

**IN THE SUPREME COURT OF SIERRA LEONE**  
**(IN ITS ORIGINAL JURISDICTION)**

**IN THE MATTER OF SECTIONS 124 AND 127**  
**OF THE CONSTITUTION OF SIERRA LEONE ACT NO.6 OF 1991**

**AND**

**IN THE MATTER OF THE OFFICE OF THE VICE PRESIDENT OF**  
**SIERRA LEONE**

BETWEEN:

ALHAJI SAMUEL SAM-SUMANA

- PLAINTIFF

AND

THE ATTORNEY-GENERAL MINISTER OF JUSTICE  
OF SIERRA LEONE

-1<sup>st</sup> DEFENDANT

VICTOR BOCKARIE FOH

-2<sup>nd</sup> DEFENDANT

**CORAM:**

The Hon. Mr. Justice V. V. Thomas, Acting Chief Justice - Presiding  
The Hon. Mr. Justice N. C. Browne-Marke, JSC.  
The Hon. Mr. Justice E. E. Roberts, JSC.  
The Hon. Ms. Justice V. M. Solomon, JSC.  
The Hon. Mr. Justice P.O. Hamilton, JSC.

**COUNSEL:**

J. B. Jenkins-Johnston Esq., Leon Jenkins-Johnston Esq., and Mohamed Pa Momoh Fofanah  
Esq. for the Plaintiff.

Berthan Macaulay Jnr. Esq., Lahai Farmer Esq., Osman Kanu Esq., and Ernest Beoku-Betts  
for the 1<sup>st</sup> Defendant.

A. E. Manly-Spain Esq., L. Dumbuya Esq., S. K. Koroma Esq., B. Koroma Esq., R. A. D.  
Jones Esq., and R. A. Nylender Esq., for the 2<sup>nd</sup> Defendant.

*The following opinions were delivered:*

**THOMAS. I.S.C. (ACTING CHIEF JUSTICE)**

The Plaintiff, by Originating Notice of Motion dated 20<sup>th</sup> March 2015 supported by two affidavits, has instituted an action in this Court in its Original Jurisdiction pursuant to Section 124 and 127 of the Constitution of Sierra Leone, Act No. 6 of 1991 (the 1991 Constitution) for the determination of two questions and prays that if the answers to those questions are negative, for certain reliefs (hereinafter referred to as "the action").

Subsequent to the filing of the action (the trial of which has not yet commenced), the Plaintiff has applied by Notice of Motion dated 24<sup>th</sup> March 2015 for an interlocutory injunction to restrain the 2<sup>nd</sup> Defendant from performing the duties or holding the Office of Vice President of Sierra Leone pending the hearing and determination of the action. This application which is the subject-matter of this Ruling is supported by the affidavit of the Plaintiff, Samuel Sam-Sumana, sworn to on the 24<sup>th</sup> March 2015 together with certain Exhibits ("A" to "E") attached thereto (the 1st Affidavit) ranging from: a Press Release from the Office of the President dated March 17, 2015 (Exhibit "A") to a copy of the Originating Notice of Motion and supporting affidavit filed in the action (Exhibit "E"). Exhibit "B" is a statement issued by the Plaintiff dated 18<sup>th</sup> March 2015; Exhibit "C" is a copy of an open letter dated 18<sup>th</sup> March 2015 addressed to the President of the Republic of Sierra Leone written by Dr. Abdulai Conteh who is a Justice of Appeal of the Court of Appeal in the Bahamas and Exhibit "D" is a copy of an SLPP Press Statement dated 19<sup>th</sup> March, 2015.

The Plaintiff filed a supplemental affidavit (the 2nd affidavit) sworn to by him on the 8<sup>th</sup> March, 2015 with five exhibits attached. Exhibit "E" is a copy of a letter expelling the Plaintiff from the All Peoples Congress (APC) Party. Exhibit "F" is a copy of the appeal lodged with the APC party by the plaintiff challenging his expulsion from the party. Exhibit "G" is a copy of the APC party Constitution. Exhibit "H" is a copy of a letter written by Dr. Jengo Stevens



addressed to the APC Party Secretary, Mr Foday Yansaneh and Exhibit "J" is a State House Press Release dated 19<sup>th</sup> March 2015.

The Defendants have opposed the application and filed affidavits in opposition. The 1<sup>st</sup> Defendant's affidavit in opposition to the application is sworn to by Dr. Julius Fofanah Sandy, Secretary to the Vice President of Sierra Leone. The 3 Exhibits attached to his affidavit are respectively a copy of his Certificate of Oath taken by him dated 5<sup>th</sup> April 2013 (Exhibit "JFS 1"), a copy of the Oath of Office taken by the 2<sup>nd</sup> Defendant dated 19<sup>th</sup> March 2015 (Exhibit "JFS 2") and a copy of the Sierra Leone Gazette (Extraordinary) Vol. CXXIX No. 21 of Wednesday 30<sup>th</sup> April 2008 (Exhibit "JFS 3"). The affidavit in opposition filed on behalf of the 2<sup>nd</sup> Defendant is that of Ajibola Emmanuel Manly-Spain, one of the solicitors and counsel for the 2<sup>nd</sup> Defendant, sworn to on the 9<sup>th</sup> April 2015. He deposes that he has seen and read the affidavit in opposition filed on behalf of the 1<sup>st</sup> Defendant (which he Exhibits as "AEMS 1") and that his instructions from the 2<sup>nd</sup> Defendant was to adopt same and use it in opposition to the Plaintiff's application.

Counsel for the Plaintiff, J. B. Jenkins-Johnston Esq. submitted that his application for an interlocutory injunction is made pursuant to Order 35 (1) of the High Court Rules 2007, which states in part as follows:

- (1) The Court may grant an injunction by an interlocutory order in all cases in which it appears to the court to be just or convenient to do so and the order may be made either unconditionally, or upon such terms and conditions as the court considers just.
- (2) A party to a cause or matter may apply for the grant of an injunction before or after the trial of the cause or matter whether or not a claim for the injunction was included in the party's writ, counterclaim or third party notice.

It has been necessary for the Plaintiff to make his application for an interlocutory injunction under the above-mentioned provisions of the High Court Rules, 2007 because of Rule 98 of the Supreme Court Rules 1982 which makes the following provision:

an injunction pending the hearing and determination of the action, it is therefore fit and proper for this Court to grant an interlocutory order restraining the 2<sup>nd</sup> Defendant from performing the duties or holding the Office of Vice President in the meantime. He referred to Exhibit "E" and read the questions posed for determination in the action. These questions are as follows:

- "(a) Whether the Constitution of Sierra Leone empowers the PRESIDENT "to relieve the Vice President of his Office and duties" in any way other than by the procedure set out in Sections 50 and 51 of the said Constitution?
- (b) Whether the "Supreme Executive Authority" of the President mentioned in Section 40(1) of the Constitution of Sierra Leone includes the power to "relieve the Vice President of his Office and duties", other than by the procedure set out in Sections 50 and 51 of the said Constitution?"

Although it was only a passing reference that was made by Counsel to guidelines (4) and (5), it is useful to set these out below so as to appreciate the context in which a decision is to be made. These guidelines state as follows:

"(4) When an application for an interlocutory injunction to restrain a defendant from doing acts alleged to be in violation of the plaintiff's legal right is made on contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when ex hypothesi the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the action.

(5) It was to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved that the practice arose of granting him relief by way of interlocutory injunction."

It is in the above context that the courts have utilized the adequacy or otherwise of damages on the possible violation of the rights of the parties in determining whether to grant an interlocutory injunction. The question of whether the plaintiff can be adequately compensated



in damages for the alleged violation of his right is an important factor because if he can, there is probably no need to protect that alleged right by granting an interlocutory injunction. On the other hand, the defendant too needs protection against injury if he is prevented from exercising his own rights if he cannot be adequately compensated by damages in the event that an interlocutory injunction is granted.

Counsel directed the Court's attention to Paragraphs 29/L/8 and 29/L/9 of the White Book, 1999 respectively sub-titled "*Balance of the risk doing an injustice*" and "*preserving the status quo ante*" and urged the Court to preserve the *status quo ante*. He contended that the *status quo ante* is that period prior to the 17<sup>th</sup> March 2015 when the Plaintiff was in Office as Vice President.

#### Arguments and Submissions of Counsel for the Defendants

Mr. Berthan Macaulay Jnr. for the 1<sup>st</sup> Defendant conceded that there is in fact a serious question to be tried in the action but submitted that this is only the first hurdle (stage) that the Plaintiff must overcome if he is to succeed in his application. He cited the decision of this Court in the unreported case of P.C. Dr. Alpha Manseray Sheriff 11 vs. Attorney-General and Minister of Justice & Others, Misc. Appl. 2/2011 (Ruling delivered on the 15<sup>th</sup> June 2011), where the Court concluded that there was no serious issue to be tried. Consequently the application in that case for an injunction was refused.

Counsel further submitted that the second stage or hurdle for the Plaintiff to overcome in order to succeed in his application is the inadequacy of damages to either of the parties to the action. This requirement or principle for the grant of an interlocutory injunction was put in the following passage in the American Cyanamid Co. case as follows:

*"The Court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought. As to that, the governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the*

*loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of trial. If damages .... would be an adequate remedy and the defendant would be in a financial position to pay them, no interim injunction should normally be granted, however strong the claimant's claim appeared to be at that stage."* Per Lord Diplock - [1975] 1 All. E.R. 504 at 510.

The learned author of Bean on Injunctions (10<sup>th</sup> Edition) at page 35 thereof has explained this principle in the following terms:

*"If however, damages would not adequately compensate the claimant for the temporary damage, and he is in a financial position to give a satisfactory undertaking as to damages, and an award of damages pursuant to that undertaking would adequately compensate the defendant in the event of the defendant succeeding at trial, an interim injunction may be granted. If the claimant is not in a financial position to honour his undertaking as to damages, and appreciable damage to the defendant is likely, an injunction will usually be refused."*

My understanding of the point Counsel for the 1<sup>st</sup> Defendant was making on this principle for the grant of an interlocutory injunction was that the Plaintiff in his affidavits in support of his application has failed to provide any evidence which will enable this Court to make a reasoned determination on the inadequacy of damages to either side. I agree with counsel's assessment of the evidence in support of the application having read the Plaintiff's affidavits in support very carefully and will say that there is absolutely nothing before the Court which addresses the issue of the inadequacy of damages to either or both sides. It was the Plaintiff's responsibility to adduce such evidence. Counsel finally submitted that damages will not be an adequate remedy on the facts of this particular case which deals with grave national and constitutional issues, in the light of the possibility of keeping the Office of Vice President vacant until the final determination of the action.



Counsel further submitted that the third stage or hurdle described as the balance of convenience in determining whether an interlocutory injunction is to be granted, arises where there is doubt as to the adequacy of the respective remedies in damages available to either side or both. In other words, the Court is asked at this stage to determine where the “balance of justice” lies as between the parties based on the affidavit evidence adduced before the Court. In the English Court of Appeal case of Cayne v. Global Natural Resources plc. [1984] All. E. R. 225, May L.J. has described this stage of the process as “the balance of the risk of doing an injustice”. Counsel submitted that the balance of convenience is clearly in favour of the Defendants and that the Plaintiff having failed to surmount this hurdle should have his application dismissed. In the American Cyanamid Co, it was adjudged that where other factors appear to be evenly balanced it is advisable to take such measures as are calculated to preserve the status quo. Counsel for the 1<sup>st</sup> Defendant contended that the status quo in this case is the period immediately before the institution of proceedings. The facts are that the Plaintiff was relieved of his duties on the 17<sup>th</sup> March 2015, the 1<sup>st</sup> Defendant was appointed and sworn into Office on the 19<sup>th</sup> March 2015 and started performing the functions of the Office of Vice President on the 20<sup>th</sup> March 2015. The action was instituted on the 20<sup>th</sup> March 2015 and this application was filed on the 24<sup>th</sup> March 2015. In conclusion, Counsel submitted that it is in the public interest that the Office of Vice President should not remain vacant pending the hearing and determination of the action and that this must be taken into consideration as a special factor in this case in refusing the application.

#### Position of 2<sup>nd</sup> Defendant

At the end of the arguments and submissions of Counsel for the 1<sup>st</sup> Defendant, Manly-Spain Esq. for the 2<sup>nd</sup> Defendant referred the Court to the State Proceedings Act, 2000 which deals with actions against the Government and a recently decided unreported case in the High Court of Bangso Fishing Co. v. The Administrator and Registrar- General delivered by N.C. Browne-Marke, JA (*as he then was during the trial*). Judgment was delivered on the 31<sup>st</sup> March 2015. Counsel submitted that the issue that ought to be determined at this stage is whether the Office of Vice President, which is a necessity, should remain vacant until the determination of the action as requested by the Plaintiff. He adopted the arguments and submissions of Counsel



for the 1<sup>st</sup> Defendant and in conclusion, asked the rhetorical question of whether a grant of interlocutory injunction will not create more chaos in the society.

In my judgment, this is a case where the balance of convenience is central in determining whether an interlocutory injunction to restrain the Vice President from performing his constitutional duties out to be granted pending the hearing and determination of the action. I have taken the following factors into account in coming to my conclusion that an interlocutory injunction should not be granted but that the action should be heard and tried speedily.

Firstly, the injunctive relief prayed for in this application is a discretionary remedy in which the Court is obliged to exercise its discretion judiciously having considered all the circumstances of the particular case. In the words of Order 35 rule 1 of the 2007 High Court Rules, the Court is empowered to grant an injunction by way of an interlocutory order where it appears to be just or convenient to do so. In applying this test of "just or convenient", the Court is required to do what is legally right, lawful and equitable as between the Plaintiff and the Defendant. Alternatively what is "*convenient*" suggests to me what is suitable and appropriate in the particular circumstances. Order 35 Rule 5 sub-rule 1 states that on the hearing of such application, if it appears to the Court that the matter in dispute can be better dealt with by an early trial, the Court may make such an order. This is a case in my opinion where the matter in dispute (i.e. the constitutionality of the President's actions with regard to the Office of the Vice President) can best be dealt with by an early trial rather than by way of an interlocutory injunction which will leave the Office of the Vice President vacant until final determination of the action. In National Commercial Bank Jamaica Ltd. v. Olint Corp. Ltd. [2009] 5 LRC 370 UKPC., it was held that the purpose of an interlocutory injunction is to improve the chances of the court being able to do justice after the determination of the merits of a trial and that what matters most is what the practical consequences of the injunction are likely to be. I foresee very grave practical consequences for the affairs of the State of Sierra Leone if the Office of Vice President is to remain vacant pending the final determination of the action. The Office holder is constitutionally the Principal Assistant to the President (*vide* section 54 (1) of the 1991 Constitution) and performs other specific constitutional duties which cannot be



performed by ministers or others. In the latter case, Lord Hoffman said in part at page 375 of the Report as follows;

*"It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial. The court may order a defendant to do something or not to do something else, but such restrictions on the defendant's freedom of action will have consequences, for him and for others, which a court has to take into account".*

So that if an interlocutory injunction is granted in this case and the Office of Vice President remains vacant until the determination of the action, there will be grave consequences for a whole nation, a factor which I have taken into account in reaching my decision to refuse the application and order a speedy trial of the action. I opine further that the "*status quo ante*" refers to the situation that existed before this application was filed. That situation was one in which the 2<sup>nd</sup> Defendant had been sworn in as Vice President and was performing the functions of that Office.

**Secondly**, the affidavit evidence adduced by the Plaintiff in support of his application for injunctive relief is significantly inadequate. Much time and space was unnecessarily spent in arguing at this stage that the President's actions are unconstitutional and unlawful, when this is not the issue before the Court at the present time except to determine whether or not there is a serious question to be tried. During the trial of the action, the constitutionality of the President's actions, is undoubtedly the issue to be determined. There are laid down principles which regulate whether injunctive relief should be granted and these are the matters that should have been dealt with to convince the Court that such relief ought to be granted. This, in my opinion, was not done up to the required standard. It was for the Plaintiff to "*prove*" his case for such relief by relevant affidavit evidence. This is a court of law and not one of emotions or sentiments.

**Thirdly**, it is clearly not enough to show that a serious question is to be tried in the action when an application for an interlocutory injunction is made. The leading case of American Cyanamid Co. makes this crystal clear. In most cases which come before the courts, there are serious questions to be tried and if this was the only hurdle for a plaintiff to overcome, then

such injunctions will be granted as a matter of course in nearly all cases without any reference to the particular circumstances in each case. Of course if there is no serious question to be tried, this is virtually the end of the matter in an application for such injunctive relief. I take judicial notice of the fact that this case has attracted much public interest both within and outside of the country among our compatriots and any decision the Court reaches will attract much debate and comment. A special factor (as the expression is used in *American Cyanamid Co.*) which has weighed heavily with me in refusing the application for injunctive relief is the public interest in maintaining the smooth running of the Office of Vice President until the action is tried and determined after full and detailed arguments. The public interest is a legitimate factor to be considered in assessing where the balance of convenience lies. I find support for this position in the English Court of Appeal decision in Smith v Inner London Education Authority [1978] 1 All. E. R. 411. In that case, the court held that a local authority should not be restrained by interlocutory injunction from exercising its statutory powers unless the claimant has shown a real prospect that his claim for a permanent injunction will succeed at trial. In such a case as this, one must look at the balance of convenience more widely and take into account the interests of the public in general to whom the duties of the 2<sup>nd</sup> Defendant are owed.

This Court should be guided by established legal and equitable principles and seriously consider whether the case for injunctive relief has been made out to the required standard. In my considered opinion such a case has not been made out and it is neither just nor convenient in the light of the affidavit evidence presented to this Court to grant an interlocutory injunction to restrain the 2<sup>nd</sup> Defendant from performing the functions and duties of Vice President of Sierra Leone pending the hearing and determination of the action.

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## **BROWNE-MARKE JSC**

### **PLAINTIFF'S APPLICATION**

1. The Application herein dated 24<sup>th</sup> March, 2015 raises issues of immense importance for our jurisprudence. Though the remedy which the Plaintiff seeks, is framed in terms of a restraining or prohibitive Order, it really is mandatory in a sense: the Order seeks in reality to compel His Excellency the President (*"The President"*) to revoke or rescind his appointment of the 2<sup>nd</sup> Defendant, Mr Victor Foh as Vice President of this Republic of Sierra Leone. For, the 2<sup>nd</sup> Defendant did not assume the Office of Vice President on his own initiative, or by force, or by stealth, or, by some other devious or otherwise unauthorised and unlawful means. He was appointed by the President to that Office. The question of whether the President was right, is a matter which will be dealt with by this Court when hearing commences into the substantive Originating Notice of Motion dated 20<sup>th</sup> March, 2015. For present purposes, this Court is called upon to determine whether the 2<sup>nd</sup> Defendant could be restrained from performing the duties, or, holding the Office of Vice President, an Office to which he was appointed by the President in the exercise of the powers conferred on him by Section 54(5) of the Constitution of Sierra Leone, 1991. Whether the President was right to exercise the powers conferred on him by that Constitutional provision, is the subject matter of the Originating Notice of Motion filed by the Plaintiff.

### **SHORT HISTORICAL BACKGROUND**

2. If my memory serves me right, the only other occasion on which the powers of the President to do certain things has been challenged in our Courts, was the challenge mounted by the late Mr Terrence Terry and Mr Eke Halloway in 1988 against the Proclamation of the Public State of Economic Emergency, and the promulgation of the Public Economic Emergency Regulations made pursuant to that Proclamation. That was SC MISC APP 1/88: THE STATE v ADEL OSMAN & 5 OTHERS,

Judgment delivered 13<sup>th</sup> April, 1988 by KUTUBU, CJ. The argument simply put, then, was that the then Constitution of Sierra Leone, 1978 did not empower the then President Joseph Saidu Momoh to Proclaim a State of public economic emergency, but only a state of public emergency; and that the Regulations promulgated by him pursuant to that Proclamation were ultra vires that Constitution as they purported to create offences ex post facto, and to impose severer penalties and punishments for those offences, contrary to Sub-Section 13(7) and (9) of that Constitution. These were arguments presented on behalf of the then 2<sup>nd</sup> and 5<sup>th</sup> accused respectively at the start of the trial in the High Court, they also being the 1<sup>st</sup> and 2<sup>nd</sup> Applicants in the matter which came to this Court by way of Constitutional reference, as the Trial Judge, Mrs Justice Virginia Wright was requested, and did agree, to refer these arguments to this Court for decision. Coincidentally, the then Attorney-General & Minister of Justice who was lead Counsel for the State in the Supreme Court was Dr Abdulai Conteh, whose written opinion on the present President's action, the Plaintiff has exhibited in these proceedings, and on which, he, the Plaintiff is relying. Dr Conteh is very highly respected in the legal world, and whether his opinion is right or wrong is a matter which will be dealt with at the hearing into the main Application.

3. The State/Respondent then, i.e. in 1988, argued in favour of the primacy of the acts of the then President. Again, if my memory serves me right, as I was then a Law Officer and part of the State/Respondent's team in those proceedings: in the High Court as junior Counsel, with Ms U H Tejan-Jalloh, (now Justice U H Tejan-Jalloh, Chief Justice on leave prior to retirement) leading; and in the Supreme Court as research (or, to use a colloquial expression, '*backroom*') Counsel, in the course of argument, Counsel for the State used a most memorable expression to buttress his arguments about the efficacy and supremacy of the then President's actions in promulgating the Economic Emergency Regulations which were intended to deal with then adverse economic situation in which the country found itself. To paraphrase what he said: "*Should President Momoh have figuratively continued to fiddle while Rome burned?*", there alluding, according to history or legend, the proverbial reaction of Emperor Nero when



told Rome was burning. In other words, should the Head of State have stood by, and do nothing to address a matter affecting the State and the nation? The then Supreme Court agreed with the arguments presented by the State, and adjudged that the late President Momoh had not exceeded the powers conferred on him by the then Constitution, and that the offences enacted in those Regulations were not really new offences, and that in any event, the then President had not acted ultra vires the then Constitution in Proclaiming a State of Public Economic Emergency and in promulgating the Economic Emergency Regulations pursuant to that Proclamation.

4. Since then, legal challenges have not really been mounted against the Executive as represented by the President, though, between 2005 and 2007 the then sitting Vice President's eligibility to contest for the Office of President in the 2007 Presidential election, was challenged in this Court, though unsuccessfully, by some of his other party members, and by Mr Charles Margai and the PMDC party, respectively.

#### WHETHER GOVERNMENT OF SIERRA LEONE SHOULD BE A PARTY

5. Though the acts and declarations of a sitting President have not been challenged other than as set out above, the Government, as distinct from the Office of President has been brought to Court through the provisions of Section 133 of the 1991 Constitution, and the mechanism provided for in the State Proceedings Act, 2000. I mention this Act at this stage, as these proceedings have been brought, it seems, against the Government of Sierra Leone as 1<sup>st</sup> Defendant: thus the Attorney-General and Minister of Justice has been sued as 1<sup>st</sup> Defendant as provided for in the State Proceedings Act, 2000. But, ironically, the act complained of by the Plaintiff, i.e. the appointment of the 2<sup>nd</sup> Defendant as Vice-President, was not the act of the Government of Sierra Leone, but that of the President alone. Sub-Section 58(5) does not state whether he should act "*in accordance with his deliberate judgment*" in appointing a Vice-President, where the circumstances so require, but even if there was a requirement that he should act in accordance with the advice of any person or authority, this Court and all other Courts, cannot inquire into whether he has received such advice or not - Sub-Section 53(3).

## PRESIDENT'S IMMUNITY FROM SUIT

6. And then, when we move on to Sub-Section 48(1) of the Constitution, it provides as follows: “*While any person holds or performs the functions of the Office of President, no civil or criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him in his official or private capacity.*” In other words, the President is immune from suit whether civil or criminal while he is in Office. As I have said above, the Order sought by the Plaintiff, though expressed in a negative form, is in reality, mandatory in nature. It is calling upon this Court to tell the person (i.e. 2<sup>nd</sup> Defendant) who has been appointed by someone who cannot be brought to Court (i.e. the President) not do what he (i.e. the 2<sup>nd</sup> Defendant) has been appointed to do. What we have to do is to examine whether we can do as requested by the Plaintiff, bearing in mind at all times, that the 2<sup>nd</sup> Defendant has not imposed himself on the people of Sierra Leone, nor is it alleged, that he has himself acted ultra vires the Constitution, or, otherwise acted or conducted himself in an unlawful manner.

### THE PLAINTIFF'S CASE

7. I shall now go on to deal with the arguments of Counsel on both sides, beginning with, the arguments presented in the documents filed, and going on to the oral submissions made in Court, together with the cases cited by the opposing sides.
8. The Application, to quote, Plaintiff's Solicitors, is for: “*An Interlocutory Injunction to issue restraining the 2<sup>nd</sup> Defendant from performing the duties or holding the Office of Vice-President of Sierra Leone pending the hearing and determination of this action.*”

### PLAINTIFF'S AFFIDAVITS

9. The Application is supported by two affidavits deposed and sworn to by the Plaintiff himself on 24<sup>th</sup> March, 2015 and on 8<sup>th</sup> April, 2015 respectively. In his first affidavit, the Plaintiff deposes that he was elected by the people of Sierra Leone to the Office of Vice President on the same ticket with President Koroma in 2007 and again in 2012. He continued in Office until 17<sup>th</sup> March, 2015 when he heard on SLBC Radio and



Television that the President had relieved him of the duties, and from the Office of Vice President. A copy of the release is exhibited as "A". In the release, the President explains the reason why he had relieved the Plaintiff of the Office of Vice President. The President said he had done so in exercise of the powers conferred on him by Section 40(1) of the Constitution. As I have said above, the question of whether he was right or wrong, is one which will be dealt with at the hearing of the substantive Motion. Its importance in these proceedings relates to the question of whether there is a serious question to be tried, one of the matters this Court must consider in deciding whether or not to grant an Injunction in the terms stated by the Plaintiff.

10. The Plaintiff deposed further that on hearing of his dismissal from Office, he was taken aback and astounded, and he immediately sought legal advice. On such advice, he issued a statement arguing that his removal from Office was unconstitutional. The statement is exhibited as "B". Also exhibited as "C" is a copy of an open letter written by a former 1<sup>st</sup> Vice-President and former Attorney-General & Minister of Justice, and former Chief Justice of Belize, and currently Justice of the Court of Appeal of the Commonwealth of The Bahamas, Dr Abdulai Conteh. Dr Conteh's name is widely known in legal circles and generally, in Sierra Leone. Dr Conteh argues in that epistle, that the Plaintiff's removal from Office was not supported by the Constitution. Exhibit "D" is another statement released by the SLPP. It is not as weighty and intellectual as Dr Conteh's letter, but it makes the same point: the Plaintiff's removal from Office was unconstitutional. In his Paragraph 7, the Plaintiff deposes that in disregard of the opposing voices he has mentioned in his Paragraphs 5 and 6, on 19<sup>th</sup> March, 2015 it was announced that the 2<sup>nd</sup> Defendant had been appointed Vice President and had been sworn into Office. He argues that in the premises, his removal from Office was unconstitutional, and that the appointment of the 2<sup>nd</sup> Defendant to the said Office also bore the same defect. He has therefore challenged his removal and the 2<sup>nd</sup> Defendant's appointment in the Application dated 20<sup>th</sup> March, 2015 exhibited as "E".
11. Coming to his 2<sup>nd</sup> affidavit deposed and sworn to on 8<sup>th</sup> April, 2015, the Plaintiff deposes that on 26<sup>th</sup> March, 2015 he appealed against his expulsion from the APC to the party's



highest organ, the National Delegates Conference. This was after he had received on 10<sup>th</sup> March, 2015, the letter of expulsion dated 6<sup>th</sup> March ,2015. The letter of expulsion is, in my view, exhibited wrongly as "E". The letter "E" had already been used in his first affidavit. Exhibits must be lettered or numbered sequentially when forming part of the affidavit of the same deponent. This second exhibit "E" was written by the APC's National Secretary-General, Amb Osman FodayYansaneh. In it, he explained the reasons for the Plaintiff's expulsion from the party with effect from the date of the letter. In Paragraph 3 of his 2<sup>nd</sup> affidavit, the Plaintiff argues that he is still a member of the party as his appeal against his expulsion has not yet been determined by the party's National Delegates' Conference. Exhibited as "F" is a copy of his appeal. The appeal contests respectively, the method by which the inquiry into his conduct had been conducted, the authority of the body which had recommended his expulsion, and the reasons given for his expulsion as well. Exhibited as "G" is a copy of the APC's Constitution which prescribes the various organs of the party and their functions, and also prescribes and describes the machinery for disciplinary action against members. Exhibited as "H" is a copy of a letter dated 16<sup>th</sup> February, 2015 written by a party member, Dr Jengo Stevens to Mr Yansaneh, complaining about matters pertaining to the party structure and the way it was being led by the President. In his Paragraph 2, Dr Stevens refers to the nomination of the Plaintiff as running-mate to the President in two elections in 2007 and 2012 respectively, but notes with disapproval the President's failure to utilise the No. 2 man's services in the fight against ebola. The Plaintiff deposes further that he was nominated and approved as running-mate to the President in the two previous elections pursuant to Article 6.9.3.(iii)(g) of the APC Constitution.

12. In his Paragraph 5, the Plaintiff deposes that at the time the 2<sup>nd</sup> Defendant assumed Office as Vice President, he was ineligible to do so as he was at the same time Ambassador to the Peoples' Republic of China, and was being paid from the Consolidated Fund in that respect. The State House Press Release announcing the 2<sup>nd</sup> Defendant's appointment is exhibited as "J".



## 1<sup>ST</sup> DEFENDANT'S AFFIDAVIT IN OPPOSITION

13. The 1<sup>st</sup> Defendant filed an affidavit in opposition to the Plaintiff's Application, deposed and sworn to by Dr Julius Fofanah Sandy on 30<sup>th</sup> March, 2015. Dr Sandy is Secretary to the Vice President. He was appointed to that Office by the President on 25<sup>th</sup> March, 2013 and he took the oath of Office on 5<sup>th</sup> April, 2013. A copy of the oath is exhibited as "JFS1". On 19<sup>th</sup> March, 2015 he was notified of the 2<sup>nd</sup> Defendant's appointment to the Office of Vice President by Mr E B O Coker, Secretary to the President. He was summoned to the swearing-in ceremony. He was present when the 2<sup>nd</sup> Defendant was sworn in as Vice President. A copy of the oath taken by the 2<sup>nd</sup> Defendant is exhibited as "JFS2". The signatures of both the 2<sup>nd</sup> Defendant and the President appear on it. On 20<sup>th</sup> March, 2015 the 2<sup>nd</sup> Defendant took up Office, and he, the Deponent, handed over to him "*a briefing note*" for his attention and guidance. In his Paragraphs 6 and 7, the deponent gives instances of the 2<sup>nd</sup> Defendant performing the duties of the Office of Vice President.
14. I suppose that these pieces of affidavit evidence are intended to assist the Court in deciding where the balance of convenience lies in granting or in refusing an Injunction. Exhibited also as "JFS3" is a copy of the Sierra Leone Gazette No. 21 of 30<sup>th</sup> April, 2008. It contains Government Notice No. 72: "*Assignment of responsibilities to Ministers.*" There, the Plaintiff is named as Vice President, and the functions of his Office are set out against his name. These functions have remained unchanged to date. As this is an interlocutory proceeding and is based on affidavit evidence, it is as well that the deponent has exhibited this Government Notice.
15. Being merely a Government Notice, it is, according to Section 4 of the Interpretation Act, 1971: "*...a public announcement of a non-legislative character made by a Minister a public Officer in the Gazette.*" As such, the Courts cannot take judicial notice of it because of Section 6 of the same Act: "*Every Act shall be deemed to be a public Act and shall be judicially taken notice of as such unless the contrary be expressly provided by such Act.*" A "*Government Notice*" is not an "*Act*" within the definition of "*Act*" in



Section 3 of the same Act. It follows, that for it to be admissible as proof of the facts contained therein at a trial it must be tendered in evidence, or, in interlocutory proceedings, exhibited to an affidavit.

## **2<sup>ND</sup> DEFENDANT'S AFFIDAVIT IN OPPOSITION**

16. The 2<sup>nd</sup> Defendant filed an affidavit in opposition, deposed and sworn to by Mr Manly-Spain on 9<sup>th</sup> April, 2015. On behalf of the 2<sup>nd</sup> Defendant, he adopted the affidavit deposed and sworn to by Dr Sandy on behalf of the 1<sup>st</sup> Defendant.

## **HEARING ON 9<sup>TH</sup> APRIL, 2015**

17. The Application came up for hearing before this Court on 9<sup>th</sup> April, 2015. Mr Jenkins-Johnston began by referring to the Application, to the affidavit and to the documents exhibited to the same. He referred to Rule 98 of the Supreme Court Rules, 1982 (SCR, 1982) and to Order 35 Rule 1 of the High Court Rules, 2007 - HCR, 2007. He referred to the substantive Application in which a permanent Injunction had been sought in the same terms as in the instant Application. He argued that as of 19<sup>th</sup> March, 2015 when the 2<sup>nd</sup> Defendant was appointed Vice President, the Plaintiff was still a member of the APC, subject to his right to appeal against his expulsion from the party. He then went on to deal with the legal issues which had arisen as a result of the Plaintiff's removal from Office, and the subsequent appointment of the 2<sup>nd</sup> Defendant to the same Office. He referred to the well-known House of Lords decision in *AMERICAN CYANAMID v ETHICON LTD* [1975] 1 All ER 504. He argued the principles enunciated in that case very well, I must say. What we have to decide is whether they apply in favour of the Plaintiff. I agree with him, that there is a serious issue to be tried in the main action. But my view is that that serious issue is not one between the parties to this action, but between the President and the Plaintiff. In this respect, I call in aid, the words of LORD DIPLOCK in *THE SISKINA* [1977] 3 All ER 803 at 824, cited by JACOB J in *NEWPORT ASSOCIATION FOOTBALL CLUB LTD & OTHERS v FOOTBALL ASSOCIATION OF WALES LTD* [1995] 2 All ER, 87 Ch. D at Page 94: "*a right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent on there being a pre-existing*



cause of action against the defendant arising out of an invasion, actual or threatened, by him of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action." My view is that there is no 'cause of action' or 'lis' between the parties.

#### QUESTIONS FOR DETERMINATION

18. The questions posed for determination in the main action are as follows: (1) Whether the Constitution of Sierra Leone empowers the President "*to relieve the Vice-President of his Office and duties*" in any way other than by the procedure set out in Sections 50 and 51 of the said Constitution? (2) Whether the "*Supreme executive authority*" of the President mentioned in Section 40(1) of the Constitution of Sierra Leone includes the power to "*relieve the Vice President of his Office and duties*" other than by the procedure set out in Sections 50 and 51 of the said Constitution?. It is only if these two questions are answered in the negative by this Court, that this Court will be able to grant the reliefs prayed for, one of them being (iii) "*For an Injunction restraining the said Victor Bockarie Foh from acting in the Office of Vice President of Sierra Leone, pending the hearing and determination of this action.*"
19. Whatever interpretation one may wish to give to the words used by Plaintiff's Solicitors, acting on the Plaintiff's instructions, in the two questions posed in the main Application, it is clear that the answers to them do not depend on anything done or, threatened to be done by the 2<sup>nd</sup> Defendant; nor by the 1<sup>st</sup> Defendant, representing the Government of Sierra Leone. The two questions are geared towards the appointor, i.e. the President, and to what he has done which he should now undo by Order of this Court, and not towards the appointee, Mr Foh.

20. According to Mr Jenkins-Johnston, the jurisdiction to grant an Injunction in this Court, is to be found in Order 35 Rule 1(1): "*The Court may grant an Injunction by an interlocutory order in all cases in which it appears to the Court to be just or convenient to do so and the order may be made either unconditionally or upon such terms and conditions as the Court considers just.*" According to Mr Jenkins-Johnston also, this Rule applies to, and in this Court as well, because of Rule 98 SCR,1982 which states: "*Where no provision is expressly made in these Rules relating to the Original and Supervisory jurisdiction of the Supreme Court, the practice and procedure for the time being of the High Court shall apply mutatis mutandis.*" What this Court adopts, according to that Rule, is not necessarily the reliefs available in the High Court to a litigant in that Court, but the practice and procedure relating to reliefs which this Court can grant and which can also be granted by and in the High Court. There should be a cause of action in this Court, which warrants the granting of the relief or remedy provided for in Order 35 Rule 1.

#### PRACTICE RELATING TO INJUNCTIONS

21. When one examines the practice and Procedure relating to the granting of Injunctions, one would realise that it is a remedy which is more applicable to cases where evidence will be led in a Court of first instance, rather to cases such as this one, where what the Court will be called upon to do in the final analysis, will be to determine whether certain provisions in our Constitution had been violated. In cases relating to land, Injunctions are sought to stop the wrong-doer continuing with his building plans. In passing-off actions, Injunctions are sought in order to stop the wrong-doer from continuing to profit from his wrong-doing until the action is tried. In infringement of copyright or patent cases, an Injunction is sought to stop the alleged wrong-doer from profiting from his use of the patent, or the unlawful use of the copyright to his benefit. In cases dealing with restraint of trade issues, Injunctions are sought to restrain the employee from profiting afterwards from knowledge gained whilst working with his previous employer, and thereby perhaps depriving that employer of some of the earnings he would have been entitled to, had the employee not left his employ for



similar or identical employment. In Petitions brought under the Chieftaincy Act, Injunctions are sought restraining a Declaration of Rights, or, restraining a provincial Secretary from filing his return until the Petition has been finally determined, and also restraining the person elected to the chieftaincy from acting as chief. But, as Counsel would readily admit, in the last mentioned type of case, applying for an Injunction only against the person elected as Chief restraining him from acting as such, is futile without applying for an order compelling the appropriate person or authority who conducted the election, to nullify the election. In the case submitted to us by Mr Jenkins-Johnston after the close of arguments, the situation as regards Paramount Chief elections is made clear. That is the case of DR SORIE KENNEDY CONTEH & 5 OTHERS v THE MINISTER OF LOCAL GOVERNMENT AND COMMUNITY DEVELOPMENT & 4 OTHERS, Judgment delivered by RENNER-THOMAS, CJ on 10<sup>th</sup> November, 2006. In that case, Mr Jenkins-Johnston came to this Court on behalf of the Plaintiffs, invoking this Court's original jurisdiction. Truth, he did not seek an Injunction directly. Several Declarations were sought. But in the 6<sup>th</sup> prayer, the Plaintiffs asked for "*any further or other Orders or directions as may be considered giving effect to, or enabling effect to be given to the declarations and orders heretofore made.*" No doubt, one such Order the Court could have made had the Plaintiffs in that case succeeded, would have been to command the 2<sup>nd</sup> Defendant therein, the Provincial Secretary, Northern Province, to nullify the election of the 3<sup>rd</sup> Defendant therein, Dr Issa Sheriff. In the result, the declarations sought were refused.

#### SECTIONS 124 AND 122 AND 127 CONSTITUTION, 1991

22. The Plaintiff has, in the substantive action, invoked the jurisdiction of this Court, pursuant to Section 124(1) and Section 127(1) of the Constitution. They read as follows: "*124(1) The Supreme Court shall, save as otherwise provided in Section 122 of this Constitution, have original jurisdiction, to the exclusion of other Courts - (a) in all matters relating to the enforcement or interpretation of any provision of this Constitution; and (b) where any question arises whether an enactment was made in excess of the power conferred upon Parliament or any other authority or person by law under this Constitution.....*"

23. Sub-Section 122(3) reads as follows: *"For the purposes of hearing and determining any matter within its jurisdiction.....and the enforcement of any judgment or order made on any such matter, and for the purposes of any other authority, expressly or by necessary implication given to it, the Supreme Court shall have all the powers, authority and jurisdiction vested in any Court established by this Constitution or any other law."*
- There are two ways of looking at this Constitutional provision: on one view, it may be read as being restricted to appeals only as the Section itself, Section 122, mainly deals with the jurisdiction of the Court to hear appeals. On another view, it may be said to be wide enough to apply to the exercise of the Court's original jurisdiction set out in Sections 124 and 127. If the latter view prevails, then it may be said that this Court has jurisdiction in certain cases to grant Injunctions. But if the earlier view prevails, then the question which will arise is whether the Court has power to grant an Injunction in the exercise of the jurisdiction to interpret and to enforce the provisions of the Constitution as contained in Section 124(1). When it comes to the reliefs this Court can grant when exercising its jurisdiction under Section 127(1) the position seems clearer: it can grant a declaration; it can also make such orders and give such directions as it may consider appropriate for giving effect to the declaration so made. Section 127(1) reads as follows: *"A person who alleges that an enactment or anything contained in or done under the authority of that or any or any other enactment is inconsistent with, or is in contravention of a provision of this Constitution, may at any time bring an action in the Supreme Court for a declaration to that effect."* The Plaintiff has not contended in this Application that the President has done anything pursuant to an enactment which he now claims is inconsistent with, or, contravenes the Constitution. He is contending, on the contrary, that the President has wrongly utilised the provisions of this Constitution. So, in my view, he cannot readily seek shelter under the Section 127 umbrella. His Application must be dealt with under Section 124(1).



24. The issue boils down to this: can this Court, while waiting to exercise the powers conferred on it by Section 124(1) of the Constitution, to wit, to interpret and to enforce the provisions of the Constitution which the Plaintiff claims have been violated by the President, in the interim, and before final judgment, issue an Injunction in effect, reversing what the President has done? Can this Court as it were, judicially review the President's act in relieving the Plaintiff of his duties in view of Section 48(4) of the Constitution? Can this Court grant what in effect will become an *interim declaration* as to the Constitutionality or otherwise of the actions of the President? Or, as to the rights of the parties? Restraining the 2<sup>nd</sup> Defendant from acting in the Office of Vice President will certainly have one of those effects. One of the matters, as we shall see later, which will normally weigh in the balance when deciding whether an Injunction ought to be granted or not, is whether the grant of an Injunction will finally dispose of the main issue in dispute in the litigation. And just to recap, I reiterate that the questions to be tried, which could be categorised as serious, are questions relating to what the President did as against the Plaintiff, and in favour of the 2<sup>nd</sup> Defendant, and not questions as to what the 1<sup>st</sup> Defendant, representing the Government of Sierra Leone and the 2<sup>nd</sup> Defendant together or individually did, vis-à-vis the Plaintiff.

#### MR JENKINS-JOHNSTON'S ARGUMENTS CONTINUE

25. To return to Mr Jenkins-Johnston's arguments, he referred to all the guidelines laid down by LORD DIPLOCK in the AMERICAN CYANAMID case. He agreed that the remedy of an Injunction lay within the discretion of the Court. He argued that it was no part of the Court's function at this stage to resolve conflicts in the evidence filed by one side, as against the other; nor, to decide difficult questions of law. In fact, there is no disagreement about the facts in this case. The Defendants tacitly admit that the Plaintiff is no longer Vice President, and that the 2<sup>nd</sup> Defendant has been appointed, and has been performing the duties of Vice President. He argued further that an Interlocutory Injunction was intended to protect a plaintiff against "*injury by violation of his right for which he could not be adequately compensated in Damages..... but the*



*plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The Court must weigh one need against another and determine where the balance of convenience lies."* Mr Jenkins-Johnston then returned to his favourite topic, "*a serious question to be tried*". He re-emphasised the gravity of the matter. He argued that maintaining the 'status quo' in the circumstances of the case, meant going back to the situation before 17<sup>th</sup> March, 2015.

#### MR BERTHAN MACAULAY IN ANSWER

26. In answer on behalf of the 1<sup>st</sup> Defendant, Mr Berthan Macaulay referred to Order 35 Rule 1, HCR,2007 and emphasised the discretionary nature of the relief provided in that Rule. He also adverted the Court's attention to Order 35 Rule 5(1) which states: "*Where on the hearing of an application made before the trial of a cause or matter, for an injunction.....it appears to the court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits for the purposes of the application, the Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires.*"
27. Mr Macaulay continued by drawing the Court's attention to the note of caution contained in CAMBRIDGE NUTRITION LTD v BBC [1990] 3 All ER 523 about the guidelines laid down in the AMERICAN CYANAMID case. That case only laid down guidelines and contains no principle of universal application. The guidelines must never be used as a rule of thumb nor as a strait jacket. Mr Macaulay agreed that there was a serious issue to be tried. As to this, I have made my own views quite clear above. This is why Mr Macaulay went onto the next stage: if there is a serious question to be tried, then the Court has to decide whether damages will be an adequate remedy if the Injunction was not granted, and the Plaintiff were to succeed at the trial. Where there is some doubt as to whether damages would be an adequate remedy, then the Court should look at the balance of convenience. According to Mr Macaulay, the Plaintiff had



not deposed in his affidavit that he would suffer irreparable damage if the Injunction were not granted. I noted the omission myself, but as I have stated above, all sides agree that the damage complained of, has been done: the Plaintiff has been stripped of his Office; it is no longer a question of stopping somebody from stripping him off his Office. Mr Macaulay also dealt with the Plaintiff's silence as whether he would be able to satisfy the Undertaking in the event he loses the main action. Mr Macaulay also referred the Court to Sections 52 and 54 of the Constitution. He argued that to keep the Office of Vice President vacant until the final determination of the main action, will cause irreparable damage and will have grave consequences. He referred the Court to NATIONAL COMMERCIAL BANK (JAMAICA) LTD v OLINT CORP LTD [2009] 5 LRC 523 where the Court held that it had to consider such matters before deciding whether or not to grant an Injunction. He said, that on a true reading of Section 54(5) of the Constitution, no vacancy of any length was contemplated.

#### BALANCE OF CONVENIENCE

28. Mr Macaulay touched on a very important issue: the balance of convenience where the party against whom the Injunction is sought is a public authority. He referred to the case of R v SECRETARY OF STATE FOR TRANSPORT ex parte FACTORTANE LTD & OTHERS [1991] No. 2, 1 A.C. (Case C213/89). The balance of convenience must be looked at more widely where the person to be restrained is performing a public duty; the interests of the public must be taken into account. The case suggests that the wider public interest may be decisive in cases such as this one.

#### MAINTAINING THE STATUS QUO

29. As regards the maintaining of the status quo, Mr Macaulay submitted that the status quo which ought to be maintained was the state of affairs on 20<sup>th</sup> March, 2015 when the Originating Notice of Motion was filed. The 2<sup>nd</sup> Defendant was already in Office on 19<sup>th</sup> March, 2015 one day before. Mr Macaulay again, touched on an important point here, and in this respect, I shall refer to FIDELIS NWADIALO's CIVIL PROCEDURE IN NIGERIA, 2<sup>nd</sup> Edition. Under the rubric: "*Interlocutory and Interim Injunctions*", at Page 224 he has this to say: "*The status quo which the court, by granting of*"

*interlocutory injunction, can maintain is the restoration of the parties to the position they were before the commencement of the dispute between them. The status quo means the position prevailing when the defendant embarked upon the activity sought to be restrained. Where the act has been completed and carried out, an interlocutory injunction cannot be a remedy for it because the status quo to be maintained is the situation as it existed at the time of filing an action, that is at a stage when no further activity can be restrained."*

#### MR MANLY-SPAIN IN ANSWER

30. Mr Manly-Spain was very brief, but to the point in his arguments. He adopted the arguments in favour of the 1<sup>st</sup> Defendant. He referred to Section 18 of the State Proceedings Act, 2000 which provides that an Injunction could not be granted against the Government.

#### STATE PROCEEDINGS ACT, 2000

31. Section 18 states: *"(1) In any civil proceedings by or against the Government, the court shall subject to this Act, have power to make all such Orders as it has power to make in proceedings between private persons and otherwise to give such appropriate relief as the case may require: Provided that: (a) where in any proceedings against the Government, any such relief is sought as might in proceedings between private persons be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties."* It seems therefore, that no Injunction can be granted against the 1<sup>st</sup> Defendant in his capacity as representative of the Government of Sierra Leone.
32. Mr Manly -Spain argued also that the Office of Vice President was a necessity and that it could not be left vacant, whether or not the previous occupant had been wrongly removed from the same. If an Injunction was granted against the 2<sup>nd</sup> Defendant as Vice President, he will be prevented from performing the duties he had taken an oath to perform.



## MR JENKINS-JOHNSTON IN REPLY

33. In his reply, Mr Jenkins-Johnston dealt with Mr Manly-Spain's reference to the State Proceedings Act, 2000. He said his client's case had nothing to do with that Act. It dealt with alleged violations of the Constitution. I have pointed out above the predicament into which the Plaintiff may have fallen by bringing in the Attorney-General & Minister of Justice as 1<sup>st</sup> Defendant. Clearly, he has been brought in as representing the Government. The 2000 Act states what must be done before an action could be brought against the Government of Sierra Leone. The acts complained of by the Plaintiff were acts and things done by the President in the exercise of his executive authority, and were not done through or by the Government of Sierra Leone. This perhaps explains why in the Interpretation Act, 1971, '*Government*' and '*President*' are defined and described to the exclusion of each other: Section 4: '*Government*' means the Government of Sierra Leone (which shall be deemed to be a person) and includes, where appropriate, any authority by which the executive power of the State is duly exercised in a particular case.' Thus, '*Government*' could include the President, but not the other way round. In the same Section 4, it is stated: "*President*' shall have the same meaning contained in section 16 of the Constitution (i.e. the 1971 Republican Constitution) (now Section 40 of the Constitution of Sierra Leone, 1991) and includes any person performing the functions of the President by virtue of the provisions of the Constitution."

## PUBLIC INTEREST

34. The other important point dealt with by Mr Jenkins-Johnston in his reply was where the public interest lay in the granting or refusal of the Injunction sought. He submitted that the public interest lay in the Constitution being respected by all including the President. But as I have said above, if we were to hold now that the President's act in declaring the Plaintiff's Office vacant was unconstitutional, and that he was wrong to have appointed the 2<sup>nd</sup> Defendant to that Office, and then grant an Injunction in the terms sought by the Plaintiff, there would be no need to proceed with the substantive Application. Mr

Jenkins-Johnston did go on to make further submissions, but in my view they were repetitions of what he had said earlier, but re-presented in a new format.

#### WHETHER PLAINTIFF WOULD BE ADEQUATELY COMPENSATED IN DAMAGES AT HEARING INTO MAIN APPLICATION

35. I have already dealt with the issue of whether there is a serious question to be tried. I shall move on to the next issue, i.e. whether the Plaintiff will be adequately compensated in Damages if the Injunction were refused. Here, again, I must emphasise how inappropriate this remedy is at this interlocutory stage. The Plaintiff is not seeking Damages in the substantive action. He is merely seeking a Declaration that the President was wrong in what he did; a Declaration that the President was wrong to have relieved him of his Office and duties. If he succeeds at the hearing into the substantive Motion, he will obtain a Declaration that he was wrongly removed from Office, and that he should continue in Office. The Plaintiff has not shown that he will suffer some damage before this Court determines the substantive Application. The most he stands to lose before hearing into the substantive Application commences and ends, is perhaps, in monetary terms, his monthly salary. If he succeeds in the main action, the likelihood is that the Court will make consequential Orders in that respect. Having reached this conclusion, I do not find it necessary to deal with the availability or non-availability and/or adequacy or sufficiency of an undertaking in damages.

#### BALANCE OF CONVENIENCE - AMERICAN CYANAMID; NWL LTD V WOODS

36. I shall then move on to the balance of convenience. LORD DIPLOCK himself admitted in the AMERICAN CYANAMID [1975] A C 396 at Page 408 that "...it would be unwise to attempt even to list all the various matter which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case." In N W L LTD v WOODS [1979] 3 All E R, 614, H.L. a trade dispute case, LORD DIPLOCK went further in explaining how the balance of convenience should be determined. At Page 625 beginning at Paragraph c, he had this to say: "*My Lords, when properly*



understood, there is in my view nothing in the decision in this House in *American Cyanamid*.... to suggest that in considering whether or not to grant an Interlocutory Injunction the judge ought not to give full weight to all the practical realities of the situation to which the injunction will apply. *American Cyanamid* which enjoins the judge on an application for an interlocutory injunction to direct his attention to the balance of convenience as soon as he has satisfied himself that there is a serious question to be tried, was not dealing with a case which the grant or refusal of an injunction at that stage would, in effect dispose of the action finally in favour of whichever party was successful in the application, because there would be nothing left on which it was in the unsuccessful party's interest to proceed to trial..... Cases of this kind are exceptional, but when they do occur they bring into the balance of convenience an important additional element. In assessing whether what is compendiously called the balance of convenience lies in granting or refusing interlocutory injunctions in actions between parties of undoubted solvency the judge is engaged in weighing the respective risks that injustice may result from his deciding one way rather than the other at a stage when the evidence is incomplete....." Of course, LORD DIPLOCK was here referring to a trial with witnesses. In these proceedings, all the affidavit evidence in support of the Plaintiff's contentions is now in.

37. LORD DIPLOCK continued at Page 626 Paragraph a, to say: "... Where however, the grant or refusal of the interlocutory injunction will have the practical effect of putting an end to the action because the harm that will have been already caused to the losing party by its grant or refusal is complete and of a kind for which money cannot constitute any worthwhile recompense, the degree of likelihood that the plaintiff would have succeeded in establishing his right to an injunction if the action had gone to trial is a factor to be brought into the balance by the judge in weighing the risks that injustice may result from his deciding the application one way rather than the other." If the Injunction sought by the Plaintiff in this Application is granted, Mr Macualay has submitted that irreparable harm will be caused to the machinery of Government. And this is not far-fetched. On the other hand, if the Injunction is refused, the Plaintiff has another opportunity to argue for its grant at the hearing of the substantive Motion. And



as I have repeatedly said, if this Court were to grant the Injunction in the terms sought by the Plaintiff, this Court will be compelling a non-party to do something in favour of the Plaintiff.

#### UDP & OTHERS V ATTORNEY-GENERAL OF THE GAMBIA

38. A similar situation was dealt with by JALLOW, JSC sitting as a single Justice of the Supreme Court of the Republic of the Gambia, in UNITED DEMOCRATIC PARTY (NO.1) AND OTHERS v ATTORNEY-GENERAL (NO.1) [1997 -2001] G.R. 789. This was a case concerning the removal of the Chairman and a member, from the Independent Electoral Commission of the Gambia. In that case, too, somebody else had been appointed to replace the Chairman, the late Right Rev Tilewa Johnson, Anglican Bishop of the Gambia. At Pages 805-806, the Learned Justice had this to say:
39. *"The applicants in the instant case are requesting this court to grant an interim order suspending the appointment of any person to the Office of the Chairman or member of the Independent Electoral Commission until such time that the full court determines the principal issues in the main suit, inter alia, whether the alleged removal or termination or dismissal of Messrs Johnson and Fatty respectively as the Chairman and member of the Independent Electoral Commission was in accordance with or in contravention of the Constitution. Since both parties are ad idem that Gabriel J Roberts had already subscribed to the oath of Office and was performing the function of the Office of the Chairman of the IEC, the application is essentially a request for the court to suspend his appointment, a completed act purportedly taken in the exercise of a constitutional power. It is not for me to express any views at this stage on the chances of success of the plaintiffs in their main suit..... However, having regard to all the relevant circumstances of the case, I have come to the conclusion that this is not a proper case for the court to exercise its discretion in favour of granting an interim injunction as sought by the applicants. A number of factors favour such a conclusion. While contrary to the argument of learned counsel for the Attorney-General, the mere fact that the act complained of has been completed before the legal proceedings have been commenced is no bar to the grant of a mandatory injunction,.....the authorities in*



*this respect have tended to relate to completed acts of a private, and not of a public nature. Completed acts of a public nature, particularly those taken in the exercise of constitutional power such as in this case, benefit by law from a presumption of constitutionality and regularity....But it seems to me that granting the interim order sought by the applicants would be to undermine that presumption in favour of the defendant's actions even before the issues have been tried and settled by the full court. Regard must of necessity also be had as to which way the balance of convenience, or of justice lies or which way lies the greater risk of doing an injustice. On this score, I find that the balance lies in favour of maintaining the status quo and not granting the interim order. The applicants have not shown any loss or injury that is likely to be suffered if the order is not granted and at the end of the day, the case is decided in their favour. On the other hand, granting the interim injunction would have the effect of depriving the Independent Electoral Commission of the services of the present Chairman and substituted member - whatever the constitutionality or otherwise of their appointments - without reinstating Messrs Johnson and Fatty, before the case is concluded. Thus, meanwhile, the Independent Electoral Commission would be deprived of the strength of its full membership. The Court, in considering this application, cannot be unmindful of the potentially disruptive effect of such state of affairs on the ability of the IEC to discharge its constitutional mandate. That is an important consideration which militates against granting the applicants the interim order they seek." These considerations, in different measures, apply to this case as well. The disruption in affairs of State which the granting of an Injunction will cause, has been alluded to in outline by Mr Macaulay.*

#### **FILMS ROVER INTERNATIONAL LTD V CANNON FILM SALES LTD**

40. In deciding where the balance should lie, I go further, and reiterate, that the language in which the Injunction sought has been couched makes it clear that it is mandatory in nature: The President must relieve the 2<sup>nd</sup> Defendant of his Office and duty; or, this Court must stop him from acting as such until the determination of the substantive action. In **FILMS ROVER INTERNATIONAL LTD & OTHERS v CANNON FILM SALES LTD** [1986] 3 All ER 772 Ch D, HOFFMAN, J ( as he then was) gave an indication how this issue should be addressed. Though he granted the Injunction



sought in that case, at Page 780, he cited with approval the dictum of MEGARRY,J in SHEPHERD HOMES LTD v SANDHAM [1970] 3 All ER 402 at 412: “*Third, on motion, as contrasted with the trial, the court is far more reluctant to grant a mandatory injunction than it would be to grant a comparable prohibitory injunction. In a normal case the court must, inter alia, feel a high degree of assurance that at the trial it will appear that the injunction was rightly granted; and this is a higher standard than is required for a prohibitory injunction.*” This case was decided before AMERICAN CYANAMID but what MEGARRY,J said there still holds true.

41. At Page 781 HOFFMAN,J continued at Paragraphs f & g: “*In Shepherd Homes Ltd v Sandham, MEGARRY, J spelled out some of the reasons why mandatory injunctions generally carry a higher risk of injustice if granted at the interlocutory stage: they usually go further than the preservation of the status quo by requiring a party to take some new positive step or undo what he has done in the past; an order requiring a party to take positive steps usually causes more waste of time and money if it turns out to have been wrongly granted than an order which merely causes delay by restraining him from doing something which it appears at the trial he was entitled to do; a mandatory order usually gives a party the whole of the relief which he claims in his writ and makes it unlikely that there will be a trial. One could add other reasons, such as that mandatory injunctions (whether interlocutory or final) are often difficult to formulate with sufficient precision to be enforceable. In addition to all these practical considerations, there is also what might be loosely called a ‘due process’ question. An order requiring someone to do something is usually perceived as a more intrusive exercise of the coercive power of the state than an order requiring him temporarily to refrain from action. The court is therefore more reluctant to make such an order against a party who has not had the protection of a full hearing at trial.*”
42. In my judgment in the case of BANGSO FISHING CO. LTD & ANOTHER v ADMINISTRATOR AND REGISTRAR-GENERAL, cited by Mr Manly-Spain, I have adopted the attitude of the Common Law Courts, i.e. to be reluctant to grant



Injunctions against public authorities and persons performing public duties. I believe that principle applies in this case as well, and perhaps with much greater force.

43. For all these reasons, I am of the view, and it is my judgment, that the Injunction sought in the Plaintiff's Application dated 24<sup>th</sup> March, 2015 ought not to be granted.
44. I have read in draft, the respective opinions of the Learned Acting Chief Justice, and of ROBERTS, SOLOMON & HAMILTON, JJSC and I agree with the conclusions they have all reached that the Plaintiff's Application should be dismissed. I also concur in, and with, the Orders made by the Learned Acting Chief Justice.

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### **ROBERTS. J.S.C.**

According to the plaintiff herein (Alhaji Samuel Sam-Sumana), he was elected by the people of Sierra Leone to the Office of Vice President on the same ticket with the President in both the 2007 and 2012 elections. The Plaintiff continued in the Office of Vice President until the 17<sup>th</sup> of March 2015 when he heard on the SLBC Radio and Television that the President had relieved him of his duties and from the Office of Vice President. That he was astounded and then sought legal advice which resulted in his issuing a statement dated 18<sup>th</sup> March 2015 stating that his purported removal was unconstitutional and unlawful. The President has since appointed Victor Bockarie Foh as Vice President of the Republic of Sierra Leone. The Plaintiff then instituted an action in the Supreme Court by Originating Notice of Motion dated 20<sup>th</sup> March 2015, against the Attorney General and Victor Bockarie Foh as 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively.

The Plaintiff then proceeded to file a Notice of Motion dated 24<sup>th</sup> March 2015 praying for an interlocutory injunction restraining the 2<sup>nd</sup> Defendant from performing the duties or holding the Office of Vice President of Sierra Leone pending the hearing and determination of this action. In support of his application the Plaintiff deposed to and relied on two affidavits, the

first was sworn to on the 24<sup>th</sup> March 2015 and the second (supplemental) was sworn to on the 8<sup>th</sup> April 2015.

*To the first affidavit the Plaintiff attached the following exhibits.*

1. Ex. A is a copy of a Press Release from State House dated 17<sup>th</sup> March 2015.
2. Ex. B is a copy of the Plaintiff's Statement dated 18<sup>th</sup> March 2015.
3. Ex. C is a copy of an open letter by Dr. Abdulai Conteh.
4. Ex. D is a copy of a Statement by the Sierra Leone Peoples' Party
5. Ex. E is a copy of the Originating Notice of Motion herein dated 20<sup>th</sup> March 2015.

*Attached to the Plaintiff's second affidavit are:*

1. Ex. F which is a copy of letter of expulsion dated 6<sup>th</sup> March 2015,
2. Ex. G an appeal dated 26<sup>th</sup> March 2015,
3. Ex. H which is a copy of constitution of the APC and,
4. Ex. J which is a Press Release dated 19<sup>th</sup> March 2015.

In moving the motion counsel for the Plaintiff referred to the affidavits in support and to Exhibit E the Originating Notice of Motion dated 20<sup>th</sup> March 2015. Counsel referred to Rule 98 of the Supreme Court Rules and as there is no provision in the said Rules governing interlocutory injunctions, counsel referred to Order 35 Rule 1 of the High Court Rules 2007. Counsel referred to Ex. A the Press Release of 17<sup>th</sup> March 2015 from the Office of the President in which the President "purported to relieve" the Plaintiff of his duties and the Office of Vice President which action was said to have been done pursuant to his "Supreme Executive Authority" as President of the Republic of Sierra Leone as enshrined in Section 40(1) of the Constitution. Counsel referred to Ex. B a Statement issued by the Plaintiff on 18<sup>th</sup> March 2015. Counsel also referred to his expulsion from the APC Party by Ex. E and his subsequent appeal which is Ex. H. Counsel referred to article 8 of Ex. H which is the APC Constitution and submitted that as at the 26<sup>th</sup> of March 2015 when the Plaintiff filed his appeal, his 30 days to appeal had not expired. Counsel therefore submitted that as at the date when Ex. A was published relieving him of his duties and Office as Vice President, the Plaintiff was still a member of the APC Party subject to his right to appeal his expulsion. Counsel referred to the case of *American Cyanamid V. Ethicon* as well as the White Book 1999 Order 29



Rule 1, particularly paragraphs 29/ L/ 2 and 29/ L/ 4 in which there is provided a summary of the guidelines for the grant of interlocutory injunctions. Counsel urged the Court to note in particular that the object of an interlocutory injunction is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages, but that the Plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own rights for which he could not be adequately compensated in damages. Counsel submitted that on the evidence before the Court there is a serious question to be tried as the action relates to an interpretation of the Constitution which is the Supreme Law. Counsel referred to paragraph 29/L/9 of the White Book and urged the Court to preserve the status quo which he submits in this case is the state before 17<sup>th</sup> March when the Plaintiff was in Office as Vice President. Counsel finally referred to paragraph 29/L/8 of the White Book, submitting that

*“...it is only after the Court has come to the conclusion that damages awarded after the expected trial would be an adequate remedy that the court is enjoined .....to look at..... the balance of Convenience.” Counsel submitted that it was just and convenient for this Court to grant the injunction sought pending the trial of the action.*

Counsel for the 1<sup>st</sup> Defendant in opposing the application relied on the affidavit of Julius Fofana Sandy sworn on 30/3/2015 . Counsel referred to Order 35 Rule 1 of the High Court Rules and submitted that the remedy sought by the Plaintiff is a discretionary one and the Court has the discretion whether or not to grant it. Counsel referred to Order 35 Rule 5 (1), submitting that in addition to its discretion, the Court has power to order an early trial rather than grant the injunction. Counsel referred to the American Cyanamid case a case which has been applied on several occasions in this jurisdiction. Counsel referred to *CAMBRIDGE NUTRITION LTD. V. BBC [1990] 3 ALL ER 523* and submitted that the guidelines laid down in the AMERICAN CYANAMID are a useful guide but that there are circumstances where those exact principles and factors mentioned would need to be reviewed. Counsel admitted that it was common ground that one of the issues which the Court was to decide is



whether there is a serious issue to be tried. Counsel referred to the Originating Notice of Motion filed herein and agreed that indeed there is a serious issue to be tried. Counsel however submitted that the next issue is whether damages would be an adequate remedy. Counsel referred to the Plaintiff's affidavits and submitted that neither affidavit expressly asserts that irreparable damage will be suffered by the Plaintiff if the injunction is refused, nor do the affidavits contain any assertions from which such irreparable damage can be reasonably inferred.

Counsel submitted that the applicant for an injunction is required to show that damages will be an adequate remedy for the Defendant and that the Plaintiff will be in a position to pay such damages in the event that he fails at the trial. Counsel submits that the Plaintiff has not shown any of this information in his affidavits.

Counsel further submits that as the issue relates to the Office of the Vice President, damages would not be an adequate remedy for the Defendants. Counsel referred to Section 54(1), 52(1) and 59(1) of the Constitution as well as the affidavit in opposition of Julius Fofana Sandy and submits that taking into account the Constitutional functions which are ascribed to the Office of the Vice President, that keeping the Office of the Vice President vacant pending the hearing and determination of the substantive matter will cause irreparable damage that cannot be adequately compensated by damages. Counsel submits that even in considering the balance of convenience, the Office of Vice President cannot remain vacant having regard to the Constitutional functions ascribed to that Office and this must be taken into consideration when deciding where the balance of convenience lies. Counsel refers to the nature of the Office and the interest of the wider public and submits that the implication of the Plaintiff's application is that the Office of the Vice President should be made vacant until the hearing and determination of the action before this Court. Counsel referred to the Plaintiff's argument about maintaining the status quo and submits that in the instant case proceedings were instituted on 20<sup>th</sup> March 2015 and immediately before that the 2<sup>nd</sup> Defendant had been appointed. Counsel concluded by referring to *American Cyanamid* and submits that having dealt with whether there were serious issues to be tried, adequacy of damages, balance of convenience and status quo, there may be special factors to be considered. Counsel submits



that in the instant case the issue relates to the Office of the Vice President, a matter of public interest which is a special factor and one that should be given considerable weight.

Counsel for the 2<sup>nd</sup> Defendant also opposed the application and relied on the affidavit of Agibola Emmanuel Manly-Spain sworn to on the 9<sup>th</sup> April 2015 in which he adopted the affidavit of Julius Fofana Sandy filed on behalf of the 1<sup>st</sup> Defendant. Counsel also adopted the submissions made by counsel for the 1<sup>st</sup> Defendant. Counsel referred to Section 18 of the State Proceedings Act, 2000 and submitted that the injunction ought not to be granted against government or government authority. Counsel submits that the Vice President is a public Officer, adding that the Office of Vice President cannot remain vacant. Counsel submitted that granting the injunction will be tantamount to the Vice President being prevented from performing his duties and it is not clear whether in those circumstances the Speaker can then perform those functions if the President is absent. This, counsel submits, may create more chaos.

Counsel for the Plaintiff in reply submits that this was a constitutional reference to the Supreme Court and does not touch or concern the State proceeding Act. Counsel submitted that if the injunction was granted the duties of the Vice President could be performed by other Ministers and Officers. Counsel submits that the matter concerns a serious Constitutional breach which should not be encouraged. Counsel submits that Order 35 Rule 5 (1) deals with Orders made under rules 2, 3 & 4 of Order 35 and that this application is made under rule 1. Counsel submits that the question of damages does not come into play, adding that each case must depend on its own peculiar facts. Counsel submitted the rules provide that if this Court determines that it wishes to grant an injunction then it will make an order for an undertaking to be given.

In dealing with the present application it would be useful to very briefly describe the nature of interlocutory injunction as prayed for by the Plaintiff. Interlocutory injunctions are temporary orders of the Court which are used to prevent a party from doing a particular act, (or require him to do a particular act), which will in some way damage or injure the other party as the case

may be. In *Civil Litigation 7<sup>th</sup> Edition* by John O'Hare and Robert N. Hill page 278 interlocutory injunction is described as follows:

*An interlocutory injunction is an order made before trial, if necessary even before the issue of proceedings, and is usually granted to keep matters in statu quo until the trial can be heard.*

*An interlocutory injunction is usually a temporary version of the type of injunction the applicant will seek at the trial as is thus only a provisional remedy.*

Again in *The Principles of Equitable Remedies* by I.C.F. Spry, 3<sup>d</sup> Edition page 430, interlocutory injunction is defined as follows:

*An interlocutory injunction is an injunction that is directed to ensure that particular defined acts do not take place or continue to take place pending the final determination by the court of the rights of the parties, and accordingly it issues in a form that requires that, in the absence of a subsequent order to the contrary, it should continue up to but not beyond the final hearing of the proceedings.*

This remedy is often a useful means of protecting parties from being injured ( or suffering an infringement to their rights) in a way that is unquantifiable in monetary value.

Although there is no express procedure in the Supreme Court Rules 1983 for obtaining such a remedy, Rule 98 of the said Rules makes appropriate direction for us to use Order 35 of the High Court Rules 2007. From the above authorities as well as the provisions of Order 35 Rule 1 of the High Court Rules, it is clear that such a remedy is both temporary and discretionary. Indeed authoritative guidelines have been laid down to be considered in an application for interlocutory injunction. Counsel for the Plaintiff relied on the case of *AMERICAN CYANAMID - V - ETHICON* 1975 AC 296 which is undoubtedly the seminal authority as regards interlocutory injunctions. In that case detailed and extremely useful guidelines were



provided. According to the said case, when an application is made for an interlocutory injunction, in the exercise of the Court's discretion an initial question falls for consideration.

That is:

1. Is there a serious question to be tried? If the answer to that question is yes then further related questions arise, they are:
2. Would damages be an adequate remedy for a party injured by the Court's grant of, or the failure to grant, an injunction? If not, where does the "balance of Convenience lie?" (See Supreme Court Practice 1999 paragraph 29/2/2 page 566-567.)

As cautioned by counsel for the 1<sup>st</sup> Defendant, the tests laid down in the American Cyanamid case are of broad and general application and in certain circumstances subject to variations. It has been recognised that in some cases not all the tests and guidelines are in fact applicable, relevant or appropriate. This caution was echoed in *Snell's Principles of Equity 28<sup>th</sup> Edition* page 642 (under the rubric The Limits of Cyanamid principles), where it states that ..... "*Notwithstanding its wide ambit, the American Cyanamid Case does not appear to apply to all applications for interlocutory injunctions.*"

With this caution in mind I have nevertheless tried to consider the present application without excluding the tests laid down in the Cyanamid case summarised above. This must only reinforce the consideration that the grant of an injunction is discretionary.

The first test is whether there is a serious issue to be tried. I have carefully perused the Originating Notice of Motion and its supporting affidavits. Indeed the Plaintiff is alleging serious violations of the Constitution of Sierra Leone as well as seeking interpretation of sections of the Constitution. Counsel for the Defendants indeed accept that there is a serious issue to be tried in this action. I shall therefore not waste further time here but to accept that indeed there is a serious issue to be tried.

I shall now proceed to consider whether damages would be an adequate remedy and also where does the balance of convenience lie? In doing so I have to consider the nature of the remedy sought and the circumstances of the present case. The situation is that the Plaintiff has been "relieved" of his duties and Office as Vice President and he is challenging this as unlawful and unconstitutional. Meanwhile the 2<sup>nd</sup> Defendant has taken the Oath of Office and is now acting and performing the duties of the Vice President. The present application is designed to enjoin the 2<sup>nd</sup> Defendant from holding the Office and performing the functions of the Vice President. Granting the injunction sought would no doubt have the effect of having a vacancy in the Office of Vice President. This may present a grave, dangerous and most undesired situation. As stipulated in Section 54 of the Constitution the Vice President is the Principal Assistant to the President, and by virtue of Section 52 of the Constitution he shall perform the functions of the President whenever the President is absent from Sierra Leone or is unable to perform his functions. This Court must therefore give serious weight and consideration to the effect and consequences of a vacant Office of the Vice President especially as regards the governance of the state and several state institutions (in which the Vice President is ex officio chairman or member), as well as the interest of the people of Sierra Leone.

The extent and gravity of the injury that may be occasioned by the rendering the Office of the Vice President vacant cannot easily be quantified in monetary terms nor can it be adequately compensated in damages.

On the other hand counsel for the Plaintiff has not stated what injury or irreparable loss that would be suffered by the Plaintiff if the injunction is refused. Counsel merely relied on the alleged violations of the Constitution and urged this Court not to allow such violations to continue. As I have stated earlier in this Ruling the issues of alleged violations are indeed grave, but these are issues to be argued and determined at the trial.

Counsel for the Plaintiff has urged this Court to preserve the status quo in this matter which according to him is the state of affairs when the Plaintiff was holding the Office of Vice President. Counsel for the 1<sup>st</sup> Defendant however argued that the status quo is the state of



affairs existing immediately prior to the commencement of the action or after the action has commenced but before the application (if there has been a delay in applying for the injunction.) And according to him in the present circumstance immediately prior to the issue of the Originating Notice of Motion in this action the 2<sup>nd</sup> Defendant had been sworn in as Vice President. This status quo as suggested by counsel for the 1<sup>st</sup> Defendant (i.e. the state of affairs existing immediately before this action was commenced) is usually that which is preserved in applications for interlocutory injunctions such as the present one . However preserving the status quo may also mean maintaining a state that existed before the defendant embarked on the acts that the Plaintiff is seeking to challenge or enjoin. For example where a defendant by some egregious or other acts steals a march on the plaintiff and rushes to establish a state of affairs in the hope that that new state may be the status quo to be maintained, the Court, may well order the preservation of an earlier "status quo" i.e. the state of affairs before the defendant took those steps or acts now complained of. (See *Thompson v Park* 1944 KB 808). Again in *The Principles of Equitable Remedies* by Spry 3<sup>rd</sup> Edition at page 439 it is stated as follows:

*Although, however, it is commonly found to be convenient, where a case for an interlocutory injunction is made out, to preserve the position that exists at the time of the making of the material application, this is by no means always so. Sometimes it is found that the most just regulation of the rights of the parties, in view of continuing hardship or inconvenience and the extent to which the court may need to ensure that its final order, when made, will operate reasonably, involves the maintenance of a different position, such as that which existed before particular acts alleged to be wrongful took place, or that which existed prior to unreasonable delay by the Plaintiff., and on some occasions it may even be necessary to grant an interlocutory mandatory injunction in order to have buildings or other structures removed, so that an earlier position is duly restored. So, for example, it may be appropriate, in particular circumstances, to order that part only of a wrongfully erected structure should be pulled down pending the final hearing. Here no general rule can be laid down and the course that will be taken in any particular case depends upon the balance of justice in all the material circumstances. But although it has been said that where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status*



*quo, it must be borne in mind that the burden is on the applicant for interlocutory relief to show that the intervention of the court is appropriate in all the circumstances.*

In the instant case however, maintaining the status quo suggested by counsel for the Plaintiff in argument would pose serious challenges and grave practical and administrative inconveniences. It would mean not only enjoining the 2<sup>nd</sup> Defendant from acting or holding the Office of Vice President, but also reinstalling (and perhaps re-swearing) the Plaintiff into that Office and putting him into the Office premises already occupied by the 2<sup>nd</sup> Defendant, pending the hearing of the main action. This would be most inconvenient, impractical and imprudent especially as an interim measure that is meant to last only till the trial of the action. This is clearly not what was contemplated by the Plaintiff and perhaps that is why this was not expressly prayed for in the motion for injunction herein.

Again maintenance of status quo is a usual but by no means the only basis of an interlocutory injunction. In preserving the status quo the Court ought to consider all the circumstances of the case including hardship and the risk of irreparable injury to the parties as well as to the third parties. In this regard I have had to consider the risk of serious and unquantifiable injury the injunction may occasion to the public and to state institutions. Again in the *Principles of Equitable Remedies 3<sup>rd</sup> Edition by I.C.F. Spry at page 453* the author stated:

*If, however, it appears that interlocutory relief will cause hardship or inconvenience to the defendant or else to third persons, a court of equity enquires, in exercising its discretions, as to "the balance of justice and injustice", that is, as to whether it is most reasonable in all the circumstances that that relief should be granted. In particular it has regard both to any inconvenience or injury that may be suffered, pending the hearing through the grant or refusal of interlocutory relief, as the case may be, and also to the extent to which, if no interlocutory injunction is issued it will be possible at the final hearing to compensate or provide for breaches that have meanwhile taken place.*

Indeed a consideration of where the balance of convenience lies has persuaded me to hold that in all the circumstance of this case it would be prudent and just for the Court to refuse the



injunction sought. I would however state that the nature and gravity of the issues raised in this action would no doubt require an urgent and speedy trial and for this Court to as a matter of urgency, and as far as practicable, fast track the hearing and determination of the action commenced by the Originating Notice of Motion herein. It is my view that in circumstances where it may be inappropriate to grant the injunction sought, this Court has power and discretion (as contemplated in Order 35 Rule 5 (1) of the High Court Rules) to instead order a speedy trial of the main action.

Counsel for the 2<sup>nd</sup> Defendant referred to the Section 18 of the State Proceedings Act, 2000 which provide as follows:

“ 18. (1) In any civil proceedings by or against the Government, the Court shall, subject to this Act, have power to make all such orders as it has power to make in proceedings between private persons and otherwise to give such appropriate relief as the case may require:

**Provided that -**

- (a) Where in any proceedings against the Government, any such relief is sought as might in any proceedings between private persons be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the right of the parties and;
- (b) In any proceedings against the Government for the recovery of land or other property, the Court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof, make an order declaring that the plaintiff is entitled as against the Government to the land or property or to the possession thereof .

- (2) The Court shall not in any civil proceedings grant an injunction or make an order against an Officer of the Government if the effect of granting the

injunction or making the order would be to give any relief against the Government which could not have been obtained against the Government under the proviso to sub section (1).”

From the above section, one could glean an obvious attempt to largely protect or insulate Officers of government from injunctions as the case may be. This is not unique to this jurisdiction (See White Book 1999 paragraph 29/1/19 page 571). However, I am not for one moment accepting that injunctions cannot and ought not to be granted against Officer of government or public Officers and institutions (See *BRADBURY V LONDON BOROUGH OF ENFIELD* [1967] 2 ALL ER 434. Indeed the above goes to emphasise the grave care that ought to be employed in granting an injunction where it involves a public Office (r) in circumstances where there is a serious risk of injury to the state, state institutions and the public.

Counsel for the Plaintiff questioned the lawfulness or validity of all acts that would have been done by the 2<sup>nd</sup> Defendant on to the trial of the action if it turned out that the Plaintiff was right and successful at the trial. It is my view that even if the Plaintiff succeeds in establishing at the trial that the 2<sup>nd</sup> Defendant’s appointment was unconstitutional, all acts of the 2<sup>nd</sup> Defendant from his appointment unto the trial are and would remain valid. I am fortified in this view by the case of *WHITFIELD V ATTORNEY GENERAL* [1990] LRC 12 6 where at page 131 it was stated as follows:

“The de facto doctrine is perhaps best expressed in the following passages.

(a) in *State of Connecticut v Anthony Carroll* 38 Conn 449 (1871) at 471:

An Officer de facto is one whose acts, though not those of a lawful Officer, the law, upon principles or policy and justice, will hold valid so far as they involve the interests of the public and third persons, where the duties of the Office were exercised.....

(b) In *Norton v Shelby County* 118 US 425 (1886) at 444”



'Where an Office exists under the law, it matters not how the appointment of the incumbent is made, so far as the validity of his acts are concerned. It is enough that he is clothed with the insignia of the Office, and exercises its powers and functions.'

(c) In *Re James (on insolvent)* [1977] 1 All ER 364 at 373.

'No matter by whom the man was appointed a judge, no matter at what date he was appointed, he is sitting as a judge of the court and the order made by him is an order of the High Court of Rhodesia. He sits in the seat of a judge. He wears the robes of a judge. He holds the Office of a judge. May be he was not validly appointed. But still, he holds the Office. It is the Office that matters, not the incumbent..... So long as the man holds the Office, and exercises it duly and in accordance with law, his orders are not a nullity. If they are erroneous, they may be upset on appeal. But, if not erroneous, they should be upheld.'

In this regard all acts done by the 2<sup>nd</sup> Defendant would, by virtue of the de facto doctrine, remain valid no matter what the outcome of the trial of the action herein and so there should not be any undue concern or speculation about such acts as urged by counsel.

I have carefully considered the arguments of counsel and the practical realities of the situation as borne out by the affidavit evidence and in the light of the said considerations and I believe that the injunction sought ought to be refused but that an order be made for the speedy hearing and determination of the main action.

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SOLOMON, J.S C.

1. The Plaintiff herein has commenced action by Origination Notice of Motion pursuant to Sections 124 and 127 of the Constitution of Sierra Leone 1991 Act No: 6, of 1991 (hereinafter called "The Constitution"). He is seeking the determination of two questions on the interpretation of Sections 40 (1), 50 and 51 of the Constitution. The parties are yet to file their respective cases.

2. Before the determination of these questions the Plaintiff herein has filed a Motion Paper dated 24<sup>th</sup> March 2015 in which he is seeking an interlocutory injunction to be issued restraining the 2<sup>nd</sup> defendant from performing the duties or holding the Office of Vice President of Sierra Leone pending the hearing and determination of the action. In support of his application are the two affidavits, to which he is the deponent. The defendants have opposed the application and the 1<sup>st</sup> defendant has filed an affidavit in opposition deposed to by one Julius Fofanah Sandy which said affidavit is adopted by the 2<sup>nd</sup> defendant in the affidavit in opposition deposed to by Ajibola Emmanuel Manly-Spain Esq.
3. Counsel for the Plaintiff moved his application and relied on both affidavits as filed. He referred the court to all the exhibits and submitted that the basis of his application is particularly based on Paragraphs 8, 9, 10 of the affidavit of 24<sup>th</sup> March 2015. He also made particular reference to Paragraphs 2 to 5 of the supplemental affidavit of 8<sup>th</sup> April 2015. In his submissions counsel referred to exhibits "A", "C", "D", "F" and "G" respectively. Mr Jenkins-Johnston also made reference to various Sections of the Constitution to wit: Sections 40 (1), 40 (3), 41 (a) (b) (c) (d), 50, 51, 54 (2) (b), 54 (5). He referred the court to Rule 98 of the Supreme Court Rules 1982; Order 35 Rule (1) of the High Court Rules 2007 (*hereinafter called "The Rules"*); and Order 29 Rule 1 of the Annual Practice 1999 (*hereinafter called "White Book"*). Counsel submitted that as at 26<sup>th</sup> March 2015 the 30 days time period for an appeal to be lodged pursuant to Section 8 of the APC Constitution had not expired. He relied on the authority of the *American Cyanamid Co. v Ethicon* case (1975) AC 375 and the guidelines issued by Lord Diplock. He submitted that the first threshold has been complied with in that there are serious issues to be determined by this court and he referred to Exhibit "E" which are constitutional issues for determination including the interpretation of the phrase "Supreme Executive Authority" in Section 40 (1) of the Constitution. He submitted that this application is to preserve the status quo ante 17<sup>th</sup> March 2015. Counsel submitted that the issue of damages does not arise and the balance of convenience tilts in favour of his client to wit; that he is deprived of his constitutional right.



4. In reply to counsel for the defendants he submitted that Section 18 (1) of the State Proceedings Act 2000 is not applicable as this matter is of a constitutional nature and its reference is made pursuant to Sections 124 and 127 of the Constitution. On the issue of "*public interest*" counsel submitted that it is in the interest of the public that the Constitution be preserved and that the 2<sup>nd</sup> defendant is acting in violation of the Constitution. He finally submitted that any violation of the Constitution can cause irreparable damage to the Constitution and the people of Sierra Leone.
5. Counsel for the 1<sup>st</sup> defendant submitted that an application pursuant to Order 35 Rule 1 of the Rules is discretionary and referred the court to Order 35 Rule 5 of the Rules which provide for a speedy trial of the matter herein. He referred to the authority of S/C App P.C. Dr Alpha Medseray Sheriff 11 v Attorney General and Minister of Justice a ruling delivered on the 15<sup>th</sup> June 2011 in which the case of American Cyanamid Co. was referred to. He agreed with counsel for the Plaintiff that there are serious issues to be determined and that this first threshold has been complied with, but submits that the next issue of damages was not addressed. The question then is, whether the applicant can adequately compensate the defendants and the affidavits as filed have not expressly assessed the irreparable damage that will be suffered by the applicant. Further the applicant has not shown he is in a position to pay the damages and his ability to pay such damages. His submission was that the relief of injunction if granted against the 2<sup>nd</sup> defendant will affect the 1st defendant as the latter has an interest in the matter herein. The relief sought is against the Office of the Vice President which is established by Section 54(1) of the Constitution. He made specific reference to the affidavit of Julius Fofanah Sandy on the functions of the Vice President and particularly to Paragraph 8 (iii), (iv) and (v). To keep the Office of Vice President vacant pending the hearing and determination of this matter will cause irreparable damage which will not be adequately compensated by damages. Counsel referred the court to the cases of Cambridge Nutrition Ltd v British Broadcasting Corporation (1990) 3 AER page 523 and National Commercial Bank Jamaica Ltd v Olint Corporation Ltd (2009) LRC 370 page 376.



6. On the balance of convenience, counsel referred to the affidavit of Julius Fofanah Sandy at Paragraphs 4 to 8 and submitted that the 2<sup>nd</sup> defendant has assumed Office and is presently carrying out its functions. He submitted that an inference can be drawn in Section 54 (5) of the Constitution that a vacancy in the position of Vice President is not contemplated and so that should be considered in the light of the balance of convenience. He referred to the authority of *Regina v Secretary of State for Transport Ex Parte Factortane* (1991) No: 2 1 AC 603. Counsel urged the court not to grant the injunction as from the authorities cited supra the balance of convenience lies in favour of the defendants. He finally submitted that by the time of filing this application another Vice President had been appointed and so the status quo ante cannot be restored.
7. Counsel made reference to the several guidelines in the *American Cyanamid Co.* case and referred to "*special factors*" which ought to be considered in whether or not to grant an injunction. The special factors to be considered include the constitutional matter of public interest and having the Office of Vice President vacant pending the hearing and determination of this matter. In reply to Mr Jenkins-Johnston on the acts done by the 2<sup>nd</sup> defendant whilst in office, counsel relied on the authority of *Whitfield v Attorney General* (1990) L.R. Commonwealth volume 136 on the de facto doctrine.
8. Counsel for the 2<sup>nd</sup> defendant adopted the arguments of Mr. Macaulay and submitted further that the Plaintiff has not complied with Section 18 (1) of the State Proceedings Act 2000 on the granting of injunctions against the government or government authority. He relied on the authority of *Cc: 211/2014 Bangso Fishing Company Ltd v Administrator and Registrar General*. He finally submitted that the Office of the Vice President is a necessity which cannot be vacant and to grant the injunction sought will cause chaos especially if the President cannot perform his duties.
9. My sole consideration in this ruling is the present application for an interlocutory injunction and no reference will be made to the substantive matter which is still pending. An injunction whether interim, interlocutory or perpetual is an equitable remedy which can only be granted after consideration of the facts and the circumstances of a particular matter. It is a discretionary order which can be granted to restrain the commission or



the continuance of some wrongful act or the continuance of some omission. American Cyanamid Co. case has laid several guidelines for consideration in whether or not an injunction ought to be granted. This authority even though it is over 30 years old, it is still very instructive in the granting of injunctions with certain considerations on the facts and circumstances of each case. It is not disputed that there are serious issues to be determined; the question then is, whether damages will be sufficient in these circumstances. Would damages be an adequate remedy for a party injured by the court's grant of, or its refusal to grant an injunction? I note that in the affidavit in support there is no averment to that effect. When such an omission was pointed out by counsel for the 1<sup>st</sup> defendant, counsel for the Plaintiff submitted in reply that the question of damages does not arise. He further submitted that he has fulfilled all the criteria for the grant of the injunction and that if damages are considered the court may order an undertaking to be made by the Plaintiff as provided for by Order 35 Rule 9 of the Rules. Counsel for the Plaintiff cannot choose the criteria he deems appropriate for his application. Just because he has established that there is a serious question to be tried does not automatically entitle the applicant to an injunctive relief. I am driven in my view by the authority of the American Cyanamid Co. case which he has relied on.

Furthermore, even if this court is to grant the injunction subject to an undertaking as to damages by the Plaintiff as counsel pointed out in his submissions in reply, this begs the question would such undertaking be an adequate remedy to compensate for the injury that may result from having prevented the 2<sup>nd</sup> defendant from holding the Office of the Vice President and performing his functions if the questions to be determined were resolved in his favour? I am of the view that damages will not be an adequate compensation for the reasons later discussed when considering the balance of convenience. According to the American Cyanamid Co. case it is where there is doubt as to the adequacy of the respective remedies in damages that the question of balance of convenience arises. I would therefore proceed to the third question where does the balance of convenience lie? Does it lie in granting the injunction or refusing it?



10. The next issue for my consideration in whether or not to grant this injunction is where the balance of convenience lies. On the originating notice of motion filed by the Plaintiff, he has sought a perpetual injunction as one of his declaratory orders. The present application for an interlocutory injunction must be considered in the light of the public interest. It is to preserve the status quo ante until the matter is fully determined. The words "*Just and Convenient*" have been widely used in the consideration of the grant or refusal of an injunction. It should be read as just as well as convenient to grant this equitable/discretionary order. The burden of proof that the inconvenience which the Plaintiff will suffer by the refusal of the injunction is greater than that, which the defendants will suffer if it is granted, lies on the Plaintiff. He should also show that until the hearing, the injunction is necessary to protect him against irreparable injury and mere inconvenience is not enough. See the case of *Street v Union Bank of Spain and England* (1885) 30 Ch D 156. In support of the Plaintiff's application are several documents including press releases, an open letter, the manifesto of the APC party and appeal he filed against his expulsion from the party. These documents do not support the present application and could well be used in the substantive matter. No argument was canvassed by counsel for the Plaintiff on the 2<sup>nd</sup> defendant's usurpation of Office of Vice President. In as much as this court cannot exercise its discretion arbitrarily or invent new modes of enforcing judgments every case must depend on its own facts. Discretion to be exercised must be so exercised judiciously having full consideration of the facts and circumstances of each case.
11. The courts in recent cases have made reference to "*special factors*" which ought to be considered including the several guidelines of Lord Diplock in the *American Cyanamid Co.* case. Special factors are factors which vary and can only be determined on a case to case basis. There are various issues to be considered but one thing which has swayed my mind is that to grant the injunction sought will be disruptive of good governance of the state. Let me point out that an injunctive relief is not a remedy that is liberally granted as of right but it is entirely within the discretion of the court and in considering the balance of convenience the court will consider all the circumstances of the case. There are no limits to the factors that the court may take into consideration in deciding where



the balance of convenience lies. I find support for my view in the case of *Cayne v Global Natural Resources plc* (1984) 1ALL ER. Page 225 per Kerr LJ at page 234 in which he had this to say:

*"It must also be remembered that the grant or refusal of an injunction is ultimately a matter of statutory discretion, and that the powers of the courts in this regard cannot be fettered by decisions in general terms, when the facts of cases will vary infinitely."*

See Paragraph 29/L/8 of the White Book. The 2<sup>nd</sup> defendant has been appointed to carry out the functions of the state and unless and until this court determines otherwise he should not be prevented to carry out his functions at this time. I am not called upon to consider the merits of this case. No mischief will be caused or created if he continues to perform his duties pending the hearing and determination of the matter herein. His role is supportive of the President on whom executive power is vested pursuant to Section 53, and by Section 54 of the Constitution he is the Principal Assistant to the President. The Offices of both the President and Vice President cannot be vacant hence the provisions in Sections 49 (4) and 54 (4) of the Constitution. To grant the injunction sought will breed uncertainty and create a lacuna in the exercise of executive powers vested in the Office of the Vice President. It will also impact negatively on the other positions that the Vice President is given authority to hold pursuant to the Constitution for instance the Police Council to which he is the Chairman as seen in Section 156 of the Constitution; his other duties in Sections 52, 54, thereof; and other specific duties as outlined in the Government Gazette marked "JFS3". The Office of the Vice President and its functions are constitutional. Section 52 sub Section 1 serves as an example. It provides that whenever the President is absent from Sierra Leone or is by reason of illness or any other cause unable to perform the functions conferred upon him by this Constitution those functions shall be performed by the Vice President. In other words granting the injunction will not only affect the exercise of executive powers it will also disturb the administration of institutions of which the Vice President is a part of, which in turn will have a negative impact in the security apparatus of the country. Suppose the



injunction is granted against the Vice President and the President is unable to perform his functions such a situation will be absurd to good governance and the security of this state. The effect of the injunction will be to endanger the exercise of the functions of the Office of the President. I am of the view that the grant of the injunction poses the risk of gravely impairing a functional government and therefore it must not be granted. I do not at this stage wish to consider Section 18 (1) (2) of the State Proceedings Act 2000. This will be dealt with when the substantive matter is considered as a perpetual injunction is one of the reliefs sought in the Originating Notice of Motion.

12. I shall now consider "*special factors*" canvassed by counsel for the 1<sup>st</sup> defendant. It is trite law that an injunction against one defendant will operate against the other hence damages in undertaking operate in respect of all the defendants. Special factors are factors which are not ordinary, and which relate to a particular case in question. They differ in each case and ought to be given separate consideration. It is in the interest of the state that the Office of the Vice President continue to function and operate as his duties are very specific as seen in Sections 52, 54 (1), 156 of the Constitution and by Government Gazette marked "*JFS3*". His functions as the Principal Assistant to the President in the exercise of his executive functions are vital to the machinery of the State which cannot be left in a vacuum. There is no provision for another person to be appointed if the 2<sup>nd</sup> defendant is temporarily prevented from performing these functions. By the granting of this application the Office of the holder of Vice President will be vacant till the hearing and determination of the matter herein. This court has to consider whether more harm will be done by granting or by refusing the injunction. I am of the opinion that more harm will be caused by the granting of the application than by its refusal.
13. The status quo principle can only be invoked to preserve the subject matter in its existing condition. The existing condition is that the 2<sup>nd</sup> defendant is now occupying the Office of the Vice President. Thus this is the status quo that must be preserved and maintained until the final determination of this matter. Preventing the 2<sup>nd</sup> defendant from holding the Office of the Vice President will amount to altering the status quo. I am therefore of the view that learned counsel's submissions on the issue of status quo are misconceived and



has failed to convince and persuade me as to how the balance of convenience could be tilted in the Plaintiff's favour.

14. Having carefully looked into the above submissions made by counsel for the Plaintiff I am of the view that his submissions are not tenable in law. The reason being that tradition, practice and history all have it that in our jurisdiction an injunction is usually granted only in cases where irreparable injury to the rights of an individual would result if the injunction is not granted. It must therefore be readily apparent to the court that some act has been performed, or is threatened, that will produce irreparable injury to the party seeking the injunction. An injury is considered irreparable when it cannot be adequately compensated by an award of damages. Therefore, a court will always consider any hardship that the parties will sustain by the granting or refusal of an injunction. I am of the view that the applicant has failed to show the court the hardship or irreparable injury that he will suffer if the application is not granted. The importance of this cannot be overstated. It is therefore my considered opinion that the Plaintiff has failed to show the kind of serious and immediate injury that demands the extraordinary relief of an interlocutory injunction. In the instant case in view of the all the circumstances the granting of the injunction will be inappropriate and is hereby refused. I hereby order a speedy hearing of the Originating Notice of Motion. Costs in the cause.

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**HAMILTON - ISC.**

This is an application by the Plaintiff/Applicant for the following orders:

*That an Interlocutory Injunction do issue restraining the 2<sup>d</sup> Defendant from performing the duties or holding the Office of Vice President of Sierra Leone pending the hearing and determination of this Action.*

This application is supported by the affidavit of Alhaji Samuel Sam-Summana sworn to on 24<sup>th</sup> day of March, 2015 to which is attached various exhibits. *Exhibit A* is a Press Release from

the Office of the President dated 17<sup>th</sup> March, 2015 which purports to relieve the Plaintiff of the duties and Office of Vice President with immediate effect. *Exhibit B* is a statement issued by the Plaintiff on the 1<sup>st</sup> day of March, 2015 on the purported relieving of the Plaintiff of his duties as Vice President. *Exhibit C* an open letter written by Dr. Abdulai Conteh former Vice President and Attorney-General of the Republic of Sierra Leone. *Exhibit D* a Press Statement issued by the opposition party the S.L.P.P. and *Exhibit E* the Originating Notice of Motion issued on the 20<sup>th</sup> March, 2015 and the affidavit in support thereto.

On the 8<sup>th</sup> April, 2015 the Plaintiff swore to a supplemental Affidavit with exhibits attached. *Exhibit F* a letter dated 6<sup>th</sup> March, 2015 addressed to the Plaintiff by Alhaji Osman Foday Yansaneh National Secretary-General A.P.C. informing him of his expulsion from the A.P.C. party effective 6<sup>th</sup> March, 2015. *Exhibit G*. an appeal filed by the Plaintiff against his expulsion from the A.P.C. Party.

Counsel by way of Cross reference referred this Court to *Exhibit H*. which is Article 8 of the *A.P.C. Constitution* and to *Page 43 on the Sub-heading Appeal* and stated that the Plaintiff has filed his appeal. *Exhibit J* a press release from the Office of the President on the 19<sup>th</sup> March, 2015 appointing the 2<sup>nd</sup> Defendant Victor Bockarie Foh as Vice President.

Counsel then touched on the affidavit filed for and on behalf of the 1<sup>st</sup> Defendant by one Dr. Julius Fofana Sandi Secretary to the Vice President and there is exhibited the Oath which he took on his appointment as Secretary to the Vice President as *Exhibit JFS<sub>1</sub>*, The Oath taken by the 2<sup>nd</sup> Defendant as *Exhibit JFS<sub>2</sub>*, dated 19<sup>th</sup> March, 2015 and a copy of the Sierra Leone Gazette dated 30<sup>th</sup> April, 2008 dealing with the assignment and duties of all the Ministers as *Exhibit JFS<sub>3</sub>*.

## SUBMISSIONS

Mr. Jenkins-Johnston Counsel for the Plaintiff refers to the *Supreme Court Practice 1999 explanatory note under Order 29 Rule 1* in which the principles to be applied and the guidelines for interlocutory injunctions are set out and in particular the case of *American Cyanamid Co. v. Ethicon 1975 A.C. 396 (American Cyanamid Case)*. He then submitted that in



determining whether an interlocutory injunction is to be granted, the Court has to determine, whether there is a serious question or issue to be tried which is one of the principles in the guidelines in the American Cyanamid Co referring especially to *Exhibit E* the Originating Notice of Motion containing the serious issues or question to be determined and there is even a prayer for an injunction against the 2<sup>nd</sup> Defendant from acting in the capacity of Vice President.

Counsel further submitted that the object of an interlocutory injunction is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages. Counsel further submitted that the Court must weigh one need against another and determine where the balance of convenience lies and the Court must satisfy itself that the claim is not frivolous or vexatious but there is indeed a serious question to be tried.

Counsel finally submitted that it is just and convenient to grant the interlocutory injunction sought since the Plaintiff having been deprived of his legal rights and his constitutional rights having been elected, not appointed Vice President pending the trial of the action itself.

Mr. Berthan Macauley Jr. in opposing the application in his reply on behalf of the 1<sup>st</sup> Defendant did emphasize that the remedy sought under *Order 35 Rule 1 of the High Court Rules 2007* is discretionary and this Court can grant or refuse the remedy and relying on the American Cyanamid Co Case agreed with Counsel for the Plaintiff and relying on *Exhibit E* that there is a serious issue to be tried.

Counsel then submitted that the only threshold the Plaintiff has met is that there is a serious issue to be tried but there are other issues to be met which have not been met citing the unreported case of P.C. Dr. Alpha Madseray Sheriff v. Attorney-General S.C. Mis App 2/2011 and referring to the affidavit in support dealt with the issue of adequacy of damages and relying on Paragraphs 4, 8, 9 and 10 submitted that the applicant is required to show that damages will be an adequate remedy for the Respondent and furthermore that the applicant will be in a position to pay such damages in the event he were to fail at the trial.

Counsel refers to paragraphs 8 of the affidavit of Julius Fofana Sandi which summarizes the functions of the Vice President and then submitted that it can be inferred that to keep the office of Vice President vacant pending the hearing and determination of the substantive matter will cause irreparable damage that cannot be adequately compensated by damages and in dealing with the balance of convenience refers to the affidavit of Julius Fofana Sandi sworn to on 30<sup>th</sup> March, 2015 Paragraphs 4 to 8 and *cited Section 54(5) of the Constitution 1991* and then submitted that the Constitution does not contemplate a vacancy in the office of the Vice President which the Court should take into consideration when assessing the balance of convenience.

Counsel then submitted that the balance of convenience is clearly in favour of the Defendant and the Plaintiff not having surmounted that important hurdle should have their application dismissed. Referring to the issue of *status quo ante*, Counsel submitted that for the purpose of an interlocutory injunction the *status quo ante* will be the state of affairs in the period immediately before the institution of proceedings; or if there is a long delay between the institution of proceedings and the filing of the application then it is the period before the filing of the application.

Mr. Manley-Spain Counsel for the 2<sup>nd</sup> Defendant swore to an affidavit on the 9<sup>th</sup> of April, 2015 and adopted the affidavit of Julius Fofana Sandi as the affidavit in opposition and added nothing more to it but referred to the High Court case of CC 221/13 *Bangso Fishing Company v. Administrator and Registrar-General* regarding an injunction against the Administrator and Registrar-General a public Officer and submitted that the position of the Vice President is a necessity and cannot be vacant which is what the interlocutory injunction is now seeking to do and that is to prevent him from performing his duties.

However it is not unusual for an interlocutory injunction to be granted pending the determination of the substantive matter. Where an order for an injunction is included in the relief prayed for as can be clearly seen in *Exhibit E* the Originating Notice of Motion.



The purpose of an interlocutory injunction therefore is to preserve the *status quo ante* until the substantive matter is tried and determined. This application seeks to do just that - a temporary relief to maintain the *status quo* until the trial and determination of the action.

The principle under which the Court will exercise its undoubted discretion to grant the relief of an interlocutory injunction is very well established in the celebrated case of American Cyanamid & Co. v. Ethicon Ltd. [1975] A.C. 396 in which the Plaintiff must establish that he has arguable claim to the right he seeks to protect and that there is a serious issue to be tried. If the Plaintiff satisfies these tests, the grant or refusal of granting of an injunction is a matter for the Court in the exercise of its discretion on a balance of convenience.

The Court should also consider the balance of convenience, as the nature of the injury on one hand which the defendant will suffer, if the injunction is granted and turns out that the defendant was right and the injury which the Plaintiff, on the other hand will sustain if the injunction was refused and it turns out he was right. *See: Halsbury Laws of England 3<sup>d</sup> Edition Volume 21 Para 366 Page 766.* Damages may not be sufficient if the wrong is irreparable, or outside the scope of pecuniary compensation, or if damages would be difficult to assess. It will generally be proper to consider whether more harm will be done by granting or by refusing the injunction.

There is no onus on the Plaintiff at this stage to make out a *Prima Facie* case before an Interlocutory Injunction is granted. *See: American Cyanamid Co. v. Ethicon Supra.*

I have carefully considered the application and the reply thereto and also perused the affidavits and exhibits attached. It is clear from the affidavit filed that there is a dispute between the Plaintiff and the Defendants and in pursuance of that dispute the Plaintiff has instituted an action contained in *Exhibit E* for this Court to determine certain issues.

Therefore on those assertions in the respective affidavits and the peculiar circumstances of this case it is clear to me that there is sufficient material before this Court to come to the conclusion that there are serious issues to be tried.

I have briefly set out above the Law relating to the granting of Injunctions it has already been stated that there is a serious issue to be tried with the Plaintiff having a good and arguable case. But the balance of convenience in my opinion lies in my refusing the injunction in the exercise of my equitable jurisdiction.

In the premises, the Plaintiff's Application for an Interlocutory Injunction is refused and no order as to cost.

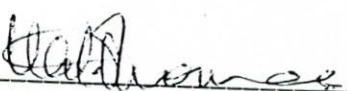
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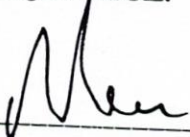
## DECISION OF THE COURT

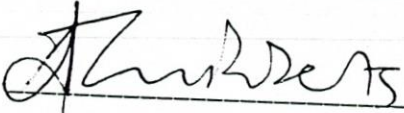
### PRESIDING JUSTICE

For the foregoing reasons, the application for an injunction by way of an interlocutory order to restrain the 2<sup>nd</sup> Defendant from performing the duties or holding the Office of Vice-President of Sierra Leone pending the hearing and determination of the action is refused. We make the following further orders:

1. The trial of this action is to commence without delay on the 12<sup>th</sup> May 2015.
2. Costs in the cause.

  
HON MR. JUSTICE V. V. THOMAS,  
ACTING CHIEF JUSTICE.

  
HON MR. JUSTICE N.C. BROWNE-MARKE,  
JUSTICE OF THE SUPREME COURT

  
HON MR. JUSTICE E. E. ROBERTS,  
JUSTICE OF THE SUPREME COURT

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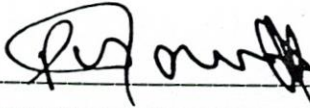
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HON JUSTICE V. M. SOLOMON,  
JUSTICE OF THE SUPREME COURT



HON MR. JUSTICE P. O. HAMILTON,  
JUSTICE OF THE SUPREME COURT