

CIO.APP

NO. 52

2020

IN THE COURT OF APPEAL OF SIERRA LEONE

IN THE MATTER OF THE PROVISIONS OF SECTION 147-149 OF THE  
CONSTITUTION OF SIERRA LEONE

IN THE MATTER OF THE CONSTITUTION INSTRUMENT NO.64 OF 2018; THE  
COMMISSION OF INQUIRY (EXAMINATION, INQUIRY AND INVESTIGATION)

NOTICE (1)2028

IN THE MATTER OF THE FINDING OF THE HON.MR JUSTICE BIOBELLE  
GEORGEWILL COMMISSION OF INQUIRY DATED MARCH 2020

IN THE MATTER OF THE WHITE PAPER PUBLISHED BY GOVERNMENT OF  
SIERRA LEONE

BETWEEN

DR DONALD BASH-TAQI

AND

THE ATTORNEY GENERAL AND  
MINISTER OF JUSTICE

CORAM

HON. JUSTICE MRS BINTU ALHADI JA(Presiding)

HON JUSTICE KOMBA KAMANDA JA

HON MRS JUSTICE TONIA BARNETT.

COUNSEL

I YILLA FOR APPELLANT

A SUWU KENDOH FOR RESPONDENT

JUDGMENT DELIVERED ON THE 21<sup>ST</sup> DAY OF NOVEMBER 2022

T. BARNETT- JA.



-APPELLANT

RESPONDENT

This appeal emanates from the findings of a commission of inquiry Constitutional Instrument No. 64 of 2018 established by the President His Excellency Retired Brigadier Julius Maada Bio pursuant to Section 147 of the Constitution of Sierra Leone Act No. 6 of 1991 (herein after referred to as the 1991 Constitution). In that regard, Justice Biobele Georgewill Commission of inquiry was set up with him as the Chairman Sole Commissioner. His terms of reference as spelt out in Section 4 of the Constitutional Instrument herein before now mentioned to do an impartial thorough investigation of allegations/ issues of corruption and

corrupt practices and other related matters of persons who were President, Vice President, Ministers, Ministers of State, Deputy Ministers, Heads and chairmen of Boards of Parastatals, to investigate whether assets were legally or illegally acquired, whether persons in control of government funds were negligent, reckless, dishonest and or complacent or otherwise abused their office thus causing huge financial loss to the government and People of Sierra Leone.

The Chairman and Sole commission upon conclusion of its investigation submitted its report thus making adverse findings, recommendations and report against the Appellant (see page 26-28.). It is against the findings of the commission that the Appellant being dissatisfied has appealed in line with Rule 9 (2)(3) of the Court of Appeal Rules 1985.

By way of a Notice of Appeal dated the 27/10/2020, the Appellant caused to be filed 19 grounds of Appeal. The grounds of appeal are:

1. That the sole commissioner erred in law by exercising personal jurisdiction over the appellant being that the Appellant was not covered by the terms of reference contained in the Constitutional Instrument No 64 of 2018 which deals with investigating President, Vice President, Ministers, Deputy Ministers, Heads of Parastatals Departments, Agencies within the period of November 2007- April 2018
2. That not being covered by the Terms of Reference, he however went on to make adverse findings and recommendation against the Appellant.
3. That the sole Commissioner erred in law by exceeding his jurisdiction conferred on his commission by constitutional instrument No 64 of 2018 by transforming persons not within the remit of the terms of reference and without any such authority.
4. That there was no evidence before the sole commissioner to have warranted him to find that the Appellant collaborated with any person in an act of corruption, dishonesty or abuse of office that he acted wilfully or complacently to have caused financial loss to the government of Sierra Leone.
5. That the Sole Commissioner erred in law and fact in making adverse findings against the Appellant without pointing any evidence submitted against the Appellant and notwithstanding same, the Sole Commissioner made generalised findings thus breaching the Appellants right of equal protection under the law.
6. That the Sole Commissioner erred in fact in making adverse findings against the Appellant without citing or analysing any evidence in the report which found that the Appellant was a civil servant/Case Management Pillar Lead at Emergency Operation Centre EOC as the person charged with the responsibility to manage, disburse and authorise disbursement of funds at EOC in the Ministry of Health.
7. That the Sole Commissioner erred in law by referring to the Appellant as an indicted person thus importing the criminal standard when the Sole Commissioner was mandated by the terms to inquire into assets and pecuniary resources of the categories of persons listed in the Constitutional instrument.
8. That the Sole Commissioner erred in fact in analysing the evidence at para 1.4 when he stated that persons of interest did not show up before the commission though there is evidence that the Appellant did as a person of interest but was told by the Sole Commissioner after no evidence adduced against him by the state to leave and promised to get on to him if need be.



9. That the Sole Commissioner erred in law in proceeding to set a standard of prima facie case not set out in the Constitutional Instrument and erroneously proceeded to set a standard of a prima facie case not set out in the constitutional instrument and finding erroneously that once a prima facie case is established in a commission of inquiry, a person of interest has no choice but is compelled to testify and on this basis erroneously proceeded to make a finding against the Appellant despite the fact that no evidence was led by the state which implicated the Appellant in any material way in the management and disbursement of Ebola funds whilst he served at the emergency Operation Centre(EOC) at the Ministry of Health.
10. That the said Hon. Sir Justice Biobele Georgewill sitting as Chairman and Sole Commissioner erred in law in proceeding to set an arbitrary standard of prima facie case not set out in the constitutional Instrument and proceeded to erroneously evaluate evidence not individually involving the Appellant but in a group involving other persons of interest utilizing the arbitrary standard of prima facie.
11. That the Sole Commissioner erred in fact in making adverse findings and recommendations against the Appellant herein a medical doctor/civil Servant in that at page 34 and 38 of his report, the commissioner made general findings and did not make any specific findings against the Appellant and in particular did not specify how the Appellant misappropriated public funds at EOC, Ministry of Health and how the Appellant abused office and his findings and conclusions in this report are therefore made without any evidential support.
12. That the said Hon. Sir Justice Biobele Georgewill sitting as Chairman and Sole Commissioner of the Commission of inquiry held in Sierra Leone pursuant to Constitutional Instrument No. 64 of 2018 lacks Jurisdiction to sit as Commission established under the Constitutional Act No 6 of 1991 in that the Rules of Court Committee which should by Constitutional Instrument design the rules and procedures for the conduct of Commissions of inquiry in Sierra Leone did not do so by Constitutional instrument and the commissioner's reliance in his Report on the practice direction developed by the Three Commissioners for the conduct of the Commission's hearings is not a substitute to the Rules of procedure and Evidence to be designed by Rules of Court Committee for the functioning of the Commission of Inquiry in Sierra Leone pursuant to Section 150 of the referred Constitution of Sierra Leone, Act No. 6 of 1991
13. That the absence of clear rules of procedure developed by the Rules of Court Committee pursuant to section 150 of the Constitution of Sierra Leone Act No. 6 of 1991, deprived the Appellant of fairness in the inquiry in that the Appellant was informed by the commissioner that he would be called upon if needed and there was a legitimate expectation on the part of the Appellant that he would be notified by the commission which had promised to call him before making any adverse finding against him thus depriving the Appellant of his due process rights and his protection under the law guaranteed by the Constitution of Sierra Leone, Act no.6 of 1991 the Appellant was deprived of his right to fair hearing. Further to that, that the Commissioner promised to call the Appellant if need be but failed to do so.
14. That Section 6(1) of the Constitutional Instrument No. 64 which grants the Commissioners powers to modify and adapt rules of evidence is unconstitutional being that it violates section 150 of the Constitution of Sierra Leone Act No. 6 of



1991 in that it impugned section 6 subjects to the procedures and practices of the hearings of the commission to the discretion of the commissioners without following due process rules and procedures thus subjecting the entire process to uncertainty, unpredictability and lack of protection for the Appellant under the law.

15. That the said adverse findings, conclusions and recommendation of the Chairman and sole commissioner against the Appellant as well as the confirmation of same by the Government White Paper aforementioned did not support the evidence that was available to the commission or ought to have been made available to the Commission had the Appellant been granted audience by the Chairman and Sole Commissioner before arriving at the said findings, findings, conclusions, recommendations and confirmations had there been clear procedures in place to be followed by the commission of inquiry developed by the Rules of Court Committee as mandated by section 150 of the Constitution of Sierra Leone Act no 6 of 1991. In particular evidence subsists on the record to show that the Appellant had legitimate expectation that he would be called by the Commissioner who had indicated to the Appellant that he would call on the Appellant, if needed, by the Commission. Evidence subsists further to show that during the short period in which the Appellant served as Case Management Pillar Lead at EOC, Ministry of Health, he did not deal with the management and disbursement of Ebola funds and did not work for National Ebola Response Centre(NERC).
16. That the Hon. Sir Justice Biobele Georgewill sitting as Chairman and sole Commissioner of the commission of inquiry held in Sierra Leone pursuant to Constitutional Instrument No 64 of 2018 erred in law/procedure in making adverse findings and recommendations against the Appellant herein without granting him an opportunity to be heard as a person of interest in order to be able to present his own side of the case or in order to respond against any allegation against him, which the Appellant contends none exists or was led against him at the hearings of the commission because he was told to leave by the Commissioner and would invite him again to the commission if required.
17. That the facts and evidence available to the chairman and sole Commissioner during proceedings of the Commission did not support his specific findings, conclusions and recommendations made against the Appellant that he (the Appellant) misappropriated public funds and or abused his office.
18. That the said Hon Sir Justice Biobele Georgewill sitting as Chairman and Sole Commissioner of inquiry held in Sierra Leone pursuant to Constitutional Instrument No 64 of 2018 erred in fact there is only one item of evidence that is the Ebola Audit Report tendered by Aiah Gbondo Tugbawa(CW3) in which the Appellant's name was mentioned against Le 33,00,00(Thirty three million ) in a table and could not have provided any evidential basis for the sole commissioner to return adverse findings of misappropriation of public funds and abuse of office against the Appellant because the narrative of the audit report provided no details /no findings against the Appellant and did mention in anyway how and why the Appellant's name was mentioned in the table contained in the report, a fact that would have been known to the Commissioner had the Commissioner called on the Appellant as he promised during the course of the proceedings.



19. That the adverse findings contained in the Commissioner's Report is against the weight of the entire evidence submitted against the appellant herein at the said Commission of Inquiry when viewed individually and collectively (as analysed by the Commissioner at pages 33-38 of his report).

Counsel for the Appellant in his submissions relied on the entirety of the grounds of appeal and the synopsis filed. For ease of reference on his submission, he groups the grounds of appeal into 4 categories; grounds 1-4 deals with jurisdiction. Grounds 5 & 6 deals with adverse findings, ground 7,8,9,10,11,16,17 18 & 19 deals with issues of fair trials, grounds 12,13,14, & 15 deals with issues of lack of clear rules for the conduct of the commission's proceedings. In summary, Counsel for the Appellant argued that the Sole Commissioner acted ultra vires his powers in exercising personal jurisdiction over the Appellant. He argued that the Appellant does not fall within the category of the following person; President, Vice President, Ministers, Ministers of State, Deputy Ministers, Heads and chairmen of Boards of Parastatals, Departments and Agencies within the period from November 2007 to April 2018. He further argued that to include persons who are not within the remit of the commission, the president should give such approval of which there is no evidence before this Court. He refers the court to **Jason Beer QC** in his book **Public Inquiry** at paragraph 297, (Oxford University Press 2011). He also refers the Court to the case of **Re Rogul Communication License 1945 New Zealand Law Report page 665 CA** where it was held that Commissions of inquiry should strictly abide by their terms of reference. On the final grounds of notice of appeal that is ground 8,9,10,11,16,17,18 & 19 Counsel submits that the Appellant was not granted a fair hearing as contained in section 23 of the 1991 Constitution though he availed himself to the Commission. That the Appellant was not served with any allegation, he did not know the allegations that were against him therefore adverse findings ought not to have been entered against him. That the Sole commissioner, by indicting the Appellant and referring to him as indictor thus imported the criminal standard into the investigation. He prays that the appeal succeeds and adverse findings be set aside.

In reply to the submissions made on behalf of the Appellant, Counsel for the Respondent A. Suwu Kendoh relies on the entirety of the synopsis filed on behalf of the Respondent dated the 30<sup>th</sup> day of March 2022. She contends that there is evidence which the sole commissioner relied on to make adverse findings and recommendations against the Appellant. She refers the Court to pages 204 -216 of volume 1 of the Court Records; the testimony of CW 1 Aiah Gbondo Tugbawa from the audit service commission and exhibit p 4- p 148 (the audit report) tendered by him. Counsel further refers to pages 2440-2441 which is evidence of cash withdrawals. That the investigation was centred around Ebola funds. She refers the court to para 2-1-26.1(4) of their synopsis. That the Appellant falls under category d(iii) of the terms of reference. That though he did not fall under the category of ministers but he collaborated with such persons.

With respect to the jurisdiction of the sole commissioner, counsel refers the Court to page 5 of the synopsis. On the use of the word indict, Counsel argued that there is no proof of an

indictment. She further argued that the Appellant had an opportunity to appear before the Court which he did. That it behoves him to bring evidence in his defence.

**Grounds 1-4 inclusive** deals with jurisdiction of the court. The crux of the contention herein is whether the Sole Commissioner had jurisdiction when he concluded and arrived at adverse findings against the Appellant and made such recommendation being that the Appellant was not covered by the terms of reference of the Commission herein? Whether his findings are ultra vires his term of reference? Was the Appellant a person of interest within the remit of the terms of Reference? Did the Chairman and Sole Commissioner exercise personal jurisdiction over the Appellant as argued by Counsel for the Appellant? The terms of reference of the Chairman and sole Commissioner as contained in the Constitutional Instrument No 64 of 2018 is herein reproduced for the sake of clarity. It states "the purpose for which the Commission is appointed are to-

(a). Examine the assets and other related matters in respect of-

i. Persons who were president, Vice President, Ministers, Ministers of state and Deputy Ministers; and,

ii. Heads and chairmen of Boards of Parastatals, Departments and Agencies within the period from November 2007 to April 2018

(b) inquire into and investigate whether assets were acquired lawfully or unlawfully;

(c) inquire into-

i. Persons who were president, vice president, ministers of state and Deputy Ministers; and

ii. Heads and Chairmen of Boards of Parastatals, Departments and Agencies

(d) Ascertain as to whether the persons referred to in paragraph(a) to (c)-

i maintain a standard of life above that which was commensurate to their official emoluments.

ii. Owned or were in control of pecuniary resources or property disproportionate to their 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 public corporation



v. Acquired directly or indirectly financial or material gains fraudulently, improperly or wilfully to the detriment of the Government local authority, parastatal including or a parastatal including a public corporation, statutory commission body or any university in Sierra Leone.

(e). To inquire into and investigate any persons or matters as may from time to time referred to the Commission by His Excellency the President

From the terms of reference herein above reproduced, does the Appellant fall within the mandate of the Commissioner as stated in the terms of Reference supra? It is the argument of Counsel for Appellant that the Appellant falls outside the scope of the Commission of inquiry. He referred to Jason Beer QC in his book titled Public Inquiries (oxford University press 2011) supra that "the drafting of Terms of Reference is crucial in determining an inquiry's ambit, length, complexity, cost and ultimately its success ... an inquiry has no vires to act outside the terms of reference; it may only investigate those matters that are covered by the terms of reference." However, Counsel for the Respondent argument is that the Appellant falls within section 4(d)(iii) of the Terms of reference which provides for collaborators of those persons who were covered in Section 4 a-c. If the Appellant falls outside the scope of those to be investigated, the Commissioner would have acted ultra vires his terms of reference thus without jurisdiction and consequently the findings would be a nullity. Jurisdiction is the spinal cord of a commission of inquiry or any judicial proceedings. Jurisdiction has been defined by Karibi-Whyte JSC in the matter of **AG Federation V Abia State** & 35 (2001) 7SC (Pt) 100 following the case of **Ndaeyo v Ogunnaya** (1977) 1SC 11 as "... the authority the court has to decide matters before it or to take cognisance of matters presented in a formal way for its decision." Where there is lack of jurisdiction, however well conducted the proceedings are, it will be a nullity. I also rely on the case of **Peoples Movement for Democratic Change and Another V the Sierra Leone Peoples Party and Another** (unreported) Judgment delivered on the 22<sup>nd</sup> June 2007 by Renner Thomas CJ when he said "*the absence of jurisdiction is not a matter of mere technicality or procedure. It is 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 justifiability. A court can only exercise power to entertain a matter where it has jurisdiction*". In the case of **M.A Kharafi & Sons Ltd v Attorney General of the Gambia**, GCA 046/2019 which we relied on in the case of **Linda Diana Konomay V the Attorney**

General & Minister of Justice (2021)SLCA 5(31 May2021). "a commission of inquiry does not adjudicate between the state and persons who appear before it but it carries out an investigation into the issues and matters that are within the scope." Where a Commissioner acts beyond his scope, proceedings will be nothing but a nullity. Also, in the case of Attorney General of Lagos v Hon Justice L.J Dosumu (1989) 3 NWLR (pt.11 )page 552 at 602 OBASEKI JSC states "jurisdiction connotes a term of comprehensive import embracing every kind of judicial action(including that of a commission of inquiry).It is the power of the Court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties".

It is within the scope of the Sole Commissioner under section 4(d) (iii) to investigate persons referred to in paragraph a-c whether they collaborated with any person in respect of such corruption, dishonesty or abuse of office. It is uncontroverted that the Commission investigated into the Ministry of Health and Sanitation on the Ebola Response and adverse findings, recommendations were made against the Minister of Health and Sanitation. At page 209 Vol 1 of the Records, the Appellant himself told the Court that "I am one of the Pillar leads in the Ebola 2014". I do adopt the dictum in SOGEFEL SARI VAG delivered on the 6<sup>th</sup> may 2021 *mutantis mutandis* where we upheld the adverse findings against the company being that there were findings against the Minister of Education that education funds were unaccounted for and that SOGEFEL benefited from receipt of certain funds from the Education Ministry. In the instant matter, there is evidence that the Appellant personally withdrew monies from the Ebola account of which there is no evidence of how it was spent. He fits within section 4(d)(iii) as a collaborator. Therefore, with recourse to the terms of reference contained in Constitutional Instrument No. 64 of 2018 Section 4(d)(iii), the Chairman and Sole commissioner did not act ultra vires his terms of reference.

In consequence thereof, grounds 1-4 inclusive are dismissed.

Grounds 5,6&19 of the appeal deals with the issue of whether there was evidence against the Appellant to warrant the adverse findings /conclusion and recommendation against the Appellant by the Chairman and Sole Commissioner. It is uncontested that the Chairman and Sole Commissioner after his investigation made adverse findings against the Appellant that the "total amount of Le 85,239,738,225.94 and USD 2,471,993.41 were misappropriated and or unverified and had remained unaccounted for between the FOC Ministry of Health and Sanitation, NERC, their several Collaborators, BDO and HIPAUF. In view of his findings, he



recommended that certain people including the Appellant shall jointly and severally refund and pay into the consolidated Revenue fund of the Government of Sierra Leone the sum of 33,643.447.070.00 and USD 1,050.000.00 that were misappropriated and or had remained unaccounted for namely Miatta Kargbo, Madina Rhaman, Dr Bash Taqi the Appellant herein and others. Was the evidence adduced not enough to arrive at such finding? This Court holds the view that the Appellant need not be specifically charged with the responsibility to authorize or disburse monies as canvassed by Counsel for the Appellant. What is relevant, is whether individually or as a team by his action or by his inaction caused the Government to lose monies. Pages 207, 210, (Vol 1) of the Records contains the testimony of Aiah Gbondo Tugbawa from audit Service Sierra Leone as earlier on stated who testified as CW 3. He produced and tendered an audit report of the management of Ebola fund from May -October 2014 as Exhibit P 164 (see pages 936-1013) vol.3). This audit report focused on the management of the Ebola funds focusing on procurement, disbursement including hazard payment, internal control system etc. and whether funds were properly utilised. The findings were that funds were used for unintended purposes, procurement procedures were flouted, and certain payments were done to certain health care workers without proper supporting documentation. This Court notes that the said audit report was tendered in the presence of the Appellant who told the commission that he will look at the document and respond later (see page 211 vol. 1 of the records). Importantly there is uncontroverted evidence that the Appellant was Pillar Lead of Ebola Response between February, 2013 and August 2014. At pages 2440 and 2442, there is specific report on withdrawals made from Ebola Response Emergency Account number 003001118285030109. A further reading of the said report shows withdrawals on the 3/10/14 and 17/9/14, in the name of the Appellant totalling to Le 66,600.000.00 (sixty -six Million Leones). Evidence shows that a total of Le. 15,815,495,120 was withdrawn from the account of which evidence was led that the Appellant himself withdrew monies. There is further evidence by CW 7 Ibrahim Swaray Chief Executive of National Public Procurement Authority that in 2014 he was Head of Procurement at the Ministry of Health and Sanitation with the responsibility to give professional advice to the Ministry on procurement issues. He told this court that his advice was however not sought in the process for the construction of 90 bed treatment centre at Kerry town but that it was the Case Management Team head according to CW 11 the Permanent Secretary of the Ministry of Health and Sanitation, the Appellant was the head. He further told the Commission that it was the Appellant that advised and recommended C.T. Group be for the contract to construct the said treatment centre at Kerry Town, a clear evidence and indication that the Appellant



was involved in the flouting of procurement rules leading to an abuse of office consequently causing the Government huge loss of money. At page 260 of the records, CW11 told the Commission that the treatment centre at Kerry Town which the Appellant advised that CL Group be hired was not completed. Relevant of his testimony is the fact that the Appellant advised that the CL Group be granted the contract without due process. This witness testified in the presence of the Appellant, the Appellant had no question. What is confusing is that contrary to why counsel for the Appellant said that there was no need for them to test the veracity of Exhibit P.164 in that nothing was added to the evidence apart from tendering it. It is the view of this court that the contents of the said report Counsel said they ignored directly implicated the Appellant not just as a collaborator, but as an active participant in the scheme of things that led to the loss of such monies belonging to the Government of Sierra Leone

An appeal is by way of appraisal and rehearing which means that the court may where need be reopen evidence or receive new evidence. The Appellant even on appeal did not bring forward evidence to counter the said adverse findings as this court has mandate to rehear/reopen the matter pursuant Rule 9(1) of the Court of Appeal Rules. In the case of **Koglex Ltd (No.2) v Field (2000) SCGL 175 at page 185** the Supreme Court held that "the very fact that the first appellate court had confirmed the judgment of the trial court does not relieve the second appellate court of its duty to satisfy itself. That the first Appellate Court's judgment is, like the Trial Courts also justified by evidence on record. For an appeal at whatever stage is by way of rehearing, and every Appellate Court has a duty to make its own independent examination of the record of proceedings." Also, this principle was emphasized in the case of **Ladd V Marshall 1954(All ER 745) 1WLR 1489**. Thus, the Appellant has not controverted /contradicted the oral and documentary evidence upon which the adverse findings were hinged. These grounds of appeal fails and are accordingly dismissed.

On ground 7, the Appellant contends that the Sole Commissioner referred to him as indicted person thus importing criminality on his side and setting criminal law standard which led to an erroneous finding against the Appellant thus arriving at wrong conclusion by imposing liability against the Appellant without specifying in fact or in law why he arrived at the adverse findings he made against the Appellant. Counsel for the Respondent contends that though the word indictment was used, the Chairman and Sole Commissioner did not indict the Appellant or used a criminal standard in arriving at the adverse findings against the Appellant. I agree with counsel for the Appellant that the sole commissioner at page 18 vol 1 para 1 xxxiii referred to the Appellant as one indicted former Head of Case Management



Team of EOC. For a better analysis of this ground, it is relevant to define what an indictment is for this Court to ascertain if the Sole Commissioner used the word indictment as in the criminal law context or otherwise. Black's Law Dictionary tenth edition at page 891 defines indictment as "the formal written accusation of a crime, made by a grand jury and presented to court for prosecution against the accused person". Within the context of our criminal justice system, Section 2 of the Criminal Procedure Act, Act No. 32 of 1965 the interpretation section thereof defines an indictment as "a document containing the charge against the accused signed by a law officer and every indictment purporting to have been signed as aforesaid shall be presumed to be signed until the contrary is shown". A Law officer is further defined in section 2 of the Criminal Procedure Act supra as "Attorney General, the Solicitor General the first Parliamentary Counsel and every other Crown Counsel or Parliamentary Counsel. From the foregoing, it is crystal clear that the Sole Commissioner is not a law officer and therefore cannot rightfully/lawfully indict the Appellant. A Commission of inquiry is an investigation and not a criminal or civil trial and therefore one is not expected to have the same standard of proof in full blown trial as my elder brother Kamanda J.A said in the case of **Emmanuel Beresford Oshobo Coker v Attorney General and Minister of Justice** unreported delivered on the 2 day of November 2022 relying on the case of **MA Kharafi and Sons Ltd v Attorney General Of the Gambia GCA CIV.APP GC o46/2019** "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 creates it. Its report submitted to the Executive is neither a Judgment nor an order which is capable in itself of being executed as perceived by the Law". From the foregoing it is my considered view that though the said sole commissioner referred to the Appellant as an indicted person, there is no evidence from which this court may infer that the use of the word 'indictment' influenced/tainted the Chairman and Sole Commissioner's adverse findings against the Appellant. He did not convict and or sentence the Appellant. This ground also fails and is accordingly dismissed

On grounds 8,9,10,11,16,17&18 Counsel for the Appellant with the leave of the Court, argued these grounds together being that they are intertwined. In a bid to argue all grounds together, he posed a question whether any commission of inquiry or any court of law for that matter can make adverse findings against a party on allegations when that party was not served with the notice of the allegation, nor was that party given an opportunity and notice to be heard on those allegations. Counsel relied on Section 23 of the Constitution which grants a



fundamental right to fair trial. He drew the court's attention to para 1.4 of the Ebola section of the sole Commissioner's report referencing and emphasising that the sole commissioner erroneously stated person of interest did not show up. When there is evidence on record that it was the sole commissioner that told the Appellant to leave the commission and that the Appellant would be called upon if need be. He argued that the erroneous conclusion impeded the Appellants right to fair hearing and thus proceeded to make adverse findings against him. He sees such as an infraction as a judgement in default which should be set aside as of right. On these grounds of appeal, counsel for the Respondent argued that these grounds are unsubstantiated. She contends that the Respondent was a person of interest within the remit of section 4(c) (ii) as a public servant and Pillar lead in the Ebola Response in 2014. That the Appellant was present when witnesses testified, was given an opportunity but did not harness same.

Was the Appellant accorded a fair hearing? Black's stone dictionary 10<sup>th</sup> edition (USA Thomson Reuters 214 )837 defines fair hearing as "a judicial or administrative hearing conducted in accordance with due process." The law is well established by case law both within and outside this jurisdiction that where a person is not given an opportunity to be heard in a commission of inquiry or any judicial proceedings, and in breach of such right a conviction or adverse finding /recommendation is made against such person, such conviction/adverse finding is an exercise in futility however well the proceedings was conducted and like Counsel for the appellant put it is like a judgment in default and must be set aside ex debito justitiae. In essence, fair hearing lies in the procedure followed in the determination of the case and not the correctness of the decision. The case of *Akila v Director General SSS* (2014) 2NWLR (Pt 1392)443 is instructive in this regard. Also, the decision of *AG V Kamara* SC MISC APP NO 4/92 SLSC(unreported delivered on the 11<sup>th</sup> August 1992 which was followed mutatis mutandis in the case of *Diana Konomanyi* COI case supra further sustain this position of the law. Also, this principle has a biblical undertone for even God did not pass sentence on Adam without hearing his side. God called Adam where art thou? Has thou eaten of the tree whereof I commanded thee thou shall not eat? God's question granted an opportunity for Adam to put up a defence which he hadn't anyway. This right is an inalienable right also recognised by the drafters of the 1991 Constitution of Sierra Leone and included it in Section 23(2) as part of the fundamental rights of its citizens, which is also in conformity with Article 7 of the African Charter on Human and People's Rights. The principle of fair hearing is not measured by any straight jacket or stereotypic analysis but



a recourse to the accompanying circumstances including the opportunity to be given to the appellant herein. What is important is whether an opportunity was granted to the Appellant to be heard who then will be at liberty to harness such opportunity or not. I am grounded in my assertion by my reliance on the dictum of **Hon. Mr. Justice S.M.F Kutubu (CJ)** in the case of **Isatu Karama V Attorney General MISC APP N0 9792 SLSC1**. The fact is that throughout the testimonies of the witnesses, the Appellant was present at the commission. This Court notes that the Appellant was present when CW 3 (Aiah Gbono Tugbawa), CW 4 (Ibrahim Sorie Kamara), CW 5 (Brimah Thullah), CW 6 (Abu bakar Conteh), CW 7 (Ibrahim Swaray), CW 8 (Vidal Tucker), CW 9 (Moses Comboh Sesay), CW 10 Abdul Mansaray and CW 11 (Chief Sidiq kapuwa) testified and tendered documents including audit reports on Ebola funds p 164 (see pages 211-239 Vol. 1 of the Records). The Appellant told the court he had no questions for these witnesses. This court further notes that when Y. Wallims esq made an application on behalf of Miatta Kargbo for the service of copies of the documents on persons of interest together with the written statements of witnesses, Counsel for the Appellant A. Sheriff aligned himself to the application. There is no evidence of complain that the said processes were not served on the Appellant after that application. Counsel for the Appellant submitted that the sole Commissioner thanked the Appellant and told him to leave after there were no adverse evidence against him. I did not find Counsel's assertion on record nor did he point out areas of the records this court may find same. I am not convinced by Counsels assertion being that as per records the Appellant was present when adverse evidence from CW 3, CW 7 AND CW 11 were led. The Appellant appeared as person of interest (see page 8) and was present during the inquiry. He was present at the commission from the first day. He ought to have made efforts/taken steps to defend the evidence against him. There is no pointer that the Appellant was not accorded the right to fair hearing. He was giving an opportunity to be heard. He was asked if he had questions for each witness after his/her testimony. He said he had none. He was given the opportunity to present his case he implicitly waived it. He cannot complain that he was not granted an opportunity to be heard at this stage. This ground also fails. It is accordingly dismissed.

On ground 11, the Appellant contends that the Chairman and sole Commissioner erred in fact in making adverse findings and recommendations against the Appellant herein a Medical Doctor/Civil Servant in that, the Commissioner made general findings and did not specify finding against the Appellant and in particular did not specify how the Appellant misappropriated public funds at the EOC, Ministry of Health and how the Appellant abused



his office and his findings and conclusions are therefore made without any evidential support. Counsel for the Respondent in this regard argues that there is evidence on which the sole Commissioner made adverse findings against the Appellant. Is there no specific evidence against the Appellant and the commissioner however proceeded to make adverse findings against him? It is uncontested and uncontroverted that the Appellant was the Pillar Lead at the Ebola Operation Centre. CW 3 produced and tendered the audit report supra in which there was clear evidence that the Appellant personally withdrew monies from the Ebola Account. CW 7 the procurement officer then at the Ministry of Sanitation told this court that the Appellant as Pillar Lead advised that team in awarding the contract of the construction of the Kerry town Ebola facility to CL group without due process. The argument that the Commissioner did not make any specific findings against the Appellant is of no moment. I say so because the Appellant is investigated as a collaborator and therefore specific findings ought not be made against him. The findings of the Chairman and sole Commissioner as stated at page 32 volume 1 of the records, was a total amount of Lc 85,239,738,225.94 and ii USD 2,471,993.41 were misappropriated and unverified and had remained unaccounted for between the EOC/Ministry of Health and Sanitation, NERC, their several Collaborators, BDO and IHAU. The public officials including the Appellant were found by the Commissioner to be in gross abuse of their offices in the reckless manner in which they dealt with the finances of the government under their care and control and failure to provide leadership and supervision of the Ministry or Department or Agency put under their charge. This ground fails and is hereby dismissed.

Grounds 12,13 14& -15 deals with non-conformity with the constitution with an adverse spillage on the right to fair trial right. The Appellant contends that the erroneous adverse findings by the sole commissioner was due to lack of rules of procedure to be prescribed by Rules of Court Committee to regulate the practice and procedure of the commission as spelt out in Section 150 of the Constitution of Sierra Leone Act No. 9 of 1991. He further contends that had there been clear rules of procedure, the commission would have been in a clear position to say who were persons of interest, what issues he was served for, the issues he was questioned for and that the commission would not have made some adverse findings against the Appellant. He limits his argument on the effect of the non-availability of these rules and not the lack of the rules itself.

In contravention, Counsel for the Respondent argues that the sole commissioner did not violate section 150 of the constitution and that the sole commissioner by commission of



inquiry constitutional instrument No 64 of 2018 was appointed by the president on the 1<sup>st</sup> of August 2018 pursuant to section 147(1) &(2) of the 1991 constitution and by section 2 thereof, the Chairman and sole commissioner was vested with jurisdiction contrary to what Counsel for the Appellant want this Court to believe.

Section 150 of the 1991 Constitution states "subject to the provision of this chapter, the Rules of Court Committee shall by Constitution regulate the practice and procedure of all commissions of inquiry". The referred rules are for the guidance and efficacy of proceedings of Commissions of Inquiry. There are two main questions to be answered on these grounds (a) were there no rules of procedure and the sole commissioner however proceeded with the commission of inquiry? (b) was the commissioner's findings tainted by the non -availability of the rules of procedure if any?

On the first limb, whether there were no rules of procedure, it is no secret that Rules of Court Committee at the commencement of this Commission of inquiry did not make rules, but does that mean that there were no rules of procedures? Does it mean that a Commission of inquiry even when set up by the president pursuant to Section 147 of the 1991 constitution shall not hold if the Rules of Court Committee fails to make rules for the guidance of proceedings of a Commission of inquiry? In a bid to an answer this question posed, this Court finds succour in the decision of the Supreme Court case **SC No. 4/96 All Peoples Congress V NASMOS & and Ministry of Social Welfare Youth and Sport (unreported delivered on the 26<sup>th</sup> day of October 1999)**. In that case, the Court unanimously held that where Parliament is to make rules for the efficacy of the Constitution but has not done so, the Rules in force made by the Rules of Court Committee in the normal civil litigation in practice should apply. Therefore, in the instant case, the High Court Rules 2007 which directs civil practice is invoked herein. The rationale behind the said judgment in **APC V NASMOS & OTHERS** is to ensure that justice is not shielded for the inaction on the part of law makers thereby allowing Courts to be harbinger of injustice rather than a place of justice. This Court is bound by the above decision pursuant to section 122(2) of the 1991 Constitution the supreme court having decided the position of the law in such an instance.

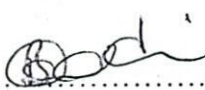
On the 2<sup>nd</sup> limb of the argument on this ground, being that there were rules the commission of inquiry proceeded with, the contention that the Appellant suffered injustice culminating in to an adverse finding against the Appellant due to lack of rules for the guidance of the



Commission cannot be sustained. Grounds 12,13,14 &15 lacks merit and are hereby dismissed.

From the entirety of the evidence adduced, I hereby Order as follows:

1. The appeal in its entirety lacks merit and is therefore dismissed.
2. The findings of the Chairman and sole Commissioner is hereby upheld.
3. Cost of Le 50,000,000(Fifty Million Leones) to be borne by the Appellant.

Hon Mrs Justice Fatmatta Bindu Alhadi JA (Presiding).....

Hon Mr Justice Komba Kamanda JA.....

