

IN THE SUPREME COURT OF SIERRA LEONES.C.1/20\_QJ1

BETWEEN: THE SIERRA LEONE ASSOCIATION  
OF JOURNALISTS

PLAINTIFF

AND

THE ATTORNEY-GENERAL AND  
MINISTER OF JUSTICE

1<sup>ST</sup> DEFENDANT

THE MINISTER OF INFORMATION  
BROADCASTING AND  
COMMUNICATIONS

2<sup>D</sup> DEFENDANT

CORAM:

HON. MS. JUSTICE U.H. TEJAN-JALLOH

CHIEF JUSTICE

HON. MRS. JUSTICES. BASII-TAQI

J.S.C.

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

J.S.C.

HON. MR. JUSTICE M.E.T. THOMPSON

J.S.C.

HON. MR. JUSTICE G. SEMEGA-JANNEII

J.S.C.

**VADA WILLIAMS ESQ. AND OSMAN JALLOH ESQ. FOR THE PLAINTIFF****L.M. FARMAH ESQ., AND OSMAN KANU FOR THE DEFENDANTS****JUDGMENT DE...:VERED THE 10<sup>11</sup> DAY OF NOVEMBER, 2009.**

**TEJAN-JALLOH, C.J.** The Sierra Leone Association of Journalists a Company Limited by Guarantee under the Companies Act, Chapter 249 of the laws Sierra Leone (as amended) by way of an originating notice of motion dated the

25<sup>th</sup> day of February, 2008 moved this Court for the under-mentioned reliefs on the 3<sup>rd</sup> day of February 2009 against the Attorney-General and Minister of Justice and the Minister of Information and Broadcasting and Communication. There reliefs were sought pursuant to *sections 25 and 171 (15) of the Constitution of Sierra Leone 1991 Act No.6 of 1991* (hereinafter referred to as ("the Constitution"]) namely,

A. The interpretation of Sections 25 of the Constitution Viz-a-Viz *sections 27, 27, 32-37 of the Public Order Act 1965, Act No.46 of 1965* for the determination of the following questions.

(i) *Whether the provisions of sections 26, 27, 32-36 of the Public Order Act criminalizing free speech contravenes the right of freedom of expression guaranteed under the entrenched provisions of section 25(1) of the Constitution?*

(ii) *Whether the provisions of sections 26, 27, 32-31, of the Public Order Act can be demonstrably justifiable in the light of Sierra Leone's obligations under the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights and the African Charter on Human and People's Right?*

(iii) *If the answer of (i) and (ii) above are in the affirmative whether the provisions of sections 26, 27, 32-36 of the Public Order Act does not fall out of the restriction provision of sections 25(2) of the Constitution*

B. A declaration that *sections 26, 27, 32-36 of the Public Order Act criminalizing free speech are unconstitutional and therefore null and void*



by virtue of *section 171 (15) of the Constitution* in so far as they violate provisions of *section 25(1) of the Constitution*.

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C. A declaration that the restriction provision to the right of freedom of expression under *section 25(2) of the Constitution* does not save the provisions of *sections 26, 27, 32-36 of the Public Order Act* in so far as the said provisions cannot be demonstrably justifiable in a democratic society.

D. Any further and other relief that the Honourable Court may deem fit and just

2. The Originating notice of motion is supported by the affidavit of Richard Olu Gordon, Philip Neville and Julius Spencer *all* sworn to on the 25<sup>th</sup> day of February 2008. Taking them serially, first Richard Olu Gordon, who deposed that he is a member of the Sierra Leone Association of Journalists and media practitioner for over twenty years and Editor-in-Chief of Peep Magazine for the past seven years.

He asserted that on the 11<sup>th</sup> February 2005 he was summoned to the Criminal Investigations Department on the instructions of the Attorney-General and Minister of Justice in connection with an article captioned "*KABBA SAYS OKERE STAYS*" that had appeared in his satirical news paper Peep Magazine questioning why Marine Minister Ibrahim Okere Adams had not been sacked after he was indicted by the Anti-Corruption Commission.

He alleged that prior to the article two other Ministers were promptly dismissed after being indicted by the Anti-Corruption Commission, but that Okere Adams is regarded as President Kabba's "most reliable Northern ally". That he was detained at the Criminal Investigation Department for three days and charged

with seditious libel, but was released on the 14<sup>th</sup> February 2005 without being arraigned before any Court and that he did not receive any compensation. That he can no longer publish contentious articles without first having to decide whether he was to go to prison or not and that the state of affairs was neither reasonable nor necessary in a democratic society. Finally, the existence of criminal or seditious libel offences allow for the government authorities to arrest and detain journalists at their will, disregarding fundamental human rights.

3. Second, Philip Neville, *inter alia*, deposed that he is a member of Sierra Leone Association of journalists and also a media Practitioner. On the 25<sup>th</sup> February, 2008 when he swore his affidavit he was President of the Association. He has been a Media Practitioner for over 20 years and Editor-in-Chief of the Standard Times Newspaper.

That during the reign of the National Ruling Council he was arrested and summarily detained. In the Pademba Road Prisons on three occasions for supposedly breaching sections 27-36 of the *Public Order Act 1965*, that on the 24<sup>th</sup> February 1991, he published an article captioned "Joe Demby's mercenaries stabbed to kill Mr. Jonah" concerning a plot to assassinate the President of Sierra Leone, Alhaji Ahmed Tejan Kabba and the then Minister of Finance Dr. Jonah, by foreign mercenaries. He was told that his arrest was for a breach of the Criminal Libel provisions of the *Public Order Act 1965* but on the 8<sup>th</sup> March, 1999 he was released without a charge under any of the offence proscribed under sections 26- 36 of the *Public Order Act*, that on the 29<sup>th</sup> June, 2007 he was again arrested after publication captioned "Bomshell Gaddafi

Exposes Government" in the Standard Times Newspaper concerning gifts from the Government and the people of Libya to the Government and People of Sierra Leone.

He was remanded in custody for two days and charged to Court on the 4<sup>th</sup> July 2007 and was granted bail in the sum of two hundred million Leones in addition to three sureties in like sum.

He opined that the amount was the toughest bail condition that was ever set for a criminal libel offence and that the incidents had a chilling effect on him and that he can no longer publish contentious articles without having to decide whether he was ready to go to prison or not.

That he has been persecuted by successive Governments merely as a result of disseminating, in his capacity as a Journalist, reliable information that came to him and he was of the view that Sierra Leoneans have the right to be informed about sensitive matters he reports on.

Finally, that he believed that the state of affairs is neither reasonable nor necessary in a democratic society.

4. The next deponent in support of the originating notice of motion is Dr. Julius Spencer, who is also a Media Practitioner and a member of the Sierra Leone Association of Journalists. He deposed, *inter alia*, that he has been a media Practitioner for over 20 years and Managing Director of the Premier Media Consultancy Limited and Proprietor of the Premier Newspaper. He averred that on the 13<sup>th</sup> October, 1993 he was editor of "New Breed" Newspaper, which published an editorial based on an article found in Swedish newspaper "Expression" captioned "Redeemer or Villain". That the article focused [in the sale of diamonds and misappropriation of some of the proceeds by the then Government of Sierra Leone, he was charged to Court with seditious libel on a ten count indictment and was found guilty and fined two thousand United States Dollars. His appeal to the Court of Appeal of Sierra Leone is still pending and

because of the conviction he is blemished with a criminal record and he is wary of being in active media practice, as it had a negative impact on his family.

He is of the opinion that the state of affairs is neither reasonable nor necessary in a democratic society.

5. Before I comment on the merits or demerits of the plaintiffs' case, it is pertinent to state that the fundamental right of freedom of expression is not an innovation in the Constitution. It was so provided in *section 21 in chapter 111 of the 1961 Constitution* under Protection of Fundamental Human Rights and Freedom of Individuals: see *Public Notice No.78 of 1961*. In the 1978 constitution of Sierra Leone - *Act No.12 of 1978* it was provided as *section 15 in chapter 11 under the rubric Protection of Fundamental Rights and Freedom of the individual*. In those two constitutions application for constitutional rights to redress for the fundamental rights of freedom of expression was to the High Court and only permitted if it was a direct or intentional hindrance to the said Freedom. And the proviso to *sections 24(2) of 1961 and 1B(2) of the 1978 Constitutions* respectively empowered the High Court to refuse such application if it was satisfied that adequate means of redress for the contravention are or have been available. Now *section 25 of the Constitution of 1991* empowers only the Supreme Court to hear an application for contravention of Freedom of expression and the proviso to *section 28(2)* enables the Court to refuse the exercise, if it is satisfied that adequate means of redress are or have been available.

It must be emphasised that freedom of expression is an entrenched provision and is subject to respect for the rights of freedom of others and for the public good and this must always be borne in mind.

6. Counsel has come to this Court by an Originating Notice of Motion and thus invoking the original jurisdiction of the Court. The relevant regulation is to be found in *Part XVI of the Supreme Court (1982) published as Constitutional Instrument No.1 of 1982*. It behoves him to satisfy the Court of the Provisions of *Rule 89 and 90*. In this regard I must mention Craies on Statute Law 5<sup>th</sup> p. 249 where the following statement appears.

*"As a general rule, Statute which enable persons to take legal proceedings under certain specified circumstances must be accurately obeyed notwithstanding the fact that their provisions may be expressed in mere affirmative language..... this rule may also be expressed thus - that when a Statute confers jurisdiction upon a tribunal of limited authority and statutory origin, the conditions and qualifications annexed to the grant must be strictly complied with".*

Rule 89 *inter alia*, stipulates that the motion must be supported by affidavit setting forth as concisely as possible the nature of the reliefs sought by the plaintiffs. Messrs Phillip Neville, Olu Gordon and Dr. Spencer have individually sworn to affidavits in support of the motion and only Mr. Phillip Neville in paragraph 19 of his affidavit deposed to the reliefs of the plaintiffs. The other two deponents are silent on this aspect. I find that the reliefs set out by Mr. Phillip *Neville* are the same as those on the face of the notice of motion. It is pertinent to mention at this stage that these deponents have not claimed or attempted to claim that they are or any of them is plaintiff. The irresistible conclusion is that Sierra Leone Association of Journalists Limited are the plaintiffs. The stark fact is that the Plaintiffs are the Association and have not complained of actual or threatened act against itself.

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7. *Rule 90 of the Supreme Court Rules* empowers a plaintiff to file his case with or after the filing of the originating notice of motion. The solicitor for the plaintiff in this case has filed such a statement with the motion. *Sub-Rule 2 of Rule 90, inter alia*, requires of the plaintiff to set forth the facts and particulars of his case, documentary or otherwise, verified by an affidavit, upon which he seeks to rely.

A Mr. Ibrahim Karim Sei, who deposes in his affidavit that he is the Secretary- General and also media Practitioner of the Sierra Leone Association of Journalists verified the statement. It is a 55 page document and exhibited and marked "H". Attached to the said affidavit of Mr. Sei are also exhibits "I", "J", "K" and "L" inclusive, which are business licences and certificates of renewal of licences of the company issued by the Registrar of Companies. I have searched amongst the documents, the annotations of Mr. Sei in his affidavit, that is to say *section A-E referred to in paragraph 3 and section 2 in paragraph 4* and I am unable to find any.

8. The reliefs sought by the plaintiffs include an interpretation and two declarations of the Constitution. Even a cursory examination will indicate that these reliefs are provided for in the basic document, to wit, the Constitution. They are *sections 124(1) and 127(1)* respectively.

*"Section 121(1) reads "the Supreme Court shall have original jurisdiction to the exclusion of all other Courts in all matters – relating to the enforcement or interpretation of any provision of this Constitution".*

*Section 127(1) reads -*

*"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".*

I observe that nowhere in the face or heading of the Originating Notice of Motion is stated or reference is made to *sections 121(1) and 127(1) of the Constitution*. It is settled practice in our jurisdiction and several other jurisdictions that when proceedings are commenced by originating notice of motion it must be intitled in the matter of the Act(s), Rule(s) and Constitutional provisions under or pursuant to which application is to be made. Surely, one would have expected the present originating notice of motion to be intitled in the matter of the appropriate sections of the Constitution. This was not done in this case no amendment was sought or obtained by counsel for the plaintiff's. In my view it is a serious omission.

9. *sections 25 and 127(1) of the Constitution* refer to the word "person" and it will be useful at this stage to decide whether the plaintiffs in this case can be described as such bearing in mind that it is a company limited by guarantee.

The answer is to be found under the definition section of the interpretation Act *1971- Act No.8 of 1971*, which states that "a person" -

*"Includes any Company or Association of Persons or body of persons corporate or unincorporated as well as an individual".*

It therefore follows that the plaintiffs fall under the definition of person in *sections 25(1) one/ 127(1) of the Constitution* I find from the memorandum and Article of Association that the last word in the name of the company has the word "Limited". This is a mandatory requirement of a company limited by guarantee.

but it is observed that the originating notice of motion and several supporting documents in this case omitted the word "Limited".

However, I take cognizance of the fact that our Courts have held that such an omission is not fatal and proceedings without it ought not to be set aside if a reasonable person reviewing and looking at the document(s) on the whole would come to the conclusion that the documents refer to the plaintiff. A case in point is that of *Mobil Oil Sierra Leone Limited v. Texaco AE Ltd. 1964-1966 ALR SL 133*. I hold that in the present case there is ample evidence for me to apply this principle of Law and I so do.

10. This is not the end of the matter. *Prima facie*, every action by a company must lie be brought in the name of the company to remedy a wrong done to it for the Court has no Jurisdiction to interfere with the internal management of a company, which is acting within its powers and will not, therefore, allow a minority to complain of a matter which can be ratified by the company in general meetings. But where the matter complained of cannot be ratified because the person against whom relief is sought controls the company the shareholders complaining are permitted to bring an action in their names on behalf of all the shareholders other than the majority. This is the rule in *Foss v. Harbottle (1843) 2. Ha 461*. On the other hand in the case of *Mozley v. Alston (1847) 1 Ph 790* two members of an unincorporated railway company filed a bill in their individual character, against the corporation and twelve other members who were alleged to have usurped the office of directors and to be exercising the functions thereof, as a majority of the governing body injuriously to the Company's interest and praying that the twelve might be restricted from acting as directors, and be ordered to deliver the company's common seal, property and books to six other persons who were alleged to be the only duly constituted directors. Lord

Cottenham, Lord Chancellor allowed a demurer to the bill. The injury alleged was . not to the plaintiffs personally but to the company.

These two cases have been regularly followed and the rule is firmly established. It is most clearly stated in the Privy Council case of *Burland v. Earle* 1962 AC 83, when Lord Davey in a passage often quoted said -

*"It is on elementary principle of the law relating to joint stock Company that the Court will not interfere with the internal management of a company acting within their powers, and infact has no jurisdiction to do so. Again it is clear law that in order to redress a wrong done to the company, or to recover money or damage alleged to be owed to the company. The action should be brought by the company itself".*

Earlier Jenkins L.J. in a case, *Edwards Hallwell* 1950 2 AER 1064 at 1066 said-

*"The rule in Foss v. Harbottle as I understand it comes to no more than this first, the proper plaintiff in an action in respect of a wrong alleged to be done to a Company or Association of persons is prima facie the Company or Association of persons itself. Secondly, where the alleged wrong is a transaction which might be made binding on the Company and all its members by a simple majority of the members no individual member of the company is allowed to maintain an action in respect of that matter for the simple reason that, if a mere majority of the members of the Company or Association is in favour of what has been done, then cadit quastio then to no wrong had been done to the Company or Association and there is nothing in respect of which anyone can sue... In my judgment it is implicit in the rule that the*

*matter relied on as constituting the cause of action should be a cause of action properly belonging to the general body of the corporators or members of the Company or Association as opposed to a cause of action which some individual member can assert in his own right".*

The principles enunciated by the above three cases are not only instructive, but they shed considerable light as regards the approach to be followed in the instant case.

I have earlier in this judgment held that the plaintiffs fall within the definition of the word "person" as contained in both *sections 2S and 127(1) of the Constitution*. Furthermore, the members of a Company are separate and distinct from the Company - *Salomon v. Salomon 1897 AC 22* and both the membership of the deponents as well as members listed in the statement of the plaintiffs does make them the Company and their assertion or allegations or complaints concern them and them alone. The action has been brought by the Company and not them. The truth of this assertion is borne out in the affidavit of Philip Neville and others.

11. Let me now advert to the case of the plaintiffs, which consists of two issues. The first is the question of interpretation of *section 25 of the Constitution, viz-u-viz sections 26, 27, 32 and 37 of the Public Order Act 196S*. *Section 25 is an entrenched provision and pertains to the Protection of Expression and the Press*. It falls under Chapter 111 of the Constitution under the rubric - "The Recognition and Protection of Fundamental Human Rights and Freedom of the individual". It is a right to both natural and juristic person.

The existence of the right is one thing. The freedom to exercise that right is an entirely different thing. Thus freedom does not mean the right to do whatever we please in the exercise of our right. That will be licence. Rather, true freedom is

the right to do what we ought to do with our right, oughtness thus implies Law, order, purpose, goal and finality. We are free to exercise our rights but only within the law and not outside it. We are free to do whatever we like with our rights provided we do not infringe the equal freedom of others. Secondly, whenever the constitutionality of an Act, as in this case, is being impugned, the Court has to balance the presumption of constitutionality with the preemption that the Constitution was to be interpreted as a whole and any derogation from the freedom and rights enshrined therein are to lie narrowly construed. The test in determining whether an enactment infringes a fundamental freedom was to examine its effects and not its objects. Thus in its construction of provision of the Constitution, the Court should not pull the language of the Constitution too pieces and make nonsense of it, nor to construe any of the provision of the constitution as to defeat the obvious end the constitution was designed to seek.

12. The words "Enforcement and Interpretation" have been defined in some Jurisdictions and these words appear in *subsection 1 of section 124 of our Constitution*. The subsection gives original jurisdiction to the Supreme Court to the exclusion of all other Courts namely -

*(a) In all matters relating to Enforcement or Interpretation of any provision of the Constitution.*

The interpretation sought by the plaintiffs is *section 25 of the Constitution viz-a-viz sections 26, 27, 32- 36 of the Public Order Act 1965 in the following circumstances -*

*(i) Whether the provisions of sections 26, 27, 32-36 of the Public Order Act criminalizing freedom of speech contravened the right of freedom of*

*speech guaranteed under the entrenched provision of section 25( 1) of the Constitution?*

*(ii) Whether the provisions of sections 26, 27, 32-36 of the Public Order Act can be demonstrably justifiable in the light of Sierra Leone's obligation, under the Universal Declaration of human Rights the international covenant on Civil and Political Rights and the African Charter on the Human and Peoples Rights?*

*(iii) If the answer to (i) and (ii) are in the affirmative whether the provision of sections 26, 27, 32-36 of the Public Order Act does not also fall out of tile restriction provisions 25(2) of the Constitution?*

*Section 25 of the Constitution* is a fundamental right of the protection of the Freedom of Expression and the Press and foils within chapter 111 of the Constitution, to wit, "the Recognition and Protection of Fundamental Human Rights and Freedom of the Individual. For the purpose of interpretation of the provisions of the constitution such a question arises only where there is a doubt as to the meaning to be attached to any provisions of the constitution".

Interpretation of provisions of Constitution is different from application of the Constitution, the two terms are not interchangeable and I apprehend some confusion in this case. It seems to me that the question that is intended to seek is the effect of the application of *section 25 of the Constitution viz-a-viz sections 26, 27, 32-36 of the Public Order Act 1965.*

13. This brings me to the issue of the duties of Judges, when the question of doubt arises in a statute or constitution. Judges are expected to observe and apply the provision of the Constitution where that application has been raised in a matter,

and it is their duty to do so. They will be failing in that duty if they refrain from doing so. This is where the application of the law involves questions of interpretation as to the meaning of the law and the purpose of its application the Court will determine the question. But if the question referred to the Court as in this case does not involve any interpretation, but its application merely it will not. On the other hand, if there is a doubt, as to the meaning to be attached to the words of the sections both in the Constitution and the Act it is the duty of the Court to give effect to their literal meaning.

In *Major and St Mellow v. Newport Corporation* (1952) AC (H/L) 159 Simonds LJ said -

*"The duty of the Court is to interpret the words that the legislation has used, these words may be ambiguous, but even if they are the power and duty of the Court to travel with them on a voyage of discovery are very restricted".*

Similarly in *Mobil Oil (Nigeria) Ltd. V. Federal Board of Inland Revenue* 1977 SC 1 the Supreme Court of Nigeria restated the principles for construing a statute (which, of course every provision of the Constitution).

When it said -

*"The General rule for construction of statutes has been stated by this Court in a number of cases the rule is. Where the words of a **statute are** clear the Court shall give effect to their literal meaning. It is only when the literal meaning may result in ambiguity or injustice that the Court may seek internal aid within the body of the statute itself or external*

*aid from statutes in pari materia in order to resolve the ambiguity or avoid doing injustice".*

I adopt the proposition of law in both cases. Furthermore, I find no ambiguity in the words used both in *section 25 of the Constitution or sections 26, 27, 32-36 of the Public Order Act*. The words are clear and unambiguous.

Furthermore, the first question of the motion seems to indicate an application as opposed to an interpretation of section 25 of the Constitution to sections 26, 27 and 32-36 of the Public Order Act. If this is the case then such an application must be based on a cause of action, that is to say a factual situation as explained in the case of *Letang v Cooper 1964 2 AER 929 at 935 1965 1QB 232 at 242/243*. It must not be speculative or hypothetical as the present case. On the other hand, if the application relates to enforcement of the fundamental rights which section 25 is then Plaintiffs have not discharged the mandatory requirement of subsection 1 of section 28 of the Constitution. And therefore the application on both grounds fails.

14. The other two questions of the motion deal with declaratory Judgments. They are as follows.

*"B. A Declaration that sections 26, 27, 32-36 of the Public Order Act criminalizing free speech are unconstitutional and therefore null and void by virtue of section 171(15) of the Constitution Act. No.6 of 1991 in so far as they violate the provisions of section 25(1) of the Constitution".*

*"C. A Declaration that the restriction provisions to the right freedom of expression under section 25(2) of the Constitution does not save the*

*provisions of sections 26, 27, 32-36 of the Public Order Act in so far as the said provision cannot be demonstrably justifiable in a democratic society".*

Where a plaintiff claims no relief legal or equitable, but seeks an adjudication upon his rights he may simply claim a declaration.

The power of the High Court to make a declaration of right or title is an inherent one deriving from the Court of Chancery and it is now in order 43 of our High Court Rules 2007. It provides a useful means whereby a party may ascertain his legal position before embarking on a course of action. However, it is axiomatic that the Courts will not adjudicate upon hypothetical questions so that no declaration will be granted, where the defendant has neither committed nor threatened any wrongful act. Declaration is mentioned in *section 127(1) of the Constitution but not mentioned in the Supreme Court Rules*. However Rule 98 of the said Rules shall apply i.e. provisions not expressly provided in these rules, the practice and procedures of the High Court shall apply.

For the purpose of the Constitution *section 127(1)* of the Court provides as follows-

*"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".*

I have earlier in this judgment mentioned that there is no reference or mention of this provision in the originating notice of motion and it is a settled practice in

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constitutional matters that technical objections are frowned upon. I will amend the heading of the motion to include the provision. In the case of *Guaranty Trust Co. of New York v. Hannay* 1915 2KB 537, it was held that the Court has power to make a declaration whether there is a cause of action or not, at the instance of a party interested in the subject matter. In *Eastham v. Newcastle United Football Club Ltd.* 1964 CH 413 Wilberforce J said that the cases establish that even though there is no cause of action and even though no consequential relief can be given, the Court has ample power to grant a declaratory judgment. In the case of *Letang v Cooper* 1965 1 QB 232, it was said that the expression "cause of action" means simply a factual situation the existence of which entitles one person to obtain a remedy against another person. It will be noted that in *section 127(1)* a factual situation in existence is required i.e. the plaintiff must bring an action. In this regard it is a well known proposition that the burden lies on the person who seeks a declaration of right to place the facts before a Court, which are necessary for the determination of such rights and would fail if no evidence was called (*see Phipson on evidence 10<sup>th</sup> ed. at p45 etc*).

15. The Courts over the years in granting declaratory judgment in respect of constitutional questions had involved principles to guide them. The first is that a declaration will not be awarded to a plaintiff or an applicant who is unable to show he is engaged with another party in a Court to which his legal interests are directly affected.

Secondly, the Court will not grant a declaratory judgment, unless all the parties interested are before it. Thirdly, the Court will decline to make a declaration affecting the interest of persons who are not before it. Fourthly, an application for a declaration must satisfy a stricter test of *locus standi* than is applied to a Prerogative Order. Fifthly, only a person with *locus standi* is entitled to assail the constitutionality of a legislation meaning that the applicant must prove that he

has sustained or is immediately in danger of sustaining some direct injury as a result of its enforcement, and not merely that he has suffered in some infinite way common with people generally.

Here in *Siena Leone* in the case of *Steele and Others v. Attorney-General, Tejan Sei and Koroma* 1967- 68ALR SL page 1 Cole Ag. Chief justice held, on an application for a declaration on enforcement of a fundamental right, a person invoking the enforcement provision laid down in *section 24 of the 1961 Constitution* must allege facts which show as a result of the acts complained of, an injury to himself, which is not one of a general nature common to all members of the public and it is insufficient to allege facts which merely show that he will suffer in common with other people. *Section 24 of 1961 Constitution* is similar to *section 28(1) of the 1991 constitution*.

16. Though the two applications are not worded as direct applications for enforcement of *section 25 of the Constitution* they are nevertheless declarations touching and concerning *section 25*, which is a fundamental right. They relate to constitutional right to redress, which axiomatically involves *section 28* of the Constitution described in the marginal note as enforcement of protective provisions. The two applications also concern *locus standi* and all the authorities establish that in a constitutional application for declaratory order in a case relating to fundamental rights the Courts will do so only to a person, who is in immediate danger of coming into conflict with a law, or whose normal business or other activities had been directly interfered with by or under the law has sufficient interest to sustain a claim that the law is unconstitutional.

I have searched the several documents and I am unable to find where plaintiffs have averred its legal rights have been infringed or likely to be infringed nor the exclusive suffering it has sustained or likely to sustain.

Let me end by stating two cases which have been decided in other jurisdictions and which in my opinion are applicable to the case in hand - the first is the Nigerian case of *Otugar Gamiobra and Others v. Ezezi II, the Onodjie of Okpe and Others (1961) ANLR 584 at 588*, where Brett, Federal Judge of the Supreme Court said -

*"... There is a further test to be applied in a case as this one. It is always necessary where the plaintiff claims a declaration that a law is invalid, that the Court should be satisfied that the plaintiff's legal rights have been or are in imminent danger of being invaded in consequence of the law. We dealt with this point of length with ALAWOYIN V. Attorney-General Northern Region (1961) ANLR 269, and it will be enough to say here that since the validity of a law is a matter of concern to the public at large the Court has a duty to form its own judgment as to the plaintiff's locus standi and should not assume it merely because the defendant admits it or does not dispute it. The plaintiff's locus standi in this present case has not been discharged, and if he has not his claim must be dismissed on that ground and it will be unnecessary to decide the question involved in the declaration he claims..."*

Similarly the House of Lords in England dealing with the same issue in *London Passengers Transport Board v. Moscrop (1942) 1AER 972 at page 103* said -

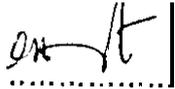
*"I cannot call to mind any action for declaration in which (as in this case) the plaintiff claims no right for himself but sought to deprive others of a right which did not interfere with his liberty or his private right. Still less can I think there is any precedent for such an action in*

*the absence of the persons, who are interested in opposing the declaration”.*

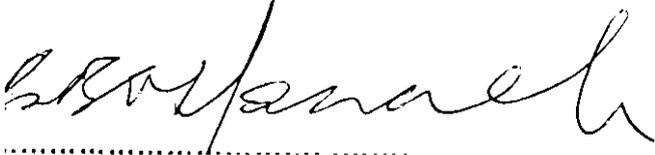
In this case the media practitioners appear to be claiming rights for the company, the plaintiffs. This cuts across the principles of law dealing declaratory judgments. The two declarations fail and I dismiss them accordingly.

  
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HON. JUSTICE U.H. TEJAN-JALLOH - CHIEF JUSTICE

I AGREE  
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..... 0/2 .....  
HON. MRS. JUSTICE S. M II-TAQI - /S.C.

I AGREE  
  
.....  
HON. MRS. JUSTICE V.A.D. WRIGHT /S.C

I AGREE  
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HON. MR. JUSTICE M.E.T. THOMPSON /S.C.

I AGREE  
  
.....  
HON. MR. JUSTICE G. SEMEGA-JANNEH - /S.C.

TRUE AND CERTIFIED COPY

REGISTRAR SUPREME COURT

REF: CJ/HJ

IN THE SUPREME COURT OF SIERRA LEONE

S.C.J/2008

IN THE CONSTITUTION OF SIERRA LEONE ACT NO.6 OF 1991 SECTION 25, 28, 171(15)

IN THE MATTER: SECTIONS 26, 27, 32-37 OF PUBLIC ORDER ACT NO.46 196'

IN THE MATTER OF AN ACTION PURSUANT TO THE SUPREME COURT RULES '89-98 ST ATUTORY INSTRUMENT NO.11982.

BETWEEN: THE SIERRA LEONE ASSOCIATION OF JOURNALISTS PLAINTIFF

AND

THE ATTORNEY-GENERAL AND MINISTER OF JUSTICE 1<sup>st</sup> DEFENDANT

THE MINISTER OF INFORMATION BROADCASTING AND COMMUNICATIONS 2<sup>nd</sup> DEFENDANT

CORAM:

EON. MS, JUSTICE U.H. TEJAN-JALLOH	CHIEF JUSTICE
HON. MRS. JUSTICES. BASH-T AQI	J.S.C.
HON. MRS. JUSTICE V.A.D. WRIGHT	J.S.C
HON. MR. JUSTICE M.E.T. THOMPSON	J.S.C.
HON. MR. JUSTICE G. SEMEGA-JANNEH	J.S.C.

" YADA WILLIAMS ESQ. AND OSMAN JALLOH ESQ. FOR THE PLAINTIFF

L.M. FARMAH ESQ., AND OSMAN KAMARA ESQ. FOR THE DEFENDANTS

**JUDGMENT DELIVERED THE 10<sup>TH</sup>**

**DAY OF NOVEMBER 2009.**

**TOLLA THOMPSON. T.S.C.**

Having had the advantage of reading the Judgment just delivered by my Lady the Chief Justice I found myself fully in agreement with her analysis of the issues she had to deal with and the conclusion arrived at. I shall articulate my own opinion on this matter in this way.

On the 26<sup>th</sup> February 2008 the Plaintiff, The Sierra Leone Association of Journalists Company Limited by guarantee and incorporated under the Company's Act chapter 249, of the laws of Sierra Leone 1960. By notice of an originating motion moved this Court for the following reliefs pursuant to section 25 and **171(15)** of the Constitution Of Sierra Leone 1991 Act 0.Jo.6 of 1991 (which for the purpose of this ruling, I shall refer to as the Constitution) namely:

A. *The interpretation of section 25 of the Constitution viz-a-viz section 26, 27, 32-36 of the Public Order Order Act 1965 No.46 of 1965 (Which for the purpose of this judgment i shall henceforth refer to as the Act) for the following questions.*

(I) *Whether the provisions of section 26, 27, 32-36 of the Act criminalizing free speech contravene the right to Freedom of expression guaranteed under the entrenched provision of section 25(1) of the Constitution No.*

(II) *whether the provisions of sections 26, 27, 32-36 of the Act can be demonstrably justifiable, in the light of Sierra Leone's obligation, under the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights and the African Charter of Human and copies Right*

*(III) If the answer to (I) and (II) above are in the affirmative whether the provision of section 26, 27, 32-36 of the Act also fall out of the restrictive provision of section 25(2) of the Constitution*

*B. Declaration sections 26, 27, 32-36 of the Act criminalizing free speech are inconsistent with the section 25(1) of the Constitution.*

*C A declaration that the restrictive provision to the right to freedom of expression under Section 25(2) of the Constitution does not serve the provision of sections 26, 27,, 32-36 of the Act in so far as the sllid provision cannot demonstratively justifiable in a democratic society.*

*D. Any further order or relief as this Honourable Court may deem fit and just.*

## **BACKGROUND**

This originating Notice of Motion relates to freedom of expression as enshrined in Section 25(1) of the Constitution. The complaint is that freedom of expression has been criminalized by some sections of the Act.

It is generally accepted that in a democratic society, freedom of expression is a fundamental right enjoyed by members of that society; therefore members of the Plaintiffs Association who exercise such freedom of expression by the dissemination of information are at liberty to publish any matter of public interest without fear or favour and with objectivity. If perchance, *the* publication is malicious, manifestly false or impinges on the right, and reputation of others, such publication will be said, had gone beyond the pale of fair comments and or privilege, and such conduct amounts to a license. Sellers LJ (deceased) in *Broadway Approval Ltd. and Another v. Odham press Ltd.* 1962 ABR 523 at 535 inter alia put it this way.

*"An honest expression of opinion on a matter of public interest is not actionable even though it may be untrue and devoid of justification. It may be said in the*

*appropriate circumstances; that a man's conduct is discreditable and it may be said a fair comment to make although a Jury is not prepared to find that the substance of comment was true."*

Also in *Tolley SS Fry and Sons Ltd. 1KB 1931l 467 at 479* which was quoted with approval in *Harding vs. Sierra Leone Daily Mail 1964-66 ALR SL 563. Greer L.J (deceased)* in determining which words are actionable as defamatory had this to say:

*"Words are not defamatory unless they amount to an attack on a man's reputation or character. They must tend to disparage him in the eyes of the average sensible citizen. Words are not actionable as defamatory. However they may damage a man in the eyes of a section of the community, unless they also amount to disparagement of his reputation to the eyes of the right thinking man generally."*

Here in Sierra Leone it is the bias and sometimes malicious reporting of events that some members of the Plaintiff's Association have been the offenders. They want only and recklessly publish things attacking the reputation of other members in the society. This they gleefully refer to in their journalistic parlance as "attack and collect, defend and collect or coasting". Whatever these expressions mean I do not know.

In spite of all these, journalists still continue to enjoy their fundamental right to freedom of expression that is why there are about forty news papers in circulation and numerous radio stations. Now by invoking the relevant provision of the Constitution, they are asking this court to give them an unlimited freedom of expression, by declaring that the Act is inconsistent with the Constitution and also criminalizes freedom of expression.

### **PRELIMINARY ISSUES**

Before dealing with the substantive issue, I have identified two issues arising from the Plaintiff's originating Notice of Motion, which I shall deal with as preliminary points. They are CAPACITY/STANDING of the Plaintiff and the DECLARATION sought by him.

STANDING / CAPACITY

The Plaintiff at page 2 of the *originating Notice of Motion* states:

*"The Plaintiff herein brings this action in the capacity as the Sierra Leone Association of Journalists a Company Limited by guarantee and incorporated under the Companies Act Cap 249 of the Laws of Sierra Leone 1960: the members of the Plaintiffs association are media practitioners in the Republic of Sierra Leone. The Memorandum of Association of the plaintiff Company provides inter alia in clause 31a and e as follows - 3a & e) as follows:-3a- To endeavour the freedom of the press and safeguard the freedom of journalist in the pursuit of their profession and to assist the growth of the press as a powerful social (sic) for the betterment of the nation through the dissemination of accurate and objective information (emphasis mine) fair comment and a constant quest for improved standard and techniques of Journalist. "*

From the above it appears to me that the Plaintiff is the so called umbrella body for journalists. My description of the Plaintiff's Association as so called, stems from the fact that not all journalists are members of the Association. They are not compelled to become members - membership is optional. To my mind it is a loose association.

It is settled law, that a Plaintiff challenging a Statute as in this case, on constitutional ground must be legally qualified to do so, See *Guarantee Trust of New York v Hannay and Company*, 1915 2 KB 5 It means that the Plaintiff must have an interest in the subject matter of the action. Such interest is variedly described as personal, real or sufficient. These interests which should not be artificial or remote are generally referred to as Standing or Capacity - the right of appearance in a court to litigate a matter. It focuses on the Plaintiff seeking to get his action or matter before the court not the action or matter which he wants decided.

It is trite law that if a Plaintiff has no standing/capacity to litigate on the matter the court has no jurisdiction to try the matter, Consequently standing/capacity and

jurisdiction are intertwined. Therefore if the Plaintiff has no standing or capacity the court has no jurisdiction to entertain the action.

In Barron Dictionary of Legal Terms, Real Interest is defined as -

*"A person will be entitled to the benefit of the legal action of It is successful. One who is actually and substantially interested in the subject matter as opposed to on who has only a normal, formal, or technical interest in it.*

This principle of real/personal interest in the subject matter has been applied in a long line of cases. I shall endeavour to refer to few cases on this point.

In Russian Commercial and Industrial Bank v. British Bank 1921 AC 438 Court adopting the above definition of real interest said.

*"The question to be decided must be real and not theoretical and the person raising it must have real interest to rise it."*

In Abraham Adesayan vs the President of Nigeria and others 1981 2 NWLR 358, the Supreme Court of Nigeria held *"That the Appellant cannot challenge the appointment of the President as he has no right peculiar or personal to him which had been violated."*

However in Sam vs the Attorney General of Ghana GLR 300 which was quoted in Hinga Norman vs Sama Banya and Others SC. No. 2/2005 Attuguda JSC took the view that so long as the plaintiff was a citizen Standing/Capacity (need not to be considered in a wider dimension). In some jurisdiction however sufficient interest in the subject matter has been regarded as enough interest to bestow standing on a plaintiff as long as such interest is not of a speculative nature. See Randolph Sheppard Venders v Weinburger 795 (DC Cir 986) Also: in Crouch v the Commonwealth 1948 77 CLR 339 the High Court of Australia held the "the claim by the plaintiff that his business was affected as he had to obtain permit under an invalid law constituted sufficient interest to institute the action"

In this case and for the sake, of argument. let me assume without conceding that the Plaintiff has sufficient interest to bring this action based on the affidavits of the three deponents indicating that they have interest in the subject matter. Indeed in the affidavits, it OF Spencer. his interest can be adequately described as real/personal which would have been in tune with Sec. 28 of the Constitution. As a victim of the Act he is in the same category as the appellants in some

of the authorities cited by Mr. Yada Williams. In my opinion he could have been an idea and competent plaintiff to institute this action.

I have taken pains to draw this analogy as I am at a loss to understand or fathom why the action was instituted by the Plaintiff whose interest in my judgment is purely nominal and calls into question the Plaintiffs standing to institute the action. It is that as it may I do not intend to rest this judgment here, that is not to say I would not be justified for doing so

#### **THE DECLARATION**

A common law. the power of the court to make a declaratory ruling/judgment discretionary, and such discretion must be exercised judiciously and with caution. See Halsbury Laws of England 3rd edition volume 22 para. 1611.

The Constitution gives the Supreme Court, when exercising its original jurisdiction the power to make a discretionary ruling/judgment, where the relief or claim is the inconsistency between the law or statutory provision and the constitution.

It is the specific provision of the Constitution. Section 127 (!) states:-

*"A person who alleges that the enactment or anything contained in or done under the authority of that or any other enactment is inconsistent with or in contravention of a provision of the constitution may at any time bring an action in the Supreme Court for a declaration to that effect"*

This is the only provision in the Constitution, which empowers the Supreme Court to make a declaratory judgment.

In this case the Plaintiff neither relies on the common law, nor the above provision of the Constitution and half heartedly and generally relies on rules 89-98 of the Supreme Court Rules. The reason for saying so will be apparent by the end of the next paragraph.

As I said the Plaintiff generally relies on rules 89 – 98 He should have confined himself to rule 98 which reads:

*"Where no provision is expressly made in these rules relating to the original or supervisory jurisdiction of the Supreme Court, the practice and procedure for the time being of the High Court shall apply mutatis mutandis."*

It is the practice of this court that a Plaintiff instituting an action pursuant to a rule other than the Supreme Court Rule should clearly state the said rule in the title of the action. It was not done in this case. The above rule is a procedural rule which does not stand on its own. It should **be** accompanied by the relevant High Court rule, and the proper in this case is O 43 r. 1 which states:

*"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 give declaration of right whether any consequential relief is or could be claimed or not"*

This is an omission or lapse on the part of the Plaintiff which ought not to be encouraged bearing in mind that the Supreme Court is the highest court in this jurisdiction. I say no more.

### **THE ARGUMENT**

I shall, in brief state the arguments and submissions of the plaintiff and Defendant. Mr. Yada Williams Counsel for the Plaintiff in his argument submitted that the Plaintiff is challenging Sections 26, 27, and 32 - 37 of the Act 1965. These sections impinge or violate Section 25 (i) of the Constitution of Sierra Leone. Their argument is not that the right to Freedom of expression is unlimited; but that these sections contravene Section 25(i) of the Constitution. He referred to several authorities in support of his argument and that the reasons given in these cases were that they were in conflict with the Constitution of the said countries which guarantees freedom of expression in a democratic state and whatever provision in the Constitution must be democratic and objective.

He submitted further that we do not have to adhere to our local standard, but to universal standard. To uphold the limitation, the burden rests on those who create the limitation to justify it.

Finally he submitted that Sec. 25 (ii) creates a limitation upon the freedom of expression the extent to which the freedom of expression can be limited. The

government cannot go around limiting the freedom of expression even if the first hurdle is crossed, The limitation created should be justified in a democratic state.

Mr. Farmer: Counsel for the 1<sup>st</sup> defendant submitted that his colleague has conceded that freedom of expression cannot be unlimited.

He submitted that the Plaintiff did not invoke the court's jurisdiction as provided under Section 124 of the Constitution; which empowers the court in all matters to interpret the Constitution. He cites the case of Pepper v Hart 1993 1A.E.R.P. 50

He submitted that there are multi dimensional rule of interpretation of statute. includes the ordinary meaning of the word; plus the context of the legislation, the subject matter the scope and purpose.

He submitted that when reading sec. 25 (i) of the constitution, it should be read in the context and subject matter in which sec. 25 (i) of the constitution - the recognition and protection of fundamental human rights. It is essential to recognize the scope under sec. 25 (1) and the limitation provided under sec 25(11) of the Constitution.

He submitted further where there is a legal restriction on the exercise of the freedom of expression under section 25 (i). That legal restriction is that of the Public Order Act 1965. He submitted that Public Order Act when read in its entirety provides the mechanism by which the exercise of the fundamental human and freedom of the individual right can be done in an orderly manner. Section 21 (i) therefore is not inconsistent with 26-27-32-36 of the Act

Finally he submitted the burden to prove where there are restrictions, or limitation does not lie on the defendant.

**THE MAIN ISSUE- INTERPRETATION**

The supremacy of the Constitution is found at Sec. 171(15) of the Constitution which states:-

*"This Constitution shall be the supreme law of Sierra Leone and any other law found inconsistent with any provision of the*

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*Constitution shall be to the extent of that inconsistency void and of no effect."*

The above is a substantive provision. It is clear and concise. It merely declares the Constitution the supreme law of the state and being the supreme law any law or act which is at variance or inconsistent with any of its provision will be declared void, and of no effect. It also confers original, appellate and supervisory jurisdiction on the Supreme Court.

The thrust of the Plaintiff's submissions and the statement of his case is that Sec 26, 27, 28, 32, 33, 36 of the Act are inconsistent with freedom of expression as enshrined in Sec. 25 (i) of the Constitution.

Section 25 (i) states:-

*Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression and for the purpose of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, freedom from interference with his correspondence, freedom to own, establish and operate any medium for the dissemination of information, ideas and opinion and academic freedom in institutions of learning"*

*Provided that no person other than the Government or any person or body authorized by the resident shall own establish or operate a television or wireless broadcasting station for any purpose whatsoever."*

Section 25 (ii) states:-

*"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:-*

*(a) which is reasonably required-*

*(i) in the interest of defence, public safety, public order, public morality or public*

*health; or*

*(ii) for the purpose of protecting the reputations,*

*rights and freedoms of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the telephony, telegraphy,, telecommunications, posts, wireless broadcasting, television, public exhibitions or Public entertainment; of*

*(b) which imposes restrictions on public officers or members of a defence force,*

*and except in so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society."*

In the interpretation of this provision I shall be guided **by** the words of Tejan Sie C.J.(deceased) in John Akar v Attorney General 1968- 69 ALR SL 274 when he said:

*"In the interpretation **of** Statute the court has to tread warily and with circumspection."*

It is settled law that if the words of a statute are plain clear and unambiguous they must be taken to be the intention of the framers and no need to look elsewhere to discover their meaning. See Halsbury 4<sup>th</sup> Edition volume 44 page 857, para. 522. This principle of law went as far back as the 19<sup>th</sup> century as was observed in the Sussex Peerage Case 1844 11 Cl & F 85 in which Timdel C. J. deceased said:

*"If the words of a statute are in themselves precise and unambiguous then no more can be necessary to expound those words in the natural and ordinary sense. The law themselves in such a case best declare the intention of the law giver."*

In Major Rural District Council v Newport Corporation 1952, 189 at page 191 of role the court in interpretation of Statute was put this way by Lord Simons -

-J. *"I rest here to find the intention of Parliament and of Alinis1c1, and carry it out and we do this better by filling in the gaps and making sense than by opening it to destructive analysis."*

Coming home the case of Chanrai & Co. Ltd. V. Palmer 1970-71 ALR (SL) 391 comes to mind in which Livesey Luke, CJ (deceased) had this to say:

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

A fortiori. not only that the words used or expressed in the statute must earn the intended meaning. but the court must not imply anything in them which is inconsistent with the words used or expressed : see Egbe v Alhaji I 990 I N. W L. R. P. 546.

This point leads me to the principle adopted in another rudiment of interpretation called the Purposive Principle or Approach, Where words expressed are uncertain and or misleading and ambiguous, to give a true meaning to the words it is necessary to examine the background, scope. subject matter and purpose of the statute. I dare say this is the current innovation in interpreting statutes. See Pepper v Hart 1993 1 A.E.R 42.

In some cases however and this is one. there are no marked difference between the literal and purposive approaches to interpretation. As to the difference Laws L.J (deceased) in Olive Ashworth (holdings) Ltd. Vs Ballard Ltd. 1999 2 AER 795 had this to say:

*"It is nowadays misleading and perhaps it always was to seek to draw a rigid distinction between literal and purposive approaches to the interpretation to Acts of Parliament. The difference between literal and purposive construction is in truth one of degree only.. On received doctrine we spend our professional lives construing legislation purposively in as much as we are enjoying at every turn to ascertain the intention of Parliament. The real distinction lies in the balance to be struck in a particular case between the literal meaning of words on the one hand and the context and purpose of the measure in which they appear on the other. Frequently there will be no opposition between the two and then no difficulty arises, Where there is a potential clash the conventional*

*approach has been to give at least very great and often decisive weight to the literal meaning enacting words."*

### The meaning of "shall"

In my opinion the vital word in Sec. 25 (i) and 25 (ii) is the word "shall". I shall now turn my attention to the use of it. This auxiliary verb should be understood in two senses; as simply futurity (i.e. will) and obligation (must) or whether in a statute it is compulsory or merely gives jurisdiction, and directly In the dictionary of Modern Usages 'shall' is defined thus:

"The word "shall" ordinarily denotes language or command. In legislation it invariably denotes an imperative rather than futurity when it appears in drafting...

There is no doubt that Sections 25 (i) and (ii) are elements of legislative drafting, consequently the word 'shall' in "no person SHALL be hindered in the enjoyment of its freedom etc" in Sec. 25 (i) and in "nothing contained or done under the authority of any law SHALL be held to be inconsistent etc... in Sec. 25 (ii) is to have any meaning at all and escape from any obscurity within the context of legislative drafting it must be looked at from the imperative/mandatory sense.

Therefore, on a close scrutiny and as far as it is relevant to this action, and using the ordinary sense approach it seems to me that the intention or the framers of the Constitution is that no one should be prevented from enjoying and exercising the right of freedom of expression. Those rights and freedom of expression however must not infringe on the right and reputation of others. Also the Constitution will give effect to any law which seeks to protect the said right and reputation and that law will not be inconsistent with the provision of Section 25(i).

The Jurist Roger Brownswood in one of his jurisprudential expose' tried to equate the law with morality and this is what he said:

*"Legal Rules ought to be consistent with some moral requirement since the two depend on social facts as well as moral values and in the enactment of any law some element of morality should be involved"*

I cannot agree with him more, and so it is with our laws including the Act which is the focus of this ruling. However I am more concerned with the legal rather than the moral aspect of certain provisions of the Act and how it fits into the Constitution and its frame work.

The Act is a punitive legislation and predates the Constitution by some twenty-six years. I fully realize and recognize the difficulties it has caused to some members of the society. Whilst at the same time it is a source of solace and happiness to those who resort to it to repair their tarnished and battered reputation.

This court primarily has been called upon to determine whether certain provisions of the Act are inconsistent with Section 25( i) of the Constitution. Secondly whether it can be justified in the light of the provision in Sec. 25 ( i) which gives a positive complexion to freedom of expression in a democratic society.

Mr. Yada Williams in his submission referred to and relied on several decisions from other countries in which the appellate court held that the legislations under which the appellants were charged tried and convicted were inconsistent with certain provisions of their respective Constitution dealing with freedom of expression. According to him this Act has no place in a democratic society.

I note that the decision in most of the cases cited by Mr. Williams are from the appellate courts. The Appellants having been convicted by the court of first instance appealed against the conviction. The decisions did not emanate from actions for the determination by the Supreme Courts or the Constitutional courts

that a particular provision or statute is inconsistent with the Constitution of the respective states.

The relevant and offending provisions of the Act relate to defamatory and seditious libel. I shall here under reproduce them in extenso:

Sec.26:

*"Any person who maliciously published any Defamatory matter knowing the same to be false shall be guilty of an offence called libel and liable on conviction to imprisonment for a term not exceeding three (3) years to a fine not exceeding one thousand leones or both."*

Sec 27 states:

*"Any person who maliciously publishes any defamatory matter shall be guilty of offence called libel and liable on conviction to a fine not exceeding seven hundred leones or to imprisonment for a period not exceeding two years or to both such fine and imprisonment. "*

Sec. 32 (i):

*"Any person lwho publishes any false statement rumour or report lwhich is likely to cause fear or alarm to the public or to disturb the public peace shall he guilty of an offence and liable on conviction to a fine not exceeding three hundred leones or to imprisonment for a period of 12 months or to both such fine and imprisonment.*

Sec.32 (2):

*"Any person \\ho publishes any false statement rumour or report which is calculated to bring into disrepute any*

*person who hold an office under the Constitution in the discharge of his duty shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred leones or to imprisonment not exceeding two years or both.”*

Sec. 33(i) states:

Any person who:-

- (a) does or attempt to do or makes any preparation to do or conspire with any person to do any act with a seditious intention;*
- (b) utters any seditious words or*
- (c) print or publishes, sells, offers for sale, distributes or reproduces seditious publication or*
- (cl) impart any seditious publication unless he has no reason to believe that it is seditious.*

*shall be guilty of an offence to imprisonment for a term not exceeding three years or to a fine not exceeding one thousand leones or to both such imprisonment and fine for a subsequent offence shall be imprisoned for a term not exceeding seven years and every such seditious publication shall be forfeited to the Government.*

Section 33(ii) states:

*"Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and on conviction be for a first offence to imprisonment for a term not exceeding twelve months or to a fine not exceeding one hundred leones or to both such imprisonment and fine and for subsequent offence shall be imprisoned for a term not exceeding three years*

*and every such publication shall be forfeited to the Government..*

It is a rule of interpretation that a general statute does not by implication affect a special statute, see *Seaward vs Vera Cruz* 1884 10 AC 59, except the general statute expressly say so or may be in terms inconsistent with the continued existence of the special statute, see *Barclay vs Edger* 1898 AC 749. In this case there is no suggestion that the Act has been expressly repealed or amended.

Is it then repealed by implication? To help me answer this question I shall resort to Maxwell on interpretation 11th edition page 169:

*"Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to alter that special provision by subsequent general enactment unless the intention be manifested in explicit language or there is something which shows that the legislature had been turned to the special act and that the general one making it unlikely that an exception was intended to regard the special Act. In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special Act."*

This principle of law was applied in the Court of Appeal case of *Attorney General v Kabia* S.L.L.R. 1963 at page 143 in which the court said

*"where there are general words in a latter act capable of reasonable and sensible application without extending them to subject specially dealt with by earlier legislation, the earlier legislation is not indirectly repeal, altered or derogated from nearly by force of such general words without an indication of a particular intention to do so. "*

I shall adopt the said principle and say that it clearly shows that the Act has not been repealed by Sec.25 (i) nor any other provision of the Constitution. I so hold.

Is the Act inconsistent with Sec. 25 (i) of the Constitution? The laws of Sierra Leone comprise among others the 'existing law', see Sec I 70. These are laws/statutes which existed before the promulgation of the Constitution. A similar provision was made in the repealed 1978 Constitution to accommodate the existing law. (See Sec.161 of the 1978 Constitution). It follows therefore that the Act has been part and parcel of the existing law which derives its validity and efficacy from the Constitution.

The Transitional provisions which give effect to the existing law is Sec. 177. I shall hereunder reproduce it.

Sec. 177 (i) states :

*"The existing law shall notwithstanding the repeal of the Constitution of Sierra Leone Act 1978, have effect after the entry into force of this Constitution as if they had been made in pursuance of this Constitution and shall be read and construed with such modification, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution."*

*Sub Sec. (ii) states. -*

*Where any matter that falls to be prescribed or otherwise provided for under this Constitution or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section), or is otherwise prescribed or provided for immediately before the commencement of this Constitution by or under the existing Constitution, that prescription or provision shall as from the commencement of this Constitution have*

..  
•  
*effect with such modifications, adaptations, qualifications and exceptions as may be necessary to bring into conformity with is Constitution as if it has been made under this Constitution by Parliament or as the case may require. by the other authority of person.”*

This existing law herein referred to is found in Sec. 176 and is defined as follows:

*"Any Act, rule or regulation order or other instrument made in pursuance or continuing in operation under, the existing Constitution and having effect as part of the laws of Sierra Leone or of any part thereof immediately before the commencement of this Constitution or any Act of the Parliament of the United Kingdom or Order of Her Majesty in Council so having effect and may be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution as if it had been made under this Constitution.."*

The Act without doubt is part and parcel of the existing law which have been saved and preserved by the transitional provisions, and should be looked upon “as if it had been made under this Constitution.”

### **INTERNATIONAL PROTOCOLS/OBLIGATION**

As regards Sierra Leone's obligation to international protocols my answer is that it is common knowledge that the United Nations and other international organizations are in the fore front in the campaign for human rights violation. Individual states including Sierra Leone have signed up to the respective protocols and when necessary incorporated them in their national laws. However the United Nations, International and other Regional organizations are mindful that freedom of expression must not be used to the detriment of the rights and reputation of others, As was illustrated in the genocide trial in Rawanda, in which Ferdinand

Nahimana and 3 others (all three accused were journalists), on the 3<sup>rd</sup> December were convicted. The court after examining the role of journalist in the genocide of 1994 and in delivering the judgment said:

*That the power of the media to create and destroy human values come with great responsibility. Those who control such media are accountable for its consequences."*

[In my opinion the above judgment underscores the point that however much we treasure Freedom of Expression such freedom must come with responsibilities. Indeed article 19 (3) of the International Convention and Civil and Political Rights states:

*"The exercise of this right provided for in paragraph 2 of the article carries with its special duties and responsibilities and may therefore be subject to certain restriction for the respect of the right and reputation of others, and for the protection of National security, public order or public health or morals."*

Paragraph 2 in the above quoted article: refers to the rights to freedom of expression in article 19(2). It seems to me that even at international and regional levels there is need for some restriction of Freedom of Expression as is evident by the judgment in the Rwanda Genocide trial. When publishing, and disseminating news international and local journalists should always be aware of the rights and reputation of others.

## **CONCLUSION**

A Constitution of a democratic state is the fundamental principle of law by which the state is administered and does not normally contain details of the law by which the State is governed. The framers of the Constitution in their wisdom included the "existing law" of which the Act is a part under the rubric of the Transitional Provision.

In as much as freedom of expression as enshrined in Sec. 25 (i) uncomfortably sits with the relevant provision of the Act, no one should pursue a course of conduct under the umbrella of freedom of expression which the law regards as criminal or tortuous: and therefore is necessary to mark the limit which an individual cannot exceed or trespass. This limit is provided by Sec. 25 (ii) and the Act. Indeed one person's freedom of expression stops where another person's right begins.

Again in our society it is common knowledge that some journalists publish matters which touch and concern another person with reckless abandon and claim the exercise of freedom of expression, sometime the exercise of that freedom paled into insignificance compared with the damage done to the reputation of that person.

In this vein, it is my fervent plea to the Plaintiff to get its members to adhere to that portion of the association's memorandum which state thus:

“.....to assist the growth of the press  
as a powerful social (sic) for the betterment of  
the nation through the dissemination of  
accurate and objective information (emphasis mine)  
fair comment and constant quest for improved standard  
and techniques of journalist.”

I am of the firm belief that if the members of the Plaintiffs Association go by the association's memorandum there will be no need any more to assert that the Act criminalizes freedom of expression.

Finally except to compulsive denialist no one can argue that in a democratic society freedom of expression should be unlimited. The form

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the limitation takes vary from State to State. Here as I said earlier our freedom of expression is limited by Section 25 (ii) of the Constitution and the Act.

Section 25 (ii) as far as it is relevant to this ruling refers to the protection of the rights and reputation of others, but does not say how the violation of those rights and reputation should be pursued. In Attorney General Vs Hallett and Carey Ltd. 1952 AC 429 Lord Radcliff inter alia said:

*"Where the import of some instrument is inclusive the court may properly lean in favour of an interpretation that leaves private rights undisturbed."*

I am persuaded by this dicta and I shall adopt it. The Section also makes provision for any Act done "under the authority of any law", this in my humble opinion is referable and inclusive of the existing law, and the *Act* is one of such law. It seems to me therefore that an individual can pursue the violation of his rights and reputation by invoking the existing law; in this case the Act as far as it is relevant to the action contemplated.

However, it is worthwhile at this juncture to digress a little and recall and repeat with some modification what I said several years ago in the Diamond Mining Company Limited vs The Sierra Leone properties Limited Misc. App. 1/79 unreported. The application was a disguised attempt to review a decision of the Supreme Court in the Nigerian Shipping Line vs Abdul Ahmed SC. App. 3/88 unreported. Though unrelated to this action, the comment holds well. It is possible that the provisions are working hazard and inconvenience among journalists. They have my sympathy; but it is not for this court to amend or to repeal Act

containing these provisions under the guise of inconsistency. That is for another forum, to which the Plaintiff is entitled to address his anxiety or displeasure.

In the result I am reluctant to hold that the Act is inconsistent with Secs. 25 (i) and 171 (15) of the Constitution.

I shall now proceed to answer the questions posed in this action. But first let me react to the Plaintiff's submission that the relevant provisions of the Act "criminalize free speech". It cannot be denied that people's right to freedom of expression is an essential law in every democratic society and must be preserved and protected. However my own view of the provisions cannot be characterized in that type of language. I will be content to say that the provisions are one of the ways to limit or curtail freedom of expression, when that freedom is abused.

In the result my answers to the questions are as follows:-

To the first question the answer is in the negative.

To the second question the answer is in the affirmative.

To the third question the answer is in the negative. The Act enhances the restrictive provision of Sec. 25 (ii).

The declarations prayed for are refused.

Mella Thompson

HON. MR. JUSTICE M.E.T. THOMPSON, J.S.C.

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