



IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT  
NO. 6 OF 1991, SECTIONS 33, 38; 74(1)(b); 77(m); 108(7) (8); 124 AND 127

AND

IN THE MATTER OF SECTIONS 38(A)(1), (2), (3) & (4) OF THE  
CONSTITUTIONAL AMENDMENT ACT, 2001

AND

IN THE MATTER OF SECTIONS 55, 56, 68 AND 171 OF THE PUBLIC  
ELECTIONS ACT, 2022 AND SCHEDULE THERETO

AND

IN THE MATTER OF AN ACTION PURSUANT TO THE SUPREME  
COURT RULES 1982 PART XVI, RULES 89 – 98 OF STATUTORY  
INSTRUMENT NO. 1 OF 1982

AND

IN THE MATTER OF THE PRESS STATEMENT BY THE ELECTORAL  
COMMISSION OF SIERRA LEONE DATED THE 21<sup>ST</sup> OCTOBER, 2022

AND

IN THE MATTER OF THE STATUTORY INSTRUMENT NO. 83  
PUBLISHED IN THE SIERRA LEONE EXTRA ORDINARY GAZETTE  
VOL. CXLXIII DATED 16<sup>TH</sup> NOVEMBER 2022

BETWEEN:

HON. ABDUL KARGBO  
39 NYLANDER STREET  
FREETOWN

- 1<sup>ST</sup> PLAINTIFF

COUNCILLOR HAKIRATU MAXWELL-CAULKER  
BLOCK 11 D LOW-COST HOUSING SITE 1 -  
KISSY MESS MESS  
FREETOWN

- 2<sup>ND</sup> PLAINTIFF

AND

**ATTORNEY-GENERAL AND MINISTER OF JUSTICE  
LAW OFFICERS' DEPARTMENT - 1<sup>ST</sup> DEFENDANT  
GUMA BUILDING  
FREETOWN**

**ELECTORAL COMMISSION  
TOWER HILL  
FREETOWN - 2<sup>ND</sup> DEFENDANT**

**CORAM:**

**HON MR. JUSTICE DESMOND BABATUNDE EDWARDS CJ  
HON MR. JUSTICE NICHOLAS COLIN BROWNE-MARKE JSC  
HON MR. JUSTICE M.F DEEN TARAWALLY JSC  
HON MR. JUSTICE ALUSINE SANI SESAY JSC  
HON MR. JUSTICE ANSUMANA IVAN SESAY JA**

**COUNSEL:**

**DR. ABDULAI CONTEH, JOSEPH FITZGERALD KAMARA ESQ  
PIOUS SESAY SNR. ADY MACAULEY, IBRAHIM KAMARA ESQ  
A. CAROW KAMARA were counsel for the Plaintiffs**

**R. B. KOWA ESQ, OSMAN I. KANU ESQ, BIGAIL SUWU-KAINDOH  
(MS), M. P. BANGURA ESQ, T. J. FREEMAN ESQ, FRANCES  
MOIGULA (MS), ADAMA BOIMA (MS), YUSUF KEKETOMA SANDY  
ESQ and AMARA LANSANA ESQ were counsel for the 1<sup>st</sup> Defendant**

**DR. EMMANUEL F. ABDULAI, A. T. TURAY AND J. A. BOCKARIE  
ESQ were counsel for the 2<sup>nd</sup> Defendant**

**JUDGMENT**

**DELIVERED THIS 27TH DAY OF JANUARY, 2023**

**Action intituled SC6/2022**

1. **BY Originating Notice of Motion dated the 28<sup>th</sup> of November, 2022, the Plaintiffs instituted action in the Supreme Court intituled SC 6/2022 to invoke the original jurisdiction of the Supreme Court pursuant to Sections**

124 and 127 of Constitution Act No 6 of 1991 praying for the following Reliefs:

- a) A Declaration that on a proper and purposive interpretation of Section 38A of the Constitutional Amendment Act No15 of 2001, the controlling provisions stipulated in sub-section (1) thereof, namely: “...*but constituencies have not been established...*” are *conditions precedent* to warrant or justify the holding of a general election of the ordinary Members of Parliament by the District Block system, (hereinafter referred to as the Proportional Representation System).
- b) A Declaration that the Directive by the President to the Electoral Commission of Sierra Leone (ECSL) to hold any public elections for ordinary Members of Parliament by the Proportional Representation System where there are extant and subsisting constituencies is, *ultra vires* the Constitution, 1991 as amended.
- c) A Declaration that the current Parliament was itself elected on a *constituency basis* as provided for in Sections 38(1), (2) and (3) and that these constituencies are still *extant* and *subsisting*.
- d) A further Declaration that *revision* of constituencies as provided for in sub-section 4 of Section 38 does not necessarily result in the establishment of constituencies stipulated in Section 38(1) (2) & (3) but that rather the Section provides for the period **when** existing constituencies should be reviewed, which revision may or may not necessarily result in a delimitation of the respective boundaries of existing constituencies.
- e) A Declaration *that to rely on Section 38A of the 2001 Act as stated by the 2<sup>nd</sup> Defendant in their Press Statement would preclude independent*

candidates from contesting for Parliament as contemplated in Section 77(m) of the Constitution of Sierra Leone Act No 6 of 1991.

- f) A Declaration that the entirety of Section 38A of the Constitutional Amendment of 2001, does not provide nor contemplate Local Councils Elections. The ward basis on which Local Authorities were last elected is the subsisting and lawful basis on which any public elections involving Local Authorities can be held and not by the Proportional Representation System.
- g) An Order restraining the 2<sup>nd</sup> Defendant, its agents, servants, privies or howsoever from taking any steps aimed at conducting the June 2023 multi-tier public elections on a Proportional Representation basis.
- h) An Order directing the 2<sup>nd</sup> Defendant to hold the June 2023 elections for ordinary Members of Parliament on a constituency basis as presently established.
- i) A Declaration that Section 2 of the Statutory Instrument No. 83 dated 16<sup>th</sup> November, 2022 making provision for both Proportional Representation for Members of Parliament and Local Council Elections, is *ultra vires* Sections 33 and 38 of the Constitution, 1991.

2. The Application was supported by the Affidavits of Hon. Abdul Kargbo, Member of Parliament representing Constituency 077 in the Port Loko District in the North Western Region of the Republic of Sierra Leone and Councillor Hakiratu Maxwell-Caulker, elected councillor for ward 414 in Constituency 118 in Freetown in the Western Urban District, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs, respectively, both sworn to on the 28<sup>th</sup> November, 2022

3. On the affidavit of the 1<sup>st</sup> Plaintiff Hon Abdul Kargbo was attached 2 exhibits viz exhibit AK1 which is a true copy of clause 57 of the Public Elections Bill 2022 and exhibit AK2 which is a letter dated 15<sup>th</sup> November 2022 from Joseph Fitzgerald Kamara Esq of JFK and Partners, Solicitors for the Plaintiffs herein to the Secretary to the President requesting for the Secretary to the President to furnish them with a copy of the Presidential directive issued to the Chairman of the Electoral Commission to conduct the June 2023 Elections on the basis of the District Block representation system .

4. On the affidavit of the 2<sup>nd</sup> Plaintiff was attached 1 exhibit, to wit, exhibit HMC1 which is a copy of the Press Statement dated 21<sup>st</sup> October 2022 from the 2<sup>nd</sup> Defendant herein.

5. Accompanying this Originating Motion and Affidavit in support of Motion was the Plaintiffs' Statement of Case also filed on the same date, the 28<sup>th</sup> of November 2022.

6. The Defendants had 10 days thereafter service on them of the plaintiffs' papers, without leave, to file a statement of the defendants' case. Service of the plaintiffs' papers was effected on the 30<sup>th</sup> of November, 2022 and on the 8<sup>th</sup> of December, 2022, both defendants obliged this Honourable Court with statements of the Defendants' Case.

7. Taking cognisance of Rule 97 (1) of the Supreme Court Rules PN No 1 of 1982 which states that 'this court may, after considering the statement of the plaintiffs' case and of the Defendants' case.....and any arguments of law decide to determine the action and give Judgment in court on a fixed date without argument .....' I have taken liberty to produce herein despite their length a verbatim production of the Plaintiffs and Defendants' case.

**STATEMENT OF THE PLAINTIFF'S CASE PURSUANT TO RULE 90(2)  
OF THE SUPREME COURT RULES, 1982**

## 8. FACTS AND PARTICULARS OF THE PLAINTIFFS' CASE

1. The 1<sup>st</sup> Plaintiff was elected as an MP in 2019 to represent Constituency 077 in the Port Loko District in the North/Western Region of the Republic of Sierra Leone.
2. The 2<sup>nd</sup> Plaintiff was elected as Councillor in the Freetown City Council in 2018 for Ward 414 in Constituency 118 in Freetown in the Western Area of the Republic of Sierra Leone. Both Plaintiffs were successful candidates for the All Peoples Congress Party in the aforesaid elections.
3. Since their election, the respective Constituency and Ward of both Plaintiffs are still extant and subsisting and they have not been delimited by revision nor disestablished by law or otherwise.
4. In 2022, a Bill entitled the *Public Elections Bill* was introduced in Parliament. Clause 57 of the said Bill provided as follows: "*A general election of Members of Parliament, other than Paramount Chief Members of Parliament, shall be by – (a) the one-member constituency system under subsection (2) of Section 38 of the Constitution; or (b) the district block representation system in accordance with Section 38A of the Constitution, as set out in the Twelfth Schedule.*"
5. During the first and second Readings of the Bill it was evident that there was strong and vocal opposition to the Bill insofar as it purported to introduce the district block system of voting for the ordinary Members of Parliament.
6. The Speaker of Parliament, perhaps sensing the mood of Parliament, later unilaterally withdrew the said Clause 57 from further consideration by Parliament.
7. The Speaker then pronounced from the chair that proportional representation system of election was already part of the laws of this country in light of the amendment introduced by Section 38A of the Constitutional Amendment Act No 15 of 2001.
8. Then, on the 21<sup>st</sup> day of October, 2022, the Electoral Commission for Sierra Leone issued a Press Statement in which it stated that on the directive of the President of Sierra Leone it would use the District Block voting system

contained in the amendment to the Constitution introducing Section 38(A) thereof.

## **SUBMISSIONS**

9. In the forefront of and central to the Plaintiffs' case is that, given the provisions of Section 38A amending the then Section 38 of the Constitution 1991, it would be *ultra vires* and unlawful to hold the June 2023 multi-tier public election for the country on proportional representation basis as stated in the Electoral Commission of Sierra Leone (ECSL) Press Statement dated 21<sup>st</sup> October 2022, for the plain and simple reason that the condition precedent to bring Section 38A into operation, namely, "*where there are no constituencies*" are not present, as there are extant and subsisting constituencies provided for in Section 38(1) of the Constitution 1991 and Local Council Wards as provided for in the Local Government Act, 2004.
10. Therefore, it is submitted for the Plaintiffs, that to conduct the 2023 Elections on the basis of the Proportional Representation System would offend the controlling provisions stipulated in Section 38A of the Constitution, to wit: "Where under any law for the time being in force, a date for a general election of Members of Parliament has been appointed ***but constituencies have not been established in accordance with subsection (3) of Section 38 for the purposes of such election, the President may, after consultation with the Electoral Commission, direct that such election shall be conducted on the basis of the existing districts in a manner to be known as the district block representation system instead of constituencies.***" (emphasis added).
11. It is further submitted that the trigger, if you will, to bring Proportional Representation System into play for the purposes of elections in the country, is "where constituencies do not exist", therefore, in the face of existing constituencies and wards the forthcoming elections for Parliament and Ward cannot lawfully and properly be held on the basis of Proportional Representation.

12. The predicate “**where**” in Section 38A is all important in the context of the meaning and effect of the section. The word itself intends to be a technical term in legislative drafting. It normally and best conveys the equivalent of general circumstances or a description of a factual situation (see: Legislative drafting, vol. 1, by V. Crabb, 1993, reprint 1998, Cavendish Publishing Ltd, p40).
13. The Plaintiffs respectfully urge this Honourable Court to take judicial notice of the fact that the present Parliament comprises members who were elected during the last general elections in 2018 to represent their respective constituencies and the same applies for the current members of the Local Authorities. These respective constituencies and wards are in being, vibrant and subsisting.
14. This, it is respectfully submitted, is the pith and substance of the Plaintiffs’ case: *there are present and subsisting constituencies and wards in the country for electoral purposes*. This should in and by itself preclude recourse to Proportional Representation System of elections as provided in Section 38A of the Constitution.
15. It is further submitted that Proportional Representation as contemplated and provided for in Section 38A of the Constitutional Amendment of Sierra Leone, 2001 is itself a product of its time. It is a *fall-back position, when there are no constituencies or wards for the purposes of public elections in the country*.
16. This was the *rationale* and the prevailing circumstances that warranted and justified the amendment introduced to Section 38 of the Constitution, 1991 and 2001 as now contained in Section 38A of the Constitution.
17. The country had then just come through a brutal and destabilizing rebel war foisted on the country which resulted, apart from the loss of human lives and destruction of property, in the destabilization of communities nationwide. An immediate effect of such a situation was the absence of settled communities and constituencies; hence the justification for the introduction of the Proportional Representation System. This was in a bid to restore the



- country to democratic civilian rule. It then was seen as a contingency provision and not intended to be a regular format for public elections or general elections for Parliament. This is borne out by the operative words of the amendment in Section 38A "... *but constituencies have not been established...*" The amendment introduced by Section 38A clearly speaks to a situation where constituencies have not been established in the country.
18. It is further the case for the Plaintiffs that these conditions do not now prevail in the country and therefore recourse cannot lawfully and properly be had to such a system, in the face *of existing constituencies and wards*.
19. Moreover, it is the case for the Plaintiffs that the *review* and possible *delimitation* of constituency boundaries as provided for in Section 38(4) of the Constitution 1991, is not a viable or tenable excuse or warrant that in the absence of such review and delimitation, recourse can be had to the Proportional Representation System as contained in Section 38A of the Constitution.
20. This is so for the simple reason that a review of boundaries of constituencies may or may not result in their delimitation. Section 38(4) of the Constitution only stipulates the time frame within which such a review may be done.
21. It is further submitted for the Plaintiffs that failure to embark on or complete such a review of boundaries exercise does not *ipso facto*, result in the abolition or elimination of such constituencies, so as to warrant the bringing into play of Proportional Representation System for electing the Members of Parliament.
22. Therefore, in the present circumstances, it is submitted for the Plaintiffs that there is no warrant or justification for the use of the Proportional Representation for the forthcoming elections.
23. It is further submitted for the Plaintiffs that the use of Proportional Presentation for public elections would negate the possibility of having *independent candidates* for such elections as is contemplated in Section 77(m) of the Constitution which relates to the loss of an elected independent's seat on cross carpeting to a political party.

24. Moreover, it is the case for the Plaintiffs that the Proportional Representation System gives primacy to a political party's list, submitted to the Electoral Commission to the exclusion of the constitutional entitlement of *every* Sierra Leonean subject to the requirement listed in Section 75 of the Constitution, 1991 to be entitled to be eligible as a candidate for Parliament.
25. The Proportional Representation System was intended for the conditions specified in the amending Section 38A of the Constitution and it was not intended to deprive Sierra Leonean citizens of the right to stand for and be elected as Members of Parliament by a mere side wind as is now contained in the 2<sup>nd</sup> Defendant's Press Statement.
26. It is further submitted for the Plaintiffs that since exceptional circumstances in 1996 and 2002 when recourse was had for public elections to the Proportional Representation System, subsequent elections up to the present, for Parliament and Local authorities, have since been on *Constituency* and *Ward* basis. The exceptional circumstances were, in 1996, the destabilized state of the country hard on the heels of military interregnum and the civil war, (desire to return the country to an elected civilian rule after a combination of civil war and military interregnum between 1992 and the year 2002) marked the official end of the civil war and the subsequent restoration of Parliamentary constituencies.
27. Therefore, it is submitted for the Plaintiffs that the use of the Proportional Representation for Parliamentary elections and Local Councils elections was done in those exceptional circumstances which do not now prevail. Accordingly, it would not be conducive to democratic civilian government in circumstances of a multi-party system to hold public elections now on a Proportional Representation System which would be a throw-back to an earlier unsettled state of affairs in the county.

*The jurisdiction and task of this Honourable Court*

28. The Plaintiffs have invoked Section 124(1) of the Constitution, 1991 which provides as follows:

*“The Supreme Court shall, save as otherwise provided in Section 122 of this Constitution, have original jurisdiction, to the exclusion of all other courts –*

*(a) In all matters relating to the enforcement or interpretation (emphasis added) of any provision of this Constitution; and*

*(b) Where any question arises whether an enactment was made in excess of the power conferred upon Parliament or any other authority or person by law or under this Constitution.”*

29. That is to say, respectfully, this Honourable Court is being asked to *interpret*, apply, and if possible *enforce* by way of granting the several reliefs prayed for by the Plaintiff in this matter as contained in the Notice of Motion.

30. In this exercise, it is respectfully submitted that the task of this Court is simple if regard is had to the basic principles and well established canons of interpretation of statute.

31. It is submitted respectfully, that the first of these, is that, if there is nothing to modify or alter the language of the statute it must be construed in the *ordinary* and *natural* meaning of the words and sentences used.

32. This, it is urged respectfully, is the literal rule of interpretation which *courts down the ages*, since the 19<sup>th</sup> Century, have employed: see the judgments of Jessel M.R in *Attorney-General v. Mutual Tontine Westminster Chambers Association Ltd (1876) 1 ExD 469* and Lord Fitzgerald in **BRADCLAPH V CLARKE**.

33. Again, it is respectfully submitted that the objective of all interpretations is to discover the intention of the law makers which is deducible from the language used; and once the meaning is clear, the Court should give effect to it. The Courts are not to defeat the plain meaning of an enactment by an introduction of their own words into the enactment.

34. Given the constitutional scheme of Section 38 of the 1991 Constitution which stipulates that **“Sierra Leone shall be divided into such**

constituencies for the purpose of electing the ordinary Members of Parliament”, it is submitted that ordinarily such elections should be on a Constituency basis. We say so because Section 38A amending the constitution envisages an extraordinary situation where no constituencies have been established for one reason or the other. This on the evidence is categorically not the case in this instance. (see Affidavit of the 1<sup>st</sup> Plaintiff paragraph 1 & 3).

35. It is respectfully submitted that the salient words used by the Legislature in Section 38A amending the Constitution, 1991 are as follows: “*Where, under any law for the time being in force, a date for a general election of Members of Parliament has been appointed but constituencies have not been established in accordance with subsection(3) of Section 38 for the purposes of such election, the President may, after consultation with the Electoral Commission, direct that such election shall be conducted on the basis of the existing districts in a manner to be known as the district block representation system instead of constituencies.*” (emphasis added).

36. In plain terms, it is respectfully submitted that the intention of the Legislature in enacting this section was clear and simple, namely, where a date for general election has been appointed but no constituencies exist in accordance with Section 38(3) of the Constitution, ***then and only then***, we submit, the President may, after consultation with the Electoral Commission, direct that such an election shall be conducted on Proportional Representation basis.

37. What is the evidence in this case at the Bar?

38. Clearly, from the Press Statement by the Electoral Commission itself, a date for the General Election has been appointed, namely the 24<sup>th</sup> of June, 2023.

39. Also, clear as a pike staff is that *there are existing constituencies and wards* established pursuant to Section 38 of the Constitution, 1991 and the Wards under the Local Government Act, 2004; (Boundary Delimitation Regulation, 2008) and Constitutional Instrument No. 2 of 2008 respectively.

40. It is accordingly submitted, respectfully, that the Press Statement of the 2<sup>nd</sup> Defendant stating that the 2023 elections would be held on a Proportional Representation basis finds no validity or affirmation in the clear and plain words of Section 38(A) of the Constitution.

41. It is further respectfully, submitted, that Section 38(A) of the Constitution does not give the President *carte blanche* power to direct that elections be held on a Proportional Representation basis regardless of the controlling words of this section, namely “...*but constituencies have not been established...*”.

42. It is therefore respectfully submitted that to find or hold otherwise is to fly in the face of the clear words and plain meaning of Section 38(A) (1) of the Constitution and the weight of evidence in this case.

THE UNCONSTITUTIONALITY OF STATUTORY INSTRUMENTS  
NO. 83 & 83 OF 16<sup>TH</sup> NOVEMBER, 2022

43. Paradoxically, it is to be noted that these Statutory Instruments given the same number, purport to address both Parliamentary and Local Council elections respectively.

44. The claimed warrant or authority for this instrument is Section 33 of the 1991 Constitution. It is submitted respectfully for the Plaintiffs that this section confers no warrant or authority as claimed in the said Statutory Instrument to change the form, format and mode of Parliamentary and Local Government Elections.

45. Section 33 of the Constitution undoubtedly confers on the Electoral Commission the power to make regulations but such regulations cannot change the form of elections for Parliaments and Local Councils, as purportedly claimed in the Statutory Instruments.

46. It is again, respectfully submitted for the Plaintiffs that to change the *form* of election of Members of Parliament and Local Authorities is a deliberate matter for primary legislation. The form for electing a member of local

authorities is specified in the Local Government Act, 2004 more particularly in subsection 4 of Section 4.

47. The power given to the Electoral Commission under Section 33 of the Constitution and Section 171 of the Public Elections Act, 2022 is to **conduct** and **supervise** elections, and not to determine the form or mode of elections. To change the format or mode of elections is, it is submitted, a matter for primary legislation, reserved for the Legislature and with respect, not the subject of a Statutory Instrument.

48. The word '**Conduct**', in the circumstances, does not include prescribing the form of elections or changing the electoral system. Section 68 of the Public Elections Act, 2022 enumerates what constitutes conduct of election by the Electoral Commission. Nowhere in the entirety of Section 68, is it suggested that the Electoral Commission can change the form or mode of the electoral system. The powers exercised under the Statutory Instrument by the Electoral Commission are in excess of the powers conferred under Section 33 of the Constitution, 1991 and 171 of the Public Elections Act, 2022.

### CONCLUSION

49. In conclusion, it is urged respectfully that, on the law and the evidence, in this case, it would be *ultra vires* and unlawful to hold the June, 2023 elections on the Proportional Representation basis for the following reasons:

*Firstly*, such elections on a Proportional Representation basis would offend the clear provisions of Section 38A of the Constitutional Amendment 2001. This section simply provides that the President, in consultation with the Electoral Commission, may direct the latter to conduct such elections on a Proportional Representation basis "where... Constituencies have not been established..."

*Secondly*, on the evidence there are currently established and existing constituencies in the current Parliament of this country.

*Thirdly*, the contingent circumstances envisaged in Section 38A of the Constitution as amended are not present to warrant a Proportional Representation system for the 2023 elections.

*Fourthly*, it would be wrong and impermissible in a democratic state to invest the President with the sole power to order or direct a Proportional Representation System for public elections without the concurrence of Parliament and in the face of existing constituencies.

*Fifthly*, it is for all these elections that the Plaintiffs beseech this Honourable Court to grant the reliefs they seek in their motion.

*Sixthly*, the proposal to hold the June 2023 Elections on a Proportional Representation basis would flout and ignore the constitutional scheme stipulated in Section 38(1) of the Constitution. This provides that: "*Sierra Leone shall be divided into such constituencies for the purpose of electing the Members of Parliament...*" which provision was amended in 2001 by the Constitution of Sierra Leone (Amendment) Act, 2001, Act No. 15 by inserting paragraph A to Section 38 as follows: "Where, under any law for the time being in force, a date for a general election of Members of Parliament has been appointed *but constituencies have not been established* in accordance with subsection (3) of Section 38 for the purposes of such election, the President may, after consultation with the Electoral Commission, direct that such election shall be conducted on the basis of the existing districts in a manner to be known as the district block representation system instead of constituencies." (emphasis added).

The plain and irrefutable evidence before this Court “as per the Affidavits of the Plaintiffs” there are present and existing constituencies in the country for Parliamentary purposes.

*Seventhly*, the multi-tier election on a Proportional Representation as stated in the statement of the 2<sup>nd</sup> Defendant finds no jurisdiction in either the constitution or the country’s laws regarding local authorities’ elections.

### **PLAINTIFFS’ COUNSEL’S ARGUMENT**

9. In his arguments before this Court Learned counsel for the Plaintiffs Dr Abdulai Osman Conteh submitted that this case was not about the merits or demerits of a Proportional Representation System. At the heart of this case, he argued was the crucial issue of whether the 2023 multi-tier Elections involving Parliamentary and Local Councils Elections should be held through a proportional representation system which he concluded strikes at the heart of the Rule of Law in that whether we can truly say as a country we are governed by the Rule of Law and the Constitution of Sierra Leone. He further submitted that the proportional representation was not an Alternative System of Election in a Democratic Country governed by the Rule of Law.

10. He argued that it was Section 38 A (1) of Constitutional Amendment Act No. 15 of 2001 that introduced such system but that it must be read in conjunction with Section 38 (1) of the Constitution of Sierra Leone Act No. 6 of 1991 which had imposed a Constituency based Election in which case it must be concluded that Section 38A is NOT (FREE STANDING) OR *ULTRA MED*.

11. Thus he argued the powers vested in Section 38A of the Constitutional Amendment must be exercised within the parameters of the Constitution Act No. 6 of 1991 which provided that Elections be constituencies based as in Section 38 (1) thereof.



12. He further submitted that apart from it Not being free standing, this case was about the limit of that power vested on the President and that of the Electoral Commission and when and how that power to run Elections by Proportional representation system could be lawfully exercised.

13. He submitted that it was against this background that he was now submitting that the directive given by His Excellency the President to the Electoral Commission for it to run the 2023 Elections following the alleged consultation with the Electoral Commission to be (*ultra vires*) the Constitution. He noted that the Plaintiffs were not questioning the directive *per se* except that it was *ultra vires* the Constitution because there were already existing constituencies.

14. He was quick to note that the Plaintiffs were further questioning whether the Electoral Commission was right in advising the President to make such a directive when the conditions precedent in their estimation has strictly not been met or followed.

15. In this context the Defendants' reliance on Sections 53(3) and 171(14) of the Constitution was plainly out of context and misconceived. The Court would no doubt and clearly be performing its role if it declares that the President was wrong in giving this directive when the conditions precedent for holding General Elections through a Proportional Representation System have, clearly in this instant case, not been met. He relied on the case of *R (on the Application of Miller) -Appellant v The Prime Minister (Respondent) Cherry & Others (Respondents) v Advocate General for Scotland (Appellant) Scotland [2019] UKSC 41* where the Supreme Court had to consider whether the Prime Minister's advice to the Monarch was justifiable or not.

16. He observed that this Court will do well if it adopted the statement of Lady Hayle when in paragraph 34 of the Judgment, she said that "*If the issue before the Court is justifiable deciding it will Not offend against separation of powers...the Court will be performing its proper function under our Constitution*".

17. Turning to the issue of whether the Preconditions for the running of an election via district block proportional representation system were met, Learned Counsel for the plaintiffs urged the court to consider the 2 conditions precedent which must be met as follows: -

Firstly, that

1. A date for the General Elections must have been fixed and
2. Secondly, and most importantly, whether constituencies have not been established.

18. He submitted that the determination of these two (2) crucial issues must be based on evidence and an analysis of the Law. Taking the above as the conditions which must be satisfied, he submitted that the answer to the first question as to whether a date has been fixed was in the affirmative (a yes answer). Regarding the answer to the second question as to whether constituencies have not been established? the response he noted was that constituencies had long existed and were subsisting as evinced by the fact that members of Parliament were currently sitting in Parliament and that the 1<sup>st</sup> plaintiff herein was the member of Parliament representing 1 of the 132 constituencies existing, to wit, Constituency 77 in the Port Loko District in the North Western Region of the country. He argued that on the contrary there was no evidence in rebuttal of the fact that constituencies were existing to show that there were no constituencies existing as required by the preconditions for the use of Proportional System of the Representation.

19. Against the foregoing, he argued any decision to hold the Election through Proportional Representation outside Section 38A (1) will be strictly unlawful.

Learned Counsel for the Plaintiffs Dr. Abdulai Osman Conteh concluded on this point by submitting that it would be the most unusual and exceptional circumstances that would warrant the holding of a multi-party Elections through a PR System of Elections and not when there is democracy.

20. He argued further that it was incumbent on the Electoral Commission to proffer reasons why it was necessary to change the form of Election from a Constituency

based First Past the Post system to a proportional representation system. As far as he was concerned, up to this time there has been no explanation given by the Defendant Electoral Commission why it had to change the form of Elections. He submitted that the lack of explanation must be confusing to the Electorate and the general public.

21. In the alternative, however, it appeared, he argued also, that if there was an excuse of inability or impracticability to complete the exercise of delimiting boundaries which they ECSL had started it was a very lame excuse and that could only be accepted if that so-called excuse was made through an affidavit and subjected to scrutiny through cross examination in the court.

22. He submitted that the Electoral Commission has sought to extinguish constituencies unilaterally when such constituencies still subsist.

23. Learned Counsel then turned to the unconstitutionality of what he called Statutory Regulations No. 83/No. 83 but indeed was SI Nos 13 and 14 of 16<sup>th</sup> November 2022 through which the Electoral Commission used to put the Proportional Representation System into effect or operation. Learned Counsel submitted that the 2<sup>nd</sup> Respondent seems to take succour in SI No. 83 & 83 for the setting up of the PR System but such a power cannot change the form/format of Elections noting and submitting that to change the format/form was a deliberate matter for the Legislature in a primary legislation and not secondary instrument. Accordingly, to change the format and mode of Elections by statutory legislation which is secondary will be plainly *ultra vires*.

24. He urged that the word 'conduct' does not include setting the format. He referred to Section 68 of the Public Elections Act No. 22 to illustrate what constitute Regulation for the conduct of Elections.

He concluded by stating that because of the aforementioned what EC, the 2<sup>nd</sup> Respondent did by the said regulations through Statutory Instrument Nos 13 and 14 of 2022 was in excess of their powers and accordingly *ultra vires*.

He therefore urged his Lordships to grant the reliefs prayed for.

**25. STATEMENT OF 1<sup>ST</sup> DEFENDANT'S CASE PURSUANT TO RULE 92(1) OF THE SUPREME COURT RULES, 1982**

**FACTS AND PARTICULARS OF THE CASE**

The 1<sup>st</sup> Defendant who is the Attorney-General and Minister of Justice is the principal legal adviser to the Government of Sierra Leone including its Ministries, Departments and Agencies.

1. The 2<sup>nd</sup> Defendant is the Electoral Commission for Sierra Leone (ECSL) responsible for the conduct and supervision of the registration of voters for, and of, all public elections and referenda, and for that purpose shall have powers to make regulations by Statutory Instrument for the registration of voters, the conduct of Presidential, Parliamentary or Local Government elections and referenda and other matters connected therewith, including regulations for voting by proxy.
2. The 2<sup>nd</sup> Defendant in compliance with its constitutional mandate (The Constitution of Sierra Leone Act No. 6 of 1991 – hereinafter referred to as the Constitution), on the 21<sup>st</sup> day of October, 2022 issued a Press Statement in which it is stated, that on the directive of the President of Sierra Leone the 2023 multi-tier elections will be conducted using the Proportional Representation System (as provided for in Section 38A(1) of the Constitutional Amendment Act of 2001 (Act No. 15 of 2001) and that the Boundaries Delimitation exercise which had commenced is halted with immediate effect.
3. That the Plaintiffs herein being dissatisfied with the Press Statement of the 2<sup>nd</sup> Defendant on the 28<sup>th</sup> day of November, 2022 filed an Originating Notice of Motion to the Supreme Court of Sierra Leone pursuant to Section 124(1) of the Constitution.

4. The main plank of the Plaintiffs' case is that to conduct the 2023 Elections on the district block representation system would offend the controlling provisions in Section 38A(1) of the Constitution as the reasons for the Constitutional Amendment Act 2001, which amended the Constitution introducing Section 38(A) are presently not subsisting.
5. Sections 38 and 38A of the Constitution provides for constituencies and the elections of Members of Parliament and prescribe which process and under which conditions they should be carried out.
6. That the President in consultation with the ECSL has directed that such elections shall be conducted pursuant to Section 38A in a manner to be known as the district block representation system.
7. Additionally, the ECSL has powers to cause a review of Constituency boundaries at intervals of not less than five years, and not more than seven years. Section 38(4) states:  
*“The Electoral Commission shall review the division of Sierra Leone into constituencies at intervals of not less than five and not more than seven years, and may alter the constituencies in accordance with the provisions of this section to such extent as it may consider desirable in the light of the review.”*
8. Furthermore, Section 38(3) and the proviso thereof deals with how constituency boundaries delimitation should be determined.
9. The population quota as referred to in the Proviso is defined in the Constitution to mean, the number obtained by dividing the number of inhabitants of Sierra Leone by the number of constituencies into which Sierra Leone is divided under Section 38 of the Constitution. Therefore, to delimit boundaries, the first thing to do is to divide the population of Sierra

Leone to determine the population quota and thereafter, the population quota will now determine constituency delimitation. (See subsection (6) of Section 38 of the Constitution)

10. To ascertain the population quota reference should be made to the latest Population Census. (See subsection 7 of Section 38 of the Constitution).

11. Therefore, the undermentioned facts since the 1991 Constitution was enacted for which we urge the Court to take judicial notice of, ought to be borne in mind as we make our submission

- a. A Population and Housing Census was conducted in December 2004
- b. Thereafter, Constituencies were reviewed, altered and delimited in 2007 by the National Electoral Commission thus, establishing 112 constituencies for the purpose of electing Members of Parliament for the 2007 general elections.
- c. Another Population and Housing Census was conducted in December 2015
- d. Constituencies were again reviewed, altered and delimitation done on the 17<sup>th</sup> February 2017 based on the 2015 Population and Housing Census wherefore, 132 constituencies were established for the purpose of the 2018 election for Members of Parliament.
- e. In July 2021, a Mid-term Population and Housing Census was conducted.
- f. The results were announced on the 15<sup>th</sup> of September, 2022 showing substantial growth in the population figures at regional, district and chiefdom levels.
- g. The date for election for Members of Parliament was announced by the President to be held on the 24<sup>th</sup> of June, 2023.
- h. Constituencies have not been reviewed, altered and delimited to be so established for the purpose of the June 24, 2023 general elections.
- i. The Electoral Commission cannot after the 23<sup>rd</sup> of December, 2022, update and revise the Voters Register due to the provision of Section 18

of the Public Elections Act, 2022 (Act No. 17 of 2022) and Article 2 of the ECOWAS Protocol on Democracy and Good Governance (A/SP1/12/01) Supplementary to the protocol relating to the Mechanism for Conflict Prevention Management, Resolution, Peace-keeping and Security – Executive Secretary Dakar, December 2001 (excerpts).

Nevertheless, it is the contention of the Plaintiffs that the conduct of the June 2023 multi-tier public elections based on the District Block Representation System pursuant to Section 38A(1) of the 1991 Constitution (as amended) in the absence of the ‘**Condition Precedent**’ namely “**Where Constituencies do not exist**” would be *ultra vires* and unlawful. The Plaintiffs argue that the trigger for the District Block Representation System is “**Where Constituencies do not exist**”. They are assertive that there are extant and subsisting constituencies and Local Council Wards pursuant to Section 38(1) of the Constitution and the Local Government Act of 2004 (Act No. 15 of 2004) and urged the Court to so hold.

## **SUBMISSIONS**

It is our submission, that the Plaintiffs’ assertion based on their interpretation of the provisions of Sections 38 and 38A of the 1991 Constitution cannot hold in law. The provisions of Section 38 and 38A are being deliberately misconstrued by the Plaintiffs. We hereby submit a legal argument and interpretation of Section 38 and 38A of the 1991 Constitution as thus: -

1. In the instant case, the provisions in Section 38A were triggered after there has been a Population and Housing Census and the results announced with a significant alteration in the population growth but the Electoral Commission for Sierra Leone could not review, delimit and establish Constituencies for the election of Members of Parliament slated for the 24<sup>th</sup> of June, 2023.
2. The Mid-term Census was conducted in July of 2021 and the final results announced on the 15<sup>th</sup> of September, 2022. Prior to the publications of the final Census result, the President announced the date of the general elections

which was slated for June, 2023. That the Electoral Commission after a consultative meeting with the President on the 19<sup>th</sup> of October, 2022 updating him on the progress relating to the Boundary Delimitation exercise being undertaken and the impracticability of complying with Section 38(3) of the Constitution, necessitated the Directive of the President.

3. This directive so given was done by an authority conferred on the President by the Constitution under Section 38A(1) of the constitutional Amendment.
4. The wordings of Section 38A(1) inter alia clearly states that

**“Where, under any law for the time being in force, a date for a general election of Members of Parliament has been appointed but constituencies have not been established in accordance with subsection (3) of Section 38 for the purposes of such election, the President may, after consultation with the Electoral Commission, direct that such election be conducted on the basis of the existing districts in a manner to be known as the District Block Representation System instead of Constituencies”**

Section 38(3) states that

**“The boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable.”**

Section 38(7) states

**“For the purposes of this section the number of inhabitants of Sierra Leone shall be ascertained by reference to the latest Census of the population of Sierra Leone held in pursuance of an Act of Parliament or if no census has been so held, by reference to any available**



**information, which in the opinion of the Electoral Commission best indicate the number of those inhabitant.”**

5. It is our submission, that the latest census in Sierra Leone is the mid-term census conducted in 2021 for which final result was announced on the 15<sup>th</sup> September of 2022. Based on the said census results there was significant population growth from 2015 to 2021 in the regions, districts and chiefdoms by 6.4% (See page 37 of the Final Census result) which necessitated the review of constituencies pursuant to Section 38(3), (4) (6) & (7) of the Constitution. Since the Commission was unable to continue the constituencies Boundary Delimitation exercise based on the latest census, and the date of the election of Members of Parliament has been appointed/announced by the President for the 24<sup>th</sup> June 2023 and the President having had consultation with the Electoral Commission on the impracticability of reviewing, altering and delimiting constituencies it is therefore, prudent for us to reason and we do submit, that **legally constituencies have not been established for the forth-coming election of Members of Parliament pursuant to Section 38(3) of the Constitution.** It is fair, just and legal for the President to perform his constitutional duty by directing that the district block representation system be used instead of the constituencies.

6. In effect the application filed by the Plaintiffs and the second relief prayed for therein is contravening the provisions of Sections 53(3) and 171 (14) of the Constitution. These provisions state thus: -

**53(3) “Where by this Constitution or under any other law the President is required to act in accordance with the advice of any person, or authority, the question whether he had in any case received or acted with such advice shall not be inquired into in any court”**

**171(14) “Where under any provision of this Constitution, any person or authority is authorized or required to exercise any function after consultation with some other person or authority, the person or authority shall not be required to act in accordance with the advice of that other person or authority, and the question whether such consultation was made shall not be inquired into in any court”**

7. That this Court must have jurisdiction to grant the Order prayed for on the subject matter before it and that without jurisdiction the whole proceedings become a nullity with no legal effect.
8. That by virtue of the restrictions placed in the above provisions in paragraph 6 hereof this court has been deprived and lacks the necessary jurisdiction to adjudicate on the second relief prayed for thus subjecting the President’s directives to scrutiny by the court which is legally wrong.
9. Where the boundaries have not been reviewed to determine the actual inhabitants with reference to the latest census i.e. the mid-term census, an election on constituency based system will be in complete violation of the Constitution particularly so when the date of election has been announced.
10. The argument by the Plaintiffs, that there is no “**condition precedent**” to invoke Section 38A is flawed, baseless and frivolous and cannot be legally countenanced by this Court. The impracticability to comply with Sections 38 (3) & (7) of the Constitution triggers the invocation of Section 38A.
11. It is the Defendants’ submission, that Section 38A was never introduced into our laws for a specific purpose as averred by the Plaintiffs in paragraphs 17, 25, 26 and 27 of their statement of case. Had it been so, it would have been repealed and replaced immediately after 2002 elections. But the drafters of that provision envisioned a situation where there would be a census but

constituencies have not been reviewed, altered, delimited and established hence, the essence of Section 38A. If the drafters wanted to limit the applicability of the provisions of Section 38A to a one-off situation, they would have said so clearly.

12. Furthermore, if it were to be believed that the 2001 amendment to the Constitution was as a result of the war, that would have been wrong, because it would have gone against the principle of posterity, which is one of the objectives for which Constitutions as in this case the Constitution of Sierra Leone. See the preamble to the Constitution of the United States.

13. It is further submitted, that contrary to the misplaced reasons proffered in paragraphs 17, 25, 26 and 27 of the Plaintiffs' case for the 2001 Constitutional amendment, the actual reason for the amendment to Section 38 of the Constitution was necessitated by circumstances **in which, the Electoral Commission finds itself in a situation where a Population Census has been conducted, a date for the general election announced but the Commission is reasonably unable to review, alter, delimit and establish constituencies for the purpose of such election.**

14. Following the Population and Housing Census in December, 2004, the Electoral Commission conducted a review of constituencies in 2006 wherefore, the constituencies were altered, delimited and 112 constituencies established for the purposes of the 2007 general elections.

15. The Plaintiffs argue that the elections for Ward Councillors cannot be lawfully and properly held on the basis of Proportional Representation. We adopt our argument in paragraphs 1-10 with the necessary modifications to wards. Wards boundaries were reviewed and delimited for the creation of 394 wards in 2008 after the 2004 Census. We state, that by the provisions of Sections 33 of the Constitution, the Electoral Commission is empowered

to make regulations for the Local Councils Election and Constitutional Instrument No. 2 of 2008 vests the authority to review wards based on the national population quota which is ascertained by reference to the latest census. In this case the latest census is the Mid-term census. It is therefore, our submission that the constituencies and wards ought to be reviewed for the delimitation and establishment of wards for the purpose of the June 2023 Local Council election as a result of the mid-term census.

16. The Plaintiffs arguments in paragraphs 23 and 24 of their case, states that the Proportional Representation System will negate the possibility of having independent candidates for such election. This assertion is speculative and not legal. Section 75 of the Constitution sets out clearly the requirements for person to be elected as a Member of Parliament irrespective of the form of electoral systems so used. Once those requirements are fulfilled, nothing stops a person (be it independent or not) from being given the opportunity to contest. To buttress this point, Section 58(1) & (8C) states **“A candidate shall be nominated in writing by 3 voters of the electoral area for which he intends to contest...”** and (8C) states **“...the political party of a candidate, as applicable...”** This simply means not all candidates would be nominated by political parties.

17. The Plaintiffs further failed to establish their locus with respect to their case for independent candidates. The Plaintiffs are both members of the All Peoples Congress Party and not independent candidates. They have not established their standing as to this argument and therefore, we submit that their argument in respect of independent candidates must not be entertained.

18. That the applicants are further seeking this court to declare Statutory Instruments Nos. 83 & 83 dated 16<sup>th</sup> November 2022, based on the argument that the Electoral Commission has acted in excess of the powers conferred under Section 33 of the Constitution and Section 171 of the Public Election.

19. It is our submission that the said Statutory Instruments were laid in the House of Parliament on the 23<sup>rd</sup> November, 2022 by the Office of the Attorney-General & Minister of Justice. Pursuant to the provisions in Section 2 subsection 3 of the Constitutional and Statutory Instrument Act 1999. It states, that any instrument so laid before Parliament shall have the force of law after 21 days, unless before that it is so defeated by vote of 2/3rds majority.

20. The said instruments are yet to have the force of law when the Plaintiffs filed their application to have it set aside. The application filed is dated the 28<sup>th</sup> November 2022 that is five days after it was laid before Parliament. They have not met any of the requirement for the document to be matured and yet the applicants are seeking this Court to act in vain by declaring it *ultra vires*. Can the Court declare an instrument which is yet to have the force of law *ultra vires*?

## Conclusions

By reason of the submissions herein, we pray that the orders prayed for as stated in 1-9 by the Plaintiffs in the Originating Notice of Motion be dismissed with cost to the 1<sup>st</sup> Defendant.

## **1ST DEFENDANT'S COUNSEL ARGUMENT**

Both Defendants opposed the granting of the reliefs prayed for. In the case of the 1<sup>st</sup> Defendant they relied entirely on the submissions made in the statement of 1<sup>st</sup> Defendant's case filed on the 8<sup>th</sup> of December, 2022.

In particular, with regard to the unconstitutionality of Statutory Instrument No. 13 & 14 of 16<sup>th</sup> November, 2022 they argue that at the time of filing this Originating Notice of Motion by the Plaintiff that Instrument was not yet Law but as of now the Instrument has received the certificate of maturity and it is now law in which case it cannot be regarded as unconstitutional.

Turning to the issue of whether the conditions precedent for the holding of Elections through PR which related to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> & 6<sup>th</sup> reliefs prayed, the 1<sup>st</sup> Defendant's Counsel, Solicitor-General argued that the Plaintiffs were not reading Section 38A in full and that a full reading of it would no doubt bring into focus that it was not that constituencies do not exist but that they have not been established in accordance with subsection (3) of Section 38 for the purpose of such Elections.

This he argued brought into focus census and its relevance in the delimitation of boundaries for the constituencies. He submitted that a midterm census was concluded with results published in September 2022, which results definitely necessitated a Review of the current existing Constituencies.

However, because of the ECOWAS Protocol & Section 18 of the Public Elections Act No17 of 2022, it was impossible to conduct any exercise to delimit boundaries without offending the aforesaid provisions. He argued that the advice by E.C and the directives given by the President were within the mandate of the Law provided in Section 38A.

On the issue of Independent candidates Mr. Kowa the Solicitor General submitted that no Independent candidate has brought a claim before this court and for that issue to have been raised by a non-independent candidate was against the principle established in the Hinga Norman case on *locus standi* as the so called Plaintiff lacked *locus standi*. He argued further that assuming that the court was inclined to consider the relief prayed for that the Statutory Instrument Nos. 13 & 14 have made adequate provisions for that in Regulation 10 thereof.

Regarding the 2<sup>nd</sup> relief prayed for, counsel for the Plaintiff Mr. Osman Kanu submitted that this Honourable Court lacks jurisdiction to grant the relief prayed for, to wit:- a Declaration that the Directives by the President to the Electoral Commission of Sierra Leone to hold any public Elections for ordinary members of Parliament was *ultra vires* where there are extant and subsisting constituencies is *ultra vires*

Relying on Sections 53 (3) & Section 171 (14) he argued that the Court could not inquire into how that directive was given. He noted the submissions of counsel for the plaintiff and the case relied upon but noted that unlike England which has an unwritten Constitution, Sierra Leone was bound by a written Constitution. He therefore asked that the Declaration be refused. Regarding reliefs 7, 8 & 9 he noted that these were all consequential Reliefs which would flow if this Court were to grants Orders 1, 2, 5 & 6.

Lastly he noted and submitted that the Plaintiff have not complied with Rules 89 (2) with regards to their Affidavit filed.

**26.STATEMENT OF 2<sup>ND</sup> DEFENDANT'S CASE PURSUANT TO RULE 92 (1) OF THE SUPREME COURT RULES, 1982.**

The 2<sup>nd</sup> Defendant filed a Statement of case the same which is constituted by 54 paragraphs. Paragraphs 1-30, 38, 39 & 40 are produced herein verbatim. The rest I will make reference to as and when necessary

**FACTS AND PARTICULARS OF THE CASE**

1. The 2<sup>nd</sup> Defendant is the Electoral Commission for Sierra Leone (ECSL), responsible for the conduct and supervision of the registration of voters for and all public elections and referenda, and for that purpose, shall have powers to make regulations by Statutory Instrument for the registration of voters, the conduct of Presidential, Parliamentary or Local Government elections and referenda and other matters connected in addition to that, including regulations for voting by proxy.

2. In order to carry out its constitutional mandate (The Constitution of Sierra Leone Act No. 6 of 1991-hereinafter referred to as the Constitution), the 2<sup>nd</sup> Defendant issued a press release on the 21<sup>st</sup> of October, 2022 in which it stated the President of Sierra Leone has directed that the 2023 multi-tier elections will be conducted using the proportional representation system (as provided for in Section 38A of the Constitutional Amendment Act of 2001 (Act No. 15 of 2001) and that the Boundaries Delimitation exercise which had commenced will be halted with immediate effect.

3. Dissatisfied with the Press Statement of the 2<sup>nd</sup> Defendant, on the 28<sup>th</sup> of November, 2022, the plaintiffs herein filed an Originating Notice of Motion to the Supreme Court of Sierra Leone pursuant to Section 124 (1) of the Constitution.

4. The Plaintiffs' arguments are centred on the contention that conducting the 2023 elections on the District Block Representation System would violate Section 38A(1) of the Constitution. The issues and situations that should trigger utilizing provisions of the Constitutional Amendment Act 2001, which amended the Constitution by introducing Section 38 (A), are presently not subsisting.

5. Sections 38 and 38A of the Constitution provide for constituencies and elections of Members of Parliament and do prescribe Proportional Representation.

6. The 2<sup>nd</sup> Defendant submits that the President of Sierra Leone, in consultation with the ECSL, directed that the 2023 elections be conducted according to Section 38A in a manner to be known as the district block representation system.

7. Additionally, the 2<sup>nd</sup> Defendant has powers to cause a review of Constituency boundaries at intervals of not less than five years and not more than seven years. Section 38 (4) states

**“The Electoral Commission shall review the division of Sierra Leone into constituencies at intervals of not less than five and not more than seven years and may alter the constituencies following the provisions of this section to such extent as it may consider desirable in the light of the review”.**

8. The constitutional provision of Section 38 (3) and the proviso thereof deal with how constituency boundaries delimitation should be determined.

9. The population quota, referred to in the proviso, is defined by the Constitution: as the number obtained from dividing the number of inhabitants of Sierra Leone by the number of constituencies into which Sierra Leone is divided under Section 38 of the Constitution. Therefore, to delimit electoral boundaries, the first thing to do is to divide the population of Sierra Leone by the number of seats in Parliament to determine the population quota; thereafter, the population quota will



now determine constituency delimitation. (See subsection (6) of Section 38 of the Constitution).

10. To ascertain the population quota, reference should be made to the latest Population Census; or, if no census has been held, by reference to any available information which, in the opinion of the 2<sup>nd</sup> defendant, best indicates the number of those inhabitants (See subsection (7) of Section 38 of the Constitution).

11. From the outset, the 2<sup>nd</sup> Defendant will like to state the following fact for the attention of the Court:

- a. A Population and Housing Census was conducted in December 2004;
- b. And it triggered the review, alteration and delimitation of constituencies in 2006 by the National Electoral Commission, thus, establishing 112 constituencies to elect Members of Parliament for the 2007 general elections;
- c. A second Population and Housing Census was conducted in December, 2015
- d. Again, the population and housing census of 2015 repeated the same process where constituencies were again reviewed, altered and the delimitation approved by parliament on the 17<sup>th</sup> February, 2017. Based on the 2015 Population and Housing census 132 constituencies were established (with directives of parliament in a letter dated the 10<sup>th</sup> of May, 2016) for the 2018 elections for Members of Parliament;
- e. In July, 2021, Mid-term Population and Housing Census were conducted, with the results announced on the 15<sup>th</sup> of September, 2022. This statistic shows that there was a significant change in the population with substantial growth in the population with figures at regional, district and chiefdom levels;
- f. The President announced the date for the election of Members of Parliament for the 24<sup>th</sup> of June, 2023;

- g. At this stage, constituencies had not yet been reviewed, altered and delimited based on the trend and practices shown above that after every census, the outcome should lead to the delimiting of boundaries for the forthcoming elections of the 24<sup>th</sup> of June, 2023, general election;
  - h. The 2<sup>nd</sup> Defendant is legally barred from updating and revising the voter registration by Section 18 of the Public Elections Act 2022 (Act No 17 of 2022) and ECOWAS protocol on Democracy and Good Governance (A/SP1/12/01) Supplementary to the protocol relating to the Mechanism for Conflict Prevention Management, Resolution, Peace-keeping and Security - December, 2001.
  - i. Therefore, the condition precedent presented itself for the 2<sup>nd</sup> Defendant to advise the President that it was impracticable to run a proper constituency election. The advice was because, firstly, wrongly placing people into constituencies; and, secondly, with a complete boundary delimitation.
12. A central contention of the Plaintiff is that the conduct of the June 2023 multi-tier public elections based on the District Block Representation System pursuant to Section 38A of the 1991 Constitution in the absence of the ‘**Condition Precedent**’ namely “**Where Constituencies do not exist**” would be *ultra vires* and unlawful. The Plaintiffs argue that the trigger for the District Block Representation system is “**Where Constituencies do not exist**”, **does not exist**.
13. Plaintiffs further assert that there are extant and subsisting constituencies and Local Council Wards according to Section 38 (1) of the Constitution and The Local Government Act of 2004 (Act No. 15 of 2004,) which should remain for the forthcoming elections.

### SUBMISSIONS

14. The 2<sup>nd</sup> Defendant submits that it has acted according to the provisions of the national constitution, electoral laws, and the law governing census in Sierra

Leone. The 2<sup>nd</sup> Defendant further asserts that the Plaintiffs are giving a narrow interpretation of Sections 38 and 38A of the 1991 Constitution. Sections 38 and 38A should be unrestricted to the post-war situation or any specific situation. The said sections apply to a litany of eventualities where constituency elections are either impracticable or impossible. We submit a legal argument and interpretation of Sections 38 and 38A of the 1991 Constitution as thus: -

15. As the sole body responsible for conducting elections and with more profound knowledge of the intricacies of undertaking boundary delimitation, the 2022 midterm Population and Housing Census heralded demographic shifts that altered the population of Sierra Leone from 53,000 to 57,000 population. This triggered the need for a review of the existing boundaries, delimitation of shifted current constituencies, and establishment of new constituencies for the upcoming 24<sup>th</sup> of June, 2023 elections.
16. The 2<sup>nd</sup> Defendant submits that once Statistic Sierra Leone, the only legal institution responsible for housing and population census in the country, has successfully conducted a census, boundaries are bound to be delimited. Sufficient examples start with the events leading to the 17<sup>th</sup> of February, 2017, when boundaries were delimited based on the 2015 census. There were 112 parliamentary seats in 2012. By 2017, while the House of Parliament was still in session, the ECSL, by the powers conferred on it by section 38 subsection 3 of the 1991 Constitution, reviewed the boundaries of the constituencies. This led to a significant movement of people and the creation of 20 more constituencies to the existing constituencies.
17. As a result of the fact that the President announced the election dates for the 24<sup>th</sup> of June, 2023, to respect the constitution's dictate of the five-year limit, it became practically impossible for the Electoral Commission to complete an unquestionable delimitation within the timeline fully. Therefore, in consultation with the President at a meeting on the 19<sup>th</sup> of October, 2022, in which the President was briefed on the progress and challenges of fully practicalizing the mandates of Section 38 (3), the President directed that the 2<sup>nd</sup> Defendant conduct

the elections in June 2023 on a Proportional Representation basis. Thus the District Block System for which this interpretation is sought.

Section 38 (3) states that

**“The boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as it reasonably practicable.”**

18. The wording of Section 38A, among other things, clearly states that **“but constituencies have not been established under subsection 3 of Section 38.** The said subsection 3 of Section 38 provides that “the electoral boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable”. To determine this population quota, the 1991 Constitution directs in that subsection 7 of Section 38, “the number of the inhabitants of Sierra Leone shall be ascertained by reference to the latest census of the population of Sierra Leone held in pursuance of Act of Parliament....”
19. It is further submitted that on the 17<sup>th</sup> of February, 2022, the boundaries delimited in 2017 reached the five years’ minimum threshold. The law allows the Government, through Statistic Sierra Leone, to conduct a housing and population census to show the correct and accurate habitation of the people of Sierra Leone. This led to a midterm census, and once statistics presented the census to the 2<sup>nd</sup> Defendant, it was bound to review the boundaries of the existing constituencies. To ensure elections are conducted on the accurate population density and as representative of the sparseness of the population.
20. The only figures that will genuinely represent the present-day Sierra Leone population shall come from the latest census conducted by the legal authority. In this case, the latest census figures are the midterm outcome, and it will be erroneous and unfair to leave those recent statistics and use an old 2015 Census outcome. The 1991 Constitution is very instructive when it provides in Section 38 (7) that -

**“for the purposes of this section, the number of inhabitants of Sierra Leone shall be ascertained by reference to the latest census of the population of Sierra Leone held in pursuance of an Act of Parliament or if no census has been so held, by reference to any available information, which in the opinion of the electoral commission best indicates the number of those inhabitants.”**

21. It is clear from the figures of the midterm census that a significant population shift and growth in specific regions, districts and chiefdoms have occurred and which makes it imperative for ECSL to review the boundaries that constitute the constituencies, as provided in Sections 38 (3), (4) (6) & (7) of the Constitution.
22. It is the 2<sup>nd</sup> Defendant’s informed position that there was, and is, a need to review the existing boundaries due to the shift in population. The 2017 electoral boundaries cannot be regarded as legal because they have to be established under the recent census and cannot inform the population distribution for the forthcoming elections. The 2<sup>nd</sup> Defendant’s legal role is to advise the President on what is doable, feasible and practicable, considering all the circumstances, at a given time. Advising the President on a Proportional Representation System in the face of the impracticability of delimiting the boundaries, but fair, just and legal.
23. Based on the impracticality of fully complying with Section 38 (3), the 2<sup>nd</sup> Defendant, with the vantage of unique and specialised knowledge information, advised the President of the eventuality of Section 38A. The President so directed in exercising was triggered, and the President was bound to exercise his powers under 38A by giving the directives as he did to the ECSL.
24. While the State will argue this, ECSL believes that the directives given by the President touching on using a District Block Proportional Representation system of the June, 2023 elections were done in good faith, followed the dictates of the spirit, letter and intent of the wordings of Section 38 (A) of the 1991 Constitution.
25. The wording of Section 38A, *among other things*, clearly states that: -

1. **“Where, under any law for the time being in force, a date for a general election of Members of Parliament has been appointed, but constituencies have not been established in accordance with subsection (3) of Section 38 for such election, the president may, after consultation with the Electoral Commission, direct that such election shall be conducted based on the existing districts in a manner to be known as the district block representation system instead of constituencies.”**

26. Considering that the Constitution provides that elections shall be held every five years and a date has been announced to that effect, where the boundaries have not been so reviewed to determine the actual inhabitants with reference to the latest census, i.e., the mid-term census, an election on the constituency-based system will be in complete violation of the Constitution particularly so when the date for the election has been announced. Any election held leaving out a midterm census would not only be illegal but a flagrant violation of constitutionalism which underscores the spirit of democratisations.
27. The 2<sup>nd</sup> Defendant will argue that the constituencies and wards ceased to exist since Statistics Sierra Leone legally conducted the country’s population census under the power conferred on them by law. To counter the existing midterm census result, a new census have to be undertaken, or the extant midterm census be declared illegal by a competent body with the power to do so.
28. It is the 2<sup>nd</sup> Defendant’s position that in the absence of legitimate boundary delimitations by the 2<sup>nd</sup> Defendant, elections for both ordinary Members of Parliament and Local Councils can only be conducted according to the provisions of Section 38A of the 1991 Constitution.
29. The Plaintiffs argue that there is no **“condition precedent”** to invoke Section 38A. As explained in paragraphs 5, 6, 7, 8, 9 and 10, the mere impracticality of delimiting boundaries in the face of a significant shift in population density in the country is enough for a condition precedent to surface and summon Section 38 (A). The point is mute, misplaced, and flawed and should be discounted by the Court.

30. The 2<sup>nd</sup> Defendant submits that the provisions of Section 38 (A) are neither transient nor transitional. It was not introduced into our laws just for the war situation as the Plaintiffs in paragraphs 17, 25, 26 and 27 of their statement of the case. The drafters knew conditions would occur when constituency elections would be impracticable and a remedial provision was needed. If they wanted it to be transitional or transient, they would have said so.

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38. It is also the Defendant's submission that in 2016, in the final report by the constitutional review committee made of 80 members including representatives of all political parties, they all agreed on pages 260-261 that the Proportional Representation System was a more democratic way to conduct an election for members of parliament.

39. That there are over 80 stable democracies that practice different forms of proportional Representation. Among these countries, we have Switzerland, where most of the United Nations offices are housed and which has enjoyed peace and stability since the first world war; Rwanda, one of the most peaceful, prosperous democracies on the continent of Africa, now have gone through a brutal civil and tribal warfare, New Zealand, Norway, Spain to name a few.

40. The Plaintiff's submission that the PR is not conducive to a democratic civilian Government is factually and materially incorrect and aimed at deceiving this Honourable Court into accepting their case. This Court should not countenance this argument.

**2<sup>ND</sup> DEFENDANT COUNSEL'S ARGUMENT**

27. In his argument 2<sup>nd</sup> Defendants' Solicitor did say they would rely on what the 1<sup>st</sup> Plaintiff has said in addition to what he was saying. In his argument Defence Counsel, Dr. Emmanuel Saffa Abdulai concentrated on the reason why the Electoral Commission was compelled to take the action of advising the President and the fact that the Plaintiffs' Counsel had said that there was no reason or the

reason being very weak. He posited an 8-part test to determine whether the 2<sup>nd</sup> Defendant the Electoral Commission acted beyond its powers as follows

- i. whether EC acted reasonably
- ii. whether EC had followed due process
- iii. whether it is within the remit of that institution to do what they did
- iv. whether the decision is rational and evidenced based
- v. whether the decision was taken in good faith
- vi. whether the decision was published after it was taken
- vii. whether the decision served proper purpose
- viii. whether proper consultation was done.

He submitted that the decision of the Electoral Commission met all these requirements

Turning to the issue of Local government he submitted that there has never been a law for Local Government Elections excepting the Public Elections Act and through Regulations which are made pursuant to Section 33 of the Constitution of Sierra Leone 1960\

He concluded that with the new census results it was necessary to delimit boundaries of constituencies which EC was unable to do because of the ECOWAS PROTOCOL AND SECTION 18 of The Public Elections Act 2022 which meant that laws for election must be settled before 6months to the elections; and to use the current constituencies would be most undemocratic as it would exclude a lot of people who have been captured by the recent census which was showing an increase in population of 57,000plus people spread across various districts and localities. He urged the court to refuse the reliefs prayed for.

## **28. CONSIDERATION OF ISSUES**

The issues to be determined in this case are as follows:

1. **Whether on a proper and purposive interpretation of section 38A OF THE CONSTITUTIONAL AMENDMENT Act No. 15 2001, the** controlling



provisions stipulated in sub section 1 thereof namely ‘.....but constituencies have not been established’ are conditions precedent to warrant or justify the holding of general elections of ordinary members of parliament by district block system hereinafter referred to as the proportional representation system

2. *Whether the directive by the President to the Electoral Commission of Sierra Leone (ECSL) to hold any public elections for ordinary members of Parliament by the proportional representation system where there are extant and subsisting constituencies is ultra vires the Constitution ACT NO 15 2001 AS AMENDED*
3. Whether the current Parliament was itself elected on a constituency basis as provided for in Section 38(1) (2) and (3) of the Constitution Act No 6 of 1991 and that these constituencies are still extant and subsisting.
4. Whether the revision of constituencies as provided for in section 38(4) does not necessarily result in the establishment of constituencies stipulated in Sections 38(1)(2)(3) but rather the section provides for the period when existing constituencies should be reviewed which revision may or may not necessarily result in a delimitation of the respective boundaries of existing constituencies
5. Whether relying on Section 38A of the Constitutional Amendment Act No. 15, 2001 would preclude independent candidates from contesting for parliament as contemplated in Section 77(m) of the Constitution 1991.
6. Whether the entirety of Section 38A of the Constitutional Amendment of 2001 does not provide or contemplate local councils proportional representation system elections and whether the ward basis on which local councils were elected is the subsisting and only lawful basis on which any public elections involving local authorities can be held and not a Proportional Representation System
7. Whether Section 2 of the Statutory Instrument No 13 dated 16<sup>th</sup> November making provisions for representation by both members of parliament and

local councils is *ultra vires* Sections 33 and 38 of the Constitution Act No 6 of 1991.

I will now deal with these issues seriatim

**29. Whether on a proper and purposive interpretation of section 38A OF THE CONSTITUTIONAL AMENDMENT Act No 15 2001, the** controlling provisions stipulated in sub-section 1 thereof namely ‘.....but **constituencies have not been established**’ are conditions precedent to warrant or justify the holding of general elections of ordinary Members of Parliament by the District Block Representation System hereinafter referred to as the Proportional Representation System.

30. In the consideration of this issue one will note firstly that the plaintiffs are arguing that the controlling provision is namely ‘**But constituencies have not been established**’ and that this is part of the conditions precedent which must be established; and which has not been established, hence the reason why proportional representation at this point in time, when according to them, constituencies do exist, cannot be applicable or be the mode or form of elections for the 2023 elections; and by extension do not justify the holding of elections by such means as adopted via their Public pronouncement via the Press Statement of 21<sup>st</sup> October 2022. This is clearly seen from the plaintiffs argument wherein they have sought to present it thus: that as a result of the provisions of Section 38A (1) of the Constitution Amendment Act No 15 of 2001, it would be *ultra vires* that provision and unlawful to hold the June 2023 multitier public elections in the country via a proportional representation using the district block system, for as they put it, the plain and simple reason that, the condition precedent according to them for bringing into effect those provisions in Section 38A are quote unquote “**where there are no constituencies**” which at this very moment is not the case in the country courtesy of the fact that there are extant and subsisting constituencies in operation pursuant to Section 38 (1) &(2) of the Constitution. That is to say, the trigger according to them to bring proportional representation into operation is ‘**Where constituencies do not exist,**’ and as is explicit to all concerned, there are

constituencies existing, 132 of which the Plaintiff is the representative or Member of Parliament for Constituency No 077 in the Port Loko District.

31. Predicated on the above, the District Block Representation System as already being put into place by the Electoral Commission would be *ultra vires* the very provision which establishes such a system of representation in parliament, in consequence of which, they are seeking the assistance of the courts to stop the Electoral Commission from carrying out the district block system of representation in place of the constituency based form of representation which had usually been the case.

32. The Defendants' reply is that the Plaintiffs have given a very restrictive meaning of Section 38A(1) of the Constitutional Amendment; and that Section 38A has never, in fact, provided as they are arguing to be the case. They claim Section 38A(1) has not stated or never stated 'Where constituencies do not exist' but that rather that Section be read as a whole, to wit - 'where under any law for the time being in force, a date for a general election of Members of Parliament has been appointed but constituencies have not been established in accordance with subsection 3 of Section 38 for the purposes of such elections the President may, after consultation with the Electoral Commission direct that such election shall be conducted on the basis of the existing districts in a manner to be known as the District Block Representation System instead of constituencies.' They submit that without the fresh or new delimitation of constituencies after the publishing of census results by Statistics Sierra Leone, legally speaking, constituencies have not been established for the forth-coming elections of Members of Parliament pursuant to Section 38A of the Constitution as amended, and that this is exactly the way they have read it, hence, the imposition of the District Block Representation System.

**Section 38(3) of the Constitution Act No 6 of 1991 provides-**

**'The boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable'**

**Provided that the number of inhabitants of such constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, density of population, the distribution of different communities, the areas and boundaries of the chiefdoms and other administrative and traditional areas.'**

33. The Defendants' infer from this section that by the words **'but constituencies have not been established'** is not saying *'but constituencies do not exist' or 'where there are no constituencies'* as the plaintiffs are arguing, but rather, that constituencies have not been established based on the current population trend as dictated by the recently conducted census which does and will always affect population quota and the eventual boundary delimitation of constituencies and the number of constituencies for purposes of election. The Defendants refer to Section 38 (6) and (7) which goes on to explain the 'population quota' as mentioned in Section 38 (3) which is the controlling section as to how such constituencies must be established for purposes of elections, the 2023 elections not being an exception. This is a process which would take time as explained by the 2<sup>nd</sup> Defendant's counsel in paragraph 11(h) and 17 of the 2<sup>nd</sup> Defendant's case and also beyond their control with the recent publication of census results by Statistics Sierra Leone. The 2<sup>nd</sup> Defendant on their own had started a review pursuant to Section 38 (4) but with the population census figures received, it became necessary to establish population quota and delimit boundaries which was going to take time and noting the law Section 18 of PEA NO 17 OF 2022 and the ECOWAS Protocol on Democracy and Good Governance A/SP1/12/01 Supplementary to the Protocol to Mechanism for Conflict Prevention Management Article 2 (1) under elections which states:

**'That No substantial modification shall be made to electoral laws in the last 6 months before the elections except with the consent of a majority of political actors.'** They will not be able to meet those time lines set.

34. From the above, it is clear to me that there are 2 positions regarding the true meaning of section 38A and its applicability. This calls for interpretation and this

is what the plaintiffs have sought to invoke by their seeking of the aforesaid declaration pursuant to section 124 of the Constitution. Interpretation of Statutes is the art of discovering the true meaning of an enactment by giving the terms of any enactment its actual and true meaning. As a Court we do not interpret arbitrarily but according to set standards or rules developed over the ages called Rules of Interpretation. The scope of our work in part of this judgment is to discover, discern or decipher the true meaning of Section 38A as expressed explicitly or implicitly in the language used.

35. Taking the above into consideration as our mandate I say that on a full Reading of Section 38A it shows the section has 4 parts.

#### Condition precedents

1. Where under any law for the time being in force a date for a general election of members of parliament has been appointed;
2. ...But constituencies have not been established in accordance with subsection 3 of Section 38 for the purpose of such election...”;  
Advise by the Electoral Commission
3. “The President may after consultation with Electoral Commission”  
Powers of the President
4. ...Direct that such election shall be conducted on the basis of the existing districts in a manner to be known as District Block Representation System instead of constituencies”

36. This Court’s position is that 1 and 2 supra are conditions precedent. The Plaintiffs argue that those conditions precedent were not met whilst the Defendants say they were met. Regarding the first condition precedent the opposing parties agree that it was met. The evidence is clear before this court that pursuant to Sections 57 and 103 of the Public Elections Act No 4 2012 (which was the law for the time being in force), on the 12<sup>th</sup> of March 2022 a Proclamation was made by His Excellency the President with the same published on the 14<sup>th</sup> of March 2022 by which the dates for election of Paramount Chiefs Members of Parliament and

Ordinary Members of Parliament was appointed as 23<sup>rd</sup> of May 2023 and 24<sup>th</sup> June 2023 respectively.

37. Turning to the 2<sup>nd</sup> condition precedent, this is where the real dispute exists. The Plaintiffs want this court to interpret 'but constituencies have not been established' to mean 'but constituencies do not exist' while the Defendants want this court to read 'but constituencies have not been established' with the connecting words therein to wit 'in accordance with' subsection 3 of Section 38 for the purpose of such election.'

38. Uncertainty or ambiguity about the meaning of words can arise because of the way words are linked together. This is particularly the case where particular phrases are used. Some of these phrases include 'in respect of' 'subject to' 'in connection with' 'by reason of' and as in this case 'in accordance with'. They are nothing more than connecting phrases and indicate some connection or relation between 2 subject matters or Sections to which the words refer.

39. The first step or starting point for interpreting statutes however is always the words used couched in what is referred to as the Literal Rule. The Literal Rule in simple language is where the Courts simply look at the words of the Statute and apply them as they are written giving them their ordinary and natural meaning. In the case of **FRANKLYN V ATTORNEY GENERAL 1973 ALL ER P879 AT 887** Lawson J opined as follows

**'NOW if I get to this second stage then, in my judgment, and then only am I entitled to look at extrinsic aids such as the long title, the heading, the side notes other legislation; then only am I entitled to resort to maxims of construction of which counsel for the plaintiff gave me a useful list. I have to construe the words so that they have reasonable effect. I have to avoid absurdity or repugnancy. I have to avoid hardship and injustice. I have got to be sure that the meaning I select, if the meaning is ambiguous is a meaning which does not unduly and unjustly interfere with subsisting rights ...BUT in my judgment, I cannot use any of those extrinsic aids, and I cannot resort to**

**those maxims, unless my answer on stage 1 is the meaning of these words is not clear and not ambiguous'**

40. With similar tenor JESSEL MR in the case of **ATTORNEY- GENERAL V THE MUTUAL TONTINE WESTMINSTER CHAMBERS ASSOCIATION LTD 1876 CA P 469 @P476** noted that if there is nothing to modify or alter the language of the statute it must be construed in the ordinary and natural meaning of the words and sentence used when he said:

**'In construing legal instruments, whether Acts of parliament or not, it is the duty of the courts to give every term used its ordinary and legal meaning, unless there is something either in the nature of the subject matter or in the context which compels the court to come to a different conclusion. Consequently, it is for those who say that the word is not used in the instrument in its ordinary legal acceptance to shew something grounded on one or other of these considerations to prove that it is so used'**

41. In *BRADLAUGH V CLARKE (1883) 8 APP CASE 354 HL* Lord Fitzgerald said

*'I prefer to guide my judgment by the rule of construction laid down in Warburton v Loveland 1 Hudson & brooks 648, so often quoted, approved of and followed. Mr Justice Burton there says 'I apprehend it a rule of construction of statutes that in the first instance the grammatical sense of the words is to be adhered to. If that is contrary to or inconsistent with any expressed intention or declared purpose of the statute or if it would involve any absurdity, repugnance or inconsistency, the grammatical sense must then be modified, extended, or abridged, so far as to avoid such inconvenience but no further'*

42. So in the interpretation before us the Literal Rule becomes our first stage or first port of call for a successful interpretation of the Section at hand, Section 38A(1). *The language of Section 38A (1) now before us does not appear to me to be open to ambiguity except that one has been created because of the divergent interpretations given to the phrase.*

**'But constituencies have not been established in accordance with subsection 3 of section 38 for the purpose of such election'**

43. The Plaintiffs are reading 'but constituencies have not been established in accordance with subsection 3 of Section 38 for the purpose of such election' to mean

*'Where constituencies do not exist' or 'where there are no constituencies'*. And since constituencies still exist unlike a situation where there are no constituencies the Proportional Representation District Block cannot be put in place.

44. *Firstly, the ordinary meaning of that section has never said that. The Plaintiffs' Counsel it would seem is importing words into the section.* Interestingly at paragraphs 29-33 of the Plaintiffs' statement of case the Plaintiffs are noted for saying.

**'Again, it is respectfully submitted that the objective of all interpretations is to discover the intention of the law makers which is deducible from the language used; and once the meaning is clear, the Court should give effect to it. The Courts are not to defeat the plain meaning of an enactment by an introduction of their own words into the enactment.'**

This no doubt and as clear as day flies against the Plaintiffs and their Counsel as it is they that are putting words into the legislation.

45. *Secondly, the Plaintiffs' interpretation has not taken any regard to the connecting words or phrases used 'in accordance with'.* This like some common phrases that appear in legislation such as 'in respect of' or 'in relation to', 'subject to' or 'in connection with' indicate some connection or relation between two sections or subject matter to which the words refer in order to get its full broad or correct meaning.

46. In this case we adhere to the grammatical sense as leading to no absurdity or repugnancy. The grammatical sense is not inconsistent with the purpose as gleaned from the annotation among others. In the annotation to this Amendment Act



Section 38A(1) we find the words “*Election by District Block Representation System*”. Noting the importance of annotations, headings and marginal notes serving as useful indicators to all Interpretation, Wood JSC (as she then was in the unanimous decision of the Supreme Court of Ghana in the case of **AUNTIE & ADJUWAH V OGBO 2005-2006 SC GLR 494 at 504/505** explained the assistance to be garnered from headings and marginal notes in the Interpretation of a Statute in the following terms:

*“As clearly provided under section 4 of the Interpretation Act, 1960 (CA.4), [the comparable section of section 15 of Act 792], headings to parts of a statute do not form part of the statute; they are intended for convenience of reference only; but the useful role they play in statutory interpretation is not disputed. Headings which may be described as sign posts, are a useful guide in determining the scope of ambit of the provisions to which they relate...”*

47. Given its plain and ordinary meaning ... “*But constituencies have not been established*” is saying but constituencies have not been set up; inferring a setting up process in accordance with Section 38(3) as the controlling provision, (hence the word “*in accordance with*”). This setting up process begins with -

1. A census which is out of the Electoral Commission’s reach or control. (within the Remit of Statistics Sierra Leone)
2. Boundary delimitation of Constituencies under which EC would -
  - a) establish a population quota pursuant to Sections 38(3) and 38(6) which according to the Constitution is number of inhabitants (census result) divided by the number of current constituencies.
3. Get the proposed boundary delimitation of constituencies approved by the current Parliament for use after dissolution of Parliament and the next elections.

This to my mind is the reason why it is stated in Section 38A(1)...but constituencies have not been established in accordance with Section 38(3) for the purpose of such election...”

48. Taking the whole Section 38 and Section 38A into consideration this court holds that the default position is that for elections of ordinary members of parliament there must be constituencies. However, to establish constituencies is not an issue of ‘think of a number’ and dividing districts into such numbers. It is based on several factors like, first and foremost, population census, population quota, number of current constituencies and the like; and where the Electoral Commission is unable to establish constituencies based on these dictates the alternative is for them to advise the President on such status who may or may not direct as within his power that the form of election depart from constituency based to a District Block Representation using the existing districts.

49. This is *what Parliament did by its Constitutional Amendment Act No 15 of 2001. The purpose as quite seen in the annotation thereto and from the Act itself is for a District Block Representation System. It is not a one-off Situation but one which might come up if the establishment of constituencies are not done well in advance of time to be taken into consideration during voter registration and long before 6 months to the election. Since 2001 Governments have come and gone. Parliament did not repeal it. They even had an opportunity to repeal same when the speaker brought it to their notice. Pursuant to Section 108 it is not an entrenched provision which required a cumbersome process to change. But they did not change Section 38A. Parliament is the law-making body if they had wanted they would have done it. This they did with the Restoration of the Right of Appeal in Court Martial cases in 2005 following the denial of that right since 1971. As Judges we can only interpret what we see and that is what I have done.*

What is important in any election is the citizens’ right to vote. It has NOT been affected and it will not be affected no matter the system whether constituency based or District Block Representation System.

50. Having tested these provisions on the literal meaning which is clear and unambiguous I think it is perhaps better if I move one step further and try to confirm it on a modern approach – the Purposeful Interpretation. In *Legislation and Statutory Interpretation* by Kath Hall and Claire Makens, 3<sup>rd</sup> Edition published by Lexis Nexis the Learned authors wrote *“Since the 1980s the Courts Approach to Statutory Interpretation has significantly changed – Today Courts are statutorily required to consider both the meaning of the words and the purpose behind the legislation, and this has led to a more balanced and effective approach to resolving ambiguity. The purposive approach means the Court must give primary importance to the purpose or object underlying legislation when interpreting a provision of an Act”*

51. In the case of **ABU RAMADAN & NIMAKO ELECTORAL COMMISSION & A.G. (2013-2014) 2 SC GLR 1654** the Supreme Court of Ghana stated regarding portions of the Public Elections (Registration of Voters) Regulation 2012 (CI 72) per Wood CJ in part as follows:

*“...established principles of Statutory Interpretation require that CI 72 be read as a whole, not piece meal and purposively construed and with the impugned legislation interpreted in the context of the other parts of CI 72”*

52. **To this END**, I take Sections 38 & 38A as a whole and hold that the purpose of this Section is clearly establishing two (2) systems of voting:

(1) Constituency based form – FIRST PAST THE POST

(2) A District Block Representative System – Proportional Representation System

Any of same may happen depending on the prevailing circumstances at hand.

*Having regard to its object and purpose as gleaned from the annotation and the Purpose for which this amendment was put in place - it does not present to my mind any such difficulty in interpretation as to warrant us departing from or adding to the ordinary sense of its terms and I give effect to every word of it.*

53. From the totality of the interpretation taking Sections 38 and 38A into consideration one can easily conclude that where there is a population census number of constituencies are likely to change as evidenced from the fact that in 2004 a population and housing census was conducted in December 2004 based on which constituencies were delineated and/or established – 112 in total for the purpose of electing ordinary Members of Parliament for the 2007 elections. For the 2012 elections there was no population census hence no change in the number of constituencies which remained the same at 112. Things were so static that in Section 56 of the Public Election Act No 4 of 2012, it stated Members of Parliament shall comprise b) one hundred and twelve members

54. However, in 2015 there was another census which resulted in the altering of the population data and/ or quota. The resultant effect was that despite the Public Elections Act No 4 of 2012 which had stated categorically in Section 56 thereof that members of parliament shall be 112 because of the primacy and supremacy of the Constitution Act No 6 of 1991 and how constituencies ought to be established via the process to elections, constituencies had to be established based on the census of 2015. This was done on the 17<sup>th</sup> of February 2017 and formed the basis under which the 2018 elections were conducted based on 132 established constituencies instead of 112 constituencies that had hitherto existed based on 2004 census and by operation of law, the Public Elections Act No. 4 of 2012 Section 56(b) thereof.

55. The census results used were published 3 years before the elections of 2018 and also the delimitation of boundaries was approved in 2017 about a year or more and most importantly, before the announcement of the date to the elections. This no doubt is different from what we now have where the date for the elections had been announced 15 months before the set date for the Elections. Also in 2021 a mid-term population census was conducted for which the results only came out on the 15<sup>th</sup> of September 2022 after the date for the election has been well appointed in advance since march 2022 and one can take judicial notice of the fact that in September 2022, registration of voters was ongoing.

56. The natural thing to have happened was for the Electoral Commission to now delimit constituency boundaries. This according to the 2<sup>nd</sup> Defendant was going to take time see paragraphs 11 and 17 of the 2<sup>nd</sup> Defendant's case. The Defendants were on a trajectory to review constituencies pursuant to Section 38(4) when the census results were published. Taking its implication on board to wit;

- (a) Establish population quota;
- (b) Delimit constituency boundaries
- (c) Get Parliament to approve same
- (d) Get Voter Registration to reflect such constituencies and wards.

Such was likely not to meet the deadline of 24<sup>th</sup> December 2022, set by Section 18 of the Public Elections Act, 2022 and the ECOWAS Protocol on Elections. The process had to be abandoned in favour of the district block under which the Electoral Commission believed they will meet time lines.

57. In the exercise of their functions the electoral commission is guided by Section 32(11) which guarantees them independence in the exercise of their function and we are inclined to support and up hold that independence.

58. In this case it is for the plaintiffs to show something either in the nature of the subject matter or in the context in which the words are used which compels this court to come to a different conclusion from the grammatical sense. They have not done that. If anything on the doctrine of harmonious construction one can easily see that there could have been no other interpretation better than that which we have adopted.

59. The doctrine of or rule of harmonious construction is to the effect that a provision in the Constitution or statute should not be interpreted or construed in isolation but as a whole so as to remove any inconsistency or repugnancy. Under this rule there is obligation placed on the courts to avoid a clash on contradicting provisions and courts must construe the opposing provision in a way as to harmonise the conflicting provisions. The doctrine is based on the principle that every statute or the Constitution does have a purpose and the provisions should be

read in totality and not in compartmentality. The doctrine may become necessary for application when there arises inconsistency between sections of the particular statute or the Constitution. After the statute or Act of Parliament has been passed the legislature no longer has jurisdiction and is *functus officio*. We being interpreters are then unable to question or get back to the legislature to request the exact interpretation of the legislature while they were making it or even sometimes, they may not have even considered such broad range of circumstances at the time of drafting or consideration.

60. In **COMMISSIONER OF INCOME TAX V MS HINDUSTAN BULK CARRIERS 2003 3SCC57 P74** the Supreme Court of India laid down five (5) principles that govern the rule of harmonious construction as follows:

1. Firstly, courts should try and avoid a conflict of seemingly disputing provisions and effort must be made to construe the disputing provisions so as to harmonise them
2. The provision of one section cannot be used to overthrow the provision covered in another section unless the court is unable to find a way to settle the differences despite all efforts
3. In a situation where the Court finds it impossible to entirely reconcile the differences in inconsistent provisions the Courts must interpret them in such a way that effect is given to both provisions as far as possible.
4. Courts must also take into consideration that the interpretation that makes one provision redundant and useless is against the essence of harmonious construction
5. Harmonising 2 contradicting provisions does not mean you render them fruitless or destroy any statutory provisions or render it ineffective.

61. Could it be doubted that if we go by the Plaintiffs' interpretation this would render Section 38A redundant and ineffective for all times. That cannot be the intention of Parliament. If they want that, they are law makers; they must change

it and remove that Law from our books. Until that is done Section 38A cannot be free standing *ultra med* or for a one-off situation.

62. There can be no doubt that while we have two (2) separate sections to deal with dealing two (2) separate forms of conducting elections that the interpretation we have given makes Section 38A to fit in nicely and *in sync* and harmoniously with Section 38 to be applied when the circumstances in the country as at now has dictated and I say no more.

**2. Whether the directive by the president to the electoral commission of Sierra Leone (ECSL) to hold any public elections for ordinary members of Parliament by the proportional representation system where there are extant and subsisting constituencies is ultra vires the Constitution ACT NO 15 2001 AS AMENDED**

63. Learned Counsel for the Plaintiff has respectfully submitted that Section 38A (1) of the Constitution does not give the president carte blanche power or unconditional authority to direct that the elections be held on a Proportional Representation System regardless of whether the conditions precedent were fully met. He claims that because there were extant and subsisting constituencies the so-called advice by the Electoral Commission was wrong in law, and so too, the directives which emerged. Even though as per Sections 53 (3) and 171(14) of the Constitution a court cannot inquire into the consultations where the directives were based on a supposed wrong presupposition to wit that constituencies have not been established when according to him constituencies have existed and were still subsisting this court has jurisdiction to make a declaration that the President acted beyond his powers. The Defendants' response was that this court lacks jurisdiction to so declare because of Section 53(3) and 171(14)

64. This court does state that it has jurisdiction to hear what the Plaintiffs' inquiry is all about. Our inquiry is not whether His Excellency the President has received or acted with such advice but whether the directive given by him is in tandem with and *intra vires* the law as prescribed which the president himself as fountain head of justice and primary upholder and defender of the Constitution is enjoined to observe or whether his action to direct the electoral commission to use the District

Block Proportional Representation System for the 2023 June elections was outside or in excess of the powers so conferred on him by Section 38A(1) of the Constitution.

65. In **R v HULL UNIVERSITY VISITOR EX PARTE PAGE [1993] 2 AC237** Lord Browne Wilkinson said in defining what is meant by *ultra vires*

*'If the decision maker exercises his powers outside the jurisdiction conferred in a manner which is procedurally irregular or is Wednesbury unreasonable, he is acting **ultra vires** his powers and therefore unlawfully.'*

66. Taking the above into consideration and having come to the conclusion that the preconditions or condition precedent were fully met, His Excellency the President's action are therefore procedurally regular and Wednesbury reasonable making the enquiry academic, in that those directives were well within his mandate and were lawfully made and can in no way be declared as *ultra vires*.

**3. Whether the current Parliament was itself elected on a constituency basis as provided for in Section 38(1)(2) and (3) of the Constitution Act No 6 of 1991 and whether these constituencies are still extant and subsisting?**

67. The Plaintiffs are seeking declaration as a way of interpretation and enforcement of the constitution that the current parliament was elected on a constituency basis as provided for in Section 38(1) (2) and (3). There can be no doubt that this was the case. Even when Section 56 of the Public Elections Act No 4 of 2012 provided that the current Parliament after 2012 was to be 112 members the evidence before this court is that following the 2015 census which altered Sierra Leone's population from that which was the case in 2004, the number of seats in Parliament or constituencies with MPS REPRESENTED changed from 112 to 132 as a result of boundary delineation and delimitation exercise in 2017 which flowed from those census results. See paragraph 11 each of the 1st and 2nd Defendants' case.

68. When that happened, the previously 112 constituencies lasted up and until the dissolution of that Parliament for the 2018 elections which saw the establishment



or introduction of the new constituencies approved by that old Parliament. Those previously 112 constituencies by and large by the dissolution of Parliament became extinguished. Learned counsel for the 2<sup>nd</sup> Plaintiff, Dr Emmanuel Saffa Abdulai has submitted in paragraph 27 of the 2<sup>nd</sup> Defendant's case that the moment census results are declared it extinguishes constituencies. I will not go as far as that, except to state, that with a new District Block System of Representation on the horizon and in place for the next election it automatically means that the current constituencies would be rendered redundant at the dissolution of the current Parliament except for calculating the population quota when that time comes after the forth-coming elections by the new Parliament.

69. The effect here is that these current constituencies for purposes of representation of people in Parliament can never be extant and subsisting after the forthcoming dissolution of Parliament and for purposes of the forth-coming elections

**4. Whether the revision of constituencies as provided for in Section 38(4) does not necessarily result in the establishment of constituencies stipulated in Sections 38(1)(2)(3) but rather the section provides for the period when existing constituencies should be reviewed which revision may or may not necessarily result in a delimitation of the respective boundaries of existing constituencies**

Section 38 (4) provides as follows

70. The Electoral Commission shall review the division of Sierra Leone into constituencies at intervals of not less than 5 and not more than 7 years, and may alter the constituencies in accordance with the provisions of this section to such an extent as it may consider desirable in the light of the review.

There is a proviso which states:

*“that the Commission may at any time carry out such a review and alter the constituencies in accordance with the provisions of this section to such extent as it considers necessary in consequence of any alteration in the number of Members of Parliament referred to in paragraph (b) of*

***subsection (1) of Section 74 by reason of the holding of a census of the population of Sierra Leone in pursuance of an Act of Parliament.”***

71. The Revision of constituencies as provided in Section 38 (4) would definitely result in the establishment of constituencies even though it is a power given to the Electoral Commission to review and alter which can be exercised even when there is no census.

72. When there is alteration in the population, the *proviso* to section 38(4) of the constitution states that the Review is a matter of must and ought be done without reference to the time i.e whether within 5 – 7 years period or at any time.

73. Either way any Review by the Electoral Commission pursuant to Section 38 of the constitution would most invariably be affecting the number of constituencies subject to parliamentary approval as the last and final hurdle.

**5. Whether relying on Section 38A(1) of the Constitutional Amendment Act No 15 would preclude independent candidates from contesting for Parliament as contemplated in Section 77(m) of the Constitution 1991**

74. The Plaintiffs have submitted that if Section 38A (1) is put into operation by applying the District Block Proportional Representation System there is no way by which independent candidates would be afforded an opportunity to represent people.

75. In the affidavit attached to the Plaintiffs Originating Notice of Motion, the 1<sup>st</sup> Plaintiff deposed at paragraph 10 thereof that

***“Such a system constricts the political space for people minded to contest election as an independent candidate as provided for in Section 77m of the constitution”.***

In their case too it is noted that paragraphs 23 and 24 respectively provides thus:

**‘23. It is further submitted for the Plaintiffs that the use of Proportional Presentation for public elections would negate the possibility of having *independent candidates* for such elections as is contemplated in Section 77(m) of the Constitution which relates**

to the loss of an elected independent's seat on cross carpeting to a political party.

24. Moreover, it is the case for the Plaintiffs that the Proportional Representation System gives primacy to a political party's list, submitted to the Electoral Commission to the exclusion of the constitutional entitlement of *every* Sierra Leonean subject to the requirement listed in Section 75 of the Constitution, 1991 to be entitled to be eligible as a candidate for Parliament.

76. The response by the other side - both Defendants is that the Plaintiffs being both members of the APC party are not independent candidates and consequently do not have the *locus standi* to institute this action. They rely on the case of **HINGA NORMAN V DR SAMA BANYA & OTHERS SC2/2005 UNREPORTED**.

77. According to the Editors of Constitutional Law of South African Chapter 8 page 83 thereof.

*“The concept of locus standi is concerned with whether a person who approaches the Court is the proper party to present the matter in issue to the Court for adjudication. The word ‘standing’ has been referred to as a metaphor used to designate a proper party to a court action”. An Inquiry into standing should thus focus on the party who brings the matter before the Court not on the issue to be adjudicated.*

78. In his book Civil Procedure in Nigeria, 2<sup>nd</sup> Edition at page 32 under the rubric ‘has the person intending to sue the *locus standi* Fidelis Nwadialo had this to say –

*“The term ‘locus standi’ denotes legal capacity to Institutional legal proceedings in a Court of Law and is used interchangeable with terms like ‘standing’ or ‘title to sue’. It has also been defined as the right of a party to appear and be heard on the question before any Court or Tribunal. It is the right or competence to institute proceedings in a Court for redress or assertion of a right enforceable in Court”*

79. In the case of **SAMUEL HINGA NORMA V DR. SAMA BANYA & OTHERS SC 2/2005 UNREPORTED**, quoted by the Defendants' solicitors and counsel, lack of *locus standi* was used by the Supreme Court to throw out the 3<sup>rd</sup> & 5<sup>th</sup> Reliefs in the Originating Notice of Motion of the Plaintiff.

80. Relying on the Nigerian Supreme Court decision of **SENATOR ABRAHAM ADESANYA V THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA (1981) NSCC 146; (1981) All NLR 1** the Supreme Court used the strict meaning instead of the modern and liberal approach to throw the matter out of Court.

81. In that case action was brought by the Appellant challenging the Constitutional validity of an appointment made by the President of Nigeria. The action was dismissed by the Nigerian Supreme Court on the sole ground that the Appellant had no *locus standi* to bring the action as there were no rights peculiar or personal to him, which had been infringed. The Court did not even go into the merits of the case and issues of *locus standi* was taken *in limine*.

82. In **JAMMEH v ATTORNEY-GENERAL Banjul Civil Suit No. 4/2001**, the Supreme Court of The Gambia did the opposite where it held that the Plaintiff being a citizen suing in the Supreme Court alleging contravention of the 1997 Constitution – need not prove particular interest in alleging contravention of the Constitution – and that a citizen is entitled under Section 5(1) (a) & (b) to challenge contravention of the Constitution.

83. In that case the dictum of Jallow JSC in **UNITED DEMOCRATIC PARTY (NO.1) V ATTORNEY-GENERAL (NO1) [1997 – 2001] GR 789 AT 803** was applied.

*“Per Jallow JSC. Every citizen of the Gambia is competent, subject only to express restrictions and limitations to seek redress in the court against alleged violation of the constitutional order. That competence vested in the general citizenry is not diminished by one’s status as a legislator. The situation might have been different if the Plaintiff had voted in favour of*

*the measure; for he cannot then be allowed to mount a legal challenge to what he has expressly supported and approved as a legislator.*

*The Plaintiff as a citizen did not need to demonstrate any particular interest in order to vest him with locus standi to bring the instant action-alleging contravention of the 1997 Constitution.”*

84. In the course of that Judgement, Wali JSC said this –

**“Per Wali JSC. A transgression or violation of the Constitution by the government is a wrong committed against the whole country and its citizenry. Even the Supreme Court of the United States is noticed now to be shifting from the strict adherence to the *locus standi* rule to the liberal emphasis of the court’s function as a protector of public interest in the enforcement of constitutional limitation and will no longer be deterred by the mere plea of *locus standi* from considering a challenge to violation or transgression of Constitution.”**

85. This Court is inclined to follow the modern liberal approach despite the strict adherence which has been upheld by this Court in Hinga Norman’s case. As a matter of judicial precedence the Supreme Court of Sierra Leone under Section 122(2) of the constitution while treating its own decisions as normally binding may depart from a previous decision when it appears right to do so. We hold that the Member of Parliament is a citizen of the country without which he would not be a Member of Parliament and this is a matter of public interest in the enforcement of the Constitution. That apart, it is noted that our Parliament by enacting the provisions contained in Section 127 of the 1991 Constitution made it possible for the first time for a private litigant (a person) to institute proceedings to challenge the Constitutional validity of any enactment as well as to challenge the validity of anything done under the authority of the 1991 Constitution or any law without requirement that the person should show that he has a legal right or interest personal or peculiar to him which has been adversely affected by the act or omission which he seeks to challenge. This accords with and is in tandem with those provisions.

86. Having said that, it behoves me to go into the merits without striking the Relief out as would have been if I uphold the *locus standi* argument.

87. In this regard, the Defendant's Solicitors went further as to argue that the claim is a mere speculation. This being the case we do agree that such consideration that independent candidates would be unable to take part was only speculative as in the Statutory Instrument No 13 of 2022 now in force dated 16<sup>th</sup> November 2022 there is ample provision for independent candidates to contest the election. They will none the less be representing a whole district instead of just a constituency and the percentage of votes he or she secures is what would make him/her to be seated in parliament. As long as an Independent candidate fulfils the requirement as detailed in Section 75 of the Constitution in terms of qualification; fulfils the requirement for nomination wherein he is nominated in writing by 3 voters from the electoral area where he/she intends to contest the elections see Section 10 of the SI NO 13 and Section 58 of the Public Elections Act No17 of 2022 and complies with the other regulations as detailed in Section 7(2) of SI NO 13 dealing with apportioning of seats to political parties and independent candidates, WHICH PROVIDES as follows -

**'Where the valid votes cast for an independent candidate result in that candidate winning more than one seat, the extra seat or seats shall be assigned in accordance with the highest remainder formula for apportioning seats to political parties or independent candidates.'**

88. He or She is entitled to stand and can win a seat in the Proportional Representation District Block System.

**6. Whether Section 2 of the Statutory Instrument No 13 dated 16<sup>th</sup> November, 2022 making provisions for both representation for both Members of Parliament and Local Councils is *ultra vires* Section 33 and 38 of the Constitution Act No 6 of 1991**

89. The Plaintiffs' counsel in his statement of case has made a heavy weather of the unconstitutionality of the regulations noting that it is primary legislation that can determine the form of the legislation and not subsidiary /secondary legislation.- 'The power given to the Electoral Commission under section 33 of the Constitution Act No 6 of 1991 and section 171 of the Public Elections Act 2022 is to conduct and supervise elections and not to determine the form or mode of elections' he stated categorically. He concluded by stating that because of this what the Electoral Commission the 2<sup>nd</sup> Respondent did by Regulations titled SI 13 and 14 published 16<sup>th</sup> November 2022 was in excess of the Electoral Commission's powers and accordingly *ultra vires*. He went to state further that they did not even give any explanation for what they did.

90. Firstly, this argument cannot be supported in view of the fact that it was primary legislation that brought the amendment to the Constitution Act No 6 of 1991 in the form of Constitutional (Amendment) No 15 of 2001 into force. This was clearly the work of Parliament in a primary legislation titled Act No 15 of 2001 as opposed to a subsidiary or secondary legislation and governments after governments have remained steadfast with the provision not choosing to abandon it but to keep it within our laws.

91. Secondly, and most importantly, it would appear the Learned Counsel has downgraded the effect of regulations as Laws of the Country. Under Section 170 (1)(c) of the Constitution of Sierra Leone it is stated the Laws of the country shall comprise *inter alia*

**170(1) (c) 'Any orders, rules, regulations and other statutory instruments made by any person or authority pursuant to a power conferred on that behalf by this constitution or any other law;'**

92. It is clear to me that those regulations are Laws of Sierra Leone made by or through the contribution of Parliament as they are laid before Parliament and would only become law on the expiry of 21 days after being so laid in Parliament without objection unless before the expiration of 21 days Parliament annuls same by 2/3<sup>rd</sup> majority. Yes they are secondary legislation but still Laws of the country and a

better way to making laws when an Emergency and technical expertise is required except that it must conform to the Principal authority, the Primary Legislation from where the authority to make the law emanates.

93. Thirdly, Learned Counsel has categorically stated that using Section 33 of the Constitution Act No 6 of 1991 to put into operation the District Block Representation System those regulations as stated in SI 13 and SI 14 of 16<sup>th</sup> November, 2022 is in excess of the powers granted by those provisions and accordingly *ultra vires*. He relies on Section 124 of the Constitution which in the b) part states **'Where any question arises whether an enactment was made in excess of the powers conferred upon Parliament or any other authority (Electoral Commission) or person (Chairman ECSL) by law or under the Constitution'**.

94. He states in no uncertain terms that the power given to the Electoral Commission under Section 33 of the Constitution and Section 171 of the Public Elections Act No 17 of 2022 is to conduct and supervise elections and not to determine the form of elections.

95. In order to determine whether such assertion as postulated by learned counsel is correct Section 33 it is noted provides as follows

**'Subject to the provisions of the Constitution, the Electoral Commission shall be responsible for the conduct and supervision of the registration of voters for, and of, all public elections and referenda; and for that purpose shall have powers to make regulations by statutory instrument for the registration of voters, the conduct of Presidential, Parliamentary or Local Government elections and referenda, and other matters connected therewith including regulations for voting by proxy'**

96. The question that begs an answer is what is the extent of the Electoral Commission's powers and whether by this enactment of the regulations vis SI Nos 13 & 14 they exceeded those powers. My task therefore is to conduct a judicial review of the Electoral Commissions' actions via the creation of Statutory



Instrument Nos. 13 and 14 of 2022 on the one hand, i.e. whether there has been a breach of the statutory/ constitutional requirements by putting in effect or force SI Nos 13 and 14 of 16<sup>th</sup> November 2022.

97. On the other hand, also noting that the Plaintiffs' counsel has made a heavy meal of the fact the Electoral Commission did not give reasons for their action or simply that the reason given was very lame and weak, one must ask whether in fact they acted reasonably i.e. whether their actions were procedurally regular or *Wednesbury* unreasonable see the case of **ASSOCIATED PROVINCIAL PICTURE HOUSES LTD V WEDNESBURY CORPORATION (1948 ) 1KB 223. SEE ALSO R v HULL UNIVERSITY VISITOR EXPARTE PAGE [1993] 2 AC237**

98. In the case of **Council of Civil Service V Minister of State for Civil Service** popularly referred to as the **GCHQ CASE 1985AC 374** the House of Lords stated that The grounds for Judicial review may be subsumed under 3 headings viz

- a) illegality – put simply decision not within the institution or commissions powers;
- b) irrationality – attesting to the fact of the decision being unreasonable and where the *Wednesbury* principle becomes relevant and thirdly
- c) procedural impropriety alluding to the process and whether due process was done or the decision was effect in disregard for the rules of natural justice .

99. Lord Diplock in the *GCHQ* case noted that by Irrationality – ‘I mean what can be succinctly referred to as the *Wednesbury* unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no reasonable person who has applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer.’

100. Thus whether or not a decision falls within the ambit of this category is a subjective test and depends on the interpretation of the judge(s). I hereby set out to conduct the inquiry on these terms

101. Regarding the first inquiry on the Electoral Commission's powers this can be gleaned from the Constitution and these are -

From Section 33

1. For the conduct and supervision of all public elections and referenda
2. For the conduct and supervision of the registration of voters
3. To carry out 1&2 above do have powers to make regulations by statutory instrument for a) the registration of voters b) the conduct of presidential, parliamentary and local government elections and referenda.
4. To carry out 1&2 above, to make regulations for matters incidental and connected with presidential, parliamentary and local government elections including regulations for voting by proxy

102. Section 33 starts with "subject to this Constitution...". Consequently, there are other functions detailed in this Constitution which are not necessarily stated in Section 33 of the Constitution and these include

(a). The Electoral Commission shall review the division of Sierra Leone into constituencies at intervals of not less than 5 and not more than 7 years and may alter the constituencies in accordance with the provisions of this section to such extent as it may consider desirable in the light of the review see Section 38(4) of the Constitution

(b). See also the proviso to Section 38(4) which states

"Provided that the electoral commission may at any time carry out such a review and alter the constituencies in accordance with the provision of this section to such an extent as it considers necessary in consequence of any alteration in the number of Members of Parliament referred to in paragraph b) of subsection 1 of Section 74 by reason of the holding of a census of population Sierra Leone in pursuance of an Act.

103. It is arguable to state that the Electoral Commission never decided the form the Elections would take in that their duty was only to advise the President and that the decision is 'His' alone.

104. Did the Electoral Commission exceed these powers when it decided what the form of the elections should be? I think NOT. The Plaintiffs' counsel has constricted the meaning of control and supervise to what is reflected in Section 68 of the Public Election Act. That cannot be. Firstly, the meaning of 'control' under **BLACK'S LAW DICTIONARY 8<sup>TH</sup> EDITION** is control n *'the direct or indirect power to direct the management and policies of a person or entity whether through ownership...by contract or otherwise, the power or authority to manage direct or oversee'*

**Control, vb. to exercise power or influence over; to regulate or govern by law. to have a controlling interest.**

105. This is quite expansive. Tell me somebody who is in control who cannot determine the form what is under his control should take . Surely that person is lame duck. A pastor in charge of a church will tell you this is the form a particular service would take . Also, that list in section 68 referred to is not exhaustive as brought out by Section 68(3) of the Public Elections Act 2022 which states

***"During an election the arrangements under this section and other enactments relating to the electoral process generally ..."***

106. It is but clear to me that the Electoral Commission 2<sup>nd</sup> defendant by making those statutory Regulation never exceeded its authority as given by both Section 33 and Section 171 of the Public elections dealing with their role or function.

107. On the second limb as to whether the decision taken was unreasonable and the explanation given which plaintiffs' counsel described as weak it is my view that the decision taken to advise the President was a reasonable one under the circumstances. The 2<sup>nd</sup> defendant as we have stated acted within their remit- the amendment Act No 15 of 2001, the decision was rational and evidenced based – national census results being the trigger to such new developments; also ECOWAS

protocol and the 6 months deadline all being reasons why they had to abandon one system for the other and the law allowing same to happen. Any other decision would have caused delay which would mean going against the constitution in terms of postponing the elections, extending the terms of Parliament and the Presidency; delaying the beginning of the terms for the new parliament and government breaching ECOWAS PROTOCOL ON ELECTIONS and in fact committing a worse form of illegality. I therefore hold that the correct and most reasonable decision was taken to advise the President to change the form of elections from a constituency based election to a district block representation system which is provided for in our laws. The Moment the decision was taken all concerned were informed immediately as reflected in the press statement dated 21<sup>st</sup> October 2022.

~~Even if they were~~

108. As could be seen from paragraph 38, 39 and 40 of the defendants case which I quote with approval it does not in any undermine our democracy.

**6Whether the entirety of section 38A of the constitutional Amendment of 2001 does not provide nor contemplate local councils elections? and whether the ward basis on which local councils were elected is the subsisting and only lawful basis on which any public elections involving local authorities can be held and not by the proportional representation system**

109. A close look at Section 38A(1) of the Constitutional Amendment Act No 15 of 2001 shows that this primary legislation has not made any provision for local councils. Thus, on the face of it, it appears as if there is no provision for proportional representation in Local Councils' elections.

110. However, by the same token a close look at the principal provisions for election of members of parliament through a constituency-based system of elections will show also that it only made provision for election of members of parliament with no provision for local councils

Section 38(1) of the constitution of Sierra Leone Act no 6 of 1991 provides

- 1) Sierra Leone shall be divided into such constituencies for the purpose of electing the Members of parliament referred to in paragraph b) of sub section 1 of section 74 of this Constitution as the Electoral Commission, acting with the approval of Parliament signified by resolution of parliament may prescribe.
- 2) Every constituency established under this section shall return I member of Parliament

111. In 2008 despite this provision which was geared towards the election of Members of Parliament and members of parliament alone, because of the provisions of section 33 which deals with the functions of the electoral commission and reads as follows

**'Subject to the provisions of the Constitution, the Electoral Commission shall be responsible for the conduct and supervision of the registration of voters for, and of all public elections and referenda; and for that purpose shall have powers to make regulations by statutory instrument for the registration of voters, the conduct of Presidential , Parliamentary or Local Government elections and referenda, and other matters connected therewith including regulations for voting by proxy'**

112. The then Electoral Commission being faced with a situation of having to delimit wards for local councils members or councillors was constrained to put into motion Constitutional Instrument No 2 published on the 17<sup>th</sup> of January 2008 titled 'The Constitution Of Sierra Leone Act No 6 1991 Wards (Boundaries) Delimitation Regulations 2008'

In that body of Legislation, it reads thus:

**'In exercise of the powers conferred by Section 33 of the Constitution 1991 the Electoral Commission makes the following regulations'**



113. It is by virtue of these regulations that we now have wards boundaries delimited for local councils, and this is so despite the seeming restriction of the provisions dealing with constituency-based election for MPS and the delineation of boundaries only for that purpose as per Section 38.

114. The form or format of the elections was brought about through a subsidiary legislation and we are unaware that any fuss was made through this court that a subsidiary legislation was used to effect such change when the guiding provision on constituency-based elections or the main provisions guiding the process did not even mention wards or appear to have considered Local Councils.

115. In the case before in the one sense as regard ordinary Members of Parliament the form of the elections has been long determined by parliament when as a result of the presence of the conditions precedent a proportional representation system became necessary as by law established and was approved by H.E. the President.

116. With regard Local Councils Election, I would say ditto the same has happened as was the case in 2008. While the Constitutional Amendment has not said anything about Local Councils in Section 38A (1) in the spirit of that provision through their functions as provided by Section 33 the Electoral Commission whose mandate it is to conduct and supervise any public elections (public elections being parliamentary local elections see **PEA NO 17 2022**) have sought before Parliament through a subsidiary legislation, to wit, the laying before Parliament and getting its approval after 28 days SI Nos 13 and 14 for a Proportional Representation System for Local Councils approved.

Should we now as court reject same. I should think not.

The word conduct and supervise election as has been seen above is broad enough as to encompass this.

117. Firstly, a precedent has been set which I dare say is not only consistent with the constitution because of section 33 but is on all fours with what transpired in 2008 leading onto the passing of the **Boundaries (Wards) Delimitation Regulation 2008**.

118. Secondly, the Electoral Commission would not be acting outside its functions which are well stated in Section 33 of the Constitution Act No 6 of 1991 which be documented at page 51 supra

119. Thirdly, by Section 32 (11) of the Constitution **‘In the exercise of these functions the Electoral Commission is not subject to the control and direction of any person or authority’.**

### **DECLARATIONS**

120. All things considered this court hereby makes the following declarations:

1, That on a proper construction of section 38A(1) of Constitutional Amendment Act No 15 of 2001 all conditions precedent for the holding of or conducting of general elections of ordinary Members of Parliament through a District Block Representation system were met and/or fulfilled.

2. That the directive given by His Excellency the President to the Electoral Commission of Sierra Leone to hold the 2023 Public elections for ordinary Members of Parliament by the District Block Representation system instead of Constituencies was in tandem with the provisions of the Section 38A(1) of the 1991 Constitution as Amended and therefore not *ultra vires*.

3. That the current parliament will soon be dissolved and thereafter all constituencies currently existing will be extinguished for purposes of representation in Parliament in favour of representatives representing each of the 16 districts of Sierra Leone inclusive of independent candidates who secure the minimum threshold for the attainment or securing of seats in parliament.

4. That the revision of constituencies as provided in section 38 (4) does lead to alteration of the number and /or the establishment of constituencies subject to parliamentary approval.

5. That independent candidates can and are part of the electoral system and can stand and be voted for to be included in any of the seats representing the existing 16 districts in the Country.

6. That Statutory Instrument Nos 13 and 14 of 16<sup>th</sup> November 2022 are part of the Laws of Sierra Leone and are not *ultra vires* Sections 33 and 38 of the Constitution Act No 6 of 1991; section 38A of the Constitution as amended in 2001 and section 171 of the Public Elections Act No 17 2001.

7. That pursuant to and subject to the current law in the country inclusive of the Constitution and Statutory Instrument Nos 13 & 14 of 16<sup>th</sup> November 2022, Local Council elections will be expected to be by the District Block Representation system approved as the mode for the 2023 elections.

8. An order restraining the 2<sup>nd</sup> defendant, Electoral Commission, its agents, servants, privies or however called from taking steps aimed at conducting the June 2023 multitier public elections on the district block proportional representation system **is REFUSED**

9. An order directing the 2<sup>nd</sup> defendant to hold the June 2023 Elections for ordinary Members of Parliament and Councillors on a Constituency or **W**ards basis **IS REFUSED.**

**Costs**

121. On the issue of costs this court notes that this is a Public Interest based litigation and hence is NOT inclined to award the usual costs. A minimal cost is therefore awarded in the sum of NLe3,000.00 to be borne by both plaintiffs jointly and severally payable to 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

DATED THIS 27<sup>th</sup> DAY OF JANUARY, 2023.

.....  
HON MR. JUSTICE DESMOND BABATUNDE EDWARDS CJ





.....  
HON. MR. JUSTICE NICHOLAS C. BROWNE-MARKE JSC

I agree



.....  
HON. MR. JUSTICE M. F. DEEN TARAWALLY JSC

I agree



.....  
HON. MR. JUSTICE ALUSINE S. SESAY JSC

I agree



.....  
HON. MR. JUSTICE ANSUMANA IVAN SESAY JA

I agree