

Neutral Citation Number Misc. App. 1/21 C1

General and Civil Division
Case No: cc 1/2021

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

Law Court Building
Siaka Stevens Street
Freetown

Date: 19 April 2021

Before:

THE HONOURABLE MR JUSTICE FISHER J

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Between:

Alfred Peter Conteh **Plaintiff/Applicant**
(Suing by his Attorney Rashid Santigie Sesay)

-and-

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

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JM Jengo of Counsel for the

Plaintiff/Applicant

L Dumbuya, A Showers, A Koroma (Ms), Il Mansaray of counsel
AS Sesay, JB Sesay of counsel for
A Macauley, W Serry-Kamal of counsel

for 1st Defendant
for 2nd Defendant
for 3rd Defendant

Hearing date: 1 March 2021

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APPROVED RULING

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

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THE HONOURABLE MR JUSTICE FISHER J

The Honourable Mr Justice Fisher J:

1. In pending proceedings before this court, counsel for 2nd and 3rd defendants have filed two notices of motions seeking a number of orders as prayed for on the motions. With respect to the 3rd defendant the following orders were prayed for.
 1. That this court strikes out the notice of motion on grounds of irregularity, in that the originating process did not comply with Order 5(3) of the High Court Rules 2007 and that secondly, the originating notice of motion does not comply with Order 8 (4) of the High Court Rules 2007.
 2. Alternatively, an order for variation of, or discharge of the interim injunction on the grounds that the plaintiff did not make a full and frank disclosure in obtaining an ex parte injunction.
2. The application is supported by the affidavit of the 2nd defendant Alhaji Osman Foday Yansaneh.
3. With respect to the 2nd defendant, the notice of motion seeks the following orders;
 1. That this court grants a stay of proceedings of the substantive action, pending the hearing and determination of this application.
 2. That this court set aside the interim injunction on the grounds that the plaintiff lacks the capacity to institute such an action.
 3. That the court dismisses the substantive action instituted by the plaintiff on the grounds of a lack of capacity to institute such an action.

4. The application is again supported by an affidavit of Alhaji Osman Foday Yansaneh with various exhibits attached, to which I have given due consideration. Should the application on standing succeed, the matter would effectively be brought to an end and the substantive matter will not be heard. I consider it expedient to deal firstly with the application with regard standing, and then should that application fail, I shall then proceed to consider the application with respect to the irregularities raised by counsel for the 3rd defendant.

Locus standi

5. The doctrine of locus standi, or standing, determines the competence of a plaintiff to assert the matter of their complaint before the court. Since an individual lacking locus standi is an incompetent plaintiff, it follows that, in public law, government can exceed or abuse its powers with impunity provided no such "qualified" litigant seeks the intervention of the court. The position in private law claims is not entirely clear. The concept of locus standi is more synonymous to public law claims, particularly judicial review applications.
6. The question of whether a plaintiff has locus standi in public law is well settled. However, where private law rights are at stake, the question for the court to consider is whether the concept of locus standi is relevant, and if so to what extent does it affect a plaintiff seeking to enforce private law rights, albeit in the public interest.
7. The decisions of the courts in *R v Secretary of State for the Home Department ex p Fire Brigades Union and Ors* [1995] 2 WLR 1 and *R v Coventry City Council ex p Phoenix Aviation* [1995] 3 All ER 37, amply demonstrate that neither administrative law nor the courts can refuse to apply a law simply because the rule at issue is perceived to be inconvenient or undesirable. The courts by their

constitutional roles, are mandated to uphold the enacted law. The doctrine of standing exposes a fundamental difficulty that standing permits judges to disapply enacted law in apparent defiance of Parliament. It also appears to violate an important mandate of the rule of law embracing the idea of universality of law that all are equally subject to legal rules.

8. In considering the question of standing, particularly on the facts of this case, this court in determining whether the plaintiff has locus standi, must consider the doctrine of *actio popularis*. This court therefore has the power to either stretch the standing rules or even to depart from the standing requirement altogether. This approach is not confined to judicial review cases but also to private law claims. However, the concept of locus standi is more rooted in judicial review claims against administrative actions.
9. Where individuals are concerned, it will normally be fairly easy for them to demonstrate sufficient interest, so long as they are in some way personally interested in the decision they wish to challenge. For example, in *R v Independent Broadcasting Authority, ex parte Whitehouse* (1984) *Times* 14 April, a television licence holder was found to have sufficient standing to challenge a decision to broadcast a controversial film. It was indicated that every television licence holder would have *locus standi* in litigation relating to the broadcast of programmes likely to give offence. Thus, the fact that the applicant was a licence-holder, rather than simply a viewer, was enough to give her sufficient standing.
10. Similarly, in *R v IRC ex parte National Federation for the self-employed* 1982 AC 617, Lord Diplock considered access to justice a fundamental constitutional importance and remarked:

"It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were

prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped”.

11. At common law, the test for standing is whether the plaintiff has a "special interest" in the subject matter of the action. The common law focussed on the issue of locus standi in administrative law and in any event it has long been a feature of the common law as way back in 1858, in the case of *Ware v Regent's Canal Co*. Upon a review of a number of authorities, the question of standing has been part of public law, in particular applications for judicial review. Notwithstanding, the concept of standing is not limited to the assertion of public law rights. The assertion of private law rights, may also give rise to questions of standing.

12. In the instant case, the defendant has argued that the plaintiff lacks locus standi to institute an action against the 2nd and 3rd defendants and by all accounts he is just a busy body. It is necessary to look at the reasons given for such a bold assertion. In summary, AS Sesay of counsel made the following submissions which are summarised below.

1. The plaintiff has failed to show what wrong was done to him, affecting his personal rights.
2. That the plaintiff has failed to show that his own rights have been breached.
3. That the plaintiff is not resident within the jurisdiction and has not made any complaint by email, letter or whatsapp message.
4. That by article 4 and 5 of the APC constitution 1995, he is obliged to complain using the party structures.

5. That the plaintiff has not shown any personal conflict between himself and the defendants and he cannot come as a busy body or meddler.
 6. That the plaintiff has failed to show, how the election of a new executive to run the affairs of the party, under a new democratic constitution would affect him. Specifically, he has failed to show which of his interests has been affected or threatened because a party is wishing to adopt a new constitution.
 7. That the plaintiff has not shown he is a delegate or a proposed contestant and in any event what he now seeks from the court ought to have been sought from the Political Parties Registration Commission, hereinafter referred to as PPRC, as was the case in the Hinga Norman case. He has failed to show how the holding of elections affects his rights, when he has not come to court to represent a group. He argued that the plaintiff is an ordinary member and the actions against the defendant smirks of a personal vendetta. The action, he argued is frivolous and an abuse of the process. He relied upon Order 21 of the High Court Rules 2007, and a number of authorities to which I shall refer subsequently.
13. This court now has to consider whether the issues raised by the defendants, amount to an arguable case to question the standing of the plaintiff to institute this action. As I have pointed out earlier, the institution of these proceedings does invoke private law rights and public law rights. In determining whether private law rights are raised by the institution of these proceedings, consideration needs to be given to the legal status of the 3rd defendant and the relationship with the plaintiff.

The legal status of the 3rd defendant, APC party.

14. The question that one needs to ask is what the APC party is legally. The 3rd defendant is not a statutory body, neither is it a company, a partnership or a trust. The court therefore needs to examine the circumstances under which the courts get involved in the affairs of a political party, like the APC. The conduct of general and local elections in this country is heavily regulated by law. In the event that an election is not conducted properly, the law will step in to render that election result void. However, what is the situation with a political party? Will the courts get involved or should the courts get involved, if there are allegations that an election for party leader or other executive members will not or has not been conducted properly?
15. In answering this question, the first thing that one needs to understand is what the APC Party is legally. The APC not only a historical political movement, it is, by all legal indications, an unincorporated association, something that is "a creature of contract" (*Conservative Central Office v Burrell* [1982] 1 WLR 522 CA) and that is separate from a company, a partnership, or a trust. For instance, if the APC Party was a trust then, given that its political purpose is overtly non-charitable, it would offend against the law on perpetuities because of the length of time that the APC Party has existed.
16. Unincorporated associations are not legal entities that are distinct from the members that compromise it, and for them to be recognised as such requires the intervening power of a statute. The APC Party is governed by a National Delegates Conference (NDC), the National advisory committee, the national executive committee, and other committees, as provided for by article 6.2 of the 1995 Constitution. Article 6.9.1 provides that the national delegates conference NDC shall be the supreme authority of the party. The NDC as the final authority of the party, shall to the exclusion of all other organs of the

party, have the power to decide the nationwide policies of the party and amend this constitution. If an unincorporated association like the APC Party is in breach of its own rules, the remedy that an unhappy member may seek would be in respect of breach of contract, i.e. a private action.

17. There has been a long line of authorities in this country which has shown that the courts have been willing to get involved in the internal affairs of political parties who are unincorporated associations. In other commonwealth jurisdictions like the UK, in the cases of *Lewis v Heffer* [1978] 1 WLR 1061, and *Green v The Labour Party* (1991) WL 1178, the courts are prepared to become involved in the affairs of unincorporated associations if a disciplinary tribunal or a political party acts *ultra vires* or is in a breach of the principles of natural justice. Any potential challenge therefore, to the actions of an executive of a political party would need to be concerned with a breach of the APC Party's rules if it is to stand any chance of success. The breach (or indeed breaches) would to be so serious that the courts would be prepared to grant a declaration and injunction.

18. Prior to such a challenge being successful or otherwise, the issue of standing, when raised will have to be considered by the court. In *R v London Borough of Tower Hamlets ex p Tower Hamlets Combined Traders Association* [1994] COD 325, Sedley J had this to say:

“(1) The status of the applicant. In principle it did not matter that the application was an unincorporated association lacking legal personality since out of its constituent associations could be spelt the names of individuals who constituted the association.”

19. In similar vein, the names of members of the APC party can be ascertained by a list of its members. *R. v. Liverpool City Council, ex p. Liverpool Taxi Fleet Operators' Association* [1972] 2 QB 299, CA, Lord Denning MR, with whom Roskill LJ and Sir Gordon Willmer agreed, said, at 308–9:

"The taxi cab owners' association come to this court for relief and I think we should give it to them. The writs of prohibition and certiorari lie on behalf of any person who is a 'person aggrieved', and that includes any person whose interests may be prejudicially affected by what is taking place. It does not include a mere busybody who is interfering in things which do not concern him; but it includes any person who has a genuine grievance because something has been done or may be done which affects him: see Attorney General of the Gambia v. N'Jie and Maurice v. London County Council. The taxi cab owners' association here have certainly a locus standi to apply for relief".

20. There is therefore a critical distinction between public law and private law litigation. In private law the individual has to be able to show that they have a legal right which has been infringed, therefore it is fundamental that they have legal capacity to sue. I also have to take into account the wider public policy issues which have over time led to a more flexible approach to the issue of standing, Groups of residents or interested people, may choose to group together to make representations, or attend inquiries, on a matter of interest and importance to them.
21. This is particularly the case in matters concerning planning or the local environment, where the nature of the impact may often fall most directly on a group of people living in a particular area. It would be unfortunate if the law prevented them from challenging the decision which they had participated in.
22. It is clear from the relevant authorities that the matter before this court is a private law claim, albeit with powerful public law issues emanating from the claim. The essence of a private law claim is a breach of contractual terms between the parties such that would entitle the other party to bring a claim for an injunction or other relief. As I have pointed out above, the APC party is governed by its rules, ie the 1995 constitution and the national delegates

conference which has the powers to decide nationwide policies and amend the constitution. Where there an allegation that a political party which is an unincorporated association is acting ultra vires its constitution, I cannot conceive of a situation where a member of that unincorporated association would not have sufficient interest in bringing a claim seeking relief against an outright illegality.

The plaintiffs' claim.

23. The key elements of the plaintiff's claim are set out in the originating notice of motion and are set out as follows:

1. That the current national secretary general, Assistant National Secretary General, National Organising secretary, Assistant National organising secretary, National Publicity Secretary, Assistant National Publicity Secretary, and the National Treasurer of the 3rd defendant APC party are illegitimate, on the basis that they were not duly elected, as required by Article 6 (14) (1)(i) of the 1995 Constitution.
2. That the four regional chairmen of the 3rd defendant APC party are illegitimate, on the basis that they were not duly elected, as required by Article 6(13)(3)(i).
3. That the 16 districts chairmen of the 3rd defendant APC party are illegitimate, on the basis that they were not duly elected, as required by Article 6(13)(4)(i) of the 1995 Constitution.
4. That the 132 constituency chairmen of the 3rd defendant APC party are illegitimate, on the basis that they were not duly elected pursuant to Article 6 (13)(5) of the 1995 Constitution.
5. That the National Advisory Committee be declared illegitimate, if the declaration of illegitimacy is established.

24. In support of these claims, the plaintiff swore to an affidavit in which he deposed at paragraph 13 that *"instead of electing the said delegates, they were merely selected in contravention of the party constitution"*.
25. That no delegates were elected from the Womens' congress and the national youth league, in contravention of the 1995 constitution. He further averred that the entire leadership is illegitimate as they were all "selected" and not elected. However, this court has taken account of the fact that the office of the national party chairman and leader can be filled by selection. However, the court further notes that any selection/election of a national chairman and leader must be for a period of three years.
26. In simple terms the matters raised by the plaintiff, if true, would amount to illegality on the part of the 3rd defendant APC party and all office holders would be acting ultra vires of the 1995 Constitution. Where that is shown to be the case, a member of the party as the plaintiff is cannot be said to have locus standi to bring a claim, when the very essence of what he signed up to is not being fundamentally adhered to. If he lacks locus standi to bring a claim against the 3rd defendant, then the question must be asked who has the necessary standing to bring a claim?
27. It is significant to note that in Article 4 of the 1995 APC Constitution, in particular Articles 4 (i) and (iii), membership is only open to those who accept the aims, objectives, policies, programmes and discipline of the party. It is even more significant to note that in Article 5 (i) and (ii), of the said constitution, every member shall pay such fees and levies as may be prescribed by the national executive and having paid such fees, every member shall abide by the provisions of the constitution. It seems to me that should it be a requirement that every member shall abide by the provisions of the 1995 APC Constitution, I see no lawful basis for executive members who are themselves members to

elevate themselves to a position where they consider the requirement to abide by the constitution does not apply to them equally as to other members.

28. I have also had regard to Article 10 of the 1995 Constitution which provides that all officers shall hold office for a period of three years unless re-elected by the party convention. Where it is alleged that an officer was not elected into office and even where elected into office their mandate has expired by virtue of their not having being re-elected in accordance with the said Constitution, a party member undoubtedly has a right and has sufficient interest and it is indeed his business to seek redress to enforce the provisions of the constitution, upon which all members of the party are bound.

29. The use of the words "every member" means just that. Every member be you an executive or ordinary member must abide by the constitution and where the constitution requires election for a period of time, nothing less will do. Neither will selection suffice. Consequently, I hold that where a member or a defined group of members are acting outside of the provisions of the constitution that they are required to abide by, they are acting ultra vires the constitution and a member of the party would have sufficient interest in the matter to bring a claim seeking appropriate relief from the courts.

Lack of a complaint by the plaintiff.

30. The 2nd defendant has argued that the plaintiff did not complain about any grievances that he had. The question this court would ask itself is to whom must the plaintiff complain to when the essence of his complaint is that those to whom he may wish to complain about the alleged illegality are themselves the products of the very illegality he wishes to complain about? It will certainly defeat the purpose to complain to persons who lack the locus standi to receive and adjudicate on the complaint.

31. I have carefully considered the 1995 Constitution and I note it makes no provisions as to how aggrieved members can exercise redress via a complaints mechanism established under the constitution. The complaint mechanism is provided for by way of an appeal under Article 8 of the constitution in relation to appeals against a decision of any organ of the party, and only against a disciplinary sanction imposed. A member aggrieved only has the option to refer the complaint to the PPRC or the courts.

Complaints to PPRC

32. This court has considered whether there is a viable option of an appeal to the PPRC, for which the plaintiff ought to have availed himself, instead of coming to this court for redress. The PPRC is the 4th defendant in this case and is established by section 2 (i) of the Political Parties Act No 3 of 2002. Its functions are set out at section 6 of the Act. The key function of the PPRC is the *“registration and supervision of the conduct of political parties in accordance with the constitution and the Act”*. This court has considered whether there was a complaint to the PPRC.

33. There is nothing on the face of the evidence before the court, that demonstrates that the plaintiff did make a complaint to the PPRC. However, matters of a similar nature were made by way of a complaint to the PPRC by other members. This letter of complaint was exhibited as Exhibit RSS9, dated 6th January 2020. The letter made reference to section 6 and 24 of the Act. The response from the PPRC is exhibited as Exhibit RSS10.

34. The 4th defendant PPRC in a considered ruling having heard from the parties made the following findings:

1. That an application brought under section 6(2)(d) of the 2002 Act, can only be brought by the leadership cadre of the party or by the party itself.

2. That none of the applicants were in cadre of the hierarchical structure and not in the leadership cadre of the APC party.
3. That the applicants were bereft of legal capacity to bring the application to the PPRC.
4. Further comments about the conduct of political party leaders were made by the PPRC including an advisory notice that there was an urgent need for an amendment to the Political Parties Act 2002, to reflect the legislative intent of sections 34 and 35 of the 1991 Constitution and to make the commission more functional and effective.
5. That the generality of section 6(1) read with the omnibus nature of section 6 (2)(e) are not applicable to them by law and as such were not intended to cater for ordinary political party membership, not captured in section 6 (2).
6. That the only fora for redress of aggrieved members is in the courts.

35. With such a ruling by the 4th defendant, it is inconceivable that the plaintiff who is aggrieved and with no legal mechanism of legal redress within his party and with no legal redress within the 4th Defendant PPRC, would have any other legal remedy apart from the court. This court would not turn away a plaintiff in the position of this plaintiff, on the grounds that he lacks sufficient interest in the subject matter and consequently lacks standing to institute an action.

36. As Lord Denning remarked in the case of *Southwark LBC v Williams [1971] Ch 734*, where defendants in dire need of housing accommodation entered empty houses owned by the local authority, it was held that the defence of necessity did not apply. Lord Denning MR justified the rule on the ground that:

"... if hunger were once allowed to be an excuse for stealing, it would open a door through which all kinds of lawlessness and disorder would pass... . If homelessness were once admitted as a defence to trespass, no one's house could be safe. Necessity would open a door which no man could shut. It would not only be those in extreme need who would enter. There would be others who would imagine that they were in need, or would invent a need, so as to gain entry."

37. As Lord Edmund Davies LJ held in the same case:

"[T]he law regards with deepest suspicion any remedies of self-help, and permits those remedies to be resorted to only in very special circumstances. The reason for such circumspection is clear – necessity can very easily become simply a mask for anarchy."

38. I therefore conclude in like terms that "shutting the door in the face of the plaintiff seeking justice by reliance on an outdated concept of locus standi, would open the gates to political lawlessness and illegality, thereby allowing the concept to be undeservedly used as a mask for political anarchy.

39. Counsel has relied upon several authorities including the Hinga Norman case, which I do not find helpful to his case. I shall deal with the Hinga Norman case as it is a decision of the Sierra Leone Supreme Court. The others he relied upon are persuasive authorities and I am not so persuaded by them. With respect to the Hinga Norman case, I have had regard to the provisions of section 122(2) of the 1991 Constitution which requires all other courts to follow decisions of the Supreme Court on questions of law.

40. *Renner-Thomas CJ* at page 23 of the judgement concluded that an enquiry into standing should thus focus on the party who brings the matter before the court and not on the issues to be adjudicated. He went further to hold that the present position of the law in Sierra Leone is that set out in Halsbury's laws

of England 4th edition Vol 1 (1) at paragraph 164 under the rubric "locus standi for declaratory relief", which provides as follows:

"In an action the plaintiff claiming a declaration must have some private, legal right, or a legal interest of which the law will take cognisance and the interest must not for example be merely a matter of professional ethics. Except where statute otherwise provides, a private person cannot bring an ordinary action to assert a public right whether his claim is limited to declaratory relief or not".

41. The court had regard to the case of *Yambasu and Ors v Ernest Bai Koroma & Ors* (S.C.3/2002, a judgement delivered on 22nd day of June 2004, unreported in which Wright J.S.C. on the question of locus standi and the requirement of an interest likely to be affected, had this to say:

"I disagree with learned counsel for the defendants that the plaintiffs do not have a locus standi in this matter. In my view, the plaintiffs in the action do have an interest that is most likely to be affected by this action"

42. There are thus, at least two decisions of the Supreme Court on the issue of locus standi in the enforcement of private legal rights. This shows that such matters are best decided on their own facts. Having reviewed all the authorities outlined above, it is unarguable to suggest that the plaintiff lacks a sufficient interest in this case and cannot therefore enforce a private right against his own party, whose executive members are acting ultra vires of their constitution which governs their conduct, particularly so as the 4th defendant PPRC has directed persons in his capacity to approach the court for redress.

43. Whilst the key issue for the plaintiff is the enforcement of private law rights, these rights also have a significant public interest. Section 35 (2) of the 1991 Constitution, provides that:

"the internal organisations of a political party shall conform to democratic principles and its aims, objectives, purposes and programmes shall not contravene, or be inconsistent with, any provisions of this Constitution"

44. Thus it cannot be argued that a member of a political party whose party officials are allegedly acting undemocratically does not have standing to enforce the private law rights which they have by virtue of being members of the party, even though that enforcement sought is also in the public interest. In the circumstances, I hold that the plaintiff does have a sufficient interest in this matter and he does have standing to institute this action. The objection brought by the 2nd defendant is therefore overruled. The several prayers prayed for on the face of the motion dated the 5th day of March 2021, are refused. The issue of costs would be dealt with in due course.

45. I shall now deal with the objections brought by the 3rd defendant in their motion. By way of the said notice of motion, dated the 4th day of March 2021, the 3rd defendant seeks a number of orders as prayed for on the notice of motion. I must at this stage point out that Mr Macauley who appeared for the 3rd defendant, abandoned prayer 1(b) on the motion. With respect to the 2nd prayer, he prayed for a variation of the injunction on the grounds that the plaintiff did not make a full and frank disclosures of all relevant facts when he sought and obtained an ex parte interim injunction. In support of the application is the affidavit sworn to by the 2nd defendant, dated 4th day of March 2021.

46. In summary, Mr Macauley alleged that the originating process used does not comply with Order 5 rule 3 of the High Court Rules 2007 and is therefore irregular. He suggested the proceedings should have been commenced by originating summons. He sought a strike out of the proceedings amongst a whole lot of other irregularities. In simple terms, Order 31 rule 4, allows the

court to receive an affidavit sworn for the purpose of being used in a cause of matter, notwithstanding any defect in its form and notwithstanding the irregularities raised by Mr Macauley, I am prepared to receive it accordingly.

47. With respect to Order 5 rule 3, it is necessary for this court to examine the context of the arguments raised by counsel.

3. (1) Proceedings by which an application is to be made to the Court or a judge under any enactment shall be begun by originating summons except where, by these Rules or by or under an enactment the application is expressly required or authorized to be made by some other means.

48. Mr Macauley has not provided adequate reasons for his assertion that the Originating summons process ought to have been used. In any event, as I read the application, the plaintiff is invoking the original jurisdiction of the High Court and the use of the Originating notice of motion does not nullify the proceedings. In any event assuming the use of the Originating notice of motion is wrong, the defendants have taken fresh steps in acceptance of its use in any event.

49. Further, Order 2 rule 1 provides clearly that an irregularity shall not nullify the proceedings. Sub rule 3 also prevents the court from wholly setting aside any proceedings on the grounds that it was begun by the wrong process other than the one employed. In any event, pursuant to order 2 rule 2, the application shall not be allowed unless it is made within a reasonable time and before the defendant took any fresh steps after becoming aware of the irregularity. I will therefore not allow the application in any event, for the reasons stated above. The first prayer is therefore refused.

50. For the same reasons I have borne in mind that the application was an ex parte application, made in circumstances of urgency and in any event, notwithstanding the defect, the defendants have entered appearance to the

said motion. The provisions of order 8 rule 4 are merely administrative, and where it is not so sealed, the provisions of Order 2 rule 2 apply. The application is for the 1st prayer on the grounds relied upon in Order 8 rule 4 is also refused.

The second prayer

51. Mr Macauley has sought a variation of the injunction order on the grounds that full and frank disclosure has not been given by the plaintiff. He relied upon the affidavit in support in its entirety. I have considered the affidavit in support in a bid to discover the allegations of a lack of full and frank disclosures relied upon. In that respect, I have had regard to paragraphs 10, 12 and 13. The factual contents do not in my view amount to material non-disclosure for the purposes of obtaining an ex parte interim injunction. I do not propose to go into the reasons for my conclusions, but having regard to the notices at exhibits D1-6, in particular the timetable disclosed for the convention, it is not beyond the bounds of possibility that the said convention could have been held at any time between 15th January 2021 and 15th July 2021. The plaintiff cannot be faulted for acting as he did to preserve the status quo.

52. Before me, Mr Macauley appeared to have abandoned the non-disclosure argument as a ground for seeking variation of the injunction order and quite sensibly too. He canvassed this court to take into account the fact that the 3rd defendant wants to adopt a new constitution and the election cycle had already kicked off. The flagbearer should be elected at least two years prior to the election and that the current executive will only go to a convention to adopt the constitution and do nothing else and that NAC has the powers to carry out the functions of the executive. He informed the court that the review

of the constitution had been distributed and copies can be given to the plaintiff.

53. JM Jengo for his part informed the court that the plaintiff has no issues with variation, as long as the issues they have raised are dealt with. He relied upon their affidavit in opposition, dated 9th March 2021 and exhibits attached.

Variation of the injunction

54. I granted an injunction in this case as I was satisfied then that there were serious triable issues that needed to be tried and it was necessary to grant an injunction, pending the hearing and determination of the substantive action. I still remain of the view that there are still serious issues that need to be considered and in that respect the injunction ought to continue, pending the hearing and determination of the substantive action.

55. Notwithstanding those conclusions on the continuation of the injunction, I have had regard to the issue of the variation of the injunction sought by counsel for the 3rd defendants, for the reasons given. In that regard I have considered the importance of political parties in a democracy. These include and are not limited to the following:

1. They make Governments accountable for its actions;
2. Prevents the rise of anti-party politicians.
3. Habituate the public to democratic norms and practices.
4. Articulate and aggregate interests.
5. Recruit, nominate and socialize political leadership.
6. Form and sustain governments.

56. Parties make the government accountable in several ways such as through strengthening the opposition, helping voters identify past performances,

providing checks and balances on the executive and diminishing the power of dominating personalities. They also help the opposition effectively challenge the incumbent government. Without political parties, the ability of the democratic opposition to maintain a united front is very difficult. Opposition movements without parties tend to be fragile, fragmented and incoherent, with limited capacity to mobilize, organize and coordinate collective action.

57. It is for these reasons and many more that the constitution of Sierra Leone Act No 6 of 1991, in Section 34 (4) recognises the importance of political parties by the creation of the Political Parties Registration Commission and the enactment of the Political Parties Act 2002, in the democracy of the country. Further in section 35(2) of the Constitution, a specific requirement is enacted to ensure that the internal organisation of a political party shall conform to democratic principles, and its aims, objectives, purposes and programmes shall not contravene, or be inconsistent with, any provisions of this Constitution.

58. Where a political party such as the 3rd defendant has indicated a willingness to abide by democratic principles in the review and adoption of a new constitution which it is suggested is more democratic, this court is duty bound to ensure that assistance is given to the 3rd defendant to ensure it maintains the spirit and tenets of section 35(2) of the 1991 Constitution, by doing all it can within the law, to facilitate the process of compliance with democratic tenets.

59. In that regard, I am satisfied that this court should exercise its discretion to vary the injunction temporarily, in order to assist the 3rd defendant to adopt its new democratic constitution, pending the hearing and determination of the substantive action on the legitimacy or otherwise of the organs challenged within the party.

60. However, in varying the injunction, I have to comply with existing laws as expressed by the wishes of parliament and pay due deference to the current 1995 constitution of the 3rd defendant. I also have to bear in mind that the challenge brought by the plaintiff has not been fully determined and that there are serious issues that remain to be determined by this court.
61. I have fully considered the evidence submitted by all parties in this case and in view of the fact that this court is yet to make a determination on the substantive issues, I consider it expedient at this not to comment upon the specifics of the evidence at this stage. However, I need to consider how best to assist the 3rd defendant to adopt its constitution whilst maintaining the rule of law, in the light of the alleged illegalities raised by the plaintiff, in relation to the occupancy of the respective offices within the party, by executive members.
62. I have borne in mind the question of delegates to attend the National Delegates Conference and their eligibility. The 1995 constitution sets out the eligibility criteria of the delegates but a number of these delegates are subject to the allegations of illegality of the occupation of their offices. Their eligibility to attend a national delegates conference as delegates rests squarely on the legitimacy of the occupation of their respective offices. Delegates who go to the National delegates conference as delegates must be entitled to do so legitimately and must have no question marks hanging over their eligibility. A prospective delegate cannot expect to take part in a legitimate process to adopt a new constitution, of a party when the very basis of their own legitimacy to act as a delegate is being questioned.
63. I shall set a time table to enable the amended constitution to be adopted at an emergency national delegates conference with modifications.

64. In addition, I am satisfied that the emergency national delegates convention can still be held in compliance with the 1995 Constitution. The National delegates conference is provided for in Article 6.91 of the 1995 Constitution. Paragraph 6.9.2 (i) provides that a national delegates convention can be held at least once in three years. Article 6.9.2 Sub article (ii) provides that an emergency national delegates conference may be convened as and when necessary by NAC. Sub para iii provides that the quorum for such a conference shall be one third of the accredited delegates at the conference.

65. In those circumstances, I am satisfied that the emergency national delegates convention can be held with the required quorum.

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

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

- VII. The Assistant National Publicity Secretary.
 - VIII. The National Treasurer.
 - IX. The five regional chairmen.
 - X. The 16 districts chairmen.
 - XI. The 132 constituency chairmen.
4. All other members of the National delegates conference **(not restrained in paragraph (66)((3) above)** are eligible to take part in the emergency national delegates conference., as delegates.
5. The 3rd defendant shall ensure that the following elections are conducted **no later than 25th June 2021** from the date of this order:
- I. Elections of twenty delegates for the women's congress;
 - II. Elections of twenty delegates for the youth league;
 - III. Elections of five delegates by each constituency.
6. A full delegates list shall be prepared by the 3rd defendant and submitted to the 4th defendant PPRC, **no later than 4pm on Friday the 9th day of July 2021.**
7. The 3rd defendant shall publish a copy of the original draft constitution as submitted by the Constitutional Review Committee in two daily national newspapers with wide circulation, **within 7 days** of this order; and in addition;
- I. Serve a copy of the said draft constitution on this court;
 - II. Serve a copy of the said draft constitution on the solicitors for the plaintiff;

- III. Make a copy available at the registered headquarters of the party in Freetown and every regional district and constituency office around the country and in the diaspora.
 - IV. Serve a copy of the said draft constitution on the 4th defendant PPRC in accordance with the provisions of section 24 of the Political Parties Act 2002.
8. The 4th defendant PPRC shall determine the time for the coming into effect of the amended constitution, in accordance with the provisions of section 24(2) of the Political Parties Act no 3 of 2002.
 9. The 3rd defendant shall hold the emergency national delegates conference **within 56 days**, from the date the 4th defendant determines the amended constitution shall have come into effect.
 10. The 4th defendant PPRC shall supervise the conduct of the emergency national delegates conference.
 11. There shall be no orders as to costs, with respect to the application made by the 3rd defendant.
 12. The 2nd defendant shall pay the costs to the plaintiff with respect to the unsuccessful application, summarily assessed at **Le5,000,000.00, forthwith.**
 13. The matter shall be adjourned to **Monday the 20th day of September 2021** for the hearing and determination of the substantive action.
 14. All matters each party intends to rely upon, if not already served in accordance with the directions given on **13th September 2021**, shall be filed in accordance with those directions, in particular **directions 5 (1-4) no later than 4 pm on 13th day of September 2021.**

15. Costs of the substantive application shall be in the cause.

The Hon Mr Justice A Fisher J