



IN THE SUPREME COURT OF SIERRA LEONE

MISC. SC. 1/ 2019

BETWEEN:

CHANG YOUNG & 10 OTHERS- APPLICANTS/ RESPONDENTS

AND

THE INSPECTOR-GENERAL OF POLICE

GEORGE STREET

FREETOWN

&

THE ATTORNEY-GENERAL &

MINISTER OF JUSTICE

LAW OFFICERS' DEPARTMENT

LAMINA SANKOH STREET,

FREETOWN-

RESPONDENTS/ APPLICANTS.

CORAM:

1. **HON. MS JUSTICE VIVIAN M. SOLOMON. JSC - PRESIDING**
2. **HON. MR. JUSTICE ALAN B. HALLOWAY. JSC**
3. **HON. MR. JUSTICE MANGEH F. DEEN-TARAWALLY. JSC**
4. **HON. MR. JUSTICE ALUSINE S. SESAY. - JSC**
5. **HON. MR. JUSTICE SENGU M. KOROMA. - JSC**

COUNSEL:

1. **C.F MARGAI ESQ.- FOR THE APPLICANTS/ RESPONDENTS**
2. **O. KANU ESQ.- FOR THE RESPONDENTS/ APPLICANTS**

RULING DELIVERED ELECTRONICALLY BY THE HON. MR. JUSTICE SENGU M. KOROMA JSC ON THE 3rd DAY OF JUNE, 2020.

1. By a Notice of Motion dated the 3rd day of April, 2019, the Respondents/Applicants herein (hereinafter referred to as the “Applicants”) moved this Court for the following Orders:-
 - a. That this Honourable Court grants an Order dismissing the Notice of Motion dated the 19th day of February, 2019 (hereinafter referred to as the “Notice of Motion”) filed on behalf of the Applicants/Respondents for irregularity on the ground that the Applicants/Respondent failed to invoke the original jurisdiction of this court in seeking a declaration that Section 18(1) (a) and (b), section 18 (2); and the provision to Section 21 (3) of Act No.14 of 2000 violate and are inconsistent with Section 133 (1) of the constitution of Sierra Leone 1991 (Act No.6 of 1991)
 - b. That this Honourable Court makes an Order dismissing the Notice of Motion on the ground that the Order ought to be made pursuant to Order 23 Rule 10 of the High Court Rules, C.I. No.8 of 2007 to cure any accidental slip or omission made in the Ruling of 4th February, 2019.
 - c. That this Honourable Court do make an order staying all further or other proceedings in this action pending the hearing and determination of this Application herein.
 - d. An order for costs against the Applicants/Respondents
2. At the hearing of the Application, the Applicant uses and relies on the affidavit of **Precious Fewry** sworn to on the 3rd day of April, 2019.

BACKGROUND:

3. By a Notice of Motion dated 19th February, 2019, the Applicant (Respondent herein) moved this court seeking the following orders:

1). That the Supreme Court constituted by five (5) Justices reverses in favour of the Applicants as may be appropriate the Ruling of the Supreme Court constituted by three (3) Justices (namely, Justice D.B. Edwards CJ; Justice G. Thompson JSC and Justice N. Jones JSC) delivered on 4th February, 2019 refusing the Applicant's Application contained in the Judges' Summons dated 15th October, 2018, predicated their refusal on the provisions of Section 24(1) of the State Proceedings Act No.14 of 2000.

2). Alternatively, were the Court to hold that reference to Section 24(1) of Act No.14 of 2000, in the Ruling delivered on 4th February, 2019 was a clerical mistake arising from an accidental slip or omission, which could be cured by invoking Order 23 Rule 10 of the High Court Rules, CI No.8 of 2007, premising such view on the proviso to Section 21(4) of Act No.14 of 2000, being the appropriate section to have been cited in the Ruling of 4th February, 2019, then, the Applicants seek a declaration pursuant to Section 127(1) of Act No.6 of 1991 that

Section 18(1) (a and b); Section 18(2); and the proviso to Section 21(3) of Act No. 14 of 2000, violate and are inconsistent with Section 21(3) of Act No.6 of 1991, as they attempt to curtail rights given by the said subsections to the individuals having claims against the Government, in the enforcement of such rights or claims as of right, and by reason of the premises, the Court to declare the said Sections and Subsections as void and having no legal effect in law and therefore, should vary the Ruling of 4th February, 2019 in favour of the Applicants.

3) That this Honourable Court departs from the views expressed in paragraph 32 of the judgment of this court dated 20th March, 2018, as it is inconsistent with Paragraph 31 of the said Judgment, hence necessitating a variation of the same, by ordering appropriately, taking on board the provision of Section 20(1) (3) and (4) of Act No. 14 of 2000, pursuant to Section 122 (2) of Act. No. of 1991 and Section 126(b) of Act No.6 of 1991.

4). The Court to grant such other/further relief(s) as the justice of the case demands.

5). Costs in the cause

AFFIDAVIT IN SUPPORT:

4. I shall refer to those aspects of this affidavit clearly setting out the Applicants case:

- a. PARAGRAPH 3: That this Honourable Supreme Court has not been granted the requisite jurisdiction for it to grant the Applicants the relief(s) or Orders sought on the face of their Interlocutory Notice of Motion intituled: MISC.APP. 1/2019 in that the Supreme Court's proper jurisdiction is contained in Sections 122, 124 and 171 of the Constitution of Sierra Leone, 1991. That the said Notice of Motion does not invoke the Supreme Court Original jurisdiction.
- b. PARAGRAPH 4: "That the Supreme Court's Original Jurisdiction can only be invoked by instituting an Originating Notice of Motion pursuant to Sections 122, 124 and Section 171 (15) of the Constitution of Sierra Leone, 1991.
- c. PARAGRAPH 5: That this Notice of Motion is a fresh Application with a different title MISC.APP. 1/2019 and not MISC.APP. 1/2018 on which the error occurred if it were meant for this Honourable Court to grant the reliefs set out in paragraph 1 of the Notice of Motion.
- d. PARAGRAPH 7: That the Applicant/Respondents ignored the procedure to simply correct the error as contained in the Judgment but rather invited the Court to declare that Section 18(1) (a and b); Section 18(2) and the proviso to Section 21 (3) of Act No.14 of 2000 violate and are inconsistent with Section 133(1) of the Constitution (of Sierra Leone, Act No.6 of 1991) as they attempt to curtail the rights given by the said Subsection to individuals having claims against government in the enforcement of such claims as of rights.

- e. PARAGRAPH 8, 9: merely repeated what had been averred in the forgoing paragraphs.
- f. PARAGRAPHS 10: That for the above reasons, I am craving the indulgence of this Honourable Court to decline jurisdiction and dismiss the action.

7. I note that in Paragraph 9, the Deponent uses the phrase “abuse of process’ in his affidavit in support and ‘dismiss’ on the face of his motion paper.

AFFIDAVIT IN OPPOSITION:

8. This Affidavit herein was sworn to by Charles Francis Margai on the 19th day of February, 2019.

I shall only consider those averments in the affidavit that are in answer to the allegations contained in the affidavit in support.

9. In this affidavit, the Deponent gave a background to the present action. As it is relevant in understanding the procedural history of this case, I shall summarise the key developments whilst reproducing, verbatim, the relevant parts.

10. PARAGRAPH 2: That as Solicitors for the Applicants we had conduct of the Applicants (then Appellants) Appeal dated 28th October, 2010 in the Supreme Court as SC.CRIMAPP. 1/2010 between CHANG YOUNG CHI & 10 ORS- APPELLANT AND THE INSPECTOR - GENERAL OF POLICE - RESPONDENT wherein there Supreme Court delivered Judgment on the 20th March, 2018 as per the Orders contained in the Judgment. Copy of the judgment is exhibited as CFM2 and CFM3.

- a. PARAGRAPH 3: That following the Judgment, as Solicitor for the Appellants then, now Applicants, believing that the sum ordered to be returned to the Appellants was paid into the Judicial sub-treasury in satisfaction of the fine imposed, wrote a letter to the Master & Registrar of the High Court requesting compliance with the Court’s judgment on the 20th March, 2018. A copy of the letter is exhibited as CFM4.
- b. The Master & Registrar, had earlier written to the Financial Secretary, Minister of Development and Economic development on 12th April, 2018

requesting a refund of payment made to the National Revenue Authority/consolidated revenue fund – CFM5.

c) That by a Judges' Summons dated 22nd June, 2018; the Court was asked to intervene in ensuring compliance with its Order contained in the Judgment of 20th March, 2018.

11. PARAGRAPH 11: That the Supreme Court heard the Summons dated 22nd June, 2018 and on the 24th July, 2018 delivered its Ruling as it appears on the Registrar's Certificate refusing the Orders sought, predicating its decision on the premise that, the Attorney-General and Minister of Justice is the appropriate Respondent to be before the Court and not the financial Secretary and that the Certificate of the Supreme Court's Judgment delivered on 20th March, 2018 should have been served on the Attorney-General and Minister of Justice (AGMJ) as required by the State Proceedings Act, 2000.

12. PARAGRAPH 12: That in compliance with decision of the Supreme Court dated the 23rd July, 2018, we addressed a letter to the Attorney-General and Minister of Justice dated 25th July, 2018 – CFM 14.

13. In the said exhibit CFM 14, Solicitors for the Appellants requested the AGMJ to ensure that the judgment is honoured.

14. PARAGRAPH 13: That subsequent to exhibit CFM 14, we filed the Judges' Summons dated 15th October, 2018 which was heard by three Justices (Justice D.B. Edwards CJ, Justice G. Thompson JSC and Justice N. Jones JSC) and on the 4th February, 2019, the Court delivered its Ruling refusing the application. The Ruling is exhibited as CFM 15.

15. PARAGRAPH 14: That it will be observed from the Ruling exhibit CFM 15 page 2 paragraph 6 that the Court predicated its refusal on section 24(1) of the State Proceedings Act, 2000 as follows:-

a) Section 24(1) state as follows: Except as in provided in this Section, no execution or attachment or process.... any such money or costs.

15: PARAGRAPH 15: That with due difference to the Supreme Court as then constituted, Section 24(1) of the State Proceedings Act, 2000 deals with Discovery and Interrogatories and nothing more.

16. SUBMISSIONS OF COUNSEL.

a. Counsel for the Applicant

In his oral submission, Osman Kanu Esq., Counsel for the Applicant relies on the affidavit of Precious Fewry sworn to on the 3rd day of April, 2019. (I have already stated the relevant averments in the said affidavit herein. Mr. Kanu contends that the Application filed by Counsel for the Respondents borders on the original jurisdiction of the Court. In his opinion, Section 122 of Act No.6 of 1991 makes it imperative on the Respondent to have invoked the Original Jurisdiction, failing which; this court is deprived of jurisdiction to hear the matter. In support of this submission, Counsel relies on the case of **SAM HINGA NORMAN -V- DR. SAMA BANYA & ORS S.C. 2/2005** (unreported).

b) Mr. Kanu concludes on this point by reiterating that since the Application dated 19th April, 2019 does not meet the requirements of an Originating Notice of Motion, this Court should dismiss the said Application.

17. On the second Order prayed for in the Notice of Motion dated 19th day of February, 2019, Mr. Kanu opines that the clerical error referred to therein can be cured by a Notice of Motion filed pursuant to Order 23(10) of the High Court Rules, 2007. (The error referred to herein is that the Learned Justice of the Supreme Court in her Judgment referred to Section 24(1) of the State proceedings Act, 2000 instead of Section 24(4) thereof.

Mr. Kanu further argues that the Respondents failed to use the correct case number for the present Application which is supposed to be a continuation of the existing matter intitled MISC. APP.1/2018.They instead filed a fresh Application intitled MISC.APP 1/2019.

18. Mr. Kanu finally submits that the “Application” is predicated on Section 126 of the Constitution which is clearly inapplicable this case.

b) Counsel for the Respondent:

19. In his response, C.F. Margai Esq., Counsel for the Respondent herein prefaces his submissions by stating that the Application is misconceived. He refers to Paragraph 3 of the Affidavit of Precious Fewry sworn to on the 3rd day of April, 2019 in which she avers as follows: “That this Honourable Supreme Court has not been granted the requisite right for it to grant the Applicant the relief or Orders sought on the face of the interlocutory Notice of Motion intitled MISC.APP. SC.1/2019 in that the Supreme Court’s jurisdiction is contained in Section 122, 124 and 1171 of the Constitution of Sierra Leone 1991. That the said Notice of Motion does not invoke the Supreme Courts Original jurisdiction’. I must comment that the averment herein is confusing.

20. Mr. Margai submits that the object of the Application is for the full Court of 5 members to review the decision of 3 as authorised by law. To require that such an application should be made by an Originating Notice of Motion is preposterous. An Originating Notice of Motion is an Application coming before the Court for the first time. To this extent, the SAM HINGA NORMAN case does not apply.

21. Mr. Margai further submits that their application is in respect of Sections 126 (6) 127 and 171(15) of Act No.6 of 1991.

21. On the contention of Counsel for the Applicant that the clerical error could have been cured by Order 23 Rule 10 of the High Court Rules, 2007, Mr. Margai counters that the thrust of his application is not to seek a correction but rather for the five Judges to determine if it was a clerical mistake and if so, whether it is inconsistent with Section 133(1) of the Constitution.

21. On the defect in the title of the action, Mr. Margai argues that it would not vitiate the Application. In support of this, he refers to the case of A.J. Thomas -v- J. VAL DOHERTY & ORS. CIV.APP.28/72 (unreported) delivered on the 6th June, 1974 – Tejan JA at page 100.-effect of irregularity traceable to the Court.

22. Mr. Margai concludes by submitting that the arguments of Counsel for the Applicant should be overruled and that justice be done.

23. In his reply, Mr. Kamu reiterates that the Application of 19th February, 2019 is invoking the original jurisdiction of the Supreme Court and by Rule 89 of the Supreme Court Rules, 1992 the correct procedure has not been followed.

ISSUES FOR DETERMINATION:

24. To my mind, there are two main issues for determination in this matter to wit:

- i) Whether the Respondent herein ought to have invoked the Original Jurisdiction of this Court in seeking a declaration that Section 18(1) (a) and (b) Section 18(1) (a) and (b); Section 18 (2); and the proviso to section 21(3) of Act No.14 of 2000 violate and are inconsistent with the constitution of Sierra Leone, No.6 of 1991.
- ii) Whether this Court can dismiss the Notice of Motion dated 19th day of February, 2019 on the ground that the Order ought to be made pursuant to Order 23 Rule 10 of the High Court Rules, C.J. No.8 of 2007
- iii) If the answer to each of the foregoing issue is in the affirmative to strike out the matter.

AUTHORITIES CITED BY COUNSEL:

25. In addition to the provisions of the Constitution relied on by Counsel for the Applicant; he cites the case of SAMUEL HINGA NORMAN -V- DR. SAMA BANYA & ORS SC.2/2005 (unreported). In this case, the Supreme Court struck out the claims of the Applicant on the ground that they could not be granted in its Original Jurisdiction.

26. The Counsel for the Respondent on the other hand argued that the SAMUEL HINGA NORMAN case is inapplicable as while it deals with the Original jurisdiction of the Court, the present case is seeking a reversal of the decision of three justices of the Supreme Court by a full panel of five Justices.

27. In determining the issues wherein, I shall additionally refer to the case of DR. SORIE KENNEDY & ORS AND THE MINISTER OF LOCAL GOVERNMENT AND COMMUNITY DEVELOPMENT & ORS. This matter was determined by the Supreme Court after the SAM HINGA NORMAN CASE but the both relate to the Original Jurisdiction of the Court

28. I shall first consider the proper purport of the word "Jurisdiction". Jurisdiction has been defined as the authority the court has in adjudicating a case brought it. In the HINGA NORMAN CASE, Renner-Thomas CJ gave a clarification regarding the use of the word "Jurisdiction" and the phrase "want of jurisdiction". In his words, "the distinction is aptly dealt with in the following dicta of RICKFORD LJ in the case of GUARANTY TRUST COMPANY of NEW YORK -V- HANNAY & COMPANY (1915) 2 KB 536 at page 563, "the word "jurisdiction" and the expression "lack of jurisdiction" are used in two different senses which I often think leads to confusion. The first and in my opinion, the only really correct sense of the expression that the Court has no jurisdiction is that it has no power to deal with and decide the dispute as to the subject-matter before it, no matter in what form or by whom raised".

29. This distinction is important in determining whether the Notice of Motion dated 19th February, 2019 could be dealt with by the Supreme Court in any its Jurisdictions, either Originating, Appellant or Supervisory. For if it falls under either its appellate or supervisory jurisdiction, then it cannot be said that the Court lacks jurisdiction. If on the other hand, the content of the said Application falls under the Court's Original jurisdiction, this court will clearly lack jurisdiction.

30. In the instant case, the Notice of Motion dated the 29th February, 2019 is seeking to reverse a decision of a panel of three Justices which ruling was based on an interpretation of section 18(1) (a) and (b); Section 18(2) and proviso to Section 21(3) of Act No.14 of 2000 on the ground that it was inconsistent with Section 133(1) of Act No.6 of 1991. This means that the matter is already before the Supreme Court albeit before a panel of three. In the SORIE KENNEDY CASE, Renner-Thomas CJ stated that the issue of the Original jurisdiction of the Supreme Court is a preliminary issue. In that case, the main argument of the Attorney-General on behalf of the five defendants was that the Supreme Court could not grant the several reliefs sought in the Originating Notice of Motion in its Original Jurisdiction.

31. Section 124 makes provision for the Original Jurisdiction of the Supreme Court. For clarity, I shall set out the said provision in extenso:

32. Section 124(1): The Supreme Court shall save as otherwise provided in section 122 of this Constitution have Original Jurisdiction, to the exclusion of all other Courts: -

- a. In all matters relating to the enforcement or interpretation of any provisions of this constitution; and
- b. Where any question arises whether an enactment was in excess of the power conferred upon Parliament or any other authority or person by law or under this constitution.

Section 124 (2) where any question relating to any matter or question is referred to in subsection (1) arises in any proceedings in any court, other than in the Supreme Court shall stay all proceedings and refer the question of law involved to the Supreme Court for determination; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.

33. A proper construction of this Section would reveal that the use of the procedure laid down in Rule 81 of the Supreme Court Rules, 1982 for invoking the Original Jurisdiction of this Court does not apply to matters already in the Supreme Court. The expression in subsection 2... "other than the Supreme Court..." is instructive. It cannot be denied that the matter is already in the Supreme Court as Section 126 of Act No.6 of 1991 provides that:

“A single Justice of the Supreme Court acting in its criminal jurisdiction, and three Justices of the Supreme Court acting in its Civil jurisdiction may exercise any power vested in the Supreme court not involving the decision of a cause or matter before the supreme court...”

34. My construction of this provision is deeply rooted in the case management obligation imposed on any court. If the matter is already in the Supreme Court, will it be time-efficient if the procedure requires that the Applicant files an Originating Notice of Motion in the same Supreme Court? The answer is definitely no.

35. Another matter to be considered is that the claims are made in the alternative. A claim made in the alternative is used to allege alternative factual situations. The

alternatives may be: in addition to those allegations preceding the particular allegation already made in the Notice of Motion. In other words, structuring the Notice of Motion by using the phrase 'in the alternative' allows a party to assert allegations which may be cumulative with the previous allegation or if the previous allegation do not succeed on the evidence (upon the court making a contrary finding of fact at the trial) to rely on those facts independently of the foregoing allegation. The party may succeed on both the foregoing allegations or subsequent allegation or one of either.

36. In the instant case, the claims are made in the alternative. So instead of striking out the Notice of Motion in its entirety, this court may proceed with the one which does not conflict with the Rules. It is my view that the Orders prayed for in the alternative could be coalesced into one because this Court while determining the Application for the first Order prayed for would invariably rule on the legal effect of Section 18(1) (a) & (b); Section 18(2) and proviso to Section 21(3) of the State Proceedings Act, No. 14 of 2000 and Section 133 (1) of Act No 6 of 1991 on which the decision of the Panel of the three Justices is based. In seeking a reversal of the decision of the Panel of three, the Respondents are in no way trying to invoke the Original Jurisdiction of the Supreme Court. Rather, they are praying this Court to exercise the powers given to it by Section 126 (b) of the Constitution of Sierra Leone, Act No 6 of 1991 which provides that:

'... in civil matters, any order, direction or decision made or given the three Justices in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Supreme Court constituted by the five Justices thereof.'

37. I shall now proceed to determine the second Order prayed for by the Applicant that the court dismisses the Notice of Motion dated the 19th day of February, 2019 on the ground that the application ought to have been made pursuant to Order 33 Rule 10 of the High Court Rules, C. I. No. 8 of 2007 to cure an accidental slip or omission made in the Ruling of 1st February, 2019.

38. In his oral submission, Counsel for the Applicant argues that the error in paragraph 6 in which Her Ladyship referred to Section 24(1) instead of Section 21(4) of the State Proceedings Act, 2000 in the Judgment dated the 19th February, 2019 could have been cured by a Notice of Motion pursuant to Order 23 (10) of the High Court Rules, 2007. He submits that if the Respondent had intended that this

Court cures the error, the case number should have been SC 1/2018- the case number of the Application refused by the Panel of three but the Application is numbered SC 1/2019 which makes it irregular and must be dismissed.

39. There are three sub issues here, these are: Application pursuant to Order 23(10) of the High Court Rules, 2007; dismissal of the Application and wrong case number. I shall briefly deal with them sequentially

- i) The authority of the Supreme Court to rely on Order 23 Rule 10 of the High Court Rules is derived from Rule 98 of the Supreme Court Rules, PN No.1 of 1982 which provides as follows:

‘Where no provision is expressly made in these Rules relating to the Original and Supervisory jurisdiction of this court, the practice and procedure for the time being of the High Court shall apply mutatis mutandis.’

40. Is the Applicant suggesting(I hope not) that after the Ruling of Panel consisting of Three Justices, the Respondents should have filed an Application to the High Court under Order 23 Rule 10 to correct any clerical mistake made therein?. I do not think any draftsman would envisage such an absurd procedure. To my mind, the Supreme Court consisting of Five Justices can cure any accidental slip, omission or vary any Order made by the Panel of Three Judges by virtue of Section 122(3) of the Constitution of Sierra Leone, 1991 which provides as follows:

‘ For the purposes of hearing and determining any matter within its jurisdiction and the amendment, execution or the enforcement of any judgment or Order made on any such matter and for the purposes of any other authority, expressly or by necessary implication given to it, the Supreme Court shall have all the powers, authority and jurisdiction vested in any court established by this constitution or any other law.’

41. This provision authorises the Supreme Court to exercise the powers vested in the High Court under the Order 23 Rule 10 of the High Court Rules, 2007. This Rule provides as follows:

‘Clerical mistakes in judgments or orders, or errors arising from any accidental slip or omission, may at any time be corrected by the court on motion or summons without an appeal’.

42. It is my conclusion on this point that the second prayer in the Respondent's Notice of Motion fulfils this requirement albeit in a rather complex manner. I therefore hold that reference to Section 21(1) of the State Proceedings Act in the Ruling delivered on the 4th February, 2010 is a clerical mistake as the appropriate provision is Section 21(4) of the said Act.

43. The next point I consider necessary to dispose of is the prayer of the Applicant that the Respondent's Application be dismissed.

44. The use of the phrase 'dismissal of an action' has been much abused in litigation. This is mostly because of the failure to appreciate the distinction between 'dismissal' proceedings which usually brings the action to an end with no the possibility of re-instatement and 'striking out' which may give a party a right to apply to the court to correct any procedural error made. In the **HINGA NORMAN CASE**, the Learned Counsel for the defendants argued that if the Supreme Court upheld his submissions on the question of jurisdiction then the action should be dismissed outright. In his judgment **RENNER-THOMAS CJ** had this to say:

'Let me hasten to say..., that even if this court were to hold that it lacked original jurisdiction to entertain the several reliefs claimed in the Originating Notice of Motion, the proper course is to strike it out as this court would not have gone into the merits of the Plaintiff's case and therefore could not summarily dismiss it (see *Buraimoh Oloriod and others -v- SIMEON OYEBI and others (1984) 5 Supreme Court and OTAPO-V- SONMONU (1987) 2 NWLR 587*).

45. In the later case of **DR SORIE KENNEDY CONTEH and others -V- THE MINISTER OF LOCAL GOVERNMENT AND COMMUNITY DEVELOPMENT and others**, **RENNER-THOMAS CJ** expanded on his earlier reasoning in the **HINGA NORMAN CASE** in these words:

'INDEED IN MY VIEW, THIS ISSUE OF THE ORIGINAL JURISDICTION IS ONE WHICH MUST BE DEALT WITH AS A PRELIMINARY ISSUE BECAUSE IF THE COURT COMES TO THE CONCLUSION THAT IT LACKS ORIGINAL JURISDICTION TO GRANT THE SEVERAL RELIEFS SOUGHT, IT WOULD NOT EVEN GO INTO THE MERITS OF THE CASE NO MATTER HOW CONVINCING THE ARGUMENT MAY BE *EX FACIE*.

46. His Lordship went on to say, where the court comes to the conclusion that that it lacks jurisdiction, the proper course is not to dismiss the application but

to have the action struck out to the extent that the court lacks jurisdiction to grant some or all of the reliefs sought.

47. I am convinced that this is the correct approach and for reasons that will soon become apparent, I intend to adopt it in this case.

48. Though Section 122(2) of Act No. 1 of 1991 gives the right to the Supreme Court to depart from its previous decision when it appears just to do so, I do not think this that is a proper case for it to do so. To my mind, the first part of this Section which provides that 'the Supreme Court while treating its previous decision as normally binding...' is more applicable to this case. I shall adopt this statement of law on 'dismissal of an action' and 'striking out' of an action espoused by Renner-Thomas CJ in both cases hereinbefore mentioned.

49. In the circumstance, even if the Court upholds the Application that the Notice of Motion is not properly before this court on the ground that it was not approached by an Originating Notice of Motion, it can only strike -out the said Application and has no power to dismiss it. This is without prejudice to the express powers given to this court and the courts below to strike out or dismiss actions on specified grounds.

50. I note that the view expressed by Renner-Thomas CJ in both cases is an *obiter dictum*, but when there are two consistent dictum on the same principle in different cases, it is my view that it will be considered weighty enough to be elevated to the status of a *ratio decidendi*.

51. It is also my view that the legal effect of a dismissal or striking out applied here should guide this court and the lower courts in determining matters regarding its applicability in cases before them.

52. The final issue I will address in this matter is the complaint that the Respondent used the wrong case number on the application dated 19th February, 2019. This to my mind is a technical objection. It is trite law that in constitutional and related matters technical objections to issues that do not affect the respective rights of the parties are frowned upon. In the instant case, the reference by the Respondent to Misc. App SC 1/2019 instead of MISC.APP 1/2018 is clerical and can be amended by the Respondent without any fanfare. The Respondent is accordingly ordered to effect the said amendment.

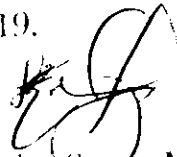
CONCLUSION

53. It is my conclusion that the Application dated 19th February, 2019 is seeking a reversal by a Panel of 5 Justices of the Supreme Court of the decision delivered by a Panel of Three Justices of the Supreme Court on the 4th February, 2019. This would inevitably require a determination of the legal effect of Section 131(1) of Act No. 14 of 1991 on Section 18 and proviso to Section 21(3) of Act No. 14 of 1991. In other words, the said Application relates more to the Appellate Jurisdiction of this court than its Original Jurisdiction. Section 122(1) of the Constitution therefore applies.

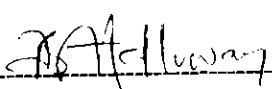
54. It is my further conclusion that the tests laid down in the HINGA NORMAN case and applied in the DR. PETER KENNEDY CONTEH CASE for invoking the original jurisdiction of this court have not been met in this matter

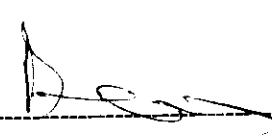
DECISION

For the reasons given in the foregoing paragraphs, this Application fails and the Respondents are hereby allowed to move their Application dated the 19th February, 2019.


Hon. Mr. Justice Sengu Mohamud
Justice of the Supreme Court.

I agree


Honourable Mr. Justice Allan B Halloway
Justice of the Supreme Court.


Honourable Mr. Justice Mangch F Deen-Tarawally
Justice of the Supreme Court