IN THE SUPREME COURT OF SIERRA LEONE

S.C. 2/2002

BETWEEN:

THE SIERRA LEONE BAR ASSOCIATION	-	PLAINTIFF
AND		
1. THE ATTORNEY-GENERAL AND MINISTER OF JUSTICE	-	1ST DEFENDANT
2. EKE AHMED HALLOWAY	-	2ND DEFENDANT

CORAM:

HON. DR. JUSTICE A. B. TIMBO	-	C. J.
HON. MR. JUSTICE S. C. E. WARNE	-	J. S. C.
HON. MR. JUSTICE E. C. THOMPSON-DAVIS	-	J. S. C.
HON. MR. JUSTICE M. O. ADOPHY	-	J.S.C.
HON. MRS. JUSTICE V. A. D. WRIGHT	-	J. S. C.

Mr. Berthan Macaulay Jnr. for Plaintiff

Mr. L. M. Farmah for 1st Defendant

Dr. A. Renner-Thomas for 2nd Defendant.

JUDGMENT DELIVERED ON THE 30TH DAY OF JANUARY 2004

TIMBO, C. J.

By Notice of Motion dated the 28th day of June Two Thousand and Two the Plaintiff sought the following reliefs pursuant to sections 122, 124 (1) (a) and 127 of the Constitution of Sierra Leone (No 6 of 1991) -

(1) The interpretation of sections 56, 57, 58, 59, 60 (1) and 64 (1) and (2) of the aforesaid Constitution, more specifically to determine,

(i.) Whether the appointment to the office of the Attorney-General and Minister of Justice referred to in section 64 (1) and (2) is subject to the provisions of section 56 (2) of the Constitution.

(ii.) If the answer to (i) is Yes what is the effect of an appointment to such office without the approval of Parliament?

(iii.) Whether the provisions of section 56 (2) – (5) inclusive of the Constitution are applicable to the said office of the Attorney-General and Minister of Justice referred to in section 64 (1) and (2) of the Constitution.

The Plaintiff also asked for among other things,

(1) A Declaration to the effect that section 56 (2) – (5) inclusive of the Constitution apply to the office of Attorney-General and Minister of Justice referred to in sections 64 (1) and (2) and in particular,

(2) A Declaration that the appointment of the 2nd Defendant on or about the 27th May 2002 as Attorney-General and Minister of Justice without the prior approval of Parliament as stipulated in section 56 (2) of the Constitution contravened the said provision of the Constitution and is consequently null and void and of no legal effect.

The Plaintiff's application was supported by the affidavit of Mr. Yada Hashim Williams, Barrister and Solicitor who is also member and the Secretary-General of the Sierra Leone Bar Association, the Plaintiff herein, sworn to on the 28th day of June 2002.

By paragraph 2 of the said affidavit Mr. Williams stated that the Plaintiff is a Company limited by guarantee incorporated under the Companies Act 1960 (Cap 249) and that the Plaintiff brings the said action in its corporate name. As the name suggests the Plaintiff is the association of legal practitioners in Sierra Leone.

Clauses 3 (a) and 3 (e) of the Memorandum and Articles of Association state the objects of the Company as being,

(a) To support and protect the character status and interest of the legal profession in Sierra Leone.

(b) To originate, promote, oppose and campaign for the improvements amendments reform and interpretation of the laws of Sierra Leone and to institute, prosecute, defend, support or oppose legal proceedings aimed at achieving the same.

In the particulars of the Statement of its Case, the Plaintiff said inter alia,

"The office of the Attorney-General and Minister of Justice is of paramount importance to members of the Sierra Leone Bar Association in the exercise of their profession more so that,

(a) The Attorney- General and Minister of Justice is the titular Head of the Bar.

(b) The Attorney-General and Minister of Justice is a member of the Rules of Court Committee established by section 22 of the Courts Act, (No. 32 of 1965).

(c) The Attorney-General and Minister of Justice is a member of the General Legal Council established by the Legal Practitioners' Act, 2000 (No. 15 of 2000) which said body is the governing authority with regard to the legal profession in Sierra Leone.

(d) The Attorney-General and Minister of Justice is the nominal Defendant in respect of actions brought against the Government of Sierra Leone under the State Proceedings Act 2000 (No. 14 of 2000) and the person upon whom prior notice is to be given before the commencement of action under the said Act;

(e) The Attorney-General and Minister of Justice has a very important role to play in criminal proceedings under the laws of Sierra Leone by virtue of sections 64 (3) and 66 (6) to (8) inclusive of the Constitution."

For these reasons the Plaintiff submitted that it is of the utmost importance that the validity or otherwise of the appointment of the Attorney-General and Minister of Justice on or about the 27th May, 2002 be determined by this Court.

Paragraphs (xi) and (xii) of the Plaintiff's Case are significant and I shall quote them verbatim.

Paragraph (xi). This avers that,

"On or about the 27th May 2002 it was announced on radio 98.1that the 2nd Defendant, among others, had been nominated by His Excellency the President to the office of Attorney-General and Minister of Justice as a Minister subject to parliamentary approval."

More especially, the release said,

"RELEASE FROM THE OFFICE OF THE PRESIDENT"

"It has pleased His Excellency the President to make the following Appointments which according to Section 56 (2) are subject to the approval of Parliament.

MINISTERS

1. Ministry of Finance

   Minister - Mr. Joseph B. Dauda

2. Ministry of Foreign Affairs and International Cooperation

   Minister - Mr. Momodu Koroma

3. Attorney-General and Minister of Justice

   Minister - Mr. Eke A Halloway

4. Minister of Development and Economic Planning

   Minister - Mr. Mohamed B. Daramy;"

Paragraph (xii). By this, the Plaintiff maintained that,

> "In 1996, the then Attorney-General and Minister of Justice was appointed Attorney-General and Minister of Justice after his nomination as Attorney-General and Minister of Justice had been approved by Parliament. That since 1996 to date there has not been any alterations to sections 56 and 64 of the Constitution."

Counsel for the Plaintiff further argued that, in construing sections 56, 57, 58, 59 and 60 (1) and 64 of the Constitution the Court should give the words of these sections their natural and ordinary meaning. He also invited us to look at the entire Constitution when interpreting section 64.

Much of the argument of Plaintiff's counsel had centred around the issue whether or not the 2nd Defendant was a Minister. In Mr. Berthan Macaulay's view the Attorney-General and Minister of Justice is clearly a Minister like any other Minister of State, and that there is no separate or specific provision in the Constitution relating to the oath of the Attorney-General and Minister of Justice other than the one taken by all other Ministers under section 57 which provides,

> "57 A Minister or a Deputy Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath for the due execution of his duties as set out in the Third Schedule."

In his amended Statement of Case counsel for the Plaintiff again drew our attention to the following salient facts,

(xiii) "That in Government Notice No 316 published in the Sierra Leone Gazette (Extraordinary) Volume cxxxiii No. 49 dated the 6th of August 2002 it was stated that His Excellency Alhaji Dr. Ahmed Tejan Kabbah, President, had appointed Eke Ahmed Halloway Esq. the 2nd Respondent herein, to the office of Minister in exercise of the powers vested in him by subsection (1) of section 56 of the Constitution on the 24th day of May 2002."

(ix) That in Government Notice No 317 published in the Sierra Leone Gazette (Extraordinary) Volume cxxxiii No. 49 dated the 6th August 2002, it was stated that His Excellency Alhaji Dr. Ahmed Tejan Kabbah, President, had appointed Eke Ahmed Halloway Esq., the 2nd Respondent herein, to be a member of the Cabinet in exercise of the powers vested in him by subsection (1) of section 59 of the Constitution on the 24th of May 2002.

(x) That in Government Notice, No. 396, published in the Sierra Leone Gazette (Extraordinary) Volume cxxxiii No. 53 dated the 28th of August 2002, it was stated that His Excellency Dr. Ahmed Tejan Kabbah, President, had appointed Eke Ahmed Halloway Esq. the 2nd Respondent herein to be Attorney-General and Minister of Justice in exercise of the powers vested in him by subsection (2) of section 64 of the Constitution on the 24th day of May 2002. That the said

Government Notice No. 396 also stated that it had cancelled Government Notices No. 316 and 317 referred to above."

Mr. Berthan Macaulay Jnr. submitted that notwithstanding the fact that Government Notice No. 396 stated explicitly that Government Notices No. 316 and 317 had been replaced, this did not derogate from the facts alluded to in those Government Notices.

As a result, in his respectful submission, the Court is still bound to determine the legality of the appointment of the 2nd Respondent as there is no doubt that from the documents filed by the 2nd Respondent in support of his Case his appointment was made without the prior approval of Parliament.

Dr. Ade Renner-Thomas, in reply submitted that by his own admission, counsel for the Plaintiff had himself conceded that there is nothing in the entire Constitution which expressly states that section 64 (2) of the Constitution is to be read subject to the provisions of section 56 (1) and (2); and that if section 64 (2) is to be read subject to section 56 (1) and (2) at all, this can only be done by necessary implication.

On the question whether the Attorney-General and Minister of Justice is a Minister, Dr. Ade Renner Thomas had no hesitation in conceding that he is a Minister. But his contention is that the Attorney-General and Minister of Justice is very much more than a Minister. He argued that his office is 'sui generis' or unique in the sense that,

(a) It is established by the Constitution - unlike other Ministers, whose Ministries are created by the President under section 56 (1) in his absolute discretion. He can reduce, add to or abolish any of these portfolios. On the contrary, he cannot do this in the case of the Attorney-General and Minister of Justice.

(b) The Attorney-General and Minister of Justice quite unlike other Ministers, must have certain professional qualifications. Under section 64 (2) he must be a person qualified to hold office as a Justice of the Supreme Court. The qualifications of a Justice of the Supreme Court are set out in section 135 (3) of the Constitution; whereas other Ministers may not have any specialist qualification. For e.g., the Minister of Health need not be a medical practitioner nor does the Minister of Agriculture necessarily have to be an agriculturist.

(c) Of all the Ministers of Government the Attorney-General and Minister of Justice is the only person apart from the President and Vice-President who is guaranteed a seat in the Cabinet – sections 64 (2).

(d) Throughout the constitutional history of Sierra Leone since Independence in 1961 there has always been a separate and distinct constitutional provision dealing with the office and appointment of the Attorney-General and Minister of Justice.

Dr. Renner-Thomas also referred the Court to Paragraph 75 of the National Constitutional Review Commission Report published in March 1991, which he said had been heavily relied upon by the Plaintiff to show the "mischief", if any, which Parliament wished to cure when it enacted sections 56 and 64.

According to Mr. Macaulay Jnr., the "mischief" was to stop people from being appointed to ministerial positions and many other important offices without being vetted by the Legislature thereby providing checks and balances in the governance of the State.

Dr. Ade Renner-Thomas submitted that not every important public office was to be affected by the suggested change any way but only "a number" of them and this in his submission does not definitely include the office of Attorney-General and Minister of Justice.

Counsel for the 2nd Defendant further contended that the main concern of the Commission as exemplified in paragraphs 79 and 80 was the matter of separation of the joint or composite office of the Attorney-General and Minister of Justice. These paragraphs state as follows:

> "79 As a matter of policy, we have refrained from interfering with Ministerial appointments. However, the post of Attorney-General and Minister of Justice appears in the present Constitution. In the light of

our recent experiences we believe that the potential for conflict between the Chief Justice and this Minister, who being also Attorney-General has a right to appear before the Chief Justice from time to time is very great.

80. Our recommendation therefore is that the post of Attorney General should be retained in Cabinet, and that, if His Excellency considers it necessary to appoint a Minister of Justice he should appoint some other person."

However, by enacting section 64, the recommendation to split the office of the Attorney-General and Minister of Justice had been clearly rejected.

I have carefully and painstakingly considered the several points canvassed by counsel on both sides. They all seem attractive but as I see it, the answer to the questions posed will inevitably turn in the main on the interpretation we give to the provisions of sections 56 and 64 and more importantly, whether section 64 is to be read subject to section 56.

Section 56 says,

(1) "There shall be, in addition to the office of Vice-President, such other offices of Ministers and Deputy Ministers as may be established by the President:

Provided that no Member of Parliament shall be appointed Minister or Deputy Minister.

(2) A person shall not be appointed Minister or Deputy Minister unless –

(a) he is qualified to be elected as a Member of Parliament; and

(b) he has not contested and lost as a candidate in the general election immediately preceding his nomination for appointment; and

(c) his nomination is approved by Parliament."

Section 64 on the other hand stipulates that,

"(1) There shall be an Attorney-General and Minister of Justice who shall be the principal legal adviser to the Government and a Minister.

(2) The Attorney-General and Minister of Justice shall be appointed by the President from among persons qualified to hold office as a Justice of the Supreme Court and shall have a seat in the Cabinet."

What does the expression "nomination" for "appointment" mean in section 56 (2) (b)? Do these words mean one and the same thing?

Webster's Dictionary explains the word "nomination" as an act of appointing to an office. The Readers Digest Universal Dictionary on its part defines the verb "nominate" as

designate or appoint to an office and by the Oxford Dictionary of Current English (New Edition) "nominate" means to propose (a candidate) for election; appoint to an office. The American College Dictionary similarly defines "nomination" as an act of appointing.

I do not find these definitions particularly helpful in the case before us. As used in section 56 (2) (b) the phrase "nomination" for "appointment" must connote two different things. The context in which they are used in this subsection clearly shows that they are not interchangeable and cannot therefore be synonymous. There is a presumption that words in a statute are not used unnecessarily or without meaning or that they are tautologous or superfluous. See Halsbury's Laws of England 3rd Edition Volume 36, Paragraph 583. A difference in terminology should not therefore be regarded as accidental. A change of language usually indicates a change of intention – Maxwell on the Interpretation of Statutes, 9th Edition page 324.

As I perceive it, under section 56 (2) (b) there must first be a nomination of the person proposed for the appointment and it is only after the Legislature has approved his candidature or his suitability for the post that such person is finally appointed to the designated position by the President..

It has been said,

> "A broad and liberal spirit should inspire those whose duty it is to interpret it (the Constitution); but this does not imply that they are free to stretch or

pervert the language of the enactment in the interests of any legal or constitutional theory or even for the purpose of supplying omission or correcting supposed errors."

Similarly as was stated by Kania C. J. in Gopalan V. State of Madras [1950]. S C J at page 191,

> "Where the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the Legislature, we cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument. It is difficult upon any general principles, to limit the omnipotence of the sovereign legislative power by judicial interposition, except so far as the express words of a written Constitution give that authority."

This same point was re-echoed and empasised by the Indian Supreme Court in another case Keshava Menon V. State of Bombay [1951] S. C. R 228 at page 232 when it observed,

> "an argument founded on what is claimed to be the spirit of the Constitution is always attractive for it has a powerful appeal to sentiment and emotion; but a Court of law has to gather the spirit of the Constitution from the language of the Constitution. What one may believe or think to be the spirit

of the Constitution cannot prevail if the language of the Constitution does not support that view."

Therefore, the duty of the Court is to find out the expressed intention of the Legislature. This it can only do from the words of the enactment itself.

So, it is not at liberty to give –

> "a speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity what the Legislature intended to be done, or not to be done can only be legitimately ascertained from that which it has chosen to enact either in express words or by reasonable and necessary implication." Vide Salomon V. Salomon [1897] A. C. 22 at page 38.

In other words, when the meaning of the words used by the Legislature are precise and unambiguous, as we have here, it is not the business of the courts to busy themselves in finding out what the supposed intentions of the framers were.

A cardinal principle of statutory interpretation is that a Constitution must be read as a whole with a view to determining the intention of each section. This is what is commonly referred to as the principle of harmonious construction. Its aim is no doubt, to reconcile different provisions of the Constitution.

This is not to say, however, that undue weight should be attached to any section except to the extent that it legitimately and expressly limits the other.

Thus in State of Madras V Champakan [1951] S C R 525 and Qutreshi V State of Bihar [1958] S. C. 731 the Indian Supreme Court decided that the Directive Principles of State Policy incorporated in the Constitution have to be interpreted and applied in a manner that will not abridge or take away the basic rights of the individual. In the same way the Court ruled in State of Bombay V. Bombay Education Society [1955] S. C. R 568 that even though Hindi is the lingua franca and Article 351 of the Indian Constitution makes especial provision requiring the State to promote the Hindi language such object cannot be achieved by any means which infringe the protection of the interests of minority groups guaranteed under Articles 29 and 30.

As agreed by counsel on both sides there is nowhere in the Constitution in which it is said categorically that section 64 (1) is to be construed subject to the provisions of section 56 (1) and (2). That being the case why should this Court either on its own volition or be urged to hold that it was the intention of Parliament that both sections shall be read side by side?

When Parliament in its wisdom had deemed it necessary that parliamentary approval should be sought for appointment to certain public offices it had not scrupled to say so. This, it had done in no less than ten different places in the Constitution.

Let us take for instance the office of the Director of Public Prosecutions. By subsection (2) of section 66, Parliament did not only unequivocally enact among other things that, the Director of Public Prosecutions shall be appointed by the President but it also added expressly that such appointment shall be subject to the approval of Parliament.

In section 65, which creates the office of Solicitor General on the other hand, the words used in section 66" and subject to the approval of Parliament" are completely avoided. Nobody has ever canvassed or suggested that the Solicitor-General should be vetted by Parliament before appointment.

Why should it be different when it comes to the appointment of the Attorney- General and Minister of Justice under section 64, which has similarly eschewed the use of the said phraseology?

This is especially so as sections 64 and 65 come immediately before section 66. Can this be said to be an oversight on the part of Parliament? With respect, I do not think so. It must have been a deliberate decision of Parliament that the appointment of the Attorney - General and Minister of Justice as well as the Solicitor-General, his principal assistant shall not be subjected to parliamentary screening or investigation as long as both have otherwise fulfilled the professional qualifications stipulated in sections 64 (2) and 65 (2) respectively.

As a matter of law the Attorney-General and Minister of Justice need not be a registered voter or a citizen of the Republic of Sierra Leone unlike the other Ministers or Deputy Ministers nominated and appointed under the provisions of section 56 where the nominee must first be on the register of voters in order to qualify to be appointed as a Minister or Deputy Minister. This difference to me further strengthens the contention of counsel for the 2nd Respondent that the office of Attorney-General and Minister of Justice is sui generis and completely distinct from that of other Ministers in section 56.

Another example of the difference in the two positions is to be found in section 115 (4) of the Constitution. While section 115 (1) deals with the remuneration of the President and certain other public officer generally, section 115 (4) specifies the offices to which section 115 (1) applies. These offices are named therein as offices of the President, Vice-President, Attorney-General and Minister of Justice, Ministers, Deputy Ministers etc.

If the Attorney-General and Minister of Justice were the same person as any other Minister of State, there would certainly have been no need to name him separately in this subsection.

The fact that the Attorney-General and Minister of Justice incidentally also takes the same oath of office like the other Ministers of Government appointed under Section 56 makes no difference whatsoever. It is indisputable that the oath set out in the Third Schedule is not confined to Ministers alone. It is the same oath that Members of

Parliament and nearly all other senior public officers subscribe to including Judges, the Secretary to the President, the D. P. P., the Solicitor-General and so forth...

There is no better illustration in my opinion, of the uniqueness of the position of the Attorney-General and Minister of Justice than what is contained in the provisions of section 66 (7) and (8) of the Constitution that,

> "(7) The powers conferred upon the Attorney-General and Minister of Justice by this section shall be vested in him to the exclusion of any other person or authority.
>
> (8) In the exercise of the powers conferred upon him by this section the Attorney General and Minister of Justice shall not be subject to the direction or control of any other person or authority."

Which other Minister of State, may I ask, is vested or conferred with such extensive or what one might be tempted to describe as absolute power under the Constitution? By section 66 (7) and (8) he is not even subject to control by the President, the highest executive authority in the land, in the execution of his duties. Constitutionally all the Head of State can do if he is not satisfied with his performance is to remove him but he cannot tell him how to perform those functions. Can this be said of other Ministers? Certainly not.

It is indeed true as has been submitted by Mr. Berthan Macaulay Jnr. that Section 64 unlike section 56 is not entrenched and can be amended with much more ease. But the fact that up to the present it has not been so amended indicates, by and large, acceptance of the provisions of that section. Why should we therefore import into section 64 the words, "and subject to parliamentary approval." when Parliament since the enactment of the Constitution in 1991 had not thought it fit to do so? In my view, this is the only competent authority which can do this, being the supreme legislative body and the embodiment of the representatives of the people.

We cannot in the guise of judicial interpretation introduce something into the Constitution that cannot be found there. Section 66, as we have seen in the case of the D. P. P. clearly states that parliamentary sanction is required. On the other hand, sections 64 and 65 (for the Attorney-General and Minister of Justice and for the Solicitor-General respectively) made no such requirement a prerequisite to appointment to those offices.

We have been reminded by Mr. Berthan Macaulay Jnr. that the immediately preceding Attorney-General and Minister of Justice now the Vice-President went to Parliament for approval before finally being appointed. He further argued that the previous announcements in the two editions of the Sierra Leone Gazette Nos. 316 and 319 made reference to parliamentary approval. In my respectful opinion, that anomaly had been cured by the subsequent publication in the Sierra Leone Gazette cancelling the earlier statements.

I do not see anything wrong or improper either in law or in principle in the Government correcting an error previously made as a result of some mistaken view of the law.

I now come to the specific questions posed by counsel for the Plaintiff i.e.

(i). Whether the appointment to the office of the Attorney-General and Minister of Justice referred to in section 64 (1) and (2) is subject to the provisions of section 56 (2) of the Constitution.

(ii). If the answer to (i) is Yes, what is the effect of an appointment to such office without parliamentary approval?

(iii). Whether the provision of sections 56 (2) – (5) inclusive are applicable to the said office of Attorney-General and Minister of Justice.

My straight-forward answer to the first question is that the appointment to the office of the Attorney-General and Minister of Justice referred to in section 64 (1) and (2) of the Constitution is not subject to the provisions of section 56 (2) of the Constitution.

From this it follows that the appointment of the 2nd Defendant on or about the 27th May 2002 as Attorney-General and Minister of Justice without parliamentary approval does not invalidate or nullify the said appointment.

On the third and last question, it is my considered view that the provisions of section 56 (2) – (5) inclusive, of the Constitution are not applicable to the office of Attorney-General and Minister of Justice referred to in section 64 (1) and (2) of the Constitution.

Consequently, the several Declarations sought by the Plaintiff are hereby refused.

Before I end, I wish to thank counsel on both sides for their industry and resourcefulness in the preparation and presentation of their Case. I however deeply regret the delay in concluding this matter which has been due largely to the incapacitation followed by prolonged periods of hospitalization of one of our brothers.

I make no order as to cost.

HON. DR. JUSTICE A. B. TIMBO

CHIEF JUSTICE

I AGREE.....HON. MR. JUSTICE S. C. E WARNE

I AGREE.....HON. MR. JUSTICE E. C. THOMSON-DAVIS

I AGREE.....HON. MR. JUSTICE M. O. ADOPHY

I AGREE.....HON. MRS. JUSTICE V. A D. WRIGHT