

SC.CIV.APP.1/2011

IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER OF THE CHIEFTAINCY ACT NO.10 OF 2009

CORAM:

HON. JUSTICE U.H. TEJAN-JALLOH - C.J. PRESIDING

HON. JUSTICE S. BASH-TAQI - JSC

HON. JUSTICE P.O. HAMILTON - JSC

HON. JUSTICE V.A.D. WRIGHT - JSC

HON. JUSTICE M.E.T. THOMPSON - JSC

BETWEEN:

MOHAMED BAI MARU KAMARA - APPELLANT

AND

MOHAMED BAI SAMA KAMARA - 1ST RESPONDENT

THE NATIONAL ELECTORAL
COMMISSION - 2ND RESPONDENT

Pursuant to an appeal dated 28th February, 2011, and Notice of Motion dated 4th March, 2011, J.B. Jenkins-Johnston Esq. moved the Court on the 16th March, 2011 for the following orders:

1. *That an Interim Stay of Execution of the Judgment of the Court of Appeal dated 25th day of January, 2011 and all subsequent proceedings be granted pending the hearing and determination of this application.*
2. *That a Stay of Execution of the Judgment of the Court of appeal dated 25th January, 2011 and all subsequent proceedings be*

granted pending the hearing and determination of the Appeal herein to this Court.

- 3. That An Interim Injunction be granted restraining the 2nd Respondent from conducting fresh Chieftaincy Elections for Lokomassama Chiefdom, Port Loko District pending the hearing and determination of the Application herein.*
- 4. That An Interlocutory Injunction be granted restraining the 2nd Respondent from conducting fresh Chieftaincy elections for Lokomassama Chiefdom, Port Loko District pending the hearing and determination of the appeal herein.*

The Court heard the submissions of J.B. Jenkins Johnston Esq. counsel for the appellant in support of his application and Y.H. Williams Esq. counsel for the 1st respondent in opposition and at the end the Court ordered as follows:

"Having heard counsel on both sides it is hereby ordered that the status quo should be maintained that is the fresh Paramount Chieftaincy Elections for Lokomassama Chiefdom, Port Loko District scheduled to be held on the 19th March, 2011 be postponed until the ruling of this Court on this application is delivered. Notices will be sent".

By a letter dated 16th March, 2011 addressed to the Honourable Chief Justice from the Chief Electoral Commissioner/Chairperson of National Electoral Commission Secretariat (NEC) stating that the election was postponed. The letter states:

"The National Electoral Commission (NEC) was in the process of holding a stakeholders meeting in preparation for the conduct of the Lokomassama Paramount Chieftaincy Election when it received a Notice of Appeal to the Supreme Court of Sierra Leone from Jenkins-Johnston and Co and a motion for injunction to prevent any further election being held pending the hearing and determination of the said appeal – see appendix I.

On receipt of Appendix I, NEC consulted its Legal Retainer for advise on the matter. His advice was that NEC should stay action until he got back. – see appendix II. As a result of his advice the election for the Lokomassama Chieftaincy which had been scheduled for 19th March, was postponed pending the outcome of the appeal.

Unfortunately, NEC had no information that there was going to be a hearing on the matter today the 16th instant. Hence NEC's absence during the sitting which is deeply regretted.

In view of the foregoing, NEC will be grateful for your advice on any further development on the matter".

Attached to this letter from NEC were appendix (1) letter dated 8th March, 2011 from J.B. Jenkins Johnston Esq. appendix (2) letter dated 10th March, 2011 from C.J. Peacock Esq. Solicitor for

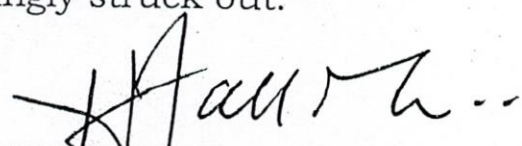
2nd respondent (NEC). While the matter was in Court I made reference to the absence of NEC or their Counsel in this matter.

What baffles this Court is that such vital information was in the domain of at least one of the Counsel appearing in this matter. Counsel was not candid enough to bring it to the notice of the Court.

In the light of the foregoing we do not consider it proper to rule on an issue that had already been postponed, this being the very gravamen of the matter.

Delivering a ruling on this application will therefore be an exercise in futility. We will therefore want to appeal to Counsel when such situation arises in future to make full and frank disclosure to the Court, this Court being the highest Court in the land.

In view of the above, the application for an injunction ought not to have been before us. It is accordingly struck out.


.....
Hon. Justice U.H. Tejan-Jalloh
CHIEF JUSTICE

Barrister-at-Law & Solicitor
of the High Court of Sierra Leone
Mobile: 076-772-386 030-772-386 077-772-386
Tel: 221876

212
2 Campbell Street,
Freetown

Email: christopherpeacock1@yahoo.com

10th March 2011.

The Executive Secretary
National Electoral Commission Secretariat
15 Industrial Estate
Wellington
Freetown

Dear Sir,

**RE: REQUEST FOR ADVICE ON PARAMOUNT CHIEFTAINCY COURT
MATTERS - REPLY TO LETTER DATED 8TH MARCH 2011.**

I hereby acknowledge receipt of your above-mentioned letter together with its attachments, the same which I have thoroughly perused and would advise thus:-

- 1) That National Electoral Commission should not conduct the said elections as ordered by the Court of Appeal Judgment delivered on the 25th day of January 2011 as there is a pending appeal before the Supreme Court for hearing and determination.
- 2) That until the Supreme Court delivers a final Judgment on the matter, National Electoral Commission is bound not to hold the said elections, as it has notice of the said appeal pending before the Supreme Court whatever the outcome of the Supreme Court Judgment on the matter would be the last and final decision on the matter, as the Supreme Court is the highest court in the land, and as such National Electoral Commission would on the final analysis comply with that final Judgment.
- 3) That by reason of the foregoing, National Electoral Commission would not be held to be in contempt of the said Court of Appeal Judgment, if it decides not to hold the said elections having regard to the appeal before the Supreme Court.
- 4) Furthermore, though the appeal before the Supreme Court does not act as a stay of execution of the Court of Appeal Judgment, there is the likelihood that the Supreme Court on its own motion and or by an application by the Appellant for a stay of execution of the Court of Appeal Judgment.
- 5) That my final advice would be, that National Electoral Commission should hold on until the Supreme Court orders a stay of the execution of the Court of Appeal Judgment, rather than rush to conduct the said elections, whilst the Supreme Court either overturn the Court of Appeal Judgment and or grant a stay of the execution of the Court of Appeal Judgment.

In other words, National Electoral Commission should not be hasty, but to wait until I as the legal retainership give further advice on the matter, as time progressed.

Thanking you for your reliance in my professional competence.

Yours faithfully



CC:

- 1) The Chief Electoral Commissioner
- 2) The Electoral Commissioner - West - (NEC) -
- 3) The Electoral Commissioner - East - (NEC)
- 4) The Electoral Commissioner - North - (NEC) ✓
- 5) The Electoral Commissioner - South - (NEC)
- 6) The Chief Legal Affairs Officer

File copy

BARRISTERS, SOLICITORS, COMMISSIONER
FOR OATHS AND NOTARY PUBLIC.

J. B. JENKINS-JOHNSTON ESQ.,
MRS. OCEANNA I.M.F. GEORGE

MISS RHODA M. F. SUFIAN-KARGBO
LEON B. JENKINS-JOHNSTON ESQ.
Fax: 224439
BABATUNDE D. R. PRATT ESQ., (Associate)
Mobile: 033-317-916

Our Ref: EJJ/DW

Your Ref:

Mr. Ansumana V. Kamneh ✓
(District Electoral Officer
Electoral Commission Secretarial
Administrative Area
Port Loko District

Date: 8th March, 2011

Dear Sir,

RE: INVITATION TO STAKEHOLDERS BRIEFING ON LOKOMASAMA
PARAMOUNT CHIEFTAINCY ELECTION

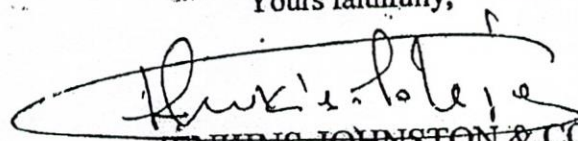
We act for and on behalf of Mr. Bai Maru Kamara P.C. Elect of Lokomasama Portloko District.

We have been shown a letter dated 7th March 2011 inviting our client to a briefing on the court decision on the Lokomasama Paramount Chieftaincy Elections.

We are hereby forwarding to your office Notice of Appeal to the Supreme Court of Sierra Leone (*The highest Court in our country*) and a Motion for Injunction to prevent any further election being held pending the hearing and determination of the said Appeal.

We appreciate and hope you will give due cognizance to same so that you do not act in futility.

Yours faithfully,


JENKINS-JOHNSTON & CO

C.C. Mr. Bai Maru Kamara
P.C. Elect

214
4 PERCIVAL STREET
P.O. BOX 1164
FREETOWN
SIERRA LEONE.

Telephones:

Chambers: 223626 /227283

(Res): 233005

SC. CIV. APP. 1/2011

IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER OF THE CHIEFTAINCY ACT NO. 10 OF 2009

CORAM:

HON. JUSTICE U.H. TEJAN-JALLOH - C.J. PRESIDING
 HON. JUSTICE S. BASH-TAQI - JSC
 HON. JUSTICE P.O. HAMILTON - JSC
 HON. JUSTICE V.A.D. WRIGHT - JSC
 HON. JUSTICE M.E.T. THOMPSON - JSC

BETWEEN:

MOHAMED BAI MARU KAMARA - APPELLANT

And

MOHAMED BAI SAMA KAMARA - 1ST RESPONDENT

And

THE NATIONAL ELECTORAL COMMISSION - 2ND RESPONDENT

COUNSEL:

J.B. Jenkins-Johnston Esq. for the Appellant
 Yada H. Williams Esq. for the 1st Respondent

RULING DELIVERED ON THE 29TH DAY OF JUNE 2011
U.H. TEJAN JALLOH - CHIEF JUSTICE

This is an application by the appellant for the orders contained in the Notice of Motion dated 11th April 2011. On the 16th of March this court heard a similar application for a stay of execution of the judgment dated the 25th January 2011 and all subsequent proceeding: and for an interlocutory injunction restraining the 2nd Respondent from conducting fresh chieftaincy election for the Loko Masama Chieftdom, Port Loko District pending the hearing and determination of firstly the application and secondly, of the appeal dated 28th February 2011 S.C. Civ.App.1/2011 entitled Mohamed Bai Maru Kamara Appellant and Mohamed Bai Sama Kamara and the National Electoral Commission 1st and 2nd Respondent respectively. At the end of the arguments and submissions the court took few hours adjournment to consider its ruling.

During the period of adjournment information came to light that the election for which the said orders were sought had been postponed. The court then came to the conclusion that it would not be proper in the circumstance "to rule on the issue that had already been postponed; this being the gravamen of the matter." The application was accordingly struck out. The appellant has now come to this court again with a similar application supported by the affidavit of the appellant with exhibits attached for the same orders prayed for earlier on.

STAY OF EXECUTION

Mr. Jenkins Johnston during his submission conceded that the Order for a stay of execution is not properly before us, pursuant to rule 60 (2) of the Supreme Court Rules 1982.

In the light of such concession the application for a Stay of Execution of the Judgment and subsequent proceedings is struck out. The Court is now left with the orders for interim injunction.

INTERIM INJUNCTION

The application here is for an interlocutory injunction pending (i) the determination of this application (ii) of the appeal dated the 30th February 2011. An interlocutory injunction is an equitable relief which is normally granted at the discretion of the court. Generally it is granted where an irreparable injury would otherwise be caused to the applicant. Such irreparable injury must be substantial and which could never be "adequately remedied or atoned for by damages." See Halsbury Laws of England 2nd Ed. Vol. 18.

Another principle of recent origin on which the court can exercise its unfettered discretion to grant the order for an injunction was laid down in the American Cyanamid v. Ethicon Ltd. 1975 A.C. 396 that the court must be satisfied that there is a serious issue to be tried and also consider the balance of convenience as to the nature of injury on one hand, which the defendant will suffer if the injunction is granted and it turns out that the defendant was right and the injury which the plaintiff will suffer on the other hand if the injunction is refused and it turns out that he was right. I shall adopt these two principles in this application.

The appellant herein is applying to this court to maintain the status quo with respect to the Chieftaincy election at Loko Masama Chiefdom, Port Loko

District i.e. the election scheduled for the 30th June 2011 must not be held until the determination of his appeal in the Supreme Court.

I have carefully considered the submission by Mr. Jenkins Johnston and Mr. Yada Williams Counsel for the Appellant and 1st Respondent respectively. I have also perused the affidavit in support and in opposition to the application. It is clear to me that the affidavit in support does not disclose enough material facts to convince me to exercise my discretion in favour of the appellant. In my judgment this is a case in which there is much greater risk of injustice if the injunction is granted and it turns out that the appellant was wrong. Indeed the affidavit in opposition will suggest and in fact suggests that greater risk will manifest itself if the injunction is granted.

In the result I am satisfied that an injunction is not necessary to protect the appellant's interest until the appeal is heard and determined.

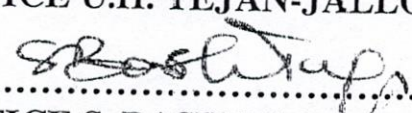
The application must therefore be dismissed.

No order as to costs.




HON. JUSTICE U.H. TEJAN-JALLOH - C.J. PRESIDING

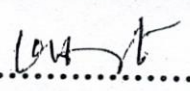
I Agree


HON. JUSTICE S. BASH-TAQI - JSC

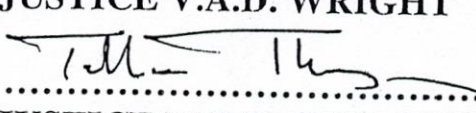
I Agree


HON. JUSTICE P.O. HAMILTON - JSC

I agree


HON. JUSTICE V.A.D. WRIGHT - JSC

I agree


HON. JUSTICE M.E.T. THOMPSON - JSC

IN THE SUPREME COURT OF SIERRA LEONE
WEDNESDAY 16TH MARCH, 2011

CORAM:

HON. JUSTICE U.H. TEJAN-JALLOH - C.J. PRESIDING
HON. JUSTICE S. BASH-TAQI - JSC
HON. JUSTICE P.O. HAMILTON - JSC
HON. JUSTICE V.A.D. WRIGHT - JSC
HON. JUSTICE M.E.T. THOMPSON - JSC

MOHAMED BAI SASA KAMARA

AND

MOHAMED BAI MARU KAMARA

AND

THE NATIONAL ELECTORAL COMMISSION

J.B. JENKINS-JOHNSTON ESQ. - APPELLANT/APPLICANT
LEON JENKINS-JOHNSTON ESQ.

YADA WILLIAMS ESQ. - 1ST RESPONDENT
OSMAN JALLOH ESQ.

NO APPREANCE - 2ND RESPONDENT

J.B. Jenkins-Johnston - in addition to the motion filed this matter has track record in the sense that we commenced in the High Court and judgment went against the appellant.

Court of Appeal – and judgment was for 1st Respondent. We are now at the final stage in the Highest Court of the land. As I understand the term our court gives right to appellant to come to Supreme Court as of right.

Sub – as soon as an appeal is filed the Supreme Court is seized of matter has full jurisdiction of matter.

This application has been made necessary by the fact that judgment has been delivered 2011 it was made public that elections would be held on the 19th day of March, 2011.

At the time that we became aware of that particular information we had already filed appeal 28th February, 2011.

While matter is pending. We are now being told that something should happen relying on the decision of Court within 4 months
Exh. F.

2nd Respondent said 19th March, 2011. While there matter pending before this Court nothing should be done that will amount to an infringement of this Court or amount to a usurpation of the powers of this Court.

Furthermore, if this elections are proceeded with on the 19th March before Court hears appeal it will seem to me that it is being suggested that the decision of the High Court if the land matters not - intolerable.

Sub – there is a very good reason why the Constitution of Sierra Leone has created a hierarchy of Courts wherein cases and actions proceed from High Court to Court of Appeal and Supreme Court. Section 122 of 1991 states very clearly that Supreme Court shall be final Court of appeal.

Sub – we must have respect for our Court and provisions not flouted or slighted.

It is but right just and sensible for what is to flow from the decision of appeal.

Also to be moved that in this same matter, the High Court had granted an injunction paragraph 5 of affidavit – blocking recognition of elected P.C. Exh. F – Court of Appeal another injunction for the purpose of ensuring that Appellant is recognized – Civ-16-2011.

Justice Thompson –

Yada Williams –

Sub – that order prayed for by Appellant – they have to reach certain bench marks before orders are granted.

1. For stay – must have *prima facie* good ground.
2. Evidence that should constitute special circumstances.

They have filed to meet criteria.

Exh. H. notice of appeal. Paragraph 3 of Exh. H.

Even by a cursory glance – no law. Only facts. The most serious ground of appeal is misconceived.

Sub – they have failed to show that they have good grounds of appeal.

2nd ambit of that ground re misdirection an appeal – Judges not guilty of misdirection.

This goes further to compound their difficulties and does not help them.

Special Circumstance

No evidence to show special circumstances

Paragraph I-II of affidavit of applicant narrates the history of this case.

The only other paragraph's 12, 13 and 14 – that applicant might this Court to consider as special circumstance.

“Appeal would be rendered nugatory.

Sub – wrong preposition. That elections to be held i.e. contest the election.

Sub – that evidence in High Court and Court of Appeal sufficient to grant us both injunctions.

Sub – that if elections were further delayed atrocities might continue.

There is evidence that there is

We did not go to the High Court and Court of Appeal to prevent NEC from conducting elections.

Those applications in Exh. C and F were meant to prevent **Crowning Ceremony.**

Counsel has canvassed argument that if elections were to proceed and they lose this Court were to subsequently uphold their appeal Lokomasama will end up with and chiefs.

Sub – if the scenario presented by Counsel was to happen the Supreme Court.

Sub – the criteria for an injunction has not been meet by the other side... the claim by the applicant should not be frivolous.

Sub – Applicant is seeking to postpone elections for the 19th March, 2011.

Both have expended considerable amount

Sub – looking at the appeal. I will adopt submissions in relation for 1st ground i.e. stay of execution i.e. appeal is frivolous – no question to be tried.

Sub – they have not present any evidence before this Court to show their financial means.

Sub – if an injunction is granted the applicant will have to give an injunction.

The loss it would cause to 1st Respondent and 2nd Respondent

2nd Respondent – were antagonists in lower Courts now we are together.

Jenkins- Johnston – page 322 P. abg Court has to determine the matters before it, with regards stay of execution.

Seeking this Court in granting an injunction to hold this Court in status quo until the matter is determined.

Yada – reference to Exh. E. after the 1st Ballot. Kidnapping started.

Jenkins-Johnston – there shall be fresh ballots in accordance with
Chieftaincy Act.

Mr. – P. chieftaincy is null and void

Court – having heard counsel on both sides it is hereby ordered that
the status quo should be maintained i.e. that the fresh Paramount
Chieftaincy Election for Lokomasama Chiefdom, Port Loko District
scheduled to be held on the 19th March, 2011, be postponed until
the ruling of this Court on this application is delivered.

Notices will be sent.

.....
HON. JUSTICE U.H. TEJAN-JALLOH - C.J. PRESIDING

.....
HON. JUSTICE S. BASH-TAQI – JSC

.....
HON. JUSTICE P.O. HAMILTON – JSC

.....
HON. JUSTICE V.A.D. WRIGHT – JSC

.....
HON. JUSTICE M.E.T. THOMPSON – JSC

SC CIV APP NO.3/2010

IN THE SUPREME COURT OF SIERRA LEONE

NOTICE OF CIVIL APPEAL

BETWEEN:

| | | |
|------------------------|---|-----------------|
| ALHASSAN PAUL KARGBO | - | AN INTERESTED |
| | | PARTY APPELLANT |
| AND | | |
| SANNOH VICTOR MUSTAPHA | - | APPELLANT |
| AND | | |
| BRIMA JALLOH | - | RESPONDENT |

CORAM:

| | | |
|------------------------------|---|-----|
| HON. JUSTICE P.O. HAMILTON | - | JSC |
| HON. JUSTICE V.A.D. WRIGHT | - | JSC |
| HON. JUSTICE M.E.T. THOMPSON | - | JSC |

A.F. Serry-Kamal Esq. and S.M. Sesay for Appellant/Applicant
D.G. Thompson Esq. for Respondent

Ruling Delivered on the 6th Day of October, 2011

HON. JUSTICE P.O. HAMILTON - JSC

This is an application on behalf of the Applicant for an Order that this Honourable Court do grant the Appellant leave to file the Appellant's case out of time and an enlargement of time as prescribed by *Rule 41(b) and (c)* of the *Supreme Court Rules, 1982 (Statutory Instruments No.1 of 1992)*.

This application is supported by the affidavit of Abdul Franklyn Serry-Kamal sworn to on 7th February 2011 to which is attached *Exh. ASFK1* a notice that the records of Appeal was ready for collection, *Exh. ASFK2* a notice that the Appeal is fixed for mentioning, *Exh. ASFK3* a Statement of the Appellant's case.

There was filed a further affidavit in support sworn to on 3rd March, 2011 to which was attached *Exhs. ASFK4* a certificate of the Order of the Court of Appeal which I shall quote in full: "The notice dated the 3rd day of November, 2009 coming up for hearing on the 9th day of February, 2010 before the Hon. Justice N.C. Browne-Marke Justice of the Appeal (Presiding), the Hon. Justice E.E. Roberts Justice of the Appeal, the Hon. Justice A. Showers Justice of Appeal, in the presence of S.M. Sesay Esq. Counsel for the Interested Party/Applicant and D.G. Thompson Esq. of Counsel for the Appellant/Respondent.

I HEREBY CERTIFY THAT the following Order was made –

"Appellant to file Appeal in the Supreme Court in view of Section 123 of the 1991 Constitution and so as not to prejudice his interest. Ruling Reserved". (Emphasis mine)

Exh. ASFK5 is a notice of appeal dated 22nd February, 2011.

There was also filed a supplemental affidavit sworn to on 12th April, 2011 by Abdul Franklyn Serry-Kamal on behalf of the Applicant/Interested Party to which was attached the following Exhibits – *Exh. ASFK6, ASFK7, ASFK8, ASFK9, ASFK10¹⁻⁷⁰* and *ASFK11* which are the Writ of Summons, the

judgment delivered on 25th January, 2005, a Conveyance from Sannoh Vandy Mustapha to Alhassan Paul Kargbo, a Judgment of the Court of Appeal delivered on 7th July, 2009, special leave to appeal to the Supreme Court filed in the Court of Appeal and an Order allowing an appeal pursuant to *Section 123 of the Constitution 1991*.

There is filed a further supplemental affidavit sworn to by Abdul Franklyn Serry-Kamal on 9th May 2011. The averment in this affidavit I will quote in full:

1. *"I am a Senior Partner in the Law Firm Serry Kamal and Co. Solicitors for the Respondent and the Interested Party and I am authorized to make this affidavit on their behalf.*
2. *The Interested Party filed a motion dated 10th August, 2009 which is Exh. APL6¹⁻¹⁰ to the affidavit of Alhassan Paul Kargbo sworn to on the 3rd day of November, 2009 the same is also part of Exh. ASFK10¹⁻⁷⁰ in my affidavit sworn to on the 12th day of April, 2011.*
3. *The aforesaid application was heard on the 20th October, 2009 the Court gave a ruling dismissing our client's application with costs. A true copy of a certified true copy of the Order of the Court is now produced and shown to me marked "ASFK12". As a result of that order another application was filed in the same Court out of caution for special leave to appeal to the Supreme Court against the Court's decision. The said Court on the 9th February, 2010 ordered the Applicant to file an appeal to the Supreme Court in view of Section*

123 of the 1991 Constitution so as not to prejudice the applicants interests. The aforesaid order is Exh. ASFK11 to my affidavit sworn to on the 12th day of April 2011.

4. In view of the provisions of Section 123(1)(a) of the 1991 the above application for special leave was wholly unnecessary as an appeal in any civil cause or matter to the Supreme Court from an order of the Court of Appeal is as of right".
5. The appeal was duly filed in the Supreme Court but owing to pressure of work and some lapses in my chambers we failed to file the case for the appellant on time. In paragraphs 3 and 4 of my affidavit in support of my application dated 7th February, 2011, I have exhibited the case for the appellant that we intend to file which it is submitted is meritorious. The Court of Appeal failed to consider the powers which Rules 31 and 32 of the Court of Appeal Rules 1985 gives it to act as if it were the Court of first instance. Order 18 Rule 6(2)(b) of the High Court Rules, 2007 any stage of the proceedings empowers the High Court either of its own motion or on application to order any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the case or matter may be effectually and completely determined and adjudicated upon to be joined in the said proceedings".

Paragraph 2 of this said affidavit makes interesting reading by stating thus: "The Interested Party....." Does it mean that the applicant is not a party but an interested party? This will be dealt with later on in this ruling.

There is filed an affidavit in opposition by David Gustavus Thompson sworn to on 17th February, 2011 and paragraph 4 of the said affidavit in opposition states:

4: *"That I have seen the supporting affidavit sworn to by Abdul Franklyn Serry-Kamal on the 7th day of February, 2011. That paragraph four (4) of the said Affidavit state that the Appellant's case discloses very serious matters of Law, with respect Alhassan Paul Kargbo is an interested party who is applying to be made a party in the matter as such could not be properly regarded as an Appellant as he has never been a party to the action both in the High Court and in the Court of Appeal of Sierra Leone and as such could not have a case that could disclose very serious matters and there is no provision in the Court of Appeal Rules 1985 (Public Notice No.29 of 1985) that allows an interested party who is not a party to the action to be made a party at the Court of Appeal after Judgment has been given".*

There is also filed an Affidavit in reply to the supplemental affidavit of Abdul Franklyn Serry-Kamal sworn to on 9th May, 2011 by David Gustavus Thompson sworn to on 19th May, 2011 in which paragraphs 2, 3 and 4 states:

2: *"That I have seen the supplemental Affidavit sworn to by Abdul Franklyn Serry-Kamal and filed herein paragraph two (2) of the said affidavit states "the interested party filed a motion dated 10th August. 2009 which is exhibit APL6¹⁻¹⁰ to the affidavit of Alhassan paul Kargbo sworn on the 3rd day of November, 2009 Exhibit ASFK10¹⁻⁷⁰ in my Affidavit sworn to on the 12th day of April, 2011".*

3: "Paragraph three (3) states "the aforesaid application was heard in the Court of Appeal and on the 20th October, 2009 the Court gave ruling dismissing our client's application with cost this is not correct the Order of the Court of Appeal dated 20th October, 2009 dismissing the application with costs have no bearing to the motion paper dated 10th August, 2009".

4: "The said Order dated 20th October 2009 is a direct consequence".

At this stage I need refer to *Exh. ASFK4* attached to the further affidavit sworn to on 3rd March, 2001 where in the attached affidavit was "Ruling Reserved" and now ask what ruling is reserved? The answer is clearly in paragraph 9 and 10 of the supplemental affidavit of Abdul Franklyn Serry-Kamal sworn to on 12th April, 2011 and it reads:

Paragraph 9: "On the 9th February, 2010 the Court of Appeal made an order allowing our client the right to appeal in view of Section 123 of our Constitution 1991. A copy of the said order is now produced and shown to me marked Exhibit ASFK 11".

Paragraph 10 : "After the previous hearing of this Honourable Court I went to see the Presiding Judge Hon. Mr. Justice N.C. Browne-marke to explain the court's Order to me. According to his explanation the Court deferred a pronouncement of a ruling after the Supreme Court's ruling in our appeal on our appeal to it. As at yet the Court of Appeal has not given a final ruling on our application".
(Emphasis mine)

In my opinion from the above quoted averments in paragraphs 8 and 9 the ruling is still reserved. Therefore to what appeal is this present application pursuant to Rule 41(b) and (c) relates?

This application is made pursuant to *Rule 41(b) and (c) of the Supreme Court Rules 1982 (Public Notice No.1 of 1982)* it provides:

Rule 41(b): "The appellant shall, within one month of being notified that the record is ready in accordance with Rule 24, file with the Registrar of the Supreme Court his case based on the grounds of appeal as set out in the notice of appeal".

Rule 41(c): "The respondent shall within one month of the receipt of the appellant's case file with the Registrar of the Supreme Court his case provided that the Supreme Court may enlarge the time by Sub-rule (b) and (c) as circumstances may require".

It is better to point out here that for an application for enlargement of time to succeed there must be very good and substantial reasons for the failure of the appellant "not an interested party/appellant" to file his case within the stipulated time. (*Emphasis mine*).

In this application the Appellant is stated "An Interested Party/Appellant" and the notice of motion is signed as "*Solicitor for the Appellant*". However, the notice of appeal (*Exh. ASFK5*) is signed "Serry-Kamal & Co., Solicitor for the Interested Party/Appellant". Can an "Interested Party" be an Appellant? I am bold to answer in the negative as an interested party is not

a party and an interested party cannot be an Appellant.

In *Exh. ASFK5* it is therein stated:

"4 The Grounds of Appeal are:-

(1) The Court of Appeal wrongly exercise its discretion in refusing the Interested Party/Appellant's application to be joined as an appellant in the appeal".

(2) "The Court of Appeal failed to exercise its discretion in refusing the Interested Party/Appellant's appeal to be joined as an appellant".

There is no provision within our rules for an "Interested Party/Appellant". This is in contrast to the situation in Nigeria wherein it is provided in the *Constitution of the Federal Republic of Nigeria in Section 243* in part:

"Any right of appeal to the Court of Appeal from the decision of the Federal High Court of a High Court Conferred by this Constitution shall be (a) exercised in the case of Civil proceedings at the instance of a party thereto or with the leave of the Federal High Court of the Court of Appeal at the instance of any other person having an interest in the matter....." (Emphasis mine)

Even the above quoted Section which is contained in the Nigerian Constitution which is the Supreme Law has certain limitations and as Niki Tobi JSC said in the case of *Enyibros Processing Co. Ltd. V. Nigerian Deposit Insurance Corporation* (2007) 3 S.C.N.J. 250 at 275:

*"By this section, a party to Civil Proceedings need not seek leave to appeal, if he appeals within time. A person having an interest in the matter must seek leave of the Federal High Court, the High Court of a State or the Court of Appeal to do so. The test to determine a person interested is whether the person could have been joined as a party to the suit at its initial stage and no more. See *Ojuku v. Military Government of Lagos State* (1985) N.W.L.R. (Pt.10) 806 (Emphasis mine)*

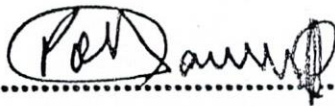
Considering the situation as it is even in Nigeria where there is a Constitutional provision for "a person having an interest" or "an interested party" to be made a party even on appeal to the Court of Appeal it is even not as of right but with leave of the Federal High Court, a State's High Court or the Court of Appeal and as Niki Tobi JSC aptly puts it "at the initial stage of the proceedings".

There is no such provision within our *Constitution of 1991* (Act No.6 of 1991) nor even in our various Rules of Court.

In my humble opinion therefore "An Interested Party/Appellant" is not a party nor an Appellant to an action. An application made pursuant to *Rule 41(b) and (c) of the Supreme Court Rules 1982* (Public Notice No.1 of 1982) is at the discretion of the Court. Therefore I hold that "An Interested Party/Appellant" is not a party nor an Appellant therefore the use of *Rule 41(b) and (c) of the Supreme Court Rules 1982* in this application is to create a lee way by which the "Interested Party/Appellant" can become a

Party/Appellant on appeal to the Supreme Court. This in my humble opinion is totally unacceptable.

In conclusion therefore I hold that there is no merit in this application and would accordingly dismiss it with cost assessed as at Le750,000/00.



HON. JUSTICE P.O. HAMILTON - JSC

I AGREE: 

HON. JUSTICE V.A.D. WRIGHT - JSC

I AGREE: 

HON. JUSTICE M.E. TOLLA THOMAPSON- JSC

