

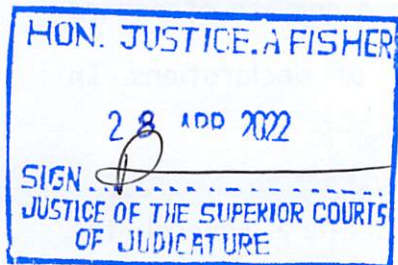
Neutral Citation Number Misc. App. 1/21 C1 General and Civil Division

Case No: cc 1/2021

IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN
GENERAL AND CIVIL DIVISION

Law Court Building
Siaka Stevens Street
Freetown

Date: 28 April 2022



Before:

THE HONOURABLE MR JUSTICE FISHER J

Between:

Alfred Peter Conteh
(Suing by his Attorney Rashid Santigie Sesay)

Plaintiff

-and-

Dr Ernest Bai Koroma
Alhaji Osman Foday Yansaneh
All Peoples Congress Party
Political Parties Registration Commission

1st Defendant
2nd Defendant
3rd Defendant
4th Defendant

.....
JM Jengo of Counsel for the Plaintiff

A Showers, II Mansaray of counsel for the 1st defendant

AS Sesay, B Koroma and R A Nylander of counsel for the 2nd defendant

SK Koroma, A Macauley, MN Kamara of counsel for the 3rd defendant.

L Dumbuya, W Serry Kamal (Judgement only) for the defendants.

Hearing dates: 26 February 2021 - 8 December 2021, 8 April 2022

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APPROVED JUDGEMENT

I direct, that copies of this version as handed down may be treated as authentic

THE HONOURABLE MR JUSTICE FISHER J

The Honourable Mr Justice Fisher J:

1. The plaintiff, through his attorney, in this action filed an originating notice of motion dated 28th January 2021, seeking a number of orders against the defendants, which required a number of declarations. In summary, the plaintiff prayed for the following orders:

1. A declaration that the current National Secretary General, the Assistant National Secretary General, the National Organising Secretary, the Assistant National organising Secretary, the National Publicity Secretary, Assistant National publicity Secretary and the National Treasurer of the 3rd defendant, All Peoples Congress are all illegitimate, hinging on the fact that they were not duly elected to office pursuant to Article 6(14)(1)(i) of the All Peoples Congress Party 1995 Constitution.
2. A declaration that the five (5) Regional Chairmen of the All Peoples Congress are illegitimate hinging on the fact that they were not duly elected to office pursuant to Article 6 (13)(3)(i) of the All Peoples Congress Party 1995 Constitution.
3. A declaration that the 16 district chairmen of the All Peoples Congress Party are illegitimate hinging on the fact that they were not duly elected to office pursuant to Article 6 (13)(4)(i) of the All Peoples Congress Party 1995 Constitution.
4. A declaration that the 132 Constituencies Chairmen of the All Peoples Congress Party are illegitimate hinging on the fact that they were not duly elected to office pursuant to Article 6 (13)(5) of the All Peoples Congress 1995 Constitution.

5. That in the alternative, orders 1 and 2 are granted, the court should declare the National Advisory Committee (NAC) illegitimate.
6. That the court grants an order mandating the 1st 2nd and 3rd defendants not to resort to the use of the 1995 APC constitution owing to the fact that sufficient steps have not been taken by them to have it reviewed.
7. That this court orders the defendants to make available the proposed amended final edited draft copy of the All Peoples Congress Party constitution to all levels of its structure, both National abroad and other interested members.
8. That the court grants an order mandating the 1st and 2nd Defendants to give a detailed financial account of all funds held in the All Peoples Congress different accounts and how the same has been expended from time the 1st and 2nd defendants have assumed the offices of National Secretary General and Chairman and leader of the All Peoples Congress Party.
9. That in the event order 8 is granted, an external auditor be appointed by the court to look into the financial management of the All Peoples Congress Party from the time the defendants became Secretary General and National Chairman and leader of the All Peoples Congress.
10. That the court grants an interim injunction and subsequently an interlocutory injunction against the All Peoples Congress Party from conducting Party activities pending the hearing and determination of the application.

11. That the court mandates and orders the 4th defendant to supervise the affairs of the APC together with members that are registered the All Peoples Congress Party in 1995 to serve as supervisors to oversee the conduct of the various constituency, district, regional and National elections within 3 months after the date of this application.
 12. Any further orders that the court deems fit.
2. In support of the originating notice of motion is the affidavit in support sworn to by Rashid Santigie Sesay, the attorney, sworn to on the 28th day of January 2022, with eleven exhibits attached. It is necessary to set out in summary the contents of the affidavit in support, in order to give greater clarity to the plaintiff's pleaded case. In summary, the attorney swore to the following facts:
1. That by virtue of a power of attorney dated 14th January 2021 he was duly appointed by the plaintiff, Alfred Peter Conteh, to represent him in this matter and several other matters.
 2. That he is reliably informed by his principal that he is a member of the All Peoples Congress Party and carries a membership card and that he is a fully paid up member and has been so for at least ten years. That he is interested in ensuring that democratic values are upheld within the Party.
 3. That a publication was caused to be done by the National Secretary General of the All Peoples Congress Party on the 12th day of July 2019, titled 'press release' APC CRC draft constitution and accompany report Thursday 11th July 2019, informing members of the APC that the necessary procedures for amending or altering

the constitution, pursuant to the 1991 Constitution, the political parties Registration Act and the 5th December 1995 constitution will be followed and that a National Party convention conference will be convened to adopt the constitution when all the above actions have been realised.

4. That the National Secretary General on the 18th November 2019, published a notice informing the membership that the final draft copy of the constitution will be made available to all its structures both at home and abroad and after it would have been certified by the National Advisory Committee, NAC.
5. That notwithstanding the matters referred to at para 4 above, they were unable to access the draft constitution. That the National Secretary General failed to present or make available to all concerned, a final draft copy of the aforementioned constitution.
6. That one Mohamed Sheridan Kamara made known his dissatisfaction to the National Secretary General and called upon him not to go ahead with the National delegates conference without electing twenty delegates from both the womens' congress and National youth league.
7. That by letters of complaint dated 6th and 7th January 2020, certain concerned people expressed grievances to the 4th defendant. The 4th defendant then met with the concerned parties and referred then on to the court, as the only place at which their concerns will be addressed.

8. That following the decision from the 4th defendant, an action was instituted in the High Court against the defendant, following which an injunction was granted against the defendants.
9. That he is reliably informed by his principal that the present offices of The National Chairman and leader, National Secretary General, Assistant National Secretary General, National Organising Secretary, Assistant National organising Secretary, National Publicity Secretary, Assistant National publicity Secretary and the National Treasurer, four regional chairmen, fourteen district Chairman and the one hundred and thirty two constituencies chairmen of the All Peoples Congress, were selected rather than being elected as required by the 1995 Constitution.
10. That he is reliably informed by his principal that those occupying the offices mentioned in paragraph 18 of the affidavit, were selected rather than being elected as required by the 1995 Constitution during the National delegate convention held in Makeni in October 2017.
11. That the offices of the Party are being occupied by these occupants through illegal means which makes their occupation of those offices illegitimate.
12. That he is reliably informed and verily believe that these occupants continue to illegally occupy the positions mentioned above, thereby stifling the democratic tenet of the 1995 All Peoples Congress Party Constitution with impunity, which is causing irreparable damage to the plaintiff and other party members who wish for their party to be viewed as a democratically oriented Party.

3. At this stage of this judgement, I shall proceed to set out the procedural history of this action.

Procedural background

4. On the 26th February 2021, I granted an interim injunction against the defendants, restraining them from conducting any Party affairs pending the hearing and determination of the action. There then followed a plethora of applications filed by the defendants, in particular the 3rd defendant and supported by the 1st and 2nd defendants, against the application. On the 10th day of March 2021, following objections raised by lawyers for the defendants, I refused an order for fortification, overruling the points of law objections raised by the defendants.
5. The defendants then filed an application seeking security for costs against the plaintiff, in the sum of ten billion leones. I granted the application and ordered the plaintiff to pay security for costs in the sum of Le30,000,000.00 and gave directions for the future conduct of the matter on the 19th April 2021.
6. On the 4th March 2021, lawyers for the defendants filed another application, seeking to set aside the originating notice of motion on grounds of irregularity, without going to the merits of the case. During the course of the hearing, I had cause to enquire of the plaintiff as to whether the plaintiff would be minded to consent to a variation of the injunction to allow the 3rd defendant to hold an emergency national delegates conference at which a new constitution would be approved and adopted, as the 3rd defendant had indicated during the course of arguments that the draft constitution was far advanced and only needed adoption. The plaintiff did not object to this cause of action on the basis

that his case was to ensure that there was democracy in his party, and would not oppose any moves towards such democracy.

7. On the 19th day of April 2021, I gave a ruling upon the application made by the defendants, specifically the 3rd defendant for a variation of the injunction I granted on the 26th day of February 2021, against all three defendants.
8. After giving my ruling, the solicitor for the 3rd defendant Joseph F Kamara, informed the court that being dissatisfied with the ruling, (having not read or digested it) they were seeking leave to appeal against the ruling to the Court of Appeal. I asked him to file the relevant papers and the application would be considered on its merits.
9. On the 28th May 2021, I refused leave to appeal on the basis that I was satisfied having reviewed the proposed grounds of appeal, that the grounds of appeal had no arguable merits, principally on account of the fact that it was the defendants themselves who sought the variation of the injunction, in order to enable them to proceed to an emergency national delegates conference and it would have been highly improper and absurd to appeal against an order that they themselves sought in the first instance. In any event the grounds of appeal had no merits as those enjoined were properly enjoined on the basis that their status as executive members were under challenge and to allow them to take part as delegates in the emergency national convention would have led to the entire process being wholly illegitimate and would have ultimately led to further litigation, as those who took part in the process were themselves arguably illegitimate.

10. By way of a notice of motion dated 27th July 2021, the 3rd defendant again sought a number of orders including an extension of time to comply with the orders they had failed to comply with previously which I granted on the 19th April 2021 and for which no appeal had been subsequently filed. I duly granted the extension of time sought to comply with the orders of the 19th April 2021, as I considered it was in the interest of democracy and justice to do so.

11. As I have pointed out, on the 19th of April 2021, I gave a number of orders. It is perhaps necessary that I restate these orders, for purposes of clarity.

"66. Consequent upon the above, I shall make the following orders:

1. The terms of the injunction granted by this court on 26th day of February 2021 continues in force, subject to the following variation set out in sub paragraphs 2-11.
2. The 3rd defendant shall hold an emergency National delegates conference, for the sole purpose of adopting the amended draft constitution and to deal with any unresolved membership issues.
3. The following office holders are restrained from taking part as delegates in the emergency National delegates convention:
 - I. All members of the National Advisory Committee.
 - II. The National Secretary General.
 - III. The Assistant National Secretary General.
 - IV. The National Organising Secretary.
 - V. The Assistant National Organising Secretary.

VI. The National Publicity Secretary.

VII. The Assistant National Publicity Secretary.

VIII. The National Treasurer.

IX. The five regional chairmen.

X. The 16 districts chairmen.

XI. The 132 constituency chairmen.

4. All other members of the National delegates conference (not restrained in paragraph (66)((3) above) are eligible to take part in the emergency National delegates conference., as delegates.

5. The 3rd defendant shall ensure that the following elections are conducted no later than 25th June 2021 from the date of this order:

I. Elections of twenty delegates for the women's congress;

II. Elections of twenty delegates for the youth league;

III. Elections of five delegates by each constituency.

6. A full delegates list shall be prepared by the 3rd defendant and submitted to the 4th defendant PPRC, no later than 4pm on Friday the 9th day of July 2021.

7. The 3rd defendant shall publish a copy of the original draft constitution as submitted by the Constitutional Review Committee in two daily National newspapers with wide circulation, within 7 days of this order; and in addition;

I. Serve a copy of the said draft constitution on this court;

II. Serve a copy of the said draft constitution on the solicitors for the plaintiff;

III. Make a copy available at the registered headquarters of the Party in Freetown and every regional district and constituency office around the country and in the diaspora;

IV. Serve a copy of the said draft constitution on the 4th defendant PPRC in accordance with the provisions of section 24 of the Political Parties Act 2002.

8. The 4th defendant PPRC shall determine the time for the coming into effect of the amended constitution, in accordance with the provisions of section 24(2) of the Political Parties Act no 3 of 2002.
9. The 3rd defendant shall hold the emergency National delegates conference within 56 days, from the date the 4th defendant determines the amended constitution shall have come into effect.
10. The 4th defendant PPRC shall supervise the conduct of the emergency National delegates conference.
11. There shall be no orders as to costs, with respect to the application made by the 3rd defendant.
12. The 2nd defendant shall pay the costs to the plaintiff with respect to the unsuccessful application, summarily assessed at Le5,000,000.00, forthwith.
13. The matter shall be adjourned to Monday the 20th day of September 2021 for the hearing and determination of the substantive action.

14. All matters each Party intends to rely upon, if not already served in accordance with the directions given on 13th September 2021, shall be filed in accordance with those directions, in particular directions 5 (1-4) no later than 4 pm on 13th day of September 2021.

12. These were the orders I granted on the 19th April 2021. It became apparent that not all of the orders were complied with by the defendants which led to contempt of court applications being filed by the plaintiff.

For eg

1. there had been no compliance with any of the orders by the defendant, save for the payment of costs.
2. The emergency National delegates conference had not been held within 56 days as required by the order, even though it was the defendants themselves that requested for a variation of the injunction order, to facilitate the process of holding the emergency National delegates conference.
3. The elections for the women's congress, the youth league and the five delegates for each constituency, that the 3rd defendant was ordered to conduct no later than 25th June 2021, were not conducted, as ordered.
4. The 3rd defendant was ordered to prepare a full delegate lists and submit the same to the 4th defendants no later than 4pm on the 9th July 2021, were also not complied with.
5. The 3rd defendant was also ordered to publish a copy of the original draft constitution, as submitted by the Constitutional Review

Committee in two daily newspapers with wide circulation within 7 days of the order of the 19th April 2021 and to serve a copy of the said draft constitution on the court and solicitors for the plaintiff, make available a copy at the registered headquarters of the Party in Freetown and every regional district and constituency office around the country and to serve a copy of the draft constitution on the 4th defendant. Again, regrettably, none of these orders were complied with either fully or partly.

6. The issue of unresolved memberships were not addressed at the emergency national delegates conference notwithstanding the issue being the subject of a clear orders by the court.

13. Notwithstanding the lack of compliance, and the absence of sufficient explanations for lack of compliance, I considered it expedient and in the interest of justice to exercise my discretion to grant additional time for compliance with the court orders, without imposing any sanctions for the clear contempt of the court orders.

14. In that regard, I granted the following further orders amongst others:

1. The establishment of an emergency delegates conference technical planning Committee, consisting of 21 members, whose sole function shall be to undertake the planning and preparation leading up to the emergency National delegates conference.
2. The 2nd and 3rd defendant shall hold an emergency National delegates conference commencing on the 17th September 2021 and

ending on the 19th September 2021, to adopt its new constitution and to deal with any unresolved membership issues.

15. The defendants did eventually hold the emergency National delegates conference and adopted a new constitution. However, they again failed to address the unresolved membership issues which were the subject of the court order. Section 24 (1) of the Political Parties Act 2002, requires that where a political Party wishes to alter its constitution, it shall notify the Political Parties Registration Commission (PPRC) of its intention to do. Subsection 2 provides that any alteration shall come into effect one month after publication by the Commission of the Government notice in the gazette. The defendants having waited for five months to comply with the orders of the court, the process at the PPRC took six months to be completed. By way of an affidavit of compliance, dated 25th March 2022, the defendant filed the said affidavit on the 28th day of March 2022. These matters of considerable delay were wholly outside of the domain of the court.

The case for the defendants.

16. On the 1st day of March 2021, the law firm of Fornah-Sesay, Cummings and Showers entered a memorandum of appearance for and on behalf of the 1st defendant. On the 2nd day of March 2022, Tanner Legal Advisory entered a memorandum of appearance for and on behalf of the second defendant. On the 1st day of March 2021, Ady Macauley Esq, entered a memorandum of appearance for and on behalf of the 3rd defendant. There was no appearance for the 4th defendant.
17. There appears to be some mix up in the papers filed by the defendant. The papers filed by Ady Macauley Esq lists Alhaji Osman Foday Yansaneh

as the 1st defendant. The affidavit in opposition he filed was on behalf of himself and the 2nd and 3rd Defendants, Dr Ernest Bai Koroma the 1st defendant and the All Peoples Congress party respectively. However, the ambiguities were subsequently cleared. The said affidavit goes into detail as to the actions taken by the 3rd defendant in seeking to adopt a new constitution. As that constitution has now come into force, I shall only deal with those sections of the affidavit in opposition that deal with the legitimacy or otherwise of the executive of the 3rd defendant. I will summarise the said affidavit in terms of the relevant materials.

1. That he makes the affidavit in opposition, on his own behalf and on behalf of the 2nd and 3rd defendants. By this he means as far as I can deduce, the 1st defendant.
2. That he is the National Secretary General of the 3rd defendant All Peoples Congress Party and the facts deposed to are within his knowledge and based upon documents he has in his possession and control.
3. That he is the administrative head of the party and his duties include taking or causing others to take minutes of the National delegates conference, NDC, National Advisory Committee (NAC) meetings, National Executive Committee (NEC) meetings amongst others, conduct such correspondence as may be required as well as supervise and control the activities of the National secretariat, approving membership applications and signing of Party membership cards.
4. That in 2017 as National Secretary General, he was instrumental in the organisation of and participated in the meeting of the National

officers of the Party in 2017, during which discussions and proposals were made for the conduct of all conventions for executive members at the constituency, regional district and National levels for all organs of the Party including the youth league and the womens' congress. The National officers proposed resolutions for the adoption of NAC.

5. That NAC subsequently met a week later and adopted the said resolutions and those resolutions constituted the rules and regulations for the election/selection of Party officials and the presidential candidate which was forwarded to the PPRC to be gazetted and which rules were gazetted on the 8th August 2017. The said gazette was thereby exhibited.
6. That the rules and regulations were promulgated in compliance with the 1991 Constitution, the 1995 Constitution and the PPRC Act and that no objection was raised by any member of the Party to the rules and regulations for the conduct of the 2017 election cycle.
7. That the information contained in the gazette was also put out in a press release which was disseminated widely to members and no objections were taken by any members to the secretariat and or the executive.
8. That given the exigencies of time since the National elections were slated for March 2018, NAC resolved to appoint various oversight Committees for each district for the conduct of the said election/selection exercises and authorised them to engage "in consultations at the various levels with a view to selecting/electing

holders of positions with the approval of relevant delegates at each level". (para 10).

9. That the press statement dated 2nd June 2017 advised members as to the decisions taken by NAC and informed them of the proposed dates for the election/selection exercises and the NDC.
10. That the dates announced for the convention had to be deferred to allow the National Electoral Commission (NEC) to complete its boundary limitation exercises. That due to the failure of NEC to complete its delimitation task in a timely manner, he was forced to issue another press release deferring the date for the election/selection exercise and the NDC again.
11. That he again issued another press release dated 9th September 2017, after the boundary delimitation was done, informing the General membership of the updated dates for the elections.
12. That they started off with the elections/selections of constituency executive members pursuant to the gazetted notice and NAC appointed oversight Committees for each district to undertake this exercise. The elections/selection exercises were held between the 22nd September 2017 - 24th September 2017, all over the country and the various oversight teams travelled to the various districts to elect/select National officers.
13. That after the conduct of the constituency elections, the oversight Committee for each area, submitted its reports to the secretariat and NAC and provided a list of the new executive members for each constituency and that task was deemed complete.

14. That with respect to the Koinadugu elections, the oversight Committee conducted the elections/selections for constituencies 43-46. They were given a list of proposed executive members by the delegates in that constituency which they then read out to all delegates present and sought objections or alternatives and counter proposals. In areas where people objected or did not agree to the list, the oversight Committee asked the delegates present to vote between the contesting candidates and those results including those who ran unopposed were communicated to the secretariat.
15. That the oversight team upon their return to Freetown, submitted their own reports and upon review of the said reports, NAC renewed the mandate of the oversight team to go back to the district, to conduct district conventions. The process used for the constituency elections level was replicated for district and regional conventions across the countries.
16. That the district conventions were held between Friday 29th September and Saturday 30th September 2017 by the oversight Committee for the various districts who again travelled to the various districts, consulted the delegates and elected/selected the candidates for the executive.
17. That the regional convention was held between the 6th and 7th October 2017, again by the appointed oversight Committee, who again travelled to the various regions, consulted with delegates and elected/selected the executive. They then prepared reports and submitted to the secretariat upon completion.

18. That in line with the constitution, the party held a National delegates conference on the 14th-15th October 2017 in Makeni, in which National officers were also elected/selected as well as the flagbearer for the 2018 elections. The delegates focussed on the selection of the flagbearer whose selection was unanimously endorsed by the NDC. The NDC further endorsed the constituency, regional and district executives that had been selected/elected at their respective conventions.
19. That the delegates were provided with a list of names of people running who wanted to be elected as the National officers of the Party. The Chairman of the NDC read out aloud the list of candidates running for National officer positions, who asked the delegates for any objections to the list and there were none and the candidates were duly returned as the new National officers of the Party. He further averred that a video and audio of the said event can be provided to the court for its review in the format that the court directs. However, no such video or audio was produced to this court to substantiate the assertions made in the affidavit. (emphasis mine)
20. That since the officers ran unopposed, they did not deem it necessary to put out ballot boxes and no one was foreclosed from running for any position.
21. That the 1995 Constitution of the APC clearly gives the power of appointment of officers at the NAC level to the National Chairman of the APC in consultation with his deputy Chairman, regional chairmen and the National Secretary General.

22. That NAC pursuant to the 1995 Constitution does not have a fixed term tenure and the members previously appointed continued to hold their positions as members of NAC.
23. That the National Chairman in consultation with his regional chairmen and the National Secretary General did appoint a few candidates to replace the deceased members of NAC and again objections were sought from the delegates present. The repertoire of the NDC prepared and submitted a report to the National Secretary General.
24. That the lawsuit is evidence of the fact that the plaintiff is not pursuing reforms for the APC but the plaintiff seems to be looking to be selected and/or appointed or anointed by this court as the successor to the existing APC executive without going through the democratic process.
18. I have also had regard to an affidavit in opposition sworn to by Ibrahim Sorie, a barrister and solicitor of the High Court of Sierra Leone on the 16th day of April 2021. I have considered the affidavit in its entirety, but I am satisfied it is not relevant to the issues to be determined by this court. Mr Sorie refers to a period in 2018 after the loss of the presidential election and a nine-man Committee was set up by the Party to review the 1995 Constitution. He explained the procedures employed in reviewing the constitution.
19. He became involved in efforts to resolve the impasse between the Party leadership and the NRM movement which had taken an action against the Party, He had presented the draft constitution to the leadership which

was well received by the Party and the National Reform Movement (NRM) group. He further averred that the plaintiff's action had no merits.

20. I have also had regard to a supplementary affidavit in opposition, sworn to by Alhaji Osman Foday Yansaneh, sworn to on the 4th day of August 2021. In that affidavit, he avers the following facts:

1. That by reason of the state of emergency declared by the Government of Sierra Leone, due to the covid-19 pandemic and its attendant restrictions on gatherings of large crowds, the National Advisory Committee of the Party twice renewed and extended the mandates of the executive members at all levels of the Party's structure as it was impossible to call a National delegate conference to organise elections.
2. That copies of the notices were provided to this court and exhibited as OFY29-32.
3. That the Party has twice scheduled National Delegates Conferences but were thwarted by court injunctions obtained by aggrieved members of the Party.

21. Having set out the case for the parties, I shall now proceed to determine the claims by both parties. In that regard, I need to set out the issues in this case as I understand the respective parties' pleaded cases. The issues for determination can be stated as follows:

1. Are the executive of the 3rd defendant APC Party illegitimate by virtue of the fact that they were not duly elected into office? If the answer to that question is negative, has their mandate expired by virtue of the provisions of the 1995 Constitution?

2. Are the executive of the 3rd defendant APC Party illegitimate by virtue of the fact that they were not duly elected into office? If the answer to that question is in the affirmative, what is the effect of such illegitimacy on the executive of the APC Party in line with the provisions of the 1995 Constitution and national law, ie the national constitution 1991 and the Political Parties Act of 2002?

3. Has the mandate of the APC Party executive expired in line with the provisions of the defunct 1995 APC constitution?

22. The plaintiff's primary contention is that the executive members of the Party were not duly elected to office in accordance with the provisions of Articles 6(14)(1)(i), 6(13)(4)(i), and 6 (13)(5) of the defunct 1995 APC constitution. I shall now deal with that contention.

The defunct 1995 APC Constitution

23. This constitution came into force on the 5th day of December 1995 and was signed by SAT Koroma, Edward Mohamed Turay and Mrs Princess Gibson-Bucknor as National Interim Chairman/Leader, National Secretary General and National Treasurer, respectively. The clauses relied upon by the plaintiff are set out in article 6. The said article 6 deals with the Party structure and organisation. The first part of the plaintiff's claim is for a declaration that current National Secretary General, Assistant National Secretary General, National Organising Secretary, Assistant National organising Secretary, National Publicity Secretary, Assistant National publicity Secretary and the National Treasurer of the All Peoples Congress are illegitimate hinging on the fact that they were not

duly elected to office pursuant to Article 6(14)(1)(i) of the All Peoples Congress Party 1995 Constitution.

Article 6(14)(1)(iii)(i)

24. The said article provides:

6.14.1

There shall be a National Party secretariat headed by a Secretary General.

6.14.1(iii)(i) - The National secretariat shall consist of the following:

- a. The Secretary General.
- b. Assistant National Secretary General.
- c. National Organising Secretary.
- d. Assistant National organising Secretary.
- e. National Publicity Secretary.
- f. Assistant National publicity Secretary.
- g. National Treasurer.

(i) *All the above-named officers shall be elected by the National delegates conference.....*

25. The said provision highlighted above requires that the officers mentioned above shall be elected into office at a National delegates conference. I have to examine the defendants' case to see if these officers were elected into office as required by the 1995 Constitution. In that regard I have reviewed the affidavit in opposition sworn to by Alhaji

Foday Osman Yansaneh. With regard to the election of executive officers, he had this to say:

1. *"That given the exigencies of time since the National elections were slated for March 2018, NAC resolved to appoint various oversight Committees for each district for the conduct of the said election/selection exercises and authorised them to engage "in consultations at the various levels with a view to selecting/electing holders of positions with the approval of relevant delegates at each level". (para 10)*
2. *"That the press statement dated 2nd June 2017 advised members as to the decisions taken by NAC and informed them of the proposed dates for the election/selection exercises and the NDC" (para 11).*
3. *"That the dates announced for the convention had to be deferred to allow the National Electoral Commission (NEC) to complete its boundary limitation exercises. That due to the failure of NEC to complete its delimitation task in a timely manner, he was forced to issue another press release deferring the date for the election/selection exercise and the NDC again" (para 13).*
4. *"That he again issued another press release dated 9th September 2017, after the boundary delimitation was done, informing the General membership of the updated dates for the elections". (para 14).*
5. *"That they started off with the elections/selections of constituency executive members pursuant to the gazetted notice and NAC appointed oversight Committees for each district to*

undertake this exercise. The elections/selection exercises were held between the 22nd September 2017 - 24th September 2017, all over the country and the various oversight teams travelled to the various districts to elect/select National officers" .(para 16)

6. That after the conduct of the constituency elections, the oversight Committee for each area, submitted its reports to the secretariat and NAC and provided a list of the new executive members for each constituency and that task was deemed complete (para 17).
7. That with respect to the Koinadugu elections, the oversight Committee conducted the elections/selections for constituencies 43-46. They were given a list of proposed executive members by the delegates in that constituency which they then read out to all delegates present and sought objections or alternatives and counter proposals. In areas where people objected or did not agree to the list, the oversight Committee asked the delegates present to vote between the contesting candidates and those results including those who ran unopposed were communicated to the secretariat. (para 19).
8. That the oversight team upon their return to Freetown, submitted their own reports and upon review of the said reports, NAC renewed the mandate of the oversight team to go back to the district, to conduct district conventions. The process used for the constituency elections level was replicated for district and regional conventions across the countries. (para 20)

9. That the district conventions were held between Friday 29th September and Saturday 30th September 2017 by the oversight Committee for the various districts who again travelled to the various districts, consulted the delegates and elected/selected the candidates. (para 22)
 10. That the regional convention was held between the 6th and 7th October 2017, again by the appointed oversight Committee, who again travelled to the various regions, consulted with delegates and elected/selected the executive. They then prepared reports and submitted to the secretariat upon completion (para 24).
26. With respect to the National delegates conference, in which the Party executive were to be elected into office as required by the constitution, Alhaji Foday Osman Yansaneh had this to say:
1. *"That in line with the constitution, the Party held a National delegates conference on the 14th-15th October 2017 in Makeni, in which National officers were also elected/selected as well as the flagbearer for the 2018 elections. The delegates focussed on the selection of the flagbearer whose selection unanimously endorsed by the NDC. The NDC further endorsed the constituency, regional and district executives that had been selected/elected at their respective conventions. (para 25)*
 2. *"That the delegates were provided with a list of names of people running and wanted to be elected as the National officers of the Party. The Chairman of the NDC read out aloud the list of candidates running for National officer positions, who asked the delegates for any objections to the list and there were none and*

the candidates were duly returned as the new National officers of the Party. He further averred that a video and audio of the said event can be provided to the court for its review in the format that the court directs."

3. *"That since the officers ran unopposed, they did not deem it necessary to put out ballot boxes and no one was foreclosed from running for any position". (para 30)*

27. With respect to the first prayer sought by the plaintiff that the National officers mentioned are illegitimate on account of the fact that they were not duly elected to office, and having regard to the affidavit in opposition sworn to by Alhaji Foday Osman Yansaneh, I have had had cause to review a number of matters and exhibits attached, as well as the relevant sections of Article 6 of the defunct APC 1995 Constitution and I make the following findings of fact:

1. That as a matter of fact and law, Article 6.14.1 (iii)(i), provides that the National officers mentioned above "shall be elected by the National delegates conference". There is no alternative provision for selection of such officers in this article and consequently, any National officer who holds office by virtue of his having being selected, would be doing so illegally and such office holder's assumption to the office they hold would be contrary to the said provision of the 1995 Constitution and therefore illegitimate.
2. That, at paragraphs 7,10,11,13,16,19,25 and 27, Ambassador continually used the words selected/elected. There is provision in the 1995 constitution particularly at article 6, where the word

"selection" is used, with respect to the assumption to office of executive members, save for the national chairman. In any event selection of National officers is contrary to the provisions of the said Article 6 of the 1995 Constitution and there is nothing before me to suggest that Alhaji Osman Foday Yansaneh, was unaware that assumption of office as a National officer of the Party, must be by way of an election and not selection.

3. I have not been able to rationalise the reasons for employing a selection exercise by the national secretary general Alhaji Osman Foday Yansaneh, when as Secretary General, he knew or could be presumed to know and be familiar with the provisions of the party Constitution which required elections to office and not selection.
4. That at para 17, Alhaji Osman Foday Yansaneh deposed to the fact that he was presented with a list of newly elected executive members for each constituency, by the oversight Committee, which was exhibited as exhibit OFY9 (1-9). Upon a review of the said exhibit, particularly in relation to Constituency 039, the report clearly states that one Sorie T Jawara was unanimously selected (not elected) by all delegates present.
5. No elections were held in constituency 040. It was stated in the report that it was the Member of Parliament who reported that extensive consultations had been done and produced a list of names for the executive officers' position. A similar situation occurred in constituency 041. There were no womens' coordinator in the executive. A similar situation occurred in constituency 042. It is further interesting to note that the oversight Committee

recommended in its report that "the community must be allowed to select/elect their candidates". Such a recommendation is evidence of the fact that there was no election held as required by the 1995 APC Constitution in constituency 042.

6. That the rules which were promulgated and published in the Sierra Leone gazette dated 8th August 2017, by Government notice no 261. It is perhaps necessary that I make specific references to the said rules as promulgated. In summary, the rules make the following provisions:

1. That the National officers met on 23rd May 2017;
2. That NAC is empowered to elect/select/endorse,
 - i. Presidential candidate and running mate.
 - ii. National officers.
 - iii. Regional executives.
 - iv. District executives.
 - v. Constituency executives.
3. That there was a need to elect/select officials at constituency, district, regional and National levels.
4. That NAC wishes to issue guidelines and determine the rules and procedures of the pending conference for voting at the conference where every delegate shall have only one vote.
5. That in view of limited time available, NAC resolved that the oversight committees engage in consultations at various

levels with a view to selecting holders of positions with the approval of relevant stakeholders at each level.

6. That proposals for selection of National officers excluding the National Chairman and leader were set out in the rules; in that:

- i. Candidates must be prepared to accept the decision of NAC to select any applicant and he/she will sign a written undertaking that if he/she is not selected, he will support the chosen candidate.

7. That proposals for the selection of district officers were made.

8. That proposals for the selection of constituency officers were made.

9. That officials in the APC National youth league, APC women's congress and APC veterans shall be chosen in accordance with Article 6.14.1 (iii) and (iv).

10. That the National secretariat announces dates for selection/election of new executives.

28. Having considered the rules that were gazetted for the convention, it is necessary to consider the status of those rules in relation to the 1995 Constitution.

Other relevant provisions of The Defunct APC 1995 Constitution.

29. Article 3 of the said constitution makes provisions for the aims, objectives and philosophy of the said constitution. A key objective of the said constitution is to "attain and sustain political power through

democratic and constitutional means in order to build a free, democratic society with equal rights and opportunities and justice for all". This objective requires activities within the Party to be in accordance with such objectives. In the attainment of executive positions within the Party, there must be equal opportunities for all as stated in the parties objectives.

30. Further, Article 5(iii) and (iv) of the said constitution provides that:

"Every member shall have the right to participate fully in the activities of the Party provided such a member is current in his financial obligations to the Party"

(iv)

"Every member of the Party shall have the right to be voted into any office or post of the Party during any election, provided such a member is current in his financial obligations to the Party and has been active in Party affairs"

31. The provisions of Article 5 provide a fundamental principle in the Party's affairs and must be adhered to. Depriving a member of the Party of the opportunity to be voted into office by adopting a unilateral selection exercise which has no legal basis in the constitution, represents a material breach of the 1995 constitution and is fundamentally undemocratic. It also represents a material breach of the 1991 Constitution which in itself, provides for democratic structures to ensure elections are held for those aspiring for offices.

32. I have made several references to the use of the words "selection/election" in the affidavit of Alhaji Osman Foday Yansaneh and

the rules and regulations of the elections as published in the Govt notice 261. The key issue for consideration is whether the term selection has any basis in the accession to executive officers in the APC Party.

National officers.

33. With respect to National officers Article 6.14(iii)(i) provides that these officers shall be elected.

Regional Party chairmen

34. With respect to these chairmen, Article 6(13)(3)(i) provides that the 4 regional chairmen shall be elected by the respective regions and endorsed by the National delegates conference every three years.

District chairmen

35. With respect to these chairmen, Article 6.13.4 (1) of the constitution provides that the 14 district chairmen shall be elected by district convention every three years.

132 Constituencies chairmen

36. With respect to these chairmen, Article 6.13.5(i) provides that the 132 chairmen shall be elected by the constituency convention every two years.

37. All of these Party officers can only assume office by election. There is no basis for selection of these officers by any person or organisation of the Party.

38. The only references to selection are with respect to constituency conventions, who are mandated to elect/select members of the constituency executive, district conventions, who are also mandated to elect/select officers of the district executive Committee. The Regional

convention is only mandated to elect officers of the regional executive and not to select them.

39. Much reliance has been placed by Mr Macauley on the powers of NAC. Before I deal with those arguments, I need to consider firstly the rules and regulations, purportedly made by NAC, which was utilised to conduct the selection exercises by using the oversight Committees.

40. I must firstly point that despite the extensive references by Alhaji Osman Foday Yansaneh in his affidavit to NAC having made the rules and mandated the extensions relied upon, I have extensively reviewed all the documents before me and I note there is not a single record of any minutes of NAC having held any such meetings, or in fact took any such decisions. This is significant for a number of reasons:

1. Firstly, Alhaji Osman Foday Yansaneh stated in his affidavit at para 3, that he is the administrative head of the party and his duties include taking or causing others to take minutes of the National delegates conference, NDC, National Advisory Committee NAC meetings, National Executive Committee NEC meetings, amongst others. It is therefore incredible that he failed to adduce a single minute of meetings of NAC in which such decisions of fundamental importance to the Party were taken.
2. This is particularly important in view of the fact that Article 6.10.11(iii) of the Constitution provides for NAC to have a quorum of members present at its meetings. One third of the members of NAC does form a quorum and for any decisions of NAC to be legitimate, there must be the required quorum. In the absence of the minutes of meetings of NAC, it is impossible to say that the

quorum of members were present, or any such meetings were held, thus giving any legitimacy to the decisions of NAC.

3. In the absence of any such minutes of any of the NAC meetings, I can only conclude that these meetings were never held or even if they were held the conclusions reached were not in line with that suggested by Alhaji Osman Foday Yansaneh.
4. With respect to the rules promulgated in the gazette dated 8th August 2017, it is noted in the preamble that National officers of the Party met on the 23rd May 2017 under the chairmanship of the leader and Chairman, There is clearly no reference in those gazetted rules to NAC having met for the purpose of promulgating the rules for the elections, notwithstanding the fact that the meeting of the 23rd May 2017 was supposedly held to provide resolutions for consideration of NAC.
5. There is mention that NAC did make the said rules, but again, there are no minutes of meetings to confirm that NAC did in fact meet or in fact made the said rules. In the absence of the minutes of meeting, I do not find it credible that NAC met and promulgated those rules, which made no references to voting at the National Delegates Conference, in clear breach of the provisions of Article 6.9.2(v) and Article 6.9.3 (iii) of the 1995 Constitution.
6. The same applies under Article 6.10.11.1 in which NAC is given the power in special and emergency situations to perform the role of the National delegates conference at a special and emergency National Advisory Committee meeting. The emphasis on the words "perform the functions" means just that. NAC is only mandated to

carry out the functions of the National delegates conference in emergency situations. This simply means that they cannot act outside of the mandate of the National delegates conference or substitute its own functions for that of the National delegates conference. They effectively act in place of the National delegates conference and are bound by the functions of the NDC and any rules incidental to the performance of those functions,

7. With respect to the rules themselves, the promulgation by NAC of these rules, if at all, are contrary to the 1995 constitution and the national constitution of 1991, in that no provision is made for selection of executive officers in the 1995 Constitution and the concept of selection for elective offices has no role to play in a democratic constitution and any rules purporting to use selection as a basis for the assumption into office of executive members whose assumption to office must be based upon elections, is wholly contrary to the said constitution and of no legal effect. Article 14.1.1 of the 1995 constitution provides as follows:

"the National Advisory Committee may for ratification by the National Advisory Committee may, for ratification by the National delegates conference, make rules and enforce any bye-law(s) not inconsistent with the provisions of this constitution and the National constitution of Sierra Leone"

8. In view of my observations above that there are no provisions for selection in the 1995 constitution with respect to National officers, district chairmen, regional chairmen and constituency chairmen, any rules promulgated which seek to introduce selection

as a basis for the assumption to office of executive members of the Party, would be inconsistent with the provisions of article 14.1.1 of the constitution and hence null and void.

9. Further, the 1991 Constitution of Sierra Leone, provides for those seeking to assume offices to do so by a process of elections. To that extent section 35(2) of the Constitution provides:

(2) The internal organisation of a political Party shall conform to democratic principles, and its aims, objectives, purposes and programmes shall not contravene, or be inconsistent with, any provisions of this Constitution.

10. Consequently, a political party as in this case, the APC that attempts to select members to assume offices in its executive instead of electing such members is not only acting contrary to its own constitution, but would also be acting contrary to the National Constitution of Sierra Leone, 1991.

41. Where elections are conducted, one would expect at the very least to see the following processes being adhered to.

1. Nomination of candidates.
2. Voting procedures.
3. Actual voting.
4. Ballot boxes.
5. Ballot counting.
6. Tally of votes.
7. Announcement of winners.

8. Returning officers.

42.No evidence of compliance with any of the procedures outlined above was adduced into evidence before me to confirm that elections were held for those aspiring candidates to be voted into office as required by the constitution. As matter of fact at para 30 of the Affidavit Alhaji Osman Foday Yansaneh, boldly stated that *"since the officers ran unopposed, we did not deem it necessary to put out ballot boxes and no one was foreclosed from running for any position"*.

43.I do not find it credible or plausible that all of these candidates ran unopposed. To accept such a submission would be contrary to common sense and logic. The constitution requires elections. There ought to have been ballot boxes at the very least to give the semblance of an election. To simply appoint oversight Committees who replaced the process of elections by selecting candidates is an affront to democratic principles and is patently illegal.

44.The activities of the 3rd defendant All Peoples Congress party are of a public nature having regard to the provisions of section 35(1) of the 1991 Constitution of Sierra Leone, Act no 6 of 1991 which provides:

35. (1) Subject to the provisions of this section, political parties may be established to participate in shaping the political will of the people, to disseminate information on political ideas, and social and economic programmes of a national character, and to sponsor candidates for Presidential, Parliamentary or Local Government elections.

45.Political Parties therefore occupy a key role in the governance structure of the country by the provisions of candidates to occupy the presidency, which carries out executive functions of the state, parliament and local

government whose core duties are to represent the interest of the public at large. To that extent, political parties must act lawfully at all times and all such actions must be lawful under the party constitution which governs the party in question, the 1991 Constitution and public law. Where a public body or as in this case, a body carrying out a public function like a political party, is acting unlawfully, such conduct is inevitably a matter of public law, susceptible to scrutiny by the courts by way of a judicial review.

46. In *Council of Civil Service Unions v Minister for the Civil Service* 1985, AC 374, the court concluded that Illegality is a very broad ground for review and covers a wide range of possible abuses by public authorities. Lord Diplock defined illegality in the following terms:

"By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable"

47. It is clear from the evidence before me that contrary to the APC 1995 constitution, no elections were held for the respective executive officers. The rules promulgated were clearly inconsistent with the 1995 APC Constitution and the National constitution of 1991 and were therefore wholly undemocratic and devoid of legitimacy for the following reasons:

1. No nominations and elections were held.

2. Members of the party were deprived of the right to seek for and be voted into office as executive members of the Party.

3. The processes set out in the 1995 Constitution were not followed.

4. The executive assumed office in 2017, with a mandate to be in office for three years and in some instances two years. As at today's date, the executive has been in office for 4 years and 6 months for various reasons not limited to court injunctions.

48. In the circumstances, I cannot be satisfied that the actions of the 2nd and 3rd defendants were lawful. Whilst I have had regard to the explanation preferred by Alhaji Osman Foday Yansaneh, as to insufficient time for the holding of elections. The court takes judicial notice that His Excellency the President declared a state of emergency on the 24th day of March 2020. There is no evidence before this court that would demonstrate that prior to this date, arrangements were already actively in place at an advanced level to hold lower-level elections for executive members and National officers, leading to a National delegates conference. In my judgement, there was sufficient time to hold elections if the 2nd and 3rd defendants had chosen to comply with the provisions of the APC 1995 Constitution. Rather than have oversight committees selecting candidates, it would have been easier for candidates who wished contest for any positions, to have been nominated and elected as required by the 1995 Constitution.

49. In the circumstances, I have no hesitation in concluding that the executive officers comprising the National officers, the regional chairmen, the district chairmen and the 132 constituency chairmen were not duly elected into office as required by the provisions of articles 6 of

the 1995 APC constitution and their assumption to office and continued occupation of those offices is therefore illegitimate and not in accordance with the 1995 APC constitution and the 1991 Constitution of Sierra Leone, Act no 6. of 1991.

50. In *Council of the Civil Service Unions v Minister for the Civil Service*, at para [410] Lord Diplock stated:

'By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.'

51. The assumption to office by these executive members were outrightly unlawful as the proper procedures laid down in the 1995 Constitution had not been followed by the 2nd 3rd defendant.

52. The plaintiff has in addition sought a declaration that the National Advisory Committee (NAC) is illegitimate. Regard must therefore be had to the composition of NAC. By virtue of Article 6.10.1 of the 1995 Constitution, NAC is made up of members from all the regions in the country. The National Party Chairman in consultation with the deputy Chairman, the regional chairmen and the Secretary General, determines the composition of NAC. In the light of the conclusions reached in this judgement that the regional chairmen and the Secretary General did not assume office legitimately, consideration must be given to the manner of assumption to office of the Chairman and deputy Party Chairman.

53. Article 6.13.1 of the 1995 constitution provides:

"There shall be a National Party Chairman and a National deputy Party Chairman who shall be the political head and leader and deputy leader

respectively of the Party. They shall be selected/elected by the National delegates conference for a period of three years."

54. Having regard to the above article 6.13.1 of the Constitution, the said National Party Chairman and deputy leader can properly be selected and I am prepared to accept that their assumption to office of the national chairman and leader by way of selection was legitimate and provided for in the 1995 constitution. However, this is not the sole issue for consideration and or determination by this court. Having being legitimately selected, the said articles of the APC 1995 Constitution require that he and his deputy must remain in office for a period of three years.

55. In that regard, I have had regard to the Exhibit OFY29-32 in the sworn affidavit of Alhaji Osman Foday Yansaneh. In a press release dated 9th September 2020, signed by Amb Dr Alhaji Osman Foday Yansaneh, National Secretary General, he makes two pronouncements:

1. That NAC gives notice pursuant to Article 6.10.11.1 of the 1995 Constitution, that conventions and National delegates conferences of the Party are rescheduled to hold in January 2021.
2. That NAC further directs that the current executives would remain in place and that all existing Party leadership, including but not limited to the Chairman and leader, the deputy Chairman and leader, the National Secretary General, all other National officers, the members of the National Advisory Committee, the National executive Committee, the regional and diaspora executives, the district executives, the constituency executive, executive of the womens' congress, the National executive of the youth league and

all other constitutionally established executives, continue in office until the conventions and or National delegates conference are held.

56. Having regard to my earlier comments about the lack of any minutes of any of the NAC meetings, I am unable to accept that the contents of the press release of the 9th September 2020, was as a result of a NAC meeting, for which there was a recognised quorum of members present. I do not believe nor accept that NAC met or took the decision that was the subject of the press release of 9th September 2020. By extension, I also do not accept that the contents of press release dated 14th January 2021, emanated from a properly constituted NAC meeting and in any event for the reasons given above, members of the said NAC were not duly elected into office and in the case of the chairman and leader, the time for which he was selected has now expired and they could not therefore hold offices they hold legitimately or issue any such directions legitimately.

57. Assuming without conceding that NAC had indeed met and taken the relevant decisions, a number of members of NAC whom I have already identified were not duly elected into office and could therefore not legitimately form part of NAC. In those circumstances, I can only conclude that the period of office for which the leader and Chairman and the deputy leader were selected in 2017 have now elapsed since 2020 and they could no longer form part of the executive of the APC Party. In any event there are no provisions for NAC, even where properly constituted to override the provisions of the 1995 Constitution.

The 2022 APC Party Constitution

58. As I have previously alluded to above, on the 9th day of August 2021, I granted a variation to my earlier injunction and ordered the 3rd Defendant to hold an emergency delegates conference for the purpose of adopting a new constitution and to deal with unresolved membership issues.
59. On the issue of unresolved membership issues, I did order that the 3rd defendant deal with all unresolved membership issues at the emergency National delegates conference. This they failed to do in contempt of the orders of this court. I had cause to order that they go back and make a determination as to how they intend to deal with the issue, following on from which a press release was issued by the 2nd defendant alluding to the fact that unresolved membership issues would be dealt with at the next National delegates conference.
60. In the light of the coming into force of the 2022 constitution and my judgement that the current executive is now defunct, by reason of their illegal assumption of office, the decision by the defunct executive to resolve all outstanding membership issues at the National delegates conference is null and void by reason of their illegality and would be contrary to the 2022 constitution now in force. In those circumstances, I shall make a number of orders dealing with the issue of unresolved membership in the final orders that I give.
61. By way of an affidavit of compliance dated 25th March 2022, solicitors for the 3rd defendant filed an affidavit of compliance on the court and exhibited a copy of the gazette dated 7th March 2022, in which the new constitution was adopted and published. Para 2 of the affidavit sworn to by Franklyn Remisa Coker averred that the 3rd defendant had complied with the orders of the court dated 1st December 2021, requiring the 3rd

defendant to hold an emergency national delegates convention for the adoption of the new constitution. The court received the said affidavit of compliance on the 28th March 2022.

62. The court now has to take a view as how to deal with the transition period between the expiry of the defunct 1995 Constitution and the coming into force of the new constitution, in order to avoid a power vacuum. Most significantly, the said constitution is now in force but for the injunction on the party, the executive may not proceed with the implementation of the said constitution. The said constitution has 83 articles which I have carefully reviewed and considered. This court will now proceed to consider the transitional provisions.

Transitional provisions

63. Article 81 contains the repeal and savings provisions relating to the 1995 constitution. Article 82 contains transitional provisions. In particular, article 82 (b), (c) and (d) make provisions, which for clarity in this judgement I shall reproduce.

82(b)

"The existing Party leadership including but not limited to the Chairman and leader, the deputy Chairman and leader, the National Secretary General, all other National officers, the members of the National Advisory Committee, the National executive Committee, the regional and diaspora executives, the district executives, the constituency executives, the National executive of the women's congress, the National executive of the young congress and all other constitutionally established executives, notwithstanding the repeal of the existing constitution, shall have effect after the entry into force of this constitution as if they have been established pursuant to this constitution and their provisions shall be and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this

constitution until the first National delegates conference and/or relevant conventions under this constitution are held."

82 (c)

"Where any office had been established by or under the existing constitution or any existing law, and this constitution establishes or provides for the establishment of a similar or an equivalent office including the Chairman and his deputy, the National Secretary General, or any other office, any person who immediately before the commencement of this constitution, holds or is acting in the former office, shall so far as consistent with the provisions of this constitution, be deemed from the commencement of this constitution to have been appointed, elected or otherwise selected to hold or act in the latter office in accordance with the provisions of this constitution until the first National delegates conference and/or relevant conventions are held under this constitution."

82 (d)

"Any person who by virtue of para C above is deemed as from the commencement of this constitution to have been appointed, elected or otherwise selected to hold or act in any office shall also be deemed as from the commencement of this constitution to have been appointed, elected or otherwise selected to hold or act in that office and has taken or subscribed to any necessary oath under this constitution".

64. There are other provisions set out at para e - i, which I will deal with separately, for reasons which I shall set out later in this judgement. With respect to Article 82, it provides for the continued existence of the various offices mentioned and I do not propose to interfere with that. These offices shall continue in existence in accordance with the said provisions of Article 82 (b).

65. With respect to Article 82 (c), this article simply makes provision for the office holders of the various offices to continue in office pending the holding of the first National delegates conference. This article presupposes that those officers in office were duly elected into office

and their mandate continues notwithstanding the repeal of the existing 1995 constitution.

66. That would have been the position had the respective office holders being duly elected into office and their mandate as duly elected officers remain unexpired. However, as I have found in this judgement, the respective office holders were not duly elected into office and their assumption to office was irregular and arguably unlawful. In those circumstances, they cannot be deemed to have assumed office or remain in office under the new constitution legitimately, when their initial assumption to office was illegitimate.

67. A similar situation exists with respect to article 82 (d). All of these office holders cannot be deemed to have assumed office or remain in office under the new constitution when their mandate under the existing constitution was irregular and has in fact expired. An injunction shall be granted restraining these individuals from holding themselves out as officers of the Party or performing any such functions associated with the office they once held.

68. With respect to para e-I, para e gives the mandate to the NAC to fix the date for the first National delegates conference and all relevant conventions. This provision presupposes that the NAC is legitimately composed and constituted under the 1995 constitution and has the mandate to fix such a date and its existence is within the period of its validity as required by the 1995 constitution. In this case, NAC was not properly constituted by reason of the fact that its members were not holding office legitimately, and essentially there is no NAC in existence to activate the said provisions.

69. Sub paragraph f provides for a transitional interim independent elections management Committee, with a membership of 25 appointed by NAC. For the reasons given above, there is no legitimately constituted NAC and they cannot in turn appoint members of the TIIEMC. The court would have to determine the issue in due course.

70. Sub paragraphs g, h, I provides for the mandate of the TIIEMC.

71. In the light of the judgment of this court that the current executive of the 3rd defendant Party is holding office illegitimately, such that they have no legitimacy, the court has to provide the Party with a governance structure that would govern the Party in the interim whilst steps are taken to put mechanisms in place to appoint a new executive for the Party.

72. In that regard, the court has carefully considered what options exist to ensure that a power vacuum does not arise within the party. In that regard, I have decided that there needs to be established an interim 21 person transition governance Committee for the Party. (ITGC). This Committee would be tasked with administering the affairs of the Party for a limited time, until fresh elections are held at the lower levels culminating in the National delegates conference where executive members would be elected, at which time their mandate will end. Due to the mistrust and bickering amongst members coupled with an atmosphere of suspicion amongst the members with various factions emerging, the composition of the Committee has been carefully chosen to ensure that much needed unity in the APC Party is achieved and maintained.

73. It is noted that there a larger number of party organs and bodies in the new 2022 APC Constitution. Every one of these organs and bodies will not

be incorporated into the transition Committee for obvious reasons. I have however given careful thought to the composition of the transition Committee, on account of the deep mistrust amongst members of impropriety which I have experienced in this court during the proceedings. The plaintiff has succeeded in his action to bring democratisation to the Party by this judgement and in those circumstances, I consider that he is entitled to a larger share of members in the Committee.

74.A political Party as I have ruled in previous rulings is an unincorporated association that is made up of its membership. All members of a political Party cannot possibly be a part of the transitional Committee, but it is recognised that the Party belongs to its members and these members are located across the country. They are however represented in parliament by members of parliament. The members of parliament are therefore key stakeholders, who have a duty to ensure that their Party which is owned by the members they represent, is democratically positioned in the country, by ensuring a democratic governance structure is in place.

75.Having considered the matter very carefully, I have decided the composition of the transition Committee would be as follows:

1. The plaintiff shall nominate 9 persons to the Committee, one of whom shall be the Chairman.
2. The leader of the All Peoples Congress Party in parliament shall hold consultations with the parliamentary party and thereafter shall nominate the following members to form part of the Committee:

1. 2 members of parliament from the north region.

2. 2 members of parliament from the north-west region.
3. 2 members of parliament from the west region.
4. 1 member of parliament from the south region.
5. 1 members of parliament from the eastern region.
3. 1 member nominated from the National young congress.
4. 1 member nominated from the diaspora region of the Party.
5. 1 member nominated from the National womens congress.
6. 1 senior legal practitioner of not less than 20 years standing to nominated by the APC legal team in this action.

Costs

76. With regard to the issue of costs, I am guided and have had regard to the provisions of Order 57 of the High Court Rules 2007. Order 57 rule 1, sub rule 1 of the High Court Rules 2007, provides:

"Subject to this Order, the costs of and incidental to proceedings in the Court shall be at the discretion of the Court, and the Court shall have full power to determine by whom and to what extent the costs are to be paid."

77. In determining the issue of costs, I have had regard, in particular to Order 57 rule 8 of the High Court Rules which provide as follows:

8. (1) Where in any proceedings anything is done or omission is made improperly or unnecessarily by or on behalf of a Party, the Court may direct that any costs to that Party in respect of it shall not be allowed, and that any costs occasioned by it to the other parties shall be paid by the defaulting Party to them.

(2) Without prejudice to the Generality of subrule (1), the Court shall, for the purpose of that subrule have regard in particular to the following matters:-

(a) the omission to do anything which, if done would have saved costs;

(b) the doing of anything calculated to occasion unnecessary costs; and

(c) any unnecessary delay in the proceedings.

78. A considerable feature about litigation is that it must be as a last resort. Parties to litigation have a duty to conduct themselves in such a manner so as to speedily dispose of the matter and at proportionate costs. The matters referred to at Order 57 rule 8 gives the court the power to award punitive costs against a Party if the costs were deemed to have been unnecessarily incurred on account of their conduct or otherwise to have caused the other Party to have improperly or unnecessarily incurred costs and to disallow all costs that have been unreasonably incurred by a Party who is nonetheless entitled to its costs.

79. These costs which under the common law principles on costs are known as indemnity costs are frequently ordered where the matters set out at Order 57 rule 8 sub rule 2 are present, ie omissions by one Party to do anything which if done would have saved costs, doing anything calculated to occasion unnecessary costs and any unnecessary delay in proceedings.

Indemnity costs

80. The significance of costs being ordered to be paid on an indemnity as opposed to the standard basis is that, although the beneficiary of such an order will still only be paid costs which have been reasonably incurred, there is no requirement of proportionality and in cases of doubt on

assessment it is for the payer to show that the costs were not reasonably incurred. Two decisions of the English courts in *Petrotrade Inc v. Texaco Ltd* (Note) [2002] 1 WLR 947, per Lord Woolf MR, at p.949 and *Victor Kermitt Kiam II v. MGN Ltd* [2002] EWCA Civ 66 at paragraph 12 per Simon Brown LJ, have stated the principles involved in this area of the law. Whilst an indemnity costs order does carry at least some stigma the purpose of such an order is not to punish the paying party but to give a fair result for the Party in whose favour a costs order is made.

81. Lord Woolf CJ in *Excelsior Commercial and Industrial Holdings Ltd v. Salisbury Hammer Aspden and Johnson (A Firm)* [2002] EWCA Civ 879 at paragraph 19, remarked that it is appropriate to award indemnity costs where there are circumstances in a case which takes it out of the norm.

82. In *Cepheus Shipping Corporation v. Guardian Royal Exchange Plc*, [1995] 1 LL Rep. 647 (Mance J) demonstrates that the following principles should guide the Court's determination whether the Claimants should be required to pay the bank's costs of the action on an indemnity basis: -

(1) The court should have regard to all the circumstances of the case and the discretion to award indemnity costs is extremely wide.

(2) The critical requirement before an indemnity order can be made in the successful defendant's favour is that there must be some conduct or some circumstance which takes the case out of the norm.

(3) Insofar as the conduct of the unsuccessful claimant is relied on as a ground for ordering indemnity costs, the test is not conduct attracting moral condemnation, which is an a fortiori ground, but rather unreasonableness.

(4) The court can and should have regard to the conduct of an unsuccessful claimant during the proceedings, both before and during the trial, as well as whether it was reasonable for the claimant to raise and pursue particular allegations and the manner in which the claimant pursued its case and its allegations.

(5) Where a claim is speculative, weak, opportunistic or thin, a claimant who chooses to pursue it is taking a high risk and can expect to pay indemnity costs if it fails.

(6) A fortiori, where the claim includes allegations of dishonesty, let alone allegations of conduct meriting an award to the Claimant of exemplary damages, and those allegations are pursued aggressively inter alia by hostile cross examination.

(7) Where the unsuccessful allegations are the subject of extensive publicity, especially where it has been courted by the unsuccessful claimant, that is a further ground.

(8) The following circumstances take a case out of the norm and justify an order for indemnity costs, particularly when taken in combination with the fact that a defendant has discontinued only at a very late stage in proceedings;

(a) Where the claimant advances and aggressively pursues serious and wide ranging allegations of dishonesty or impropriety over an extended period of time;

(b) Where the claimant advances and aggressively pursues such allegations, despite the lack of any foundation in the documentary

evidence for those allegations, and maintains the allegations, without apology, to the bitter end;

(c) Where the claimant actively seeks to court publicity for its serious allegations both before and during the trial in the international, National and local media;

(d) Where the claimant, by its conduct, turns a case into an unprecedented factual enquiry by the pursuit of an unjustified case;

(e) Where the claimant pursues a claim which is, to put it most charitably, thin and, in some respects, far-fetched;

(f) Where the claimant pursues a claim which is irreconcilable with the contemporaneous documents;

(g) Where a claimant commences and pursues large-scale and expensive litigation in circumstances calculated to exert commercial pressure on a defendant, and during the course of the trial of the action, the claimant resorts to advancing a constantly changing case in order to justify the allegations which it has made, only then to suffer a resounding defeat.

83. The appropriate conclusion in this case is not difficult to reach. In truth, it is difficult to think of a case in which the entitlement to indemnity costs could more clearly be made out, as I hope hereafter to demonstrate insofar as it is not already apparent. The plaintiff's claim was very simple. The executive of the defendant were not duly elected into office and even if they were, their term of office has since expired. The plaintiff's primary claim is in my judgement unassailable. The evidence which I have reviewed before me clearly show in indisputable manner that:

1. No elections were held for delegates who formed the electorate at the National delegates conference.
 2. The selection procedure utilised by the 3rd defendant was wholly illegitimate and could find no support in the Party's 1995 Constitution.
 3. The 2nd defendant even admitted in his sworn affidavit that there was no need to place ballot papers as every candidate was running unopposed.
 4. There was no minutes of NAC even when the 2nd defendant admitted that one of his key duties was to take minutes of meetings or in fact cause to be taken such minutes.
 5. No election reports were ever produced as exhibits.
 6. Most significantly, at the time the plaintiff filed their application, preparations for the adoption of the new constitution were far advanced as is evidenced by the application by the defendants for a variation of the injunction to enable the Party to go to an emergency delegates conference with a view to adopt the constitution, which is one of the key issues raised by the plaintiff.
84. Against this background, lawyers for the defendants sought to pursue and file a huge number of unnecessary and fruitless applications, numbering some formidable 2500 pages of documents, when all that had to be done was to concede the plaintiff's case at the earliest opportunity and seek to adopt the constitution without delay. The actions of the defendant's lawyers have occasioned considerable costs which have been needlessly incurred.

85. In that respect, in an unprecedented manner, I have had cause to needlessly write a number of interlocutory rulings totalling 10 in this matter, of which 7 are of relevance to the issue of costs which has served to lengthen the proceedings and needlessly incur additional costs.

I had to produce rulings on:

1. 17th March 2021
2. 7th April 2021
3. 19th April 2021
4. 28th May 2021
5. 9th August 2021
6. 5th November 2021
7. 1st December 2021

86. I should also comment on some of the actions of counsel representing the defendants in this case. Some counsel for the defendants were infrequently rude and hostile to me and I ignored it, preferring instead to focus on the matters before the court. Not everything said by counsel Mr Macauley for the 3rd defendant however is intended to be taken seriously and sometimes his offensive remarks are the product of a well-intentioned but ill-judged attempt to lighten the mood. I propose to say no more about some of the things said in the course of the trial about the defendant's solicitor.

87. Mr Macauley's sustained aggressiveness to his opponent was of an altogether different order. It was behaviour not in the usual tradition of the Bar and it was inappropriate and distracting. I should have done more to attempt to control it, although I doubt if I should have been any more

successful than evidently were Mr Macauley's colleagues whom at any rate on one occasion I was invited to attempt to exercise some restraining influence. Whether this alone is a ground upon which an award of indemnity costs should be considered I do not need to decide.

88. The actions of the defence team in mounting a robust and unnecessary challenge to the plaintiff's case in the light of the documentation before the court which plainly supported the plaintiff's case was not just unrealistic but absurd. In my judgement, the plaintiff was fully entitled to pursue this action in the light of the blatant undemocratic practices carried out by the now defunct executive. It would have been an affront to justice and contrary to the public interest, for such actions by the defunct executive to have gone unchecked.

89. In my judgement, the defendants must pay the costs of this action on an indemnity basis as I have concluded that the filing of unnecessary and voluminous applications in the light of the plaintiff's stated case, occasioned unnecessary costs and resulted in unnecessary delay in the proceedings. The amount of such costs would be summarily assessed by the court, subject to further submissions by counsel.

90. In the circumstances and having reviewed the evidence extensively, I shall make the following orders:

1. A declaration is hereby granted that the current National Secretary General, Assistant National Secretary General, National Organising Secretary, Assistant National organising Secretary, National Publicity Secretary, Assistant National publicity Secretary and the National Treasurer of the All Peoples Congress are illegitimate on the fact that they were not duly elected to

office pursuant to Article 6(14)(1)(i) of the All Peoples Congress Party 1995 Constitution and their continued occupation of their respective offices is illegitimate.

2. A declaration that the five (5) Regional Chairmen of the 3rd defendant All Peoples Congress are illegitimate pursuant to Article 6 (13)(3)(i) of the All Peoples Congress Party 1995 Constitution and their continued occupation of the said offices is illegitimate.
3. A declaration that the 16 district chairmen of the All Peoples Congress Party are illegitimate pursuant to Article 6 (13)(4)(i) of the All Peoples Congress Party 1995 Constitution and their continued occupation of their respective offices is illegitimate.
4. A declaration that the 132 Constituencies Chairmen of the All Peoples Congress Party are illegitimate pursuant to Article 6 (13)(5) of the All Peoples Congress 1995 Constitution.
5. A declaration that the National Advisory Committee (NAC) of the 3rd defendant APC Party is illegitimate by reason of the above declarations in (1) and (2) above, and is hereby dissolved.
6. A declaration that all officers holding the following offices within the 3rd defendant are illegitimate by reason of their having not been duly elected or selected into office and their continued occupation of the respective offices are illegitimate by reason of the same and shall save for the National Secretary General and the assistant National Secretary General vacate their respective offices, forthwith.

1. The National leader and Chairman.

2. The National deputy Party Chairman and leader.
 3. The five regional Party chairmen.
 4. The 16 district chairmen.
 5. The 132 constituency chairmen.
 6. The National Secretary General.
 7. The assistant National Secretary General.
 8. The National organising Secretary.
 9. The Assistant National organising Secretary.
 10. The National publicity Secretary.
 11. The assistant National publicity Secretary.
 12. The National Treasurer.
 13. All heads of department appointed by the National Party Chairman.
7. The injunction granted on the Party on the 26th February 2021, with respect to political activities is hereby lifted and replaced by A perpetual injunction which is hereby granted in terms of the injunction order below.
 8. There is hereby established, an Interim Transition Governance Committee(ITGC) made up of 21 persons whose composition shall be as follows:
 1. The plaintiff shall nominate 9 persons to the Committee, one of whom shall be the Chairman.

2. The leader of the All Peoples Congress Party in parliament shall hold consultations with the parliamentary Party and thereafter shall nominate the following members to form part of the Committee.
 - i. 2 members of parliament from the northern region.
 - ii. 2 members of parliament from the north-west region.
 - iii. 2 members of parliament from the western region.
 - iv. 1 member of parliament from the south region.
 - v. 1 member of parliament from the eastern region.
3. 1 member nominated from the National young congress.
4. 1 member nominated from the diaspora region of the Party.
5. 1 member nominated from the National womens congress.
6. 1 senior legal practitioner of not less than 20 years standing nominated by the APC legal team in this action.
9. The ITGC shall be formed within fourteen days of this order and shall assume office on the fifteenth day of this order ie 10am on Friday the 13th day of May 2022.
10. The ITCG shall have overall responsibility for manning the affairs of the Party until the National delegates conference when their mandate would expire. To that extent, the ITGC shall be responsible for:
 1. The promulgation of rules of procedures and regulations which shall be compliant with the 1991 Constitution, the APC 2022 Constitution and the Political Parties Act 2002 for the

conduct of all lower-level elections, which shall be promulgated within 14 days of the assumption of office of the ITGC in any event no later than 4pm on Friday 27 May 2022. The said rules shall be forwarded to the 4th defendant PPRC within 7 days of promulgation, in any event no later than 4pm on the 3rd day of June 2022.

2. Ensuring the conduct of lower-level elections within 60 days from the date of the gazetted rules by the 4th defendant PPRC, through the Transitional Interim Independent Elections Management Committee, (TIIEMC)
3. The holding of the first National delegates Conference within 28 days of completion of the lower-level elections, which shall be supervised by the chairman of the 4th defendant PPRC.
4. Resolving all unresolved membership disputes within the Party, prior to the National delegates conference in accordance with Article 10 of the 2022 constitution and ensuring that those membership disputes that are required to be dealt with at the National delegates conference pursuant to article 13 (f) and (G) of the 2022 Constitution are resolved at that conference by its inclusion on the agenda.
5. The Appointment of a national audit firm who are registered members of the Chartered Institute of Accountants Sierra Leone to carry out a forensic audit on the financial activities of the 3rd Defendant APC party between October 2017 and

the 28th April 2022, within 14 days of their assumption of office. The said firm shall provide its report within sixty days of their appointment to the chairman of the ITGC who shall who shall forward a declaration of the party's income, assets and liabilities of the party to the 4th defendant PPRC within 14 days of the receipt of the final audit report.

6. In order to achieve unity within the party, decisions of the ITGC shall be by simple majority.

11. The 2nd defendant shall vacate the office of Secretary General and hand over the secretariat including but not limited to a detailed handing over note, bank statements, bank account information, membership documents, and all offices of the secretariat to the Chairman of the ITGC at 10am on Friday the 13th day of May 2022.

12. The 2nd defendant shall provide a signed detailed financial statement of expenditure of all funds held in the All Peoples Congress different accounts and how the same has been expended on behalf of the party from October 2017 to 28th April 2022 to the chairman of the ITGC on Friday 13th May 2022 at 10am.

13. There is hereby established in accordance with the 2022 APC constitution, a Transitional Interim Independent Elections Management Committee, (TIIEMC) whose Chairman shall be the Chairman of the APC Party Constitutional review Committee.

14. The ITGC shall appoint the membership of 25 persons of the TIIEMC, save for the Chairman.

15. The TIIEMC shall oversee and conduct the first set of elections within the Party, ie ward constituency, district and regional in accordance with Article 82 (g,h,i) of the 2022 APC Constitution, the rules of the elections promulgated by the ITGC and subject to supervision by the 4th defendant PPRC and the general control of the ITGC

16. There shall be no orders as to costs.

17. The Master and Registrar shall cause to be refunded the amount of Le30,000,000.00 paid by the plaintiff as security for costs, forthwith.

The Hon Mr Justice A Fisher

ORDER FOR AN INJUNCTION

IMPORTANT: -

NOTICE TO THE DEFENDANTS

(1) This Order prohibits you from doing the acts set out in this Order. You should read it all carefully. You have a right to ask the Court to vary or discharge this Order. You are advised to seek legal advice from a solicitor of your choice.

(2) IF YOU DISOBEY THIS ORDER YOU MAY BE FOUND GUILTY OF CONTEMPT OF COURT AND MAY BE SENT TO PRISON OR FINED OR YOUR ASSETS MAY BE SEIZED.

An application for an injunction

An application was made on the 26th day of February 2021 by Counsel for defendant, who applied to the judge for an injunction. The Judge heard the Application and read the affidavit listed in Schedule 1 and accepted the undertaking in damages dated the 26th day of February 2021 and made a number of orders. The judge having further conducted a trial of all relevant issues in dispute has now determined the issues between the parties and in aid of those resolutions has granted the following orders:

IT IS ORDERED THAT:

THE INJUNCTION

1. The following persons are restrained by way of a perpetual injunction whether by themselves, their servants, workmen, agents, or privies, associates or howsoever called from holding themselves out or carrying out any Party related functions as executive members of the 3rd defendant APC Party with respect to their previously held offices, forthwith.

1. The National leader and Chairman.
 2. The National deputy Party Chairman and leader.
 3. The 5 regional Party chairmen.
 4. The 16 district chairmen.
 5. The 132 constituency chairmen.
 6. The National Secretary General.
 7. The assistant National Secretary General.
 8. The National organising Secretary.
 9. The Assistant National organising Secretary.
 10. The National publicity Secretary.
 11. The assistant National publicity Secretary.
 12. The National Treasurer.
 13. All heads of department appointed by the National Party Chairman.
2. The defunct National Secretary General and the Assistant National Secretary General shall not hold themselves out as Secretary General and Assistant National Secretary General respectively or carry out any functions of the office of Secretary General, save for activities relating to the handover of the secretariat to the Chairman of the ITGC.
 3. The defunct national Secretary General and the Assistant National Secretary General, are at liberty to work with the incoming members of the ITGC, in order to achieve a smooth transition.

THE DEFENDANTS AND THE PARTIES IDENTIFIED ABOVE MUST NOT BREACH THE INJUNCTION AS STATED ABOVE.

COSTS OF THE APPLICATION

The costs of this application are as set out in order 10(16) of this Order.

VARIATION OR DISCHARGE OF THIS ORDER

The Defendants may apply to the Court at any time to vary or discharge this Order but if they wish to do so, they must first inform the plaintiff's solicitors in writing at least 48 hours beforehand.

NAME AND ADDRESS OF CLAIMANT'S SOLICITORS

The defendant's' Solicitors are: (Jengo Sam and Partners, 2nd floor, 34 Campbell Street, Freetown).

INTERPRETATION OF THIS ORDER

- 1) In this Order the words "he" "him" or "his" include "she" or "her" and "it" or "its".
- 2) Where there are two or more Defendants then (unless the contrary appears)
 - (a) References to "the Defendant" mean both or all of them;
 - (b) An Order requiring "the Defendant" to do or not to do anything requires each Defendant to do or not to do it.

THE EFFECT OF THIS ORDER

1) A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

2) A Defendant which is a corporation, and which is ordered not to do something must not do it itself or by its directors, officers, employees or agents or in any other way.

3) A defendant who is ordered to do something must comply with the order of the court.

SERVICE OF THIS ORDER

This Order shall be served on the defendants by the plaintiff, **FORTHWITH**.

SCHEDULE 1.

Affidavits

The Judge read the following Affidavits before making this Order:

1. Rashid Santigie Sesay

