

SC. MISC. APP. 1/2006

OMRIE GOLLEY & 2 OTHERS

- APPLICANTS

VS

THE STATE & JUSTICE S.A. ADEMOSU

- RESPONDENTS

CORAM:

Hon Mr. Justice S.C.E. Warne JSC
Hon Ms. Justice U.H. Tejan-Jalloh JSC
Hon Mr. Justice E.C. Thompson-Davies JSC
Hon Mrs. Justice V.A.D. Wright JSC
Hon Mr. Justice A.N.B. Stronge JA

C.F. Margai Esq. with him R. Kowa Esq. for Applicants
E. Roberts Esq. with him O. Kanu Esq. and A. Sesay Esq.

RULING: Delivered this 17th day of January 2007. *FW*

WARNE JSC - This Notice of Motion has been before this Court for some considerable time. The important issue before this Court is for the interpretation of section 137 (2)(a) of the Constitution of Sierra Leone, Act No. 6 of 1991 in so far as it relates to the Honourable Mr. Justice S.A. Ademosu who is the trial Judge in the case of The State vs. Omrie Golley and two others in the High Court: Mr. C.F. Margai, Counsel for the Applicants has submitted that since the present Coram consists of Warne, Thompson-Davis, Wright JJSC and Stronge JA are affected by 0 4 (b) in the declaration sought, the interest of justice will be served by the four Justices herein before mentioned rescuing themselves from these proceedings. 0 4 (b) states "Where a Justice of Appeal retires after attaining the compulsory retiring age of sixty five (65) years as provided by section 137 (2) (b) of the Constitution but is retained as a Judge

relying on section 136 (2) of the said Constitution, was it the intention of the Legislature that the latter appointment should be indefinite”?

On the 6th April 2006, the Court ruled that the submission had no merit and that the proceedings should commence.

When proceedings commenced on the 2nd May 2006, Mr. Margai informed the court that he had another Notice of Motion dated 23rd April, 2006 seeking an order that the present members of the panel save Justice Tejari-Jalloh recuse themselves from hearing the motion with regard to the interpretation of the fourth Order concerning Mr. Justice Ademosu sitting as judge notwithstanding his retirement in 1998.....

No doubt this submission affects the four justices named above. The Court, even though not seised of this motion, adjourned the matter sine die to give the learned Chief Justice an opportunity to appoint a panel consistent with the request of Mr. Margai. The Chief Justice wrote a letter to Mr. Margai that he will fix a date for the hearing when a panel can be constituted.

Be that as it may, the present Coram decided to resume hearing. The said Constitution is quite clear vis-à-vis a criminal matter before our Courts – vide section 23 (1) of the said Constitution Act No. 6 of 1991, which provides as follows: “Whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law” (Emphases is mine).

Fully conscious of this provision, notices were sent out to Counsel for the Applicants and the applicants themselves and the Law Office in order to commence hearing as the Court ordered on the 6th April 2006. At the hearing of the 1st January, 2007, the Court was informed that the applicants had been

brought from Prison the Court ordered that they be brought up and they appeared in the dock. Mr. Margai observed that the letter from the Chief Justice did not refer to this matter. Whether it referred to this matter or not, the Court was concerned with the compliance of the Order made on the 6th April 2006 – Mr. Margai for his part maintains his position that he cannot proceed before this Court.

This position cannot be maintained ad infinitum I have no alternative but to strike out the Notice of Motion and it is struck out accordingly.

The above Ruling was going to be delivered on the 16th January 2007 but Mr. Margai observed that the applicants were not in court and in the interest of justice, he applied that they be brought to court. The Court granted the application. The matter was adjourned to Wednesday 17th January 2007.

On the 17th January 2007 the applicants were present and the Ruling was delivered striking out the Notice of Motion.

SYDNEY WARNE JSC

UMU TEJAN-JALLOH JSC

E. THOMPSON-DAVIS JSC

V.A.D. WRIGHT JSC

A.N.B. STRONGE

S. Margai
iffell
Thompson-Davis
J.A.A.B. S.