

COI APP

NO. 60

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. MR. JUSTICE BIOBELLE
GEORGEWILL COMMISSION OF INQUIRY DTED MARCH 2020

IN THE MATTER OF THE WHITE PAPER PUBLISHED BY GOVERNMENT OF SIERRA
LEONE DATED SEPTEMBER 2020

BETWEEN:

AJIBOLA EMMANUEL MANLEY-SPAINE
162 CIRCULAR ROAD
FREETOWN

- APPELLANT

AND

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

- RESPONDENT

CORAM;

HON. MRS JUSTICE FATMATA BINTU ALHADI JA
HON. MR. JUSTICE KOMBA KAMANDA JA
HON. MRS JUSTICE TONIA BARNETT JA

PRESIDING

ADVOCATES;

J.O.P. MANLEY SPAINE ESQ
A.SUWU KENDOH ESQ

APPELLANT
RESPONDENT

KAMANDA - JA.

JUDGMENT DELIVERED THIS 2ND DAY OF NOVEMBER 2022

The President of Sierra Leone 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 Justice Biobele Georgewill Commission of Inquiry with the said Judge as Chairman and Sole Commissioner.

The terms of reference of the Commission of Inquiry known as COI were laid down in Section 4 of the said 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 emoluments
 - ii. Owned or were in control of pecuniary resources or property disproportionate to their official emoluments or there are evidence of corruption, dishonesty or 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 willfully 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 willfully 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 Biobele Georgewill in the course of the investigation found the Appellant wanton and therefore made adverse findings, recommendations and report against the Appellant herein to wit:

- a) At page 171 of the report the Sole Commissioner stated that "The evidence disclose and clearly identified the following persons as being responsible for these acts of corruption, abuse of office, maladministration and lack of accountability..... Ajibola Emmanuel Manley-Spaine.
- b) The one-off payment of the huge sum of USD270,000 about Le1,326,547,800.00 as professional fees for the defence of the case of Sam Sumana v Attorney-General and Victor Foh before the Supreme Court of Sierra Leone when the Attorney-General, the Chief Law/Officer/Consultant to the Government and the Civil Division is primarily charged with the responsibility of prosecuting or defending court cases involving the Government

was not only exorbitant but was a subterfuge to launder money belonging to the Government”.

- c) At page 175 “the following persons shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone two thirds of the sum of USD270,000 about Le 1,326,547,800.00 laundered under the guise of professional fees for the defence of the case of Sam Sumana v Attorney-General and Victor Foh before the Supreme Court of Sierra Leone when the Attorney General is the Chief Law Officer/Consultant to the Government they should be referred to the criminal jurisdiction and or the corruption commission for investigation and likely prosecution namely..... Ajibola Emmanuel Manley-Spaine”.

It is against the background of the aforesaid findings and recommendations that the Appellant being dissatisfied filed a Notice of Appeal herein based on five grounds which I shall deal with in a chronological manner as canvassed by Counsel.

GROUND 1

The Appellant’s appeal touches and concerns jurisdiction, that the sole Commissioner went beyond his jurisdiction as conferred on the COI by Constitutional Instrument No. 64 supra which laid bare the terms of reference of the Commission. Counsel for the Appellant J.O.P. Manley Spaine Esq. submitted that the terms of reference of the Commission limited the scope of individuals that should be investigated as provided for by Constitutional Instrument No. 64 2018 No. 4 a-d. These category of persons she argued include “The President, Vice President, Ministers, Ministers of State, Deputy Ministers and Heads and Chairmen of Boards of Parastatals, Departments and Agencies from November 2007 to April 2018”. She stated that the Appellant a private legal practitioner does not fall in that category and that any findings against him by the COI amounted to the sole commissioner acting in excess of the Jurisdiction conferred on him. She relied on the case of DANIEL K. CAULKER v KOMBA KANGAMA CIV.APP 2/74 to submit that where the Court lacks jurisdiction whatever Judgment it gives amounts to a nullity. Counsel also relied on the case of PEOPLE’S MOVEMENT FOR DEMOCRATIC CHANGE PMDC AND ANOTHER V. SIERRA LEONE PEOPLE’S PARTY (SLPP) AND ANOTHER UNREPORTED, Judgment of the Supreme Court of Sierra Leone delivered on the 22nd June 2007 by A. Renner Thomas C.J, when he stated that “the absence of Jurisdiction is not a matter of a mere technicality or procedure. It is a fundamental issue touching on the power of the Court to act, where a Court has no jurisdiction to entertain a matter, any proceedings or decision given thereon is a nullity no matter how well conducted the proceedings were judicial power is inextricably tied up with jurisdiction and justiciability. A court can only exercise power to entertain a matter where it has jurisdiction”.

Conversely, Counsel for the Respondent A Suwu Esq. submitted that the Sole Commissioner acted within the confines of his mandate as provided for in section 4 paragraph d and e of Constitutional Instrument No. 64 Supra. She also relied on the case of SOGEFEL SAL AND THE STATE CIV.APP.NO. 71/2020.

It is crucial to note that jurisdiction is an integral or fundamental aspect of all legal proceedings that ought to be considered first when raised, more than any other issue. Where there is excess or want of Jurisdiction the entire proceedings however perfect it was conducted amounts to a nullity. In AG FEDERATION v A.G. ABIA STATE AND 35 ORS (2001) 7 Sc (PTI) 100 per Karibi Whyte (JSC) as he then was defined Jurisdiction to mean 'the authority the court has to decide matters before it or to take cognizance of matters presented in a formal way for its decision'.

I have perused the terms of reference of the COI particularly Section 4 of the aforesaid Constitutional Instrument No. 64 which state the functions of the sole Commissioner "To inquire into and investigate any persons or matter as many from time to time be referred to the Commission by the President". This provision in my view is all embracing and therefore not only limited to those mentioned in Section 4 a-d. It bestowed on the sole Commissioner Jurisdiction to investigate the Appellant. This position was also well articulated by this very court in the case of SOGEFEL SAL v THE STATE CIV.APP. NO.71/2020 which I shall not depart from in this matter. This ground of appeal lacks merit and is therefore dismissed.

GROUND 2

The 2nd ground of appeal deals with the principle of natural justice. Counsel for the Respondent submitted that opportunity was not given to the Appellant to be heard as enshrined in the National Constitution Section 23 (4) of Act No. 6 of 1991 and in some International Instruments. Counsel also relied on the case of ISATU KAMARA v ATTORNEY GENERAL SC MISC APP 4/92 where the learned Hon. Justice S.M.F. KUTUBU CJ in his dictum opined:

"Fundamental principles which govern judicial and quasi-judicial inquiries; the audi alteram partem rule, that is, a party to judicial proceedings should not be condemned unheard.....".

Counsel further relied on the case of SECRETARY OF STATE OF THE HOME DEPARTMENT V A.F. (201) 2 AC where per Phillips L.J. held ;

"The best way of producing a fair trial is to ensure that party to it has the fullest information of the allegations that are made against him and the evidence relied upon in support of those allegations. 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 witnesses...."

On the other hand, A Suwu Kendoh esq. submitted that opportunity was given to the Appellant to be heard in that the proceedings were not held in camera but broadcast on the Television, Radio and several media outlets and therefore as an esteemed legal practitioner, he ought to have gone to the Commission to defend himself but he refused.

As regard this 2nd ground, I take judicial notice of the fact that the said COI proceedings were broadcast and as such where a person has been mentioned as a result of the investigation, it behooves that individual particularly where that person is a lawyer to approach the Commission by way of an application to be heard. Where such application is made and refused then that Applicant can now raise 'the fundamental principle of *Audi Alteram Partem*'. I take judicial notice also that such a practice as mentioned is a common place in our judicial proceedings which is applicable to the COI. Also, now that the Appellant has approached this court, enough opportunity

has been provided for the Appellant to bring forth his evidence. The said grounds of appeal therefore fails

GROUND 3 AND 4.

As regards ground 3 and 4, dealing with errors of facts, law and evidence, I shall deal with them conjointly as they deal with the same issues. Counsel for the Appellant submitted that the evidence before the COI against the Appellant was not sufficient to reach the threshold so as to found him wanton as he was not a person of interest. She referred to Section 23(4) of the Constitution of Sierra Leone Act No. 6 of 1991 which provides that:

“Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty...” In order to submit that the Appellant was neither presumed innocent nor was he given the opportunity to prove his innocence, counsel also relied on the case of WOOLMINGTON v DIRECTOR OF PUBLIC PROSECUTION (1935) AC 46 to submit that it is the ‘duty of the prosecution to prove accused’s guilt beyond reasonable doubt only subject to insanity and statutory exceptions....’. She further argued that the facts and law do not support the adverse findings against the Appellant.

The Respondent Counsel submitted to the contrary that there was sufficient and uncontroverted evidence before the COI through the oral testimony of CW3 Hadrat Sheik Alimamy Bangura and documentary evidence (exhibit p4-p12 at pages 165-170 of the Court of Appeal Records Volume 1). She further stated that it was through the evidence laid before the COI that urged the sole Commissioner to come out with his findings and that it was based on the said evidence that it came out that infractions and procurement lapses in the disbursement of huge sum of USD\$ 270,000 about Le1,326,547,800 taken out of the consolidated funds were discovered. She further argued that procurement procedures as contained in the Public Procurement Act of 2004 (Act No. 14 of 2004 now repealed and replaced by the Procurement Act of 2016 (Act No. 1 of 2016) as stated at page 168 of the Records volume 1) were disregarded.

It is relevant to state that COI is not a Court of Law and therefore the standard of proof required is distinct from that of a criminal trial where the standard of proof required is beyond reasonable doubt as espoused in WOOLMINGTON v DPP Supra. This position of the Law was well articulated by H. Jallow CJ in the case of M.A. KHARAFI AND SONS LIMITED v ATTORNEY GENERAL OF THE GAMBIA, GCA, CIV.APP GCA 046 when he opined 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’

It is obvious from its creation, that the strict rules applicable in a criminal trial in the court of law cannot be imported to a COI. Since the latter is an investigation and not a trial. In examining the evidence, facts and law, Counsel needs to take this in to consideration that is why where a party is dissatisfied with the findings, recommendations and report, the avenue is open in the Court of Appeal which may even rehear the evidence. Counsels over reliance on abnormalities as regards

the facts, evidence and Law is not visible in this matter in view of the totality of the evidence available to the Sole Commissioner, which led to adverse findings against the Appellant in this regard.

GROUND 5

Ground 5, deals with refund of professional fees paid to the Appellant a very senior barrister and solicitor for services rendered to the Government in defence of a case brought by Sam Sumana former Vice President who was sacked by the former President of Sierra Leone Dr. Ernest Bai Koroma. Counsel relied on Section 39 of the legal practitioners Act 2000 which State "A legal practitioner may make agreement in writing with his client as to his fees in respect of any contentious business done or done by him, provided that he shall be paid either by a gross sum or by salary or otherwise and at either a greater or a lesser rate than that which he would otherwise have been entitled to be paid" to submit that the Appellant did a job within the scope of his function as a lawyer. Counsel also submitted that it was legal for the Appellant to be contracted to render professional service to the state. She relied on Section 3 of the Law Officers Act of 1965 to support her submission in that regard. The said section provides: "The Attorney-General may appoint Counsel to represent him or the Government (or at the request of the Governor-General any other person) in any proceedings before any Court and the fee of such Counsel (not being a public officer) shall be paid by the Account-General out of monies provided for this purpose by Parliament on the certificate of the Attorney-General that such fees are reasonable".

The gravamen of the Appellant's argument is that the Commissioner did not ascertain all the circumstances surrounding the payment of the said sum to the Appellant.

Conversely, Counsel for the Respondent A. Suwu Kendo Esq. apart from arguing that the procedures were not followed as stated in the Public Procurement Act 2004. (Act No. 14 of 2004) now repealed and replaced by the procurement Act of 2016 Act No.1 of 2016, stated that the amount paid to the Appellant was excessive.

In order to arrive at a just conclusion of this matter, it is necessary to give a brief background leading on to the payment made to the Appellant and other solicitors. The former President of the Republic of Sierra Leone, Dr. Ernest Bai Koroma sacked his Vice-President Chief Samuel Sam Sumana and instead appointed Victor Bockarie Foh to assume the position of Vice President. Chief Sam Sumana the ousted Vice President being dissatisfied instituted a suit in the Supreme Court challenging the manner in which he was sacked.

The Attorney-General pursuant to Section 3 of the Law Officers Act of 1965 contracted the professional services of the Appellant to represent the appointed Vice President Victor Bockarie Foh. It was against the background of the said proceedings that the Appellant was paid professional fee together with other solicitors representing the Attorney General the sum of USD\$ 270,000 .

Also in order to determine whether the said payment from the consolidated fund was excessive, certain criteria need to be considered which are:

- a. The complex nature of the matter

- b. The length of experience of the Appellant and the other solicitors
- c. Number of Solicitors or Counsel who took part or assisted in the proceedings

As regards the first consideration, one should not be oblivious of the fact that proceedings, were held in the Apex Court (Supreme Court). It is clear that matters that go to the Supreme Court are not matters of triviality. As in the instant case the sacking of the elected Vice President was not a minor or trivial matter as it borders on the sanctity of the Constitution and was also of grave national concern. Therefore, much seriousness and weight ought to be attached to it. I can safely and soundly say it was a complex legal matter bordering on the interpretation of the constitution.

The importance attached to such matters is the reason why the Supreme Court alone has exclusive jurisdiction as stated in Section 124 of the Constitution of Sierra Leone 1991 Act No. 6 of 1991. Therefore, the fact that the Appellant and other senior solicitors were contracted by the State also gives a clear indication that the Attorney General's Office lacked the legal or professional capacity or competence at that time to handle such a complex matter. I have also taken judicial notice of the fact that Section 3 of the Law Officers Act 1965 has always being used where necessary and prudent.

I have also taken judicial notice that the Appellant is an experience Counsel of over forty 40 years of remarkable legal practice and the contract given to him by the State was performed excellently leading to the State gaining victory. If the contract had not been executed by the Appellant then he ought to have returned all the monies paid to him. There is also evidence that the Appellant performed his contract in representing Victor Bockarie Foh (the former Vice President) together with other Counsel who assisted him throughout the proceedings? How then could he be ordered to pay after performing such an excellent job?

What also boggled my imagination was the attempt by the Sole Commissioner to criminalize the good conduct of the Appellant by stating that such payment was meant to launder monies belonging to the State. Such diction ought to have no place in the report based on the evidence available to the Commission. I hold the view that one's reputation that has been seriously built through hard work, diligence and pain ought not be fumbled with where there exists no reason to do so as in the instant case.

I have also averted my mind to the Respondents argument and submission that Procurement Laws were not followed. In my considered view, even if that was the case, the Appellant who played his role in performing the contract had nothing to do with it. He did not award the contract to himself neither was he part of the team that awarded the contract. Any attempt to suggest that he did not follow procurement laws is completely misplaced.

In view of the totality of the evidence before the court the justice of the case demands that I make the following orders ;

1. That the Appeal is hereby allowed
2. That the adverse findings ,recommendations and report against the Appellant are hereby dismissed.
- 3 .No order as to costs.

Kamanda

HON. JUSTICE KOMBA KAMANDA JA

HON MRS JUSTICE FATMATA BINTU ALHADI

HON. MRS JUSTICE TONIA BARNETT

I agree
JA - (Presiding)
JA Agree Barnett

