

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 Chiefdom, 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.

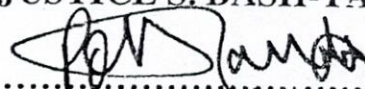
In the result I am satisfied that an injunction is not necessary to protect the appellant's interest until the appeal is heard and determined.

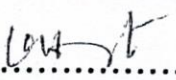
The application must therefore be dismissed.

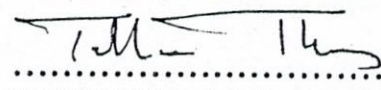
No order as to costs.


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

I Agree 
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HON. JUSTICE S. BASH-TAQI - JSC

I Agree 
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HON. JUSTICE P.O. HAMILTON - JSC

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

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