C.C. 33/2018 2018 C.
NO. 25

IN THE HIGH COURT OF SIERRA LEONE

(GENERAL CIVIL DIVISION)

BETWEEN:

Media One Centre - Plaintiff

3 Mammah Street

Freetown

AND

Electricity Distribution and Supply Authority (EDSA) - 1st Defendant

5 Murray Town Road

Freetown

Alhaji Kargbo

5 Murray Town Road - 2nd Defendant

Freetown

Mohammed Jalloh

5 Murray Town Road - 3rd Defendant

Freetown

Counsel: Fatmata Forster and R. A. Nylender for the Plaintiff/ Respondent

E. N.B. N'gakui Esq. for the Defendants/ Applicants

Ruling on an Application for a Stay of Proceedings, Pending the Compliance with Section 3(1) of the State Proceedings Act N0. 14 of 2000, Delivered on Thursday, 22st November, 2018 by Hon. Justice Dr. Abou B. M. Binneh-kamara

Purposefully, on 12th November, 2018, counsel for the Defendants/Applicants (E. N. B. N'gakui Esq.), filed in an interlocutory application by way of a notice of motion (alongside the requisite affidavit in support thereof) to this court for a stay of all the proceedings, contingent on the writ of summons, dated 18th October, 2018, commencing this action. The application is predicated on the contention that the Plaintiff/Respondent did not comply with the requisite provision in subsection (1) of section 3 of the State Proceedings Act, No. 14 of 2000. Nevertheless, on 13th November, 2018, counsel for the Plaintiff/Respondent (Fatmata Forster) filed in an affidavit in opposition to the affidavit dated 12th November, 2018, supporting the notice of motion dated 12th November, 2018.

The aforesaid motion was slated for hearing on Thursday, 15th November, 2018, consonant with Order 8 Rule 3 (2) of the High Court Rules, Constitutional Instrument, N0. 8 of 2007 (hereinafter referred as the High Court Rules, 2007). At the hearing, E. N. B. N'gakui Esq., submitted that the said provision in Act N0. 14 of 2000, makes it mandatory for the Plaintiff/Respondent to serve the Attorney-General and Minister of Justice with a three month notice, prior to the commencement of this action, because the 1st Defendant/Applicant {The Electricity Distribution and Supply Authority (EDSA)} is an institution/or department (in the Ministry of Energy) of the Government of Sierra Leone.

Meanwhile, counsel craved the court's indulgence to direct the Plaintiff/Respondent to serve the Attorney-General and Minister of Justice with the requisite notice, pursuant to subsection (2) of section 4 of the same Act N0. 14 of 2000. Counsel further requested the court to adjourn/or stay the proceedings, until the Plaintiff/Respondent fully complies with the specific dictates of subsection 1 of section 3 of the said statute. Moreover, counsel referenced section 4 (1) of the Interpretation Act N0. 8 of 1971 and sections 4, 12, 13 and 23 of the National Electricity Act, N0. 16 of 2011 in justification of the submission that the 1st Defendant/Applicant (EDSA) is a state institution in the Ministry of Energy.

Emphatically, counsel finally noted that the aforementioned provision, requiring a claimant/plaintiff to serve the Attorney-General and Minister of Justice with the requisite notice of intention to commence proceedings is quite compelling enough to convince all and sundry that EDSA is a functional state institution. Contrariwise, whilst responding to the foregoing postulations, Fatmata Forster denied, wholesale, the applicability or imputation, of the provisions in sections 3 and 4 of

Act N0. 14 of 2000 to the 1st Defendant/Applicant. She intuited that EDSA is not a state institution in the administration of the Government of Sierra Leone. She rather asserted that EDSA does not fall within the definition of the 'Government of Sierra Leone'; as stated in subsection (1) of section 4 of the Interpretation Act No. 8 of 1971, because of the following reasons:

1. EDSA's Board does not perform or exercise an executive function of the state.
2. Act N0. 16 of 2011 clearly established two distinctively different institutions: The Electricity Generation and Transmission Company (EGTC) and EDSA. Therefore, sections 2, 4, 12, 13 and 23, which counsel on the other side relied on in justification of his legal submissions do not apply to EDSA; they are only applicable to EGTC.
3. The Board of Directors of EDSA established by subsection (1) of section 26 of Act N0. 16 of 2011, does not perform or exercise any executive functions of the Government of Sierra Leone.
4. The composition of EDSA's Board of Directors shows that it is not all of its members that are in the employment of the Government of Sierra Leone {see sections 26 (1) and 34 of Act N0. 16 of 2011}.
5. That section 25 which establishes EDSA does not confer governmental powers to it. It rather confers juridical status to it as a 'corporate entity' that has the right to sue and be sued in its own corporate name.

Alternatively, counsel contended that assuming without acceding that EDSA is a state institution that exercises governmental powers, then it is not the business of

counsel for the Defendants/ Applicants to either defend this action or represent the state. Counsel justified this alternative submission in subsections (1) and (2) of sections 2 and 3 of the Law Officers Act, 1965. Counsel conscientiously concluded that section 3 in particular, gives the Attorney-General the unfettered discretion to appoint any counsel to represent her; and that counsel for the Defendants/Applicants has not provided any evidence in this court, authorizing him to represent the Attorney-General in this action. To this alternative submission, the Defendants'/Applicants' counsel referenced section 42 of Act N0. 16 of 2011, which confers powers on EDSA to seek the services of any consultant to efficaciously facilitate its activities and operations.

Having clearly presented the dialectics that underpinned the submissions of both counsels, I will now attempt to put the relevant provisions of the respective statutes that punctuated their arguments into context; and simultaneously deconstruct them, for the unequivocal meanings, that will resolve the contentions that characterised the application and the response thereto. In doing this, it should be borne in mind that I am unambiguously guided by the 'strict constructionists' (as opposed to the 'intention seekers') approach in deconstructing the statutes that informed the contentious issues, which this court must unravel, if I am to clinically rule on the orders as prayed for on the face of the motion, dated 12th November, 2018.

I will set out the pieces of legislation that are cited in the application and the response thereto, to establish whether both counsels have rightly or wrongly relied on those statutes in justifications of their seemingly convincing submissions in support of, or in opposition to the application. Meanwhile, the following are the

relevant statutes, which must be construed by this court to determine whether the application should or should not be granted:

1. The Interpretation Act N0. 8 of 1971;
2. The State Proceedings Act N0. 14 of 2000;
3. The National Electricity Act N0. 16 of 2011, as Amended in 2018; and
4. The Law Officers Act, 1965.

The principal thrust of the contentions which this court must resolve (in connection with the application which it must rule on) are rationalised in the following questions:

1. What is meant by Government in the context of the Interpretation Act N0.8 of 1971?
2. What is meant by Government in the context of the State Proceedings Act N0.16 of 2000?
3. Are there vividly sparkling provisions in the National Electricity Act N0.16 of 2011, the State Proceedings Act N0. 14 of 2000 and the Interpretation Act, N0. 8 of 1971, justifying the functions and functionality of EDSA as a state institution in the Ministry of Energy?

I will now attempt to answer the aforementioned questions sequentially. Uncontestably, regarding the first question, section 4 (1) of Act N0. 8 of 1978 describes 'Government' as 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. The phrase: 'which shall be deemed to be a person' in parenthesis, articulates the juridical status of the Government of Sierra Leone as 'a legitimate person'.

Thus, every Government institution that exercises 'executive power' in Sierra Leone is a 'legitimate person' that has the right to sue or be sued in its own name. Essentially, the definition of 'person' in the same section 4 (1) subsumes any 'company' or 'association' or 'body of persons', ('corporate' or 'unincorporate'), as well as an 'individual'. So, 'Government' as a 'person' in effect means 'Government' as a 'body of persons'. Circumspectly, any circumstance in which the Government's executive power is exercised or performed is deemed to be a state activity/or operation. In the contexts of constitutional and administrative law and public administration, the Government's executive functions (powers) are rationalised in the activities and operations of Ministries, Departments and Agencies; headed by 'public officers'.

By section 171 (1) of the Constitution of Sierra Leone, Act N0. 6 of 1991, a 'public officer' means a person holding or acting in a 'public office'. And the definition of 'public office' in the same subsection, encompasses any office for which the emoluments of that office are directly paid out of the 'Consolidated Fund' or directly out of 'moneys appropriated by Parliament'. Significantly, it is discernible in the foregoing analysis that although the semantic value of the word

'Government' as explicated in section 4 (1) of the Interpretation Act, NO. 8 of 1971, appears to be quite clear, I have relied on Act NO. 6 of 1991, to articulate the meanings of 'public office' and 'public officer', which are considered to be crucial in the exercise/or performance of state functions in the name of the 'Government' of Sierra Leone.

Concerning the second question, I reckoned that section 1 (the interpretation section) of the State Proceedings Act, NO. 14 of 2000, does not define the word 'Government'. But the section defines a plethora of wards and phrases, including the word 'officer'. And the semantic value of the word 'officer' in the said statute, contextually dovetails with the meaning of 'public officer', enshrined in section 171 (1) of Act NO. 6 of 1991. By section 1 of the State Proceedings Act NO. 14 of 2000, an 'officer' in relation to the 'Government' of Sierra Leone, includes a 'minister' and any 'officer of the Government'. Naturally, a minister or any 'officer of the Government' exercises their functions and functionalities in accordance with 'statutes' and/or 'statutory instruments' made by Parliament.

And the same interpretation section of Act NO. 14 of 2000, defines a 'statutory duty' as any duty imposed by or under any 'enactment'. 'Enactment' here, means an act of Parliament. Significantly, by the dictates of section 2 of the same State Proceedings Act, NO. 14 of 2000, a person that has any claim against the 'Government', can have it enforced by instituting proceedings against the 'Government' in a court of competent jurisdiction. Section 3 (1) demands that no action shall be commenced against the 'Government', pursuant to section 2, if the claimant/plaintiff or his attorney or agent, has not served the Attorney-General,

with a notice of intention to commence the proceedings, prior to the actual commencement of the proceedings.

For all intents and purposes, section 3 (2) is indicative of how must the notice referenced in subsection (1) be framed before it is sent to the Attorney-General. Alas! It must contain the cause of action, the name and place of abode of the intended claimant and the relief that is sought. Purposefully, subsection (1) of section 4, espouses the circumstances, pursuant to which proceedings can be commenced against the 'Government', without any need to serve the notice stipulated in subsections (1) and (2) of section 3 on the Attorney-General.

And the circumstances contemplated for non-compliance in subsection (1) of section 4, unequivocally resonate with the original exclusive jurisdiction of the Supreme Court, relating to the interpretation and enforcement of Act N0. 6 of 1991 (section 124), the enforcement of fundamental human rights (section 28) and for a declaration that an enactment and/or anything done under it, contravenes the country's supreme law (the Constitution). Moreover, it is quite important for me to set out the provision in subsection 2 of section 4 wholesale; as it does not nullify the proceedings for non-compliance of the provisions in subsections (1) and (2) of section 3 of Act N0. 14 of 2000. The provision thus reads:

> *Where, in any proceedings against the Government there is failure to give the notice referred to in subsection (1), the court before which the proceedings are taken shall not dismiss the proceedings but shall direct the Plaintiff to give the Attorney-General the requisite notice and adjourn the proceedings accordingly.*

Furthermore, section 7 concerns itself with some of the circumstances, consequent on which the Government cannot be held liable for the activities and operations of its operatives. These circumstances, include, the failure of a judicial officer to perform his functions; and any act relating to the neglect or default of an 'officer' of 'Government', unless:

> *The officer has been directly or indirectly appointed by the Government and was, at the material time, paid in respect of his duties as an officer of the Government wholly out of public funds; or out of monies appropriated by Parliament...*

Meanwhile, I reckoned that I have meticulously referenced a plethora of provisions in the State Proceedings Act NO. 14 of 2000, to guide the analysis that will result in a well thought out ruling, which will uphold or negate the contentious interlocutory application, with which this court is faced. At this stage, it is legally and rationally expedient to examine the legal and constitutional circumstances that culminated in the enactment of the State Proceedings Act NO. 14 of 2000, before assessing whether its provisions are applicable to the functions and functionalities of EDSA and its personnel.

In the case of the All People's Congress v NASMOS and Another (S.C NO. 4/96) {1999} SLSC (26th October, 1999), Nylender J., a Judge of the High Court of Justice, was faced with an interlocutory application by way of notice of motion dated 30th April, 1996, to set aside the writ of summons, dated 9th April, 1996, for irregularity and/or formality, on the ground that the Plaintiff failed to comply with the provisions of the Petitions of Right Act, Cap. 23 of the Laws of Sierra Leone, 1960. The said writ of summons was issued and served by Serry-Kamal and Co. on behalf

of the APC Party against NASMOS and the Ministry of Social Welfare, Youths and Sports, for a number of orders as prayed for on the face of the said notice of motion.

When the motion came up for hearing, J. G. Kobba Esq. argued that the court had no jurisdiction to hear the matter because the Plaintiff failed to comply with sections 4 and 5 of cap. 23. Section 4 of the said statute articulated how an action was to be commenced against the 'Government'; and section 5 espoused that a 'fiat' had to be issued, prior to the commencement of any action against the 'Government' of Sierra Leone. Serry-Kamal responded that section 133 (1) of Act N0. 6 of 1991, expressly amended sections 3, 4 and 5 of Cap. 23.

Nylender J., by way of case a stated as a constitutional reference, referred the matter to the Supreme Court for an interpretation of section 133 (1) and (2) of Act N0. 6 of the 1991, pursuant to section 124 (2) of the same statute (the Constitution). Nevertheless, it was the Supreme Court's interpretation of the said section 133 (1) that culminated in the abolition of the petitions of right process rationalised in particularly Cap. 23 of the Laws of Sierra Leone, 1960. Meanwhile, Nylender J., could not have attempted to interpret section 133 (1) and (2) of the Constitution of Sierra Leone, Act N0.6 of 1991, because he was conspicuously prohibited by section 124 (2) of the same constitution from doing so.

Unlike Nylender J.'s situation, I am not compelled by the provision of section 124 (2) of Act N0. 6 of 1991, to stay this proceeding, pending the determination of the question of law that is raised in the application, with which I am faced. I am rather obliged to grant or not to grant the application, on the basis of my interpretations of the natural/normal statutory provisions that are not coterminous with

constitutional provisions, which I do not have jurisdiction to interpret. This however leads me to the third question which I posed above. For ease of reference, I will again set forth the said question as follows:

> *Are there vividly sparkling provisions in the National Electricity Act N0.16 of 2011, the State Proceedings Act N0.14 of 2000 and the Interpretation Act, N0.8 of 1971, justifying the functions and functionality of EDSA as a state institution in the Ministry of Energy?*

I will now proceed to unravel the aforementioned question, which certainly underpins the contentious application, which this court must rule on. The principal thrust of the question, is whether there are statutory provisions that legally justify the functionality of EDSA as a 'Government' institution. The National Electricity Act, N0. 16 of 2011, inaugurated and simultaneously incorporated the EGTC and EDSA. Both institutions can therefore be regarded as 'corporate entities'. The definition of a 'corporation' in the Interpretation Act, N0. 8 of 1971, encapsulates a 'statutory corporation', a company formed and registered under the Companies Act (Cap. 249) or the Companies Act, 1924, and any Company to which Part IX of the Companies Act (Cap. 249) applies.

However, Cap. 249 was repealed and replaced with the Companies Act No. 5 of 2009. Henceforth, issues relating to 'corporate affairs' in Sierra Leone are handled by the Corporate Affairs Commission, created by section 2 of Act N0. 5 of 2009. Since the inauguration of Act N0. 5 of 2009, references to the formation and registration of companies, pursuant to Cap. 249 in Act N0. 8 of 1971 (The Interpretation Act) are taken to mean references to the corresponding requisite provisions in the Companies Act N0. 5 of 2009. Consonant with the meaning of

'corporation' in Act N0. 8 of 1971, it is discernible that every 'incorporated' (as opposed to an 'unincorporated') entity is considered a 'corporation'.

By parity of reasoning, an attempt to further deconstruct the word 'corporation' for meaning in the context of Act N0. 8 of 1971, reveals that a 'public corporation', which is different from 'a company limited by shares or guarantee', are all generically regarded as 'corporations'. So, it stands to reason that Act N0. 8 of 1971, cannot be entirely incisively relied upon in the determination of what a 'corporation' is in the context of the Electricity Act, No. 16 of 2011. Thus, it is legally expedient to pinpoint the fundamental distinctions between particularly a 'company limited by shares' as a 'corporation' and a 'public corporation' as a 'corporation'.

Legally speaking, a 'public corporation' is specifically incorporated by its own specific statute to provide social amenities at affordable rates for the benefit of the entire citizenry. The requisite finances of a public corporation do not come from private sources; they are principally generated through legitimate processes stipulated in the statute that incorporated it. And its functions and functionalities, are clearly devoid of profit maximization, but are geared towards the provision of essential public services for societal/national consumption.

A public corporation is therefore undoubtedly not a privately owned entity. It is therefore a state owned entity. Unlike a public corporation, a company limited by shares, is privately owned. It can either be a public limited liability company or a private limited liability company, depending on the provisions of Act N0. 5 of 2009, pursuant to which it is formed and registered. It functions and functionalities are

characterised by profit maximization; and its principal sources of finance are not unconnected with private sources.

The question now arises: Is EDSA a public corporation that came into existence, pursuant to its own specific statute, articulating its functions and functionalities; or is it a public or private limited liability company that came into existence, pursuant to the requisite provisions of Act N0. 5 of 2009? Thus, it cannot be denied that EDSA as an institution did not come into existence, pursuant to any provisions in Act N0. 5 of 2009. It is undisputedly clear that EDSA came into existence, consonant with the requisite provisions of Act N0. 16 of 2011.

It provides electricity supply (public service and social amenity) for the entire citizenry; section 43 of Act N0. 16 of 2011, establishes its 'statutory sources' of finance, devoid of private sources; therefore it is a 'public corporation' as opposed to a 'public' or 'private' limited liability company. Having established that EDSA is a public corporation, I am obliged to give credence to Fatmata Forster's response to E.N.B. N'gakui's submission on the point that sections 4, 12, 13 and 23 of Act N0. 16 of 2011, are not applicable to EDSA; they are rather conspicuously applicable to EGTC.

Thus, section 4 deals with the composition of EGTC's Board of Directors; section 12 empowers the Minister of Energy to give general directions to EGTC on matters of policy; section 13 concerns itself with the functions and functionality of the Director-General; and section 23 encompasses EGTC's responsibility to prepare and forward its annual reports, including its annual accounts and financial records to the Minister of Energy, for onward transmission to Parliament for the requisite vetting and scrutiny of the Public Accounts Committee and the House of

Parliament. Undisputedly the said sections do not have anything to do with the activities and operations of EDSA. So, E.N.B. N'gakui's submission on this point can best be described as an intuition that is not founded in the very statutory provisions he relied on in justification of why the orders as prayed for should be granted.

However, the next point that is to be addressed is whether as a 'public corporation' EDSA is a 'Government' institution. Since EDSA is not a functional institution in the private sector and did not come into existence, pursuant to the provisions in Act NO. 5 of 2009, neither does it generate its finances from sources outside the purview of section 43 of Act NO. 16 of 2011 (non-private sources), it cannot be legally regarded as a functional private institution, that is outside the management, control and supervision of the state, through the 'Government'. This legal position is bolstered by the following findings:

1. *EDSA is governed by a governing body known as Board of Directors. And the composition of the Board takes in the Chairman, the Permanent Secretary of the Ministry of Energy, the Financial Secretary in the Ministry of Finance, a representative of the Sierra Leone Association of Engineers, a representative of Sierra Leone Chamber of Commerce, Industry and Agriculture, a representative of the Association of Manufacturers, a representative of Consumers Association and the Director-General. Apart from the Permanent Secretary in the Ministry of Energy and the Financial Secretary in the Ministry of Finance, the other members of the Board are appointed by the President on the recommendation of the Minister (the Minister of Energy), subject to the Approval of Parliament {see section 26 (1) and (2) of Act NO. 16 of 2011}.*

2. *One of the reasons pursuant to which a member of the Board may cease to be a member is when he resigns by sending a written notice to the Minister {see section 27 (2) (f)}. And according to the interpretation section of Act N0.16 of 2011, Minister means the Minister responsible for electricity and Ministry can be construed accordingly.*
3. *When a vacancy subsists in the membership of the Board, the President shall, after consultations with the Minister, appoint a replacement, who shall hold office, for the remainder of the term of the person replaced, and who shall subject to Act N0. 16 of 2011, be eligible for re-appointment {section 27 (3)}.*
4. *The Minister may give General Directions to EDSA on matters of policy (section 38).*
5. *EDSA can, among other non-private sources, generate its finances through moneys, appropriated by Parliament for the purposes of EDSA; and loans raised by EDSA with the approval of the Minister responsible for Finance {section 43 (a) and (c)}.*
6. *EDSA, with the approval of the Minister responsible for Finance, can borrow money or raise capital in any currency and from any source for the purpose of performing its functions and meeting its obligations (see section 47).*
7. *The Minister responsible for Finance, may guarantee the payments of the interest and principal on any loan proposed to be paid by EDSA upon such terms and manner as it may think fit (section 48).*
8. *The accounts of EDSA are audited by the Auditor- General (section 49).*
9. *EDSA shall submit to the Minister of Energy a report on the performance of its functions during that year and on its policy and programmes within four months after the end of the financial year. The said report shall include*

annual financial statements prepared under section 49 and the report of the audit. The Minister of Energy shall lay copies of the annual report before Parliament within two months after he received the report (see section 50).

10. *The financial year of EDSA shall be the same as the financial of the Government.*
11. *The Energy Asset Unit in the Ministry of Energy shall, inter alia, ensure the transfer of assets currently held by the Ministry, National Power Authority and the Bo- Kenema Power System to EGTC and EDSA.*

In fact, analytically, at the level of the Executive Arm of Government, it is discernible from the foregoing findings that EDSA as an institution/public corporation is under the direct management, control and supervision of both the Ministries/Ministers of Energy and Finance. Whereas the Ministry of Energy exercises its supervisory function over EDSA on issues relating to the appointments and replacements of Board Members (see sections26 and 27), and matters relative to policy formulation, implementation and evaluation (section 38); the Ministry of Finance, performs it oversight function over EDSA on issues, germane to the financial management of the funds of the corporation (see sections 43, 47 and 48).

This legal analysis, depicting the nexus, between the Miniseries/Ministers of Finance and Energy on the one hand and EDSA on the other hand, vividly expatiates how executive power of the 'Government' is exercised in accordance with the incisive provision, enshrined in subsection (1) of section 4 of the Interpretation Act N0. 8 of 1971. To further enhance accountability, transparency and conspicuous financial probity in the management of the finances of EDSA, as a public corporation, its accounts and financial records, are independently audited by the

Auditor-General (see section 47), who heads the Audit Service Commission, which is itself a state institution that audits the accounts and financial records of every Government Ministry, Department and Agency.

Again, analytically, at the level of the Legislative Arm of Government, it cannot be legally negated that EDSA is not under the direct control and supervision of the Legislature of the Republic of Sierra Leone. By subsections (1), (2) and (3) of section 93 of the Constitution, Act NO. 6 of 1991, nothing precludes Parliament, from establishing committees, in exercising its oversight functions, against state institutions and structures, performing executive functions as Ministries, Departments and Agencies. In part, subsection (3) of the said section reads:

> *It shall be the duty of such committee... to investigate or enquire into the activities or management of such Ministries and Departments as may be assigned to it, and such investigation or enquiry may extend to proposals for legislation.*

Intriguingly, one of the Committees of Parliament that is established by subsection (1) of section 93 of Act NO. 6 of 1991, is the Committee of Appointments and Public Service. And it is this Committee that is responsible for vetting and approving the Members of the Board of Directors of EDSA, appointed by the President on the recommendation of the Minister of Energy {see section 26 (1) and (2) of Act NO. 16 of 2011}. Further, the same subsection (1) of section 93 of Act NO. 6 of 1991, provides for the Public Accounts Committee, whose composition and jurisdiction is clearly articulated in the requisite Standing Orders of Parliament. Standing Order 70 (6) (a) establishes the Public Accounts Committee, consisting of the Deputy Speaker as Chairman, and not more than ten other Members, to be nominated by

the Committee on Selection. Standing Order 70 (6) (d) thus explains the jurisdiction of the Public Accounts Committee as follows:

> *The Public Accounts Committee shall have power to examine any accounts or reports of Statutory Corporations and Boards after they have been laid on the table of the House, and to report thereon from time to time to the House, and to sit notwithstanding any adjournment of Parliament.*

Undisputedly, EDSA being a 'statutory corporation', its annual reports (see section 50), containing its annual accounts produced at the end of every financial year, which shall be the same as the Government financial year (section 51), is contingent on the vetting, scrutiny and endorsement of the Public Accounts Committee. This analysis further authenticate the authenticity of the legal fact that EDSA is a state institution that falls within the purview of the meaning of 'Government' in subsection (1) of section 4 of the Interpretation Act, N0. 8 of 1971. Significantly, it should be borne in mind that, Fatmata Forster's, response to E. N. B. N'gakui's penultimate submission, intuiting that section 25 of Act N0. 16 of 2016, only establishes EDSA as a 'body corporate' that has juridical status to sue and be sued in its own name, but does not confer governmental power on EDSA ; must not be left to fester unaddressed in this ruling.

The conundrum of this submission is that it would appear that because EDSA has juridical status to sue and be sued in its own name, it is therefore a 'corporate entity' that is not in the management, control and supervision of the Ministries of Energy and Finance of the Government of Sierra Leone. And, therefore, against this backdrop, the provision in subsection (1) of section 3 of the State Proceedings Act

NO. 14 of 2000, requiring a claimant/plaintiff to serve on the Attorney-General a three month notice, prior to the commencement of any proceedings against the Government, does not apply to the circumstances and context of EDSA.

In as much as I would not dismiss this submission as one that is guilty of a naïve legal miscalculation, I would rather say that it appears logically seductive and correct, but factually and legally delusional. This is simply because in Sierra Leone most statutory corporations and/ or or commissions, for all intent and purposes of their juridical statuses, are deemed to have the statutory right to sue and be sued in their own names. But this does not however presuppose that state institutions that have the requisite statutory mandate to sue and be sued in their own 'corporate' names, cannot be regarded as Government institutions. Again, this does not mean that the 'corporate entity' status (the right to sue and be sued in their statutory names, conferred on public corporations by Parliament) precludes claimants/plaintiffs from complying with subsection 1 of section 3 of Act NO. 14 of 2000.

Are public corporations not under the management, control and supervision of specific Ministries in the Government of Sierra Leone? If the answer is no, why are their Board Members appointed by the President, subject to the vetting of the Parliamentary Committee on Appointments and Public Services and the approval of the House of Parliament? Why do they have to wait for Parliament, through the Appropriation Act, to access their statutory finances to facilitate their activities and operations? Why are their annual reports, depicting their annual programmes, operations and finances, be annually scrutinized by the Parliamentary Committee on Public Accounts?

In the case of EDSA, why should the Ministry of Finance be its financial guarantor, should it intend to raise funds for its operations by taking out loans? How can the Government absolve itself from liability should EDSA default in paying any loan, which is being guaranteed by the Ministry of Finance? Nevertheless, the following excerpts are taken from a selected pieces of legislation, establishing a plethora of statutory institutions (including Corporations, Agencies and Commissions), which statutes have expressly and uncontestably conferred that 'corporate body' or 'entity status' on:

1. The Sierra Leone Investment and Export Promotion Agency Act N0. 3 of 2007, establishes in subsection (1) of section 2, a body to be known as the Sierra Leone Investment and Export Promotion Industry. And subsection (2) describes the Agency as a 'body corporate' having perpetual succession, and capable of acquiring, holding and disposing of any property, and of suing and being sued in its corporate name.
2. The National Commission for Privatisation Act N0. 12 of 2002, in subsection 1 of section 3, inaugurates the National Commission for Privatisation. And subsection (2) describes the Commission as a 'body corporate', having perpetual succession, and capable of acquiring, holding and disposing of any property, and of suing and being sued in its corporate name.
3. The Anti-Corruption Act N0. 12 of 2008, in subsection (1) of section 2 establishes the Anti-Corruption Commission. And paragraphs (a) and (b) of section 2, describe the Commission as a 'body corporate', having perpetual succession, and capable of acquiring, holding and disposing of any property, and of suing and being sued in its corporate name.

4. The Independent Media Commission Act N0. 12 of 2000, in subsection 1 of section 2, establishes a body to be known as the Independent Media Commission. And subsection (2) of section 2, describes the Commission as a 'body corporate', having perpetual succession, and capable of acquiring, holding and disposing of any property, and of suing and being sued in its corporate name.
5. The Telecommunications Act N0. 9 of 2009, in subsection 1 of section 2, establishes a body to be known as the National Telecommunications Commission. And subsection (2) of section 2, describes the Commission as a 'body corporate', having perpetual succession, and capable of acquiring, holding and disposing of any property, and of suing and being sued in its corporate name.
6. The Sierra Leone Broadcasting Corporation Act N0. 1 of 2010, in subsection (1) of section 2, establishes a body to be known as the Sierra Leone Broadcasting Corporation. And subsection (2) of section 2, describes the Commission as a 'body corporate', having perpetual succession, and capable of acquiring, holding and disposing of any property, and of suing and being sued in its corporate name.
7. The National Youth Commission Act N0. 9 of 2011, in subsection (1) of section 2, establishes a body to be known as the National Youth Commission. And subsection (2) of section 2, describes the Commission as a 'body corporate', having perpetual succession, and capable of acquiring, holding and disposing of any property, and of suing and being sued in its corporate name.

8. The Public Procurement Act NO. 14 of 2004, in subsection (1) of section 3, establishes a body to be known as the National Public Procurement Authority. And subsection (2) of section 3, describes the Commission as a 'body corporate', having perpetual succession, and capable of acquiring, holding and disposing of any property, and of suing and being sued in its corporate name.
9. The Sierra Leone National Commission on Small Arms Act NO. 6 of 2010, in subsection (1) of section 2, establishes a body to be known as the Sierra Leone National Commission on Small Arms. And, paragraphs (a) and (b) of subsection 2 of section 2, describe the Commission as a 'body corporate', having perpetual succession, and capable of acquiring, holding and disposing of any property, and of suing and being sued in its corporate name.
10. The National Electricity Act NO. 16 of 2011, in subsection (1) of section 25, establishes a body to be known as the Electricity Distribution and Supply Authority. And subsection (2) of section 25, describes EDSA as a 'body corporate', having perpetual succession, and capable of acquiring, holding and disposing of any property, and of suing and being sued in its corporate name.

However, can it be legally justifiably denied that the above agencies, commissions and corporations, are neither under the control, nor supervision of the Government? Does it mean that because they have the statutory right to sue and be sued in their own corporate names, they cannot be said to be Government institutions; when it is the tax payers monies appropriated by Parliament that fund their operations? If this last question is answered in the affirmative, can proceedings be instituted against any of the aforementioned Government

institutions, without recourse to subsection (1) of section 3 of the State Proceedings Act N0.14 of 2000; requiring the service of the three months' notice on the Attorney-General and Minister of Justice by claimants/ plaintiffs, prior to the commencement of any proceedings against the Government?

I am very much certain that the 'corporate entity' status conferred on EDSA by section 25 of Act N0. 16 of 2011, does not negate the applicability of subsection 1 of section 3 of Act N0.14 of 2000. The provision in the latter statute is applicable to any proceedings to be commenced against Government's Ministries, Departments and Agencies, through which the Executive powers of the state are exercised; as clearly explicated in subsection 1 of section 4 of the Interpretation Act N0. 8 of 1971.

The applicability of the said subsection (1) of section 3 of the State Proceedings Act N0. 14 of 2000, to proceedings to be begun against Government's Ministries, Departments and Agencies, poses very serious challenges to persons that do have very urgent claims against Government, for which immediate remedies are to be sought. Nevertheless, in tandem with the above forensically legal analysis, there is no evidence before this court that counsel for the Plaintiff/Respondent, did comply with the mandatory (not directory) provisions in subsection (1) of section 3 of Act N0. 14 of 2000; before issuing and serving the writ of summons, originating this action, on particularly the 1st Defendant/Applicant.

Being a Government institution, the 1st Defendant/Applicant should not have been made a party to this action, without being served with the requisite three months' notice of intention to sue on the Attorney- General and Minister of Justice. Significantly, the final point to be addressed is whether the provision in subsection

1 of section 3, which has been referenced throughout this ruling, can be lied on by a non-law officer for this proceeding to be stayed. Again, although Fatmata Forster correctly referenced sections 2 and 3 of the Law Officers Act, 1965, regarding who a law officer is and the circumstances under which the Attorney-General and Minster of Justice can appoint any counsel to represent the state; her submission that counsel on the other side had no authority to raise the issue of non-compliance with the aforementioned provision, cannot hold good.

Again, E.N.B. N'gakui's response that he is performing the services of a consultant to EDS, pursuant to section 42 of Act No. 16 of 2011, is manifestly ill-conceived; as the said section 46 does not apply to the services of a solicitor; the functions which E.N.B N'gakui has sought to exercise in this proceedings. Nevertheless, this is a court of competent jurisdiction that must give credence and effect to any rule of law, including a statute. And the application before this court revolves around the interpretation of a number of statutory provisions; catalogued above for meanings.

So nothing precludes this court from construing the requisite statutes, referenced in the application, and the response thereto, for the determination of this application. Even an amicus curiae can bring any point on a rule law (at any stage during the proceedings of a court of competent jurisdiction) to the attention of that court, should that court inadvertently attempt to circumvent that rule of law. And that court is undoubtedly instantaneously bound to give credence and effect to such rule of law. Again, no reasonable tribunal of facts will even attempt to advertently circumvent any rule of law; for that will create confusion and mischief, instead of clarifying the meanings of the letters of the law to promote the jurisprudence.

Nevertheless, notwithstanding the fact that Counsel for the Plaintiff/Defendant failed to comply with the aforementioned provision, this failure or non-compliance has not invalidated the proceedings. Order 2 of the High Court Rules of 2007 is very much instructive on this. Even section subsection (2) of section 4 of Act N0.14 of 2000, is quite clear on this. Thus, the said subsection reads:

> *Where in any proceedings against the Government, there is failure to give the notice, referred to in subsection (1), the court before which the proceedings are taken shall not dismiss the proceedings, but shall direct the Plaintiff to give the Attorney-General the requisite notice and adjourn the proceedings accordingly.*

Consonant with the foregoing findings, I hereby order as follows:

1. The proceedings in this action are stayed, pending the compliance with section 3 (1) of the State Proceedings Act N0. 14 of 2000, which requires that the Plaintiff serves a three month notice of intention to sue on particularly the 1st Defendant, which is a state institution that is under the management, control and supervision of both the Ministries of Finance and Energy.
2. The Plaintiff/ Respondent is thus directed to serve the Attorney-General and Minister of Justice the requisite notice in accordance with section 4 (2) of the State Proceedings Act N0. 14 of 2000.
3. The proceedings are thus adjourned until the Plaintiff/Respondent fully complies with section 3 (1) of the State Proceedings Act, N0. 14 of 2000.

4. That Counsel for the Plaintiff/Respondent shall file an affidavit as evidence of compliance with orders 2 and 3 above.
5. I make no order as to cost.

Hon. Justice Dr. Abou B. M. Binneh-Kamara

26/11/18