

S.C. NO. 2/2005

IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTIONS 122; 124(1), 127 AND 171(15) OF THE CONSTITUTION OF SIERRA LEONE, ACT NO.6 OF 1991, AND RULES 89 AND 98 INCLUSIVE OF THE SUPREME COURT RULES, STATUTORY INSTRUMENT NO.1 OF 1982.

IN THE MATTER OF SECTIONS 35(1), (2), (4) & (6); 4(b); 42(1); 43(a) & (b); 46(1); AND 76(1)(h) OF THE SAID CONSTITUTION OF SIERRA LEONE

IN THE MATTER OF SECTIONS 6, 14(1), 24, 27 AND 29 OF THE POLITICAL PARTIES ACT, NO.3 OF 2002.

IN THE MATTER OF CLAUSES 11(4); IV(A)(1); IV(A)(3)(i); IV(B)(5)(b), (c) & (i); V(1)(c) & (d); V(2)(c) & (d); VI(b) & (f), AND X OF THE CONSTITUTION OF THE SIERRA LEONE PEOPLE'S PARTY CONFERENCE OF THE SAID SLPP SLATED FOR 19-20 AUGUST AT MAKENI.

BETWEEN:

SAMUEL HINGA NORMAN

PLAINTIFF

-AND-

DR. SAMA S. BANYA
National Chairman, SLPP

1ST DEFENDANT

Dr. PRINCE HARDING
National Secretary-General, SLPP

2ND DEFENDANTTHE SIERRA LEONE PEOPLE'S PARTY (SLPP) 3RD DEFENDANT

(All Defendants being of 29 Rawdon Street, Freetown)

CORAM:

HON. MR. JUSTICE A.R.D. RENNER-THOMAS	-	CHIEF JUSTICE
HON. MRS. JUSTICE V.A.D. WRIGHT	-	J.S.C
HON. MR. JUSTICE M.E. TOLLA-THOMPSON	-	J.S.C
HON. JUSTICE SIR JOHN MURIA	-	J.A.
HON. MR. JUSTICE JON KAMANJA	-	J.A.

DR. BU-BUAKEI JABBI for the Plaintiff
E.A. HALLOWAY ESQ.; D.B. QUEE Esq.; E.E.C. SHEARS-MOSES Esq.; and

A. BREWAH Esq.; for the Defendants.

JUDGMENT DELIVERED THE DAY OF AUGUST, 2005.

RENNER-THOMAS, C.J. The Plaintiff, Samuel Hinga Norman, describes himself for the purposes of the action herein as a member of the Sierra Leone Peoples Party, the Third Defendant herein, (hereinafter referred to as "the SLPP")

"who aspires to be Presidential Candidate at the 2007 Presidential elections, but who is keenly concerned that the pristine democratic credentials and processes of the SLPP are maintained, entered and facilitated in all its internal structure, organization, operations, programmes, activities and functioning".

The First Defendant herein, Dr. Sama Banya, is described as the National Chairman of the SLPP. The Second Defendant, Dr. Prince Harding, is described as the National Secretary-General of the SLPP. The SLPP is a political party registered pursuant to the provisions of the Constitution, Act. No.6 of 1991(hereinafter referred to as "the National Constitution") and the Political Parties Act, No.3 of 2002 (hereinafter referred to as the "Political Parties Act").

Apparently, some time in July 2005 the National Executive Council of the SLPP (hereinafter referred to as "the NEC") held a meeting in Freetown and took a decision that a Party Conference of the SLPP was going to be held in Makeni in the Northern Region of Sierra Leone on the 19th and 20th day of August 2005. Among other things, it was proposed to elect the Presidential Nominee of the SLPP for the 2007 elections who, pursuant to Clause V(2)(c) of the 1995 Constitution of the SLPP, automatically becomes the Party Leader of the SLPP after such election.

According to the Statement of the Plaintiff's Case the Plaintiff is of the view that it is too premature to choose a Presidential Nominee for the SLPP anytime in 2005 for the Presidential elections due to be held in 2007. Apparently, it was the Plaintiff's dissatisfaction with the decision of the NEC of the SLPP to go ahead with the election of the Presidential Nominee of the SLPP at the Party Conference scheduled for 19th – 20th August 2005 that prompted the Plaintiff to institute these proceedings.

The Plaintiff commenced this action by way of an Originating Notice of Motion dated 27th day of July 2005 invoking the original jurisdiction of this Court, according to the title of

the action, pursuant to sections 122, 124(1), 127 and 171(15) of the National Constitution. By this action, the Plaintiff seeks from this Court several reliefs, four by way of declarations and one injunctive, the text of which I hereby set out *in extenso*:-

"1. A DECLARATION to the effect that the Constitution of the Sierra Leone People's Party (SLPP) dated July 1995 (hereinafter also called "**the SLPP Constitution**") is the authentic currently applicable Constitution of the Sierra Leone People's Party (also herein called "**the Party**" or "**the SLPP**") for the purposes of the functioning and operation of the Party in terms of the National Constitution and the Political Parties Act, No.3 of 2002.

2. A DECLARATION to the effect that, where an incumbent President of the Republic of Sierra Leone was originally elected thereto in compliance with the following provisions in the respective Constitutions as cited herein below, among others, to wit.

i) as to the SLPP Constitution:

- a) Clause IV (A)(3)(i) thereof,
- b) Clause V(1)(c) and (d) thereof,
- c) Clause V(2)(c) thereof, being under the rubrics "Duties of Officers" and "Leader", and
- d) Clause VI(b) and (f), and

ii) as to the National Constitution

- a) section 41(b) thereof,
- b) section 42(1) thereof; and
- c) section 43 thereof,

then, in that case, the following interpretive conclusions are or would be, each by itself, within the spirit, intendment, contemplation, and indeed inescapable force and effect, of the said SLPP Constitution, viz:

- (1) That the SLPP Constitution makes no express or specific provision for the substantive independent existence, or for the direct nomination, election, selection, choice or identification, as the case may be, of the Leader of the

SLPP as such, but, rather, that any such nomination, election, selection, choice or identification, as the case may be, of the said Leader takes place only indirectly as a consequential or derivative issue from the process of nominating, electing, selecting, choosing or identifying, as the case may be, the Party's Presidential Nominee for the next pending national Presidential election.

- (2) That the position of Leader of the SLPP is not a free-standing office or status in its own right, but rather, that it is, by virtual definition, dependent upon the position of Presidential Nominee for the said party, thereby making it so intertwined or associated with the Office of State President **at any time when an SLPP member holds the said Presidency** as to make the two positions indivisible and inseparable one from the other at all such times.
- (3) That **at anytime when the SLPP is in power and/or a member thereof is the lawful incumbent President of Sierra Leone**, the two positions of Leader of the party and State President may or can only be either held together and jointly or relinquished together and jointly, and never otherwise **at any such time**, so that an incumbent thereof may not selectively relinquish one of them and yet hold or seek to continue holding to the other, nor may two different persons at one and the same time or simultaneously hold the two positions separately, i.e. one position to one of them and the other to the other.
- (4) That the SLPP Constitution makes no express or specific provision for the Substantive independent existence of, or for any nomination, election, selection, choice or identification (as the case may be) of, a Leader of the SLPP as such, **at anytime when the said Party is either not in power or not providing the incumbent President of Sierra Leone or when a national Presidential election is not immediately due to be held.**

3. A DECLARATION to the effect that, in view of the following Party and National constitutional and other legislative provisions respectively, among others, to wit:

- a) Clause II(4), IV(A)(1), IV(B)(5)(b) and (c) and (i), V(2)(c) as aforesaid, and X of the SLPP Constitution;
- b) Sections 6, 14(1), 24, 27 and 29 of the Political Parties Act, No.3 of 2002; and
- c) Sections 35(2) and (4), 42(1), 43(a) and (b); 46(1), 49(4), 76(1)(h), and 171(15) of the National Constitution,

then, in view thereof, the following interpretive conclusions are or would be, each by itself, within the spirit, intendment, contemplation, and indeed inescapable force and effect, of the said provisions respectively, viz:

- (1) That as at the date of filing the application herein, there are or were at least two or three regular annual meetings and an unspecified number of possible special other meetings of the Party Conference of the SLPP still to be held before the Presidential and Parliamentary elections of 2007 are or were due to be held, to wit, the annual Party Conferences for the years 2005, 2006 and possibly 2007 and any other special or other meeting(s) of the Party Conference "as may be determined by the National Executive Council".
- (2) That, **without any prejudice whatsoever to the holding of the Party Conference (as such) slated for 19-20 August 2005 or at all otherwise in 2005,** the nomination, election, selection, choice or identification, as the case may be, whether attempted or purported, of a Presidential Nominee and/or Leader of the SLPP at the said Party Conference, that is to say, almost two years before the Presidential and Parliamentary elections of 2007 are due to be held, has or would have or leads or would lead to the following interpretive consequences, viz:

- (i) it and will in itself be grossly premature and incompontant with

democratic principles, for being inconsistent with and in contravention of the provisions in sections 35(2) and 43(a) and (b) of the National Constitution, and accordingly void and of no effect'

(ii) *it is and will in practice be grossly unfair to certain individual members of the Party and potentially prejudicial to their interests vis-à-vis the Presidency and even to the wider related interests of the Party itself and the nation at large, in that;*

- a) *it does and will tend to operate to prematurely preclude and exclude certain potential aspirants to that or those position(s) who, for reasons of present untimeliness or prematurity or otherwise, may not yet, as at 19-20 August 2005 or at any other time in 2005, have indicated their intentions or aspirations in respect thereof, but may be likely as at the due and proper time in 2006 or 2007 to make such intentions or aspirations publicly known at the appropriate time.*
- b) *it is and will be likely to deprive the SLPP itself as a democratic national Party of a possible better quality or more popular Presidential candidate who, however, for reasons of present untimeliness or prematurity or otherwise, may not yet, as at 19-20 August 2005 or at any other time in 2005, have indicated his/her intentions or aspirations in respect thereof, but may wish as at the due and proper time in 2006 or 2007 to make such intentions or aspirations publicly known at the appropriate time; and it is also likely to deprive the said Party of a fairer and more informed choice of a Presidential Nominee or Candidate, thereby putting the SLPP at a possible electoral disadvantage vis-à-vis the Presidential candidates of other political parties and thus at the risk of losing the Presidential elections of 2007 against the said other parties;*
- c) *it is and will be likely to deprive the entire nation itself and the people of Sierra Leone as a whole of a possible better quality*

Presidential Candidate and potential ultimate President of Sierra Leone who, however, for reasons of present untimeliness of prematurity or otherwise, may not yet, as at 19-20 August 2005 or at any other time in 2005, have indicated his/her intentions or aspirations in respect thereof, but may wish as at the due and proper time in 2006 or 2007 to make such intentions or aspirations publicly known at the appropriate time, with all the possible attendant risks of prejudice (arising from an inapt choice due to the said gross prematurity) to the prospects of good governance, peace and positive national economic and other development during the five to ten years following the next Presidential election;

- (iii) it is or will, in any case, be tantamount to an amendment or attempted/ purported amendment of the SLPP Constitution, and accordingly inconsistent with and in contravention of the provisions in Clauses 11(4), IV(B)(5)(b) and (c) and (i), and X of the said SLPP Constitution, and with an[y] of those of section 24 of the Political Parties Act 2002 and sections 35(2) and (4) and 76(1)(h) of the National Constitution, and therefore unlawful, void and of no effect*
- (3) That the positions of Leader and Deputy Leader of the SLPP, in the manner and to the extent that they have been and/or are being held by specified incumbents respectively over the past ten years or so, that is to say, since at least 1996 and upto now, were and are so held in contravention of the provisions in section 14(1) of the Political Parties Act and sections 35(4) and 76(1)(h) of the National Constitution and so, as held, were and are void and of no effect*
- (4) That, in so far as and to the extent that the current SLPP Constitution remains and reads as it stands at the present time and at least up to 12 months hence, it is unlawful for the said Party to nominate, elect, select, choose or otherwise identify, as the case may be, a Leader of the SLPP as*

such, or to attempt/purport to so do, at any Party Conference or indeed at anytime at all within the next 12 months from the date of filing this application.

(5) That, in view especially of the provisions of sections 14(1) of the Political Parties Act 2002, and 35(4) and 76(1)(h) of the National Constitution, a person who is for the time being the President, the Vice-President, a Minister or a Deputy Minister in the Government under the provisions of the National Constitution may not and must not be, and ought not to be, either:

- a) Leader of the SLPP, or
- b) A member of the executive body or officers of the SLPP, whether national or otherwise, or
- c) The National Secretary-General of the SLPP.

(6) That the position of National Secretary-General of the SLPP, in the manner and to the extent that it has been or is being held by a Minister of Government, to wit, by the 2nd Defendant herein over the past three years or so, that is to say, at least since around June 2002 and up until now, was and is so held in contravention of the provisions in section 14(1) of the Political Parties Act 2002 and sections 35(4) and 76(1)(h) of the National Constitution and so, as held, was and is void and of no effect since at least June 2002 up until now.

(7) That, in consequence of all the provisions and conclusions cited and recited in the current declaratory relief and its foregoing sub-items 3(1) to (6) inclusive herein, **the SLPP as a Party is already dangerously left open and exposed to a present risk of disqualification and disestablishment applications to the Supreme Court**, on the one hand by the relevant Commission for an order to cancel the registration of the Party and, on the other hand, by the Attorney-General and Minister of Justice after such cancellation for an order to wind up and dissolve the SLPP, pursuant respectively to sections 27 and 29 of the Political Parties

Act 2002.

4. A DECLARATION to the effect that the following provisions of the SLPP Constitution in so far as the respective aspects thereof as are indicated herein are concerned and to the respective extents thereof, to wit:

- a) Clause V(2)(c) thereof, in so far as the stipulations "shall automatically become The Leader of the Party after such nomination. He shall be the political head of the Party and" are concerned and to the extent thereof;
- b) Clause V(1)(c) & (d) thereof, in so far as the mentions of "Leader" and "Deputy Leader" therein respectively are concerned and to the extent thereof;
- c) Clause V(2)(d) thereof, in its entirety; and
- d) Clause VI(f) thereof, in so far as the stipulation "shall cease to be Leader and Deputy Leader respectively" is concerned and to the extent thereof,

Are, each and every one of them, inconsistent with and in contravention of the provisions in section 14(1) of the Political Parties Act 2002 and sections 35(4) and 76(1)(h) of the National Constitution and that the said inconsistent provisions are, to the extent of the said inconsistency, in each case as specified herein, null and void ab initio and of no effect.

5. **A PERMANENT INJUNCTION restraining the 1st and 2nd Defendants (in their personal and official Party capacities alike) and 3rd Defendant herein, their servants, agents and privies, and in the case of the 3rd Defendant, in all its emanations and manifestations as organs, institutions, officers and members thereof, from nominating, electing, selecting, choosing or identifying, as the case may be, a Presidential Nominee and/or Leader of the SLPP in any shape or form or name or guise, or attempting/purporting so to do, or encouraging or causing or countenancing or shepherding or partaking in the doing of any such thing, at the Party Conference slated for 19-20 August 2005 or at all otherwise in 2005, but otherwise without any prejudice whatsoever to the holding of the said Party Conference as such.**

6. *ANY OTHER OR FURTHER RELIEF that this honourable Supreme Court would deem fit, proper and just in all the circumstances.*
7. *Costs of this action."*

In support of the Originating Notice of Motion there is filed an affidavit of Dr. Bu-Buakei Jabbi sworn to on the 27th day of July 2005, pursuant to Rule 89 of the Rules of this Court, Constitutional Instrument No.1 of 1982. A Statement of the Plaintiff's Case together with an affidavit in verification thereof were filed on the 3rd day of August 2005. The Defendants in turn filed a joint Statement of their case together with an affidavit in verification thereof on the 11th day of August 2005.

It should be noted in passing that the Attorney-General and Minister of Justice is not mentioned as a defendant in this action nor did he avail himself of the provision of Rule 92(4) of the Rules of this Court to file an answer to the Statement of the Plaintiff's Case.

After disposing of the Plaintiff's application for an interim injunction in the terms of that sought in the Originating Notice of Motion by ordering that the Defendants do give an undertaking accordingly and that the Plaintiff should give a cross-undertaking as to damages this Court ordered that oral arguments were to commence on the 17th August 2005.

Shortly after opening the case for the Plaintiff, Dr. Bu-Buakei Jabbi, with characteristic candour, conceded that the first declaration sought in the Originating Notice of Motion was not one which this Court could properly grant in its original jurisdiction. He therefore sought leave to abandon that relief which leave was granted accordingly. The application for this declaration will therefore be struck out.

In contrast, Dr. Jabbi argued strenuously that this Court has original jurisdiction, pursuant to Sections 122, 124(1), 127 and 171(15) of the National Constitution, to grant the other four reliefs sought in the Originating Notice of Motion. For the purposes of clarity I shall set out *in extenso* the several provisions of the National Constitution that Dr. Jabbi argued

gave this Court original jurisdiction to grant reliefs 2 to 5 inclusive in the Originating Notice of Motion.

They are as follows:-

1. Section 122(1): "The Supreme Court shall be the final court of appeal in and for Sierra Leone and shall have such appellate and other jurisdiction as may be conferred upon it by this Constitution or any other law".
2. Section 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) where any question arises whether an enactment was made in excess of the power conferred upon Parliament or any other authority or person by law or under this Constitution".
3. Section 127(1): "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."

Section 127(2): "The Supreme Court shall, for the purposes of a declaration under subsection (1), make such orders and give such directions as it may consider appropriate for giving effect to, or enabling effect to be given to, the declaration so made."

4. Section 171(15) "This Constitution shall be the supreme law of Sierra Leone and any other law found to be inconsistent with any provision of this Constitution, shall, to the extent of the inconsistency, be void and of no effect."

Mr. Eke Holloway, Counsel for all three Defendants, in answer to Dr. Jabbi's contention argued that none of the above provisions gives this Court original jurisdiction to entertain the Originating Notice of Motion and went further to contend that this Court lacked original jurisdiction to grant any of the reliefs sought. Mr. Holloway further argued that if this Court upheld his submissions on the question of jurisdiction then the action should be dismissed outright.

Let me hasten to state, with the greatest respect to Mr. Holloway, that even if this Court were to hold that it lacked original jurisdiction to entertain the several reliefs claimed in the Originating Notice of Motion the proper thing to do would be to strike out the Originating Notice of Motion as this court would not have gone into the merits of the Plaintiff's case and therefore could not summarily dismiss it. (see *Buraimoh Oloriode & Others v. Simeon Oyebi and Others* (1984) 5 SC1 and *Otapo v Sunmonu* (1987) 2 NWLR 587).

What then is the answer to the first vital question posed in this matter? Does this Court have original jurisdiction to entertain the Plaintiff's case?

Before setting out to answer this all important question I need to make certain clarifications regarding the use of the word "jurisdiction". A distinction ought to be made between two meanings frequently attributed to the word and which sometimes tend to lead to confusion. This distinction is aptly dealt with in the following dicta by Rickford L.J. in delivering his judgment in the case of *Guaranty Trust Company of New York v. Hannay & Company* ((1915) 2 KB 536 at 563):-

"The word 'Jurisdiction' and the expression 'the court has no jurisdiction' are used in two different senses which I think often leads to confusion. The first and, in my opinion, the only really correct sense of the expression that the court has no jurisdiction is that it has no power to deal with and decide the dispute as to the subject-matter before it, no matter in what form or by whom it is raised. But there is another sense in which it is often used, i.e., that although the Court has power to decide the question it will not according to the settled practice do so except in a certain way and under certain circumstances."

Barraclough v. Brown ([1897] A.C. 615) and *Westbury-on-Severn Rural Sanitary Authority v Meredith* (30 Ch.D.387) are two English cases that illustrate this distinction. In *Barraclough's* case, there was a real want of jurisdiction. The power to decide the dispute as to the particular subject-matter had been removed by statute from the High Court as a court of first instance and transferred to another tribunal. In the second case, the Court could decide the dispute and give the relief sought but, by a settled practice embodied in a rule, it would not do so except under certain circumstances, i.e., if the subject-matter was of the value of £10/00 or more.

In my humble opinion, therefore, in answering the question whether this court has original jurisdiction to hear and determine the matters raised in the Originating Notice of Motion, no matter in what form and by whom they are raised, I shall be addressing the issue of jurisdiction in the first, and in the words of Pickford L.J. above, "the only correct sense of the expression", i.e., whether or not this Court is vested original jurisdiction to hear and determine the dispute between the Plaintiff and the Defendants as to the subject-matter before us.

I need to make a further clarification on the issue of the original jurisdiction of this Court. As is evident from the provisions of section 122(1) of the National Constitution quoted above, it is not only the National Constitution which endows the Supreme Court with original jurisdiction. This subsection provides that this Court "shall have such appellate and other jurisdiction as may be conferred upon it by this Constitution or any other law". Two examples of other enactments that confer original jurisdiction upon the Supreme Court are the Electoral Laws Act, No.2 of 2002 and, of more relevance to the case, the Political Parties Act.

I now turn to the other provisions of the National Constitution relied on by Dr. Jabbi in his argument in support of the contention that this Court has original jurisdiction to entertain the matters raised in the Originating Notice of Motion.

First, there is section 171(15) of the National Constitution. With the greatest respect to Dr. Jabbi, this section which is of utmost significance in the search for the source of law in this country vests absolutely no jurisdiction in the Supreme Court. Rather, it is a substantive provision which merely declares the National Constitution to be the supreme

law of Sierra Leone and emphasizes that status of the National Constitution by providing that any other law which is found to be inconsistent with any provision of the National Constitution shall, to the extent of the inconsistency, be void and of no effect.

It is true that the Supreme Court has got original jurisdiction to make a declaration to the effect that any law found to be inconsistent with any provision of the National Constitution renders the offending provision of that law null and void but that jurisdiction is vested in this Court by section 124(1) of the National Constitution, not even by section 127 which merely lays down the procedural rules for the making of such declarations.

Indeed, this brings me to the consideration of the legal effect of section 127(1) of the National Constitution. In my opinion, this section lays down the procedure for the enforcement of the National Constitution by this Court but only in certain specific circumstances. They are the following:

Where -

- (1) any person alleges that an enactment is inconsistent with or in contravention of a provision of the National Constitution. That person may then invoke the original jurisdiction conferred upon this Court by section 124(1) for a declaration based on section 171(15) of the National Constitution that to the extent of the inconsistency the said enactment is null and void;
- (2) any person alleges that anything contained in an enactment is inconsistent with or is in contravention of any provision of the National Constitution. That person may also invoke the original jurisdiction of this Court conferred by section 124(1) for a similar declaration as under (1) above; and
- (3) any person alleges that anything done under the authority of an invalid enactment or any other enactment is inconsistent with or in contravention of the National Convention. That person may equally invoke the original jurisdiction of this Court conferred by section 124(1) for a similar declaration as under (1) and (2) above.

As part of his argument in support of his contention that this Court has original jurisdiction to hear and determine the present action Dr. Jabbi sought to rely on what I may call "the procedural jurisdiction" in the second sense of the word "jurisdiction" as outlined in the dicta of Pickford L.J. cited above. He contended that the several matters the Plaintiff was complaining about had been done "under the authority of an enactment", that enactment in question being the SLPP 1995 Constitution, which according to him is subsidiary legislation. //

With the greatest respect to Dr. Jabbi, the SLPP 1995 Constitution cannot in any sense be considered as subsidiary legislation. It was not made pursuant to any power vested in the SLPP by the Political Parties Act or any other enactment. All the Political Parties Act lays down is a requirement that the constitution of every political party shall be one of the documents to be lodged with the Political Parties Registration Commission (hereinafter referred to as "the Commission") when a political party applies for registration. Further, neither before nor after registration is the party's constitution laid before Parliament as is required by the Constitutional and Statutory Instruments Act, No 6 of 1999, for any subsidiary legislation to have the necessary binding force of law. I shall deal with this issue more fully later in this judgment.

For all the above reasons, I hold that section 127(1) of the National Constitution does not confer any original or other jurisdiction in the Supreme Court.

I now turn to section 124(1) of the National Constitution. This subsection not only confers original jurisdiction on the Supreme Court but it also stipulates that in respect of those matters for which original jurisdiction is thus conferred no other court shall exercise original jurisdiction. What then are those matters? According to section 124(1)(a) these are "all matters relating to the enforcement or interpretation of any provision of" the National Constitution." Giving the words in this provision their plain and natural meaning, as I am obliged to do, since I perceive no ambiguity in the provision, as long as the matter in question relates to the enforcement or interpretation of any provision of the National Constitution original jurisdiction is vested in the Supreme Court to hear and determine it.

The first test is that the Plaintiff seeking to invoke this original jurisdiction must be able to point to some provision, any provision, of the National Constitution that is to be enforced or interpreted. The next test is to show, in addition, what act or omission makes it necessary for the provision to be enforced. The third test, in my opinion, is an alternative to the second test. The Plaintiff must otherwise show that an interpretation of the particular provision of the National Constitution identified under the first test is required as a matter of law.

Has the Plaintiff then satisfied the first test and any or both of the other two tests? As far as the first test is concerned, the Plaintiff has indeed identified several sections of the National Constitution which, according to him, have been contravened and are to be enforced. These he listed as sections 35(2), 35(4), 42(1), 43(a), 43(b), 46(1), 49(4), 76(1)(h) and 171(15).

However, to be able to invoke the original jurisdiction the Plaintiff needs also to pass any one or both of the other two tests. I shall analyze the several matters raised by the Plaintiff in relation to each of the sections cited by the Plaintiff to see if the requirements of the second and/or third tests are satisfied. If I am satisfied that the matter raised in respect of the particular section of the National Constitution relates to the enforcement and/or interpretation of the provision therein contained then this Court will be deemed to have original jurisdiction in respect of the matter so raised.

First, sections 41(b), 42(1) and 43 of the National Constitution referred to in respect of the second relief sought by the Plaintiff shall be considered together. I find as a fact that it is not being alleged by the Plaintiff either in the Originating Notice of Motion or in the Statement of the Plaintiff's case or in any of the affidavits filed on behalf of the Plaintiff that any of the provisions of these sections of the National Constitution are to be enforced as a result of something done or omitted to be done by the Defendants. The Plaintiff therefore fails the second test as far as these sections are concerned.

Is there then any legal reason, because of matters raised in respect of the second relief sought by the Plaintiff in the Originating Notice of motion, which makes it necessary to interpret any of these three sections of the National Constitution? I can find no such legal reason. In my opinion, the matters raised indicate rather a need for an

interpretation of Clauses IV(A)(3)(1), V(1)(d), V(2)(C), VI(b) and VI(6) of the SLPP 1995 Constitution. This, in my view, cannot confer original jurisdiction in the Supreme Court. I therefore hold that this Court does not have original jurisdiction to grant the second relief sought by the Plaintiff. As a result the application for this relief is to be struck out.

I now turn to the third relief sought by the Plaintiff. In addition to sections 42(1), 43(a), 43(b) and 41(b) which I have already dealt with under the second relief the Plaintiff has identified the provisions of sections 35(2), 35(4), 49(4), 76(1)(h) and 171(15) of the National Constitution as ones to be enforced or interpreted as a result of matters raised by him in support of the third relief claimed in the Originating Notice of motion.

I shall deal with sections 35(2), 35(4) and 76(1)(h) together. I shall set them out *in extenso* for the purpose of clarity:

Section 35(2) – “ *The internal organization of a political party shall conform to democratic principles, and its aims, objectives, purposes and programmes shall not contravene, or be consistent with, any provision of this Constitution.*”

Section 35(4) – “ *No political party shall have as a leader a person who is not qualified to be elected as a Member of Parliament.*”

Section 76(1)(h) – “ *No person shall be qualified for election as a member of Parliament - .. he is for the time being the President, the Vice-President, a Minister or a Deputy Minister under the provisions of this Constitution.*”

As far as section 35(2) of the National Constitution is concerned, the Plaintiff alleges, and this remains a mere allegation, that the decision of the NEC to hold the election for a Presidential Nominee of the SLPP during the Party Conference scheduled for 19th-20th August 2005 or anytime in 2005 is contrary to democratic principles and therefore tantamounts to a contravention of the provisions of section 35(2) of the National Constitution.

I hold that this is a matter relating to the enforcement of a provision of the National Constitution and therefore this Court has original jurisdiction to hear and determine it.

Next, I propose to deal with sections 35(4) and 76(1) (h) together as, in my opinion, they should be read together. The Plaintiff's contention relating to these sections is that the SLPP 1995 Constitution makes it possible for a person who holds any of the offices of President, Vice President, Minister or Deputy Minister under the National Constitution, and therefore not qualified for election as a member of Parliament because of the provision of Section 76(1)(h) of the National Constitution to be a leader of the SLPP in contravention of section 35(4) of the National Constitution. This clearly raises a matter relating to the enforcement of a provision of the National Constitution and therefore I hold that this Court has original jurisdiction to hear and determine the matters raised in the third relief sought in the Originating Notice of Motion.

I now turn to the fourth relief sought in the Originating Notice of Motion. In this regard, the provisions of the National Constitution cited are those in sections 35(4) and 76(1)(h) and the allegation, put briefly, is that certain provisions in the SLPP 1995 Constitution are inconsistent with the said provisions of the National Constitution as well as with section 14(1) of the Political Parties Act.

For the reasons already stated above, I hold that the said allegation raises a matter of enforcement and also, I opine, a need for the interpretation of the relevant provisions of the National Constitution so as to give this Court original jurisdiction to hear and determine the matters raised in the fourth relief claimed in the Originating Notice of Motion.

Finally, under this aspect of jurisdiction, I turn to the fifth relief sought, that for an injunction restraining the Defendants from electing a Presidential Nominee of the SLPP anytime before the end of 2005. In my view, this is a consequential relief flowing from the third relief referred to above. I therefore hold that the claim for this relief could be heard and determined in this Court's original jurisdiction.

The next type of jurisdiction dealt with in the dicta of Pickford L.J in the *Guaranty Trust Bank of New York* case is that which I have termed "procedural jurisdiction". It involves seeking an answer to the question whether this Court has jurisdiction to entertain this matter taking into account the manner in which this Court has been approached and the

locus standi or standing of the Plaintiff. This is the second hurdle the Plaintiff must surmount before this Court can go on to determine the merits or demerits of this action.

First, I shall deal with the manner in which the Plaintiff has presented his claim. The proceedings were instituted by way of Originating Notice of Motion dated 27th day of July 2005. According to Rule 89 of the Supreme Court Rules this is the correct procedure where the original jurisdiction of the Supreme Court is invoked. The content of the Originating Notice of Motion should correspond with that in Form 8 set out in the First Schedule to those Rules. According to that Form the reliefs are to be sought in accordance with section 104(1) of the 1978 Constitution which is *ipsissima verba* the provisions of section 124(1) of the present National Constitution. The Form also requires the Plaintiff to state the capacity in which he brings the action. In the instant case, this has been stated as follows :

"The Plaintiff/Applicant brings this action as a law-abiding citizen of Sierra Leone and member of the Sierra Leone People's Party(SLPP), who aspires to be Presidential Candidate for the SLPP at the 2007 Presidential elections, but who is keenly concerned that the pristine democratic credentials and processes of the SLPP are maintained, enhanced and facilitated in all its internal structure, organization, operations, programmes, activities and functioning; and that they are always consistently compliant with the valid and lawful provisions not only of its own Party Constitution, Rules, Regulations and Standing Orders but also of the Political Parties Act 2002, the national Constitution, and any other law(s) relevant and pertinent thereto.."

It is clear from this statement that the Plaintiff brings the action in his own right and not in a representative capacity. However, Form 8 as set out in the First Schedule to the Supreme Rules makes no provision for the Plaintiff to indicate therein in what capacity the Defendant(s) are sued. However, in my opinion, this does not enable the Plaintiff to dispense with the requirement that, as a matter of practice at least, the capacity in which a defendant is sued should be indicated in the originating process. Indeed, Rule 98 of the Rules of this Court provides that where no provision is expressly made in those Rules relating to the original and supervisory jurisdiction of the Supreme Court, the

practice and procedure for the time being in force in the High Court shall apply *mutantis mutandis*.

Order 3 rule 4 of the High Court Rules provides that where the Plaintiff or the Defendant sues or is sued in a representative capacity the indorsement should show the capacity in which the plaintiff or defendant sues or is sued. Two factors are worth noting in respect of this rule. It is only applicable to cases where the action is commenced by a Writ of Summons. Secondly, it is the indorsement, not the title of the action, which should show the capacity of the person suing or being sued as a representative.

Both the High Court Rules and the English Rules, as contained in the 1960 Annual Practice to which according to Order 52 rule 3 one must turn in the absence of any local provision, are silent as to what should obtain where the action is commenced by an Originating Notice of Motion. In my opinion, it is sufficient, in such a case, if the capacity in which the defendant is sued is indicated either in the title of the Originating Notice of Motion or in the body of the Originating Notice of Motion or in the affidavit in support thereof.

In the instant case, an indication of the capacity in which the 1st and 2nd Defendants are sued is to be found in the body of the Originating Notice of Motion. In the fifth relief sought it is stated that the 1st and 2nd Defendants herein, Dr. Banya and Dr. Harding are being sued on their own behalf and in a representative capacity as SLPP officials. Indeed, the fifth relief is the only one that could, in the circumstances, be properly claimed against them. As a result, I hold that both the 1st and the 2nd Defendants are properly joined in this action.

The next question is whether this Court can properly grant the reliefs sought. As stated earlier the Plaintiffs seeks several declarations and an injunction. Dr. Jabbi argued strenuously that the several declarations are being sought pursuant to section 127(1) of the National Constitution and, though he did not go so far, presumably the injunction could properly be granted as a consequential relief flowing from the declarations under 127(2) of the National Constitution.

As stated above, the basis for Dr. Jabbi's contention is that the several declarations are sought pursuant to section 127(1) of the National Constitution because the 3rd Defendant has done something under the authority of an enactment, i.e. the constitution of the SLPP promulgated in 1995 certain Clauses of which, it is being alleged by the Plaintiff, contravene certain provisions of the National Constitution. Dr. Jabbi further argued that because the said SLPP 1995 Constitution was made pursuant to Section 11(2)(a) of the Political Parties Act, it was therefore first, something done under the authority of an enactment within the meaning of section 127(1) of the National Constitution and, secondly, that it was subsidiary legislation.

With respect to Dr. Jabbi, I cannot accept either contention. Section 11(2)(a) of the Political Parties Act does not authorize political parties to promulgate their respective constitutions. All it does is to require political parties to submit to the Commission two copies of their constitution and rules with their application for registration.

Secondly, even if the SLPP 1995 Constitution was made pursuant to the said section 11(2)(a) of the Political Parties Act it could not be said to be in the nature of subsidiary legislation. According to section 170(1) of the National Constitution subsidiary legislation consists of

"any orders, rules, regulations and other statutory instrument made by any person or authority pursuant to a power conferred in that behalf by this Constitution or any other law"

Further, sections 1(1) and 1(2) of the Constitutional and Statutory Instruments Act, No.6 of 1999 provide as follows:-

1(1) *"Where in any Act, power is conferred on any person or authority to make any proclamation, regulation, order, rule, notice, by-law or any other instrument having the force of law that power shall be exercised by statutory instrument".*

1(2) *"Subject to section 14 where the power referred to in subsection (1) is conferred by the Constitution or it is so required thereunder, the power shall be exercised by a constitutional instrument."*

Section 3(1) further provides as follows:-

"In accordance with subsection (7) of section 170 of the Constitution, every Statutory instrument shall be laid before Parliament and shall be published in the Gazette on or before the date of being so laid."

Finally, according to section 2 of the latter Act a Statutory Instrument laid before Parliament shall come into force at the end of twenty-one days from the date of being so laid unless before then it had been annulled by Parliament.

There is no suggestion that the SLPP 1995 Constitution was made by Public Notice, Statutory Instrument or Constitutional Instrument or that it was ever laid before Parliament. I hold therefore that the SLPP 1995 Constitution is not an enactment and for this reason the several declarations sought in the Originating Notice of Motion could not be made by this Court pursuant to 127(1) of the National Constitution.

Having said that, I must hasten to point out that this Court does have ample authority otherwise, acting in its original jurisdiction, to make the several declarations properly sought in the Originating Notice of Motion. Such authority is vested in this Court by Order 21 rule 4 of the High Court Rules which provision were not cited by either Counsel in this matter and which reads as follows:-

"No action or proceeding shall be open to objection, on the ground that a mere declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is or could be claimed or not".

For an exposition on the origin and ambit of the above rule which is *ipsissima verba* that found in the English Order 25 rule 5 as found in the 1960 Annual Practice see the case of *Guaranty Trust Company of New York v Hannay and Company* referred to earlier in this judgment and particularly the judgments of *Buckley L.J.* and *Pickford L.J.*

The Plaintiff having thus crossed the first procedural bar i now turn to the second limb of the procedural test for jurisdiction contained in the dicta of Pickford L.J. in the *Guaranty Trust Company of New York* case cited earlier in this judgment, viz, whether this Court has any jurisdiction to deal with and determine the matter herein taking into account the capacity of the Plaintiff to bring this action before us. In short, could the Plaintiff pass the test of *locus standi* or standing?

This test is of crucial importance for the Plaintiff's case because where a court reaches the conclusion that a plaintiff lacks locus standi or legal capacity to institute the particular proceedings before it the court is obliged to strike out the action without going into the merits of the case.

On the issue of *locus standi*, Fidelis Nwadialo in his book "*Civil Procedure in Nigeria*" 2nd edition at page 32 under the rubric "*Has the person intending to sue the locus standi*" has this to say:

"The term 'locus standi' denotes legal capacity to institute proceedings in a court of law and is used interchangeably with terms like 'standing' or 'title to sue'. It has also been defined as the right of a party to appear and be heard on the question before any court or tribunal. It is 'the right or competence to institute proceedings in a court for redress or assertion of a right enforceable law'."

According to the editors of the "*Constitutional Law of South Africa*", an authority cited by Dr. Jabbi, at Chapter 8 page 8.3 thereof:

"The concept of standing is concerned with whether a person who approaches the court is a proper party to present the matter in issue to the court for adjudication. The word "standing" has been referred to as "a metaphor used to designate a proper party to a court action". An inquiry into standing should thus focus on the party who brings the matter before the court, not on the issues to be adjudicated."

I cannot agree more.

Before conducting the inquiry into the Plaintiff's standing in the instant case, I wish to make certain clarifications as to the various sources of the law governing the concept of standing.

First, I think it is important to recognize that there is a distinction between standing at common law and the various statutory provisions relating to standing in different common law jurisdictions such as England, South Africa, Nigeria, Canada, India and, of course, locally.

Secondly, according to the authorities, a distinction ought to be made between the requirement of standing in private law litigations brought, for example, to enforce private rights in contract, tort or property on the one hand and the requirement for standing in public law litigation, particularly in the field of administrative law. An example of the latter type would be an action seeking a judicial review of administrative action. In England, in particular, the question of *locus standi* in actions seeking a judicial review is now governed entirely by statute, to wit, the English Supreme Court Act 1981. This is exhaustively dealt with in Chapter 2 of De Smith, Woolf & Jowell's "*Principles of Judicial Review*" that Dr. Jabbi relied on very heavily but which, in my opinion, is not relevant in the instant case.

I shall now deal with the position at common law. The principle in English law is that in an action to enforce a private right legal capacity to sue accrues only to a person who has a legal right or whose legal right has been adversely affected or who has suffered or is likely to suffer special damage in consequence of an alleged wrong.

In an action to assert or protect a public right or to enforce the performance of a public duty, it is only the Attorney-General, as the guardian of public interest who has the requisite standing to sue. Such proceedings can either be brought at the instance of the Attorney-General or he can consent to a private person bringing a "relator action" in the name of the Attorney-General. (See *Attorney-General For New South Wales v. The Brewery Employees Union* (1908)6 CLR 469 at 550-581; *Gouriet v Union of Post Office Workers* (1977)3 WLR 300).

In private law litigations, whether a person has *locus standi* or not seldom presents any problem. However, it is in the area of public law that there has been some major developments in most common law countries. Over the years, there has been a shift from the strict common law principle of *locus standi* in public law litigation which has occurred in two ways.

First, the courts in some common law jurisdictions have adopted a more modern and liberal approach in conducting the inquiry as to the *locus standi* of the plaintiff in public law litigations. However, in all the common law jurisdictions where this change of approach has taken place the courts have not done away with the requirement that for a person to have *locus standi* in an action to assert a right conferred on the public at large or to enforce a duty owed to the public he must show that he has a special interest which is personal and peculiar to him and which interest has been adversely affected by the act or omission which he seeks to challenge. Invariably, what the courts have done is to take a liberal view of what constitutes the required interest.

For example, in the Canadian case of *Minister of Justice of Canada v. Borowski* ([1981] 2 SCR 575, the only interest alleged by the plaintiff was that he was a concerned citizen who wanted the issue in contention to be litigated. The Supreme Court of Canada granted him standing, holding that where a plaintiff is seeking a declaration that a statute is invalid, if there is a serious issue as to its invalidity, that person need only show that he is affected by it directly or that he has a genuine interest as a citizen in the validity of the legislation and that there is no other reasonable and effective manner in which the issue may be brought before the court. [See also the Canadian cases of *Thorson v Attorney-General of Canada* (1975) 1 SCR 138, and *Nova Scotia Board of Censors v McNeil* [1976] 2 SCR 265 and the Indian cases of *Gupta v. Union of India*, AIR 1982 SC 149; and *Wadwa v. State of Bihar*, AIR 1987 SC 149.)

In the case of *Senator Abraham Adesanya v. The President of Federal Republic of Nigeria and others* ([1981] 2 NWLR 358 the action was brought by the appellant challenging the constitutional validity of an appointment made by the President of Nigeria. The action was dismissed by the Nigerian Supreme Court on the sole ground that the appellant had no *locus standi* to bring the action as there were no rights peculiar or personal to him which had been infringed or injured. The Court did not even go into

the merits of the case and the issue of *locus standi* was taken *in limine*. Apparently, the decision in that case still remains the law on *locus standi* in Nigeria but in the later case of *Fawehinmi v. Akilu* ((1987) 4 NWLR 797 the Supreme Court of Nigeria departed from the narrow approach in the *Adesanya* case. In granting *locus standi* to the appellant who had sought leave to apply for an Order of Mandamus to compel the Director of Public Prosecutions to decide whether or not to prosecute Nnamani JSC had this to say about section 6(6)(b) of the Nigerian Constitution which provision is in actual fact a codification of the common law principle on *locus standi*:

"It is my view that in these matters which are interlined with the criminal law, our interpretation of Section 6(6)(b) of the Constitution must be approached with a true liberal spirit in the interest of Society at large. The appellant has locus to make the application he has brought to court, and if all other conditions are fulfilled, to initiate criminal proceedings. He also has an obligation which the courts must determine and protect. In the circumstances of this case, can it be seriously argued that the appellant is not on a higher pedestal than any person, to whom the law has given locus in the wider interest of the society? From the affidavit filed, the deceased was in his lifetime his friend and client."

In delivering his own judgment in the *Fawehinmi* case Eso J.S.C. expressly conceded that the decision was "a departure from the narrow attitude of [the Supreme Court of Nigeria] in the *Abraham Adesanya's* case and subsequent decisions."

In contrast, in the case of *Nwanko v Nwanko* (1995) 2SCNJ 44 the parties were a divorced couple and the dispute was over the proprietorship of a business registered in the couple's joint names under the Nigerian Registration of Business Act 1961. The husband was a civil servant and by virtue of paragraph 2(b) of the 5th Schedule of the 1979 Nigerian Constitution, he should not, *inter alia*, "be engaged or participate in the management or running of any private business, profession or trade." Paragraph 15 and 17 of the said 5th Schedule set up a Code of Conduct Bureau and a Code of Conduct Tribunal to deal with any breach of the provisions set out in the said Schedule.

Mrs Nwanko had instituted an action against her former husband claiming, *inter alia*, an injunction restraining the husband from interfering with the running and management of the business. The Supreme Court of Nigeria held that the provisions of the said paragraph 2(b) of the 5th Schedule of the Nigerian Constitution did not create a private right or interest for which the plaintiff could claim a relief, that the purpose of the provisions was to protect public interest and that she therefore had no *locus standi* to claim a relief against the husband as a result of his contravention of the said provision of the Nigerian Constitution. The Court accordingly struck out the matter.

The second method by which the strict common law principle that a private person has no *locus standi* in an action to assert or vindicate a right conferred in the public at large has been modified is by way of statutory intervention. This time we do not have to go very far for an example, Right here in Sierra Leone, in 1991, our Parliament by enacting the provisions contained in section 127 of the National Constitution made it possible for the first time for a private litigant to institute proceedings to challenge the constitutional validity of any enactment as well as to challenge the constitutional validity of anything done under the authority of the National Constitution or any other law without any requirement that that the person should show that he has a legal right or interest personal or peculiar to him which has been adversely affected by the act or omission which he seeks to challenge.

It is important to note that the provisions of section 127(1) of the National Constitution are only applicable in the limited factual circumstances which I have listed earlier in this judgment. In my opinion, in all other matters, whether constitutional or not, the common law principles of standing continue to apply.

This present position in Sierra Leone therefore is as stated in *Halsbury's Laws of England* 4th Edition Vol.1(1) at paragraph 164 under the rubric '*Locus standi for declaratory relief*':

"In an ordinary action the plaintiff claiming a declaration must have some private

legal right, or a legal interest of which the law will take cognisance and the interest must not, for example, be merely a matter of professional ethics. Except where statute otherwise provides, a private person cannot bring an ordinary action to assert a public right whether his claim is limited to declaratory relief or not".

This Court has recently applied this requirement of a private legal right or legal interest to ground standing in the case of *Yambasu and Ors.v.Ernest Bai Koroma & Ors.* (S.C.3/2002 judgment delivered on the 22nd day of June 2004, unreported)

In the judgment delivered by Wright J.S.C. she had this to say on the question of *locus standi* and the requirement of an interest likely to be affected:

"I disagree with learned counsel for the Defendants that the Plaintiffs do not have a locus standi in this matter. In my view, the Plaintiffs in the action do have an interest that is most likely to be affected by this action."

My understanding of that statement is that, absent such interest, the plaintiffs in that case would have lacked *locus standi*.

Dr. Jabbi has urged this Court to adopt the liberal approach in applying the common law principle. This would involve in effect giving *locus standi* to a plaintiff who claims relief not in his own personal interest but in the public interest or in the interest of a section of the public as happened in the Canadian case of *Minister of Justice of Canada v. Borowski* cited earlier in this judgment.

For reasons which will soon become obvious, I do not believe it is necessary in the circumstances of the instant case for me to dispose of the issue of standing on that basis and I do not desire to do . I therefore make no pronouncement on whether or not this Court should adopt the liberal approach in the inquiry for standing as advocated by Dr. Jabbi.

Of much greater concern to me is the question whether this Court can accord the Plaintiff *locus standi* in the instant case when one takes into account the several provisions of the National Constitution and the Political Parties Act dealing with the functions and powers of the Political Parties Registration Commission.

In my opinion, sections 34 and 35 of the National Constitution should be read together with virtually all the provisions of the Political Parties Act. In section 35(6) of the National Constitution it is expressly provided that subject to the provisions of the National Constitution and in furtherance of the provisions of the said section 35 Parliament may make laws regulating the registration, functions and operation of political parties. Pursuant to this provision, in 2002, Parliament enacted the Political Parties Act, No3 of 2002, which, according to its short title, is:

" an Act to establish the Political Parties Registration Commission for the Registration and regulation of the conduct of political parties in accordance with sections 34 and 35 of the Constitution and to provide for related matters."

The Commission was established by virtue of section 3 of the Act and section 7 designates the Administrator and Registrar-General as Secretary to the Commission. Section 6(2) of the Act then goes on to particularize the functions of the Commission. I need to highlight those stated in Section 6(2)(a), 6(2)(b) and 6(2)(e) as they are of particular relevance in the instant case. They state the Commission's functions as follows:

- 6(2)(a) *"to monitor the affairs or conduct of political parties so as to ensure their compliance with the Constitution, this Act and with the terms and conditions of their registration."*
- 6(2)(b) *"to monitor the accountability of political parties to their membership and to the electorate of Sierra Leone;" and*
- 6 (2)(e) *"to do all such things as will contribute to the attainment of the object stated in subsection(1)."*

These three provisions taken together invest the Commission with tremendous powers at the same time as it imposes very great responsibilities on it. The matter does not end there. The National Constitution goes on to provide in section 34(5) that in the exercise of the functions vested in the Commission it shall not be subject to the direction or control of any person or authority. I dare say that this includes even the courts provided, of course, the Commission is carrying out its functions in the manner envisaged by the National Constitution, the Political Parties Act and the general law.

Then, there is section 27 of the Political Parties Act. This enables the Commission to apply to this Court for the ultimate sanction, when all else has failed as it were, against any political party which has contravened any provisions of the National Constitution or the Political Parties Act.

In my opinion, Section 27(1) of the Political Parties Act gives the Commission *locus standi* to invoke this Court's original jurisdiction where a political party has contravened any provision of the National Constitution in the same way that section 127(1) of the National Constitution gives *locus standi* to any person, without exception, who wishes to challenge the constitutional validity of any enactment or anything contained in or done under the authority of that or any other enactment. Maybe, this was why Dr. Jabbi argued so strenuously that the Plaintiff was seeking the several reliefs in the Originating Notice of motion pursuant to section 127 of the National Constitution. The advantage of seeking relief under section 127 of the National Constitution is that, as I have already held in this Judgment, contrary to the position at common law, the plaintiff is not required to that he has a legal right or interest which he is seeking to enforce or protect.

In my opinion, it could not be seriously doubted that the *locus standi* given to the Commission by section 27(1) of the Political Parties Act is exclusive to the Commission.

It has not been alleged by the Plaintiff that the Commission has neglected or refused or is unable to carry out its functions under sections 6 and/or 27 of the Political Parties Act. The situation here is different from what obtained in the Nigerian case of *Fawehinmi* cited earlier in this judgment. In that case, it was shown by affidavit evidence that the appellant had requested the Director of Public Prosecutions to exercise the discretion

granted to him by statute and it was only after the Director of Public Prosecutions had replied that he had not come to a decision whether or not to prosecute that the appellant took out the proceedings for leave to apply for an order of Mandamus to compel the Director of Public Prosecutions to carry out his statutory functions. I say this because, in this country also, where a public officer or public body fails or refuses to carry out functions its functions or to exercise powers conferred by statute the law provides ample remedies open to a person affected thereby. This is how the law is stated in Halsbury's *Laws of England* 4th edition Volume 1(1) at paragraph 163 under the rubric "*Declaratory Judgments*":

"The remedy by declaration is available to ensure that a board or other authority set up by Parliament makes its determinations in accordance with the law, and this is so whether the determinations are judicial, disciplinary or administrative; nor is the remedy excluded by the fact that any determination is by statute made final."

(See *Taylor v. National Assistance Board* [1957] 1 All E.R.183 at 185, C.A. per Denning L.J.)

In the circumstances of this case and based on the available affidavit evidence, to grant the Plaintiff *locus standi* to maintain this action to ensure that the SLPP, a political party registered under the Political Parties Act, does not contravene any provision of the National Constitution, particularly section 35 thereof, would be, in my opinion, to preempt the Commission and, as it were, to allow the Plaintiff to usurp the powers of the Commission particularly when there is no allegation before us that the Commission has neglected or failed to carry out its statutory duties and the Commission has not even been made a party to this action. (See the Nigerian cases of *Nwanko v. Nwanko supra*; *Ajakaiye v. Military Governor* (1994) 9 SCNJ102 at 119; *Amaghizenween v. Eguamwense* (1993) 11 SCNJ 27)

For all the above reasons, I hold that the plaintiff lacks *locus standi* to maintain the claim for the declarations sought as part of the third and fourth reliefs in the Originating Notice of Motion. The claim for these reliefs should therefore be struck out.

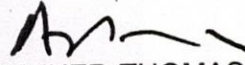
Finally, I turn to the fifth relief claimed in the Originating Notice of Motion, that for a permanent injunction. As I said earlier, in my opinion, this is a consequential relief which of necessity must flow from one of the several declarations sought. *Ex facie*, it is difficult to tell with which of the declarations sought this relief has a nexus. If it is to be attached to the declaration sought in the second relief in the Originating Notice of Motion then it must be struck out in view of my earlier pronouncement that the Plaintiff could not invoke the original jurisdiction of this Court to maintain an action for the second relief. The claim for an injunction ought also to be struck out for the same reason. Similarly, since I have held that despite the fact that this Court's original jurisdiction is properly invoked in respect of the third and fourth reliefs sought in the Originating Notice of Motion the Plaintiff still lacks *locus standi* to maintain the claim for said third and fourth reliefs and that, as a result, the claim for the said reliefs ought to be struck out, for the same reason, the claim for an injunction being a relief flowing consequentially from the declarations sought under the third and fourth reliefs in the Originating Notice of Motion ought also to be struck out.

I therefore make the following Orders:-

- (1) The claims for the 1st and 2nd reliefs in the Originating Notice of Motion are hereby struck out as they could not be granted in this Court's original jurisdiction;
- (2) The claim for the 3rd and 4th reliefs in the Originating Notice of Motion are hereby struck out for want of *locus standi* on the part of the Plaintiff.
- (3) In view of Orders 1 and 2 above the fifth relief in the Originating Notice of Motion that for a permanent injunction is struck out accordingly;
- (4) The Defendants are hereby discharged from the Undertaking they gave to this Court on the 16th August 2005.
- (5) The Cross-Undertaking as to damages given by the Plaintiff on the 16th August 2005 is to remain on the file until further Order;

(6) Each party to bear its own costs of the proceedings so far.

(7) Liberty to apply



A.R.D. RENNER-THOMAS
CHIEF JUSTICE

1. Hon Mrs. Justice V.A.D. Wright J.S.C.
2. Hon Mr. Justice M.E. Tolla-Thompson J.S.C.
3. Hon. Justice Sir John Muria J.A.
4. Hon Mr. Justice Jon Kamanda J.A.

SC. NO.2/2005

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:-

SAMUEL HINGA NORMAN

-

PLAINTIFF

AND

DR. SAMA S. BANYA

-

1ST DEFENDANT

National Chairman SLPP

DR. PRINCE A. HARDING

-

2ND DEFENDANT

National Secretary-General, SLPP

THE SIERRA LEONE PEOPLE'S PARTY (SLPP)

3RD DEFENDANT

CORAM:-

THE HON. DR. ADE RENNER THOMAS

C.J.

THE HON. MRS. JUSTICE V.A. WRIGHT

J.S.C.

THE HON JUSTICE T. THOMPSON

J.S.C.

THE HON. JUSTICE SIR MURIA

J.A.

THE HON. JUSTICE J. KAMANDA

J.A.

DR. BU-BUAKEI JABBIE FOR THE PLAINTIFF

E.A. HALLOWAY ESQ. WITH D.B. QUEE ESQ., E.E.C. SHEARS MOSES
ESQ., AND A.Y. BREWAH ESQ. FOR THE DEFENDANTS

V.A. Wright,

The plaintiff by originating motion dated 27th July 2005 sought declarations in pursuance of sections 122, 124(1), 127 and 171(15) of the Constitution of Sierra Leone Act n0.6 of 1991 namely:

1. A DECLARATION to the effect that the Constitution of the Sierra Leones People's Party (SLPP) dated July 1995 (hereinafter also called the " THE SLPP CONSTITUTION") is the authentic currently applicable constitution of the Sierra Leones Peoples Party (also herein called (The Party) or the((" SLPP") for the porposes of thefunctioning and operation of the Party in terms of the National Constitution and the Political Parties Act, No 3 of 2002.

2. A DECLARATION to the effect that, where an incumbent resident of the Republic of Sierra Leone was originally elected thereto in compliance with the following provisions in respective Constitutions as cited herein below, among others, to wit:

(i) as to the SLPP Constitution

- a) Clause IV(A)(3)(i) thereof
- b) Clause V(I)(c) and (d) thereof
- c) Clause V (2) © thereof, being under the rubrics "Duties of Officers" and "Leader", and
- d) Clause VI (b) and (c) and

(ii) as to the National Constitution.

- a) section 41(b) thereof;
- b) section 42(1) thereof; and
- c) section 43 thereof,

then in that case, the following interpretive conclusions are or would be, each by itself within the spirit, intendment, contemplation, and indeed inescapable force and effect, of the said SLPP Constitution, viz:

- (1) That the SLPP Constitution makes no express or specific provision for the substantive independent existence, or for the direct nomination, election, selection, choice or identification, as the case may be, of the Leader of the SLPP as such ; but, rather, that any such nomination, election, selection, choice or identification, as the case may be of the said Leader takes place only indirectly as a consequential or derivative issue from the process of nominating, electing, selecting, choosing or identifying, as the case may be, the party's Presidential Nominee for the next pending national Presidential election
- (2) That the position of the Leader of the SLPP is not a free-standing office or status in its own right: but rather, that is, by virtual definition, dependent upon the position of Presidential nominee for the said party, thereby making it so intertwined or associated with office of State President **at any time when an**
- (3) **SLPP member holds the said Presidency** as to make the two positions indivisible and inseparable one from the other at all such times.
- (4) **That at any time the SLPP is in power and/or a member thereof is the lawful incumbent President of Sierra Leone,** the two positions of Leader of

the Party and State President may or can be either held together and jointly or relinquished together and jointly, and never otherwise at any such time, so that an incumbent thereof may not selectively relinquish one of them and yet hold and yet hold or seek to continue holding to the other, nor may two different persons at one and the same time or simultaneously hold the two positions separately, i.e. one position to one of them and the other to the other.

- (5) That the SLPP Constitution makes no express or specific Provision for the substantive independent existence of or for any nomination election, selection, **choice or identification (as the case may be) of, a leader of the SLPP as such, at any time when the said party is either not in power or not providing the incumbent President of Sierra Leone or when a nation Presidential election is not immediately due to be held.**

3. A DECLARATION to the effect that, in view of the following party and National constitutional and other legislative provisions respectively, among others to wit:

a) Clause II(4), IV(a) (I), (IV) (5)(b) and (c) and (I), V(2)(c) as aforesaid, and X of the SLPP Constitution :

b) Section 6, 14(1) 24, 27 and 29 of the Political Parties Act, N0.3 of 2002:

c) Sections 35(2) and (4), 42(1) 43(a) and (b) 46(1), 49(4) 76(1)(h) and 171(15) of the national constitution ,

Then, in viz

w thereof, the following interpreting conclusion are or would be, each by itself, within the spirit, intendment, contemplation, and indeed inescapable force and effect, of the said provisions respectively, viz:

- (1) That as at the date of filing the application herein, there are or were at least two or three regularly meetings and unspecified number of possible special or order meetings of the party conference of the SLPP still to be held before the Presidential and Parliamentary elections of 2007 are were due to be held, to wit the annual party conferences for the year 2005/2006 and possible 2007 and any other special or other meeting(s) of the Party Conference "as may be determined by the National Executive Council "
- (2) That, **without any prejudice whatever to the holding of the Party Conference (as such) slated for 19-20 August 2005 or at all otherwise in 2005).** the nomination, election, selection, choice or identification , as the case may be. Whether attempted or purported of a Presidential Nominee and/or Leader of the SLPP at the said Party Conference, that is to say. almost two years before the Presidential and Parliamentary election of 2007 are due to be held, has or would

have or leads or would lead to the following interpretive consequences and/or conclusions, viz:

- (i) it is and will in itself be grossly premature and incommportant with democratic principles, for being inconsistent with and in contravention of the provisions in sections 35(2) and 43(a) and (b) of the National Constitution, and accordingly void and of no effect.'
- (ii) it is and will in practice be grossly unfair to certain individual members of the Party and potentially prejudicial to their interest vis-à-vis the Presidency and even to the wider related interests of the Party and the nation at large, in that:
 - (a) it does and will tend to operate to prematurely preclude and exclude certain potential aspirants to that or those certain potential aspirants to that or those position(s) who, for reasons of present untimeliness or prematurely or otherwise, may not yet, as at 19-20 August 2005 or at any other time in 2005, have indicated their intentions or aspirations in respect thereof, but may be likely as at the due and proper time in 2006 or 2007 to such intentions or aspirants publicly known at the appropriate time;
 - (b) it is and will be likely to deprive the SLPP itself as a democratic national Party of a possible better quality or more popular Presidential candidate who. However, for reasons of present untimeliness or prematurely or otherwise in 2005, have indicated his/her intentions or aspirations in respect thereof, but may wish as at the due and proper time in 2006 or 2007 to make such intentions or aspirants publicly known at the appropriate time; and it is also likely to deprive the said Party of a fairer and more informed choice a possible electoral disadvantage vis-à-vis the Presidential candidates of other political parties and thus at the risk of losing the Presidential elections of 2007 against the said other parties.
 - (c) It is and will likely to deprive the entire nation itself and the people of Sierra Leone as a whole of a possible better quality Presidential Candidate and potential ultimate President of Sierra Leone who, however, for reasons, of present untimeliness or prematurity or otherwise may not yet, as at 19-20 August 2005 or at any other time in 2005, have indicated his/her intentions or aspirations in respect thereof, but may wish as at the due and proper time in 2006 or 3007 to make such intentions or aspirations publicly known at the appropriate time, with all the possible attendant risks of prejudice (arising from an

inapt choice due to the said gross prematurity) to the prospects of good governance, peace and positive national economic and other development during the five to ten years following the next Presidential election;

- (iii) it is or will, in any case, be tantamount to an amendment or attempted/purported amendment of the SLPP Constitution, and accordingly inconsistent with and in contravention of the provisions in Clause 11(14), IV(A)(1), IV (B)(5)(b) and (c) and (i), and X of the said SLPP Constitution, and with and of those of those section 24 of the Political Parties Act 2002 and sections 35 (b) and (c) and (i), and X of the said SLPP Constitution, and with and of those of section 24 of the Political Parties Act 2002 and sections 35(2) and (4) and 76(1) (h) of the National Constitution and thereof unlawfully, void and of no effect.
- (3) That the position of Leader and Deputy Leader of the SLPP, in the manner and to the extent that they have been and/or are being held by specified incumbents respectively over the past ten years or so, that is to say, since at least 1996 and up till now, were and are so held in contravention of the provisions in section 14 (1) of the political parties act and sections 35 (4) and 76 (1) (h) of the national constitution and so, as held, were and are void and of no effect.
- (4) That, in so far as and to the extent that the current SLPP Constitution remains and reads as it stands at the present time and at least up to 12 months hence, it is unlawful for the said Party to nominate, elect, select, choose or otherwise identify, as the case may be, a Leader of the SLPP as such, or to attempt purport to so do, at any Party Conference or indeed at any time at all within the next 12 months from the date of filing this application.
- (5) That , in view especially of the provisions of sections 14 (1) of the Political Parties Act 2002, and 35 (4) and 76 (1) of the National Constitution, a person who is for the time being the President, The Vice President, a Minister or a Deputy Minister in the Government under the provisions of the National Constitution may not and most not be , and ought not to be, either:
 - (a) Leader of the SLPP, or
 - (b) A member of the executive body or officers of the SLPP, whether national or otherwise or
 - (c) The National Secretary _General of the SLPP.
- (6) That the position of the National Secretary –General of the SLPP, in the manner and to the extent that it has been or is being held by a Minister of Government , to wit, by the 2nd Defendant herein over the past three years or so, that is to say, at least since around June 2002 and up until now, was and is so held in contravention of the provisions in section 14 (1) of the Political Parties Act 2002

and sections 35 (4) and 76 (1) (h) of the National Constitution and so, as held, was and is void and of no effect since at least June 2002 until now.

- (7) That, in consequence of all the provisions and conclusions cited and recited in the current declaratory relief and is foregoing sub-items 3 (1) to (6) inclusive herein, **the SLPP as a Party is already dangerously left open and expose to a present risk of disqualification and disestablishment applications to the Supreme Court**, on the one and by the relevant commission for an order to cancel the registration of the Party and, on the other hand, by the Attorney and the Minister of Justice after such cancellation for an order to wind up and dissolve the SLPP, pursuant respectively to sections 27 and 29 of the Political Parties Act 2002.

4. A DECLARATION to the effect that the following provisions of the SLPP Constitution, in so far as the respective aspects thereof as are indicated herein are concerned and to the respective extents thereof, to wit.

- a) Clause V(2)(c) thereof in so far as the stipulations "shall automatically become the Leader of the Party after such commission. He shall be the political head of the Party and" are concerned and to the extent thereof.
- b) Clause V(1)(c) & (d) thereof, in so far as the stipulations (shall automatically become the Leader of the Party after such nomination. He shall be political head of the Party and " are concerned to the extent thereof;
- c) Clause V(2)(d) thereof, in its entirety; and
- d) Clause V(f) thereof, in so far as the stipulation "shall cease to be Leader and Deputy Leader respectively" is concerned and to the extent thereof.

Are, each and every one of them, inconsistent with and in contravention of contravention of the provisions in section 14(1) of the Political Parties Act 2002 and sections 35(4) and 76(1)(h) of the National Constitution and that the said inconsistent provisions are, to the extent of the said inconsistency, in each case as specified herein, null and void ab initio and of no effect.

4. A PERMANENT INJUNCTION restraining the 1st and 2nd Defendants (in their personal and official Party capacities alike) and 3rd Defendant herein their servants, agents and privies, and in the case of the 3rd Defendant, in all its emanations and manifestations as organs, institutions, officers and members thereof, from nominating, electing, selecting, choosing or identifying, as the case may be, a Presidential Nominee and/or Leader of the SLPP in any shape or form or name or guise, or attempting/purporting so to do, or encouraging or causing or countenancing or shepherding or partaking in the doing of any such thing, at the

Party Conference slated for 19-20 August 2005 or at all otherwise in 2005, but otherwise without any prejudice whatsoever to the holding of the said Party Conference as such.

In relation to the motion was supported by the affidavit of Dr. Bu-Buakei Jabbie sworn to on the 27th day of July 2005 interlocutory notice of motion for an interim injunction dated 4th August 2005 the 1st, 2nd and 3rd defendants/respondents gave an undertaking to this Court that the SLPP Party Conference to be held on the 19th -20th August 2005 or any other time in 2005 will not nominate or elect a Presidential Nominee or candidate and/or Leader of the Sierra Leone People's Party (SLPP) at the said Party Conference or at any other Party Conference thereafter in 2005 until the determination by this Court of the plaintiff's/applicants' substantive application contained in the originating Notice of Motion dated 27th day of July.

The Court having accepted counsel for the plaintiff/applicants offer to give a cross-undertaking undertook that the plaintiff/applicant shall abide by any order which this court may make as to damages in case this Court shall be of the opinion that the defendants/respondents shall have suffered any damages by reason of the undertaking given on the 15th August 2005 and which the plaintiff/applicant ought to pay.

The interlocutory notice of motion dated 4th August 2005 was accordingly struck out.

The plaintiff in his statement of case dated 3rd August 2005 dealt with the undemocratic principles he alleged especially paragraph 4 in which he stated that His Excellency the President, Alhaji Dr. Ahmed Tejan Kabbah, has been President of Sierra Leone since March 1996 and uptill now doubled as leader of the Sierra Leone People's Party, that the 2nd defendant herein has also been National Secretary-General of the Party for most of that period during which he held various government ministerial offices one of which he still holds. Also that the Vice President, Mr. Solomon Berewa has held the said position since June 2002 during which period he doubled as Deputy Leader of the SLPP.

He referred to Exhibit 2 which is the SLPP Constitution and stated that it was registered at the Electoral Commission in 1995 as the Constitution of the SLPP which was in compliance with section 34 and section 35 of the Constitution of Sierra Leone.

He submitted that the Leader of the SLPP is dependent upon the position of Presidential Nominee for the party thus making it intertwined with the office of the President at any time when the SLPP holds the said Presidency.

He further submitted that the provisions of section 14(1) of the Political Parties Act 2002 and 34(4) and 76(1)(h) of the National Constitution that a person who is for the time being the President, the Vice President, a Minister, Deputy Minister in the Government under the Constitution may not either be a Leader of the SLPP or a member of the

executive body or officers of the SLPP, whether national or otherwise or the National Secretary General of the SLPP.

Learned Counsel for the plaintiff Dr. Buakei Jabbi also referred to Clause V(2)©, V(1)©, V(2)(d) and VI(f) in Exhibit 2 i.e. the SLPP Constitution

In relief of paragraph 3(1) to (7) of the Originating Notice of motion he submitted that the party may have contrived sections 11(2) (a) (iii), 14(1) and 24(1) of the Political Parties Act and also sections 35(4) and 76(1)(h) of the 1991 Constitution of Sierra Leone

The learned counsel for the plaintiff also stated that Leader or Deputy Leader referred to in Exhibit 2 i.e. SLPP Constitution are inconsistent with and in contravention of section 14(1) of the Political Parties Act and section 35(4) and 76(1)(h) of the 1991 Constitution and is therefore void and of no effect in relation to section 171(15) of the 1991 Constitution.

Learned counsel for the plaintiff submitted that only the Supreme Court had jurisdiction to determine the issue, raised in relief 3(3)(5) & (6) in the originating notice of motion in view of the provisions in sections 124(1)(a), 127 and 171(15) among others in the 1991 Constitution since the conduct referred to in these three subparagraphs are inconsistent and incompatible with and in contravention of section 35(4), 76(1)(h) and 35(2) of the 1991 Constitution.

In relation to the defendants case learned counsel for the defendants E.K. Halloway Esq. argued locus standi jurisdiction together. He stated that there is a modern conception on locus standi in constitutional issues from common law and that locus standi was legislated for the first time in Sierra Leone in Section 127 and 171(15) as the modern conception of local standi. He said that he relied on section 127 of the Constitution and submitted that locus standi is recognized in constitutional matters in section 171 of the Constitution of Sierra Leone Act N0.6 of 1991. The learned counsel for the plaintiff E.K. Hollway Esq said that the issues raised by the plaintiff are matters primarily of political public interest.

In the case for the 1st, 2nd and 3rd defendants it was stated that the Supreme Court lacks original jurisdiction to enforce or interpret any of the provisions of the SLPP Constitution. Therefore the Supreme Court lacks original jurisdiction to hear the application or make the 1st, 2nd and 3rd declaration sought in the plaintiff's originating notice of motion dated the 27th July 2005 and filed herein.

Also that the plaintiff has no locus standi to invoke the Supreme Court's jurisdiction for the 1st, 2nd and 3rd Declaration sought since the plaintiff has not shown any rights or obligations personal or peculiar to him which have been infringed. In relation to the 4th Declaration sought that the plaintiff has no locus standi to invoke the original jurisdiction of the Supreme Court since the appropriate body to invoke the Supreme

Courts jurisdiction on such matters is the Political Parties Registration Commission established by the Political Parties Act 2002.

Also that the application for a permanent injunction in the plaintiffs originating notice of motion dated the 27th day of July 2005 does not allege that the right of the plaintiff has been infringe.

E.K. Halloway Esq for the defendants submitted that the Supreme Court lacked original jurisdiction to hear and determine the case made in the originating notice of motion under section 124 of the Constitution of Sierra Leone 1991 Act No 6 of 1991 or any other section of the Constitution since the matters raised in the originating notice of motion neither relates to enforcement or interpretation of the Constitution or to a question as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority.

Learned counsel for the defendant E. K. Halloway Esq stated that the plaintiff cannot rely on sections 124 (1) section 127, and 171 (15) to vest in the Supreme Court original jurisdiction to hear and determine such application in the notice of originating summons, and also that section 34 of the Constitution of Sierra Leone makes provision for the establishment of the Political Parties Commission which confers certain powers and functions relating to the internal manner and structure of the Political Parties.

In relation to the prayer for the permanent injunction he said that the plaintiff has not shown that he has a personal or peculiar interest to be infringed at the Party Conference by the nomination of the Leader/ Presidential Candidate.

The plaintiff seeks several declarations pursuant to section 122, 124(1) 127 and 171(15) of the Constitution of Sierra Leone Act N0.6 of 1991. I shall not set out these provisions as they have already been enumerated in the judgment of the learned Hon Chief Justice.

I will first deal with the question of original jurisdiction by the Supreme Court. This court has original jurisdiction under sections 122(1) and 124(1) of the Constitution of Sierra Leone Act N0.6 of 1991 and not under section 171(15) as submitted by Counsel for the plaintiff.

There appears to be some confusion in relation to section 12 of the Constitution of Sierra Leone Act N0.6 of 1991. I agree with the views of the learned Hon. Chief Justice that the section only lays down the procedure for the enforcement of the Constitution of Sierra Leone Act N0.6 of 1991 in certain circumstances.

I will now turn to the question of whether or not this court has original jurisdiction to hear and determine matters raised in the originating notice of motion.

In Halsburg's 4th Edition Volume 10 it was stated that the declaration claimed must confer some tangible benefit on the plaintiff. There is no power to make a declaration on a subject relief in respect of which is beyond the jurisdiction of the court. There is a general power to make a declaration whether there be a cause of action or not and at the instance of any party who is interested in the subject matter of the declaration. See Guaranty Trust Co. New York vs. Hannay & Co. (1915) 2KB 536 in which it was held that the court has the power to make a declaration whether there is a cause of action or not at the interest of the party. it will, then be for the court to decide on the facts whether or not it will exercise those powers.

The plaintiff claiming a declaration must have some private legal right or legal interest of which the law will take cognizance. The plaintiff abandoned the first declaration sought legal right or legal interest of which the law will take cognizance. See Olhams Press Ltd. vs. London and Provincial Sporting News Agency (1929) Ltd. Vol.1 A E R page 217 in which it was stated that the power of the court to make declaratory judgment is a discretionary power and in every case the court must exercise its discretion on the particular case.

I do not agree with the submission of Counsel for the plaintiff that the SLPP 1995 Constitution is a subsidiary legislation since the Political Parties Act 2002, Act N0.3 of 2002 states that the Constitution of every political party should be lodged with the Commission on application for registration. The definition of a subsidiary legislation is to be found in section 170(1) of the Constitution of Sierra Leone Act N0.6 of 1991 and see also section 1(1) and 1(2) of the Constitutional and Statutory Investments Act N0.6 of 1999. The plaintiff complained that sections 35(2) 35(4) 42(1) 43(a) 43(b) 46(1), 49(4) 76(1)(h) and 171(15) of the Constitution of Sierra Leone Act N0.6 of 1991 has been contravened. In the 2nd relief sought by the plaintiff also referred to sections 41(b) and 43 of the Constitution of Sierra Leone Act N0.6 of 1991. The case of Guaranty Trust Company v Hannay I opine that none of these provisions are to be enforced as a result of something done or omitted to be done by the defendants all the causes 1V(A)(3)(1) V(1)(c) and (d) V(2)(c), V1(b) and V1(6) in the SLPP Constitution which were raised does not give this court the original jurisdiction for the relief sought. The plaintiff has alleged that the decision of National Executive Council to hold the election for a Presidential Nominee of the SLPP during the Party Conference which should have taken place on the 19th -20th August 2005 or at anytime in 2005 is contrary to democratic principles and contravenes Section 35(2) of the Constitution of Sierra Leone Act N0.9 of the Constitution of Sierra Leone section 35(2) states

"The internal originating of a political party shall conform to democratic principles, and its aims, objectives, purposes and programmes shall not contravene or be consistent with any provision of this Constitution"

Thus since it relates to the enforcement of a provision of the Constitution of Sierra Leone Act N0.6 of 1991 this court has jurisdiction to hear and determine it. On the plaintiff's contention relating to section 35(4) and section 76(1)(h) that under the SLPP Constitution it is possible for a person who holds any office of President, Vice President, Minister or Deputy Minister under the Constitution of Sierra Leone Act N0.6 of 1991 and therefore not qualified for election as a member of Parliament because of section 76(1)(h) to be a leader of the SLPP in contravention of section (4) of the Constitution of Sierra Leone Act N0.6 of 1991 I opine that this court has original jurisdiction to hear and determine the matters raised in the Third relief sought since it relates to the enforcement of a provision in the Constitution of Sierra Leone Act N0.6 of 1991.

Counsel for the plaintiff rightly clearly presented his papers under the correct procedure in accordance with Rule 89 of the Supreme Court Rules Act 1982 Public Notice N0.1 of 1982.

To my mind this action should have been brought in a representative capacity and not on the plaintiff's own right. Rule 98 of the Supreme Court Rules provides that where no provision is expressly made in these Rules relating to the original and supervising jurisdiction of the Supreme Court, the practice and procedure for the time being in force in the High Court shall apply mutatis mutandis.

Then Order 3 Rule 4 of the High Court Rules provides that where the plaintiff or the defendant sues or is sued in a representative capacity the endorsement should show the capacity in which the plaintiff or defendant sues or is sued.

I am of the view that it would be sufficient if the capacity in which the defendant is sued is indicated in the title of the originating notice of motion or in the body of the originating Notice of motion.

The defendants were rightly sued in a representative capacity. In relation to the 4th relief for an injunction in restraining the defendants from electing a Presidential Nominee of the SLPP anytime before the end of 2005. I am of the view and so hold that this relief could be determined in this court original jurisdiction.

Now I turn to the question of locus standi. Has the court any jurisdiction to deal with and determine the matter taking into consideration the capacity of the plaintiff to bring this action before the Supreme Court? Counsel for the plaintiff referred to chapter 2 of De Smith, Woolf & Jowell's Principles of Judicial Review in which a distinction was made between the requirement of standing in private law and public law according to decided cases there is a distinction between standing at common law litigations and private law legislations Counsel for the plaintiff asked this court to adopt the liberal approach in applying the common law principle.

On the concept of locus standi is whether a person who approached the court is a proper party to present the issue to the court for adjudication see cabinet of the Transitional Government for the Territory of South West Africa VS EINS 1988 (3) S.A

369 (A) See also *Otugor Gamioba & others VS Ezezi II the ongajie and others* 1961 2SCN 237

In Halsbury's 4th Edition volume 10 it was stated that the plaintiff claiming a declaration must have some private legal right or a legal interest of which the law will take cognizance. A litigant is required to demonstrate some actual or threatened injury personally suffered and that the injury can be traced to the challenged action and that the injury is redressable by a decision of the Court.

In the Nigerian Constitutional Law Reports (1981) 2 N C L R. The Chief Justice in the case of *Senate Abraham Ade Adesanya vs. The President of the Federal Republic of Nigeria* the Hon. Justice Victor Ovie - Whiskey said "locus standi" denotes the legal capacity to institute proceedings in the Court of Law.

On reading the authorities cited it appears that the test of applying locus standi differ in various jurisdiction.

I have had the opportunity of reading the judgment of the learned Chief Justice on the question of locus standi. In the light of the authorities quoted in my judgment. I agree with the reasons given by the learned Chief Justice for refusing the locus standi.

Since the plaintiff did not come to court in a private capacity and not in a representative capacity but as a member of the S.L.P.P. it was for him to satisfy the court that he had a special or justifiable interest or that he will suffer some injury had the Convention been held on the 19th - 20th August in choosing a Presidential Candidate.

Has the plaintiff exhausted all remedies available to him? This brings to my mind the Political Parties Act 2002 whose short title reads "Being an Act establish Political Parties Registration Commission for the registration and regulation of the conduct of Political Parties in accordance with sections 34 and 35 of the Constitution and to provide for the related matter".

Section 34 and 35 of the Constitution of Sierra Leone Act N0.6 of 1991 are to be read with the Political Parties Act 2002.

Section 27 of the Political Parties Act 2005 gives the Political Parties Registration Commission the exclusive right to apply to the Supreme Court, and the Act gives aggrieved persons to make complaints to the Commission about matters listed in the provisions of the Political Parties Act 2002.

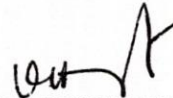
I entirely agree with this aspect of the Learned Chief Justice in his judgment.

I conclude with the words of UWAIS JSC in the case of Senator Abraham Ade Adesanifa vs. The President of the Federal Republic of Nigeria and the Hon. Justice Victor Ovie-Whiskey cited earlier.

"It is of paramount importance and indeed most desirable to encourage citizens to come to court to have the Constitution interpreted. However, this is not to say, with respect, that meddle-some interlopers, professional litigants or the like should be encouraged to sue in matters that do not directly concern them. In my view, to do that is to open the flood gate to frivolous and vexatious proceedings. I believe that such latitude is capable of creating undesirable state of affairs.

For reasons given the originating notice of motion is struck out.

I agree with the orders proposed by the Learned Chief Justice.



.....
V.A. WRIGHT

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S.C.NO. 2/2005

IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTIONS 122; 124(1), 127 and 171 (15) OF THE CONSTITUTION OF SIERRA LEONE, ACT NO.6 OF 1991, and RULES 89 AND 98 INCLUSIVE OF THE SUPREME COURT RULES, STATUTORY INSTRUMENT NO. 1 OF 1982

IN THE MATTER OF SECTIONS 35(1), (2), (4), & (6); 4(b); 42(1); 43(a) & (b); 46(1); AND 76(1)(H) OF THE SAID CONSTITUTION OF SIERRA LEONE

IN THE MATTER OF SECTIONS 6, 14(1), 24, 27 AND 29 OF THE POLITICAL PARTIES ACT. NO.3 OF 2002

IN THE MATTER OF CLAUSES II(4); IV(A)(1); IV(A)(3)(i); IV(B)(5)(b), (c) & (i); V(1)(c) & (d); V(2)(c) & (D); VI(b) & (f), AND X OF THE CONSTITUTION OF THE SIERRA LEONE PEOPLE'S PARTY (SLPP), JULY 1995, AND ALSO OF THE PARTY CONFERENCE OF THE SAID SLPP SLATED FOR 19-20 AUGUST 2005 AT MAKENI

BETWEEN

SAMUEL HINGA NORMAN

PLAINTIFF

AND

**DR. SAMA S. BANYA
National Chairman, SLPP**

1ST DEFENDANT

**DR. PRINCE HARDING
National Chairman, SLPP**

2nd DEFENDANT

THE SIERRA LEONE PEOPLE'S PARTY (SLPP)

3rd DEFENDANT

(All Defendants being of 29 Rawdon Street, Freetown)

CORAM:

**HON. MR. JUSTICE A.R.D. RENNER-THOMAS
HON. MRS. JUSTICE V.A.D. WRIGHT
HON. MR. JUSTICE M.E. TOLLA THOMPSON
HON. JUSTICE SIR JOHN MURAI
HON. MR. JUSTICE JON KAMADA**

**- CHIEF JUSTICE
- J.S.C.
- J.S.C.
- J.A.
- J.A.**

JUDGEMENT

Tolla Thompson JSC

My Lords

I have had the opportunity to read the draft judgment of my brother the Honourable Chief Justice and I agree with him. However, I wish to articulate few words of mine.

On the 17th August 2005 the plaintiff Samuel Hinga Norman by an originating Notice of Motion, moved this court under sections 122, 124(1), 127 and 171(15) of the Constitution of Sierra Leone, Act No. 6 of 1991, invoking the original jurisdiction of this court for several declarations and relief against the 1st defendant Dr. Sama S. Banya National Chairman Sierra Leone Peoples party, 2nd defendant Dr. Prince A. Harding, National Secretary General Sierra Leone Peoples Party and 3rd defendant the Sierra Leone Peoples Party (SLPP).

Background

The plaintiff is a fully paid up member of the Sierra Leone Peoples Party see Ex. 1. He also intends to contest the presidential election in 2007, having already declared the intention to do so. The Sierra Leone Peoples Party is the party in government at the moment. At the National Executive committee meeting held sometime ago it was decided that the 2005 party conference be held in Makeni on the 19th and 20th August 2005 at which the agenda will include the nomination and election of national officers.

Being dissatisfied with this agenda the plaintiff came to this court to seeking certain declaration and relief.

Declaration and Relief

1. A declaration to the effect that the constitution of the Sierra Leone Peoples Party (which for the purposes of this judgment I shall henceforth refer to as the SLPP) dated July 1995 is the authentic currently applicable to the constitution of the SLPP for the purposes of the functioning and operation of the party in terms of the National Constitution and the Political Parties Act No. 3 of 2002.
2. A declaration to the effect that where an incumbent President of the Republic of Sierra Leone was originally elected thereto in compliance with the following provisions in the respective constitution as cited herein below among others to wit:
 - i. As to the SLPP constitution
 - a. clause IVA(3) (1) thereof
 - b. clause V(1)(c) and (d) thereof
 - c. clause V(2) (c) thereof being under the rubric "duties of officers and leader" and
 - d. clause VI(b) and (f)
 - ii. As the national constitution
 - a. section 41 (b) thereof

- b. section 42(1) thereof
- c. section 43 thereof

Then in that case, the following interpretive conclusions are or would be each by itself within the spirit, intendment contemplation and indeed inescapable force and effect of the said SLPP constitution viz:

- (1) That the SLPP constitution makes no express or specific provision for the substantive independent existence or for a direct nomination, election, selection choice or identification as the case may be of the leader of the SLPP as such but rather that any such nomination, election selection choice or identification as may be of the said leader takes place only indirectly as a consequential or derivative issue from the process of nominating, electing, selecting choosing or identifying as the case may be the party presidential nominee for the next pending national presidential election.
- (2) That the position of leader of the SLPP is not a free standing office or status in its own right, but rather that it is by virtual definition, dependent upon the position of presidential nominee for the said party thereby making it so intertwined or associated with the office of state president at any time when an SLPP member holds the said presidency as to make the two positions indivisible and inseparable one from the other at all such times.
- (3) That at any time when the SLPP is in power and/or a member thereof is the lawful incumbent president of Sierra Leone, the two position of leader of the party and state president may or can only be either held together, or jointly or relinquished together and jointly and never otherwise at any such time so that an incumbent thereof may not selectively relinquish one of them and yet hold or seek to continue holding to the other nor may two different persons at one and the same time or simultaneously hold the two positions separately i.e., one position to one of them and the other to the other.
- (4) That the SLPP constitution makes no express or specific provision for the substantive independent existence or for any nomination election, selection, choice or identification (as the case may be) of a leader of the SLPP as such at any time when the said party is either not in power or not providing the incumbent president of Sierra Leone or when a national presidential election is not immediately due to be held.
- (3) A declaration to the effect that, in the following party and national constitution and other legislative provisions respectively among others to wit:
 - a. clause IV(a)(1) IV(b)(5) and (c) and (i)
Clause II(4) (c) as aforesaid and X of the SLPP constitution
 - b. sections 6 (14) (1) 24, 27 and 29 of the political parties Act No. 3 of 2002 and
 - c. sections 35(2) and (4) 42(1), 43 a and (b) 46(1) 49 (4) 76(1)(h) and 171(15) of the national constitution.

Then in view thereof the following conclusions are or would be each by itself, within the spirit intendment contemplation and indeed inescapable force and effect of the said provisions respectively viz:

- (1) That at the date of filing the application herein there are or were at least two or three regularly annual meetings and unspecified number of possible special or other meetings of the party conference of the SLPP still to be held before the presidential and parliamentary election of 2007 are or were due to be held to within the party conference of the years 2005, 2006 and possibly 2007, and any other special or other meetings of the party conference as may be determined by the national executive committee.
- (2) That without any prejudice whatsoever to the holding of the party conference (as such) stated for 19-20 August 2005 or at all otherwise in 2005 the nomination, election, selection, choice or identification as the case may be whether attempted or purported of a presidential nominee and/or leader of the SLPP at the said party conference that is to say almost two years before the presidential and parliamentary elections of 2007 are due to be held has or would have lead or would lead to the following interpretive consequences and/or conclusions viz:
 - i It is and will itself be grossly premature and incompontant with democratic principles for being inconsistent with and in contravention of the provision of sections 35(2) and 43(a) and (b) of the national constitution and accordingly void and of no effect.
 - ii It is and in practice be grossly unfair to certain individuals, members of the party and predijucial to their interests vis-à-vis the presidency and even to the wider related interest of the party itself and the nation at large in that:
 - a. It does and will tend to operate to prematurely preclude, exclude certain potential aspirant to that or those position(s) who for reasons of present untimeliness or prematurely or otherwise may not yet as at 19-20 August 2005 or any other time have indicated their intention or aspirations in respect thereof, but may be likely or at the due and proper time in 2006-2007 to make such intention or aspiration publicly known at the appropriate time.
 - b. It is and will be likely to deprive the SLPP itself as a democratic national party of a possible better quality or more popular presidential candidate who however for reasons at of present untimeliness or prematurely or otherwise may not yet as at 19-20 August 2005 or at any other time in 2005 have indicated his/her intentions or aspirations in respect thereof but may wish as at due and

proper time in 2006 or 2007 to make such intention or aspirations known at the appropriate time and it is also likely to deprive the said party of a fairer and more informed choice of presidential nominee or candidate, thereby putting the SLPP at a possible electoral disadvantage vis-à-vis the presidential candidates of other political parties and thus a risk of losing the presidential elections of 2007 against the said other parties.

- c. It is and will be likely to deprive the entire nation itself and the people of Sierra Leone as a whole of a possible better quality presidential candidate and potential ultimate president of Sierra Leone who however for reasons of present untimeliness or prematurity or otherwise may not yet as at 19-20 August 2005 or at any other time in 2005 have indicated his/her intentions or aspirations in respect thereof but may wish at the due and proper time in 2006 or 2007 to make such intentions or aspirations publicly known at the appropriate time with all the possible attendant risk of prejudice arising from an inept choice due to the said gross prematurity to the prospect of good governance, peace and positive national economic and other development during the five to ten years following the next presidential election.
- ii. It is or will in any case be tantamount to an amendment to the constitution or attempted/purported amendment of the SLPP constitution and accordingly the consent with and in contravention of the provision of clauses II (4) IV(A)(1) IVB(5)(b) and (c) and (i) and X of the said SLPP constitution and with and of those of sections 24 of the political parties Act 2002 and sections 35(2) and (4) and 76(1)(h) of the national constitution and therefore unlawful void and of no effect.
 - (3) That the position of leader and deputy leader of the SLPP in the manner and to the extent that they have been and/or are being held by specified incumbents respectively over the past ten years or so that is to say since at least 1996 and up till now were and are so held in contravention provisions of sections 35(4) and 76(b) of the national constitution and so as held were or are void and of no effect.
 - (4) That in so far as and to the extent that the current SLPP constitution remains and reads as it stands at the present time and at least up to the present time and at least up to 12 months hence it is unlawful for the said party to nominate, elect, select, choose or otherwise identify as the case may be a leader of the SLPP as such or to attempt/purport to do at any party conference or indeed at any time at all within the next 12 months from the date of filing this application.

- (5) That in view especially of the provisions of section 14(1) of the Political Parties Act 2002 and 35(1) and 76(1)(h) of the national constitution a person who is for the time being president, vice, president and minister or deputy minister in the government under the provisions of the national constitution may not and must not be and ought not to be either.
- a. leader of the SLPP or (b) a member of the executive body or officers of the SLPP whether national or otherwise, or
 - b. the National Secretary General of the SLPP
- (6) That the position of the National Secretary General of the SLPP in the manner and to the extent it has been or is being held by a minister of government to wit the 2nd defendant herein over the past three years or so that is to say due around June 2002 and up till now was and is so held in contravention of the provisions in section 14(1) of the Political Parties Act 2002 and Sections 35(4) and 76(1)(h) of the National Constitution and so as held was and is void and of no effect since at least June 2002 up till now.
- (7) That in consequences of all the provisions and conclusions cited and recited in the current declaratory reliefs and its forgoing sub items 3-6 inclusive herein the SLPP as a party is dangerously left open and exposed to a present risk of disqualification and disestablishment applications to the Supreme Court on the one hand by the relevant commission for an order to cancel the party and on the other hand by the Attorney-General and Minister of Justice-after such cancellation for an order to wind up and dissolve the SLPP pursuant respectively to Section 27 and 29 of the Political Party Act 2002.
- (4) A declaration to the effect that the following provisions of the SLPP constitution in so far as the respective aspects thereof as here indicated herein are concerned and to the respective extent thereof to wit.
- a. V(2)(c) thereof in so far as the stipulation shall automatically become the leader of the party after such nomination and shall be the political head of the party and are concerned and to the extent thereof
 - b. clause V(1)(c) and (d) thereof in so far as the mentioning of "leader" and deputy leader therein respectively are concerned and to the extent thereof.
 - c. clause V(2)(d) thereof its entirety and
 - d. clause VI(f) thereof in so far as the stipulations shall cease to be leader and deputy leader respectively" is concern and to the extent thereof

Each and everyone of the inconsistent and in controventive of the

provision of 14(1) of the Political Parties Act 2002 and Sections 35(4) and 76(1)(h) of the National Constitution and that the said inconsistent provisions to the extent of the said inconsistency in each case as specified herein null and void.

- (5) A permanent injunction restraining the 1st and 2nd defendants (in their personal and official party capacities alike) and the 3rd defendant herein their servant, agents and privies and in the case of the 3rd defendant in all its emanation and manifestation as organs, institution, officers and members thereof from nominating, electing, selecting, choosing or identifying as the case may be a presidential nominee and/or leader of the SLPP in any shape or form or name or guise or attempting/purporting so to do or encouraging or causing or countenancing or shepherding or partaking or the doing of such thing at the party conference stated for 19-20 August 2005 or at all otherwise in 2005 but otherwise without prejudice whatsoever to the holding of the said party conference as such.

As regards the first declaration, both sides agreed that Ex2 is the authentic document applicable to the SLPP. As regards the rest of the declaration, on a close scrutiny it is obvious that they revolve around the contravention of the Political Parties Act 2002 and the National Constitution 1991 in particular sections 6 and 14(1) of the Political Parties Act and Sections 34, 35(2) and (4) 42(1) 43, 46 and 76(1)(h) of the National Constitution by the SLPP Constitution.

Argument

I shall briefly state the argument and submission of the plaintiff on the 1st declaration refers to Sections 35 and 76(1)(h) and submitted that the combined affect of these two Sections is that anybody who is president, vice president, minister or deputy minister in government is barred from holding the position as leader of the SLPP. Reference was also made to the Political Parties Act 2002.

That the Supreme Court is the only court which has the jurisdiction to hear and determine the issue. In this connection he refers to Section 124(1) (a) 127 and 171(15) of the National Constitution.

On the 3rd declaration learned counsel for the plaintiff submitted that it is premature to elect a leader in 2005 when the contemplated period of vacancy is sometime in 2007. If the election is held in 2005 he will bowl out aspirant.

On the 4th declaration learned counsel submitted that certain clauses of the SLPP Constitution pertaining to the leader and deputy leader are inconsistent with Sections 14(1) of the Political Parties Act 2002 and Sections 35(4) and 76(1)(h) of the National Constitution. Therefore the clauses are null and void and of no effect.

On the issues of jurisdiction and locus standi, Dr. Jabbie submitted that the plaintiff did not sue in a representative capacity and further said that his case is built around the modern concept of locus standi on constitutional issues and submitted that the modern concept of locus standi was legislated for the first time in Sierra Leone in Section 127 of the National Constitution.

Finally he submitted that the issues raised are matters of public political interest as expressed by the National Constitution and the Political Parties Act 2002.

Mr. E.A. Holloway learned counsel for the defendants in reply submitted that the Supreme Court lacks the jurisdiction to hear and determine the matter under, Section 124 of the National Constitution 1991 or any other Sections of the constitution as the matters raised do not relate to the (a) enforcement of any provision of the constitution (b) to question as to whether an enactment was made in excess of the powers conferred by parliament or any other authority.

The contravention of Section 34, 35 of the National Constitution and Sections 6 and 14 of the Political Parties Act 2002 by the SLPP Constitution cannot be the subject of a declaration under Section 127 of the National Constitution.

On the issue of lack of locus standi by the plaintiff, Mr. Holloway submitted that the plaintiff cannot rely on Sections 124, 127 and 171(15) to vest the Supreme Court with jurisdiction to hear and determine the matter.

He further submitted that according to Section 27 of the Political Parties Act 2002 only the political party commission can apply to the Supreme Court.

I think at this stage it is pertinent for me to say that usually (though not imperative) the related issues of lack of jurisdiction and locus standi are raised at the earliest opportunity by way of an objection to the proceedings. If it is raised at the earliest opportunity the court should not proceed to hear the matter on its merit see *Macfoy v UAC* 1961 AER 1169. In this case however the defendants made these issues answers to the plaintiff case, which necessitated a full blown argument by the plaintiff of his case.

In this connection, therefore it left the door open for me to consider the plaintiff case on its merit.

Having said this, I shall start with the issue of jurisdiction and say the question raised by this action is whether the Supreme Court has jurisdiction to grant the declaration prayed for in the plaintiff originating notice of motion. Dr. Jabbie's contention is that the Supreme Court has. Mr. Holloway on the other hand submitted that the Supreme Court does not.

Jurisdiction

Jurisdiction, with reference to a country's judicial system, simply means the authority which a court has within that system to **decide on matters litigated** before it. It is usually conferred by the constitution of that country or statute. Therefore if a constitution of a country states that the court has no jurisdiction in certain matters it is impossible for the court to assume jurisdiction on such matters see *Ohene More v Akassa Taye* 2 WACA 43. But when jurisdiction is given or assumed, the court must deal with factual or real question.

In this connection I recall the words of Lord Sumner in *Russian Commercial and Industrial Bank v British Bank* 1921 AC 438. He said inter alia at page 452:

"The question must be real not theoretical. The person raising it must have a real interest to raise it and must be able to secure a proper opponent i.e., some one presently existing who has the true interest to oppose the declaration sought"

On a close scrutiny of the above dicta the necessary criteria for a court to assume jurisdiction on any matter are:

- i. there must be a real or factual question to be determined
- ii. the person raising the question must have interest in the question
- iii. he must also secure an opponent i.e., someone with interest in the question i.e., declaration

There is also the point of exclusion or ouster of jurisdiction. This is the removal from the court of its power to hear and determine the issue. In some jurisdiction, the exclusion clause is incorporated in the constitution of the country for example Section 94(2) of constitution forbids any act done under the rules of parliamentary procedure "shall not be inquired into by any court". In some case the jurisdiction of the court is excluded by statute or by decree. See *Anisminic v Foreign Compensation Commission* 1969 AC 147. *Din v Attorney General of the Federation of Nigeria* 1988 4NWLR 147 a case dealing with the forfeiture of asset by the Federal Military Government. The Supreme Court held that the powers exercised by the Federal Military Government of Nigeria are not changeable.

However where a constitution or statute seeks to exclude the jurisdiction of the courts to determine certain matters it must do so in clear and unambiguous words. See Section 94(2) of the Sierra Leone Constitution Supra. Also in this connection, I shall reach the words of Viscount Simmonds in the House of lords case of *Pyx Granite Co Ltd v. Ministry of Housing and local Government and Others* 1960 AC P. 200, referring to the jurisdiction of a court, he said:

"It is a principle not by any means to be whittled down that the subjects recourse to her Majesty's court for the determination of his right not to be excluded except by clear words that is a fundamental rule from which I would not for my part sanction any departure"

I am persuaded by the above dicta and I shall adopt the principle in this case. With this principle in mind I shall now proceed to consider the issue raised.

Briefly put, the plaintiff's complaint is the contravention of Section 35(2) (4), 43 and 76(1)(h) of the National Constitution and Section 6 and 14 of the Political Parties Act 2002 by some clauses of the SLPP constitution.

I shall here under reproduce the provisions in the national constitution:

Section 35:

(2) States:

The internal organization of a political party shall conform to the democratic principles and its aims and objective purposes and programmes shall not contravene or be inconsistent with any provision of this constitution.

(4) States:

No political party shall have as a leader a person who is not qualified to be elected as a member of parliament.

Section 76:

(1) No person shall be qualified for election as a member of Parliament.

(h) If he is for the time being the President, the Vice-President a Minister, Deputy Minister under the provision of this constitution.

Section 6:

Of the Political Parties Act 2002 relate to the function of the political parties commission and section 11(1) & (2) deals with the registration of political parties and what should accompany such registration. Section 14 (1) deals with the qualification of the founding member, leader of the party or member of the executive body. They must be qualified to be elected as members of parliament

The offending clauses of the SLPP Constitution 1995 are IV(3)(1) which deals with the agenda which include nomination of candidate for the Presidential Election by the party conference. VI(c) and (d) states who the national officers of the party should be included. The Leader (Presidential Nominee) and the Deputy Leader Vice Presidential Nominee) V(2) (c) and (d) relate to the determination of the Presidential nominee at party conference who shall automatically become leader of the party and his choice of the vice presidential nominee who shall become the deputy leader in consultation with National Executive Council. VI(b) deals with the national executive council's responsibility to ensure that the Party Conference nominate a candidate for the presidential election. As a result of these infractions, the plaintiff has invoked the original jurisdiction of the Supreme Court under sections 122, 124 (1) (a), 127 and 171 (15) of the national constitution to ventilate his grievance by seeking the several declarations and a permanent injunction in his originating notice motion.

I shall now go on to ascertain whether this court has jurisdiction to entertain the originating notice of motion under the several provisions of the constitution referred to. I shall start with Section 122(1) of the National Constitution.

Section 122(1) states:-

"The supreme court shall be the final court of appeal in and for Sierra Leone and shall have such appellate and other jurisdiction (emphasis mine) as may be conferred upon it by this constitution or any other law"

I shall also refer to section 170(1) of the constitution – chapter XII

The laws of Sierra Leone:

It states:

The laws of Sierra Leone shall comprise:-

- (a) The constitution
- (b) Laws made by under the authority of Parliament as established by this constitution
- (c) Any orders, rules regulation and other statutory instrument made by any person or authority pursuant to a power conferred in that behalf by this constitution or any other law
- (d) The existing law
- (e) The common law

Reading these two provisions together it seems to be that Section 122(1) merely tells us that jurisdiction can only be conferred by the constitution and any other law within the context of Section 170 examples Sections 124, 127 and 28 of the constitution, see 27(1) of the Political Parties act 2002. In my humble opinion Section 122 does confer original jurisdiction on this Supreme Court.

I now move on to Section 127 of the Constitution.

Sub Section 1 states:

"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 anytime bring an action in the Supreme Court for declaration."

The question here is whether the plaintiff can come for a declaration when he is not challenging the validity of an act.

The section is clear the act done must be under an enactment or under the authority of an enactment. In this regard I refer to chapter XIII of the constitution in particular see 171(1).

This section defines "law" to include "any instrument having the force of law made in exercise of a power conferred by law". It also gives the meaning of "statutory instrument" as any proclamation, regulation, order, rule or other instrument (not being an act of Parliament) having the force of law. I am sure it was this sort of legislation the drafters of the national constitution had in mind, when they framed Section 127 of the constitution in the way they did i.e. to accommodate subsidiary and delegated legislation.

Dr. Jabbie however submitted that this provision can be extended to include the SLPP Constitution. I profoundly disagree. If this court were to do this it will be acting as a legislature. In this regard I shall here recall the words of Livesley Luke C.J. deceased in *Chanrai vs. Co. Ltd. v Palmer* 1970 – 71 ALR SL 391 at 405 he said inter alia:

"In my judgment if the words used in a statute are plain and unambiguous the court is bound to construe them in their ordinary sense having regard to the context"

I shall adopt this dicta and say this court cannot interfere by way of extending the provision of Section 127 to include the SLPP constitution. Worst still if the court were to interfere in the manner suggested by Dr. Jabbie it will certainly be an infraction of Section 127 of the national constitution the very reason why Dr. Jabbie is here.

In the result I hold that Section 127 does not confer original jurisdiction on the Supreme Court.

Dr. Jabbie also invoked Section 171(15) to confer jurisdiction on the Supreme Court.

Section 171(15) states:

"This constitution shall be the supreme law of Sierra Leone and any other law found inconsistent with any provision of the constitution shall be to the extent of the inconsistency void and of no effect"

The short but important point here is that the constitution of Sierra Leone Act N. 6 of 1991 is the grundnorm of Sierra Leone in other words it is the fundamental law of the land and Section 171(15) being a substantive enactment gives fillip to the constitution by emphasizing that the constitution is the supreme law of the land.

With respect this provision does not confer original jurisdiction on the Supreme Court.

I now come to Section 124 of the national constitution.

Section 24(1) states:

"The Supreme Court save as otherwise provided in Section 122 of the 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

- (b) any question arises whether an enactment was made in excess of the power conferred upon parliament or any other authority or person by law or under this constitution.

No doubt this provision gives exclusive original jurisdiction the Supreme Court on all matters relating to the enforcement and interpretation of the constitution and questions as to whether parliament, any other authority or person when making an enactment has exceeded his powers.

My brother the learned Chief Justice has exhaustively dealt with this provision in the leading judgment. It only left for me to say that Dr. Jabbie's complaint with regard to the contravention of Section 35(2 & 4) the internal organ of the political party shall conform to the democratic principles and its aim etc. shall not contravene or be inconsistent with any provision of the constitution. A person who is not qualified to be elected a member of parliament cannot be a leader of a political party.

Section 76(2) – the president, vice president and minister and deputy minister are not qualified to be members of parliament.

These are matters which can be eminently taken under the original jurisdiction of the Supreme Court pursuant to Section 124 of the constitution.

I shall now go on to the next big issue i.e., the locus standi of the plaintiff.

Locus standi or legal capacity

Earlier on when I reviewed the argument of Dr. Jabbie and Mr. Hallway, I stated the two contending positions on this issue. Locus standi simply means standing or the legal capacity of a person to institute an action in court. In this case that person is the plaintiff, Samuel Hinga Norman. At page 7 of his original notice of motion, he tells us in what capacity he brings this action and I quote:

“The plaintiff/applicant brings the action/application as a law abiding citizen of Sierra Leone and member of the SLPP who aspires to be presidential candidate for the SLPP at the 2007 presidential election but who is keenly concerned that the pristine democratic credential and the processes of the SLPP are maintained, enhanced and facilitated in all the internal structure, organization, operation, programmes, activities and functions and they are always consistently compliant with the valid and lawful provision not only of his own party constitution, rules, regulations, standing order but also of the Political Parties Act 2002, national constitution and any other laws relevant and pertinent thereto and that they are always consistently compliant with the valid and lawful provisions not only its own Party Constitution Rules Regulations standing orders, but also of the Political Parties Act 2002 National constitution and any other laws relevant and pertinent there of.

It is clear from this exposé that the plaintiff brought this action in his personal capacity he should now demonstrate to us that he has the legal capacity to institute the action in other words he has the interest in the outcome of the action. This interest I dare say has ranged

from personal, sufficient, to public interest. In Senator Abraham Ade Adesanya v the President of Nigeria 1981 2NWLR. It was stated that the interest must be personal. On the other hand, the Ghana Supreme Court adopted a different approach and in the case of Sam V. Attorney General of Ghana GLR.300 Atuguba JSC said.

"As the plaintiff is a citizen of Ghana, suffices to enable him bring the personal action and I need not consider the question of locus standi in a wider dimension. Once a citizen".

Dr. Jabbie urged the court to adopt the liberal approach and stated that the plaintiff interest is public. In my view, while not agreeing with Dr. Jebbie, I think there should be a dichotomy between private rights on the one hand and public/constitution right on the other and I opine that when public/constitutional right are involved a liberal approach should be adopted, in view of Section 127 of the National Constitution which vests locus standi on any person irrespective of personal sufficient or public interest if and when there is infraction of the provisions in the National Constitution. In this regard, I am incline to adopt a liberal approach to this question.

The plaintiff is a Sierra Leonean and a fully paid up member of the SLPP. He is an aspirant for the Presidential election in 2007. In my humble view, I think this is enough to vest the plaintiff with standing and I so hold. However there is this matter of the Political Parties Act 2002, which in my view cannot be treated under the locus standi of the plaintiff. Has he exhausted all his remedies before coming to us? I opine not. The infraction of the SLPP constitution is intertwined with the Political Parties act and the National Constitution and therefore Section 6(2) (d) and Section 27 (1) of the Political Parties 2002 come into play.

Section 6(2)(d) and 87(1)

Section 6(2) (d) states:

"Without prejudice to the generality of sub section the function of the commission when approach by the persons or parties concerned, to mediate any conflict or dispute between or among the leadership of any Political Party or between or among political parties".

There is no evidence that the plaintiff ever approached the commission either orally, writing or otherwise in accordance with this section, if he had done, it would have been a different matter.

Again Section 27(1) of the Political Parties Act 2002 states:

Section 27(1)

"Without prejudice to any other penalty prescribed by this Act or any other enactment the commission may apply to the Supreme Court for an order to cancel the registration of the Political Party which has contravened any provision of the constitution or other act".

In whatever circumstance, I do not think that the plaintiff should have bypassed the commission and come straight. He should have exhausted his remedy if only for the record. If the commission failed to act there should be evidence to that effect.

In conclusion, I would like to record certain observation, and that is the national constitution came into operation in 1991, and included in its provision, the promulgation of a political party act. This act only came into effect in 2002, some 11 years after the national constitution. This clearly demonstrates tardiness on the part of those responsible for such matters. I say no more.

In the result the originating notice of motion is struck out.

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S.C. NO. 2/2005

IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTIONS 122; 124(1), 127 and 171(15) OF THE CONSTITUTION OF SIERRA LEONE, ACT NO. 6 OF 1991, and RULES 89 AND 98 INCLUSIVE OF THE SUPREME COURT RULES, STATUTORY INSTRUMENT NO. 1 OF 1982.

IN THE MATTER OF SECTIONS 35(1), (2), (4), & (6); 4(b); 42(1); 43(a) & (b); 46(1); AND 76(1)(h) OF THE SAID CONSTITUTION OF SIERRA LEONE

IN THE MATTER OF SECTIONS 6, 14(1), 24, 27 AND 29 OF THE POLITICAL PARTIES ACT. NO. 3 OF 2002.

IN THE MATTER OF CLAUSES II(4); IV(A)(1); IV(A)(3)(i); IV(B)(5)(b), (c) & (i); V(1)(c) & (d); V(2)(c) & (d); VI(b) & (f), AND X OF THE CONSTITUTION OF THE SIERRA LEONE PEOPLE'S PARTY (SLPP), JULY 1995, AND ALSO OF THE PARTY CONFERENCE OF THE SAID SLPP SLATED FOR 19-20 AUGUST 2005 AT MAKENI.

BETWEEN:

SAMUEL HINGA NORMAN

PLAINTIFF

AND

DR. SAMA S. BANYA
National Chairman, SLPP

1st DEFENDANT

DR. PRINCE HARDING
National Secretary-General, SLPP

2nd DEFENDANT

THE SIERRA LEONE PEOPLE'S PARTY (SLPP)

3rd DEFENDANT

(All Defendants being of 29 Rawdon Street, Freetown)

CORAM:

HON. MR. JUSTICE A.R.D. RENNER-THOMAS
HON. MRS. JUSTICE V.A.D. WRIGHT
HON. MR. JUSTICE M.E. TOLLA-THOMPSON
HON. JUSTICE SIR JOHN MURIA
HON. MR. JUSTICE JON KAMANDA

- CHIEF JUSTICE
- J.S.C.
- J.S.C.
- J.A
- J.A

DR. BU-BUAKEI JABBI for the Plaintiff
E.A. HALLOWAY ESQ.; D.B. QUEE Esq.; E.E.C. SHEARS-MOSES Esq.; and
A. BREWAH Esq.: for the Defendants

JUDGMENT

DELIVERED THE 31st DAY OF AUGUST 2005

MURIA J A: This case turns on two issues, namely whether the Supreme Court has jurisdiction to hear and determine the plaintiff's claims as contained in his Originating Notice of Motion, and secondly, if the Supreme Court has jurisdiction, whether the plaintiff has the *locus standi* to invoke that jurisdiction. By his Originating Notice of Motion, the plaintiff has sought four declarations and a permanent injunction against the defendants. He brings this action in his personal capacity as a member of SLPP ("the SLPP").

The Background of the Case

The background circumstances to this case are set out in the judgment of His Lordship the Chief Justice. I need not rehearse them here. I need only say that the plaintiff is a fully paid-up member of the SLPP and an aspirant to be nominated a Presidential nominee for the national Presidential Election in 2007. Until March 2003 when he was arrested and detained before the Special Court of Sierra Leone, the plaintiff was a Minister of Internal Affairs in the SLPP – led Government. He is presently standing trial before the Special Court for alleged war crimes. He continues, however, to be a full-pledged member and supporter of the SLPP.

As a result of the planned SLPP Conference which was to be held on the 19 – 20 August 2005 to, among other things, choose a Presidential Nominee and/or a Leader of the Party, the plaintiff instituted these proceedings, seeking declaratory and injunctive orders against the defendants. As it will become apparent, these discretionary orders of the Court are dependant on the plaintiff establishing, not only that this court has jurisdiction in the matter, but that he has the standing to invoke the court's jurisdiction. That is the common law position, and one which is applicable to the circumstances of Sierra Leone. I will return to this aspect of the case later in this judgment. For now, I turn to the first issue of jurisdiction of the Court.

Jurisdiction of the Supreme Court

The starting point in ascertaining the jurisdiction of the Supreme Court is the Constitution of Sierra Leone 1991 ("the National Constitution"). Part II of Chapter VII of the National Constitution sets out the provisions for the establishment and power of the Supreme Court. For our present purpose, section 124 of the National Constitution is directly relevant for our consideration. However, before I turn to that provision, let me first refer to section 122(1) of the National Constitution. That provision states:

"122(1) The Supreme Court shall be the final court of appeal in and for Sierra Leone and shall have such appellate and other jurisdiction as may be conferred upon it by this Constitution or any other law:

Provided that notwithstanding any law to the contrary, the President may refer any Petition in which he has to give a final decision to the Supreme Court for a judicial opinion. (*Emphasis is mine*).

There are three aspects to this provision. Firstly it expressly states that the Supreme Court is the apex of the Judiciary in Sierra Leone and as such it is the final Court in the land that any person, citizen or non-citizen, can appeal to. Secondly, the provision provides that the Supreme Court shall also have "other jurisdiction" in addition to its appellate jurisdiction conferred on it by the Constitution or any other law. These "other jurisdiction" of the Supreme Court can be found in other provisions of the Constitution, such as Sections 28 (enforcement of protective provisions), 124 (original jurisdiction on the Interpretation of the Constitution), 125 (Supervisory jurisdiction) and 127 (Enforcement of the Constitution). Thirdly, Section 122(1) confers advisory jurisdiction to the Supreme Court which can give a judicial opinion on a matter upon Petition by the President. The provision of such advisory jurisdiction on the court is not unique to Sierra Leone. The Constitution of PNG confers power on the Supreme Court of that country to give advisory opinion. There are jurisdictions whose constitution do not conferred advisory power on the Courts, for example, the US Supreme Court, although invested with judicial review power, can adjudicate only actual cases and disputes: *Marbury -v- Madison* (1803) 1 Cranch 137 (USSC); *Chicago -v- Wellman* 12 (US) Supreme Court Reporter 400. See also *Baker -v- Carr* (1962) 369 US 186.

I briefly mention section 127 of the National Constitution which is also relied upon by the plaintiff. Dr Bu-Buakei Jabbi contended that section 127 contains the Modern Law of Locus Standi. If Counsel's argument here is to buttress his case that under this section, the Supreme Court also has original jurisdiction to hear and determine the plaintiff's claims, then it cannot be accepted. Section 127 does not confer jurisdiction on the court. However, what it does is to give a right or standing on "a person" to bring an action in the Supreme Court to challenge the constitutionality of an Act of Parliament. It will be observed that the right to bring the action is in respect of an allegation that "an enactment or anything done under the authority of that enactment" is inconsistent with or contravenes the National Constitution. This is a Constitutional requirement to be fulfilled by an applicant who seeks to rely on section 127. It is not necessarily a modern version of the test of standing as urged by Counsel.

In the present case the plaintiff is not challenging the validity or constitutionality of an Act of Parliament, rather he is challenging the validity of the provisions of the SLPP Constitution. In this regard, the plaintiff cannot take shelter under section 127 of the National Constitution. In short, section 127 does not apply in the present case.

Counsel sought to persuade this Court to enlarge the meaning of "enactment" in section 127 so as to cover the SLPP Constitution. Political Parties Constitutions do not have the elements or nature of an "enactment." Counsel's contention is clearly untenable and I reject it.

I return to Section 124 of the National Constitution of Sierra Leone which, as I have said earlier, is relevant here. Mr. Halloway, vehemently argued that the Supreme Court has no jurisdiction, original or otherwise, to hear and determine the plaintiff's Originating Notice of Motion in this case. I set out the provisions of section 124 and as it will be clear from the wording of that section, I cannot accede to Counsel's contention. Section 124(1) 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) where any question arises whether an enactment was made in excess of the power conferred upon Parliament or any other authority or person by law or under this Constitution."

Under this constitutional provision, the Supreme Court has exclusive original jurisdiction "in all matters" *relating* to the enforcement or interpretation of any provision of the National Constitution. Apart from its strict constitutional jurisdiction in the enforcement or interpretation of any provision of the National Constitution, the Supreme Court is also clothed with an added power under this section. This power is what is commonly described as judicial review jurisdiction" and this is clearly borne out by the language of paragraph (b) of section 124(1). This power is more aptly described as constitutional review since it is exercised within the framework of a written constitution, conferring

power on the Supreme Court, the highest court of Sierra Leone, to rule legislative enactments invalid or unconstitutional. It is in this sense of the review jurisdiction of the Supreme Court that the expression "judicial review" is used in this judgment.

The other instance where the power of judicial review is manifested is where the courts exercise their power of review in respect of decisions of a judicial nature, of administrative bodies and inferior tribunals as in *National Joint Council for Dental Technicians, ex parte Neate* [1953], QB 704. We are not concerned with this second aspect of the review power of the courts in the present case.

The plaintiff seeks a number of declarations together with an injunction. The learned Chief Justice has dealt with them in his judgment. I need not go into them here, save to say that I agree with all that his Lordship has said and determined in respect of the orders sought by the plaintiff. Among the relief sought by the plaintiff in his Originating Notice of Motion, are orders to declare that certain provisions of the National Constitution, such as sections 35(2) and (4), 43(a) and (b) and 76(1)(h), had been contravened. These are matters to which section 124(1) of the National Constitution apply. This Court is invested with the power to hear and determine such claims of non-compliance with the National Constitution. The National Constitution of Sierra Leone established the Supreme Court and invested it with the jurisdiction to deal with complaints "in all matters" relating to the enforcement and/or interpretation of the National Constitution, such as those raised by the plaintiff. The Court cannot, therefore, deprive itself of that jurisdiction. The Court has jurisdiction under section 124(1) of the

National Constitution to hear and determine those matters relating to the enforcement or interpretation of the provision of the National Constitution. Whether or not the Court exercises that jurisdiction, is another matter. It is to that aspect of the case that I now turn.

The Plaintiff's locus standi

The plaintiff's contention is that, he has the standing to invoke the jurisdiction of the Supreme Court to hear and determine his claims as set out in his Originating Notice of Motion. The plaintiff's standing, Dr Bu-Buakei Jabbi of Counsel submitted, is based on his claim that he is a fully-paid up member of SLPP, an aspirant Presidential Nominee for 2007 Presidential Elections, and that he is a Law-abiding citizen who is keenly concerned to see that SLPP upheld the democratic principles and processes in its organization and functioning, ensuring compliance with the SLPP Constitution, Political Parties Act 2002 and the National Constitution. Mr. Halloway, on the other hand, submitted that the plaintiff has no locus standi to invoke the original jurisdiction of the Supreme Court in the present case. Counsel contended that the plaintiff who had already made known that he was an aspirant to be Presidential Nominee at the scheduled SLPP Conference, suffers no disadvantage over and above the other aspirants for the same position, nor did he has any right or interest peculiar to himself which could be said to be threatened by the holding of the said Party Conference and choosing of Presidential Nominee and/or Leader of the Party. Counsel relied on the case of *Odhams Press Limited v London and Provincial Sporting News Agency (1929) Limited* [1936] 1 All E.R. 217. In my respectful opinion, it is on this question of standing to invoke the jurisdiction of the Court that

presents the plaintiff with an obstacle which he must overcome. He must establish his standing to sue.

It is sometimes assumed that the Courts' jurisdiction can be invoked in a matter provided such jurisdiction exists. But as Stein pointed out in his work on locus standi; L.A. Stein (ed) *Locus Standi* (1979)3:

“Although the very existence of Courts as an institutional mechanism for dispute settlement might suggest that anyone could require that an issue be considered by the appropriate court, rules have been enunciated by Courts which confine the right to those persons possessing a certain interest in the issue.”

In other words, a person seeking to invoke the power of the court to hear him must show his interest in the matter before the court. The court has no jurisdiction, inherent or otherwise, over any person other than those properly brought before it as parties: *Brydges -v- Brydges and Wood* [1909] P 187 C A.

The plaintiff is here seeking to invoke the original jurisdiction of the Supreme Court. The Supreme Court Rules 1982 do not expressly provide in what capacity a person is entitled to seek such relief from the Court. Rule 98, however, provides that in the absence of such rule, the High Court Rules shall apply. We must therefore turn to the High Court Rules.

O.21, r.5, of the High Court Rules permits this Court to make declaratory orders which are properly sought before the Court. The Rule provides;

“No action or proceeding shall be open to objection, on the ground that a mere declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is or could be claimed or not”.

However, a party seeking such orders must still place himself properly before the Court. He must have the legal basis for doing so. See *Guaranty Trust Company of New York v Hannay and Company* (1915) 2 KB 536.

In the light of the abovementioned rule, what is the appropriate test of locus standi in Sierra Leone? The authorities are varied. They range from the traditional approach to standing which depended on the type of relief sought as found in the cases of *Boyce -v- Paddington Borough Council*, [1903] 1 Ch. 109; *Pynx Granite Co. Ltd -v- Minister of Housing and Local Government* [1960] A.C. 260; *R -v- Thames Magistrates' Court; Ex parte Greenbaums* (1957) 55 LGR 129; *R -v- Cotham* [1898] 1 QB 802; *R -v- Guardians of Lewisham Union* [1897] 1 QB 498; *R -v- Electricity Commissioners, ex parte London Electricity Joint Committee Co. (1920) Ltd* [1924] 1 KB 171 to the new and more liberal approach based on the test of “sufficient interest” as stated in *Inland Revenue Commissioners -v- National Federation for the Self-employed and Small Business Ltd* [1982] AC. 617 (“the National Federation Case”). Thus prior to 1978 when, in England, the new Rules of the Supreme Court were made, the courts had used different tests of standing in cases of judicial review of the decisions of administrative bodies. These tests

are framed in various forms such "an aggrieved person" (as in the *National Federation case*) the term sometime used interchangeably with "an adversely affected person" (as in *R -v- Guadians of Lewisham Union*), or "a person who suffers or at a risk of suffering particular harm over an above all the rest of the public" (*Boyce -v- Paddington Borough Council*). The position now contended for by Counsel for the plaintiff in the present case is that this Court ought and should adopt and apply the liberal test of "sufficient interest" which was expressly laid down in O.53 r 3 (7) of English Supreme Court Rules and Section 31(3) Supreme Court Act 1981 and now widely applied, not only by the English Courts, but by the Courts in other common law jurisdictions.

Long before the new O.53 of English Supreme Court Rules and Supreme Court Act 1981 came into existence in England, in the Australian case of *Crouch -v- The Commonwealth* (1948) 77 CLR 339 the High Court of Australia held that the claim by the plaintiff that his business was adversely affected by the need to obtain permits under an allegedly invalid law constituted sufficient interest entitling him to sustain the action. Unlike in the present case, the plaintiff in *Crouch case* challenged the validity of an Act of Parliament, the Defence (Transitional Provisions) Act 1946 which purported to control the disposition of cars by requiring the plaintiff to have permits to buy cars and to sell them only to persons who had permits to purchase cars.

In the Nigerian case of *J.S. Olawoyn -v- A.G, Northern Region* [1961] 2 SCNLR 5 the Court refused to grant a declaration because the plaintiff had not shown that he had an interest in the subject matter. The Federal Supreme Court of Nigeria dismissed the

plaintiff's appeal, holding that he had no sufficient interest in the matter to entitle him to seek a declaration from the Court. In the Papua New Guinea case of *PNG Air Pilots -v- Director of Civil Aviation* [1983] PNGLR 1, the Court found that the applicants had sufficient interest because they had a "real interest" in the matter (based on the PNG Air Pilots Association objectives) which involved economic, contractual and other interests affecting their livelihood and day to day working lives.

In the present case, if this Court were to accept the liberal approach to the test of standing urged upon it by Dr Bu-Buakei Jabbi, the plaintiff must show, not only that he has a sufficient interest in the matter that he brings to the court, but that this liberal test of "sufficient interest" is the appropriate test to be adopted in Sierra Leone when invoking the Court's power under Section 124(1) of the National Constitution. No case decided by our Courts here had been cited by Counsel on this issue. However, when looking at the cases on the test of standing from other jurisdictions, it is clear that the position is not uniform. Thus, the Courts in Sierra Leone, in particular, the Supreme Court, will have to decide the path to follow on the standing of a party who seeks to invoke the review jurisdiction of the Court in Constitutional, as well as in administrative law disputes. The Court must do so based on legal grounds. My searches in the National Constitution, Statutes and Rules of Courts have not shown any express legislative formula in this jurisdiction for the liberal approach to standing as urged by Counsel.

Apart from the clear limited test to invoke the Courts jurisdiction under section 28 of the National Constitution, where an alleged contravention of the protective provisions of

the National Constitution "has been, is being or is likely to be in relation to him" (applicant), and the specific conferring of standing on the President under section 122(1) also of the National Constitution, the only other provision that is suggestive of standing is section 127(1). However, the application of section 127(1) is limited to challenging the validity or constitutionality of an enactment or things done under such enactment. The allegations raised by the plaintiff in the present case do not come within the bounds of section 127(1). It is therefore difficult to see the basis for the liberal approach to the test of standing as urged by Counsel.

Having said that, and in view of the nature of the complaints raised by the plaintiff in his originating Notice of Motion, the general tenor as to the approach to be taken by the Courts in Sierra Leone in such a case is one where the applicant must show that he has an interest in the subject matter before the court. That interest must be one that is personal to himself, and one in which he has been adversely affected by the actions complained of. A general interest which the applicant possesses, as in the present case, in common with all members of the public or in common with other members of a section of the community cannot confer standing on him.

The position is similarly found in Nigeria, as expressed in *Senator Adesanya -v- President of Nigeria* [1981] 2 NCLR 358; in the United States of America, in *Massachusetts -v- Melon* (1923) 262 US 447; and in India, in *Dwarkadas -v- Sholapur Spinning Co.* (1954) S.C.A 132, and A.I. R. (1954) S.C. 119; and *Charanjit Lal -v- Union of India*, A.I.R. (1951) S.C. 41. In another American case of *Ex parte Levitt*, 302

US 633, the Court held that a citizen, though a member of the bar of the Supreme Court of the United States, had no standing to challenge the validity of an appointment of a Justice to the Supreme Court of the United States.

I come to this conclusion having regard to the provisions of the National Constitution and Rules of, both the Supreme Court and High Court, and in the absence of any express legislative formula in support of a liberal approach to standing in Sierra Leone. In this regard, I joined Bello JSC in his cautionary stand on this question when he said *Senator Adesanya -v- President of Nigeria*, at 381:

"I prefer to be on the side of caution and consequently, in my view, the question of standing ought to be decided on the very narrow compass it has been canvassed before us. I endorse the method of gradual approach in constitutional matters so that each case will be decided on its particular facts and circumstances and after the issues involved have been ventilated by the parties to their disputes".

Further, I do not lose sight of the fact that in this case the plaintiff has come to this court in his own private capacity as a member of the SLPP seeking the various declaratory orders and an injunctive order against the defendants. It is therefore all the more incumbent on him to satisfy the Court that he has a justiciable interest which may be affected by the action of the defendants in holding the planned Party Conference and conducting the businesses of the Party during that conference or that he will suffer injury

or damage as a result of the defendants' action . Of course, whether the plaintiff has sufficient justiciable interest or has suffered damage or injury as a result of the action of the defendants, depends on the facts and circumstances of the case. See *Bengal Immunity Co. -v- State of Bihar* (1965) 2 SCR 602; *Frothingham -v- Mellon* (1925) 262 US 447.

In the case now before us, the plaintiff is a fully paid-up member of the SLPP. He has made known to the Party that he is an aspirant to be Presidential Nominee and/or a Leader of the Party. He comes to this court in his personal capacity to seek the various declarations and an injunction against the defendants. What legal or equitable rights or justiciable interest does he have or suffer as a consequence of the defendants' action to entitle him to invoke the original jurisdiction of this court in the matter now before the Court? In my judgment and in the light of the authorities discussed in this judgment, the plaintiff does not have any right, legal or equitable, nor any justiciable interest to be protected so as to entitle him to the orders, declaratory or injunctive, which he seeks against the defendants. He therefore has no standing in the circumstances of the present case to invoke the jurisdiction of this Court under Section 124(1) of the National Constitution.

In passing I simply wish to add that when sections 34 and 35 of the National Constitution are read together with sections 6 and 27 of the Political Parties Act 2002, it should become obvious to the plaintiff as to the proper procedure of invoking the jurisdiction of the Supreme Court if he wishes to ensure that the SLPP which is a Party registered under the Political Parties Act and of which he is a member, does not contravene the provisions

of the National Constitution. I say no more. The learned Chief Justice has dealt with this aspect in his judgment with which I entirely agree. I wish only to add that one of the fundamental rules in administrative law in relation to judicial review is the question as to whether the applicant has exhausted other remedies provided by law. Generally, the judicial review jurisdiction will not be exercised if other remedies available have not been exhausted. See *R -v- Epping & Harlow General Commissioners; Ex parte Goldstraw* [1983] 3 ALL ER 257. The provisions of the Political Parties Act mentioned above, in my view, provide an aggrieved person such as the plaintiff, with the statutory machinery to deal with his complaints against the defendants over the organization, operation, functioning or conduct of the SLPP under its Constitution. The plaintiff has not done that in this case. Further, there was no suggestion that the available alternative administrative remedy under the provision of the Political Parties Act was inadequate nor was it dispositive. It may well be viewed as an abuse of process to allow the plaintiff to first exhaust judicial remedies and then revert to explore the alternative administrative remedy. This is a factor also relevant to the exercise of the Court's discretion.

Thus even if I were to find that he has standing to come to this court, I would have refused the orders he sought in the exercise of the Court's discretion under the doctrine of Exhaustion.

In the light of all that I have said, I hold that the Supreme Court has jurisdiction to hear and determine the plaintiff's claims in so far as they relate to the alleged contravention of the provisions of the National Constitution. However, the plaintiff has no standing to

invoke that jurisdiction in the circumstances of the present case. Consequently, the originating Notice of Motion must be struck out.

I agree to the orders proposed by the learned Chief Justice.



Sir John Muria JA.

IN THE SUPREME COURT OF SIERRA LEONE
S.C. No. 2/2005

Between SAMUEL HINGA NORMAN - PLAINTIFF

AND

DR. SAMA S. BANYA - 1ST DEFENDANT
(National Chairman, SLPP)

DR. PRINCE A HARDING - 2ND DEFENDANT
(National Secretary-General – SLPP)

THE SIERRA LEONE PEOPLE'S PARTY (SLPP) 3RD DEFENDANT

(All Defendants being of 29 Rawdon Street, Freetown)

CORAM

HON. MR. Justice A.R.D. RENNER-THOMAS	-	CHIEF JUSTICE
HON. MRS. JUSTICE V.A.D. WRIGHT	-	J.S.C.
HON. MR. JUSTICE M.E. TOLLA-THOMPSON	-	J.S.C.

Mr. Sahid Sesay,

ADVOCATES :

DR. BU-BUAKEI JABBI for the Plaintiff

E.A. HALLOWAY Esq; D.B. QUEE Esq; E.E.C. SHEARS-MOSES Esq;

A.BREWAH Esq. for the Defendants

JUDGMENT

DELIVERED THE 31st DAY OF AUGUST 2005

KAMANDA JA: In light of all that has been said before me, and in the interest of time, mine must of necessity be a short judgment. My Lords,
I have had the advantage of reading in draft the judgments of the Learned Chief Justice, Hon. Dr. A.R.D. Renner-Thomas, and those of the other Hon. Justices of this Court. In view of the exhaustive analysis of the law and facts by the Hon. Chief Justice, with whom I agree, there is not much I can usefully add without running the risk of being repetitious. I, nonetheless crave indulgence to add a few words of my own.

The Plaintiff has come to this Court on two grounds: firstly, seeking an interim injunction restraining the 1st, 2nd and 3rd Defendants from nominating, electing, selecting, choosing or identifying a Presidential Nominee and/or Leader of the Sierra Leone Peoples Party (SLPP) at their party convention scheduled for 19th to 20th August, 2005 pending the determination of a suit instituted through an originating notice of motion.

Secondly, the plaintiff by the said originating notice of motion is seeking relief in the form of Declarations to be made by this court on a number of issues, and an injunction in the terms I have referred to above. The matter of the said interim injunction has been mutually settled through the provision of an undertaking and cross-undertaking by the Defendants and the Plaintiffs respectively.

On the substantive matter instituted through the originating notice of motion, the Plaintiff has relied on several provisions of (i) the Constitution of Sierra Leone 1991, (ii) The Political Parties Act No. 3 of 2002, (iii) The Constitution of the Sierra Leone People's Party. He has also cited case law and a number of text book authorities. All of these have been forcefully canvassed with great erudition and meticulous detail by Dr. Bu-Buakei Jabbie on behalf of the Plaintiff.

In my judgment, the subject matter of this action hinges on the answers to the following questions:

1. Does the Plaintiff have locus standi (or 'standing') in instituting this action before this court in its original jurisdiction?
2. Does this court have original jurisdiction to entertain the plaintiff's action?

It should be pointed out that the entire case of the Defendants is built on two limbs:

1. That the Plaintiff has no standing to institute this action, and
2. That this court lacks original jurisdiction in entertaining this action, and cannot therefore grant the reliefs sought by the Plaintiff.

For the reasons given by the Hon. Chief Justice regarding how the issue of standing and jurisdiction apply to each relief, it has not been necessary for me to delve into the merits of the plaintiff's case.

I will accordingly, and in agreement with the Hon. Chief Justice and other Hon. Members of this court, strike out the originating notice of motion.

