

IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER OF THE ELECTORAL LAWS ACT NO.2 OF 2002
AND IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE
(ACT. NO 6 OF 1991).
AND RULE 89 OF THE SUPREME COURT RULES 1982(PUBLIC NOTICE
(NO 1 OF 1982))

BETWEEN:

DANIEL SANKOH - PLAINTIFF

AND

ALHAJI DR. AHMED TEJAN KABBAH - DEFENDANT

CORAM

HON. MRS. JUSTICE V.A.D. WRIGHT - J.S.C.
HON. MR. JUSTICE S.C.E. WARNE - J.S.C.
HON. MR. JUSTICE M.O. ADOPHY - J.S.C.

Plaintiff absent

A. Renner-Thomas Esq., with him M.J. Tucker, Umaru Barrie Esq., Miss M. Dumbuya, Ransford Johnson Esq., and E. Pabs Garnon for the Defendant/Applicant.

RULING DELIVERED ON THE 29TH DAY OF APRIL, 2002

WRIGHT J.S.C. :- this is an application on behalf of the Defendant/Applicant by way of motion dated the 15th April 2002 for the following orders:-

1. That the Originating Notice of Motion dated 11th day of April 2002 and all subsequent proceedings be set aside on the grounds of irregularity to wit:- that the same is not properly before this Honourable Court for the following reasons:
 - (a) The proceedings commenced by Originating Notice of Motion herein dated 11th April 2002 by the Plaintiff has failed to comply strictly with the provisions of the said section 32 (2) of the Electoral Laws Act. No. 2 of 2002 as no objection to the nomination of the defendant herein has in fact been lodged with the Supreme Court within seven days of the publication of the relevant Government Notice No 129 published in the Sierra Leone Gazette No 17 of the 4th April 2002.

- (b) That the said Originating Notice of Motion is irregular in form and content in that through it purports to invoke the Original Jurisdiction of the Supreme Court, it does not comply with Rule 89 (1) of ~~Public Notice No 1~~ of 1982 which requires such an Originating Notice of Motion to be in form 8 set out in the first schedule of the said Rules nor as required by Rule 98 of the said Supreme Court Rules Public Notice No 1 of 1982 nor does it comply with the relevant provisions of the High Court Rules governing the issue of an Originating Notice of Motion as supplimented by the Rules procedure practice and forms in force in the High Court of Justice in England on the 1st day of January 1960 in accordance with Order 52 Rule 3 of the High Court Rules.
- (c) Any other or further reliefs.
- (d) The costs of this application be borne by the Plaintiff.

The application is supported by the affidavits of Ransford Johnson sworn to on the 12th and 15th April 2002 respectively. There were several exhibits attached to the said affidavit including the Originating Notice of Motion dated 11th April 2002 which they are seeking to set aside and the Sierra Leone Gazette of 4th April 2002.

Counsel for the Defendant submitted that the Electoral Laws Act 2002 as amended confers original jurisdiction on the Supreme Court. The said Electoral Laws created a separate regime for the objection of candidates with the lodging of objections as required by section 32 (2) of the Electoral Laws Act 2002 as amended which is a condition precedent and must all be completed within 30 days. He reiterated that it was incumbent upon the person making the objection to fix a date promptly thereafter for the objection to be heard. Time being of the essence. He submitted that the notice of intention to object was not an objection. There was no return date in the originating notice of motion dated 11th April 2002. He further submitted that strict compliance was necessary in this case. He referred to Bennion Statutory Interpretation 1992 2nd Edition by Butterworth where directory and mandatory requirements were fully discussed. He concluded that the compliance was mandatory, and that non-compliance was fatal and incurable. Her also referred to several authorities in support of his submissions.

On ground 1, the Electoral Laws Act No 2 of 2002 Sec 32 (3) states "The Government Notice referred to in sub section (1) shall direct that any citizen of Sierra Leone may lodge an objection if any, against the nomination of a presidential candidate but that such objection shall be lodged with the Supreme Court within seven days of the publication of the Government Notice.

3. Any objection against the nomination of any presidential candidate shall be heard by the Supreme Court made up of three Justices whose decision shall be given within thirty days of the lodging of the objection."

In computing time for the purposes of an Act, according to sec 39(1) (a) of the Interpretation Act 1971 No.8 of 1971 " a period reckoned by days from the happening of an event or the doing of any act or thing done shall be deemed to be exclusive of the day on which the event happens or the act or thing done.

The publication in the gazette stating the nomination of Alhaji Dr. Ahmed Tejan Kabbah was on the 4TH April 2002. The purported originating notice of motion to object was filed on the 11th April 2002. In view of the Electoral Laws Act No. 2 of 2002 as amended section 32 (2) there was no objection filed.

I now turn to Exhibit RJ 1 which is the originating notice of motion dated 11th April 2002 which reads:

“ Take Notice that at a date, time and place appointed by the Honourable Supreme Court the Applicant intends to object to the presidential nomination of Alhaji Dr. Ahmed Tejan Kabbah pursuant to section 32 (2) of the Electoral Laws Act No 2 of 2002 as amended etc.”

The above does not comply with the provision of Rule 89 (1) of the Supreme Court Rules Public Notice No 1 of 1982. This rules states:

- (a) Save as otherwise provided in these Rules, an action brought to invoke the original jurisdiction of the court shall be commenced by originating notice of motion in form 8 set out in the first schedule of these rules which shall be signed by the Plaintiff or his Counsel.

Is the non-compliance mandatory? In Bennion Statutory Interpretation 2nd edition by Butterworth page 28 under Section 10 mandatory and directory requirements states :

“(1) This section applies where:-

- (a) a person (“ the person affected “) may be affected by thing done under an enactment, and
 - (b) the legal effectiveness of that thing is subject to the performance by the same or any other person (“ the person bound “) of some statutory requirement (“ the relevant requirement “), and
 - (c) the relevant requirement is not complied with, and
 - (d) the intended consequence of the failure to comply is not stated in the legislation
2. In ascertaining, in a case where this section applies, the effect of the failure to comply with the relevant requirement, it is necessary to determine whether the requirement was intended by the legislature to be mandatory or merely directory. For this purpose it maybe relevant to consider whether the person affected and the person bound are the same, and whether the thing done under the enactment is beneficial or adverse to the person affected.
 3. Where the relevant requirment is held to be mandatory, the failure to comply with it will invalidate the thing done under the enactment.
 4. Where the relevant requirement is held to be merely directory, the failure to comply with it will not invalidate the thing done under the enactment; and the law will be applied as nearly as may be as if the requirement has been complied with” In

57

deciding one has to look at the consequences Parliament intended to follow when making the statute. I agree that strict compliance is mandatory in this case.

In *Opong v Attorney General & Ors.* in the Supreme Court of Ghana Law Reports 2000 page 275 it was unanimously held that the defendant's preliminary objection to the plaintiff's writ per Bamford-Addo J.S.C. would be struck out because the requirements in Rule 45 (1) of the Supreme Court Rules 1996 (C116) were not complied with by the plaintiff, no action having been initiated by a writ. The other documents i.e. the statement of case filed by the plaintiff and an affidavit were of no consequence and the same are null and void. The plaintiff's request in the supplementary affidavit filed on 30th September 1999 that the said invalid documents should be attached to the writ filed on 30th September 1999 is misconceived. It is not for the Registrar to rectify lapses in the filing of papers for parties who failed to comply with rules of procedure, nor has he any power to do so. Neither can invalid and void documents be resurrected and given life by attaching same to a later valid document. *Raman vs. Cumarasamy* (1965) WLR 8 PC, *Revoco Vs Prentice Hall Incorporated* (1969) WLR 157, CA were cited.

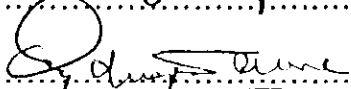
Per Bamford-Addo JSC said in this case "many a time litigants and their Counsel have taken the rules of procedure lightly and ignored them altogether as if those rules were made in vain and without any purpose. Rules of procedure setting time limits are important for the administration of Justice, they are meant to prevent delays by keeping the wheels of justice rolling smoothly. If this were not so, parties would initiate actions in court and thereafter go to sleep only to wake up at their own appointed time to continue with such litigation." I entirely agree with the decision and I adopt it.

In view of the fact that Rule 103 of the Rules of the Supreme Court is not applicable in the present matter I now turn to Rule 98 of the Supreme Court Rules which states "where no provision is expressly made in these Rules relating to the original and the supervisory jurisdiction of the Supreme Court, the practice and procedure for the time being of the High Court shall apply *mutatis mutandis*".

This Rule 98(1) of the Supreme Court Rules Public No. of 1982 empowers the Court to use the practice and procedure in the High Court in the absence of a relevant rule in the Supreme Court Rules. The practice in the High Court in application before the court in trials if the plaintiff or his counsel fails to appear and reasons for their non appearance were not given to this court the matter is struck out for want of prosecution. This court has already adjourned once to allow the plaintiff to appear by himself or his counsel but he has not appeared and there was an affidavit of service filed. The law requires that a person must register an objection in the Supreme Court. If such a person or his counsel does not appear the court is left with no alternative but to strike out the originating notice of motion.

In view of what has been said *supra* the matter is struck out.

Signed:  Mrs. Justice V.A.D. Wright JSC.

I agree:  Mr. Justice S.C.E. Warne JSC.

I agree:  Mr. Justice M.O. Adophy JSC.