



S.C. NO. 03/23

IN THE SUPREME COURT OF SIERRA LEONE
(ORIGINAL JURISDICTION)

IN THE MATTER OF SEEKING DECLARATIONS UNDER THE ORIGINAL JURISDICTION OF THE SUPREME COURT OF SIERRA LEONE, PURSUANT TO RULES 89-98 OF THE SUPREME COURT RULES C.I. NO 1 OF 1982 PART XVI

AND

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT NO. 6 OF 1991 SECTIONS 124(1); 122(2); 32(3), (4) & (7), 75(C), 76(1B); 171(1)(4); 33; 35; 38 (AS AMENDED), 28(6) OF ACT NO. 6 OF 1991

AND

IN THE MATTER OF THE PUBLIC ELECTIONS ACT, NO. 17 OF 2022 REPEALING AND REPLACING THE PUBLIC ELECTIONS ACT NO. 4 OF 2012 TO WIT: SECTIONS 7; 57; 169; 170; 154 & 155

AND

IN THE MATTER OF THE POLITICAL PARTIES ACT NO. 25 OF 2022 (SECTION 24) AND REGULATIONS MADE THEREUNDER

BETWEEN: -

PATRICK JOHN

- 1ST PLAINTIFF

NO. 2^R SMART LANE ROAD

NEW ENGLAND

FREETOWN

SIERRA LEONE

AND

PEOPLE'S MOVEMENT FOR DEMOCRATIC (PMDC) PARTY

- 2ND PLAINTIFF

C/O IT'S SOLICITORS

C. F. MARGAI & ASSOCIATES

46 RAWDON STREET

FREETOWN

AND

MOHAMED KONNEH (CHIEF ELECTORAL COMMISSIONER) - 1ST DEFENDANT
ELECTORAL COMMISSION OF SIERRA LEONE (ECSL)
STATE AVENUE
TOWER HILL
FREETOWN, SIERRA LEONE

AND

ELECTORAL COMMISSION OF SIERRA LEONE (ECSL) - 2ND DEFENDANT
STATE AVENUE
TOWER HILL
FREETOWN, SIERRA LEONE

THE ATTORNEY-GENERAL & MINISTER OF JUSTICE - 3RD DEFENDANT
GUMA BUILDING
LAMINA SANKOH STREET
FREETOWN, SIERRA LEONE

CORAM:

HON. JUSTICE DESMOND BABATUNDE EDWARDS - CHIEF JUSTICE
HON. JUSTICE N. C. BROWNE-MARKE JSC
HON. JUSTICE M. F. DEEN-TARAWALLY JSC
HON. JUSTICE ALUSINE S. SESAY JSC
HON. JUSTICE ANSUMANA IVAN SESAY JA

C. F. MARGAI ESQ. FOR THE PLAINTIFFS

**BERYL CUMMINGS (MS) WITH HER, EMMANUEL SAFFA ABDULAI ESQ FOR
THE 1ST AND 2ND DEFENDANTS**

R. B. KOWA ESQ FOR THE 3RD DEFENDANT

RULING DELIVERED THIS 13TH DAY OF JULY 2023

- 1. Action intituled SC No 3 / 2023** between **PATRICK JOHN AND THE PEOPLES MOVEMENT FOR DEMOCRATIC CHANGE (PMDC) PARTY V MOHAMED KONNEH, ELECTORAL COMMISSION FOR SIERRA LEONE** and the **ATTORNEY GENERAL AND MINISTER OF JUSTICE** was scheduled for hearing on the 6th of July 2023 with Coram as follows viz Hon. Justice Desmond B Edwards CJ, presiding, Hon. Justice Nicholas C. Browne-Marke JSC, Hon. Justice M. F. Deen-Tarawally JSC, Hon. Justice Alusine S. Sesay JSC and Hon. Justice Ansumana Ivan Sesay JA all sitting as Justices of the Supreme Court.
- 2.** On the date of the hearing of the Action after announcing representations Mr. Charles Francis Margai, Solicitor and Counsel for the 1st and 2nd Plaintiffs amidst much rudeness and charade orally made an application for the Presiding Judge, the Chief Justice and Mr. Justice Ivan Sesay JA to recuse themselves from the case.

Regarding the Application for the recusal of the Chief Justice Mr. Margai stated as follows:

'That the Chief Justice swore the President-elect as President of the Republic of Sierra Leone with such rapidity which presupposes that the Chief Justice was either cognizant of the Result before it was officially declared or premonitious of same. He went on to state 'My Lord Chief Justice, I want to believe that as a reasonable intellectual, you must have presumed, or if not, certified yourself that the process leading up to the declaration that Julius MAADA BIO is the elected

President was regular; and if that assumption is correct, then I submit, it would be unconscionable and perhaps a conflict of interest to be a member of this panel, let alone Presiding Judge, where the issues for determination borders on the proprietary of the process leading to the declaration.'

3. He relied on the **SAM HINGA NORMAN CASE (SCSL) 2004 14PT** delivered on the 28th March 2004 - Motion for Recusal of Judge Winter from deliberations on the recruitment of Child soldiers.
4. It was brought to Mr. Charles Margai's attention by the Court that the application for recusal ought to be by Motion but he chose to ignore same instead choosing to continue the application notwithstanding the interjection.
5. On the issue of Justice Ivan Sesay's recusal he referred the Court to Section 28(6) of the Constitution of Sierra Leone, Act No. 6 of 1991 importing a literal meaning that, firstly the case in question involved fundamental Human Rights and that by that section it was only five (5) Supreme Court Justices that would be competent to sit as Supreme Court Justices in the case before the Court, consequent upon which, paneling of Justice Ivan Sesay JA, as one of the five (5) Justices of the Supreme Court was an error requiring him to recuse himself from the panel. He noted that in a particular case of the Supreme Court to wit; **THE STATE V HON MR. JUSTICE M. A. PAUL, DR. MAGNUS KEN GBORIE, DR. EDWARD MAGBITY AND LANSANA S. M. ROBERTS** he had made similar application before the Supreme Court when Justice A. H. Charm JA (as he then was) was included as member of the Supreme Court Panel and the Supreme Court of which Justice Browne-Marke was a member of the panel agreed with his submission.

6. At this juncture, the Chief Justice interjected to say that under Section 122(2) of the Constitution of Sierra Leone, this Court while treating its own previous decisions as normally binding can depart from a previous decision when it appears right to do so.

REFUSAL TO CONSIDER THE APPLICATION NOT MADE BY MOTION

7. I have listened carefully to the oral application Made by Mr Charles Francis Margai for Recusal of myself, the Honourable Chief Justice Desmond Babatunde Edwards and Hon. Justice Ansumana Ivan Sesay JA also a member of the panel.

Application for Recusal of a judge Or justices from a Lawsuit has to be made by Motion supported by Affidavit Evidence. This has not been done. The Oral Application is therefore dismissed.

8. The Applicant is at liberty to file such a motion within ten (10) days from today's date, failing which we shall proceed with the hearing of the substantive action.

9. **Cost** is cost in the cause.

DATED THIS ^{B^h} DAY OF JULY 2023



.....
HON. MR. JUSTICE DESMOND BABATUNDE EDWARDS CJ



.....

HON. JUSTICE NICHOLAS C. BROWNE-MARKE JSC

I agree



.....

HON. MR. JUSTICE M.F. DEEN-TARAWALLY JSC

I agree



.....

HON. MR. JUSTICE ALUSINE S. SESAY JSC

I agree



.....

HON. MR. JUSTICE ANSUMANA IVAN SESAY JA

I agree