub-section (4), if any of the provisions of sections 16 to 27 (inclusive) has been, is being or is likely to be contravened in relation to him by any person (or in the case of a person who is detained, of any other person alleges such a contravention in relation to the detained person), the, without prejudice to any other action with respect to the same matter which is lawfully available, that person, (or that other person), may apply by motion to the Supreme Court for redress".

Sub-section 4 referred to in this section deals with the rules of practice and procedure and any other additional powers conferred by Parliament on the Supreme Court for exercising the jurisdiction conferred under Section 28.

Section 127

The provisions of section 127 (1) which the judge considered to be more germane to Counsel's request state:-

"A person who alleges that an enactment or anything contained in or done under the authority of that or any other enactment is inconsistent with or is in contravention of a provision of this Constitution, may at any time bring an action in the Supreme Court for a declaration to that effect".

(Emphasis supplied).

Section 28 (3)

Counsel's request was made pursuant to section 28 (3) which provides:-

"If in any proceedings in any court other than the Supreme Court, any question arises as to the contravention of any of the provisions of sections 16 to 27 inclusive, that court may and shall if any



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party to the proceedings so requests, refer the question to the Supreme Court".

I make the following brief observations on the above provisions:

- (i) Section 28 (1) caters for situations where there are no proceedings in which alleged contraventions could be raised; in such situations the applicant applies directly to the Supreme Court for redress; this is in ~~contrast~~ distinction to section 28 (3) which allows such matters to be raised in proceedings "in any court other than the Supreme Court".

Section 28 (1) stipulates an application by motion for redress, whilst section 28 (3) uses the word "requests" with regard to a deserved reference to this court.

- (ii) Section 127 relates to any alleged inconsistency with or contravention of any provision of the Constitution. This provision would be appropriate in relation to Mr. Betts' allegation that sections 28 (1) and (3) and the Public Order Act 1965 infringed the provisions of Sections 23 (1) (4) and 23 (5) (b) of the Constitution.

- (iii) There were criminal proceedings instituted by the State against the accused persons. The proceedings were being heard by the judge (there had been the consent to file the indictment, the arraignment of the accused, the taking of pleas). Most of the issues raised by Counsel for the accused fall within sections 16 to 27 of the Constitution. The learned judge had held alternatively, that even if there had been infringements of the accused's fundamental rights, those infringements did not occur in the proceedings before him.



I find myself unable to agree with the learned judge. Allegations of denial of a fair trial and presumption of guilt in consequence of an alleged pre-trial publicity, as well as inadequacy of time and facilities for the preparation of the accused's defence, before trial are matters which naturally occur before and not in the course of proceedings; they could properly be raised in the proceedings to which they relate.

The learned judge was obliged by the provisions of section 28 (3) to refer the issues raised by Counsel for determination by this court. The request was properly made under section 28 (3).

We order:-

1. That the said Ruling dated 17 November 1993 be removed into the Supreme Court and that the learned judge to send forthwith the said Ruling or a copy thereof under his hand to the Registrar of the Supreme Court and thereupon the said Ruling be quashed.
2. The questions raised by Counsel for the accused which fall within the provisions of sections 16 to 27 of the Constitution be referred to this court on or before 4 July 1994 for determination pursuant to section 28 (3) of the said Constitution and Rule 99 of the Rules of the Supreme Court.
3. The High Court be prohibited, and it is hereby prohibited from further hearing and determining the proceedings founded on Criminal Information dated 19 October 1993 pending the determination by the Supreme Court of the aforesaid Reference.



4. The parties to these proceedings do file their case pursuant to Rule 99 (3) of the Rules of the Supreme Court on or before 14th July 1994.

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Hon. Justice S. Beccles-Davies, Ag. C

I agree

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Hon. Mrs. Justice A.V.A. Awunor-Renner,

I agree

.....  
Hon. Justice S.C.E. Warne, J.S.C.

I agree

.....  
Hon. Justice E.C. Thompson-Davis, J.S.C.

I agree

.....  
Hon. Justice G. Gelaga-King, J.A.