IN THE SUPREME COURT OF SIERRA LEONE

S.C.1/2008

BETWEEN: THE SIERRA LEONE ASSOCIATION OF JOURNALISTS - PLAINTIFF

AND

THE ATTORNEY-GENERAL AND MINISTER OF JUSTICE - 1ST DEFENDANT

THE MINISTER OF INFORMATION BROADCASTING AND COMMUNICATIONS - 2ND DEFENDANT

CORAM:

HON. MS. JUSTICE U.H. TEJAN-JALLOH	-	CHIEF JUSTICE
HON. MRS. JUSTICE S. BASH-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-JANNEH	-	J.S.C.

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

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

JUDGMENT DELIVERED THE 10TH 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 of Sierra Leone (as amended) by way of an originating notice of motion dated the

25th day of February, 2008 moved this Court for the under-mentioned reliefs on the 3rd day of February 2009 against the Attorney-General and Minister of Justice and the Minister of Information and Broadcasting and Communication. These reliefs are 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 26, 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, 32-36 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 the provisions of *section 25(1) of the Constitution*.

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 25th 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 a Media Practitioner for over twenty years and Editor-in-Chief of Peep Magazine for the past seven years.

He asserted that on the 11th 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 newspaper 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 14th 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 25th 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 at the Pademba Road Prisons on three occasions for supposedly breaching sections *27-36 of the Public Order Act 1965,* that on the 24th 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 8th 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 29th June, 2007 he was again arrested after a publication captioned "Bomshell Gaddaffi 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 4th 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 13th October, 1993 he was editor of "New Breed" newspaper, which published an editorial based on an article found in a Swedish newspaper "Expression" captioned "Redeemer or Villain". That the article focused on 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 18(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 Rules (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 5th ed. p. 246 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.

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 124(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 124(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 intituled 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 intituled in the matter of the appropriate sections of the Constitution. This was not done in this case and no amendment was sought or obtained by counsel for the plaintiff's. In my view it is a serious omission.

9. Both *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) and 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 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 share holders 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, 93*, when Lord Davey in a passage often quoted said –

> *"It is an 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 25 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-a-viz sections 26, 27, 32 and 37 of the Public Order Act 1965. 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 be 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 to 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 the 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 falls within chapter III 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 interprete 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 3 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 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 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

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 1QB 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 10th 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 Sierra Leone in the case of *Steele and Others v. Attorney-General, Tejan Sei and Koroma 1967 – 68 ALR 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 declaration touching and concerns *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. Esezi 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 legal rights have been or are in imminent danger of being invaded in consequence of the law. We dealt with this point at 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 admit 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 claim 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 with 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 .....

HON. MRS. JUSTICE S. BASH-TAQI - J.S.C.

I AGREE .....

HON. MRS. JUSTICE V.A.D. WRIGHT - J.S.C

I AGREE .....

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

I AGREE .....

HON. MR. JUSTICE G. SEMEGA-JANNEH - J.S.C.

TRUE AND CERTIFIED COPY

REGISTRAR SUPREME COURT

REF: CJ/HJ