



Sup Ct. Case No. 2/2018

IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE 1991 - ACT NO. 6 OF 1991 (AS AMENDED) SECTIONS, 41, 75 & 76

IN THE MATTER OF THE SIERRA LEONE CITIZENSHIP ACT, 1973 - ACT NO. 4 OF 1973

IN THE MATTER OF THE SIERRA LEONE CITIZENSHIP (AMENDMENT) ACT, 1973 - ACT NO. 13 OF 1973

IN THE MATTER OF THE SIERRA LEONE CITIZENSHIP (AMENDMENT) ACT, 2006 - ACT NO 11 OF 2006

IN THE MATTER OF AN ACTION PURSUANT TO THE SUPREME COURT RULES, 1982 - PART XVI RULES 89 - 98, S.I. NO 1 OF 1982

BETWEEN:

DAVID FORNAH

PLAINTIFF

AND

1. AL HAJI DR. KANDEH KOLLEH YUMKELLA
2. THE ATTORNEY-GENERAL & MINISTER OF JUSTICE
3. MOHAMED N'FAH ALIE CONTEH
4. NATIONAL ELECTORAL COMMISSION (NEC)
5. DR. DENNIS AYODELE BRIGHT
6. FRANCIS HINDOWA
7. NATIONAL GRAND COALITION

DEFENDANTS

CORAM:

THE HONOURABLE MR. JUSTICE N.C. BROWNE-MARKE
JUSTICE OF THE SUPREME COURT

THE HONOURABLE MR. JUSTICE E.E. ROBERTS
JUSTICE OF THE SUPREME COURT

THE HONOURABLE MS JUSTICE G. THOMPSON
JUSTICE OF THE SUPREME COURT

THE HONOURABLE MR. JUSTICE A.S. SESAY
JUSTICE OF THE SUPREME COURT

THE HONOURABLE MR. JUSTICE SENGU KOROMA
JUSTICE OF THE SUPREME COURT

COUNSEL:

CENTUS MACAULEY ESQ FOR THE PLAINTIFF
 DR. A. O. CONTEH, F.M. DABOR ESQ, & MS. YASMIN JUSU-SHERIFF
 FOR THE 1ST DEFENDANT

OSMAN KANU ESQ, ABIGAIL SUWU (MS) & P. FEWRY (MS) FOR THE 2ND
 DEFENDANT

MS B.E.T CUMMINGS, DRUCIL E. TAYLOR ESQ & J.E. KAPUWA ESQ FOR THE 3RD
 AND 4TH DEFENDANTS

I.S. YILLAH ESQ & M.S BANGURA ESQ FOR THE 5TH DEFENDANT

S.B. TEJAN-SIE II ESQ FOR THE 6TH DEFENDANT

MS YASMIN JUSU-SHERIFF, ALEX MUSA ESQ & ALHAJI M. KAMARA ESQ FOR
 THE 7TH DEFENDANT

JUDGMENT DELIVERED THIS 3rd DAY OF September 2021

ROBERTS, JSC.

1. My lords and my lady, I have had the benefit of reading the Judgment of my brother Browne-Marke, JSC. I agree with and adopt his summary of the facts of this case, his identification of the issues for determination and the arguments of counsel. I also agree with his final declaration and orders. However, and to the extent that my consideration of the issues may well be in addition to or in furtherance of his, permit me to give my judicial opinion albeit a concurring one. The following summary of the relevant and salient filings and applications in this action is therefore only necessary for clarity and ease of reference.
2. By an Originating Notice of Motion (ONM) dated 5th February, 2018 one David Fornah, the Plaintiff in this action, sought, among others, an interpretation of Sections 41, 75 and 76 of the Constitution of Sierra Leone, Act No. 6 of 1991 (the 1991 Constitution) by the determination of several questions contained in the ONM. He also prayed for several declarations which I do not find necessary to reproduce here as in any case he has applied to discontinue the action. The sole declaration that warrants further consideration will be dealt with later in this judgment. The ONM is supported by several affidavits by David Fornah with exhibits attached.

3. In the ONM the Plaintiff named Alhaji Dr. Kandeh Yumekella as the 1st Defendant, the Attorney-General as the 2nd Defendant, Mohamed N'fa Alie Conteh as 3rd Defendant and the National Electoral Commission as 4th Defendant.
4. An application was made for Dr. Dennis Bright, Chairman and Leader of National Grand Coalition (NGC), Francis Hindowa, Secretary of NGC and the NGC Party to be added as parties to this action. By order of this Court made on the 2nd March, 2018 the aforementioned were added as 5th, 6th and 7th Defendants respectively. A Statement of Case was filed on behalf of each defendant.
5. After adjournments for further hearing the Plaintiff filed a Motion dated 28th March, 2018 praying that the action against all the defendants be discontinued and/or in the alternative that leave be granted for the withdrawal of the action.
6. An affidavit in opposition filed Yasmin Baindu Sandoh Jusu-Sheriff on behalf of the Defendants.
7. At the hearing of the application for discontinuance, Dr. Abdulai O. Conteh of Counsel for 1st Defendant stated that he was not opposing the application, noting that Dr. Yumkella's status was made known to the plaintiff long ago and he therefore asked for costs.
8. Notwithstanding the affidavit in opposition, Yasmin Jusu-Sheriff said she was not opposed to the application. She however referred to the ONM as well as the Statement of case for the 7th Defendant and asked this Court to make the following declaration to wit:

Any person who upon attaining the age of twenty-two years was or is citizen of Sierra Leone and also a citizen of any other country did and does not by operation of law or any other means cease to be a Sierra Leone.

9. I. S. Yillah of Counsel for the 5th Defendant said he was not opposed to the application for discontinuance, noting however that the 5th Defendant suffered financial loss as a result of the institution of this action by the Plaintiff. Counsel stated that supporters who were supposed to have given funds withdrew at the last minute because of the uncertainty this action created. D. Taylor of Counsel for the 3rd and 4th Defendants also said he was not opposed to the application.

10. At this stage it became clear to me that apart from procedural issues which have been dealt with in the judgment of Browne-Marke, there were two main issues for consideration by this Court. The first is the application for discontinuance by the Plaintiff and the second is the declaration sought and urged by counsel on behalf of the 7th Defendant. I shall deal with them in the order they have been mentioned here.
11. Indeed there is no express provision in the Supreme Court Rules, 1982 for the discontinuance or withdrawal of an action commenced by Originating Notice of Motion. However by virtue of Rules 98 thereof this Court is authorized to use the relevant practice and procedure in the High Court and it is by this authority that order 24 of the High Court Rules 2007 relating to discontinuance becomes applicable.
12. I note that the Plaintiff in his application prayed for “...*the action herein be discontinued and in the alternative that leave be granted to the plaintiff herein for the withdrawal of the said matter*”. In my view, ‘discontinuance’ of an action usually refers to where the party wishes to abandon the whole or entire action, while ‘withdrawal’ refers to abandonment of a part of or a claim in his action. Indeed the Plaintiff in his affidavit in support of the application deposed ‘...*I have now instructed my Solicitor to discontinue the action.*’ It would only be proper therefore for the application to be treated and considered as one for discontinuance.
13. Having read the application and having heard Counsel for the Plaintiff and the Defendants respectively, I do not find any reason(s) why the application should not be granted especially so when counsel for the Defendants have stated that they are not opposed to it. I therefore join my brethren in granting that application save for the consideration of the declaration sought and urged by the 7th Defendant which I shall now turn to.
14. Following the Plaintiff’s application for discontinuance of his case, the defendants accepted and did not in the main oppose it. Counsel for the 7th Defendant however sought and urged the declaration stated above.
15. On careful perusal of this declaration sought, I find its wording rather curious. For a start it seeks a declaration on a state that can no longer exist in law by virtue of the Citizenship Act no. 4 of 1973 (the 1973 Act) as amended by the Citizenship (Amendment) Act no. 11 of 2006 (the 2006 Amendment Act).

16. In order to appreciate the purport of the declaration sought and to underscore how irrelevant its consideration may be, I will reproduce here relevant sections of the 1973 Act as well as the 2006 Amendment Act.

17. Sections 10 and 11 of the 1973 Act state as follows:

10. No person shall have Sierra Leone citizenship and any other Citizenship at one and the same time.

11. Any person who, upon attaining the age of twenty-one years, is a citizen of Sierra Leone and also a citizen of another country shall cease to be a citizen of Sierra Leone upon his attaining the age of twenty-two years, (or in the case of a person of unsound mind, at such later date as may be prescribed) unless he has complied with paragraphs (a), (b) and (c) of Section 9.

19. The above Sections are no longer in force. Section 10 has been repealed and replaced by Section 5 of the 2006 Amendment Act as follows:

5 Section 10 of the principal Act is repealed and replaced by the following section:-

10. A citizen of Sierra Leone may hold a citizenship of another country in addition to his citizenship of Sierra Leone

And Section 11 of the 1973 Act was repealed by Section 9 of the Amendment Act as follows:

9. Sections 6, 11 and 23 of the principal Act are hereby repealed.

20. Prior to the 2006 amendment, the law prohibited dual citizenship where a citizen of Sierra Leone voluntarily acquired the citizenship of another state as provided in the Act. But this is no longer the case as by virtue of Section 5 of the 2006 Amendment Act, a Sierra Leonean can now hold dual citizenship. The law regarding a Sierra Leonean holding dual citizenship does not therefore require any further elucidation.

21. However, the Plaintiff in argument had suggested that before the passing of the Amendment in 2006, Dr. Yumkella had gained US Citizenship and had thereby lost his Sierra Leone citizenship. I do find this argument rather spurious and dated if not disingenuous. Apart from the general purport of

the 2006 Amendment Act, Section 7 thereof (which amended Section 19 of the 1973 Act) provides for the resumption of Sierra Leonean citizenship in situations where a citizen might have lost his citizenship by virtue of among others acquiring a foreign citizenship. And it would be useful to note that notwithstanding the reference to citizen by naturalization in Sections 16 to 19 of the 1973 Act, the amendment (Section 19A) clearly refers to “..any citizen of Sierra Leone..”, and does not limit its application to citizenship by naturalization. In the light of the above and by virtue of the 2006 Amendment, there is no doubt that dual citizenship is permitted under the laws of Sierra Leone and that Dr. Yumkella never lost his Sierra Leone citizenship.

22. It must be made clear that Dr. Yumkella has shown uncontroverted evidence to this court that in fact he does not hold dual citizenship, having renounced his US citizenship since November, 2017. This was indeed admitted by the Plaintiff in his affidavit in support of his application for discontinuance of this action.
23. There is however the interesting issue of whether a Sierra Leonean holding another citizenship may be disqualified from being a Member of Parliament and/or by extension president of Sierra Leone. Whilst this issue remains a matter of public interest, it is not a one that remained in the list of issues for consideration by this court. I say this because the parties to this action no longer urged for its determination. Firstly, the Plaintiff has applied to discontinue the whole of his action (which includes the issue of whether a dual citizen may be disqualified to contest for Member of Parliament or President of Sierra Leone).
24. On the part of the defendants particularly Dr. Yumkella, his renouncing his US Citizenship since 2017, renders a determination of whether a dual citizenship is qualified to contest for Parliament and presidency an academic and rather speculative exercise, one that was criticized by Dr. Abdulai Conteh of counsel for Dr. Yumkella.
25. However, having had the benefit of reading the judicial opinions of my brethren in this panel, I note a significant mention by some and consideration by others of the issue of whether a dual citizen may be qualified to contest for parliament or the presidency. It is perhaps for this reason that I deem it useful to make my contribution as may be helpful in the circumstances.

26. My first but no less telling observation is that all the parties to this action support or are of the view that by virtue of section 76 (1) (a) of the 1991 Constitution, a dual citizen is disqualified from contesting as Member of Parliament. Indeed the Plaintiff in paragraph D of his ONM sought a declaration to that effect. Also, the First Defendant Dr. Yumkella "agreed" that by virtue of Section 76 of the Constitution a dual citizen was disqualified from contesting as Member of Parliament. This is evident in Dr. Yumkella's Statement of Case and his affidavit in support of his case as shown below.
27. In paragraphs X and XI of his Case (filed on 19th March, 2018) Dr. Yumkella submitted as follows: -
- X. He formally renounced his American naturalization in November, 2017, at a ceremony in the Embassy of the United States in Freetown. At the conclusion of the renunciation ceremony, the 1st Defendant requested and was formally handed a Certificate of loss of (American) Citizenship (CLN).*
- Xi. The 1st Defendant believes that from the date of his renunciation of American citizenship in November, 2017, he became compliant with all the provisions of the national Constitution of 1991 and the laws of Sierra Leone governing eligibility to vote and be elected to public political office, including as a Member of parliament and the office of President of the Republic.*
28. Also, in a transcribed recording of an address by Dr. Yumkella at a Press Conference in January, 2018 which is exhibited as DT3 in the affidavit of David Fornah in support of the ONM, Dr. Yumkella is recorded as stating as follows:
- Thus, voluntarily and because of my firm commitment to serve my country, I renounced my US Citizenship to ensure that I fully qualified to run for parliament on behalf of the people of Samu, and to contest the position of President of the Republic of Sierra Leone. In other words, I made sure that I did not violate Section 76 subscribed (1a) of the 1991 Constitution*
29. From the above it is evident that the parties (both the Plaintiff and particularly the 1st Defendant) hold the view that by Section 76 (1) (a) of the Constitution a dual citizen may be disqualified from contesting as Member of Parliament.

30. Notwithstanding the seeming "agreement" by the Plaintiff and the 1st Defendant on the effect of Section 76 (1) (a), it would be prudent to record my consideration of the issue having regard to the existing law.

31. Section 76 (1) (a) of the Constitution provides as follows:

76 (1) No person shall be qualified for election as a Member of Parliament (a) if he is a naturalized citizen of Sierra Leone or is a citizen of a country other than Sierra Leone having become such a citizen voluntarily or is under a declaration of allegiance to such a Country...

32. This provision is in my view clear, precise and unambiguous. It has not been amended, or repealed. The 2006 Amendment Act did not alter or affect Section 76 (1) (a) of the Constitution whether by express mention or reference nor by implication or construction.

33. In the case of *Chanrai & Co Ltd v. Palmer* [1970-71 ALR SL 391 at 405] Livesey Luke CJ had this to say

In my judgment if the words used in a statute are plain and unambiguous the court is bound to construe them in their ordinary sense having regard to the context.

This dictum of Livesey Luke CJ was cited with approval and indeed adopted by Tolla Thompson JSC in the case SC No. 2/2005 *Samuel Hinga Norman v. Dr. Sama S. Banya & Ors.* I adopt same and I find no reason to give the section any meaning other than its plain and ordinary meaning.

34. For the avoidance of any doubt however, it would be useful to record that section 76 (1) (a) does not automatically disqualify all and every holder of dual citizenship from contesting membership of Parliament. What the provision disqualifies are the following.

35. Firstly a naturalized citizen is disqualified from election to Parliament. Second, a citizen by birth for example may only be disqualified for election as Member of Parliament if he voluntarily becomes a citizen of another country or is under a declaration of allegiance to such other country.

36. A relevant issue that may be raised here is one posed by my brother Browne-Marke in his judgment when he asked "*..whether a Member of Parliament elected as such, at a time when he held dual nationality, could be asked to vacate his seat for that reason, though he continues to hold Sierra Leone citizenship.*" I agree with him that such a Member may not automatically vacate his seat so long as he continues to hold Sierra Leone citizenship by birth and I adopt his reasons given in support of that view. I

will say no more on this issue primarily because in truth it was no longer one of the issues for consideration by this court following the Plaintiff's discontinuation of the action. Furthermore, it would have been helpful had arguments and submissions been made by a person in that situation i.e. a Member with dual nationality.

37. Let me conclude by returning to the sole declaration now sought by the 7th Defendant. I concur in granting it as in the judgement of Browne-Marke JSC. The Plaintiff's action is accordingly discontinued. I also agree with his orders as to costs, such costs to be taxed if not agreed.



Hon Justice E. E. Roberts, JSC.

The seal of the Supreme Court of Sierra Leone is circular. It features a central shield with a crown on top, flanked by two palm trees. Below the shield is a banner with the motto 'UNITY FREEDOM JUSTICE'. The words 'SUPREME COURT OF SIERRA LEONE' are written around the perimeter of the seal. The name 'E. E. Roberts' is written across the seal, and 'JSC.' is written to its right.