

CIV. APP. NO. 29/2020

**IN THE COURT OF APPEAL OF SIERRA LEONE**

**IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE 1991, ACT NO. 6 OF 1991,  
SECTIONS 147 – 150 (INCLUSIVE)**

**IN THE MATTER OF CONSTITUTIONAL INSTRUMENT NO 64 OF 2018 THE COMMISSION  
OF INQUIRY NO. 64 OF 2018 (INQUIRY AND INVESTIGATION NOTICE (1) 2018**

**THE JUSTICE BIOBELE GEORGEWILL COMMISSION OF INQUIRY**

**BETWEEN:**

MR. RAYMOND SAIDU KARGBO - APPELLANT  
Boundary One Community  
IMMAT  
Freetown

AND

ATTORNEY-GENERAL & MINISTER OF JUSTICE - RESPONDENT  
Guma Building  
Lamina Sankoh Street  
Freetown.

**Coram:**

Hon. Mrs. Fatmatta Bintu Alhadi J.A. - Presiding  
Hon. Mr. Komba Kamanda J. A.  
Hon. Mrs. Tonia Barnett J.A.

**Counsel:**

A S Sesay Esq - For the Appellant  
B. Koroma Esq  
E.B. Kargbo Esq  
E. W. Conteh Esq

A Suwu-Kendoh (Mrs) - For the Respondent  
M.P. Bangura Esq  
A. Lansana Esq

**JUDGMENT DELIVERED THIS 19th DAY OF December 2022**

1. **Alhadi J A**: On the 19<sup>th</sup> day of October 2020 a Notice of Appeal was filed by the Appellant on 6 grounds of appeal. Synopsises were filed by both parties and on the 14<sup>th</sup> of November 2022 an oral hearing was held. The grounds of appeal are as follows:

**Ground 1**

2. The Hon. Biobelle Georgewill erred in law and acted in violation of Section 150 of the Constitution of Sierra Leone, Act No. 6 of 1991, when he proceeded to conduct the Commission of Inquiry without the 'rules regulating the practice and procedure' of all Commissions of Inquiry to be prescribed by the Rules of Court Committee ("ROCC") through a constitutional instrument, as provided for under section 150 aforesaid.

**Particulars**

- (a) The Hon. Justice Biobelle Georgewill erred in law and acted outside the remit of his mandate, when he illegally and without due constitutional process reached the conclusion that the Commission of Inquiry is constitutional, legal, and valid in law".
- (b) The Hon Justice Biobelle Georgewill found and ruled at Paragraph 1.5 page 19 of volume one of the Commission's Report that "Regrettably, and in a practice that leaves much to be desired, Joseph Fitzgerald Kamara, Esq., learned Senior Counsel to H.E.



Dr. Ernest Bai Koroma, former President of Sierra Leone, a Person of Interest before this Commission of Inquiry had once again canvassed extensively the issues of jurisdiction and legality of the Commissions of Inquiry in his written final submissions. This Commission reiterates, adopts, and incorporates its valid and subsisting ruling delivered on this issue on 14/2/2019, and once again holds firmly that this Commission of Inquiry is constitutional, legal, and valid in law".

## **Ground 2**

3. The Hon. Justice Biobelle Georgewill erred in law when he proceeded to indict the Appellant for the offence of "Abuse of Office", an offence provided for under Section 42 of the Anti-Corruption Act No. 12 of 2008 and the offence of "Abuse of Public Trust". The Commission of Inquiry is an investigating mechanism with limited adjudicatory powers, but never a trial court for criminal offences established under the common law or statute.

## **Particulars**

- (a) Hon. Justice Biobelle Georgewill made adverse findings, against the Appellant herein, at page 5 of the Commission's Report, volume one under the rubric "Persons Indicted", when he stated "On Abuse of office: The following indicted public officials and their collaborators who were all involved in gross abuse of their offices in the reckless manner in which they dealt with the finances of the Ministry or Department or agency of Government put under their care and failure to provide the required leadership, direction



control and supervision, namely 35.Dr. Raymond Kargbo, former Director General, Petroleum Directorate."

- (b) Further at paragraph 6 of the Conclusion: Persons Indicted: The Hon. Justice Biobelle Georgewill found that "At the conclusion of the investigations, and upon consideration of the evidence and the findings made thereon, the following 84 persons made up of former and serving public officials and their collaborators were indicted and recommendations made against them, namely: Two indicted former Director Generals (2) Dr. Raymond Kargbo."
- (c) The purposes for which the Commission was created are to, inter alia, investigate whether assets were acquired lawfully or unlawfully in respect of persons who were (i) President (ii) Vice Presidents (iii) Ministers and Deputy Ministers (iv) Heads of Departments and Agencies within the period 2007 to April 2018 (the period covering the reign of the former President Dr. Ernest Bai Koroma) and not to conduct a criminal trial and impose sentence on the Appellant herein, in the guise of adverse findings.
- (d) The Hon. Justice Biobelle Georgewill erred and without authority, indicted the Appellant for the offences of Abuse of office and Abuse of Public Trust, a power that was not conferred by Constitutional Instrument No. 64 of 2018 that established the Commission. The Commission was rather empowered to inquire/investigate/examine and make recommendations but never to "INDICT". The Hon.



Justice Biobelle Georgewill acted ultra vires the powers conferred upon him by Parliament under Constitutional Instrument No. 64.

### **Ground 3**

4. The Hon. Justice Biobelle Georgewill erred in law and reached an adverse finding against the appellant herein Raymond Saidu Kargbo when he adjudged “as being responsible for acts of corruption, maladministration, abuse of office and lack of accountability” in the performance of his duty as Director General of the Petroleum Directorate.

### **Particulars**

- (a) The Hon Justice Biobelle Georgewill at page 67 of the Commission’s Report stated that “the evidence disclosed the following Persons of Interest as well as their collaborators as being responsible for these acts of corruption, maladministration, abuse of office and lack of accountability”
- (b) The Sole Commissioner established that the sum of US\$3M had been paid to SMRT for the Kits, yet he failed to inquire whether SMRT supplied the Kits as per contract specifications and requirements, thereby satisfying proper use of the money. Instead, he created a tendentious situation of the successful completion of the transaction in his write-up thus creating an eerie feeling of a failed contract in which money was lost to fit into his narrative of corruption,



maladministration, abuse of power and lack of accountability.

- (c) The functions of the Director General of the Petroleum Directorate were justified as stated in the Act and all his actions were done according to the Act. His functions are clearly set out in section 8 of the Petroleum (Exploration and Production) Act No. 7 of 2011. Section 8(4)(d) clearly states that “performing such other functions as are assigned by this Act or as directed by the Minister.
- (d) The Hon. Justice Biobelle Georgewill referred to four (4) separate acts, to wit: (i) corruption (ii) maladministration (iii) abuse of office (iv) lack of accountability; and seven separate persons, to wit (i) Dr. Ernest Bai Koroma (ii) Raymond Kargbo. Other persons mentioned: (i) Emmanuel Beresford Oshoba Coker (ii) Karefa Kargbo (iii) Dr. Kaifala Marrah (iv) SMRT Co. Ltd (v) DR. Michael Kargbo (vi) Momodu L. Kargbo (vii) Guandjin Construction Ltd.
- (e) Failing to distinguish which person(s) were found wanting in respect of any one or more of the four (4) acts referred to and the elements of the respective offences alleged.

#### **Ground 4**

- 5. That the Hon. Justice Biobelle Georgewill usurped the functions of the Supreme Court when he offered to interpret Section 62 of the Constitution of Sierra Leone. A



function that is the domain of the Supreme Court of Sierra Leone to the exclusion of all other courts.

### Particulars

- (a) Section 124(1)(a) provides that “the Supreme Court shall, save as otherwise provided in section 122 of this Constitution, have original jurisdiction, to the exclusion of all other Courts— (a) in all matters relating to the enforcement or interpretation of any provision of this Constitution;”
- (b) The Hon. Justice Biobelle Georgewill made adverse findings against the Appellant herein, when he erroneously interpreted section 62 of the Constitution of Sierra Leone Act No. 6 of 1991, to wit:
  - (i) “The following persons shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of Le 70,294,264,523.00 that had remained unaccounted for as monies not transferred to the single treasury account in 2017 and monies paid out illegally as terminal benefits to staff whilst still in the service of the Petroleum Directorate: Raymond Kargbo.....(Chapter 9.6 paragraph 1).
  - (ii) The following persons shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of US\$ 3,000,000 that had remained not refunded as monies given out illegally as loan by the Petroleum Directorate through the Ministry of Finance to SMRT



Co. Ltd for supply of Biometrics Machines: iii Raymond Kargbo.....' (Chapter 9.6 paragraph 4).

- (iii) The following persons shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of US\$12,263,821.00 that had remained not refunded as monies given out illegally as loan by the Petroleum Directorate through the National Commission for Privatisation to Rokel Commercial Bank: iii. Raymond Kargbo; (Chapter 9.6 paragraph 5)
- (c) The Hon. Justice Biobelle Georgewill at page 20 of the Commission's Report, volume one, interpreted the Constitution when he rhetorically posed the question "in Sierra Leone, who is truly the Government official ultimately in charge of the funds and resources of a Ministry or Department and is the real 'vote controller' in the Ministry or Department of Government under the Constitution of the Republic of Sierra Leone 1991, Act No. 6 of 1991, as between a Minister and a Permanent Secretary?"
- (d) The Hon. Justice Biobelle Georgewill answered the question posed and directly interpreted the section 62 of the Constitution thus: "There is no doubt in my mind howsoever, that the power of supervision of a Ministry or Department by a Permanent Secretary is clearly and unambiguously subject to the powers of general direction and control of a Minister over the Ministry or Department of Government."



- (e) The attempt to interpret section 62 (Administration of Ministries) of the Constitution of Sierra Leone Act No. 6 of 1991, the Hon. Justice Biobelle Georgewill, without due regard, violated section 124 (1) of the Constitution, which reserves its interpretation function exclusively to the Supreme Court.
- (f) Ex arguendo, the Hon. Georgewill's interpretation of section 62 of the Constitution, whether valid or not, cannot stand, because the Hon. Judge, illegally usurped the functions of the Supreme Court of Sierra Leone and exercised a power he does not have. Therefore the adverse findings against the Appellant, consequent upon the fatal interpretation of the Constitution, are void and of no legal effect.

## **Ground 5**

- 6. The Honorable Justice Biobelle Georgewill acted outside of his terms of reference and therefore in excess of his jurisdiction and thereby "ultra vires" by questioning the Petroleum Directorate in the following transactions: (i) the settlement of the terminal benefit to the members of staff of the Petroleum Directorate, (ii) the payment for biometric machines to SMRT through a loan to the Ministry of Finance and (iii) loan to Rokel Commercial Bank.

## **Particulars**

- (a) The Commission was rather empowered to inquire/investigate/examine and make recommendations.



(b) The Hon. Justice mentioned that the Appellant was involved in corruption, malpractice and abuse of office, but failed to show any actual financial loss suffered by the government from the activities of the Appellant as Director-General of the Petroleum Agency and also failed to show who benefitted from the alleged corruption.

( c) The activities carried out by the Director General of the Petroleum agency i.e.: (i) the settlement of the terminal benefit to the members of staff of the Petroleum Directorate, (ii) the loan through Ministry of Finance to SMRT Co. Ltd for supply of Biometric Machines, (iii) loan to Rokel Commercial Bank , were performed in good faith and according to section 5(2)(j) of The Petroleum (Exploration and Production) Act (PEPA) 2011 which states “ without limiting the generality of subsection (1) the directorate shall – (j) Contribute to national budgetary planning and control (t) Perform any other function incidental or consequential to its function under this Act.

## **Ground 6**

7. Violation of Section 149 (4) of the Constitution of Sierra Leone Act No. 6 of 1991 as the purported published Commission Report is incomplete and therefore cannot be deemed in law as a “judgment.”

## **Particulars**

(a) That there are five (5) volumes of the report of the Hon. Justice Biobelle Georgewill, Commission of Inquiry



Constitutional Instrument No. 64 of 2018, only two (2) volumes were published by the Government of Sierra Leone.

#### **8. RELIEFS SOUGHT FROM THE COURT OF APPEAL**

- a. That the incomplete Report be declared null and void and of no legal effect.
- b. That the adverse finding of Hon. Justice Biobelle Georgewill made and directed against the Appellant herein, be set aside and/or quashed.
- c. That this Honourable Court declares void the acceptance of the Government in the White Paper dated September 2020 on matters affecting Dr. Raymond Kargbo as a Person of Interest.
- d. That this Honourable Court enters Judgment in favour of the Appellant.
- e. That the Costs of these proceedings and that in the Commission of Inquiry be borne by the Respondent.

#### **SUMMARY OF SUBMISSIONS MADE BY THE RESPONDENT**

- 9. On ground 1, Counsel for the Respondent submitted that the Learned Judge/Sole Commissioner did not err in law and did not act in violation of Section 150 of the Constitution of Sierra Leone of 1991; neither did he act ultra vires the Constitution of Sierra Leone. The Learned



Judge conducted the investigations by Constitutional Instrument No. 64 of 2018.

10. On ground 2, Counsel averred that the Learned Judge did not indict the Appellant for the offence of abuse of office or for any other offence for that matter. She said that the investigation was conducted pursuant to Section 4 (d) (ii) and (iii) of Constitutional Instrument No. 64 of 2018 deals with "abuse of office" as part of the Terms of Reference of the Commission. It authorised the Judge/Sole Commissioner to investigate into abuse of office.
11. Counsel maintained that as for the use of the phrase 'abuse of public trust', it means in common law to refer to a breach or an abuse for which there is a liability; and in civil or criminal jurisdiction, it is a term of art in the legal field. Mrs Suwu-Kendoh espoused that this ground lacked merit and that it cannot be a ground for which a decision could be set aside and should therefore be dismissed.
12. On ground 3, Mrs. Suwu-Kendoh argued that the Learned Judge did not err in law in reaching an adverse finding against the Appellant when he adjudged "as being responsible for acts of corruption, maladministration, abuse of office and lack of accountability in the performance of his duty as Director General of Petroleum Directorate.
13. She submitted that the Appellant as Director-General of the Petroleum Directorate had no legal



mandate to deal with public money without due process. Counsel propounded that the Learned Judge was mandated by Constitutional Instrument No. 64 of 2018 to inquire/examine/investigate and not to institute a criminal trial. She said that he did not charge the Appellant and the others with any criminal offence. She pointed out that the Sole Commissioner only used those words/phrases to describe the conduct of the said public officials with respect to the loan from the Petroleum Directorate. She urged the court to dismiss this ground of appeal as it lacks merit.

14. On ground 4, Counsel submitted that the Learned Judge by sharing his opinion on Section 62 of the 1991 Constitution of Sierra Leone, did not usurp the functions of the Supreme Court and therefore did not violate Section 124 (1) of the Constitution. She argued that this ground was unsubstantiated, could not serve as a ground of appeal and should be dismissed.
15. On ground 5, Mrs Suwu-Kendoh opined that the Learned Judge did not err in law and did not act ultra vires, outside of his terms of reference or in excess of his jurisdiction. She argued that the Learned Sole Commissioner kept himself strictly to his terms of reference as prescribed in Constitutional Instrument No. 64 of 2018. She submitted that the discretionary power (if any) to retain the services of employees should be done in accordance with employment laws and procedures.
16. She also submitted that the Civil Service Code and Regulations and Rules, which deal with employment in government, provides that civil servants shall retire on



attaining the statutory retirement age of sixty (60) years and shall be entitled to end of service certificate on request (See pages 156-157 of the Civil Service Code and Regulations and Rules.) She urged the court to take judicial notice of the fact that employees are entitled to end of service benefits at the end of the service or contract.

17. Regarding payment to SMRT Company Limited through a loan to the Ministry of Finance and loan to Rokel Commercial Bank, which both deal with the investigation of the utilization of public money without due process, Counsel submitted that the Sole Commissioner did not act 'ultra vires' his mandate, which was to investigate the granting of loans of public money without following due process of the law.

18. Mrs. Suwu-Kendoh maintained that it is in evidence that on the 9<sup>th</sup> of October 2014, under the leadership of the Director-General, the Petroleum Directorate granted a bridging loan amounting to US\$ 14,000,000.00 to the National Commission for Privatisation for Rokel Commercial Bank and the payment of SMRT Company through a loan to the Ministry of Finance. He said that it is also in evidence that, of the said amount of US\$ 1,736,178.63 was refunded on the 29<sup>th</sup> of January 2015, leaving the balance of US\$ 12,263,821.00 which amount remained unpaid.

19. Counsel submitted that the investigation into the activities of the Petroleum Directorate disclosed that there were blatant breaches of the provision of the national Constitution of Sierra Leone of 1991 and the



Public Financial Management Act of 2016. She said that the Appellant acted contrary to law in the discharge of his duties as Director General of Petroleum Directorate in respect of the stated activities, subject matter of the investigation by the Sole Commissioner. She asked that the court dismiss this ground of appeal.

20. Lastly, on Ground 6, Counsel submitted that Section 149 (4) of the 1991 Constitution of Sierra Leone, gives the Appellant a right to appeal against an adverse finding and not a missing part of the report. She said that if the Appellant has issues with a missing part of the report, he should seek other remedies but not to appeal. She said that the report of the Commission of Inquiry caused to be published is presumed to be the complete report until there is evidence to the contrary. She submitted that this ground of appeal lacked merit and should be dismissed.

## BACKGROUND

21. Pursuant to Section 147 (1) of the 1991 Constitution of Sierra Leone, His Excellency, President Brigadier (Rtd) Julius Maada Bio upon taking office as President of the Republic of Sierra Leone in April 2018, appointed Hon. Justice Biobelle Georgewill as Sole Commissioner of Commission of Inquiry Constitutional Instrument No. 64 (hereinafter referred to as "COI CI No. 64") that was tasked with the responsibility to investigate the activities of the erstwhile All Peoples Congress government led by former President Dr. Ernest Bai Koroma between November 2007 and April 2018. The terms of reference (TOR) of the Sole Commissioner as provided for in Section



4 (a) to (e) of Constitutional Instrument No. 64 of 2018,  
were thus:

1. The Chairman's Terms of Reference of the Commission as provided for in Section 4 (a) to (e) of the said Constitutional Instrument were 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:
    - i. Persons who were President, Vice Presidents, Ministers, Ministers of State and Deputy Ministers
    - ii. Heads of Parastatals, Departments and Agencies
  - D. To ascertain as to whether the Persons referred to in paragraphs (a)-(c):
    - i. Maintained 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 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 a Parastatal, including a Public Corporation, Statutory Commission, Body or any University in Sierra Leone
- E. 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.
2. The Sole Commissioner, the Hon. Justice Biobele Georgewill, after the asset investigation of individuals then referred to as persons of interest; as stated in Section 4 (a) – (c) of the said Constitutional Instrument No 64 of 2018 including the Appellant, reduced his findings into a report and submitted same to His Excellency the President as required by Section 149 (2) of the 1991 Constitution on 25<sup>th</sup> March 2020. The President in fulfilment of the obligations imposed by Section 149 (3) of the 1991 Constitution published the COI CI No. 64 Report together with a Government White Paper dated September 2020.
3. Volume 2 of the Justice Biobele Georgewill Commission of Inquiry Report and the corresponding Government White Paper contained adverse findings and recommendations touching and concerning the



Appellant and his assets during his tenure as Director General at the Petroleum Directorate between the period 2013 to 2018.

4. The Appellant being dissatisfied with the adverse findings against him contained in the said Report which by virtue of Section 149 (4) of the Constitution of Sierra Leone (Act No. 6) 1991 is deemed to be a judgment of the High Court for purposes of the Constitution, filed this appeal to the Court of Appeal.

## **FINDINGS AND RECOMMENDATIONS**

22. Having reviewed the unchallenged evidence led by the State, which the Commission believed as true, and bearing in mind that in law unchallenged evidence is good evidence which could be relied upon to make relevant findings of facts, the Commission hereby finds that all the allegations of impropriety, misappropriation, corruption, abuse of office and maladministration, for which the Persons of Interest and their collaborators have no answer, have been duly established against all the Person of Interest and their identified collaborators as required by Law.

23. Consequently, the Commission finds the follow:

1. The Petroleum Directorate had from 2007-2018 a total inflow amounting to Le 863, 976,420,000.00 out of which it spent the Sum of Le 757, 697, 583, 000.00 leaving a cumulative total balance of Le 106, 278,837,000.00.



2. Curiously, on 11/4/2018 the sum of Le 40,000,000,000.00 only was transferred as all the monies due from the Petroleum Directorate into the Treasury Single and leaving the huge sum of Le 66,278,837,000.00 not transferred to the Single Treasury Account and thus left unaccounted for.
3. The total rent of USD 550,000.00 paid for four years on “Emmanshola House” was in excess by USD 150,000.00 over the budgetary approval of USD 100,000.00 per annum on rental of office space for the Petroleum Directorate and in gross abuse of office, notwithstanding the ill – conceived disclosure of interest merely used as a subterfuge.
4. The payment of terminal benefits to staff of the Petroleum Directorate amounting to Le 6, 175,669,000.00 whilst still in service was illegal and unlawful and was merely intended to circumvent the provision of the Fiscal Management Act 2017.
5. The Petroleum Directorate has no mandate in law to give out its funds as loans to any authority or person or business
6. The Loan Amounting to the huge sum of USD 3,000,000.00 given through the Minister of Finance on the approval of the Former President to SMRT Co. Ltd for the supply of Biometrics Machines was irregular and the loan



has remained unpaid since 2017 till date despite repeated demands for its repayment and reminders by the Petroleum Directorate.

7. The loan amounting to the huge sum of USD 14,000,000.00 given through the National Commission for the Privatization on the approval of the Former President to Rokel Commercial Bank for its recapitalization was most irregular and the balance of USD 12,263,821.00 on the loan has remained unpaid since 2015 till date despite demands for its repayment by the Petroleum Directorate.

8. From the above findings therefore, the total amounts of i. Le 72,254,506,000.00 and ii. USD 15,413,821.00 were misappropriated and or unverified and had remained unaccounted for.

24. In the light of all the findings, it is hereby recommended as follows: -

1. The following persons shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of Le 70,294,264,523.00 that had remained unaccounted for as monies not transferred to the Single Treasury account in 2017 and monies paid out illegally as terminal benefits to staff while still in the service of the Petroleum Directorate: i. H.E. Dr. Ernest Bai Koroma ii. Raymond Kargbo; iii. Karefa Kargbo.



2. Mr. Raymond Kargbo shall personally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of Le 2,160,241,477 that had remained unaccounted for as monies paid out illegally to him as terminal benefit whilst he was still in service as the Director General of the Petroleum Directorate.
3. The followings persons shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of USD 3,000,000.00 that had remained not refunded as monies given out illegally as loan by the Petroleum Directorate through the Ministry of Finance to SMRT Co. Ltd for the supply of Biometric Machines i. H.E. Dr. Ernest Bai Koroma; ii. Momodu L. Kargbo iii. Raymond Kargbo iv. SMRT CO. LTD.
4. The following persons shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of USD 12,263,821.00 that had remained not refunded as monies given out illegally as loan by the Petroleum Directorate through the National Commission for Privatization to Rokel Commercial Bank: i. H.E. Dr. Ernest Bai Koroma; ii. Dr. Micheal Kargbo; iii. Raymond Kargbo iv. Dr. Kaifela Marah; v. Mr. Momodu L. Kargbo; vi. Rokel Commercial Bank.



5. All amount due and recommended to be refunded and paid into the Consolidated Revenue

## **ANALYSIS OF THE LAW AND FACTS**

25. I will now give an analysis of the law and the facts, as I deal with each ground.

### **Ground 1**

26. Did the Hon. Justice Biobelle Georgewill err in law and acted in violation of Section 150 of the Constitution of Sierra Leone, Act No. 6 of 1991, when he proceeded to conduct the Commission of Inquiry (COI) without the 'rules regulating the practice and procedure' of all Commissions of Inquiry to be prescribed by the Rules of Court Committee through a Constitutional Instrument, as provided for under Section 150 aforesaid, which was raised in the Commission by counsel Ady Macauley and Joseph Fitzgerald Kamara?
27. In the absence of any law to regulate COIs, the existing laws prevail; and that is Chapter 54 of the Laws of Sierra Leone 1960 (as amended) which is still part of our laws as it has not been revoked. Counsel referred to other COIs that were set up and proceeded with, without any rules made by the Rules of Court Committee.
28. Furthermore, the Commission was mandated by Section 6 (1) of Constitutional Instrument No. 64 of 2018 to give directions for the conduct and procedure of its deliberations. The Commission also had power to adopt the Sierra Leone High Court Rules of 2007 with such modification and exceptions as necessary to guide the proceedings of the Commission. Section 150 of the 1991 Constitution does not constitute a condition precedent to the operation of the Commission and therefore



cannot invalidate the proceedings of the Commission since in law, the said provision envisages the existence of a Commission of Inquiry for the application of Section 150 of the 1991 Constitution to come into operation.

29. Also, there is no reference to "Rules of Evidence" under Section 150 or under any provision of the 1991 Constitution of Sierra Leone as would render rules of evidence applicable to a COI. The Court also takes note of the fact that, there is no inconsistency between the provisions of Section 150 of the 1991 Constitution and Section 9 of Chapter 54 of the Laws of Sierra Leone 1960 in that both Sections are merely complementary and not contradictory.

30. This ground of appeal is therefore well-settled now and I agree with Counsel for the Respondent that the Learned Commissioner did not err in law and did not act in violation of Section 150 of the Constitution of Sierra Leone. The COI was conducted in accordance with Constitutional Instrument No. 64 of 2018. **Ground One of the Appeal is therefore DISMISSED.**

## **Ground 2**

31. Did the Hon. Justice Biobelle Georgewill indict the Appellant for the offence of "Abuse of Office" an offence provided for under Section 42 of the Anti-Corruption Act of 2008 and the offence of "Abuse of Public Trust"?

32. Counsel for the Appellant, Mr. Sesay submitted that "The Hon. Justice Biobelle Georgewill erred in law when he proceeded to indict the Appellant for the offence of "Abuse of Office", an offence provided for under Section 42 of the Anti-Corruption Act No. 12 of 2008 and the offence of "Abuse of Public Trust"." He argued that "The Commission of Inquiry is an investigating mechanism with limited adjudicatory powers, but never a trial court for criminal offences established under the common law or statute."



33. This issue of indictment has been coming up in different guises throughout these appeals and the Court has sought to answer it in terms of how it has been submitted. In this instance, the question that needs to be asked is: what is an indictment? An indictment is a formal written accusation of a crime, made by a grand jury and presented to court for prosecution against the accused person;" Black's Law Dictionary, 10<sup>th</sup> edition at page 891. In Sierra Leone, Section 2 of the Criminal Procedure Act No. 32 of 1965, under "interpretation," it is defined 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."
34. Furthermore, a Law Officer is defined in Section 2 of the said Criminal Procedure Act as "the Attorney-General, the Solicitor-General, the First Parliamentary Counsel and every other Crown Counsel or Parliamentary Counsel.
35. Based on the definition of an "Indictment," was there any formal written accusation of the offences of Abuse of Office and Abuse of Public Trust against the Appellant? No evidence has been adduced to show that there was one because it was not a criminal trial. There was no trial. There was no conviction and a sentence. I think that the Sole Commissioner used the word "indictment" loosely and for want of a better word. He should have been mindful. His role was that of an investigator, to publish his findings and make recommendations, which he did. In my opinion, this ground lacks merit and ought to be disallowed.  
**Ground 2 is therefore Dismissed.**

### **Ground 3**

36. Did the Hon. Justice Biobele Georgewill err in law when he adjudged the Appellant, Raymond Saidu Kargbo, "as being responsible for acts of corruption, maladministration, abuse of



office and lack of accountability" in the performance of his duty as Director General of the Petroleum Directorate? I will answer this question after considering Ground 5.

#### **Ground 4**

37. Did the Hon. Justice Biobelle Georgewill usurp the functions of the Supreme Court? Did he attempt to interpret Section 62 of the Constitution of Sierra Leone?

38. It is the opinion of this Court that the Learned Judge did not usurp the functions of the Supreme Court. Indeed, he shared his opinion on Section 62 of the 1991 Constitution of Sierra Leone, which would ordinarily slip into his deliberations as a judge. What is wrong with that? He did not violate Section 124 (1) of the said Constitution. I agree that this ground of appeal lacks merit and ought not to be allowed. **Ground 4 is therefore Dismissed.**

#### **Ground 5**

39. Did the Hon. Justice act outside of his terms of reference and therefore in excess of his jurisdiction and thereby "ultra vires" by questioning the Petroleum Directorate in the following transactions: (i) the settlement of the terminal benefit to the members of staff of the Petroleum Directorate, (ii) the payment for biometric machines to SMRT through a loan to the Ministry of Finance and (iii) loan to Rokel Commercial Bank?

40. What did Constitutional Instrument No. 64 of 2018 state? According to Section 4 (a) to (c) of the said Instrument, the Commissioner had the sole mandate to 'examine', 'inquire' and 'investigate' the categories of identified persons under investigation as shown in Section 4 (c) (i) and (ii).

41. Furthermore, under Section 4 (d), he had the mandate to ascertain whether the persons referred to in paragraphs A to C, collaborated with any person. The Appellant, by virtue of his



position as Director-General of the Petroleum Directorate, who worked directly with one of the Persons of Interest, that is the former President of the Republic of Sierra Leone and the de facto Minister of Petroleum Affairs, falls under the category of Section 4 (c)(ii).

42. As Director-General of the Petroleum Directorate, which is an agency of government in which " all rights of ownership in and control of petroleum in its natural state in, under or upon any land of Sierra Leone are vested in the Republic of Sierra Leone notwithstanding any right of ownership or otherwise that any person may possess in and to the soil or water in, under or upon which petroleum is found or situated; Section 2 (1) of the Petroleum (Exploration and Production) Act No. 7 of 2011; and in receipt of public funds and in control of public resources.
43. Evidence was also adduced to show that the Appellant, Raymond Saidu Kargbo, thus settled terminal benefits to the members of staff and himself, he gave a loan to a company called SMRT through the Ministry of Finance and he gave a loan to Rokel Commercial Bank through the Commission for Privatisation.
44. Given this background, it was within the mandate of the Sole Commissioner to investigate the activities of the Appellant, who was the Head of a government agency and who was in control of public funds and resources. In this regard, The Learned Commissioner did not act 'ultra vires' his mandate.
45. The next question that arises is: whether the activities carried out by the Appellant as Director-General of the Petroleum Directorate, that is, (i) the settlement of terminal benefits to himself and the members of staff of the Petroleum Directorate; (ii) loan to a company SMRT and (iii) loan to Rokel Commercial Bank, were performed in good faith and in accordance with Section 5 (2) (j) of the Petroleum (Exploration and Production) Act of 2011?



46. The question that arises here is: what do the terms and conditions of service for staff of the Petroleum Directorate provide?
47. Under Section 8, rule 801, "terminal benefits will be paid to staff who have served continuously for a period of not less than a year and are leaving the employment of the Directorate as a result of retirement, resignation, Redundancy or Death. Rule 802 states that "every employee shall retire on reaching the age of 60 years."
48. It also states that "on the recommendation of the Director-General and with the Approval of H.E. the President, the Directorate may for special reasons relating to the efficient operation of the Directorate engage the service of any employee on a contractual basis upon retirement."
49. From the facts of the case no proof has been shown to the court that any of the employees paid terminal benefit, had retired on attaining the age of 60 or had sent in a letter of resignation or had been made redundant by the Directorate. According to CW2 (Commission Witness 2) at page 310 of the records, he said that the Director-General informed them (i.e., the staff) that he had succeeded in getting the end of service benefit and told the Supervisor to disburse it to staff members. (See page 314 of the records on "request for approval to pay staff end of service benefit and letter addressed.....Exh D2.
50. At page 317 of the records, CW2 said that after receiving his terminal benefit, he continued to work by signing a fresh contract on 1<sup>st</sup> January 2018. No evidence was produced to the court of the employment contract signed by the staff to establish the terms of the contract.
51. At page 317 of the records, CW2 said that the Director-General continued to work after receiving his terminal benefit of



Le 2,160,241,477. Even if some staff members had resigned, how could they all be approved and engaged again en masse on a contractual basis? Assuming that on the recommendation of the Director-General and with the approval of the former President, employees were given contracts of employment, on what basis were they given fresh contracts? What were the special reasons for their re-employment?

52. I find it difficult to understand and I am not persuaded by the reasons for paying out the terminal benefits. There was no evidence of staff having attained retirement age, nor redundancy or resignation. I am also convinced that it was "illegal and unlawful and was merely intended to circumvent the provision of the Fiscal Management Act of 2017".

53. On the issue of the payment for biometric machines to SMRT Company through a loan to the Ministry of Finance, and loan to Rokel Commercial Bank, the question is: what is the law that governs these types of transaction? Section 118 (3) of the Constitution of Sierra Leone No. 6 of 1991 states that "No loan shall be raised by the Government on behalf of itself or any other public institution or authority otherwise than by or under the authority of an Act of Parliament."

54. Also, Section 118 (1) (supra) states that Parliament may by a resolution passed in that behalf and supported by the votes of a majority of all the Members of Parliament, authorise the Government to enter into an agreement for the granting of a loan out of any public fund or public account.

55. Additionally, Section 118 (2) aforesaid, says that, an agreement entered pursuant to subsection (1) supra, shall be laid before Parliament and shall not come into operation, unless the same has been approved by a resolution of Parliament.

56. According to the Public Financial Management Act of 2016, which is an Act to make provision for the prudent, efficient,



effective, and transparent management and use of public financial resources, Section 26(1) states that, public money may not be spent, except as expressly authorised by the Constitution of Sierra Leone or an Act of Parliament or an Appropriation under the Appropriation Act.

57. Subsection (2) states that the authority to spend public money provided by an appropriation under an Appropriation Act – (a) shall be limited to the amount specified for the appropriation, under the Appropriation Act and may not be exceeded.....

58. From the facts of the case, no evidence has been adduced to show the court that Parliament approved these transactions. Counsel for the Appellant, Mr. Sesay argued that because the Director-General, Raymond Saidu Kargbo secured executive approval from the former President who was the de facto Minister, he was therefore prudent.

59. He also said that "by paying terminal benefits to staff of the Directorate at a time when the Directorate was losing its autonomy as entrenched in Section 6 of the Petroleum (Exploration and Production) Act of 2011, it lessened a huge liability of government." He also argued that "the payment of these benefits accrued to staff of the Directorate and the decision to retain them was the best decision taken by the Directorate in good faith, considering how much the Directorate would have spent in the recruitment and training of new staff to fill in the gaps at the Directorate." I am not convinced by the argument on the payment of terminal benefits.

60. I agree with Counsel for the Respondent, Mrs. Suwu-Kendoh, that the end of service benefit is paid at the end of service. In the event, as in this instance, such employees have to be retained or recalled, they have to go through the process of advertisement, interview, recruitment, contract of employment and so on, in the interest of clarity, accountability and



transparency. The general codes of end of service of employment should apply. There is no proof of any contract of re-employment after the payment of benefits from public funds.

61. On the issue of the US\$ 3,000,000 as loan by the Petroleum Directorate through the Ministry of Finance to SMRT Company Limited for the supply of Biometric Machines, Mr. Sesay argued that "the Ministry of Finance acknowledged receipt of the said sum for the purpose of meeting government contribution for the payment of Biometric equipment for the conduct of National Elections in 2018." He said that "the contractors confirmed receipt of the said amount and delivered the Biometric equipment."
62. Also, he said that "there was executive approval from the President to meet the government's obligation to conduct credible elections as a democracy." He said that it was the former President's policy "that the then pending General Elections slated for 2018 should not be postponed on the grounds of lack of funding."
63. Mr. Sesay opined that "in fact, it was the Government of Sierra Leone who benefitted from all the actions and decisions made by the Petroleum Directorate." He said that when the Rokel Commercial Bank received a loan from the Petroleum Directorate through the National Commission for Privatisation in the government's recapitalisation decision, the said bank received the sum of US\$ 12,263,821 and it increased Government's stake from 51% to 65.2% as a result of the said loan." He said that Government can now sell its shares if it so desires at a higher rate than if it were to sell when it had a lesser share."
64. Also, he said that "it was the former President's policy not to see the Rokel Commercial Bank, one of the only 3 locally owned banks in a banking sector dominated by foreign owned banks fail under his leadership." Counsel said that this would



have brought so much pain and hardship to his citizens, institutions and others and cause considerable economic damage to the country.

65. There is no doubt that part of the function of the Petroleum Directorate is to contribute to national budgetary planning and control and perform any other function incidental or consequential to its functions as prescribed by Section 5 (2) (j), (t) of the Petroleum (Exploration and Production) Act No. 7 of 2011.
66. Also, the said Act prescribes that the Directorate shall.....consult and co-operate with ministries, departments and agencies of Government having duties, aims or functions related to those of the Directorate; Section 5 (3) aforesaid. Furthermore, the said Act provides inter alia, that the Directorate shall, subject to subsection (1) of Section 7 and subsection (2) of Section 8, be independent in the performance of its functions and duties and the exercise of its powers.
67. Counsel for the Appellant canvassed these points vociferously in court and I do understand his standpoint and the concerns expressed. However, the actions taken should have been carried out within the law. The Constitution and the Public Finance Management Act make provision for the use of public funds and how it should be utilised. Due process of the law ought to have been followed by the Appellant, in the utilisation of these public funds. the Constitution of Sierra Leone of 1991 takes precedence. Nowhere in the Petroleum Act was it stated that the Directorate is empowered to grant loan without the authority of Parliament. Nowhere is it stated in the Act of the Petroleum Directorate that it is independent of Government. The fact that Section 2 (1) of the said Act states that "all rights of ownership in and control of petroleum.....are vested in the Republic of Sierra Leone.....tells you that it is a public body and is not independent



of Government. The Directorate cannot give out loans without the authority of Parliament.

68. I agree with counsel for the Respondent when she said that "the investigation into the activities of the Petroleum Directorate disclosed that there was a blatant breach of the provisions of the National Constitution of Sierra Leone of 1991 and the Public Financial Management Act of 2016 to wit sections 118 of the 1991 Constitution and section 28 respectively." I also agree that there was no legal mandate to give out the bridging loan amounting to US\$ 14,000,000 given through the National Commission for Privatisation (NCP).

69. I also agree that the Appellant acted contrary to law in the discharge of his duties as Director-General of the Petroleum Directorate. It is in the same vein that I consider the conduct of the Appellant as one of an abuse of power and maladministration. Where abuse of power is "the misuse and improper exercise of one's authority; especially the exercise of a statutorily or otherwise duly conferred authority in a way that is unlawful or outside its proper scope."

70. Whilst maladministration is "poor management or regulation by a public officer; specifically, an official's abuse of power;" Black's Law Dictionary, 10<sup>th</sup> edition. The Hon. Justice Biobele Georgewill did not err in law when he adjudged the Appellant, Raymond Saidu Kargbo to be responsible for acts of corruption, maladministration, abuse of office and lack of accountability. **Grounds 3 and 5 are therefore DISMISSED.**

## **Ground 6**

71. Has there been a violation of Section 149(4) of the Constitution of Sierra Leone Act No. 6 of 1991? Is the published Commission Report incomplete that it cannot be deemed in law as a judgment?



72. From the evidence that has been adduced to the Court including the adverse findings as stated in volume 1 of the court records, except Counsel has evidence that the missing records contain adverse findings, I cannot see how Section 149 (4) of the 1991 Constitution has been violated. The adverse findings have been stated in Volume 1 and the Appellant has appealed against them, which Section 149 (4) aforesaid, gives him a right to appeal against and not a missing report.

73. The Court will take the view that Counsel for the Respondent, Mrs. Suwu-Kendoh, has submitted that the allegations and issues raised against the Appellant as submitted in the Reports of the Sole Commissioner and the White Paper are complete. The Court accepts it as complete. **Ground 6 is therefore Dismissed.**

### **Conclusion**

74. In conclusion therefore, all six (6) grounds of appeal are Dismissed.

75. In the light of the conclusion reached, the following consequential Orders are made:

1. The adverse findings of the Hon. Justice Biobelle Georgewill made and directed against the Appellant, Raymond Saidu Kargbo are HEREBY UPHELD.
2. That the acceptance of the Government in the White Paper dated September 2020 on matters affecting Dr. Raymond Saidu Kargbo as a Person of Interest is HEREBY UPHELD.
3. That Judgment is entered AGAINST THE APPELLANT, Dr. Raymond Saidu Kargbo as follows:
  - i. Raymond Saidu Kargbo is to jointly and severally refund and pay into the Consolidated Revenue Fund of the



Government of Sierra Leone the sum of Le 70,294,264,523.00 (Seventy Billion Two Hundred and Ninety-Four Million Two Hundred and Sixty-Four Thousand Five Hundred and Twenty-Three Leones. This remained unaccounted for as monies not transferred to the Single Treasury Account in 2017 and monies paid out illegally as terminal benefits to staff while still in the service of the Petroleum Directorate.

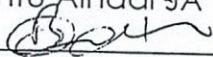
- ii. The Appellant, Raymond Saidu Kargbo shall personally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of Le 2,160,241,477.00 (Two Billion One Hundred and Sixty Million Two Hundred and Forty-One Thousand Four Hundred and Seventy-Seven Leones) that remain unaccounted for as monies paid out illegally to the Appellant as terminal benefit whilst he was still in service as the Director-General of the Petroleum Directorate.
- iii. The Appellant, Raymond Saidu Kargbo shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone, the sum of US\$ 3,000,000 (Three Million United States Dollars) that had remained and not refunded, as monies given out illegally as loan by the Petroleum Directorate through the Ministry of Finance to SMRT Company Limited for the supply of Biometric Machines.
- iv. The Appellant, Raymond Saidu Kargbo shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of US\$ 12,263,821.00 (Twelve Million Two Hundred and Sixty Three Thousand Eight Hundred and Twenty One United States Dollars) that had remained and not refunded as monies given out illegally as loan by the Petroleum Directorate through the National Commission for Privatisation to Rokel Commercial Bank.



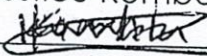
Directorate through the National Commission for Privatisation to Rokel Commercial Bank.

- v. All amount due and recommended to be refunded and paid into the Consolidated Revenue Fund.
4. That the Report of the Commission of Inquiry is DECLARED COMPLETE.
5. That costs of these proceedings and that in the Commission of Inquiry be BORNE BY THE APPELLANT AND TO BE TAXED IF NOT AGREED UPON.

Hon. Mrs. Justice F. Bintu Alhadi JA - (Presiding)



Hon. Mr. Justice Komba Kamanda JA. - I agree



Hon. Mrs. Justice Tonia Barnett JA. - I agree

