

SC APP. 1/2007

In the Supreme Court of Sierra Leone

Between

People's Movement for Democratic Change (PMDC)

And

Secretary General of the People's Movement for Democratic Change PMDC)
- Appellant/Petitioner

And

Sierra Leone People's Party (SLPP)

And

- Respondents

Chairman Sierra Leone People's Party

CORAM

Hon. Justice Dr. Ade Renner Thomas	-	CJ
Hon. Mr. Justice U.H. Tejan Jalloh	-	JSC
Hon. Mr. Justice G. Semega- Jenneh	-	JSC
Hon. Mrs. Justice V.A.D. Wright	-	JSC
Hon. Mr. Justice M.E. Tolla Thompson	-	JSC

Mr. C.F. Morgan and M.P. Fofana, for the Appellant/Petitioner
Mr. Eke Holloway, Mr. D.B. Quee, Mr. E.E. Shears Moses and Mr. A. Brewah,
for Respondents

Judgment delivered on the 22nd June 2007

Tolla Thompson JSC

I have had the opportunity of reading the judgment of my Lord the Chief Justice and my learned brothers and sisters. I concur in their reason and conclusion. I will merely add my own view and treat the matter this way which I think is supplementary to what they had said.

This appeal is against the "decision" of the Political Party Registration commission: which I shall call for the purpose of this judgment "the commission" given on the 21st July 2006. Pursuant to a petition brought before the commission, by the appellant on the 16th June 2006.

Brief Background

The 1st appellant is a political party registered by the commission as the People's Movement for Democratic Change PMDC on the 16th June 2006 1st appellant through the 2nd appellant petitioned the commission pursuant to sec 6(1) (2a) (2e), 14(1) 27(1) of the Political Parties Act No 3 of 2002 (as amended) which I shall call for the purposes of this judgment the Act and sec 35(4) and 76(1)(h) of the Constitution 1991 Act No. 6 of 1991 which again I shall call for the purposes of this judgment the Constitution) about the eligibility of Mr. Solomon Ekuma Berewa as leader of the Sierra Leone Peoples party whilst holding the office of the Vice President of the Republic of Sierra Leone.

The respondent also is a political party, registered political party under the name and title Sierra Leone Peoples Party (SLPP). On the 14th September 2005 the respondent held a convention in Makeni in which the Vice President Mr. Solomon Ekuma Berewa was elected leader and presidential candidate of the said party.

It seems to me that it was the election of the vice President as leader of the SLPP which precipitated the appellant petition to the commission. The petition was on these lines:

The Chairman
Political Party Registration commission
C/o Roxy Buildings
Walpole Street
Freetown

Dear Mr. Chairman

Re: Petitioning under sec 6(1)(2a), (2e), 14(1) and 27(1) of the Political Parties Act No. 3 of 2003 (as amended) and sec 35(4) and 76(1)(h) of Act No. 6 of 1991

On behalf of the Peoples Movement for Democratic Change I hereby petition the illegibility of Mr. Solomon Ekuma Berewa as leader of the Sierra Leone Peoples Part whilst holding the office of Vice President of the Republic of Sierra Leone.

Sect 6 (1) of Act No. 3 of 2002 as amended provides the object for which the constitution is established is the registration and supervision of the conduct of political parties in accordance with the constitution and this Act.

Sec 6 (2) provides without prejudice to the generality of sub section (1) it shall be the function of the Constitution

- (a) to monitor the affairs or conduct of political parties so as to ensure their compliance with the constitution, the Act and with the terms and conditions of their registration
- (b) to do all such things as well contribute to the attainment of the object stated in sub section (1)

sec 14(1) of the Political Parties Act No. 3 of 2002 as amended provides:

a political party shall not have as a founding member or as a leader of the party or a member of the executive body whether national or otherwise; a person who is not qualified; to be elected as a member of parliament under the Constitution

sec 35 (4) of the Constitution of Sierra Leone Act No. 6 of 1991 provides:

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

76 (1) of the Constitution of Sierra Leone Act No. 6 of 1991 provides:

No person shall be qualified for election as a member of parliament.

Sec 76 (1) (h)

If he is for time being the president, vice president, a minister or a deputy minister under the provision of this Constitution.

The Sierra Leone Peoples Party (SLPP) is a registered political party in Sierra Leone.

The Peoples Movement for Democratic Change (PMDC) is a registered political party in Sierra Leone.

The leader of the Sierra Leone Peoples Party is Mr. Solomon Ekuma Berewa who incidentally is the Vice President of the Republic of Sierra Leone and was such when on the 4th September 2005 he was elected leader of the said party at a convention held in Makeni.

The petition seeks to have determined whether in the light of the aforesaid provisions of sec. 14 (1) of the Political Parties Act No. 3 of 2002 (as amended and sec. 35 (4) and 76 (1) (h) of the constitution of Sierra Leone Act No. 6 of 1991, Mr. Solomon Ekuma Berewa as vice President of the Republic of Sierra Leone and leader of the Sierra Leone Peoples Party (SLPP) is not contravening the aforementioned provisions

It is further submitted that the answer to the preceding paragraph is in the affirmative then you petitioner request that immediate steps be taken to invoke the provision of section 27 (1) (b) of Act No. 3 of 2002 as amended in conformity with the spirit and intendment of sec. 6 (1) (2) (a) and (2) (e) of the said Act.

Sec. 27 (1) (l) of Act No. 3 of 2002 as amended provides without prejudice to any other penalty prescribed by the Act or any other enactment the commission may apply to the Supreme Court for an order to cancel the registration of any political party where that party has contravene any provision of the constitution or the Act.

Yours faithfully

Ansu B. Lansana

Interim Secretary-General (PMDC)

It is obvious that Appellant was bringing to the notice of the Commission the purported violation of the Constitution and the act, and was asking the Commission to invoke the ~~the~~ Constitution. Powers

Based on this petition, the Commission gave a decision which is the subject of the appeal before us. I shall hereunder reproduce the decision and I quote:

“As an ordinary citizen Solomon Ekuma Berewa is qualified to become a member of parliament but while serving as Vice President of the Republic of Sierra Leone he cannot become a member of parliament at the same time”.

This is so because of the existence of the separation of powers as no one individual citizen can become a member of two or all three arms of government simultaneously that is:

1. The Legislature which comprise the Speaker and Members of Parliament
2. The Executive comprising the President, Vice President and the Cabinet
3. The Judiciary comprising the Chief Justice and Members of the Superior Court of Judicature.

Because of the aforementioned, the Political Parties Registration Commission is of the view that Solomon Ekuma Berewa is qualified to contest for the office of the Presidency of the Republic of Sierra Leone.”

The Appeal

It was the above decision of the Commission that precipitated the appeal to this court by the 1st and 2nd Appellants.

Particulars of misdirection and error of law respectively

1. That the commission erred in considering Mr. Solomon Ekuma Berewa response dated 28th June 2006 purportedly made in response to the appellant/petitions dated 16th June 2006 was a response to the respondents.
2. That the commission in its deliberation and hence decision failed to appreciate that sec. 75 of the Constitution of Sierra Leone 1991 Act No. 6 1991 aforesaid should have been read subject to sec 76 (1) (h) of the said Constitution.
3. That the commission in its deliberation and conclusion misconceived the spirit and intent of sec. 76 (1) (h) of the said Constitution.

Grounds of Appeal

1. That in the light of sec. 34, 35, and 76 of the Constitution of Sierra Leone 1991 Act No. 6 of 1991 in particular section 35 (4) 76(1) (h) of the said constitution as well as the provision of sec. 6(1) and (2) (a-e) 14 (1) and 27 1(a) and (b) of the Political Parties act 2002 Act. No. 3 of 2002 as amended the Political Parties Registration Commission in its decision of the 21st day of July 2006 failed to address the crucial and all important question contained in the appellant/petitioners petition of the 16th June 2006: as to whether in the light of the aforesaid provisions of sec. 14 (1) of the Political Parties Act No. 3 of 2002 (as amended) and 35 (4) and 76 (1) (h) of the Constitution of Sierra Leone Act. No. 6 of 1991. Mr. Solomon Ekuma Berewa as vice President of the Republic of Sierra Leone and leader of the Sierra Leone Peoples Party (SLPP) is not contravening the aforementioned provision.
2. Notwithstanding of sec 5 (3) and (4) of the Political Parties Act 2002 aforesaid the commission in proceeding to determine the said petition in the absence of its

chairman deprived itself of the necessary judicial oversight that the chairman's presence would have brought to bear on its decision

3. That the Political Parties Registration Commission determined the appellant/petitioner petition and reached a decision on it without a response from the respondents.
4. That the aforesaid; decision of the Political Parties Registration Commission is against the weight of the petition filed by the appellant/petitions.

Reliefs sought from the Supreme Court are:

1. To set aside the decision of the Political Parties Registration commission for the aforesaid reason and to substitute one in favour of the appellant/petitions
2. Such further or other relief to be granted as the justice of the case requires.

I note by the petition, the appellant is calling on the Commission to interpret the Constitution, as in my view there cannot be any determination of the issue without interpretation of the Constitution which will set the Commission at collusion course with the ~~the~~ Supreme Court – whose function it is to interpret the Constitution – Sec 124 of the Constitution.

General powers of the Supreme court to entertain an appeal is spelt out in sec. 123 (1 and (2) of the constitution and rule 6(1) of the Supreme Court Rules 1982 P.N. No. 1 of 1982.

Sec. 123 (1) states:

An appeal shall lie from the judgment decree or order of the Court of Appeal to the Supreme Court:

- (a) As a right in any civil cause or matter
- (b) As of right in any criminal cause or matter in respect of which a n appeal has been brought to the court of Appeal from a judgment decree or order of the High Court of Justice in the exercise of its original jurisdiction
- (c) With leave of the Court of Appeal in any criminal course or matter where the Court of appeal is satisfied that the case involves a substantial question of law or it is of public importance

Also: In pursuance of rule 5 (2) of the Supreme Court Rules the Supreme Court prescribed by means of practice direction No 1 of 1007 the practice and procedure applicable to this appeal and in order to comply with the Supreme Court rules the appeal is deemed to have been filed on the 31st January 2007 instead of 18th January 2007. However the appeal herein is by Notice filed in pursuant of Sec. 35(7) of the Constitution and the appellant has asked the Supreme Court to exercise to reverse the decision of the Commission.

This appeal however by the notice filed is in pursuant to sec. 35 subsection 7 of the Constitution ~~With~~ respect to the activities, supervision and control of political parties sec. 35 (6) of the Constitution ~~as~~ ^{was} enacted.

Sec. 35(6) enacts thus:

“subject to this provision of the constitution and in furtherance of the provision of this section, parliament may make laws regulating the registration function and operation of political parties”

I will not be wrong to say that in consequence of the provision above the Political Parties Act No. 3 of 2002 was belatedly enacted. The title of the Act is as follows:

"Being an act to establish the Political Parties Registration commission for the registration and regulation of the conduct of political parties in accordance with sec. 34 and 35 of the constitution and to provide for related matters".

JURISDICTION/LEGAL CAPACITY

The Supreme Court by this appeal has been asked to exercise its appellate jurisdiction - the power vested in the Supreme Court to correct the legal errors of the commission if there is one and if possible to reverse the decision accordingly. However before addressing the issues in the appeal, there are serious preliminary points which call for this courts attention.

The appellants in their case at page 11 of the record contend that the Supreme Court has jurisdiction to entertain this appeal and that the appellant appeal is derived from sec 35 (7) of the constitution. Mr. Fofana, learned counsel for the appellant submitted that the commission failed to address their complaint and as the Supreme Court has the jurisdiction to hear the appeal they have come to seek redress.

As I said in the case of Hinga Norman v. Sierra Leone Peoples Party (SLPP) and others SC. 2/2005 that "with reference to a country's judicial system jurisdiction simply means the authority which the 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 court has no jurisdiction in certain matters; it is impossible for it to assume jurisdiction". In my humble opinion the principle of law holds good and it makes no difference whether the court sits on a matter in its original or appellate jurisdiction.

It is usually the case that when a court is confronted with litigation it is of the ought most importance, for the court to ascertain whether it has the jurisdiction to entertain the suit- see Central Bank of Nigeria v. Barclays Bank 1976: 6sc 179 page 188. However a court ought not to decline jurisdiction in a specific case if in doing so it will defeat the purpose for which it was set up, provided in the circumstance of the specific case its assumption of jurisdiction does not amount to a violation of its jurisdiction, but can rather be logically deduced as a necessary adjunct of the jurisdiction under which it operates. I hasten to add here that this does not apply to this case under my pen.

The point on jurisdiction will not be complete if no mention is made of competence, of the court as jurisdiction is in some cases inextricable linked with competence of the court. Indeed in the opinion of some jurist the two are sometimes interchangeable. In Adeigbe v. Kinshino 1965 a ALL N.L.R. 249 the Supreme Court of Nigeria inter alia held "that a court is competent when it has lawful authority to hear and determine the proceedings before it"

The appellant in its case dealing with locus standi contends that they are legally qualified to petition the respondent herein as well as appeal against the decision of commission on the grounds stated in their notice of appeal; by virtue of the fact that the 1st appellant is an association registered as a political party pursuant to sec. 12 of the Act and was presented with a final certificate. Mr. Fofana in his submission said the 1st appellant is a political party registered under sec. 12(1) of the Act. The 2nd appellant is the secretary general of the 1st appellant and has a special interest in the petition.

Since the issue of locus standi-legal capacity to some extent is linked with the court jurisdiction to entertain the matter it follows therefore that if the appellant in this case has no locus standi to come before us this court will have no jurisdiction to entertain the matter.

What then should be the outcome of a matter whenever the twin juggernaut plea of jurisdiction and capacity is successfully raised in the lower or in the appeal court by the defendant/respondent or the court suo motu?

Buraimoh Oloriode and others vs Simeon Oyebe & others 1984 5 Sc. 1 and RTEAN V NURTN 1992 NWLR 381 AT 391 are instructive on this point.

In Buraimoh Oloriode and others v Simeon Oyebe and others supra the Supreme Court of Nigeria held that where a Plaintiff has no locus standi the action should be struck out and not be dismissed since the action has not been tried. And in RTEAN V NURTN supra. The Supreme Court stated the reason for striking out instead of dismissing such an action. The court said:-

“When a court hold that a plaintiff has no locus standi in respect of a claim the consequential orders to be made is striking out of such claim and not a dismissal of the claim. The rational is that the holding that a plaintiff has no locus standi goes to the jurisdiction of the court before which such an action is brought when the question that the plaintiff has no locus standi to institute an action arises, all that is being said in effect is that the court before which such an action is brought cannot entertain the adjudication of such an action. The court cannot dismiss the merit of which it is not competent to enquire into. A dismissal presumes that the court looked into the claim and found it wanting on merit. But it can only so look into the claim if the claim falls within the court jurisdiction.

A dismissal postulates that the action was properly constituted.”

ISSUES

I shall now go in to consider whether this court has jurisdiction to hear the appeal pursuant to Sec. 35 (7) in view of the capacity of the Appellants.

Let me say the issue before the court does not touch or fall under section 16 and 17 of the Act as both sections concern the refusal of registration of an Association to register as a political party.

A political party cannot invoke sec. 12 of the Act to register and by extension a political party cannot avail itself of the provisions under sec. 16 and 17 of the Act. It will not be out of place if I say a little about this. There is no dispute or disagreement the 1st Appellant – People Movement for Democratic Change is a political party registered pursuant to Sec.12 of the Act. Indeed the 2nd Appellant in the Petition to the Commission stated that the 1st Appellant is a political party. There is also no dispute that the Commission was established for “registration and regulation of the conduct of political parties” in accordance with section 34 or 35 of the Constitution: the 1st Appellant is one of such parties. I dare say 1st Appellant was right to petition the Commission on the purported infraction of the Constitution by the Respondent. Before I continue let me digress a little and say a few words about the Commission as an administrative body. Much play has been made of the function and powers of the Commission. I therefore pose the question whether it has got authority to act within the legal frame work of the Constitution or is it a mere administrative body as a watch dog so to speak over the activities of political parties? The short title of the Act is to establish the Commission to register and regulate the conduct of political parties. The object is enacted under 6 (i) as follows:-

"The object for which the Commission is established is for the Registration and supervision of the political parties in accordance with the constitution."

and Sec. 6 (2) went on to state the function of the Commission, which are:-

- (a) To monitor the affairs or conduct of the parties so as to ensure their compliance with the Constitution.
- (b) To monitor the accountability of political parties to their membership and electorate of Sierra Leone.
- (c) To promote political pluralism and the spirit of constitutionalism among political parties.
- (d) When approached by the persons or party concerned to mediate any conflict or dispute between or among the leadership of any political party or between or among political parties.
- (e) To do all such things as will contribute to the attainment of the object stated in sub Section I.

It seems to me that from the title, object and function, the Commission cannot be looked upon as a decision making entity as it does not possess the requisite authority; it is not a judicial or quasi judicial tribunal, if anything it is an administrative body charged with the responsibility to supervise, monitor and control the activities of political parties.

Section 11 makes it mandatory for an Association wishing to function as a political party to apply to the Commission for Registration. If the Commission is satisfied with the Association, the Association will then be registered after sixty days as a political party. As evidence of registration a certificate will be issued to the new political party. See Sec. 12 of the Act.

Sometimes the Commission can refuse to register. — and the reasons for such refusal is contained in Sec. 16 of the Act.

It states:-

Pursuant to sub section 5 of Sec. 35 of the Commission shall refuse to register as a political party if the association by whatever name called if the Commission is satisfied that

- (a) The membership or leadership of the association
 - (i) is restricted to members of any party, tribal ethnic group or religion; or
 - (ii) includes a non citizen or a person prohibited from membership or leadership of a political party under the Constitution or this Act;

- (b) The name, symbol, colour or motto of an association has exclusive or partly significance or connotation to member of any particular tribe or ethnic group or religious faith;
- © The Association is formed for the sole purpose of securing or advancing the interest and welfare of a political tribal or ethnic group, community, geographical area or religious faith;
- (d) The Association does not have a registered office in each of the Provincial Headquarter towns in the Western Area or
- (e) The association concerned has contravened any provision of the constitution of the Act regarding its formation or application for registration.

On a close scrutiny of section 35 (5) of the Constitution it is plain and clear to me that Section 16 and 17 of the Act is a reinvention or carbon copy of section 35 (5) of the Constitution.

Under Section 17 an Association which has been refused registration of the provision under Sec. 16: May appeal to the Supreme Court pursuant to Sec. 17 sub section 1. It states:

"Any Association aggrieved by the decisions of the Commission refusing its application for registration may appeal to the Supreme Court made up of three Judges whose decision shall be given within 30 days of the hearing of the appeal."

This is a provision by which an association can appeal against the refusal of the Commission to register a political party. It has no relevance to any other infraction of the act.

The main issue concerns section 35 (7) of the Constitution which I think is the pivot of the appeal.

The vehicle by which the appellant has invoke our jurisdiction to entertain the appeal. The appellant says that the Commission has failed to address its complaint about an infraction of the Constitution – To be precise the eligibility of the Vice President Mr. Solomon Berewa Vice President of the Republic of Sierra Leone leader of the S.L.P.P. and want to determine such eligibility in the affirmative. It urges the Commission to apply to the Supreme Court for an Order to cancel the certificate of the Respondent. The Commission failed to act accordingly. That is why the appeal is before us.

Sec. 35 (7) states:-

"Any association aggrieved by the decision of the Political Party Commission under this section may appeal to the Supreme Court and the decision of the Court shall be final."

Section 35 (8) states:-

"For the purposes of this section the expression Association include anybody of person corporate or incorporate who agree to act together for any common purpose or an association formed for any ethnic, social, cultural occupational or religious purpose and "political party means by association registered

as a political party as prescribed by sub section 5.”

I note a Political Party carries the same meaning both in the act and the Constitution. See Section 1 of the Interpretation Section of the Act and Section 35 (8) an interpretation section for the purposes of sec. 35. The indication here is that a political party has to be an association before registration and on registration it becomes a political party. This same process applies to section 18 of the Act. On merging the political parties revert to an association and on registration it becomes a political party once more.

At the latter stage of the proceedings Mr. C. F. Margai learned Counsel for the Appellants in his usual eloquent forceful and yet jocular style was adamant in his submission that section 35 (7) sub section 7 is the right vehicle, by which to ground this appeal: My reaction to this submission is that learned counsel will want the court to invoke logic to accommodate the appellant under sec. 35 subsection 7 and say if the association includes corporate or incorporate body or person and that political party means an association, then a political party will mean corporate and incorporate body. With the greatest respect I cannot accord that intention to the legislature. Plainly and succinctly political party means an association after registration under sec. 12 of the act.

The Association appealing under this section must be aggrieved by the decision of the Commission. Does the Appellant fall into the category of aggrieved association. But first let me caution myself that in interpreting the expression an “aggrieved association” I should not put any interpretation on it that would work injustice, hardship or inconvenience unless it is clear that such was the intention of the legislature.

In a dictionary of legal terms the expression “aggrieved party means one who has been injured or has suffered a loss, a person aggrieved by a judgment, decision or decree whenever it operates prejudicially and directly upon her property monetary or personal right and it is used almost exclusive in a legal context”. – The meaning will be clearer if I refer to the dictum of Lord James in Re Sidebottom exparte Sidebottom 1880 14 Ch P.459. He put it this way... “.....”that a man aggrieved means “a man who had suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something.”

I am incline to adopt Lord James definition and apply it to an aggrieved association with the context of sec.35 (5).

CONCLUSION

In view of what I have said I do not think that the Appellant can avail itself of the provision of sec. 35(7) to appeal to this court. This provision is exclusively applicable to an aggrieved association which presupposes that the association has not yet been registered as a political party under sec.12 of the Act. In any case I do not consider the appellant an aggrieved association – It does not fall within such category as it is not qualified under section 35 (7) to be so described.

With regard to sec. 27(1) of the Act I agree that the appellant can urge the Commission to invoke the above section; that is, if the Appellant comes properly before the Commission on matters contained in the act, the Commission may apply to the Supreme Court. But if the Commission fails or refuses to apply to the Supreme Court the Appellant cannot seek redress by way of appeal to Supreme Court. The application to the Supreme Court under sec.27 (1) of the Act is the preserve of the Commission.

In the result I hold that this court has no jurisdiction to entertain this appeal brought by the Appellant. The appeal is struck out.

No order as to cost.

M. E. Lalle Thompson