

L.M. FARMAH ESQ., AND OSMAN KAMARA ESQ. FOR THE DEFENDANTS

JUDGMENT DELIVERED THE 10th DAY OF NOVEMBER 2009.

TOLLA THOMPSON, J.S.C.

Having had the advantage of reading the Judgment just delivered by my Lady the Chief Justice I found myself fully in agreement with her analysis of the issues she had to deal with and the conclusion arrived at. I shall articulate my own opinion on this matter in this way.

On the 26th February 2008 the Plaintiff, The Sierra Leone Association of Journalists a Company Limited by guarantee and incorporated under the Company's Act chapter 249, of the laws of Sierra Leone 1960. By notice of an originating motion moved this Court for the following reliefs pursuant to section 25 and 171(15) of the Constitution of Sierra Leone 1991 Act No.6 of 1991 (which for the purpose of this ruling, I shall refer to as the Constitution) namely:

A. *The interpretation of section 25 of the Constitution viz-a-viz section 26, 27, 32-36 of the Public Order Act 1965 No.46 of 1965 (which for the purpose of this judgment I shall henceforth refer to as the Act) for the following questions.*

(I) *Whether the provisions of section 26, 27, 32-36 of the Act criminalizing free speech contravene the right to Freedom of expression guaranteed under the entrenched provision of section 25(1) of the Constitution No.*

(II) *Whether the provisions of sections 26, 27, 32-36 of the Act can be demonstrably justifiable, in the light of Sierra Leone's obligation, under the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights and the African Charter of Human and Peoples Right.*

(III) If the answer to (I) and (II) above are in the affirmative whether the provision of section 26, 27, 32-36 of the Act also fall out of the restrictive provision of section 25(2) of the Constitution

B. Declaration sections 26, 27, 32-36 of the Act criminalizing free speech are inconsistent with the section 25(1) of the Constitution.

C. A declaration that the restrictive provision to the right to freedom of expression under section 25(2) of the Constitution does not serve the provision of sections 26, 27, 32-36 of the Act in so far as the said provision cannot demonstratively justifiable in a democratic society.

D. Any further order or relief as this Honourable Court may deem fit and just.

BACKGROUND

This originating Notice of Motion relates to freedom of expression as enshrined in Section 25(1) of the Constitution. The complaint is that freedom of expression has been criminalized by some sections of the Act.

It is generally accepted that in a democratic society, freedom of expression is a fundamental right enjoyed by members of that society; therefore members of the Plaintiffs Association who exercise such freedom of expression by the dissemination of information are at liberty to publish any matter of public interest, without fear or favour and with objectivity. If perchance, the publication is malicious, manifestly false or impinges on the right, and reputation of others, such publication will be said, had gone beyond the pale of fair comments and or privilege, and such conduct amounts to a license. Sellers L.J. (deceased) in *Broadway Approval Ltd. and Another v. Odham Press Ltd.* 1962 ABR 523 at 535 inter alia put it this way:

"An honest expression of opinion on a matter of public interest is not actionable even though it may be untrue and devoid of justification. It may be said in the

appropriate circumstances; that a man's conduct is discreditable and it may be said a fair comment to make although a jury is not prepared to find that the substance of comment was true."

Also in Tolley S.S. Fry and Sons Ltd. 1KB 1930 467 at 479 which was quoted with approval in Harding vs. Sierra Leone Daily Mail 1964-66 ALR SL 563. Greer L.J. (deceased) in determining which words are actionable as defamatory had this to say:

"Words are not defamatory unless they amount to an attack on a man's reputation or character. They must tend to disparage him in the eyes of the average sensible citizen. Words are not actionable as defamatory. However they may damage a man in the eyes of a section of the community, unless they also amount to disparagement of his reputation to the eyes of the right thinking man generally."

Here in Sierra Leone it is the bias and sometimes malicious reporting of events that some members of the Plaintiff's Association have been the offenders. They wantonly and recklessly publish things attacking the reputation of other members in the society. This they gleefully refer to in their journalistic parlance as "attack and collect, defend and collect or coasting". Whatever these expressions mean I do not know.

In spite of all these, journalists still continue to enjoy their fundamental right to freedom of expression that is why there are about forty news papers in circulation and numerous radio stations. Now by invoking the relevant provision of the Constitution, they are asking this court to give them an unlimited freedom of expression, by declaring that the Act is inconsistent with the Constitution and also criminalizes freedom of expression.

PRELIMINARY ISSUES

Before dealing with the substantive issue, I have identified two issues arising from the Plaintiff's originating Notice of Motion, which I shall deal with as preliminary points. They are CAPACITY/STANDING of the Plaintiff and the DECLARATION sought by him.

STANDING / CAPACITY

The Plaintiff at page 2 of the *originating Notice of Motion* states:

"The Plaintiff herein brings this action in the capacity as the Sierra Leone , Association of Journalists a Company Limited by guarantee and incorporated under the Companies Act Cap 249 of the Laws of Sierra Leone 1960: the members of the Plaintiffs association are media practitioners in the Republic of Sierra Leone. The Memorandum of Association of the Plaintiff Company provides inter alia in clause 31a and e as follows – 3a & e) as follows:-3a- To endeavor to defend the freedom of the press and safeguard the freedom of journalist in the pursuit of their profession and to assist the growth of the press as a powerful social (sic) for the betterment of the nation through the dissemination of accurate and objective information (emphasis mine) fair comment and a constant quest for improved standard and techniques of Journalist."

From the above it appears to me that the Plaintiff is the so called umbrella body for journalists. My description of the Plaintiff's Association as so called, stems from the fact that not all journalists are members of the Association. They are not compelled to become members – membership is optional. To my mind it is a loose association.

It is settled law, that a Plaintiff challenging a Statute as in this case, on Constitutional ground must be legally qualified to do so. See *Guarantee Trust of New York v Hannay and Company*, 1915 2 KB 536. It means that the Plaintiff must have an interest in the subject matter of the action. Such interest is variedly described as personal, real or sufficient. These interests which should not be artificial or remote are generally referred to as Standing or Capacity -- the right of appearance in a court to litigate a matter. It focuses on the Plaintiff seeking to get his action or matter before the court not the action or matter which he wants decided.

It is trite law that if a Plaintiff has no standing/capacity to litigate on a matter the court has no jurisdiction to try the matter. Consequently standing/capacity and

jurisdiction are intertwined. Therefore if the Plaintiff has no standing or capacity the court has no jurisdiction to entertain the action.

In Barron Dictionary of Legal Terms, Real Interest is defined as –

"A person will be entitled to the benefit of the legal action of it is successful. One who is actually and substantially interested in the subject matter as opposed to one who has only a normal, formal, or technical interest in it."

This principle of real/personal interest in the subject matter has been applied in a long line of cases. I shall endeavour to refer to few cases on this point.

In *Russian Commercial and Industrial Bank v. British Bank* 1921 AC 438 the Court adopting the above definition of real interest said.

"The question to be decided must be real and not theoretical and the person raising it must have real interest to raise it."

In *Abraham Adesayan vs the President of Nigeria and others* 1981 2 NWLR 358, the Supreme Court of Nigeria held *"That the Appellant cannot challenge the appointment of the President as he has no right peculiar or personal to him which had been violated"*.

However in *Sam vs the Attorney General of Ghana* GLR 300 which was quoted in *Hinga Norman vs Sama Banya and Others* SC. No. 2/2005 Attuguda JSC took the view that so long as the Plaintiff was a citizen Standing/Capacity (need not be considered in a wider dimension).

In some jurisdiction however sufficient interest in the subject matter has been regarded as enough interest to bestow standing on a Plaintiff so long as such interest is not of a speculative nature. See *Randolph Sheppard Venders v Weinburger* 795 (DC Cir 986).

Also: in *Crouch v The Commonwealth* 1948 77 CLR 339 the High Court of Australia held that *"the claim by the Plaintiff that his business was affected as he had to obtain permit under an invalid law constituted sufficient interest to institute the action"*.

In this case and for the sake, of argument, let me assume without conceding that the Plaintiff has sufficient interest to bring this action based on the affidavits of the three deponents indicating that they have interest in the subject matter. Indeed in the affidavit of Spencer, his interest can be adequately described as real/personal which would have been in tune with Sec. 28 of the Constitution. As a victim of the Act he is in the same category as the appellants in some

of the authorities cited by Mr. Yada Williams. In my opinion he could have been an ideal and competent Plaintiff to institute this action.

I have taken pains to draw this analogy as I am at a loss to understand or fathom why the action was instituted by the Plaintiff whose interest in my judgment is purely nominal and calls into question the Plaintiff's standing to institute the action. Be that as it may I do not intend to rest this judgment here, that is not to say I would not be justified for doing so.

THE DECLARATION

At common law, the power of the court to make a declaratory ruling/judgment is discretionary, and such discretion must be exercised judiciously and with caution. See Halsbury Laws of England 3rd edition volume 22 para. 1611.

The Constitution gives the Supreme Court, when exercising its original jurisdiction the power to make a discretionary ruling / judgment, where the relief or claim is the inconsistency between the law or statutory provision and the Constitution. It is a specific provision of the Constitution. Section 127 (1) states:-

"A person who alleges that the enactment or anything contained in or done under the authority of that or say other enactment is inconsistency with or in contravention of a provision of the constitution may at anytime bring an action in the Supreme Court for a declaration to the effect."

This is the only provision in the Constitution, which empowers the Supreme Court to make a declaratory judgment.

In this case the Plaintiff neither relies on the common law, nor the above provision of the Constitution and half heartedly and generally relies on rules 89 – 98 of the Supreme Court Rules. The reason for saying so will be apparent by the end of the next paragraph.

As I said the Plaintiff generally relies on rules 89 – 98. He should have confined himself to rule 98 which reads:

"Where no provision is expressly made in these rules relating to the original or supervisory jurisdiction of the Supreme Court, the practice and procedure for the time being of the High Court shall apply mutatis mutandis."

It is the practice of this court that a Plaintiff instituting an action pursuant to a rule other than the Supreme Court Rule should clearly state the said rule in the title of the action. It was not done in this case. The above rule is a procedural rule which does not stand on its own. It should be accompanied by the relevant High Court rule, and the proper Rule in this case is O 43 r. 1 which states:

"No action or proceeding shall be open to objection on the ground that a mere declaratory judgment or order is sought thereby and the court may give declaration of right whether any consequential relief is or could be claimed or not."

This is an omission or lapse on the part of the Plaintiff which ought not to be encouraged bearing in mind that the Supreme Court is the highest court in this jurisdiction. I say no more.

THE ARGUMENT

I shall, in brief state the arguments and submissions of the Plaintiff and Defendant. Mr. Yada Williams Counsel for the Plaintiff in his argument submitted that the Plaintiff is challenging Sections 26, 27, and 32 – 37 of the Act 1965. These Sections impinge or violate Section 25 (i) of the Constitution of Sierra Leone. Their argument is not that the right to Freedom of expression is unlimited; but that these sections contravene Section 25(i) of the Constitution. He referred to several authorities in support of his argument and that the reasons given in these cases were that they were in conflict with the Constitution of the said countries which guarantees freedom of expression in a democratic state and whatever provision in the Constitution must be democratic and objective.

He submitted further that we do not have to adhere to our local standard, but to universal standard. To uphold the limitation, the burden rest on those who create the limitation to justify it.

Finally he submitted that Sec. 25 (ii) creates a limitation upon the freedom of expression the extent to which the freedom of expression can be limited. The

government cannot go around limiting the freedom of expression even if the first hurdle is crossed. The limitation created should be justified in a democratic state.

Mr. Farmer: Counsel for the 1st defendant submitted that his colleague has conceded that freedom of expression cannot be unlimited.

He submitted that the Plaintiff did not invoke the court's jurisdiction as provided under Section 124 of the Constitution; which empowers the court in all matters to interpret the Constitution. He cites the case of *Pepper v Hart* 1993 1 A.E.R.P. 50.

He submitted that there are multi dimensional rule of interpretation of statute. It includes the ordinary meaning of the word; plus the context of the legislation, the subject matter the scope and purpose.

He submitted that when reading sec. 25 (i) of the constitution, it should be read in the context and subject matter in which sec. 25 (i) of the constitution – the recognition and protection of fundamental human rights. It is essential to recognize the scope under sec. 25 (i) and the limitation provided under sec 25(ii) of the constitution.

He submitted further where there is a legal restriction on the exercise of the freedom of expression under section 25 (i). That legal restriction is that of the Public Order Act 1965. He submitted that Public Order Act when read in its entirety provides the mechanism by which the exercise of the fundamental human and freedom of the individual right can be done in an orderly manner. Section 25 (i) therefore is not inconsistent with 26-27-32-36 of the Act.

Finally he submitted the burden to prove where there are restrictions, or limitation does not lie on the defendant.

THE MAIN ISSUE - INTERPRETATION

The supremacy of the Constitution is found at Sec. 171(15) of the Constitution which states:-

"This Constitution shall be the supreme law of Sierra Leone and any other law found inconsistent with any provision of the

Constitution shall be to the extent of that inconsistency void and of no effect."

The above is a substantive provision. It is clear and concise. It merely declares the Constitution the supreme law of the state and being the supreme law any law or act which is at variance or inconsistent with any of its provision will be declared void and of no effect. It also confers original, appellate and supervisory jurisdiction on the Supreme Court.

The thrust of the Plaintiff's submissions and the statement of his case is that Sec. 26, 27 28, 32, 33, 36 of the Act are inconsistent with freedom of expression as enshrined in Sec. 25 (i) of the Constitution.

Section 25 (i) states:-

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression and for the purpose of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, freedom from interference with his correspondence, freedom to own, establish and operate any medium for the dissemination of information, ideas and opinion and academic freedom in institutions of learning."

Provided that no person other than the Government or any person or body authorized by the President shall own establish or operate a television or wireless broadcasting station for any purpose whatsoever."

Section 25 (ii) states:-

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:-

(a) which is reasonably required –

*(i) in the interest of defence, public safety,
public order, public morality or public*

"I rest here to find the intention of Parliament and of Ministers and carry it out and we do this better by filling in the gaps and making sense than by opening it to destructive analysis."

Coming home the case of *Chanrai & Co. Ltd. v Palmer* 1970 – 71 ALR (SL) 391 comes to mind in which Livesey Luke, C.J. (deceased) had this to say:

"In my judgment if the words used in the Statute are plain and unambiguous the court is bound to construe them in their ordinary sense having regard to the context."

Afortiori, not only that the words used or expressed in the statute must carry the intended meaning, but the court must not imply anything in them which is inconsistent with the words used or expressed : see *Egbe v Alhaji* 1990 1 N. W L. R. P. 546.

This point leads me to the principle adopted in another rudiment of interpretation called the Purposive Principle or Approach. Where words expressed are uncertain and or misleading and ambiguous, to give a true meaning to the words it is necessary to examine the background, scope, subject matter and purpose of the statute. I dare say, this is the current innovation in interpreting statutes. See *Pepper v Hart* 1993 1 A.E.R 42.

In some cases however and this is one, there are no marked difference between the literal and purposive approaches to interpretation. As to the difference Laws L.J. (deceased) in *Olive Ashworth (holdings) Ltd. Vs Ballard Ltd.* 1999 2 AER 795 had this to say:

"It is nowadays misleading and perhaps it always was to seek to draw a rigid distinction between literal and purposive approaches to the interpretation to Acts of Parliament. The difference between literal and purposive construction is in truth one of degree only.. On received doctrine we spend our professional lives construing legislation purposively, in as much as we are enjoying at every turn to ascertain the intention of Parliament. The real distinction lies in the balance to be struck in a particular case between the literal meaning of words on the one hand and the context and purpose of the measure in which they appear on the other. Frequently there will be no opposition between the two and then no difficulty arises. Where there is a potential clash the conventional

approach has been to give at least very great and often decisive weight to the literal meaning enacting words."

The meaning of "shall"

In my opinion the vital word in Sec. 25 (i) and 25 (ii) is the word "shall". I shall now turn my attention to the use of it. This auxiliary verb should be understood in two senses; as simply futurity (i.e. will) and obligation (must) or whether in a statute it is compulsory or merely gives jurisdiction, and directory. In the dictionary of Modern Usages 'shall' is defined thus:

"The word "shall" ordinarily denotes language of command. In legislation it invariably denotes an imperative rather than futurity when it appears in drafting."

There is no doubt that Sections 25 (i) and (ii) are elements of legislative drafting, consequently the word 'shall' in "no person SHALL be hindered in the enjoyment of its freedom etc" in Sec. 25 (i) and in "nothing contained or done under the authority of any law SHALL be held to be inconsistent etc." in Sec. 25 (ii) is to have any meaning at all and escape from any obscurity within the context of legislative drafting it must be looked at from the imperative/mandatory sense.

Therefore, on a close scrutiny and as far as it is relevant to this action, and using the ordinary sense approach it seems to me that the intention of the framers of the Constitution is that no one should be prevented from enjoying and exercising the right of freedom of expression. Those rights and freedom of expression however must not infringe on the right and reputation of others. Also the Constitution will give effect to any law which seeks to protect the said right and reputation and that law will not be inconsistent with the provision – of Section 25 (i).

The Jurist Roger Brownswood in one of his jurisprudential expose' tried to equate the law with morality and this is what he said:

"Legal Rules ought to be consistent with some moral requirement since the two depend on social facts as well as moral values and in the enactment of any law some element of morality should be involved.

I cannot agree with him more, and so it is with our laws including the Act which is the focus of this ruling. However I am more concerned with the legal rather than the moral aspect of certain provisions of the Act and how it fits into the Constitution and its frame work.

The Act is a punitive legislation and predates the Constitution by some twenty-six years. I fully realize and recognize the difficulties it has caused to some members of the society. Whilst at the same time it is a source of solace and happiness to those who resort to it to repair their tarnished and battered reputation.

This court primarily has been called upon to determine whether certain provisions of the Act are inconsistent with Section 25(i) of the Constitution. Secondly whether it can be justified in the light of the provision in Sec. 25 (i) which gives a positive complexion to freedom of expression in a democratic society.

Mr. Yada Williams in his submission referred to and relied on several decisions from other countries in which the appellate court held that the legislations under which the appellants were charged tried and convicted were inconsistent with certain provisions of their respective Constitution dealing with freedom of expression. According to him this Act has no place in a democratic society.

I note that the decision in most of the cases cited by Mr. Williams are from the appellate courts. The Appellants having been convicted by the courts of first instance appealed against the conviction. The decisions did not emanate from actions for the determination by the Supreme Courts or the Constitutional courts

that a particular provision or statute is inconsistent with the Constitution of the respective states.

The relevant and offending provisions of the Act relate to defamatory and seditious libel. I shall here under reproduce them in extenso:

Sec.26:

"Any person who maliciously publish any defamatory matter knowing the same to be false shall be guilty of an offence called libel and liable on conviction to imprisonment for a term not exceeding three (3) years to a fine not exceeding one thousand leones or both."

Sec 27 states:

"Any person who maliciously publishes any defamatory matter shall be guilty of an offence called libel and liable on conviction to a fine not exceeding seven hundred leones or to imprisonment for a period not exceeding two years or to both such fine and imprisonment."

Sec. 32 (i):

"Any person who publishes any false statement rumour or report which is likely to cause fear or alarm to the public or to disturb the public peace shall be guilty of an offence and liable on conviction to a time not exceeding three hundred leones or to imprisonment for a period of 12 months or to both such fine and imprisonment."

Sec.32 (2):

"Any person who publishes any false statement rumour or report which is calculated to bring into disrepute any

person who hold an office under the Constitution in the discharge of his duty shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred leones or to imprisonment not exceeding two years or both."

Sec. 33(i) states:

Any person who:-

- (a) *does or attempt to do or makes any preparation to do or conspire with any person to do any act with a seditious intention;*
- (b) *utters any seditious words or*
- (c) *print or publishes, sells, offers for sale, distributes or reproduces seditious publication or*
- (d) *impart any seditious publication unless he has no reason to believe that it is seditious;*

shall be guilty of an offence to imprisonment for a term not exceeding three years or to a fine not exceeding one thousand leones or to both such imprisonment and fine and for a subsequent offence shall be imprisoned for a term not exceeding seven years and every such seditious publication shall be forfeited to the Government.

Section 33(ii) states:

"Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and on conviction be liable for a first offence to imprisonment for a term not exceeding twelve months or to a fine not exceeding one hundred leones or to both such imprisonment and fine and for a subsequent offence shall be imprisoned for a term not exceeding three years

and every such publication shall be forfeited to the Government."

It is a rule of interpretation that a general statute does not by implication affect a special statute, see *Seaward vs Vera Cruz* 1884 10 AC 59, except the general statute expressly say so or may be in terms inconsistent with the continued existence of the special statute, see *Barclay vs Edger* 1898 AC 749. In this case there is no suggestion that the Act has been expressly repealed or amended.

Is it then repealed by implication? To help me answer this question I shall resort to Maxwell on interpretation 11th edition page 169:

"Having already given its attention to the particular subject and provided for it, the legislative is reasonably presumed not to alter that special provision by subsequent general enactment unless the intention be manifested in explicit language or there is something which shows that the legislative had been turned to the special act and that the general one making it unlikely that an exception was intended to regard the special Act. In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special Act."

This principle of law was applied in the Court of Appeal case of *Attorney General v Kabia S.L.L.R.* 1963 at page 143 in which the court said

"where there are general words in a latter act capable of reasonable and sensible application without extending them to subject specially dealt with by earlier legislation, the earlier legislation is not indirectly repeal, altered or derogated from nearly by force of such general words without an indication of a particular intention to do so."

I shall adopt the said principle and say that it clearly shows that the Act has not been repealed by Sec.25 (i) nor any other provision of the Constitution. I so hold.

Is the Act inconsistent with Sec. 25 (i) of the Constitution? The Laws of Sierra Leone comprise among others the 'existing law', see Sec 170. These are laws/statutes which existed before the promulgation of the Constitution. A similar provision was made in the repealed 1978 Constitution to accommodate the existing law. (See Sec.161 of the 1978 Constitution). It follows therefore that the Act has been a part and parcel of the existing law which derives its validity and efficacy from the Constitution.

The Transitional provisions which give effect to the existing law is Sec. 177. I shall hereunder reproduce it.

Sec. 177 (i) states :

"The existing law shall notwithstanding the repeal of the Constitution of Sierra Leone Act 1978, have effect after the entry into force of this Constitution as if they had been made in pursuance of this Constitution and shall be read and construed with such modification, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution."

Sub Sec. (ii) states:-

Where any matter that falls to be prescribed or otherwise provided for under this Constitution or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section), or is otherwise prescribed or provided for immediately before the commencement of this Constitution by or under the existing Constitution, that prescription or provision shall as from the commencement of this Constitution have

effect with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with is Constitution as if it had been made under this Constitution by Parliament or as the case may require, by the other authority of person."

This existing law herein referred to is found in Sec. 176 and is defined as follows:

"Any Act, rule or regulation order or other instrument made in pursuance or continuing in operation under, the existing Constitution and having effect as part of the laws of Sierra Leone or of any part thereof immediately before the commencement of this Constitution or any Act of the Parliament of the United Kingdom or Order of Her Majesty in Council so having effect and may be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution as if it had been made under this Constitution."

The Act without doubt is part and parcel of the existing law which have been saved and preserved by the transitional provisions, and should be looked upon "as if it had been made under this Constitution."

INTERNATIONAL PROTOCOLS/OBLIGATION

As regards Sierra Leone's obligation to international protocols my answer is that it is common knowledge that the United Nations and other international organizations are in the fore front in the campaign for human rights violation. Individual states including Sierra Leone have signed up to the respective protocols and when necessary incorporated them in their national laws. However, the United Nations, International and other Regional organizations are mindful that freedom of expression must not be used to the detriment of the rights and reputation of others, As was illustrated in the genocide trial in Rawanda, in which Ferdinand

Nahimana and 3 others (all three accused were journalists), on the 3rd December were convicted. The court after examining the role of journalist in the genocide of 1994 and in delivering the judgment said:

That the power of the media to create and destroy human values come with great responsibility. Those who control such media are accountable for its consequences."

In my opinion the above judgment underscores the point that however much we treasure Freedom of Expression such freedom must come with responsibilities. Indeed article 19 (3) of the International Convention and Civil and Political Rights states:

"The exercise of this right provided for in paragraph 2 of the article carries with its special duties and responsibilities and may therefore be subject to certain restriction for the respect of the right and reputation of others, and for the protection of National security, public order or public health or morals."

Paragraph 2 in the above quoted article refers to the rights to freedom of expression in ~~paragraph~~ ^{article} 19 (2). It seems to me that even at international and regional levels there is need for some restriction of Freedom of Expression as is evident by the judgment in the Rwanda Genocide trial. When publishing, and disseminating news international and local journalists should always be aware of the rights and reputation of others.

CONCLUSION

A Constitution of a democratic state is the fundamental principle of law by which the state is administered and does not normally contain details of the law by which the State is governed. The framers of the Constitution in their wisdom included the "existing law" of which the Act is a part under the rubric of the Transitional Provision.

In as much as freedom of expression as enshrined in Sec. 25 (i) uncomfortably sits with the relevant provision of the Act, no one should pursue a course of conduct under the umbrella of freedom of expression which the law regards as criminal or tortuous: and therefore is necessary to mark the limit which an individual cannot exceed or trespass. This limit is provided by Sec. 25 (ii) and the Act. Indeed one person's freedom of expression stops where another person's right begins.

Again in our society it is common knowledge that some journalists publish matters which touch and concern another person with reckless abandon and claim the exercise of freedom of expression, sometime the exercise of that freedom paled into insignificance compared with the damage done to the reputation of that person.

In this vein, it is my fervent plea to the Plaintiff to get its members to adhere to that portion of the association's memorandum which state thus:

".....to assist the growth of the press
as a powerful social (sic) for the betterment
of the nation through the dissemination of
accurate and objective information (emphasis mine)
fair comment and constant quest for improved standard
and techniques of journalist."

I am of the firm belief that if the members of the Plaintiff's Association go by the association's memorandum there will be no need nay more to assert that the Act criminalizes freedom of expression.

Finally except to compulsive denialist no one can argue that in a democratic society freedom of expression should be unlimited. The form

the limitation takes vary from State to State. Here as I said earlier our freedom of expression is limited by Section 25 (ii) of the Constitution and the Act.

Section 25 (ii) as far as it is relevant to this ruling refers to the protection of the rights and reputation of others, but does not say how the violation of those rights and reputation should be pursued. In Attorney General vs Hallett and Carey Ltd. 1952 AC 429 Lord Radcliff inter alia said:

"Where the import of some instrument is inclusive the court may properly lean in favour of an interpretation that leaves private rights undisturbed."

I am persuaded by this dicta and I shall adopt it. The Section also makes provision for any Act done "under the authority of any law", this in my humble opinion is referable and inclusive of the existing law, and the Act is one of such law. It seems to me therefore that an individual can pursue the violation of his rights and reputation by invoking the existing law; in this case the Act as far as it is relevant to the action contemplated. ~~However,~~

~~for more~~ It is worthwhile at this juncture to digress a little and recall and repeat with some modification what I said several years ago in the Diamond Mining Company Limited vs The Sierra Leone properties Limited Misc. App. 1/79 unreported. The application was a disguised attempt to review a decision of the Supreme Court in the Nigerian Shipping Line vs Abdul Ahmed SC. App. 3/88 unreported. Though unrelated to this action, the comment holds well. It is possible, that the provisions are working hazard and inconvenience among journalists. They have my sympathy; but it is not for this court to amend or repeal the Act

containing these provisions under the guise of inconsistency. That is for another forum, to which the Plaintiff is entitle to address his anxiety or displeasure.

In the result I am reluctant to hold that the Act is inconsistent with Secs. 25 (i) and 171 (15) of the Constitution.

I shall now proceed to answer the questions posed in this action. But first let me react to the Plaintiff's submission that the relevant provisions of the Act "criminalize free speech". It cannot be denied that people's right to freedom of expression is an essential law in every democratic society and must be preserved and protected. However my own view of the provisions cannot be characterized in that type of language. I will be content to say that the provisions are one of the ways to limit or curtail freedom of expression, when that freedom is abused.

In the result my answers to the questions are as follows:-

To the first question the answer is in the negative.

To the second question the answer is in the affirmative.

To the third question the answer is in the negative. The Act enhances the restrictive provision of Sec. 25 (ii).

The declarations prayed for are refused.

Tulla Thompson

HON. MR. JUSTICE M.E.T. THOMPSON, J.S.C.

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