

IN THE SUPREME COURT OF SIERRA LEONE

SC-MISC-APP-4/96

BETWEEN:

ALL PEOPLE'S CONGRESS

- PLAINTIFF

AND

NASMOS

MINISTRY OF SOCIAL WELFARE

YOUTH AND SPORTS

- DEFENDANT

CCORAM:

Hon. Mr. Justice D.E. Luke - Chief Justice

Hon. Mr. Justice A.B. Timbo - JSC

Hon. Mr. Justice H.M. Joko-Smart - JSC

Hon. Mrs. Justice V.A.D. Wright - JA

Hon. Mr. Justice M.E.T. Thompson - JA

A.F. Serry Kamal Esq., for the Plaintiff

J.G. Kobba Esq., for Defendants.

JUDGMENT DELIVERED THE 26th DAY OF OCTOBER 1999

WRIGHT, JA This is a constitutional reference by way of case stated to the Supreme Court made by Nylander J. sitting in the High Court in which he referred the following questions:

- (1) Is sec. 133(1) of the 1991 Constitution in operative until sec. 133(2) is effected by Parliament?
- (2) If the answer is in the negative can the High Court Rules apply to put into operation sec. 133(1) in the absence of Parliament effecting sec. 133(2)
- (3) What is the state of the parties right as at present in relation to sec. 133?

I have had the advantage of reading ^{some of} the judgments delivered by my learned brothers so I shall not go into the background of the case or the arguments raised by counsel on both sides.

The Interpretation Act No. 8 of 1971 defines government as "the Government of Sierra Leone (which shall be deemed to be a person) and includes where appropriate any authority by which executive power of the state is duly exercised in a particular case". I am of the opinion that

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both defendants answer to that description see sec.53(1) and sec.53(5) of the constitution, although this is not before the court.

The gravamen of this matter is the interpretation of section 133(1) and section 133(2) of the constitution of Sierra Leone Act No.6 of 1991.

I hold the view that sections 3, 4 and 5 of the Petition of Right Act are void and inconsistent with sec.133(1) of the constitution which is now in force considering sec.171 (15) of the constitution which provides "The Constitution shall be the Supreme Law of Sierra Leone and any other law found to be inconsistent with any provisions of this constitution shall, to the extent of the inconsistency be void and of no effect.

I also hold that sections 6, 7 and 8 of the Petition of Right Act has not been repealed by implication by section 133(1) and so is not inconsistent with the constitution, and is still applicable.

Section 177(1) of the Constitution states: The existing law shall notwithstanding the repeal of the constitution of Sierra Leone Act 1978, have effect after the entering of this constitution as if they have been made in pursuance of this constitution and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them in conformity with this constitution.

Section 177(2) where any matter that fails to be prescribed or otherwise provided for under this constitution by parliament or by any other authority or is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or otherwise prescribed or provided for immediately before the commencement of this Constitution by or under the existing Constitution, that prescription or provision shall as from the commencement of this constitution have effect with such modifications, alterations, qualifications and exceptions as may be necessary to bring it into conformity with this constitution as if it had been made under this constitution by Parliament or as the case may be, by the other authority or person"

The constitution by its section 176 defines "existing law" as:

"any Act, Rule, Regulation, order or other

such instrument made in pursuance or continuing in

operation under, the existing constitution and having

effect as part of the laws of Sierra Leone or any part thereof immediately before the commencement of this constitution".

As I said earlier the procedure under sections 6, 7 and 8 of the petition of Right have not been repealed and so prescribe the procedure under the existing law which is applicable in this case.

I have perused several authorities including *Oliver Ashworth (Holdings) Ltd. vs. Ballard (Kent) Ltd.* 1999 2 A.E.R. 79, *Attorney General for Canada vs. Halcet & Carey Ltd.* 1952 AC.427, *Canada Sugar Refining Co.* VR 1898 AC. 735 in deciding whether section 133(1) and section 133(2) of the constitution should be read singularly or conjunctively and to decide whether section 133(1) is inoperative until section 133(2) is effected by Parliament.

In the *Sussex Peerage claim (1844)* II CL & F85, 143 The judges said:

"If any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention to call in aid and the ground and cause of making the statute absolute, and to have recourse to the preamble, which according to Chief Justice Dyer in *Stoweb vs. Lord Zouch* 1562 Ploud 353 is a key to open the minds of the makers of the Act and the mischiefs which they intended to redress." Quoted and approved by Lord Halsbury L.C. in *Income Tax Commissioner vs. Pen* 1891 A.C.531. See *Craies on Statute Law* 7th Edition page 203.

In *Magor and St. Mellons Rural District Council vs. New Port Corporation* 1950 2 A.E.R. 1226 Lord Denning L.J.said:

"I confess that I find it difficult to deal with these questions of interpretation in the abstract. I like to see their practical application."

In my view it was obvious that the intention of the constitution was that the claims could be brought against the government as considered necessary in accordance with sec.133(1) of the constitution which reads:

"Where a person has a claim against the government, that claim may be enforced as of right by proceedings taken against the government for that purpose, without the grant of a fiat or the use of the process known as petition of Right.

The fact that the constitution further goes to say in sec.133(2) "Parliament shall by an Act of Parliament make provision for the exercise of jurisdiction under this section" does not preclude actions in claim against the government being taken nor is there any express intention that the taking of such action is dependent on parliament making such provision. It is my view that the section stating that parliament should make such provision is merely to give assurance of a systematized approach as to the practice and procedural steps for taking such action.

In answer to the question which Nylander J. posed for directions to this court:

1. To question 1 the answer is in the negative.
2. The answer to question 2 is in the affirmative.
3. The party has all rights available to him as when he is suing another private person.


V.A.D. WRIGHT, JA.