COI APP 75/2020

IN THE COURT OF APPEAL OF SIERRA LEONE
IN THE MATTER OF THE PROVISIONS OF SECTIONS 147-149 OF THE CONSTITUTION OF SIERRA LEONE (ACT NO. 6 OF 1991);
IN THE MATTER OF THE CONSTITUTIONAL INSTRUMENT NO. 64 OF 2018; THE COMMISSION OF INQUIRY (EXAMINATION, INQUIRY AND INVESTIGATION) NOTICE (1) 2018
IN THE MATTER OF THE FINDINGS OF THE HON. JUSTICE DR. BANKOLE THOMPSON COMMISSION OF INQUIRY DATED MARCH 2020
IN THE MATTER OF THE WHITE PAPER PUBLISHED BY GOVERNMENT OF SIERRA LEONE DATED SEPTEMBER 2020

BETWEEN:

HENRY KARGBO - APPELLANT

AND

ATTORNEY-GENERAL AND MINISTER OF JUSTICE - RESPONDENT
GUMA BUILDING
LAMINA SANKOH STREET
FREETOWN

CORAM:

HON JUSTICE F.B. ALHADI JA -- PRESIDING
HON JUSTICE KOMBA KAMANDA JA
HON. JUSTICE T. BARNETT JA

COUNSEL:

M.P. FOFANAH ESQ -- APPELLANT

R.B. KOWA ESQ -- RESPONDENT

JUDGMENT DELIVERED ON THE 19TH DAY OF DECEMBER 2022 .

KAMANDA JA;

BACKGROUND

The President of Sierra Leone His Excellency Dr. Julius Maada Bio by Constitutional Instrument No. 64 of 2018 pursuant to Section 147 of the Constitution of Sierra Leone, Act No. 6 of 1991 set up the Hon. Justice Dr. Bankole Thompson Commission of Inquiry with the said Judge as Chairman and Sole Commissioner.

The terms of reference of the Commissions of Inquiry known as COI were laid down in Section 4 of the aforementioned Constitutional Instrument thus:

a. To examine the assets and other related matters in respect of;
   i. Persons who were President, Vice Presidents, Ministers, Ministers of State, Deputy Ministers; and
   ii. Heads and Chairmen of Boards of Parastatals, Departments and Agencies within the period from November 2007 to April 2018.

b. To inquire into and investigate whether assets were acquired lawfully or unlawfully

c. To inquire into; and
   i. Persons who were President, Vice Presidents, Ministers, Ministers of State, Deputy Ministers; and
   ii. Heads and Chairmen of Boards of Parastatals, Departments and Agencies within the period from November 2007 to April 2018.

   d. To ascertain as to whether the Persons referred to in paragraphs (a)-(c)
   i. Maintained a standard of life that which was commensurate to their official emulations
   ii. Owned or were in control of pecuniary resources or property disproportionate to their official emoluments or there are evidence of corruption, dishonesty of abuse of office for private benefit by them:

iii. Collaborated with any person in respect of such corruption, dishonesty or abuse of office.

iv. Acted wilfully or complacently in such a manner so as to cause financial loss or damage to the Government, Local Authority or Parastatal, including a Public Corporation

v. Acquired directly or indirectly financial or material gains fraudulently, improperly or wilfully to the detriment of the Government, Local Authority or Parastatal, including a Public Corporation, statutory Commission, Body or any University in Sierra Leone.

vi. To inquire into and investigate any persons or matter as may from time to time be referred to the Commission by His Excellency, the President.

The Sole Commissioner Hon. Justice Dr. Bankole Thompson in the course of the investigation found the Appellant wanton and therefore made adverse findings, recommendations and report against the Appellant herein which were endorsed by the Government White Paper dated and published September 2020.

The grounds of appeal are explicitly laid out in grounds 1-5 which are:

1. That the Hon. Justice Dr. Bankole Thompson sitting as Chairman and Sole Commissioner erred in law in making adverse findings and recommendations against the Appellant herein without granting him an opportunity to defend himself, considering that he was not named or listed as a Person of Interest to the Commission and that is in contravention of the fundamental principle of natural Justice to ***audi alteram partem***.

2. That the Chairman and Sole Commissioner erred in fact and in Law in his findings and specific recommendations relevant to the Appellant herein as contained in pages 26 to 40 of the Report (specifically at page 36.

paragraphs 1(b) and 2(a) and well as at page 5 of the White Paper on the said Report, in volume 1.

3. That the adverse findings, conclusions and recommendations of the Chairman and Sole Commissioner against the Appellant as well as the confirmation and endorsement of same by the Government White Paper aforementioned did not support the evidence submitted against the Appellant herein at the said Commission of Inquiry.
4. That for the Appellant herein contends that the adverse findings, conclusions and recommendations of the Commission's Report against him as well as the confirmation and endorsement of same by Government White Paper are similar against the weight of the entire evidence submitted against him.
5. That the Chairman and Sole Commissioner of the Commission could not lawfully have sat as both chairman and sole Commissioner of the Commission even if the same was said to have done by virtue of Constitutional Instrument No. 64 of 2018, in view of the glaring provision 147 of the Constitution of Sierra Leone, 1991 aforesaid, which was not and has not been since amended by Parliament.

It is against the background of the findings, report and recommendations of the sole commissioner herein and the White Paper, that the Appellant being dissatisfied file a Notice of Appeal herein based on five grounds which I shall deal with in a chronological manner as canvassed by Counsel.

GROUND 1

Ground 1 — Counsel for the Appellant M.P. Fofanah Esq. argued that the Appellant was not a person of interest and that he was not put on notice that he was going to face the Commission as such to enable him secure the services of a lawyer so as to prepare his defence . He also submitted that as a witness the

Appellant bore no reverse onus or burden to disprove any issues relating to criminal or fraudulent conduct. Counsel further submitted that the conduct of the Sole Commissioner by way of his findings against the Appellant evidently contradicted the standards set by the said Commissioner under the rubric "Evaluation of the Evidence; the facts as found at pages 27-32 of his Report at page 32 Volume 1 of the Appeal Records. Counsel relied on a string of authorities such as ATTORNEY GENERAL V KAMARA (SC MISC.APP. NO. 4/92 unreported delivered on the 11th August 1992, MOHAMMED EL TAYYIB BAH V REPUBLIC OF SIERRA LEONE (SUIT NO. ECW/CCJ/APP 20/13 judgment delivered on the 4th May 2015 and the case of RIDGE (A.P.) V BALDWIN AND ORS (NO. 1) (1963) UK HL 2 Order (1963) 2 ALL ER 66 to buttress or fortify his arguments and submissions that the Appellant was not accorded fair hearing.

When dealing with the issue that he was not heard as a person of interest to enable him defend himself properly, counsel placed heavy reliance on the ratio in the MOHAMMAD TAYYIB BAH'S CASE supra where it was held at page 10-11 of the said judgment that "the best way of producing a fair trial is to ensure that a party to it has the fullest information of both allegations that are made against him and the evidence relied upon in support of those allegations. So where the evidence is documentary, he should have access to those documents. Where the evidence consists of oral testimony, then he should be entitled to cross examine the witnesses who give that testimony, whose identity should be disclosed". He therefore submitted, in essence that the findings, conclusions and recommendations of the Sole Commission Hon. Justice Dr. Bankole Thompson and the White Paper referred to herein be quashed as nullity and expunged from the Records of the said Commission.

On the other hand, counsel for the Respondent R.B. Kowa Esq argued that though the Respondent is not named as a person of interest specifically, he falls within the meaning and scope of Section 4 d iii of Constitutional Instrument No. 64 of 2018

which refers to any person who collaborated with those bearing the nomenclature persons of interest. He stated that the Appellant was a staff and Director of Crops at the Ministry of Agriculture, Forestry and Food Security (MAFFS). He referred to exhibit AN1 to 49 at pages 2279 to 2332 of the Appeal records in Volume 7.Also counsel for the Respondent relied on the Judgement of this court in the case of DR, DONALD BASH TAQI V ATTORNEY GENERAL AND MINISTER OF JUSTICE COI NO 52 2020 unreported Judgement delivered on the 21st November 2022 to argue the entirety of ground 1 in dealing with the issues of fair hearing ,persons of interest and the jurisdiction of the COI herein .

It is important to state categorically, that the instant appeal is an off shoot of a Commission of Inquiry which in my candid view is not a criminal trial but rather an investigation into the conduct of persons as prescribed by the said instrument. In the instant case it deals with persons of interest and those who collaborated with persons of interest as stated in Section 4 d iii of the aforesaid Constitutional Instrument. The standard and burden of proof is distinct from the normal trend as it operates in a criminal trial. This position was firmly laid bare by the Hon. Mr. Justice H. Jallow C.J. when he opined in the case of M.A. KHARAF, AND SONS LIMITD V ATTORNEY GENERAL OF THE GAMBIA, GCA CIV.APP GCA 046/2019 that a Commission of Inquiry does not adjudicate between the state and a person who appears before it: but it carries out an investigation into the issues and matters that are within its terms of reference as per the legal instrument that established it. Its report submitted to the Executive Branch of Government, is neither a Judgment, neither an order which is capable in itself of being executed as perceived by the Law."

In my humble view, it is necessary to reiterate the position I articulated in the case of EMMANUEL BERESFORD OSHOBA COKER V THE ATTORNEY GENERAL AND MINISTER OF JUSTICE COI NO. 1812020 unreported Judgment deliberated on the 2nd November, 2022 on matters of this nature which

is that the strict standard and burden of proof as espoused by Lord Sankey in WOOLMINGTON V DPP (1935) AC 462 (HL) in all criminal cases, do not apply to Commissions of Inquiry which is a mere investigation into the conduct of individuals as prescribed by the legal instrument creating the said Commissions of Inquiry.

It is very important and even imperative to mention the fact that the provision of Section 4 d iii gives the Commissioner extensive power to investigate and inquire into the conduct of those mentioned in Section 4 1a-c as persons of interest. Such power stretches wide to include the Appellant who was not only any staff at the Ministry of Agriculture and Forestry (MAFFS) but Director of Crops who was integral to the investigation dealing with the purchase of fertilizers. He had all the opportunity to clarify and answer questions. In the process of the investigation where there is substantial evidence against the Appellant being a collaborator as provided for in Section 4 d (iii), there is no law preventing the sole Commissioner from holding him to account. We have also maintained a consistent position that where an Appellant raises alarm that he was not given enough opportunity during the investigation at the COI, the avenue is open to him on appeal as in the instant case so as to put in his case. Therefore, mere allegations that the Appellant was not given fair hearing opportunity because strict procedures applicable in a criminal trial were not follow cannot be a potent ground of appeal against a decision emanating from a Commission of Inquiry. This ground of appeal lacks merit and is therefore dismissed.

GROUND 2 3 4 5

Ground 2 – The gravamen of this appeal is that the Sole Commissioner erred in fact and in law in his findings, and specific recommendations to wit that "a policy document that would have guided the process was not developed. Hence the project was implemented without a guiding document." Also that there was no documentation as to "the method and time that distribution, utilization and

recovery of the said fertilizer will be done, neither were responsible persons or Departments that would have undertaken and monitored the above activities agreed upon". These are the findings the Appellant is opposed to.

Counsel for the Appellant M.P. Fofanah Esq. stated to the contrary that there was actually a National Fertilizer Policy for Sierra Leone developed in February 2017 by the Ministry of Agriculture, Forestry and Food Security (MAFFS) under the leadership of Prof. Monty Jones the Minister and during the tenure of the Appellant as Director of crops in the said Ministry. He said the Sole Commissioner exhibited same as exhibit (D) K 1-20 found at pages 1652 to 1617 of Volume 5 of the Appeal Records. Counsel also stated that the said records indicating the existence of a policy was produced at the tribunal by Lansana Dumbuya Esq counsel that was representing Prof. Monty Jones and Dr. Sam Sesay both Ministers and persons of interest. He even mentioned that the Commissioner in referring to the said policy document stated that it was 'tendered evidently, in rebuttal as a guiding policy document". Counsel therefore submitted that the blanket dismissal of the said National Policy on fertilizers tendered in rebuttal as evidence on behalf of the Appellant defeated the fair hearing standards set out by the Commissioner himself at pages 27 to 32 of Volume 1 of the records. He further argued that such dismissal of the policy as tendered was subjective and non-analytical but in the same breath adopted and upheld a corresponding policy for Disbursement of funds to farmers prepared in October, 2016 by the same Ministry under the leadership of the Minister Professor Monty Jones and that same could be found at pages 4669 – 4680 in Volume 12 of the Appeal Records.

As regards the National Fertilizer Policy referred to by the Appellant , M.P. Fofanah Esq. maintained that the said policy was in conformity with World Bank requirements and ECOWAS Regional Regulations on Fertilizers referred to in the said National Policy which was approved by the then cabinet and used as the basis for the enactment of the National Fertilizer Regulatory Agency Act 2017 (Act No.

4 of 2018 but which only came into force in April 2018 when the term of office of the previous government had ended.

The other key issues dealing with the appeal that falls under ground 2 deal with the over pricing of the purchase price of fertilizers, and the mode or method of acquisition of the fertilizer.

Counsel argued that there were three categories of importers of fertilizers namely, the government-funded, donor funded and private funded sectors. He stated that of these three categories, donor funded like the community based poverty reduction project (RCPRP) mentioned by the Sole Commissioner ought not to be compared with the two other categories in view of speed and effectiveness, they pre finance, that is 30% of the contract sum is paid upon signing the contract while for the other two categories of importers that are not donor funded, they are not paid expeditiously and that government is still in arrears. He stated that however, the fertilizers were examined and supplied. He considered this conduct to be sufficient and that the Sole Commissioner had no basis to compare a donor funded transaction and that of the private sector.

Counsel further submitted that the fertilizer prices were high due to the mode of payment used by the Government to pay its contractors. He referred to the minutes of negotiations' found at pages 1771 – 1774 at volume 5 of the Appeal Records indicating that the prices were reduced from between $78 to $79.99 to $73 to $74 per 50kg bag of fertilizer. He referred to pages 1771 -1774 of volume 5 of the Appeal Records. He also stated that the quantity of fertilizers contracted for by MAFFS to be supplied that is (250,000) bags in total was meant to serve the entire country for the period 2016 to 2019 and that was good value for money done in the interest of the nation. Counsel further stated that the National Procurement Authority that advises the Ministry on pricing gave a 'no objection ratification to the relevant fertilizer purchases by a letter dated 30th June, 2016 found at page 1714 at Volume 5 of the Appeal Records and also that the Solicitor-General

writing through Osman I. Kanu Esq. (Principal State Counsel) gave his no legal objection to the various clauses contained in the three contracts for the procurement of fertilizers by Balsam Enterprises, Okar Agency and AMJAM Company. He also submitted that within MAFFS itself, it was the responsibility of the procurement unit headed by Mr. Francis Kaikai to conduct price survey, technical review and advise the Ministry, via the Permanent Secretary.

As regards the quality of fertilizer supplied the original contract was for the supply of NPK 20.20.20 but the supplier supplied NPK 0-20-20. Counsel relied on the statement of the Appellant at the COI found in pages 2323-2324 of volume 7 of the Records particularly where the Appellant made mention of three different specifications that were recommended to the procurement officer Mr. Francis Kaikai. He further stated that the relevant authorities SLARI/SLESCA or Standard Bureau the bodies responsible to vet the quality of goods in order to ascertain their authenticity and fitness for purpose, examined NPK 0.20.20 supplied by Balsam Enterprises had no issue with the supply of the said fertilizer. Counsel also stated that after proper technical advice it came out clear that NPK 0.20.20 was preferable due to the climatic condition in Sierra Leone and also that SLARI's Guide on Fertilizer use and handling in Sierra Leone dated January 2012 makes no provision for NPK 20 20 20 and argued that there is no scientific evidence or basis that NPK 20 20 20 was a must and best fertilizer for Sierra Leone as well.

As regards the Auditors report M.P. Fofanah Esq. submitted that the Sole Commissioner ought not to have placed reliance on same, because it was never laid before Parliament in order for it to be debated and in the public interest for Parliament to appoint a Committee to deal with the irregularities complained of against MAFFS officials pursuant to Section 119 sub sections 4 and 5 of the Constitution of Sierra Leone 1991 Act No. 6 of 1991.

Counsel also argued that the Audited Report Marked Exhibit X 1-62 was produced a couple of months after the establishment of the Commissions of Inquiry in August, 2018.

Conversely, as regards, ground 2, 3 and 4 Counsel stated that the fertilizer scheme started from 2014 on to 2017. He stated also that the said policy was only done in 2017. Counsel also argued that the said policy relied on by the Appellant was unsigned and that it had no cabinet approval onto the time of the investigation. He reiterated that the said or purported unsigned policy marked exhibit DK 1-20 is of no probative value and therefore the learned Judge placed no weight on such evidence.

Counsel also argued that the audit report was a performance Audit done in 2018 and that the Commission started sitting on the 4th February 2019 and more importantly was that it was Parliament that gave authority to the Commission to investigate all bodies including the fertilizer scheme. He further submitted that the Appellant herein was not only a collaborator but an active participant being the Director of Crops who was unlawfully changing documents midway the process.

He reiterated that the bidding process and documents were for NPK 20 20 20 but between the period of payment a new document emerged, talking about NPK 0 .20. 20 and that there were attempts to present to government as if NPK 20 20 20 was actually supplied.

Counsel also argued that the issue of over pricing of the fertilizer was a key component of the Commission's investigation. In his further submissions and legal arguments on the issue of over pricing R.B. Kowa Esq. relying on the evidence at the commission and the records stated the following:

> My Lords, it was disclosed in Exhibit X1 to 62 and reaffirmed by SW4 Morrie Lansana with supporting documents that two of the three types of fertilizers NPK 15.15.15 and Urea 46.0% purchased by the Ministry were

extremely overpriced in the sum of Le66,630,940,000; (Sixty-Six Billion, Six Hundred and Thirty Million, Nine Hundred and Forty Thousand Leones). See pages 19, paragraph 2.8 and 21 paragraph 3.2.1 of Exhibits X 1 to 62 respectively titled Resource Allocation Overpricing of Fertilizers.

This overpricing was disclosed after price comparison with another project in the same Ministry with some of the same personnel involved in the purchase of fertilizer for the Ministry in the Rehabilitation and Community Base Poverty Reduction Project. The same types of fertilizers were purchased about the same time. The invoices were compared.

The overpricing per each 50kg bag of fertilizer in the year 2014 for the purchase of 10,000 bags of NPK 15-15-15 and 5000 bags of Urea 46% totaling 15,000 bags was 212% increments i.e. a difference of Le5,569,500.000 and in 2016 the overpricing of 100,000 bags of NPK 15-15-15 was Le32,137,600,000 and 90 bags of Urea was Le28,923,840,000 totalling Le 61,061,440.000.

The total loss to government due to the overpricing is Le66 ,630,940.000 see testimony of SW4 at pages 19&27 of records of 14/2/19 and page 21 paragraph 3.2.1 of exhibit X 1-62. The calculations do not include NPK 0-20-20 which has not been supplied by any other project to the Ministry.

My Lords, the witnesses, of the Permanent Secretary Mr. Abdulai Koroma, the Director of Crops Mr. Henry Kargbo and the Procurement Officer Mr. Francis Kaikai did not deny the allegation of over pricing, in fact they raised issues to justify the overpricing and/or trying to shift the blame as thus:-

a. That the prices are extremely high because of the mode of payment by Government to its Contractors.

b. That is the National Public Procurement Authority that should advice the Ministry on Pricing.

c. It is also the responsibility of the Procurement officer in the Ministry to conduct Price Survey and advice the Ministry?

I have meticulously considered the legal arguments and submissions of Counsel on both sides of our adversarial legal system. In order to arrive at a just conclusion, I need to ask certain questions touching and concerning the various grounds of appeal specifically dealing with ground 2 3 4 and 5. Important among these questions are:

(1) Was it prudent for the Appellant and MAFFS officials to have changed the specification of fertilizer after the bidding process and relevant documentation?

(2) Did Government suffer any loss as a result of the conduct of the Appellant?

(3) Is it prudent to nullify the entire investigation by the Sole Commissioner because of the manner in which the audit report was handled ?

(4) Was there any policy regulating the fertilizer scheme before it started?

The answers to the aforementioned questions touching and concerning ground 2 3 4 and 5 of the appeal herein will definitely lead to proper determination of the instant matter . In dealing with the first question, there is compelling and even uncontroverted evidence that the agreement signed on the 6th day of September 2016 between the Ministry of Agriculture and Food Security and Balsam Enterprise stipulated that NPK 20.20.20 with a chemical composition of 20% Nitrogen. 20% Phosphorous and 20% potassium should be the variety to be supplied to the scheme but unfortunately the supplier delivered NPK 0.20 .20 and not NPK 202020.The sole commissioner in handling this matter, having considered the evidence stated in his findings inter alia; 'Physical inspection of the fertilizer delivered to MAFFS revealed that the supplier delivered NPK 0.20.20 instead of NPK 20.20.20.The fertilizer supplied had 0% Nitrogen.20%

Phosphorous and 20% Potassium .Simply put the supplier did not meet the updated requirement in the contract. Again this is another classic example of gross dereliction of authority. It is not simply ,as the defence contends, a mistake ''.He also opined that 'All the technical specifications stipulated in the Ministry's bidding documents in respect of the signed contract agreement were also done in respect of NPK 20.20.20'. The said findings and recommendation could be found at pages 31 to 33 at paragraph 23 of the records .It is obvious from the records of appeal that the Respondent has not shown any relevant or cogent evidence as to why a lower specification was supplied that only had a Nitrogen content of 0% instead of 20% as provided for in the contract. There is no evidence that the contract entered into herein was amended .The evidence of DW10 Mr. Abdulai Koroma the Permanent Secretary of MAFFS found at pages 3828 to 33831 in volume 10 of the appeal records in respect of the letter written by Mr. Francis Kaikai the Procurement Officer of MAFFS seeking the approval from the Appellant for the importation of the fertilizer 0.20.20 is of no relevance to the Appellant's case. A mere letter written did not in any way nullify or invalidate the contract between MAFFS and Balsam Enterprise dated 6th September 2016 .In fact I see the said letter and the purported approval as a smoke screen to be devil the real intention of the Appellant and his team, a joint enterprise to defraud the state of whooping sums of money .The MAFFS officials had no business to change the specification of fertilizer after the completion of the bidding process and the signing of the contract .Their reliance on a No objection from a Senior law officer and SLARI/SLeSCA or Standards Bureau for the supply of 0.20.20 fertilizer cannot vindicate them or help their case where the process is completely flawed and there is evidence of glaring malfeasance.

As regards the second question, counsel for the Appellant contended that the fertilizer 0.20.20 were supplied and utilized nation wide for four years. However the evidence of SW4 Morie Lansana an expert as regards the issue of over pricing is revealing .Exhibit X 1 to 62 titled Resource Allocation Over pricing of

fertilizers show price comparison with another project with some of the same personnel herein involved. It came out conspicuously that the evidence of Morie Lansana backed by documentary evidence that 'each 50 kg bag of fertilizer in the year 2014 for purchase of 10,000 bags of NPK 15.15.15 and 5000 bags of Urea 46% totalling 15,000 bags was 212% increment i.e. a difference of Le 5,569,500,000 and in 2016 the over pricing of 100,000 bags of NPK 15.15.15 was Le 32,137,6oo.000 and 90 bags of Urea was Le 28,923,840,000 totalling Le 61,061,440.000.The evidence of SW4 is that the total loss to the Government of Sierra Leone is Le 66.630,940.000.(Sixty Six Billion Six Hundred and Thirty Million Nine Hundred and Forty Thousand Leones).This evidence has not being controverted and therefore, it remain good evidence. Little wonder that the sole commissioner in his findings that was confirmed by the Government White Paper stated '..... the evidence shows ,compellingly, that a comparison of the unit price paid by MAFFS for the specific quantity of fertilizer by the one paid for instance, the Rehabilitation and Community Based Poverty Reduction Project (RCPRP) for the same quantity and quality of fertilizer ,in the same period reflected a variance in price between 201% and 212%''He also went further to say '' .....this over pricing resulted in an additional cost on the Ministry of the sum of Le 66,630, 940,000 (Sixty Six Billion ,Six Hundred and Thirty Million ,Nine Hundred and Forty Thousand Leone.) The additional cost would have been avoided if the fertilizer had been acquired at the same price as that paid by RCPRP'' The said findings are definitely an offshoot of the compelling evidence at the commission against the Appellant.

The third consideration deals with the audit report relied on by the sole commissioner which the Appellant's counsel is vehemently opposed to .I have considered the provisions of Section 119 Sub Section 4 and 5 of the Constitution of Sierra Leone 1991 Act No 6 of 1991which state :

''The Auditor General shall within twelve months of the end of the immediately preceding financial year submit his report to Parliament and shall in that report draw attention to any irregularities in the accounts audited and to any other matter which in his opinion ought to be brought to the notice of Parliament.''

''Parliament shall debate the report of the Auditor General and appoint where necessary in the public interest a committee to deal with any matters arising therefrom''

The evidence before the court show that a performance audit was conducted which is the subject matter of this appeal .The gravamen of Section 119 Sub Section 4 and 5 is that the intervention of Parliament is sacrosanct to authenticate an audit report. The efficacy of such report must be viewed based on the intervention of Parliament .It is therefore ,necessary to determine the commission's source of authority to deal with and use the said audited report ,be though as it may, a performance audit report .I have perused the instrument that established the commissions of Inquiry Constitutional Instrument No 64 of 2018 pursuant to Section 147 of the Constitution of Sierra Leone Act No 6 of 1991. These statutes show that Parliament approved and endorsed the creation of the commissions of inquiry and mandated it to investigate inter alia the Appellant pursuant to Section 4 d iii of the aforesaid Constitutional instrument. Therefore any attempt to question or challenge the authority of the COI in this regard is untenable. It is also important to pin point or reiterate the fact that, where there are glaring evidence of malfeasance uncovered during the investigations at the COI ,it behooves the Appellant to bring forth evidence in rebuttal or to the contrary in the court of appeal, instead of placing heavy reliance on technicalities that will invariably defeat the course of justice .This poignant position of the law was espoused in the case of EMMANUEL OSHOBA COKER V ATTORNEY GENERAL AND MINISTER OF JUSTICE supra .Similarly ,in the case of LADD .V MARSHALL 1954 (ALL ER 745) ,the court of appeal ,as in the instant case can rehear a matter

decided in a lower court .In essence, the Appellant had all the opportunity to adduce fresh evidence before the court .Rule 27 of the Court of Appeal Rules 1984 is also very instructive on the aforesaid position of the law but unfortunately the Appellant did not find comfort in the said provision of the law ,rather heavy reliance is placed on technicalities helpless to his case .

The final issues relate to the fertilizer scheme. The sole commissioner in his findings relating to the scheme based on exhibit DK 1 to 20, titled 'National Fertilizer Policy, Ministry of Agriculture ,Forestry and Food Security Sierra Leone 2017,which is found on paragraph 20 page 36 of volume 1 of the Appeals Records stated ;

''.....it has no probative value in the sense that it falls far short of a fertilizer policy. It merely sets out l , in generalities certain key theoretical features of a Fertilizer Policy .It reads more like academic treaties rather than practical guide..... A practical guide that would have guided the process was not developed. Hence, the project was implemented without a guiding document''

I have perused the records which show that the fertilizer scheme started in 2014 and continued on to 2017.The document referred to and relied on by the Appellant is dated 2017 when the scheme was well advanced . It is unsigned and I have not seen any evidence that it was approved by cabinet which ought to be the correct procedure. I am of the view that the Appellant owe a duty even on appeal to manifest that the policy was ratified by cabinet as it involved huge financial implication on Government .What evidence has the Appellant brought to this court to canvass and convince us that the scheme had a well established policy even before its implementation ?

I have considered the length and breathe of all the grounds of appeal and have come to the conclusion that they are porous and completely baseless with no foundation whatsoever. By reason of the fore going, I hereby order as follows:

(1) That the appeal is dismissed in its entirety.

(2) That the findings and report of the sole commissioner are hereby upheld.

(3) That the costs of this appeal is Le 50. 000 (Fifty Thousand Leones) New notes to be borne by the Appellant .

19-12-22

HON. JUSTICE F.B. ALHADI JA .. I agree

HON. JUSTICE T . BARNETT JA .. I agree