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IN THE SUPREME COURT OF SIERRA LEONE

SUPERVISORY JURISDICTION



IN THE MATTER OF SECTION 125 OF THE CONSTITUTION OF SIERRA LEONE, 1991

AND

IN THE MATTER OF THE UNDERMENTIONED MATTER IN THE HIGH COURT OF SIERRA LEONE

AND

IN THE MATTER OF ORDER 52 OF THE HIGH COURT RULES, 2007

AND

IN THE MATTER OF RULE 98 OF THE SUPREME COURT RULES, 1982 - STATUTORY INSTRUMENT NO. 1 OF 1982

AND

IN THE MATTER OF THE JUDICIAL REVIEW OF THE RULING OF THE HON MR JUSTICE ABDUL RAHMAN MANSARAY DATED 24 MARCH, 2018 IN THE UNDERMENTIONED MATTER

AND

IN THE MATTER OF THE JUDICIAL REVIEW OF THE INTERIM ORDER ORDER OF THE HON JUSTICE ABDUL RAHMAN MANSARAY DATED 24 MARCH, 2018 IN THE UNDERMENTIONED MATTER. TO WIT:

EP3/18

2018

K No. 1

*IN THE HIGH COURT OF SIERRA LEONE
GENERAL CIVIL JURISDICTION*

IN THE MATTER OF THE INHERENT JURISDICTION OF THE HIGH COURT OF SIERRA LEONE

IN THE MATTER OF SECTION 33 OF THE CONSTITUTION OF SIERRA LEONE, 1991

*IN THE MATTER OF SECTIONS 7, 8 & 43 OF THE PUBLIC ELECTIONS ACT, 2012
IN THE MATTER OF TRANSPARENT AND FREE AND FAIR ELECTIONS IN THE
REPUBLIC OF SIERRA LEONE*

*IN THE MATTER OF AN APPLICATION FOR CONSEQUENTIAL ORDERS TO AID
THE DELIVERY OF CREDIBLE FREE AND FAIR ELECTIONS IN THE REPUBLIC OF
SIERRA LEONE*

BETWEEN:

IBRAHIM SORIE KOROMA - PLAINTIFF/RESPONDENT

AND
THE CHIEF ELECTORAL COMMISSIONER
NATIONAL ELECTORAL COMMISSION
THE ATTORNEY-GENERAL & MINISTER OF JUSTICE

AND IN THE SUBSTANTIVE APPLICATION HEREIN:

BETWEEN:

THE CHIEF ELECTORAL COMMISSIONER - APPLICANTS
NATIONAL ELECTORAL COMMISSION

AND

IBRAHIM SORIE KOROMA - RESPONDENT

CORAM:

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT
THE HONOURABLE MR JUSTICE E E ROBERTS
JUSTICE OF THE SUPREME COURT
THE HONOURABLE MS JUSTICE G THOMPSON
JUSTICE OF THE SUPREME COURT

COUNSEL:

MS B E T CUMMINGS, DRUCIL E TAYLOR ESQ & J KAPUWA ESQ for the
Applicants
LANSANA DUMBUYA ESQ for the Respondent

JUDGMENT DELIVERED THE 1ST DAY OF SEPTEMBER, 2021

BROWNE-MARKE, JSC

INTRODUCTION

1. My Lord, My Lady, this is another case which relates to the 2018 Presidential and Parliamentary elections. Simply put, the issue here, is whether any matter relating to a Presidential election could be dealt with at the High Court level. It behoves us to review the proceedings in the High Court, and to determine whether at any stage, a party could apply to that Court, to halt or, to stop a Presidential election from being held. At the time, i.e. in 2018, we determined quite summarily, that the High Court

had no such power, and ordered that the run-off elections should proceed on 31st March, 2018. That notwithstanding, we allowed Counsel on both sides to address the Court, after the feverish activities relating to the elections had dissipated, on a date after the last mentioned date. The matter was of such urgency, that the first sitting began at 5.15pm on Monday 26 March, 2018, a day before the date which had been fixed by the Applicants herein for the holding of the run-off Presidential election.

HIGH COURT HEARING SATURDAY 24 MARCH, 2018

2. On Saturday, 24 March, 2018, the High Court, MANSARAY, J presiding, had granted an Injunction which purported to stop the holding of the run-off Presidential election on Tuesday 27 March, 2018. As such, on Monday 26 March, Solicitors for the Chief Electoral Commissioner and the National Electoral Commission, sought to invoke the supervisory jurisdiction of this Court in order to quash that decision, so that both Applicants could carry out their Constitutional mandate, that being, to hold and to conduct a run-off Presidential election in accordance with the provisions of section 42(2)(e)&(f) of the Constitution of Sierra Leone, 1991 - hereafter, the 1991 Constitution.
3. Section 42(2)(e)&(f) provide as follows: *(e) no person shall be elected as President of Sierra Leone unless at the Presidential election he has polled not less than fifty-five per cent of the valid votes in his favour; and (f) in default of a candidate being duly elected under paragraph (e), the two candidates with the highest number or numbers of votes shall go forward to a second election which shall be held within fourteen days of the announcement of the result of the previous election, and the candidate polling the higher number of votes cast in his favour shall be declared President.* The Presidential election, together with other elections were held and conducted on 7 March, 2018. On 13 March, 2018, the Applicant announced the results, and declared that since no candidate had crossed the 55% threshold in the just concluded Presidential election, a run-off would be held 14 days later on 27 March, 2018. The 14 day period was the maximum number of days allowed under the Constitution.

APPLICANTS' ORIGINATING NOTICE OF MOTION

4. By notice of ex parte Motion dated 26 March, 2018, the Applicants herein, applied to this Court for the following Orders: (1) That this Court abridges the time for the hearing of an Originating Notice of Motion

7. Section 45 is set out in very clear terms: "45(1) The Chief Electoral Commissioner shall be the Returning Officer for the election of a President. (2) Any question which may arise as to whether - (a) any provision of this Constitution or any law relating to the election of a President under sections 42 and 43 of this Constitution has been complied with; or (b) any person has been validly elected as President

SECTION 45 1991 CONSTITUTION

which was taken with the utmost speed by this Court.

some delay, but the delay did not render nugatory the remedial action ensued had he succeeded in full in his application. His action did cause action taken by Mr Koroma, and the catastrophic results which would have "portentous" advisedly; and I do so to express the seriousness of the Sierra Leone on 7th March, 2018". I have used the expression of Local Council elections results as conducted throughout the Republic of the Applicants herein from "announcing Presidential, Parliamentary or more portentous. He asked the High Court for an injunction restraining March, 2018. The orders prayed for in his paragraphs 5 and 6 were even Applicants herein from conducting the run-off Presidential election on 27 to grant an injunction, interim and interlocutory, restraining the numbered 7 and 8 in his motion paper. Therein, he prayed the High Court I would later show. Two of these orders prayed for, were those Koroma, were some which could not be properly made in the High Court as notice of motion in the High Court. Among the orders sought by Mr Koroma, a Legal Practitioner instituted an action by way of originating 6. It all started on 21 March, 2018 when the Respondent, Mr Ibrahim Sorie leading to the filing of the Notice of Motion.

affidavit. In his affidavit, Mr Taylor sets out the course of events on the same 26 March, 2018. Several documents were exhibited to his Taylor who also appeared as Counsel in the matter, deposed and sworn to 5. The Application was supported by the affidavit of Mr Drucil Evelyn application contained in the Notice of Originating Motion.

before 11am on the date fixed for the hearing of the substantive this Court orders that the Respondent files his statement of case on or March, 2018 on the Solicitors for the Respondent therein. (3) That the with personal service, and to serve the said Motion on the same day 26th Rules, 2007 - HCR, 2007: (2) That this Court grants leave to dispense bearing the same date pursuant to Order 3 Rule 5(1) of the High Court

under section 42 of this Constitution or any other Law, shall be referred to and determined by the Supreme Court" The other law, in this context, is the Public Elections Act, 2012. Neither the Constitution, nor the 2012 Act contemplates any proceedings being instituted in the High Court on any matter relating to a Presidential election.

8. It may be argued that as of 22nd March, 2018 when Mr Koroma filed his application, none of the candidates had been, in the words of section 45(2)(b) validly elected as President. Nevertheless, the plain words of section 45(2)(a) indicate in no uncertain terms that any query as to whether the law relating to the election of a President has been complied with, must be directed to this Court. But it would be best to set out in detail the train of events which resulted in the Supreme Court hearing.

MR I S KOROMA'S ACTION IN THE HIGH COURT

9. On 21 March, 2018, 6 days before the run-off Presidential election, the Respondent herein, Mr Ibrahim Sorie Koroma, filed in the High Court Registry, an Originating Notice of Motion set to be heard on Friday 23 March, 2018. The first order sought was one which would direct the Auditor-General or, some other competent person, to conduct a forensic audit of the internal systems used by the 1st and 2nd Defendants at the elections held on 7 March, 2018, and to prepare a report and make recommendations based on such a report within 14 days of the date such a person was appointed. The second order was for an order directing both defendants to manually recount all elections results in respect of all the elections, including the Presidential election, held on 7 March, 2018. The 3rd and 4th orders prayed for, were in the same vein, in that granting them would have inevitably resulted in the deferment of the run-off Presidential election already fixed for Tuesday 27 March, 2018. The prayers in his paragraphs 5, 6, 7 & 8, I have already referred to in outline in paragraph 6, supra. That a single individual, not a party official, as his affidavit would show, could canvass our High Court for the cancellation of a Presidential run-off election without any thought of the consequences that would flow from such deferment, suggests that he must have thought very highly of himself. In the event that the High Court accepted his complaints and made the order for a recount of the votes cast, he was asking for further ancillary orders to be made in his paragraph 9, sub-paragraphs a) to k). His application was supported by an affidavit deposed and sworn to by himself the same day, 21 March, 2018.

10. In his affidavit, he begins by deposing as follows: "That I am a Sierra Leonean and a registered voter in the March 7th 2018, Presidential, Parliamentary and Local Council elections, and I make this affidavit on my own personal behalf." Here, Mr Koroma was presenting himself as the disinterested individual, concerned only that things should be done the right way. He did not say he had taken that course of action because of any party affiliation. He was just being high-minded, perhaps, according to his own lights. As of the date Mr Koroma deposed to that affidavit, only one Parliamentary election remained outstanding. A Parliamentary election is not subject to what is termed a run-off. If a Parliamentary election is cancelled for one reason or the other, a bye election is held. The only run-off outstanding, was that for the election of a President. Irrespective of the apparently respectable integument and packaging given to the woolly and inconsequential submissions made by Mr Koroma and by his Counsel in support of his application, that was the state of affairs as of 21 March, 2018.

HEARING IN THE HIGH COURT

11. The Motion came up for hearing before MANSARAY, J that same day 21 March, 2018, a momentous day in our history in the year, 1967. The Learned Judge in his Ruling delivered on 24 March, 2018 set out the course the hearing took. Though Mr Koroma's application was *ex parte*, His Lordship heard Mr Taylor for the 1st and 2nd Defendants. He granted the order for short service, and ordered that the defendants file their respective affidavits in opposition. The matter was then adjourned to Friday 23 March, 2018, another day with sad omens recalling the events of 1971 and 1991.
12. At the hearing on 23 March, the Learned Judge noted that affidavits had not been filed as ordered by him. Mr Dumbuya was just about to move his Motion, when Ms Cummings, Counsel jointly with Mr Taylor, for the 1st and 2nd Defendants therein, raised the preliminary objection that the Court lacked jurisdiction to hear the matter because of section 45 of the 1991 Constitution; and also because, Mr Koroma had approached the Court by way of Originating Notice of Motion, rather than by Petition. The Learned Judge ruled, erroneously in our view, that Mr Koroma's complaint about the manner in which votes had been counted and computed in a Presidential election did not fall within section 45 of the 1991 Constitution. The second issue of whether a Petition was the proper way

of approaching the Court where there is a challenge to a Presidential election, has now been settled by the Supreme Court in S C cases 6&7/2018 - DR SYLVIA BLYDEN, DR SAMURA KAMARA & ORS v H E PRESIDENT BIO & OTHERS - Judgment delivered by the Hon Chief Justice in April, 2021. Regrettably, the Learned Judge did not equate a challenge to the computation of votes in a Presidential election, with a challenge to the election of a President. They are one and the same thing. He concluded, wrongly, in our view, that he could exercise jurisdiction in the matter before him. On Saturday 24 March, 2018, the objections raised by Ms Cummings were refused and rejected in the words of the Learned Judge. That same day, Mr Drucil Taylor was also in Court, jointly with Ms Cummings and Mr Kapuwa, appearing for 1st and 2nd Defendants. Mr Taylor asked the Learned Judge to state a case, or, using the proper language, to refer the case to the Supreme Court for determination as he, Mr Taylor still held the view that a question relating to the interpretation of the Constitution had arisen. The Learned Judge then granted in the interim, the restraining orders Mr Koroma had prayed for. To quote the first order verbatim, it read:

- "1. An interim injunction restraining the 1st and 2nd Defendants from conducting the Presidential election scheduled for March 27th 2018 pending the hearing and determination of this Court.*
 - 2. That the 1st and 2nd Defendants should file their question for consideration by the Supreme Court on Monday 26th March, 2018 at 10am.*
 - 3. That this matter is adjourned to Monday 26th March, 2018 at 12.00pm for this Honourable Court to consider referring the question so filed to the Supreme Court".*
13. Whatever may have been the views of the Learned Judge, he was clearly making an order affecting a Presidential election, notwithstanding the conclusion he had reached that no interpretation of sections 42, 43 and 45 respectively of the 1991 Constitution was necessary. It is the view of this Court that the plain words of these three sections meant that only the Supreme Court could decide whether any law, in particular, the Public Elections Act, 2012 had been complied with. It should also be noted, that at this stage, Mr Dumbuya, Counsel for Mr Koroma had not yet moved his motion. In other words, the Court was not in possession of the full facts which would have necessitated the granting of an injunction however mild. No evidence was before the Court as to whether the Plaintiff in the

action therein had a good cause of action; and, more importantly, the Court had not been presented with sufficient factual evidence to enable it determine where the balance of convenience lay. The cases since the American Cyanamid case, i.e. *AMERICAN CYANAMID CO v ETHICON Ltd* [1975] 1 All ER, 504, H L, all lay down the guiding principles for granting an interlocutory injunction.

14. The 1st and 2nd Defendants were compelled to issue a statement that Saturday, explaining that while awaiting official confirmation of the injunction restraining them from carrying on with preparations for the run-off, practical and logistical preparations for the run-off would go ahead.

MONDAY 26 MARCH, 2018 - HEARING IN THE SUPREME COURT

15. By Monday 26 March, 2018, the matter had been brought up before us as stated in paragraph 4, supra. Before this Court sat at 5.15pm, The Hon Mr Justice Mansaray had already, wisely, discharged the interim injunction he had granted, restraining the holding of the run-off Presidential election. The Court asked Mr Taylor when the Applicants would be ready to hold the run-off; he said Saturday 31 March, 2018 would be fine. This Court there and then ordered that the run-off be held and be conducted on Saturday 31 March, 2018.

16. Mr Dumbuya, Counsel for Mr Koroma then asked for compliance with the orders made by The Learned Judge in the High Court before the run-off. The Court's response was that it was the duty of NEC to fix the date for the run-off. The Court then proceeded to make the following Order:

"UPON HEARING DRUCIL TAYLOR ESQ of Counsel for the Applicants, the Chief Electoral Commissioner and the National Electoral Commission respectively; and LANSANA DUMBUYA ESQ of Counsel for the Respondent: IT IS THIS DAY ORDERED that the date requested by the Applicants, i.e. Saturday 31st March, 2021 be the date fixed for the run-off Presidential Election pursuant to Section 42(2)(f) of the Constitution of Sierra Leone, 1991, and in view of the order restraining the holding of the same made by The Hon Mr Justice A R Mansaray, High Court Judge on Saturday 24th March, 2018 which said Order was discharged by him earlier today Monday 26th March, 2018".

17. The next issue to be addressed was whether we should proceed under Order 52 of the High Court Rules, 2007. Mr Taylor informed the Court that he had filed his statement of case in accordance with the provisions

of Order 52 r 6(2) HCR, 2007. The Court pointed out to him that he would have to file the Order he was seeking to quash. This is a requirement of Order 52 Rule 8(1) HCR, 2007 incorporated as part of the Rules of this Court by Rule 98 of the Supreme Court Rules, 1982. Mr Taylor indicated that he would have to amend his statement of case. On his part, Mr Dumbuya asked for a whole day to file his statement of case. He asked that the full hearing be fixed for Wednesday 28 March, 2018 at 1pm.

18. The Court thus made the following Order:

"UPON HEARING DRUCIL TAYLOR ESQ of Counsel for the Applicants and LANSANA DUMBUYA ESQ of Counsel for the Respondent, THIS HONOURABLE COURT ORDERS:

1. That Leave is granted to the Applicants to short serve the substantive Originating Notice of Motion dated 26th March, 2018.

2. This Honourable Court grants leave to the Applicants to amend the said Originating Notice of Motion.

3. This Honourable Court notes that the Applicants have already filed their statement of case.

4. This Honourable Court grants Leave to the Respondent to file his statement of case against 12 midday, Wednesday 28th March, 2018.

5. Hearing of the Applicant's Originating Notice of Motion will be held on Wednesday 28th March, 2018 at 1pm.

6. No Order as to Costs.

7. Liberty to Apply."

19. At the hearing on 28 March, 2018, the Court acknowledged that the Applicants had filed three documents, viz: the amended Notice of Motion; the amended statement of case; and a supplemental affidavit deposed and sworn to on 28 March, 2018. The Respondent had not at that stage, filed his own statement of case. The Court had no alternative but to adjourn to 5 April, 2018. Thereafter, Mr Taylor enquired as to what should happen to the orders, save for the Injunction, which had been made by The Learned High Court Judge. Our response was that he should, if he thought it necessary, ask for the file to be recalled so that the Respondent's application in that Court could be argued, as no argument had been heard before that Court had proceeded to make the Orders it made. On our part, we did not think it necessary for any arguments to be advanced further in the High Court, as this Court had become seised of the matter. And, as could be implied in our Orders referred to above, this

Court was of the view that those Orders prayed for in the High Court, were ultra vires the jurisdiction of that Court, as they were made in respect of a Presidential election.

20. On 4 April, 2018, the President was sworn into office. There was no hearing on 5 April, 2018. The next hearing was on Monday 9 April, 2018. Mr Taylor, Lead Counsel for the Applicant, began presenting his case as filed in the substantive Originating Notice of Motion. He relied on the affidavit in support of the Motion, together with the documents exhibited to it. He referred the Court to the leading case in this area of the Law, *Certiorari*, to wit, *RIDGE v BALDWIN* [1964] AC, 40, HL.

Mr Dumbuya on his part, relied on the affidavit in opposition he had filed, and to the statement of case filed on behalf of the Respondent.

21. I think I should specifically mention that the Respondent was himself absent at these last two hearings. We were informed by Mr Dumbuya that he had gone abroad. The Court expressed its views about the Respondent's absence. The Court had hoped Mr Koroma would at least be present in Court when his case was being presented. His action had led to the deferment of an election for the first time in recent history. Ruling was then reserved.

22. The first point I would wish to make, is that this Court had cause to depart from some of the laid down rules as to time and otherwise because of the urgency of the situation. Any delay on the part of the Court to deal with the matter at hand expeditiously, could have had calamitous consequences. Thus, the glossing over some of the time lines laid down in the Rules of Court.

23. The second point is that Counsel at the Bar owe a duty to the Court. They are officers of justice, and bear responsibility for assisting the Court to arrive at a just determination of issues before it. Lamentably, this did not happen during the High Court hearings. Great candour is expected from Counsel when asking the Court for its assistance. Thus, Mr Dumbuya requested this Court at the eleventh hour to reinforce an Order he well knew ought not to have been made at the High Court level. At that late stage, a day before the scheduled run-off of the Presidential election, Counsel was asking this Court to enforce an order made by a Court which had no jurisdiction to do so. We deprecate such persistence as unworthy of the high standards of the Bar, and the Court made its views clear to Mr Dumbuya at that hearing.

24. I shall now turn my attention to the merits of the Application made by the Applicants herein. I shall start by explaining why any challenge to a Presidential election has to be brought before, and in, the Supreme Court.

HOW THE PRESIDENT IS ELECTED AND HOW HIS ELECTION COULD BE CHALLENGED 1971 - DATE

25. Sierra Leone became a Republic on 19 April, 1971 by way of the Constitution of Sierra Leone Act, 1971 - Act No. 6 of 1971. The Hon Mr Justice C O E Cole, Chief Justice, became what was termed a Ceremonial President with Dr Siaka Stevens as Prime Minister. Two days later, on 21 April, 1971, the Constitution of Sierra Leone, 1971 (No.2) Act 1971 - Act No. 7 of 1971 was passed into law by Parliament. Dr Stevens became the Executive President. Mr Justice Cole, reverted to his position as Chief Justice, and Head of the Judiciary. The Supreme Court was also established, as the final Court of Appeal. Appeals to the Judicial Committee of the Privy Council were abolished. No Presidential election was held. The President assumed office on the basis of a Parliamentary Motion. He was to hold office for a term of 5 years, subject to re-election.

26. In 1976, The Constitution (Amendment) Act, 1976, Act No. 1 of 1976 was passed into law on 18 March, 1976. In its section 1, it repealed and replaced section 16 of the 1971 Constitution. The President was once more to be elected by Members of Parliament, and not by universal suffrage. The Chief Justice was appointed Returning Officer for the election. A new paragraph was added to section 16 of the 1971 Act. The new section 16(2)(e) stated that: "*Any question which may arise as to whether - (i) any person has been validly elected as President under this Constitution or any law relating to the election of a President has been complied with; or (ii) any person has been validly elected as President under this Constitution or any other law, shall be referred to and determined by the returning officer whose decision shall be conclusive and shall not be questioned in any Court.*" That same day, the Election of President of Sierra Leone, Act, 1976 - Act No. 2 of 1976 was passed into law to give effect to the Constitutional amendment.

27. Pursuant to the above mentioned amendment to the 1971 Constitution, and to Act No. 2 of 1976, President Stevens was again elected President for a further 5 year term by Parliament on Friday 26 March, 1976 and

was inaugurated as such. In 1978, by virtue of the Constitution of Sierra Leone, 1978 - Act No. 12 of 1978, Sierra Leone became a one-party State, with the APC as the sole party of Government. President Stevens continued in office as President. Once again, no Presidential election was held.

28. In 1985, Dr Stevens retired as President; Major-General Momoh, being the sole candidate of the ruling one party, was selected to be the sole candidate in the election which was to be held. The Presidential Election Act, 1985 - Act No.1 of 1985 was passed into law to regulate the election. President Momoh was, inevitably elected President. The 1985 Act was amended subsequently by Acts Nos. 4 and 9 of 1985. Section 21 of the Principal Act made a challenge to the election of a President, non-justiciable - the Returning Officer's (the Chief Justice's) decision on whether the then sole candidate had been duly elected, was final. There could be no challenge to the validity of the election of the President. It continued in the tradition laid down in 1976, and before then, in 1971.
29. In 1986, the Election Petition Rules, S.I. No. 12 of 1986 were promulgated. They applied exclusively to Parliamentary elections. These Rules, were, by virtue of the extant section 62 of the Electoral Provisions Act, 1962 - Act No. 42 of 1962, promulgated by the Chief Justice. By virtue of Rule 59: The Parliament Election Petition Rules (page 407 of Vol. VI of the Laws of Sierra Leone, 1960) were revoked. No provision was made in these Rules relating to petitions challenging the election of a President. These Rules were intended for use in the then imminent Parliamentary Elections scheduled for May, 1986. As stated above, the sole-candidate election for the Presidency had been held in October, 1985. The validity of the election of a President was non-justiciable up to 1991. The last time, (prior to 1995 under the NPRC Military regime), express provision was made for a Presidential Election was on 18 April, 1985 with the passing into law of the Presidential Elections Act - Act No. 1 of 1985 as amended and as referred to above.
30. In 1991, the new multi-party Constitution, referred to above, came into force. It made specific provision for the election of a President and for any challenge to that election. All of these provisions have been set out above. In the premises, and as has been repeatedly shown above, the High Court had no jurisdiction to enquire into, or, to deal with any challenge to a Presidential election. The position is made clear in the Constitution. Section 78 of the 1991 Constitution states- 78(1) -*The High Court shall*

have jurisdiction to hear and determine any question whether - (a) any person has been validly elected as a Member of Parliament; and (b) the seat of a Member of Parliament has become vacant. Section 78(6) - For the purpose of this section, Parliament may make provision, or, may authorize the making of provisions with respect to the practice and procedure of the High Court, OR The Court of Appeal, and may confer upon such Courts such powers OR May authorize the conferment thereon of such powers as may appear to be necessary or desirable for the purpose of enabling the said Courts effectively to exercise the jurisdiction conferred upon them by this section, OR by any law relating to the hearing of appeals from the High Court.

31. Parliament promulgated laws pursuant to powers conferred in that behalf in the Electoral Laws Act, 2002, which were later repealed and replaced by the Public Elections Act, 2012 as amended. Parliament also promulgated the Election Petition Rules, 2007 which applied exclusively to Parliamentary elections.
32. But the history of the election process, and challenges to the election of a President, do not end with the 1991 Constitution. There was an interregnum between 1992 and 1996. The NPRC held the reins of Government for four years. When a return to civilian rule was imminent, provision was made for the expected Presidential election. The Presidential Election Decree, 1995 - No 17 of 1995 was promulgated by the NPRC and was used in the 1996 Presidential election. Section 19(1) thereof provided that: "*19(1) Any person who is a citizen of Sierra Leone may challenge the validity of the election of the President by petition to the Supreme Court within seven days after the declaration of the result of a presidential election under subsection (2) of section 15. Section 19(2) - A declaration by the Supreme Court that the election of the President is not valid shall be without prejudice to anything done by the President before the declaration.*"
33. Constitutional rule and democratic governance was restored as of 2 April, 1996. The Constitution Reinstatement (Consequential Provisions) Act, 1996 - Act. No 2 of 1996 was passed into law. By virtue of Section 6 of the Act, "*The Presidential Elections Decree, 1995 shall be deemed to be an Act of Parliament enacted pursuant to paragraph (b) of subsection (2) of section 42 of the Constitution, and shall be construed as such with modification and adaptation as may be necessary.*"

34. By virtue of section 40(1) Electoral Laws Act, 2002: *"Any person who is a citizen of Sierra Leone may challenge the validity of the election of the President by petition to the Supreme Court within seven days after the declaration of the result of the presidential election under subsection (2) of section 38".* Section 129 of the Act states: *"The following Acts are hereby repealed: (a)..... (b)..... (c) - The Presidential Elections Act, 1995."*
35. Then came the Public Elections Act, 2012. Section 55(1) states: *"s. 55(1) - A person who is a citizen of Sierra Leone and has lawfully voted, may in a presidential election challenge the validity of that election by petition to the Supreme Court within seven days after the declaration of the result of a presidential election under subsection (2) of section 52. Section 55(2) - A declaration by the Supreme Court that the election of the President is not valid shall not prejudice anything done by the President before the declaration".* By section 168(1) - *The following enactments are hereby repealed:- (a) the National Electoral Commission Act, 2002; and (b) the Electoral Laws Act, 2002.* In the premises, since 1991, all matters relating to the election of a President have been the exclusive preserve of the Supreme Court. And for the purpose of clarity, the repeal of the Electoral Laws Act, 2002 did not bring back into force the repealed Presidential Elections Act, 1995. This is the effect of section 18(1) of the Interpretation Act, 1971 - Act No. 8 of 1971. It states: *"section 18(1)(a) - The repeal or revocation of an Act, unless a contrary intention appears, shall not - (a) revive anything not in force or existing when the repeal or revocation takes effect."*

THE IMPACT OF SECTIONS 42 & 43 1991 CONSTITUTION

36. The intervention by Mr Koroma in the High Court also posed a much graver problem. Section 42(3) of the 1991 Constitution states: *"section 42(3)- A person elected to the office of President under this section shall assume that office on the day upon which he is declared elected by the Returning Officer, or, upon the date that his predecessor's term of office expires, whichever is the latter".* On 23 November, 2012, President Koroma was re-elected President. His second five year term began as of that date. It expired as of 23 November, 2017. The period during which the election of his successor was to be held is provided for in section 43. Section 46(1) provides that *"No person shall hold office as*

President for more than two terms of five years each, whether or not the terms are consecutive". As such, he was not eligible for re-election.

37. Section 43 states: - "A Presidential election shall take place: (a) where the office of President is to become vacant by effluxion of time, and the President continues in office after the beginning of the period of four months ending with the date when his term of office would expire by effluxion of time, during the first three months of that period; (b) in any other case, during the period of three months beginning with the date when the office of President becomes vacant." Paragraph (a) works out as follows: the period of four months contemplated was 23rd July to 23 November. Accordingly, if I have read the paragraph correctly, the Presidential election should have been held within the first three months of that four month period: i.e. between July and 23rd October, 2017. But paragraph (b) contemplates an addition to the 5 year period. It contemplates a three month period beginning with 23 November. That period evidently ended on 23 February, 2018. The election held on 7 March, 2018 was a date which was already outside that 3 month window. The vacuum in the seat of power which the 1991 Constitution was trying to avoid, became an eventuality. Mr Ibrahim Sorie Koroma's intervention, if successful, would have extended, or, rather, enlarged the vacuum. It may safely be assumed that the drafters of the 1991 Constitution never had this eventuality in mind. The paramount consideration in 1991 was to ensure that there was a smooth transition from a one party form of government to political pluralism.

38. To return to the Orders prayed for by the Applicants in their Originating Notice of Motion, the 1991 Constitution confers on this Court, supervisory jurisdiction over other subordinate Courts. Section 125 of the 1991 Constitution states: "The Supreme Court shall have supervisory jurisdiction over all other Courts in Sierra Leone and over any adjudicating authority; and in exercise of its supervisory jurisdiction shall have power to issue such directions, orders or writs including writs of habeas corpus, orders of certiorari, mandamus and prohibition as it may consider appropriate for the purposes of enforcing or securing the enforcement of its supervisory powers."

39. The supervisory power conferred on this Court has been exercised on several occasions and in several cases. Some of these cases have been cited by Mr Taylor in the course of argument; this Court is seized of the

reasons for the decisions in those cases, and will follow the trend set in those cases.

Whenever a subordinate Court has acted ultra vires, or, has exceeded its jurisdiction in such a way as to create injustice, or uncertainty in the Law, this Court will quash any decision flowing from the wrongful exercise of jurisdiction.

40. In the result, this Court makes the following Orders:

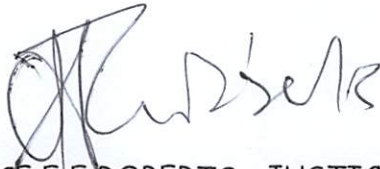
This Honourable Court issues the Order of Certiorari quashing,

- (1) FIRST, the decision of the High Court, The Hon Mr Justice A R Mansaray presiding, made on Saturday 24 March, 2018 in which decision, two orders were made, to wit:
 - (i) Paragraph 13 of the Ruling delivered on Saturday 24 March, 2018 wherein The Learned Judge held: *"For the above stated reasons and having answered in the affirmative that this Court has jurisdiction to hear and determine the originating notice of motion, this Court hereby refuses and rejects the objection of the 1st and 2nd Defendants herein."*
 - (ii) Paragraph 1 of a subsequent Ruling made the same day, Saturday 24 March, 2018 wherein the Learned Judge granted an interim injunction restraining the 1st and 2nd Defendants from conducting the run-off Presidential election scheduled for March 27th 2018 pending the hearing and determination of the application made to that Court by the Respondent in the Application in this Court.

- (2) SECOND, the decision of the High Court, the Hon Mr Justice A R Mansaray presiding, made on Monday 26 March, 2018 in which 9 Orders were made by the Learned Judge relating to the holding and conduct of the pending run-off Presidential election, save that numbered 1 in which the interim injunction restraining the Applicants herein from conducting the run-off Presidential election on 27 March, 2018 was vacated.
- (3) The Respondent shall pay the Costs of this Application to the Applicants, such Costs to be taxed, if not agreed.



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



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



THE HON MS JUSTICE G THOMPSON, JUSTICE OF THE SUPREME COURT

