

CIV. APP. 76/95

IN THE SIERRA LEONE COURT OF APPEAL

BETWEEN:-

AHMED TEJAN KABBA - APPELLANT

AND

FIRETEX COMPANY (S.L) LTD - RESPONDENT

CORAM:-

HON. MR. JUSTICE G. GELAGA-KING - J.A. (PRESIDING)

HON. MR. JUSTICE A.B. TIMBO - J.A.

HON. MR. JUSTICE N.D. ALHADI - J.A.

Mr. Y.H. Williams for the Appellant

Dr. W.S. Marcus-Jones for the Respondent.

RULING DELIVERED ON THE 18<sup>TH</sup> DAY OF JUNE, 1996.

GELAGA-KING, J. A.: When this matter was called, Counsel for the Respondent, Dr. Marcus-Jones, intervened to make preliminary objection, having filed a notice to that effect. His objection was as follows:- that the status of the Appellant had changed and the action ought to be stayed until the Appellant ceases to hold office as President of the Republic of Sierra Leone.

Firstly, that there is no appeal before the Court by H.E. The President of Sierra Leone. Secondly, that the person of the President of the Republic of Sierra Leone is inviolable and cannot be impeached in his own Courts. Thirdly, that it is infra dignitatem and against the principles of international and municipal law that a Head of State should pursue a remedy in his own Courts against his own subjects while he holds or continues office as President of the country.

He relied on Act No.9 of 1971 The Constitution (Consequential Provisions) Act, 1971, and s. 48(4) of the Constitution of Sierra Leone Act No. 6 of 1991, (hereinafter referred to as the Constitution") and argued that what he was raising was a constitutional point and that this Court ought to remit the matter to the Supreme Court for interpretation of S. 48(4) of the Constitution. His final submission was that this Court should have confirmation from H.E. The President himself that he was willing to submit to the Jurisdiction of this Court and he relied on O'Connel's International Law, 1<sup>st</sup> ed. P. 936.

Mr. Y.H. Williams for the Appellant, in reply, submitted that O'Connel's International Law had no application. He contended that s. 48(4) of the Constitution precludes anyone from instituting or continuing legal action against an incumbent President, but the section did not prohibit the President from pursuing his legal remedies and enforcing his legal rights in Court. He urged us to overrule the objection.

I shall deal with the Constitution (Consequential Provisions) Act 1971, first, if only to make short shrift of it. S. 15 provides:-

"Where under any law in force in Sierra Leone immediately before the commencement of the Constitution any prerogatives or privileges are vested in Her Majesty those prerogative or privileges shall from the commencement of the Constitution vest in the President."

That Act has been repealed by s. 177 of the Constitution of Sierra Leone Act No.12 of 1978, itself repealed by s. 190 of the Constitution. I strongly believe that this Court will be ill-advised to set a most unworthy and unbecoming precedent by succumbing to a gratuitous invitation to act on a repealed statute.

It likewise does not avail Dr. Marcus-Jones to refer us to such statute. His submission on that ground is clearly untenable and fails.

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I now turn to s. 48(4) of the Constitution. It states:-

“(4) While any person holds or performs the functions of the office of President, no civil or criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official or private capacity.”

I would have thought that the words are clear, precise and unambiguous. They speak for themselves and, therefore, need no interpretation. No civil or criminal proceedings shall be instituted or continued against the President, so says the Act. There is nothing in the section, however, to say that the President shall not pursue his remedies in Court in an action commenced by him before he became President, or that in such a case he cannot continue with his appeal in this court, where the decision in the court below had gone against him.

Dr. Marcus-Jones, however, urges us not to interpret s. 48(4) which, in fact, needs no interpretation as I have opined, but to transmit it to the Supreme Court for interpretation. He prays in aid s. 124 (2) of the Constitution which states:-

“124. (1) The Supreme Court shall, save as otherwise provided in section 122 of this Constitution, have original jurisdiction, to the exclusion of all other Courts –

(a) in all matters relating to the enforcement or interpretation of any provision of this Constitution, and

(b) .....

(2) Where any question relating to any matter or question as is referred to in subsection (1) arises in any proceedings in any court, other than the Supreme Court, that Court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the Court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.”

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This section also is clear and needs no interpretation. I shall, therefore, stay the proceedings and refer the question involved to the Supreme Court for determination.

The question of law involved is as follows:-

“Whether s. 48(4) of the Constitution of Sierra Leone, 1991, (Act No. 6 of 1991) precludes or prohibits the President of Sierra Leone from continuing in the Court of Appeal the action intituled Civ. App. 76/95.

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instituted by him in the High Court before he became President of Sierra Leone.

(sgd) G. Gelaga-King

Hon. Mr. Justice G. Gelaga-King

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TIMBO, J.A.: I have read the Ruling of my Learned brother, Gelaga-King, J.A. While I wholeheartedly agree with the view expressed by him that section 48(4) of the Constitution (Act No. 6 of 1991) requires no interpretation as it is simple and straight forward, I fail to see the reason the Learned Presiding Justice nevertheless thinks the matter ought to be referred to the Supreme Court for interpretation under section 124 of the Constitution.

All that section 48(4) of the Constitution has done, in my opinion, is to confer immunity on the Head of State, whilst he holds that office, against criminal or civil process in respect of anything done or omitted to be done by him whether in his official or private capacity.

The Supreme Court in *Wellington Distilleries v. Electrovia P. Clarkson* (Constitutional Reference) Misc. App. No. 4/81 (unreported) while conceding that the question posed was a constitutional question, nonetheless had this to say at page 27 of the bound report,

“But it should be noted that not all constitutional questions necessarily involve or entail the interpretation of the Constitution.”

I will therefore overrule the preliminary objection of Dr. Marcus-Jones and order that the hearing of the appeal should proceed without further delay and I so order.

(Sgd), A.B. Timbo

(HON. JUSTICE A.B. TIMBO)

N.D. ALHADI, J.A.:-

I have had the advantage of reading the judgment first delivered by my Learned brother my Lord Gelaga-King, J.A. I agree with his reasons for rejecting the argument of Counsel for the Respondent in support of the preliminary objection. But I do not agree with his conclusion that a question of law is involved which should be transmitted to the Supreme Court for determination.

Section 124 of the Constitution provides inter-alia

- “(1) The Supreme Court shall, save as otherwise provided in Section 122 of this Constitution have original jurisdiction, to the exclusion of all other Court.
- (a) in all matters relating to the enforcement or interpretation of any provision of this constitution and
- (b) .....
- (2) Where any question relating to any matter or question as is referred to in sub-section (1) arises in any proceedings in Court, other than the Supreme Court, that Court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination, and the Court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.”

If according to the judgment of my Learned brother Gelaga-King J.A., the words of section 48(4) are clear, precise and unambiguous and need no interpretation I find no conceivable reason why that provision could be referred to the Supreme Court for interpretation.

Also there is the question raised as to the enforcement of my position of the constitution which is covered by the section. This again leaves us with no jurisdiction to have any matter referred to the Supreme Court.

It is never the intendment of this provision that all matters which have reference to a provision of the constitution should be remitted to the Supreme

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Court, especially matters which are within the competency of the Court, in which the matter arose, to decide.

The proposed question which my learned brother Gelaga-King J.A. wishes to be referred, as framed, is with respect one of jurisdiction. It is for the Court to decide what its jurisdiction is from its practices and statutory enactment which creates it.

The question in the jurisdiction of any Court is not one provided for in Section 124 of the Constitution.

For these reasons I will overrule the Preliminary Objection and rule that the appeal proceeds.

(Sgd) N.D. Alhadi

(HON. MR. JUSTICE N.D. ALHADI)

CERTIFIED TRUE COPY

*A. Showers*

REGISTRAR  
COURT OF APPEAL.