S.C. 2/2018

IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE 1991, ACT No 6 OF 1991 (AS AMENDED) SECTIONS 41, 75 & 76

IN THE MATTER OF THE SIERRA LEONE CITIZENSHIP ACT No. 4 OF 1973

IN THE MATTER OF THE SIERRA LEONE CITIZENSHIP (AMENDMENT) ACT No. 13 OF 1976

IN THE MATTER OF THE SIERRA LEONE CITIZENSHIP (AMENDMENT) ACT No.11 OF 2006

IN THE MATTER OF THE PUBLIC ELECTIONS ACT No. 4 OF 2012

IN THE MATTER OF AN ACTION PURSUANT TO THE SUPREME COURT RULES, 1982, PART XVI, RULES 89-98, PUBLIC NOTICE No.1OF 1982

BETWEEN

DAVID FORNAH — PLAINTIFF

AND

ALHAJI DR KANDEH KOLLEH YUMKELLA	1st DEFENDANT
THE ATTORNEY GENERAL AND MINISTER OF JUSTICE	2nd DEFENDANT
MOHAMED N'FAH ALIE CONTEH	3rd DEFENDANT
NATIONAL ELECTORAL COMMISSIONER	4th DEFENDANT
DR. DENNIS BRIGHT	5th DEFENDANT
MR FRANCIS HINDOWA	6th DEFENDANT
NATIONAL GRAND COALITION	7th DEFENDANT

Coram:

Hon. Mr Justice N. C. Browne-Marke JSC
Hon. Mr Justice E. E. Roberts JSC
Hon. Ms Justice G. Thompson JSC
Hon. Mr Justice A. S. Sesay JSC
Hon. Mr Justice Sengu M.Koroma JSC

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O.I. Kanu, A. Suwu and P. Fewry - for the 2nd Defendant
B. Cummings, D. E. Taylor and J.E. Kapuwa for the 3rd and 4th Defendants
I. S. Yilla and M.S. Bangura for the 5th Defendant
S. B. Tejan-Sie - for the 6th Defendant
Y. Jusu - Sheriff, A. M. Musa and A. M. Kamara for the 7th Defendant

Dated 3rd day of September 2021

Glenna Thompson JSC.

1. My Lords, I have had the advantage of reading the speech of my Learned Brother Browne-Marke JSC and with the exception of his conclusions that section 47 of the Public Elections Act 2012 (PEA) is inconsistent with section 126 of the 1991 Constitution and the necessity for acceding to a request by the 7th Defendant for the declaration sought, I agree with his judgment. I gratefully adopt the facts as set out by him and other issues including those relating to costs.

2. I have considered with care my Brother's discourse and findings in respect of a conflict between the PEA and the 1991 Constitution of Sierra Leone. This is self-evidently an important issue and one that should be clarified by this Court in order to provide certainty and clarity in respect of an important aspect of electoral law. Having considered the matter I take a contrary view to my Brother and I am satisfied that there is no conflict between Section 47(3) of the PEA 2012 and the 1991 Constitution.

3. The starting point when considering a potential conflict between an Act of Parliament and the Constitution is the presumption of regularity. Parliament must be taken to have been cognisant of the relevant provisions of the Constitution when enacting the PEA and must be taken to have satisfied itself that the provisions of the PEA would not require this Court to do anything which was contrary to its Constitutional authority. As is often stated, it is for Parliament to legislate and for this Court to interpret legislation in a manner that is consistent with the will of Parliament and compatible with our Constitution.

4. Section 47 of the PEA deals with the publication of the nominations of presidential candidates. Section 47(3) states that *"An objection against the nomination of a presidential candidate shall be heard by the Supreme Court made up of three Justices whose decision shall be given within thirty days of the lodging of the objection."* It is obvious that in enacting this provision, Parliament recognised the fundamental importance of ensuring that there was an efficient and speedy mechanism for resolving disputes concerning presidential nominations which would not frustrate the election process whilst at the same time providing a safe guard for potential candidates. This is reinforced by section 47 (4) which states that *"Where the Supreme Court upholds an objection against a nomination, it shall declare the presidential candidate concerned to be disqualified from contesting the presidential election."*

5. The authority and limits of this court are to be found at Chapter VII of the Constitution. Section 121 deals with composition of the court and stipulates that there should always be a minimum of five Justices of the Supreme Court, one of which must be the Chief Justice. There is no maximum number of Justices that is required. The business of the Supreme Court is regulated by

section 121(2) which states that *"The Supreme Court shall, save as otherwise provided in paragraph (a) of subsection (6) of Section 28 and section 126 of the constitution be duly constituted for the dispatch of its business by not less than three justices thereof."* It follows that save for the exceptions mentioned in section 28 (6) and section 126 the minimum number of Justices required for the court to be quorate is three.

6. Section 121(3) provides that *"the Chief Justice shall preside at the sittings of the Supreme Court and in his absence the most senior of the justices of the Supreme Court as constituted for the time being shall preside."* The fact that section 47(3) of the PEA states that the Supreme Court shall be made up of three Justices for the purpose of hearing an objection to a nomination cannot be said to be inconsistent with section 121(3) of the Constitution unless it infringes section 28(6) or section 126 of the Constitution to which I shall return.

7. The Court's jurisdiction is set out in section 122 which explicitly states inter alia at subsection (1) that the Court *"shall have such appellate and other jurisdiction as may be conferred upon it by this Constitution or **any other law.**"* The Court's powers are extensive and include appellate (section 123), interpretative (section 124), supervisory (section 125), interlocutory (section 126), and enforcement powers (section 127). In other words its powers are not just confined to those conferred upon it by the Constitution but crucially also by any other legislation. It follows that is also therefore includes the jurisdiction conferred upon it by the PEA 2012.

8. I now return to section 28 (6) of the Constitution. Section 28 deals with the enforcement of protective provisions. Those provisions are set out in sections 16-27. They are not fully

rehearsed here but include the right to life, protection from arbitrary arrest or detention, protection from slavery and forced labour and protection from inhuman treatment, the right to a fair trial and protection from discrimination. Significantly in the context of this matter, elections whether parliamentary or presidential, do not fall under the protected provisions.

9. Section 28(6) provides that when this court is dealing with a referral that concerns any of the protected provisions it shall consist of *"not less than five justices"* and the court is required to pronounce its decisions in open court not later than thirty days after a referral. Section 47 of the PEA 2012 is not caught by section 28(6) of the Constitution and therefore there can be no inconsistency between the two.

10. I now turn to section 126 of the Constitution. This section sets out the powers of this court when exercising its interlocutory jurisdiction. It states: *"A single Justice of the Supreme Court acting in its criminal jurisdiction, and three Justices of the Supreme Court acting its civil jurisdiction may exercise any power vested in the Supreme Court not involving the decision of a cause or matter before the Supreme Court, save that:-*

    (a) in criminal matters, if any such Justice refuses or grants an application in the exercise of any such power, any person affected thereby shall be entitled to have the application determined by the Supreme Court constituted by three Justices thereof; and

    (b) in civil matters, any order, direction or decision made or given by the three Justices in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Supreme Court constituted by five Justices thereof."

11. Section 47 (3) of the PEA 2012 is civil and not criminal. However before considering the impact of section 126 of the constitution on it, we must first determine whether an objection brought under section 47 (3) is an interlocutory matter. I observe in passing that section 126 is an exception to the requirements of section 121(2) because it permits the business of the court to be conducted by a single justice instead of three when dealing with interlocutory criminal matters. Under the PEA 2012 the jurisdiction for determining an objection against the nomination of a presidential candidate is conferred on the Supreme Court. If the Court upholds the objection then that is decisive of the issue and the court must then declare the presidential candidate concerned to be disqualified from contesting the presidential election pursuant to section 47(4) PEA 2012.

12. It follows from the above that in dealing with an objection under section 47(3) the Supreme Court is not dealing with an interlocutory matter but is acting in accordance and in furtherance of the jurisdiction expressly conferred upon it by the PEA 2012, as permitted by section 122(1) of the Constitution, and as such its decision is final.

13. Notwithstanding that this is not an interlocutory matter it is clear that when dealing with such matters there can be no question of inconsistency/incompatibility unless three justices are empanelled to deal with a matter concerning a protective provision. The fact that a decision by a panel of three may be varied, discharged or reversed by a panel of five reflects the fact that an interlocutory matter is not decisive of an issue and allows for the matter to be revisited before the issue at hand is finally determined if there are compelling reasons for doing so.

14. Our constitution is not unique in this regard. By virtue of section 128(1) of the 1992 Constitution of Ghana, the Supreme Court consists of the Chief Justice and not less than nine Justices. That is the equivalent of our own section 121(1). The equivalent of our 121(2) is section 128(2) which states that the Supreme Court is *"duly constituted for its work by not less than five Supreme Court Justices except as otherwise provided in article 133 of this Constitution."* Section 133 is a provision of review of its own decisions, a provision we do not have in our own constitution. However, section 134 is the equivalent of our section 126, *"A single Justice of the Supreme Court may exercise power vested in the Supreme Court not involving the decision of the cause or matter before the Supreme Court"*, save that in criminal matters, a dissatisfied litigant may go before a panel of three justices, the same as for civil matters where the decision may be varied, discharged or reversed as the case may be.

15. Similarly, in Kenya, (Constitution of Kenya 2010) the Supreme Court consists of the Chief Justice, the Deputy Chief Justice and five other Judges (See section 163(1)). Section 163(2) is the equivalent of our section 121(2). The Supreme Court is properly constituted for the *"purposes of its proceedings if it is composed of five judges."*

16. It is therefore indisputable in my view that an application under section 47 (3) of the PEA falls within the jurisdiction of this Court. It follows that the requirement in the section for three justices to make a decision within thirty days is entirely consistent and compatible with Section 121(2) of the Constitution. For the purposes of the electoral calendar, speedy and efficient disposal of applications and challenges are extremely important. This is not inconsistent with the ruling of this court in the case of Dr. Sylvia Blyden, Dr Samura Kamara &

Others (Nos. 6/2018 and 7/2018) that the route to invoking the original jurisdiction of the Supreme Court is by Originating Notice of Motion. The fact that the Supreme Court Rules state that filing should be done within ten days does not mean that parties should wait till the tenth day to file. In cases where urgency is required the court would expect parties (and where applicable the court) to have served the relevant documents well before the time limit for service expires, and in any event no later than the ten day limit. It is the case that in the recent past, including in this case, this court has departed from its laid down rules as to time when the urgency of the situation demanded it. When the court is dealing with a matter which by law it needs to rule upon within thirty days then time limits will be strictly enforced so that the court has at most ten days to consider and deliver its ruling. The issue here is not the process but rather the substance of the relevant and applicable sections.

17. I shall now turn to the matters which were raised by the parties and I shall confine myself to the following:
    a. the Plaintiff's reason for withdrawal of his action as stated in his affidavit sworn to on the 28th March 2018 and attached to his Notice of Motion;
    b. the request by the 7th Defendant to determine the order prayed for in Paragraph H of the Plaintiff's Originating Notice of Motion regardless of his Motion for withdrawal; and
    c. Section 76 (1)(a) of the Constitution of Sierra Leone 1991.

Notice of Motion for Withdrawal

18. It is clear that the purpose and objective of this action was as stated in paragraph I of the orders prayed for in the Originating Notice of Motion dated 5th February 2018 – that is the

disqualification of the 1st Defendant. Rather than simply file an objection as prescribed in section 47(2) of the Public Elections Act 2012, the Plaintiff sought to take a circuitous route thereby wasting valuable court time and costs in the process.

19. The reason stated by the Plaintiff for seeking to discontinue the matter in his affidavit sworn to on the 28th March 2018, which supports the Notice of Motion for Discontinuance of the same date, is that he is now satisfied that the 1st Defendant had renounced his U.S. citizenship and was therefore qualified to stand in the Parliamentary and Presidential elections.

20. Accepting as we must that the Plaintiff is now genuinely satisfied that the issue of whether the 1st Defendant had renounced his citizenship (which is a question of fact that does not require the Constitution to be interpreted) it follows that the action brought by the Plaintiff is at best ill-conceived and at worst frivolous and vexatious. It is clear that the Plaintiff did not need the Court's interpretation of the various sections of the Constitution and the Sierra Leone Citizenship Act 1973 (as amended) when he filed his Originating Notice of Motion dated 5th February 2018. The inescapable reality of the Plaintiff's stance is that either he had no difficulty interpreting the relevant provisions of the Constitution, or that on realising the 1st Defendant was no longer a U.S. citizen, he had an epiphany, the result of which was that he was suddenly enlightened about the various sections he needed interpreted. Either way it demonstrates that this action, as filed, was wholly without merit.

21. It ought not to need stating that the Courts in general and this court in particular should not be used as a political weapon in order to achieve political gain. The rule of law and an effective democracy require strong and independent institutions of which

the judiciary is and must be seen to be one. The courts must therefore guard against attempts to abuse its process for the sake of political expediency disguised as an application for interpretation. It will not have escaped the attention of most right-thinking people that the very topic of this action – nationality and citizenship – was toxically divisive and menacing, at a time when national cohesion and good citizenry was most important. It hardly needs stating that the country's recent history ought to inform the conduct of those seeking to hold public office.

The Determination of Paragraph H of the Plaintiff's Originating Notice of Motion

22. The Defendants have all stated in open court that they are not averse to the discontinuance subject to costs. The 2nd Defendant, though represented, made no representations nor was any case filed on his behalf. However, the 7th Defendant has asked that given the importance of the matters raised, the Court should determine the order prayed for in Paragraph H of the Plaintiff's Originating Notice of Motion and make a declaration as follows:

> *"Any person who upon attaining the age of Twenty Two years or is a citizen of Sierra Leone and also a citizen of any other country did and does not by operation of law or any other means cease to be a Sierra Leonean."*

23. This declaration is sought despite that fact that section 10 of the Sierra Leone Citizenship (Amendment) Act 2006 (the 2006 Act) repealed section 11 of the 1973 Act. Section 11 of the 1973 Act stated as follows:

"Any person who, upon attaining the age of twenty-one years, is a citizen of Sierra Leone and also a citizen of another country shall cease to be a citizen of Sierra Leone upon his attaining the age of twenty-two years (or in the case of a person of unsound mind, at such later date as may be prescribed) unless he has complied with paragraph (a), (b) and (c) of section 9."

24. For ease of reference section 9 deals with citizenship by naturalisation. Section 10 of the 2006 Amendment reads as follows:

"A citizen of Sierra Leone may hold a citizenship of another country in addition to his citizenship of Sierra Leone."

As stated above this amendment repeals the aforementioned section 11 of the 1973 Act.

25. Counsel for the 7th Defendant however urged this court to deal with this because the 7th Defendant is a political party "with obligations to promote and protect the rights and interests of its membership (whether in or out of Sierra Leone) and to the entire nation."

26. As a matter of law, where there is an act of Parliament that changes previous legislation, unless the new legislation preserves particular sections of that previous legislation, then the supervening legislation overrides the previous law and this court will not entertain a futile consideration of repealed provisions that have no relevance or applicability to the law as it currently stands. I agree with the submission of Counsel for the 1st Defendant that the proper role of this court is to interpret and pronounce on the effect of subsisting legislation, and not to offer an opinion on the effect in law, before the coming into force of any amendment. However, this court recognises that the matter

having been raised, has created unnecessary uncertainty and as a result has become an issue of immense importance. To allow this uncertainty to continue would have far reaching and unintended consequences, affecting citizens who are dual nationals whether they live in Sierra Leone or not. It therefore falls to this court to remove any uncertainty that remains even though the Plaintiff now seeks to withdraw his action. In doing so I have relied on the various statements of case filed by the parties.

27. Apart from naturalisation, Sierra Leone citizenship can be acquired by the following ways pursuant to the 1973 Act (as amended):

2. *Citizenship by birth*

Every person who, having been born in Sierra Leone before the nineteenth day of April, 1971, or who was resident in Sierra Leone on the eighteenth day of April, 1971, and not the subject of any other State shall, on the nineteenth day of April, 1971, be deemed to be a citizen of Sierra Leone by birth:

Provided that-

(a)his father or his grandfather was born in Sierra Leone; and

(b)he is a person of negro African descent;

3. Citizenship by birth in Sierra Leone

Every person born in Sierra Leone on or after the nineteenth day of April, 1971, in the circumstances set out in section 2, shall be deemed to be a citizen of Sierra Leone by birth.

4. Citizenship by birth outside Sierra Leone

Every person born or resident outside Sierra Leone on or before the eighteenth day of April, 1971, and who, but for such birth or residence outside Sierra Leone would be a citizen of Sierra Leone by virtue of section 2, shall, on the nineteenth day of April 1971, be deemed to be a citizen of Sierra Leone by birth.

5. Citizenship by descent

Every person born outside Sierra Leone on or after the nineteenth day of April 1971, of a father who was or would but for his death have been a citizen of Sierra Leone by virtue of sections 2, 3 and 4, is a citizen of Sierra Leone by birth.

6. Other category of citizenship

Every person whose mother is or was a citizen of Sierra Leone by virtue of sections 2,3, 4 and 5 and who does not or did not acquire the citizenship of another State shall be deemed to be a citizen of Sierra Leone by birth.

28. Counsel for the Plaintiff's argument was that section 11 of the 1973 Act is mandatory, clear and emphatic (see Page 10 of the Plaintiff's Statement of Case). That the words "shall cease" imposes a mandatory and/or compulsory compliance with the Act and admits no discretion or contrary interpretation other than the ordinary meaning as stated and/or conveyed therein. He further stated that there is no ambiguity or lacunae and that the section is plain and clear.

29. I have considered the arguments advanced by Counsel for the 1st Defendant in his Statement of Case. At paragraph 87, he states as follows:

"It is submitted that the section did not state the consequences then of the possession of another citizenship (dual nationality). If possession of dual nationality was

intended to effect a loss of citizenship of Sierra Leone, the section was glaringly silent on this; at best, it could only have operated, if at all, as a ground or reason for non-recognition of the other nationality when set against Sierra Leone citizenship. For such an important matter involving loss of citizenship, it is submitted that it could not be implied by any reason and proper reading of the section."

30. As stated earlier, the function of this court is to interpret and give effect to the law as it currently stands. Section 10 of the Sierra Leone Citizenship (Amendment) Act 2006 repealed section 11 of the 1973 Act in its entirety. As a result, section 11 does not represent the law as it currently stands. All matters concerning citizenship are to be considered only by reference to the sections of the 1973 Act that were not repealed and the provisions of the 2006 Act. It follows that the provisions of section 11 of the 1973 Act are obsolete and require no interpretation or guidance from this court. For the avoidance of doubt save for the exceptions provided for in the Constitution there is no bar to holders of dual citizenship holding public office or exercising any of the rights afforded to all Sierra Leonean citizens. Those rights are clearly set out in both the 1973 Act (the unrepealed sections) and the amendment Act of 2006.

31. Therefore, in the circumstances of this case the declaration sought is unnecessary. A consideration of section 11 of the 1973 Act would only be necessary if, which is not the case and is unlikely to be ever the case, the Court was being invited to consider an election that had taken place prior to section 11 being repealed.

Section 76(1)(a) of the Constitution

32. I will address the issue that exercised much debate in the run up to the Elections and which formed the basis of the answers sought in A (i) to (iv) and the declarations sought in paragraphs C, D, E and F of the Plaintiff's Originating Notice of Motion. Namely whether the section 76 (1)(a) of the Constitution disqualifies Sierra Leoneans who hold dual citizenship from standing for Parliament. I address this issue because as I said in paragraph 26 above, this matter having been raised is of immense importance. Additionally, this action is no ordinary action. It is not an appeal that can be abandoned or an issue which raises a question of fact which can be settled. This is a fundamental constitutional issue, which raises serious questions for democracy in this country. It would therefore be a serious failing of this court if we allowed the application for withdrawal without expressing an opinion on this important issue. The Court would lay itself open to the suggestion that it had sacrificed clarity and certainty at the altar of expediency and convenience or as I said earlier allow itself to be used in this way. Further it is my view that this is the only way the issue raised in the declaration sought by the 7th Defendant, as a political party, can be addressed and dealt with decisively.

33. That said, section 76 (1)(a) now has to be interpreted in a manner that is consistent with the will of Parliament as evinced in the 2006 Citizenship Act. Prior to 2006 it was not lawful for Sierra Leoneans to hold dual citizenship. Section 76 (1)(a) therefore did no more than reflect the law as it then stood. Since 2006 it has been lawful and permissible for Sierra Leoneans to hold dual nationality.

34. Section 173 of the Constitution foreshadowed that the law concerning citizenship might change and provided that any "*Act relating to citizenship shall not be amended, repealed, re-enacted or replaced unless the Bill incorporating such amendments, repeal, re-enactment or replacement is supported at the final vote thereupon by the votes of not less than two-thirds of the Members of Parliament.*" This is just as well because our Constitution is unique in that unlike so many others in Africa, it does not deal with citizenship and the qualifications for attaining such. The significance of section 173 is that it allows Parliament to amend constitutional provisions and when this happens the pertinent provision (in this case section 76 (1)(a)) is superseded by the new provision. S76 (1)(a) is therefore subject to the relevant provisions of the Citizenship Act 2006 assuming as we must, that two thirds of the members of Parliament voted to enact it.

35. This court has in the past adopted the purposive approach to statutory interpretation in interpreting other sections of our Constitution. See Charles F. Margai v S. E. Berewa and Another SC.2/2007 3rd August 2007, unreported, per U. H. Tejan-Jalloh JSC. See also Sierra Leone Enterprises v Attorney General and Minister of Justice SC.4/2005 18th July 2008 unreported. In the latter case Rhodes-Vivour JSC relied on the Privy Council decision in AG of the Gambia v Momodu Jobe [1984] AC 689 at page 700. There Lord Diplock stated inter alia:

> *"A Constitution and in particular that part of it which protects and entrenches fundamental rights and freedoms to which all persons in the State are to be entitled, is to be given a generous and purposive construction."*

36. Similarly, in the Nigerian Supreme Court case of Nafiu Rabiu v. The State (1981) 2 N.C.L.R. 293 @ 326 Udo Udoma JSC stated:

"..... Where the question is whether the Constitution has used an expression in the wider or in the narrower sense, in my view, this Court should whenever possible, and in the response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the object and purposes of the Constitution....."

37. I see no reason to deviate from that approach now. Several English authorities have also adopted the same approach to statutory interpretation. In the case of Maunsell v Olins [1975] AC 373, Lord Simons explained the approach as follows:

"The first task of a court of construction is to put itself in the shoes of the draftsman to consider what knowledge he had and importantly, what statutory objective he had ....being thus placed .....the court proceeds to ascertain the meaning of the statutory language."

38. As previously stated section 76(1)(a) gave effect to the Citizenship Act 1973 which self-evidently was the governing and applicable act when the Constitution was passed. However, in accordance with section 173 section, 76(1)(a) should be read as now giving effect to the Citizenship (Amendment) Act 2006. The Constitution is a living document and as Lord Bingham stated in the case of R v Secretary of State for Health ex parte Quintavalle [2003] 2 AC 687:

"There is, ... no inconsistency between the rule that statutory language retains the meaning it had when Parliament used it and the rule that a statute is always speaking. If Parliament, however long ago, passed an Act

applicable to dogs, it could not properly be interpreted to apply to cats; but it could properly be held to apply to animals which were not regarded as dogs when the Act was passed but are so regarded now."

39. In the English case of the Royal College of Nursing of the United Kingdom v The Department of Health and Social Security [1981] AC 80 at page 822, a case which concerned the Abortion Act 1967 in that jurisdiction and whether nurses could lawfully take part in a termination procedure not known when the Act was passed, Lord Wilberforce said:

"In interpreting an Act of Parliament it is proper, and indeed necessary, to have regard to the state of affairs existing, and known by Parliament to be existing, at the time. It is a fair presumption that Parliament's policy or intention is directed to that state of affairs. Leaving aside cases of omission by inadvertence, this being not such a case, when a new state of affairs, or a fresh set of facts bearing on policy, comes into existence, the courts have to consider whether they fall within the Parliamentary intention. They may be held to do so, if they fall within the same genus of facts as those to which the expressed policy has been formulated. They may also be held to do so if there can be detected a clear purpose in the legislation which can only be fulfilled if the extension is made. How liberally these principles may be applied must depend upon the nature of the enactment, and the strictness or otherwise of the words in which it has been expressed. The courts should be less willing to extend expressed meanings if it is clear that the Act in question was designed to be restrictive or circumscribed in its operation rather than liberal or permissive. They will be much less willing to do so where the subject matter is different in kind or dimension from that for which the legislation was passed. In any event there is one

course which the courts cannot take, under the law of this country; they cannot fill gaps; they cannot by asking the question 'What would Parliament have done in this current case - not being one in contemplation - if the facts had been before it?' attempt themselves to supply the answer, if the answer is not to be found in the terms of the Act itself."

40. Another illustration of interpretation of a statute to reflect current circumstances is the extension of the term "bodily harm" in the Offences against the Person Act 1861 to mean psychiatric harm, a concept which was unknown at the time of the passing of that legislation. See R v Chan-Fook [1991] 1 WLR 687 and R v Burstow sub nom R v Ireland [1998] A.C 147.

Conclusion

41. If as stated above, the constitution is a living document, then it must adapt and respond to changes in society's attitudes. From time to time, Parliament steps in. For example, the Devolution of Estates Act 2007 and its effect on section 27 (4)(d) of the Constitution (in so far as marriage, devolution of estate on death or other interests of personal law are concerned) and the more recently passed Abolition of the Death Penalty Act 2021 for certain offences (murder, treason, robbery with aggravation) and its effect on section 16(1) of the Constitution. The same can be said for the 2006 Act. It could not surely have been the intent of Parliament to give to some of its citizens a right whilst leaving in place provisions which deprived them of the benefits of that same right. On the occasions where parliament does not act, this court must step in to ensure that the Constitution or any enactment is interpreted to reflect society's evolution and progressive attitudes particularly towards gender, tribe, religion, race or citizenship, so that no one group or part of a group is left

out of an inclusive society. In doing so, the court must be careful to ensure that it is not making any new law, but merely interpreting that which already exists in a manner consistent with the will of Parliament.

42. It follows that the changes made by the 2006 Act are in accordance with the Constitution. The 2006 Act does not restrict the rights of any category of citizens and self-evidently does not discriminate against any citizen who holds dual-nationality. Section 76 of the constitution must be considered in light of Section 173 which gave Parliament the discretion to legislate in respect of matters concerning citizenship. Parliament in its wisdom had decided that it should not be unlawful for Sierra Leoneans to hold another nationality. The mischief against which section 76 (1) (a) was aimed is no longer in existence, indeed what was once unlawful is now lawful. It follows a fortiori that there is no automatic disqualification by virtue only of holding dual or multiple citizenship. The effect of this is that the disqualification of Sierra Leonean citizens who voluntarily hold citizenship of another country by virtue of section 76(1)(a) is now only relevant to elections conducted before the 2006 Act was passed. If it needs stating, the law as it now stands is that Sierra Leonean citizens who are voluntarily citizens of another country are no longer disqualified from standing for Parliament.

43. The only citizens with dual nationality excluded under section 76 (1)(a) are naturalised citizens, given that only citizens other than naturalised citizens are qualified under section 75 of the constitution. Until such time as Parliament amends the law this disqualification remains in force.

The Hon. Justice Glenna Thompson
Justice of the Supreme Court