

IN THE SUPREME COURT OF SIERRA LEONE  
(ORIGINAL JURISDICTION)

IN THE MATTER OF SECTION 124(1) AND SECTION 127(1)  
OF THE CONSTITUTION OF SIERRA LEONE ACT NO.6 OF 1991

AND

IN THE MATTER OF THE ELECTION FOR THE OFFICE OF PARAMOUNT  
CHIEF OF BIRIWA CHIEFDOM, BOMBALI DISTRICT IN THE NORTHERN  
PROVINCE OF THE REPUBLIC OF SIERRA LEONE, HELD ON THE  
12<sup>TH</sup> AUGUST 2006

BETWEEN: (1) DR. SORIE KENNEDY CONTEH  
(2) ALBERT CONTEH  
(3) PRINCE AMADU KALAWA  
(4) SALIFU MANNAH KALAWA  
(5) ALHAJI KINGKOMA CONTEH  
(6) FODAY BABA CONTEH - PLAINTIFFS

A N D

(1) THE MINISTER OF LOCAL GOVERNMENT  
AND COMMUNITY DEVELOPMENT - 1<sup>ST</sup> DEFENDANT  
(2) THE PROVINCIAL SECRETARY,  
NORTHERN PROVINCE - 2<sup>ND</sup> DEFENDANT  
(3) DR. ISSA M. SHERIFF - 3<sup>RD</sup> DEFENDANT  
22C EAST BROOK STREET  
FREETOWN.  
(4) THE ATTORNEY-GENERAL AND  
MINISTER OF JUSTICE - 4<sup>TH</sup> DEFENDANT  
(5) THE NATIONAL ELECTORAL  
COMMISSION - 5<sup>TH</sup> DEFENDANT

CORAM:

HON. JUSTICE A.R.D. RENNER-THOMAS - CHIEF JUSTICE  
HON. JUSTICE SIR JOHN MURIA - J.S.C.  
HON. MRS. JUSTICE V.A.D. WRIGHT - J.S.C.  
HON. JUSTICE MR. M.E.T. THOMPSON - J.S.C.  
HON. MS. JUSTICE U.H. TEJAN-JALLOH - J.A.

J.B. JENKINS-JOHNSTON ESQ. FOR THE PLAINTIFF

-79-

**F.M. CAREW ESQ., Attorney-General, OSMAN KANU Esq and ALIMAMY SESAY Esq. for the Defendants**

**JUDGMENT DELIVERED THE 10<sup>th</sup> DAY OF NOVEMBER, 2006.**

**RENNER-THOMAS, C.J.** This is an action commenced by an Originating Notice of Motion dated 14<sup>th</sup> September, 2006 invoking the original jurisdiction of the Supreme Court of Sierra Leone pursuant to Sections 124(1) and 127(1) of the Constitution, Act. No.6 of 1991.

The reliefs claimed by the Plaintiffs are the following:-

- (1) *A Declaration that any Election for the Office of Paramount Chief as provided for in Section 72(5) of the Constitution, IS A PUBLIC ELECTION, the conduct and supervision of which is the responsibility of the 5<sup>th</sup> Defendant herein, as provided by Section 33 of the said Constitution of Sierra Leone.*
- (2) *A Declaration that the Election for the Office of Paramount Chief of BIRIWA CHIEFDOM, Bombali District in the Northern Province of the Republic of Sierra Leone conducted by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on the 12<sup>th</sup> August 2006 as a result of which the 3<sup>rd</sup> Defendant was purportedly declared to be Elected as the PARAMOUNT CHIEF of BIRIWA CHIEFDOM was conducted in contravention of Section 72(5) and Section 33 of the Constitution of Sierra Leone, and is therefore INVALID, NULL AND VOID.*
- (3) *Consequent upon (2) above, FOR A Declaration that the Office of Paramount Chief of BIRIWA Chiefdom, Bombali District, in the Northern Province of Sierra Leone IS VACANT.*
- (4)
  - (i) *A Declaration that by Native Law and Custom and by tradition, any person who does not belong to a Ruling House is not eligible to contest for and be elected as Paramount Chief of any Chiefdom in Sierra Leone.*
  - (ii) *A Declaration that DR. ISSA M. SHERIFF not being a member of any of the Four(4) Established Ruling Houses of BIRIWA Chiefdom, Bombali District, Northern Province of Sierra Leone is not eligible to contest for the Office of Paramount Chief of the said BIRIWA Chiefdom.*

- (5) *For An Order that an Election to the office of Paramount Chief of BIRIWA Chiefdom, Bombali District in the Northern Province of the Republic of Sierra Leone shall be conducted and supervised by the 5<sup>th</sup> Defendant in accordance with Section 33 of the Constitution of Sierra Leone on a date to be determined by the 5<sup>th</sup> Defendant herein.*
- (6) *For Any Further or other Orders or directions as may be considered giving effect to, or enabling effect to be given to the declarations and orders heretofore made.*
- (7) *That the Costs of this Action shall be paid by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, such Costs to be taxed."*

In addition to the affidavit of Dr. Sorie Kennedy Conteh, the first Plaintiff herein, sworn to on the 14<sup>th</sup> day of September, 2006 and filed together with the Originating Notice of Motion Counsel for the Plaintiff was given leave by the Court to rely also on the joint affidavit of the second to sixth Plaintiffs inclusive sworn to on the 6<sup>th</sup> day of October 2006 and filed herein.

On the 29<sup>th</sup> day of September 2006 the Statement of the Plaintiffs Case was filed together with the affidavit as required by Rule 90 (2) of the Rules of the Supreme Court, Constitutional Instrument No.1 of 1982. On the 10<sup>th</sup> day of October 2006, Osman Kanu, State Counsel as Solicitor for all the five Defendants herein filed a Statement of the Defendants case accompanied by the requisite affidavit pursuant to Rule 92 (2) of the said Rules of the Supreme Court.

A date was fixed for the hearing and arguments commenced on the 19<sup>th</sup> day of October 2006 and were concluded on the 20<sup>th</sup> day of October 2006. Though both the Plaintiffs and the Defendants did give an indication that they might be calling witnesses at the hearing no such witnesses were called.

Put briefly, the case for the Plaintiffs, as I understand it, is

- (5) *For An Order that an Election to the office of Paramount Chief of BIRIWA Chiefdom, Bombali District in the Northern Province of the Republic of Sierra Leone shall be conducted and supervised by the 5<sup>th</sup> Defendant in accordance with Section 33 of the Constitution of Sierra Leone on a date to be determined by the 5<sup>th</sup> Defendant herein.*
- (6) *For Any Further or other Orders or directions as may be considered giving effect to, or enabling effect to be given to the declarations and orders heretofore made.*
- (7) *That the Costs of this Action shall be paid by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, such Costs to be taxed."*

In addition to the affidavit of Dr. Sorie Kennedy Conteh, the first Plaintiff herein, sworn to on the 14<sup>th</sup> day of September, 2006 and filed together with the Originating Notice of Motion Counsel for the Plaintiff was given leave by the Court to rely also on the joint affidavit of the second to sixth Plaintiffs inclusive sworn to on the 6<sup>th</sup> day of October 2006 and filed herein.

On the 29<sup>th</sup> day of September 2006 the Statement of the Plaintiffs Case was filed together with the affidavit as required by Rule 90 (2) of the Rules of the Supreme Court, Constitutional Instrument No.1 of 1982. On the 10<sup>th</sup> day of October 2006, Osman Kanu, State Counsel as Solicitor for all the five Defendants herein filed a Statement of the Defendants case accompanied by the requisite affidavit pursuant to Rule 92 (2) of the said Rules of the Supreme Court.

A date was fixed for the hearing and arguments commenced on the 19<sup>th</sup> day of October 2006 and were concluded on the 20<sup>th</sup> day of October 2006. Though both the Plaintiffs and the Defendants did give an indication that they might be calling witnesses at the hearing no such witnesses were called.

Put briefly, the case for the Plaintiffs, as I understand it, is

- (1) that any election for the office of a Paramount Chief is according to Section 33 of the Constitution, Act No.6 of 1991 is a public election should therefore be conducted and supervised by the fifth defendant, the National Electoral Commission.
  
- (2) that as the election held by the first and second Defendants, the Minister of Local Government and Community Development and the Provincial Secretary, Northern Province, on the 12<sup>th</sup> August 2006 as a result of which the third Defendant, Dr. Issa M. Sheriff, was elected to the Office of the Paramount Chief of Biriwa Chiefdom in the Bombali District in the Northern Province of the Republic of Sierra Leone was not conducted in accordance with the provisions of the said Section 33 of the Constitution, the said election should be declared invalid, null and void and the office of the Paramount Chief of the said Biriwa Chiefdom should therefore be declared vacant.

The Plaintiff also challenged the eligibility of the third defendant to be a candidate in the said election and seek an Order of the Court directing the fifth Defendant thereafter to conduct the said elections in accordance with Section 33 of the Constitution.

The short answer of the Defendants to the Plaintiffs' case, as could be gleaned from the Statement of the Defendants' Case is first, that the election of a Paramount Chief is not a public election as envisaged by Section 33 of the Constitution and that the conduct of such an election is not governed by Sections 33 and 72(5) of the Constitution. Though not raised as part of their case, during the course of his argument, the Attorney-General on behalf of the five Defendants contended that this Court could not grant the several reliefs sought in the Originating Notice of Motion in its original jurisdiction

He was allowed to raise this issue which was outside the Case for the Defendants as filed because this Court is of the view that the question as to whether the original jurisdiction had been properly invoked is one which even if not canvassed by any of the parties the Court, *suo moto*, can properly raise and dispose of as a matter of law.

Indeed, in my view, this issue of the original jurisdiction is one which must be dealt with as a preliminary issue because if the Court comes to the conclusion that it lacks original jurisdiction to grant the several reliefs sought it would not even go into the merits of the case no matter how convincing the arguments in favour may be *ex facie*. (See *Issa Hassan Sesay & Ors v. The President of the Special Court for Sierra Leone*, SC 1/2003, judgment delivered the 14th day of October 2005 and *Hinga Norman v. Sama Banya*, SC 2/2005, judgment delivered the 31<sup>st</sup> day of August 2005, both unreported )

The procedure adopted by this Court in the *Issa Sesay v. Special Court for Sierra Leone* case was to examine each relief prayed for by the plaintiff separately and individually with a view to establishing whether there was any basis for invoking the Courts original jurisdiction to grant the said relief. Where the Court comes to the conclusion that it lacks jurisdiction the proper course is not to dismiss the whole action but to have the action struck out to the extent that the Court lacks jurisdiction to grant some or all of the reliefs sought.

I am still convinced that this is the right approach and for reasons which will soon become apparent I intend to adopt it in the instant case.

In the instant case, the Plaintiffs seek to rely on sections 124(1) and 127(1) of the Constitution as the basis for invoking this courts original jurisdiction. In the *Hinga Norman* case (*supra*) this Court made a distinction between the legal effect of the provisions of section 124(1) and those of section 127(1) of the Constitution. The essential distinction is that whereas the provisions of section 124(1) are substantive vesting exclusive original jurisdiction in the Supreme Court in matters

of interpretation and enforcement of the Constitution those of Section 127(1) are purely procedural setting out the requirements for and manner in which the Constitution may be enforced by this Court.

The test to be applied where the original jurisdiction is invoked to interpret or enforce provision of the Constitution was thus stated by me in my Judgment in the *Hinga Norman case (supra)*.

*"The first test is that the Plaintiff seeking to invoke the 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 show that an interpretation of the particular provision of the National Constitution identified under the first test is required as a matter of law."*

In the Issa Sesay case when dealing with the test for invoking the original jurisdiction of this Court for the purposes of interpretation of a substantive provision of the Constitution I cited the above dicta and reemphasized my view in the following words.

*"Let me repeat what I stated in the Hinga Norman case in the passage cited earlier in this judgment i.e. in order to invoke this Court's original jurisdiction under Section 124(1) of the Constitution the plaintiff must satisfy this Court that the interpretation sought is required as a matter of Law, for example, to clarify any ambiguity or to determine the legal effect of a provision"*

I may add that this Court will not allow its original jurisdiction to be invoked to interpret a provision of the Constitution in a purely hypothetical case or where

original jurisdiction to try the subject matter of the dispute is vested in some other Court and there is only a likelihood that the need for interpretation might arise in the course of the trial in that other Court. In the latter case, the jurisdiction of the other court to try the matter is not ousted merely because a question of interpretation of a provision of the Court is likely to arise in the course of the trial.

Section 124 (2) of the Constitution expressly provides for such a situation by stipulating that where a question of interpretation or even enforcement of a provision of the Constitution arises *"in any proceedings in any Court, other than the Supreme Court that Court shall stay the proceedings and refer the question of law involved to the Supreme Court [not in its original jurisdiction I may add] for determination;"*

I now turn to the test to be applied where the original jurisdiction of this Court is invoked to enforce compliance with a provision of the Constitution. The factual circumstances in which this could be done are spelt out in three separate sections of the Constitution. First, there is Section 28 which allows this Court's original jurisdiction to be invoked where it is alleged that there has been a violation of Sections 16 to 27 inclusive of the Constitution. Next, pursuant to Section 171 (15) the original jurisdiction of this Court could be invoked where it is alleged that any enactment is inconsistent with any provision of the Constitution. Thirdly, the original jurisdiction of this court could be invoked pursuant to Section 127 (1) where it is alleged that a statute or its content or any thing done under the authority of that or any other statute is in contravention of a provision of the Constitution.

Clearly, Sections 28 and 171 (15) are not applicable in the instant case and are not invoked by the Plaintiffs herein. In contrast, the Plaintiffs rely squarely on the provisions of Section 127(1) and by implication on those of Section 127(2) for the declarations sought in the Originating Notice of Motion.



— 86 —

For purposes of clarity I shall reproduce Section 127 of the Constitution in full. It states as follows:-

*"(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*

*(2) The Supreme Court shall, for the purpose 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.*

*(3) Any Person to whom an order or direction is addressed under subsection (1) by the Supreme Court shall duly obey and carry out the terms of the Order or direction.*

*(4) Failure to obey or to carry out the terms of an order or direction made or given under subsection (1) shall constitute a crime under this Constitution".*

In the Hinga Norman case (Supra) I stated that it is important to remind oneself that the provisions of Section 127(1) of the Constitution are only applicable in the limited factual circumstances which I set out as follows:-

*"Where-*

*(1) any person alleges that any enactment is inconsistent with or in contravention of provision of the..... 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..... 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..... 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 enactment is inconsistent with or in contravention of the Constitution. 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."*

Thus, in the case of *Ngandi T.A.Sokoyama v. The Attorney-General and Minister of Justice* (SC 1/2005, judgment delivered the 6<sup>th</sup> day of September 2006, unreported) this Court held that its original jurisdiction had been properly invoked to enable it grant a declaration that the provision contained in the Provinces Act, Cap 60 of the Laws of Sierra Leone, 1960, as amended which required a plaintiff to seek the consent of the Attorney-General before bringing an action to challenge the validity of an election of a Paramount Chief was inconsistent with Section 133 (1) of the Constitution and was therefore null and void. Section 133(1) of the Constitution provides that:

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

Having thus set out the circumstances in which the original jurisdiction of this Court could be invoked I shall now proceed to examine the several reliefs claimed by the Plaintiffs in the instant case to ascertain whether they could properly be granted by this Court in its original jurisdiction.

The first relief sought is a declaration that any election for the office of Paramount Chief as provided for in Section 72(5) of the Constitution is a public election; the

— 88 —

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conduct and supervision of which is the responsibility of the fifth defendant herein as provided by Section 33 of the said Constitution.

To be able to decide whether or not this relief could properly be granted by this Court in its original jurisdiction it is in my opinion necessary as a matter of law and based upon what I said above first to decide whether this Court ought to interpret Sections 33 and 72(5) of the Constitution and secondly based on the outcome of such interpretation determine whether the factual circumstances of this case is covered by the provisions of Section 127 (1) of the Constitution

For the reasons already stated above, I hold that this Court cannot properly refuse to exercise its original exclusive jurisdiction to interpret the provisions of Section 33 and 72(5) of the Constitution in the circumstances of the instant case and I shall now proceed to do so.

Section 33 of the Constitution provides as follows:-

*"Subject to the provisions of this Constitution, the Electoral Commission shall be responsible for the conduct and supervision of the registration of voters for, and of, all public elections and referenda and for that purpose shall have power to make regulations by statutory instrument for the registration of voters the conduct of Presidential Parliamentary or Local Government elections and referenda, and other matters connected therewith including regulation for voting by proxy."*

Counsel for the Plaintiffs urged this Court to hold that as long as an election could properly be defined as a public election it becomes the responsibility of the Electoral Commission to conduct and supervise that election. Based upon the definition he culled from the Oxford Concise Dictionary he urged this Court to conclude that any election for the office of Paramount Chief is a public election and therefore to be conducted and supervised by the Electoral Commission.

On the other hand, the Attorney-General, on behalf of the Defendants contended that the term "*public election*" in Section 33 of the Constitution cannot possibly be referable to the election of Paramount Chiefs as this was not the intention of the legislature which, in contrast to the express reference to Presidential Parliamentary, Local Government Election and referenda, made no reference to elections of Paramount Chiefs. He went on to argue that such elections are governed by customary law and usage as provided for in Section 5 of the Provinces Act, Cap 60 of the Laws of Sierra Leone, 1960 as amended.

As stated above, Counsel for the Plaintiffs made reference to the Concise Oxford Dictionary to ascertain the meaning of the term "*public*". I must here state that whereas recourse may properly be had to a dictionary or other work of reference to ascertain the meaning of a term used in an enactment the dictionary cited should be "*well-known and authorized*" (see *Marquis of Camden v IRC* [1914] 1KB 641 of 647, CA per Cozens-Harding M.R). Besides, the Court remains free to reach its own conclusion as to the legal meaning of a word based on other considerations.

Indeed, it is most essential in the process of statutory interpretation to bear in mind the fundamental distinction between the literal meaning of a term or an enactment and its legal meaning. This distinction between literal meaning and legal meaning according to Benion on Statutory Interpretation "lies at the heart of the problem of statutory interpretation" (see *Statutory Interpretation* by Francis Benion, 3<sup>rd</sup> edition at p.343). The function of the court as interpreter of an enactment is to determine the legal meaning of the enactment, that is the meaning that correctly conveys the legislative intention. Therefore, the main object in construing an enactment is to ascertain the intention of Parliament as expressed in the enactment considering it as a whole and in its context. For this reason, the legal meaning may or may not correspond to the grammatical or literal meaning.

How then do we arrive at the legal meaning? According to Halsbury's Laws of England the legal meaning:

*"is arrived at by applying to the enactment taken with any other relevant and admissible material, the rules, principles, presumptions and canons which govern statutory interpretation. These may be referred to as the interpretative criteria or guides to legislative intention". (See Halsbury's Laws of England, 4<sup>th</sup> edition, vol. 44(1), para. 1373)*

In the next paragraph it is stated further that:

*"If on an informed interpretation there is no real doubt that a particular meaning of an enactment is to be applied, that meaning is to be taken as its legal meaning. If there is a real doubt, it is to be resolved by applying the interpretative criteria" (Halsbury's, supra para 1374).*

In the instant case, each party is contending for a different legal meaning of the enactment contained in Section 33 of the Constitution. As it is put in Halsbury's Laws of England *"when the relevant interpretative factors do not all point one way it is necessary for the Court to assess their respective weights and determine which of the opposing constructions, on balance, it favours" (Halsbury, supra, para 1378) (see also dicta of Lord Reid in Mansell v Olins [1974] 1 All E.R 16 at 18, [1974] 3 WLR 835 at 837, HL, and those of Donalson M.R in Nancollas v Insurance Officer [1985].*

In the light of the facts of the instant case what then are the relevant interpretative criteria applicable and what are the guides or interpretative factors weighing in favour or against such application.

The first criteria applicable in my view is what is commonly referred to in the authorities as the plain meaning rule. According to Counsel for the Plaintiffs the word *"public"* used to define election is capable of one meaning only i.e. the opposite of private affecting the community as a whole or a portion of the community. Based on this definition Counsel for the Plaintiffs contended that an

election for a Paramount Chief is a public election and therefore falls within the category of elections envisaged by Section 33 of the Constitution.

Let me hasten to say that there are several factors which raise a real doubt in my mind as to whether that meaning of the word public is the one intended by the legislature when it enacted section 33 of the Constitution. First, the opening words of Section 33 i.e. "*subject to the provisions of this Constitution*" point to the fact that the Section should not be read and construed in isolation but in the light of any other related provisions of the Constitution that may narrow or limit its meaning and operation. In my view, this is exactly what Section 72 of the Constitution does particularly Section 72(5) which provides that:

*"Subject to the provisions of this Constitution and in furtherance of the provisions of this Section Parliament shall make laws for the qualification, election, powers, functions, removal and other matters connected with Chieftaincy".*

The clear intention of Parliament, in my opinion, to be gleaned from Section 72(5) is that Parliament is to enact special provisions dealing *inter alia* with the elections of Paramount and other Chiefs. In contrast, if it was the intention of Parliament that the regime established by Section 72 was to be read together with or be dependent on that to be found in Section 33, which deals with other public elections named therein, the draftsman would have used appropriate wording such as "*without prejudice to the provision of Section 33*" to qualify the provisions of section 72.

Another interpretative criteria which is applicable to the instant case is that relating to the construction of general and particular enactments. *Prima facie*, a general enactment should receive a general construction. Thus "*public elections*" in Section 33 of the Constitution should cover all elections that fit into that category. However, the fact that general words are used in an enactment is not in itself conclusive reason why every case falling literally within them should be

governed by those words and the context may indicate that they should be given a restrictive meaning.

In the instant case, Section 33 is a general enactment whereas Section 72 is a particular enactment dealing only with Chieftaincy matters. According to Halbury's Laws of England:

*"Whenever there is general enactment in an Act which, if taken in its most comprehensive sense would overrule a particular enactment in the same Act, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the Act to which it may apply properly".* (supra. para 1486).

This distinction is also recognized in the *maxim generalia specialibus non derogant*.

Another interpretative criteria that is relevant in the instant case is the linguistic canon which states that *expressio unis est exclusio alterius* (to express one thing is [by implication] to exclude another). This principle is applied in particular where a formula, such as "*public elections*" in the instant case, which in itself may or may not include a certain class is accompanied by words of extension or exception naming only some members of that class the remaining members of the class being taken to be excluded from the formula. In this case, I hold the view that words Presidential, Parliamentary, Local and referenda are words of extension accompanying the formula 'public elections' utilized by the draftsman without any specific definition of the same and thus by implication excluding others of the same or similar class..

Finally, the fact that Parliament reserved to itself in Section 72(5) the right to make laws for the qualifications, election, powers, and other matters connected with Chieftaincy as opposed to leaving it to the Electoral Commission to regulate the conduct and supervision of Chieftaincy election by statutory instrument as

under section 33 leaves me in no doubt that Parliament did not intend to have paramount Chieftaincy elections subsumed within the category of public elections dealt with in the context of Section 33 of the Constitution.

Having reached this conclusion, I do not think it is necessary for me to go further and consider whether this Court could properly make the declaration sought as the first relief in the Originating Notice of Motion..

The declaration sought as the second relief is as follows;

*"that the Election for the Office of Paramount Chief of BIRIWA CHIEFDOM, Bombali District in the Northern Province of the Republic of Sierra Leone conducted by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on the 12<sup>th</sup> August 2006 as a result of which the 3<sup>rd</sup> Defendant was purportedly declared to be Elected as the PARAMOUNT CHIEF of BIRIWA CHIEFDOM was conducted in contravention of Section 72(5) and Section 33 of the Constitution of Sierra Leone, and is therefore INVALID, NULL AND VOID"*

I shall deal first with the contention that the conduct of the said election by the first and second Defendants was a violation of Section 33 of the Constitution. Having held that the said election was not a public election within the meaning of that Section it follows that it should not have been conducted and supervised in accordance with the provisions of the said section which stipulates inter alia that the Electoral Commission was to be responsible for the conduct and supervision of the registration of voters and vested it with powers for that purpose to make regulations not only for the registration of voters but also for the conduct of elections mentioned therein I take judicial notice of the fact that the Electoral Commission has never made any regulations, by statutory instrument or otherwise for the registration of voters or the conduct of Paramount chieftaincy elections. From the affidavit evidence before this Court it is common ground that the person responsible for the revision of the list of Chiefdom Councilors who are the electors in such election is the Provincial Secretary.



For all the above reasons I am unable to hold that the conduct of the said election by the first and second Defendants was in contravention of section 33 of the Constitution. The declaration sought could therefore not be granted by this Court in its original jurisdiction.

Though it is apparently not the case, I am obliged to consider whether the allegation that conduct of the said election by the first and second defendant was indeed in contravention of Section 72(5) . This is so because if it could be established that there was a violation of any provision of the Constitution involved in the process then the Plaintiffs could properly invoke the provisions of Section 127(1) to have this Court declare the said election is invalid, null and void.

I shall once more set out the exact words of Section 72(5) of the Constitution for emphasis and clarity. The Section merely provides that:

*"Subject to the provisions of this Constitution and in furtherance of this Section, Parliament shall make laws for the qualification, election, powers, functions removal and other matters connected with Chieftaincy".*

With the greatest respect to Counsel for the Plaintiffs, I fail to see how the first and second Defendants could be said to have acted in any way in contravention of the above provision. The present position of which this Court is obliged to take judicial notice is that since the enactment of the Constitution no law has been made by Parliament as stipulated by Section 72(5). Even if such law had been enacted by Parliament and the conduct of the Defendants complained of in the instant case had been a contravention of the provisions of such law it would not have been tenable to argue that they would thereby have violated the provisions of Section 72(5) of the Constitution so as to invoke the original jurisdiction of this Court to deal with the said contravention..

- 95 -

For the above reason, the declaration sought as the second relief could not be made by this Court. Since the declaration sought as the third relief is a consequential one dependent on the second declaration which this court has already declined to make, it follows that it could not properly be made and the invitation to make it is hereby declined.

I now turn to the two declarations sought as the fourth relief in the Originating Notice of Motion which read as follows:

- (i) *A Declaration that by Native Law and Custom and by tradition, any person who does not belong to a Ruling House is not eligible to contest for and be elected as Paramount Chief of any Chiefdom in Sierra Leone.*
- (ii) *A Declaration that DR. ISSA M. SHERIFF not being a member of any of the Four(4) Established Ruling Houses of BIRIWA Chiefdom, Bombali District, Northern Province of Sierra Leone is not eligible to contest for the Office of Paramount Chief of the said BIRIWA Chiefdom."*

Counsel for the Plaintiffs has not been able to point to any provision of the Constitution which would serve as the basis for the making of these declarations by this Court in its original jurisdiction. Indeed, this is not surprising because it is not the Constitution that governs the question of eligibility to contest for and be elected as a Paramount Chief of any Chiefdom in Sierra Leone. It is a matter that is governed partly by customary law and partly by statute, the relevant statute being the Provinces Act Cap 60 as amended. This, until such time as Parliament acts in accordance with its mandate contained in Section 72(5) of the Constitution by enacting a new law to govern the question of eligibility. There is nothing in Cap 60 which makes it incumbent on this Court to ensure compliance with its provisions by invoking its original jurisdiction. I hold that the said declarations sought as part of the fourth relief in the Originating Notice of Motion could not be made by this Court in its original jurisdiction.

96-

Finally, the fifth relief is for an Order that an election to the office of Paramount Chief of Biriwa Chiefdom shall be conducted and supervised by the 5<sup>th</sup> defendant in accordance with Section 33 of the Constitution on a date to be determined by the defendant herein.

Before proceeding to examine the question whether or not this Order ought to be made as a matter of law I wish to examine the state and effect of the available affidavit evidence. This discloses that the 5<sup>th</sup> Defendant was at some stage invited by the Permanent Secretary of the Ministry of Local Government and Community Development, according to the express words contained in Exh "M" attached to the affidavit in support of the Originating Notice of Motion sworn to by the first Plaintiff, to *"put in place modalities for the said elections"*. This request was declined for reasons stated in the said Exh "M" signed by the chairperson, Chief Electoral Commissioner.

I need not enquire into the validity of the reasons advanced by the Electoral Commissioner because, based upon the conclusion I reached above after a proper construction of Section 33 of the Constitution, I am of the view that the Electoral Commission was under no constitutional duty to be responsible for the conduct and supervision of the said election. There is no doubt that based on the available evidence the Commission has a role to play in the process of electing Paramount Chiefs. I am not sure what is the legal basis of this role but I am satisfied it does not derive from the provisions of Section 33 of the Constitution.

This situation could be contrasted with that relating to the presidential election. Apart from Section 33 which makes the Electoral Commission expressly responsible for the conduct and supervision of such an election there is Section 45 which not only designates the Chief Electoral Commissioner the Returning Officer for the election of a President but the Section also expressly vests original jurisdiction in this Court to hear and determine any question which may arise relating to the conduct of the said election.

In the instant case, I am of the view that this Court cannot make the said Order sought in its original jurisdiction for the same reasons that it cannot make the declarations sought that the election of the third Defendant is void or that the office of Paramount Chief of Biriwa Chiefdom is vacant or that the third Defendant was not eligible to contest the said election. In short, this is not the appropriate forum to have these matters determined. I hereby decline to make the Order sought.

In view of this Court's lack of original jurisdiction to make the several declarations and Order sought in the Originating Notice of Motion for the reasons stated above, I hereby make the following Orders:

- (1) That the Originating Notice of Motion herein dated 14<sup>th</sup> September 2006 is hereby struck out;
- (2) Each party is to bear its own costs of this action.

*[Handwritten signature]*

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Hon. Justice Dr. Ade Renner-Thomas - Chief Justice

*[Handwritten signature]*

.....  
Hon. Justice Sir John Muria - J.S.C.

*[Handwritten signature]*

.....  
Hon. Mrs. Justice V.A.D. Wright - J.S.C.

*[Handwritten signature]*

.....  
Hon. Mr. Justice M.E.T. Thompson - J.S.C.

*[Handwritten signature]*

.....  
Hon. Ms. Justice U.H. Tejan-Jalloh - J.A.

