

**IN THE SUPREME COURT OF SIERRA**  
**S.C. MISC. APP. 2/2011**

IN THE MATTER OF GOVERNMENT NOTICE NO. 166 DATED 19<sup>TH</sup> MAY 2009 AND ISSUED UNDER THE HAND OF H.E. THE PRESIDENT OF SIERRA LEONE, PURPORTEDLY ACTING IN ACCORDANCE WITH THE ADVICE OF THE CABINET AND IN EXERCISE OF POWERS CONFERRED UPON HIM BY SUBSECTION (1) OF SECTION 25 OF THE PROVINCES ACT. CAP. 60 OF THE LAWS OF SIERRA LEONE, 1960.

IN THE MATTER OF THE HONOURABLE MR. JUSTICE ABDULAI SHEIK FOFANAH COMMISSION OF INQUIRY AND TWO ASSESSORS APPOINTED BY H.E. THE PRESIDENT OF SIERRA LEONE BY VIRTUE OF THE FOREGOING GOVERNMENT NOTICE NO. 166 DATED 19<sup>TH</sup> MAY 2009, AS AFORESAID, TO INQUIRE INTO THE CONDUCT OF PARAMOUNT CHIEF DR. ALPHA MADSERAY SHERIFF LL OF BIRIWA CHIEFDOM, BOMBALI DISTRICT, IN THE NORTHERN PROVINCE OF THE REPUBLIC OF SIERRA LEONE AND "TO DETERMINE WHETHER HIS CONDUCT HAS BEEN OF A KIND SUBVERSIVE OF THE INTERESTS OF GOOD GOVERNMENT".

IN THE MATTER OF THE PROVISIONS UNDER SECTIONS 32(1), 33, 72(3) AND (4) AND (5), 122, 124, 127, 147, 148, 149 AND 171(15) OF THE CONSTITUTION OF SIERRA LEONE, ACT NO. 6 OF 1991; SECTIONS 2(1) AND 6 OF THE NATIONAL ELECTORAL COMMISSION ACT 2002; SECTIONS 2(3), 13(1), AND (2), 20, 21, AND 48 OF THE INTERPRETATION ACT, NO. 8 OF 1971; SECTION 20 OF THE LOCAL TAX ACT, NO. 15 OF 1975; AND SECTIONS 4, 19, 20, 21, 28, 30 AND 32 OF THE CHIEFTAINCY ACT, NO. 10 OF 2009; AMONG OTHERS.

BETWEEN

**P.C. DR. ALPHA MANSERAY SHERIFF II**  
 Bririwa Chiefdom. Bombali District.

- PLAINTIFF

AND

1. **ATTORNEY-GENERAL AND MINISTER OF JUSTICE** - 1<sup>ST</sup> DEFENDANT  
 Guma Building, Lamina Sankoh Street,  
 Freetown.
2. **MINISTER OF LOCAL GOVERNMENT AND  
 COMMUNITY DEVELOPMENT** - 2<sup>ND</sup> DEFENDANT  
 Youyi Building, Brookfields, Freetown.
3. **NATIONAL ELECTORAL COMMISSION** - 3<sup>RD</sup> DEFENDANT  
 15 Industrial Estate, Wellington, Freetown.

CORAM

HON. MS. JUSTICE UMU TEJAN-JALLOH	-	CHIEF JUSTICE
HON. MRS. JUSTICE S. BASH-TAQI	-	JSC
HON. MR. JUSTICE P.O. HAMILTON	-	JSC
HON. MRS. JUSTICE V.A.D. WRIGHT	-	JSC
HON. MR. JUSTICE TOLLA THOMPSON	-	JSC

COUNSELS

DR. BU-BUAKEI JABBIE FOR THE PLAINTIFF/APPLICANT  
 KEKURA BANGURA ESQ. FOR THE 1<sup>ST</sup> AND 2<sup>ND</sup> DEFENDANTS/RESPONDENTS  
 C.J. PEACOCK ESQ. FOR THE 3<sup>RD</sup> DEFENDANT/RESPONDENT

RULING DELIVERED ON THE 15<sup>th</sup> DAY OF JUNE 2011

**M.E. TOLLA THOMPSON, JSC.** - This is an interlocutory notice of motion dated 18<sup>th</sup> March 2011 for the following orders:-



1. **AN ORDER OF MANDAMUS** severally and/or jointly commanding the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein to make available and deliver to the Plaintiff herein, with immediate effect, and in any case within and not later than fourteen (14) days following the date of the granting of this order of mandamus by the Honourable Supreme Court, a certified true copy of each of the following documents, as may be respectively applicable:
  - (a) *the Report, if any, of the Provincial Secretary (North) on the administrative investigation in respect of the Plaintiff herein as Paramount Chief of Biriwa Chiefdom, which was held in or around June 2008 and submitted to H.E. the President as the prerequisite process before setting up the Justice Fofanah Commission of Inquiry; and*
  - (b) *the Report, if any, of the Justice Fofanah Commission of Inquiry as submitted or presented to H.E. the President; and*
  - (c) *the White Paper, if any, issued by Government on the Report of the Justice Fofanah Commission of Inquiry; and*
  - (d) *the Statement, if any, issued by H.E. the President to the effect that the Report of the Justice Fofanah Commission of Inquiry was/is not to be published, together with the reasons given, if any, as to why the Report was/is not to be published.*
  
2. **AN ORDER OF MANDAMUS** severally and/or jointly commanding the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein to make available and deliver to the Registrar of the Supreme Court for the use of their Lordships in the proceedings in this action, matter or suit, with immediate effect, and in any case within and not later than fourteen (14) days following the date of the granting of this order of mandamus by the Honourable Supreme Court, a certified true copy of each of the following documents, as may be respectively applicable:-
  - (a) *the Report, if any, of the Provincial Secretary (North) on the administrative investigation in respect of the Plaintiff herein as Paramount Chief of Biriwa Chiefdom, which was held in or around June 2008 and submitted to H.E. the President as the prerequisite process before setting up the Justice Fofanah Commission of Inquiry; and*

- (b) *the Report, if any, of the Justice Fofanah Commission of Inquiry as submitted or presented to H.E. the President; and*
- (c) *the White Paper, if any, issued by Government on the Report of the Justice Fofanah Commission of Inquiry; and*
- (d) *the Statement, if any, issued by H.E. the President to the effect that the Report of the Justice Fofanah Commission of Inquiry was/is not to be published, together with the reasons given, if any, as to why the Report was/is not to be published.*

3. **AN INTERIM INJUNCTION** severally and jointly restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein, their agents, servants and privies, as the case may be, with instant or immediate effect, and in any case **within and not later than twenty-four (24) hours following the date of the service upon them (whether severally or jointly) of this order of interim injunction** herein granted by the Honourable Supreme Court, from pursuing or further pursuing the execution or implementation of the removal or termination of the service of the Plaintiff/Applicant herein as Paramount Chief of Biriwa Chiefdom, Bombali District, in the Northern Province and also from seeking or further seeking to "retrieve the Staff of Office" from the family of the Plaintiff/Applicant herein or for himself as Paramount Chief of Biriwa Chiefdom, as the case may be, **pending and until after** final determination by this Honourable Supreme Court of the cause, matter, action or suit issued or instituted by the Originating Notice of Motion herein.

4. **AN INTERIM INJUNCTION** severally and jointly restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants hereir, their agents, servants and privies, as the case may be, with immediate effect, and in any case **within and not later than forty-eight (48) hours following the date of the granting of this order of interim injunction** by the Honourable Supreme Court, from further pursuing any and all of their planning and preparations and activities towards effecting or effecting or exccuting the Declaration of Rights on 3<sup>rd</sup> May 2011 and of the subsequent voting or polling on 3<sup>rd</sup> June 2011 (or at all otherwise, in either case) in respect of the



election of a new Paramount Chief of Biriwa Chiefdom, Bombali District, in the Northern Province, as otherwise planned or projected by them, **pending and until after** final determination by this Honourable Supreme Court of the cause, matter, action or suit issued or instituted by the Originating Notice of Motion herein.

5. **AN ORDER OF DAMAGES IN COMPENSATION** to the effect that the Plaintiff/Applicant herein compensate the Defendants (whether severally or jointly) in damages for any loss arising from the grant of the foregoing interim injunctions (whether severally or jointly) in the event that final determination of the substantive cause, matter, action or suit herein, at any rate in so far as the in respect of the subject-matter(s) of the said interim injunctions is(are) concerned, shall have been decided or determined (whether severally or jointly) in favour of the said Defendants.
6. **ANY OTHER RELIEF**, order or directive that this Honourable Supreme Court, whether **suo motu** (on its own motion) or upon application by the Plaintiff/Applicant herein, may consider fit, proper and just in all the circumstances.
7. **COSTS** of and incidental to this application to be costs in the cause.

The Motion is supported by the Affidavit of Dr. Bu-Bukei Jabbie sworn to on the 18<sup>th</sup> March 2011 and Chernor Mawiatu Jalloh sworn to on the 16<sup>th</sup> May 2011 and the exhibits thereon.

Dr. Bu-Buakie Jabbie Counsel for the Plaintiff/Applicant at the hearing of the application said that an order for mandamus can be made at the preliminary stage, and was applying for two sets of injunction and an order in the form of an undertaking in damages. He further said that he was seeking an interim injunction because the election of the Paramount Chief of

Biriwa Chiefdom was planned to be held, on the 3<sup>rd</sup> June 2011 and also that the declaration of rights had already taken place on the 27<sup>th</sup> May 2011.

Kekura Bangura Esq. Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents submitted that no authority has been shown under which the court can grant the orders prayed for. He referred to Section 125 of the Constitution stating that there is nothing involving the supervisory jurisdiction of this court. Sections 18 and 19 of the State Proceedings Act No. 18 of 2003 which was an up shoot of the Constitution. He stated that he relied entirely on the Affidavit of Lahai Momoh Farmah sworn to on the 25<sup>th</sup> day of March 2011.

He stated that Counsel for the Plaintiff/Applicant should have invoked the supervisory jurisdiction under Section 125 of the Constitution Act No. 6 of 1991. He said that under Section 149(1) of the Constitution there is no legal duty to supply or to make available or deliver to the Plaintiff/Applicant the outcome of the Commission but there is only an obligation to publish the Report and White Paper.

C.J. Peacock Esq. for the 3<sup>rd</sup> Defendant/Respondent opposed the application because of failure by the Plaintiff/Applicant to give an undertaking, as to damages. See Order 35 Rule 9 of the High Court Rules. He relied entirely on his Affidavit especially paragraph 3, 4 and 5. He further submitted that the undertaking in damages is crucial to the application, because the 3<sup>rd</sup> Defendant/Respondent had expended millions of Leones in preparation for the elections.

Dr. Bu-Buakie Jabbie Counsel for Plaintiff/Applicant in answer said that Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent misconceived the basis on which this action is based. He said that the action brought was under the original jurisdiction of the Supreme Court, and not under the supervisory jurisdiction



of that Court. He further said that Section 125 and 134 of the Constitutions are dealing only with the supervisory jurisdiction of the Supreme Court and the High Court and the order sought are excluded from the supervisory jurisdiction of the Supreme Court.

He conceded that the order sought in relief V does not expressly indicate an undertaking in damages but says that the essence of an undertaking is clearly indicated in the content of relief 5 sought at this stage he sought to file an express undertaking in damages.

A brief background to this application tells us that pursuant to the Provinces Act Chapter 60 of the Laws of Sierra Leone the Government of Sierra Leone by Public Notice No. 166 set up the Fofanah Commission of Inquiry to enquire into the conduct of the applicant then Paramount Chief Alpha Madeseray Sheriff 11 of Biriwa Chiefdom, Kamabai in the Bombali District.

On the completion of the inquiry, and ON OR about the 10<sup>th</sup> November 2010 according to the Applicant said that there was a Radio announcement that he the Applicant has been removed from the post of Paramount Chief. This was followed by a letter on the 17<sup>th</sup> November 2010 from the Provincial Secretary, that his services as Paramount Chief has been terminated and must surrender his "staff of office". As a result of the foregoing the Applicant on the 14/3/11 took out an Originating Notice of Motion for the relief described in Exh "BJ9".<sup>12</sup> In respect of the relief prayed for the Applicant has moved the court for interlocutory orders pending the trial of the Originating Notice of Motion.

I shall first deal with orders for Mandamus prayed for by the applicant in the interlocutory Notice of Motion. Mandamus, is one of the four

prerogative writs at common law. The others are Habeas Corpus, Prohibition and Certiorari. These writs were issued from the High Court of Justice in England in its supervisory jurisdiction. Apart from Habeas Corpus the nomenclature was changed from writs to orders in 1938. See the Administration of Justice Act 1938. Section 11 of the Court Act Chapter 7 of the Laws of Sierra Leone 1960 extended the jurisdiction, power, and authority to our own Supreme Court, now High Court to exercise the said writ and orders. In 1963 the procedure and practice with respect to these orders, was adopted by the High Court here. See the Administration of Justice, (Miscellaneous Provision) Act 1963.

Halsbury Laws of England 3<sup>rd</sup> edition volume 11 tells us how the High Court in England exercised this jurisdiction. Its states:-

“The principal means by which the supervisory jurisdiction is exercised are the prerogative writ of Habeas Corpus and the orders of Certiorari Mandamus and Prohibition.”

By the Administration of Justice (Miscellaneous Provision) Act 1963, the procedure and practice in England was adopted by the High Court here.

The Courts Act 1965 repealed the Court Act Chapter 7 of the Laws of Sierra Leone. Sec. 18 states:-

“The Supreme Court shall exercise unlimited original and supervisory jurisdiction in all causes and matters in the same manner and with the same power and authority as immediately before the commencement of this Act.”

Succinctly put it means the exercise of the supervisory jurisdiction will continue just like before the passing of the 1965, Court Act. Let me



however hasten to say that Supreme Court herein referred to is not the Supreme Court as it is composed today.

By Section 125 of the 1991 Constitution Act No. 6 of 1991 the Supreme Court was empowered, to exercise in its supervisory jurisdiction through the orders of Mandamus, Habeas Corpus, Certiorari and Prohibition. This jurisdiction was exercise "over all other courts and adjudicating authorities.....as may consider appropriate for the purpose of enforcing or securing the enforcement of it supervisory powers."

Having given this short origin of the prerogative orders, I shall now concern myself with the order of Mandamus prayed for in this interlocutory application. In Barons Dictionary of Legal Terms – Mandamus is defined as "compelling the performance of an Act that the law recognizes as an absolute and public duty as distinct from an act which may be at the discretion of an official."

It is a well established principle, that an order for Mandamus will not be made, unless the court is satisfied that there was a distinct demand and refusal to do an act, and it will only be where no alternative remedy is available to enforce the legal right see *R. v Bristol and Exeter Railway* 1843 4 QBD 162. Also the order will not be made if the court is not satisfied, that it will produce the intended result.

It is pertinent to emphasize here, that in granting the order during an interlocutory proceeding, it must appear to the court just and convenient. See Section 45 of the Judicature Act 1925.

Dr. Jabbie in his submission said Sec. 125 and 134 of the Constitution deal only with supervisory jurisdiction of the Supreme Court and the High Court, and it is only under those sections that an order for Mandamus can be

made. I agree with Dr. Jabbie, I will go further to add that Sec. 125 of the Constitution is the preserve of a Mandamus order. It specifically makes provision for such an order.

Another submission of Dr. Jabbie is that the Supreme Court can issue an order for Mandamus in its original jurisdiction and said that is provided for in Section 124 and 127 of the Constitution. Let me say right away that this cannot be right. Sec. 124 and 127 of the Constitution deal with interpretation, enforcement and declaration. With the greatest respect this is not the case here, Section 125 is the only section of the Constitution which empowers the Supreme Court to issue an Order for Mandamus. Action instituted under Sec. 124, is done under the original jurisdiction of the Supreme Court. I am sure Dr. Jabbie would not want this court to carve out the supervisory jurisdiction from Sec. 125, to support this application in its original jurisdiction, neither has he made a case for this court to invoke its inherent power to issue the said order.

Again this being an interlocutory proceedings, it must appear to the court to be just and convenient. I am not satisfied that the granting of a Mandamus accede, to the demand in the application at this stage, and will produce the intended result. In any case, this court has not asked for any documents in the hands of a third party. If and when it does there are other processes to be invoked, to obtain them.

In the result, the court is reluctant to grant the orders for Mandamus prayed for. The orders are refused.

I shall now consider the injunction prayed for in this application, which are reliefs III and IV. The purpose of an interlocutory injunction is to regulate the position of the parties to an action pending the trial of the said action while avoiding the issues which have to be resolved at the trial. In



this regard, this court has the power to grant an interlocutory injunction, in all cases, when it appears to be just and convenient. Thus in Frys Book on Equitable Remedies, 2nc Edition para. 430 the definition of interlocutory injunction is given as follows:

“An interlocutory/interim injunction is an injunction that is directed to ensure that particular Acts do not take place or continue to take place pending the determination by the court of the rights of the parties.”

From the above definition, it is clear that the right to interlocutory injunction is not a cause of action., see *Re Siskima* 1979 A.C. 210 at page 256. It cannot stand on its own and it is dependent on an existing action.

It is a discretionary remedy and before the court exercises such discretion it must consider the relevant evidence both in favour and against the granting of the injunction, see *Commet Radio Vision Services Ltd.vs Farnell Tanberg Ltd..* 1971 WLR 1287.

The importance of such a relief was emphasized by Whitford J. Landi den Hartog N.V. vs Sea Bird 1976 FSR 273 at 275 when he said:

“....relief by way of injunction is relief which is never lightly granted and in interlocutory proceedings the court in any event must be satisfied that there is a real apprehension that if steps be not taken to preserve a party interest in property the irreparable damage may be done.....the grant of an interlocutory relief has always been considered the grant of relief of a somewhat exceptional character and it is appropriate to grant relief of this nature unless it is absolutely vital in order to

protect the legitimate interest of the Plaintiff that such a relief be granted.”

The distinction between law and equity as far as interlocutory injunction is concerned is that an injunction is an equitable remedy. It could be granted and rejected at the discretion of the court, unlike an infringement of right for instance the recovery of land which is a remedy in law. Recourse to equity does not instantly warrant a remedy when it is admitted that the applicant's right has been infringed.

However if the above is established, by the plaintiff, the court must be satisfied that there is a serious issue to be tried and will also consider the balance of convenience as to the nature of the injury on the 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 turn out that he was right, see *American Cyanamid v Ethicon Ltd* (supra) which was quoted with approval in the case of *Dr. Bu-buakie Jabbie vs Sierra Leone Peoples' Party and others* Misc.1/2011 App. unreported.

The applicant herein is asking to preserve the status quo with respect to the Chieftaincy Election at Biriwa Chiefdom – Kamabai in the Bombali District in that the election of Paramount Chief for the said Chiefdom must not be conducted until the action he has commenced in the Supreme Court with respect to the said election is tried and decision given.

I have carefully considered the submission of Dr. Jabbie and the portion of the affidavit referable to this segment of the application with the exhibit attached. I have also considered the reply thereto by Mr. Bangura and Mr. Peacock and that portion of the affidavit of Lahai Farmah and



Christopher Peacock respectively. I have also looked at the authorities cited in support and against the application by learned counsel and those my own researches unearth.

Dr. Jabbie's submission is a reflection of the contents of his affidavit; therefore I would not do more than rely on the affidavit in support of the application.

I accept that in granting the relief, the court must confine itself to the evidence presented; however, failure to disclose material facts; as in this case, DECLARATION OF RIGHTS AND THE HOLDING OF THE ELECTION, RESPECTIVELY may taint the hands of the applicant and may affect the outcome of the application for the relief prayed for. See *Rose v Buxton* (1888) WN 55.

In the light of the authorities and the law, enunciated which I consider germane to this application for an interlocutory injunction; it does not seem to me that the evidence proffered supports the criteria for the court to exercise its discretion in favour of the applicant. It is clear to me that a large portion of the affidavit evidence is an unauthorized record of the proceedings at the Commission of Inquiry held by Mr. Justice Fofanah, the rest is hearsay. It runs contra to what an affidavit should contain. I dare say it must contain statement of information or belief with the sources and ground for such information or belief. See *Re Young J.L. Manufacturing Co. Ltd.* 1900 2 CH 753. It is a vehicle for facts not of law: see *Alfred Dunhill Ltd. V Sunoptics SA* 1979 FSR. 337 at 352.

In the result I have come to the conclusion that there is no serious issue to be tried. They are not issues to my mind, which, I think tilt the balance of convenience in favour of the applicant.

In the light of the foregoing, this court is reluctant to exercise its discretion in favour of the applicant. The injunction is accordingly refused. The Motion is dismissed. No order as to cost.

*M.E.T. Thompson*

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