

COLAPP NO. 18/2020

IN THE COURT OF APPEAL OF SIERRA LEONE

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE  
1991 (ACT NO. 6 OF 1991) PART IX COMMISSION OF INQUIRY, SECTIONS 147-149

AND

IN THE MATTER OF THE CONSTITUTION INSTRUMENT NO. 64 OF 2018; THE  
COMMISSION OF INQUIRY EXAMINATION, INQUIRY AND INVESTIGATION NOTICE  
(1) 2018

AND

IN THE MATTER OF THE HON. MR. JUSTICE BIOBELE GEORGEWILL COMMISSION  
OF INQUIRY REPORT OF MARCH 2020

AND

IN THE MATTER OF THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE'S  
WHITE PAPER DATED SEPTEMBER 2020

BETWEEN:

EMMANUEL BERESFORD OSHOBA COKER - APPELLANT  
4 THIRD STREET  
HILL STATION  
FREETOWN

AND

THE ATTORNEY-GENERAL & - RESPONDENT  
MINISTER OF JUSTICE  
LAW OFFICERS DEPARTMENT  
3<sup>RD</sup> FLOOR, GUMA BUILDING  
LAMINA SANKOH STREET  
FREETOWN

CORAM:

HON. JUSTICE F.B. ALIADI - JA - PRESIDING  
HON. JUSTICE K. KAMANDA - JA  
HON. JUSTICE T. BARNETT - JA

COUNSEL:

R.S.V. WRIGHT ESQ - APPELLANT



It is against the background of the aforesaid findings, recommendations and report that the Appellant being dissatisfied has approached this Court on appeal by way of Notice of Appeal herein.

The grounds of appeal are well laid out in grounds A-H which I shall deal with in a chronological manner as canvassed before the court.

#### GROUND A

The gravamen of the Appellants arguments and submissions are that the Sole Commissioner acted outside the jurisdiction conferred on him by the terms of reference as stated inter alia in compliance with the Constitutional obligation set out in Section 149(1) (a) of the Constitution of Sierra Leone Act No. 6 of 1991 which state that the Commission of Inquiry shall "make a full, faithful and an impartial inquiry into any matter specified in the Commission of appointment".

Counsel for the Appellant R.S.V. Wright Esq. buttressed the said submission when he relied on the case of ATTORNEY GENERAL V. KAMARA SC MISC. APP NO. 4/92) SLSC1 where Hon. Justice S.M.F. Kutubu (then Chief Justice) opined that the Appellant ought to be confronted with any allegations and or charges against her and should be given the opportunity to have a legal representation or put in her defence or tell the version of events. Counsel submitted that in the instant matter the Sole Commissioner failed to comply with the said requirements and also with Section 149(1) (a) of the Constitution and as such the entire proceedings is void.

Counsel also submitted that since the Appellant was not a person of interest as laid down in the aforesaid Constitutional Instrument establishing the Commission, all adverse findings against him must be set aside and declared null and void.

Conversely, Solicitor for the Respondent R.B. Kowa Esq. conceded that the Appellant did not fall within the scope of Section 4 a-c of the Constitutional Instrument No. 64 but however submitted that the Appellant falls within the Terms of Reference as stated in Section 4 (d) (iii) which provides;

"The purpose for which this Commission is appointed are to:

(d) ascertain as to whether the persons referred to in sub paragraph (a) – (c)

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

Counsel submitted that the Commissioner acted within the scope of his mandate in view of the fact that he was required to examine, inquire and investigate the category of persons as provided for in Section 4 (a) – (c) and in (d) (iii) to ascertain whether they collaborated with any person".

In my considered view, the provision of (d) (iii) gives the Sole Commission extensive power to investigate and inquire into the conduct of persons beyond those mentioned in Section 4(1a) – (c). Such power to investigate those he considered collaborators stretches wide to include any person who in his opinion may have collaborated or assisted those mentioned as persons of interest who may have participated in "acts of corruption, dishonesty and abuse".



**JUDGMENT DELIVERED THIS 2<sup>ND</sup> DAY OF NOVEMBER 2022**

Kamanda JA ;

The President of Sierra Leone by Constitutional Instrument No. 64 of 2018 pursuant to Section 147 of the Constitution of Sierra Leone, Act No. 6 of 1991 set up the Justice Biobele Georgewill Commission of Inquiry with the said Judge as Chairman and Sole Commissioner.

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

A, To examine the assets and other related matters in respect of;

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

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

d. To ascertain as to whether the Persons referred to in paragraphs a –c

i Maintained a standard of life that which was commensurate to their official emoluments

ii Owned or were in control of pecuniary resources or property disproportionate to their official emoluments or there are evidence of corruption, dishonesty or abuse of office for private benefit by them

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

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

v. Acquired directly or indirectly financial or material gains fraudulently improperly or willfully to the detriment of the Government, Local Authority or Parastatal. Including a Public Corporation, statutory Commission, Body or university of Sierra Leone

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

The Sole Commissioner Hon. Justice Biobele Georgewill, during the course of the investigation found the Appellant wanton and therefore made adverse findings, recommendations and report against the Appellant herein found at Page 74 of the records, Paragraph 9.5 No. 3 to wit "The total rent of US\$550,000.00 paid for four years on "Emmanshola House" was in excess by USD \$150,000.00 over the budgetary approval of USD100,000.00 per annum on rental of office space for the Petroleum Directorate and in gross abuse of office, notwithstanding the ill-conceived disclosure of the interest merely used as a subterfuge".



It must be stated that Jurisdiction is the backbone or spinal cord in every legal proceedings. In AG FEDERATION V AG ABIA STATE AND 35 ORS (2001) 7 SC (PTI) 100, per Karibi Whyte (JSC) as he then was defined Jurisdiction to mean, 'the authority the Court has to decide matters before it or to take cognizance of matters presented in a formal way for its decision'. Where a tribunal lacks jurisdiction the entire proceedings becomes a nullity however fair and transparent the proceedings were conducted.

It is uncontested that the Appellant was Secretary to the former President H.E. Dr. Ernest Bai Koroma. His constitutional functions as such are well spelt out in Section 67 (1) (a) (b) and (C) of the Constitution of Sierra Leone 1991 Act No. 6 of 1991 to include:

- (a) Acting as the Principal adviser to the President on Public Service matters
- (b) The administration and management of the office of the President of which he shall also be vote controller
- (c) The performance of all other functions assigned to him from time to time by the President."

In my considered view, these functions are very clear and unambiguous to the extent that they need no further elucidation in that they fall within the office of the Presidency. However, though the Appellant falls outside the specific definition of persons of interest, he cannot go beyond the definition of collaborators where there is glaring evidence as in the instant case of a transaction involving the Presidency or the State, where there may be evidence of corruption or abuse of office which led to the State being a victim of fraud. There is compelling evidence that the Appellant being Secretary to the President and as a vote controller was involved in a transaction where his house was leased to the Petroleum Directorate in which his boss the President was the *defacto* head, at a very higher rate above the normal ceiling provided for by the said Directorate and that monies in the form of rent were paid to him for four years. Where there is such glaring and uncontroverted evidence, how could the Appellant argue that the Commissioner was wrong to investigate him as a collaborator. Such arguments and submissions based on jurisdiction in my view are misplaced as the scope of the Commissioner's functions fell squarely within the ambit of Section 4 d iii the terms of reference stipulated by Constitutional Instrument No. 64.

## GROUND B

As regards ground B the gravamen of the Appellant's argument was that he was not presumed innocent which is a fundamental principle of human rights as enshrined in Section 23 (4) of the Constitution of Sierra Leone Act No. 6 of 1991 which provides "Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty; provided that nothing contained in or done under the authority of any Law shall be held to be inconsistent with or in contravention of this sub section to the extent that the Law in question imposes on any person charged as aforesaid the burden of proving a particular fact".

Counsel for the Appellant R.S.V. Wright Esq. also relied on Article 11 (1) of the Universal Declaration of Human Rights, adopted December 10, 1948 by the General Assembly of the United Nations which states: "Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty in a public trial at which he has had all the guarantees necessary for



his defence' to further submit that the Appellant was not invited to appear before the Commission of Inquiry to face any allegations but was only subpoenaed to appear as a witness by the State which goes against the presumption of innocence. He further relied on the case of *Woolmington V Director of Public Prosecution* (1935 AC 462 (H.L)) with reference to the fundamental principle of the presumption of innocence in criminal trials as articulated by Viscount Sankey "Throughout the web of the English Criminal Law a golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner guilty subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If at the end or on the whole of the case, there is a reasonable doubt created by the evidence by either the Prosecution of the Prisoner, as to whether the prisoner killed the deceased with a malicious intention... No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common Law of England and no attempt to whittle it down can be entertained." Solicitor for the State R.B. Kowa Esq. argued that the Appellant was summoned to testify and that during the course of his testimony, it came out clear that he personally had collaborated to defraud the state in his dealings with the Petroleum Directorate by renting his house at a far higher rate than the approved ceiling. He submitted that the Commissioner merely acted within his terms of reference as provided for in Constitutional Instrument No. 64.

It is salient to pin point the fact that a Commission of Inquiry as in the instant case, is not a criminal trial but rather an investigation into the conduct of persons as prescribed by the instrument that creates it. The standard and burden of proof is distinct from the normal trend or run of things in a full blown trial. This position was firmly laid bare by Hon. Mr. Justice H. Jallow C.J, when he opined in the case of *M.A. KHARAFI AND SONS LIMITED V ATTORNEY GENERAL OF THE GAMBIA*, GCA CIV. APP GCA 046/2019 that "a Commission of Inquiry does not adjudicate between the state and a person who appears before it; but it carries out an investigation into the issues and matters that are within its terms of reference as per the legal instrument that established it. Its report submitted to the Executive Branch of Government, is neither a Judgment, neither an order which is capable in itself of being executed as perceived by the Law".

In my considered view, the strict standard required in a trial cannot be imported to an inquiry which by all standards is not a trial. Where the meaning of the word 'collaborator' is extensive as spelt out in Constitutional Instrument No. 64, mere failure to comply with strict adherence to procedure as applicable in a full blown trial in the face of glaring evidence of malfeasance, abuse of office or acts of dishonesty cannot invoke this court's jurisdiction to dismiss the investigation, that is even why enough opportunity has been given to the Appellant herein to present contrary evidence that he is not culpable. This ground of appeal fails.

#### GROUND C AND D

Grounds C and D speak to the same issues that the Appellant was neither given the opportunity of a fair trial nor was he accorded the opportunity to be heard. Counsel for the Appellant reiterated the case of *ISATU KAMARA V THE ATTORNEY GENERAL* Supra where Mr. Justice S.M.F. Kutubu said "Fundamental principles which govern judicial and quasi-judicial inquiries, the *audi alteram partem* rule that is, a party to judicial proceedings should not be condemned unheard." As I have stated inter alia, the records show that the Appellant was heard, be though as it may as a witness in the inquiry. What evidence has the Appellant shown to this Court indicating that his conduct as an official attached to the office of the Presidency and the President being the *defacto*



*head* of the Petroleum Directorate, that he did not receive rent in excess of the prescribed amount? What evidence has he shown also that being the principal adviser to the President, he could legally award such contract of renting his own house at a far more higher rate than the prescribed amount? He has not shown us any evidence to be contrary in his favour. These grounds of appeal C and D fail.

#### GROUND S E. F. G. H.

I shall also deal with grounds E, F, G and H conjointly. Counsel for the Appellant submitted that the agreement to lease the Appellant's house falls within the doctrine of freedom of contract in that the parties, that is the Petroleum Directorate an agency of Government and the Appellant Secretary to the President entered into a valid and binding contract and as such the Respondent have failed to show that fraud, misrepresentation and duress was involved during the execution of the contract. He argued further that during the course of the investigation at the COI, the Appellant managed to tender the following documents:

- 1) Exhibit PIA – Page 474 of the records, minutes dated 1<sup>st</sup> May 2014 addressed by the Appellant to the then President of the Republic of Sierra Leone making full and frank disclosure of his interest and that the President granted a no objection.
- 2) Exhibit PL-B found at pages 475-477 of the records showing report on prospective location for accommodation of the Petroleum Directorate office issued by the Senior Legal Officer of the Petroleum Directorate justifying need to enter the Lease Agreement with the Appellant.
- 3) Exhibit PLC found on pages 478-479 of the records which is a letter dated 1<sup>st</sup> May 2014 written by the Director-General of the Petroleum Directorate addressed to the Appellant Secretary to the President for the attention of the President of the Director's desire to enter into a lease agreement with the Appellant and his wife.
- 4) Exhibit PL D found on pages 480-482 of the records, an inter-office memorandum issued by the Financial Controller addressed to the Director General of the Petroleum Directorate giving a breakdown of the costs involved in entering into the Lease Agreement with the Appellant.
- 5) Exhibit PL E found at pages 483-488 of the records which is a copy of the lease agreement between the Appellant and his wife as co-owners and the Petroleum Directorate as Lessees.

Counsel for the Appellant submitted that these evidence suggest that there was nothing the Appellant could have done in the area of transparency, accountability and compliance with Civil Service Regulations and the provisions of Section 45 Sub Section 1 of the Anti-Corruption Act 2008. He therefore submitted that the appeal be allowed.

Conversely, the Respondents arguments and submissions hinge on issues relating to the fact that the Appellant was a Public Officer who occupied a very senior and influential position as Secretary to the then President who was the defacto Minister of the Petroleum Directorate. He was also the



Principal Adviser to the President pursuant to Section 67(1) (3) and 4 of the constitution. He argued that he personally benefited from the transaction though he disclosed his interest. He submitted that in view of the reasons advanced by the Respondent, the Appeal ought to be dismissed.

A close perusal of the records before me show that the gravamen of this matter touches and concerns the Appellant who was Secretary to the President bestowed with the constitutional power as a Principal adviser to the president pursuant to Section 67(1) a and b of the Constitution. The said Appellant leased his house to the Petroleum Directorate of which the then president was the de facto Minister. The rent to be paid by the said Petroleum Directorate was fixed but that the Appellant was paid in excess of USD\$150,000 (One Hundred and Fifty Thousand US Dollars) for a period of four years. In resolving this matter, I need to ask myself certain questions.

- (1) Was it right for the Appellant to have entered into such contract with the Petroleum Directorate when the president was the de facto Minister and he was Principal Adviser to the President, that is , was there a conflict of interest in the duties or conduct of the Appellant?
- (2) Whether it was legal for the Appellant to receive excess rent beyond the fixed and prescribed amount as laid out in the budget of the Petroleum Directorate ?

What is conflict of interest in the law of Sierra Leone ? Section 45 {1} of the Anti Corruption Act of 2008[as amended} states that 'where a public body in which a public officer is a member, director, employee is otherwise engaged proposes to deal with any company, partnership, or other undertaking in which that public officer has a direct or indirect , private or personal interest, that public officer shall forthwith disclose in writing to that public body, the nature of such interest'. Also under the Government of Sierra Leone Civil Service Code, Regulations and Rules of June 2011, Rule 11.5, Civil Servants are required to report the following to the Head of their Ministry or Department' ....any business interests or shareholdings including directorship which they hold'. From the law as stated Mr, Coker was a public officer'. A public officer according to Section 1 of the said Act, is 'an officer or member of a public body..... in any of the three branches of government, whether appointed or elected, permanent or temporary, paid or unpaid'

From the documentary evidence produced in court , Exhibit P1 A at page 474 of volume 2 of the records entitled 'Disclosure of interest 'dated 1<sup>st</sup> May 2014 ,the Appellant wrote a letter to the former president of Sierra Leone ,Dr. Ernest Bai Koroma disclosing his interest in the lease of his property in accordance with Section 45 {1} of the Anti Corruption Act of 2008 as amended. This however, did not absolved or exculpate the Appellant because according to Section 1 of the ACC Act as stated above ,disclosure should have been made to his public body and that is the cabinet .The president on his own is not cabinet. The procedure used was therefore irregular.

There is documentary evidence such as Exhibit P 1 C at page 478 of volume 2 of the records, which is a letter from the Director General of Petroleum Directorate addressed to the Secretary to the President dated 1<sup>st</sup> May 2014 .It stated, 'that building has been identified for the relocation of the said Petroleum Directorate from Siaka Stevens Street for a four year lease' This letter was sent through the Appellant to the former president and which the president approved by endorsing his signature writing the word 'approved' and dated the 5<sup>th</sup> May 2014.Exhibit P 1 D at page 480 of volume 2 of the records which makes reference to the negotiaton with Mr. Coker and the Financial Controller of PD and Exhibit P 1 E at page 483 of volume 2 of the records which is the lease



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agreement ; all of which show that the Appellant was involved in the process ,which Section 45{2} of the said ACC Act considers to be conflict of interest.

It is crystal clear that the President was the de facto Minister of the Petroleum Directorate and the Appellant was the Principal Adviser to the President. There is therefore the presumption that he knew and even advised the President on issues concerning the Petroleum Directorate. Therefore, entering into a contract with an institution which squarely falls under his purview by way of advising the President further buttresses the issue of conflict of interest even where the said interest was disclosed.

As regards the excess payment of USD\$150,000 (One Hundred and Fifty Thousand United States Dollars) as rent, it is undesirable for the Appellant to have received rents far above the normal rate which was USD \$ 100,000, per annum for a period of four years, even where such was approved by the President who may have sought advice from the Appellant as his chief adviser. In my considered view, what made the agreement worse, was the increased in rent beyond the prescribed rate, which was received by the Appellant.

Throughout these proceedings the Appellant has not given any justifiable reason[s] why he received such a whopping sums of money from Government coffers beyond the normal rate. It creates a lot of suspicion and disbelief that a man of such knowledge and repute should allow himself enter into such suspicious and illegitimate contract. The Sole Commissioner therefore had justification to recommend that the Appellant pays the excess amount he received for a period of four years which amounted to USD\$150,000. This court shall therefore not depart from such findings. In essence the appeal on these grounds that is ,E ,F, G .H also fail.

Having gone through the entire appeal, I shall order as follows:


- 1) That the appeal is dismissed in its entirety.
- 2) That the findings, recommendations of the sole commissioner against the Appellant are upheld.
- 3) That the Appellant pays into the consolidated fund the sum of USD \$150,000 ( One Hundred and Fifty Thousand United States Dollars) received as excess rent within 60 days of this Order and evidence of such payment to be forwarded to the Court.
- 4) That the costs of this appeal be borne by the Appellant and such to be taxed if not agreed.

  
HON. JUSTICE KOMBA KAMANDA JA



I agree

HON. JUSTICE FATMATA BINTU ALHADI J.A.....

 (Presiding)

HON. JUSTICE MRS. TONIA BARNETT

J.A. ....

 I agree

