

CIV.APP.55/2021



IN THE COURT OF APPEAL OF SIERRA LEONE

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT  
NO.6 OF 1991 PART 1X, COMMISSION OF INQUIRY, SECTIONS 147-  
149 (INCLUSIVE)

IN THE MATTER OF CONSTITUTIONAL INSTRUMENT NO.64 OF 2018  
AND

THE COMMISSION OF INQUIRY (EXAMINATION, ENQUIRY AND  
INVESTIGATION) NOTICE (1)2018 (JUSTICE BIOBELE GEORGEWILL  
COMMISSION OF INQUIRY

BETWEEN

ALHAJI OSMAN BOIE KAMARA  
(Suing through his Executrix of his estate  
Ms. Isata Boie-Kamara)  
No. 116 Wilkinson Road  
Freetown

- APPELLANT

AND

THE ATTORNEY GENERAL AND MINISTER OF JUSTICE - RESPONDENT  
Law Officers' Department  
3<sup>rd</sup> Floor, Guma Building  
Lamina Sankoh Street  
Freetown

CORAM

Hon. Mr. Justice Komba Kamanda - Chief Justice - Presiding  
Hon. Mrs. Justice Fatmatta Bintu Alhadi J.A.  
Hon. Mrs. Justice Tonia Barnett J.A.

ADVOCATES

Ady Macauley Esq - for the Appellant  
M.P. Bangura Esq  
T.J. Freeman Esq &  
A. Lansana Esq - for the Respondent



## JUDGMENT DELIVERED ON THE 26th DAY OF FEBRUARY 2025

Alhadi J. A. - On the 6th day of November 2020, a Notice of Appeal was filed by the Appellant on five (5) grounds of appeal. Synopses were filed by both parties and on the 9<sup>th</sup> of March 2022, Counsel for the Appellant made an application by way of a Notice of Motion that leave be granted by the Court to adduce fresh evidence pursuant to Rule 27 of the Court of Appeal Rules of 1985 and to substitute the name of the Appellant (now deceased) who passed away on the 11<sup>th</sup> of December 2020, by replacing it with the name of Isata Boie-Kamara, the Administratrix of the estate of the Deceased Intestate Appellant herein. The Respondent had no objection to the applications, and they were duly granted on the same date.

On the 14<sup>th</sup> day of December 2022 an oral hearing was held.

Before I state the grounds of appeal, let me enumerate briefly, a background of the facts of the case.

### 1.0 BACKGROUND FACTS

In April 2018, following the elections that were held, the Rtd Brigadier Julius Maada Bio of the Sierra Leone Peoples Party, emerged as the winner. He then assumed office as president in April 2018. The Government of president Rtd Brigadier Juluis Maada Bio, then decided to establish commissions of Inquiry, to investigate allegations of widespread corruption and abuse of office against the Government of former president Ernest Bai Koroma, from November 2007 to April 2018. In bid to ensure accountability in governance and public offices.

The commissions were established to carry out a thorough, independent fair and impartial investigations into the allegations of corruption and abuse of public office and to make appropriate relevant findings and proffer appropriate recommendations to the government of Sierra Leone, for its considerations. By way of commission of Inquiry, constitutional instrument No. 64 of 2018, which was approved by parliament, the Honorable Justice Biobele Georgewill was appointed as chairman and sole commissioner, by His Excellency the President.

The commission of inquiry, pursuant constitutional Instrument no.64, reported its findings in March 2020, in a number of volumes. following the submission of the report, the Government published a white paper into the findings of the Biobele

Commission of Inquiry in September 2020, where it accepted and rejected some of the findings. Following the publication of the white paper, the appellant being dissatisfied with the findings contained therein appealed to this court against those findings.

Findings of the Sole Commissioner and Chairman of Constitutional Instrument No. 64 2018.

- I. The sum of le2,429,843,000.000.00 were unverified and had remained unaccounted for out of the proceeds of the sale of the Japanese food aid amounting to the sum of 11, 023,306,399.99 out of which only the sum of le8,593,463,050.000 was paid into the bank account.
- II. The total sum of 11,400,000, 000.00 had remained unaccounted for and lost to the country of the le16,200,000,000.00 given out as loans to SMEs, out of which only the sum of 4,800, 000,000.00 had been paid.
- III. The sum of le1, 550, 000, 000.00 obtained as soft loan for SMEs by SMEDA had remained unaccounted for.
- IV. The total sum of le229, 088, 300. 00 was withdrawn and expended on procurement of goods and services but without supporting documents or verification and had remained unaccounted for.
- V. The total sum of 358, 498, 012.00 was withdrawn between 2007 and 2009 and expended on fuel without any supporting documents or verification by means of logbook and had remained unaccounted for.
- VI. The total sum of le41, 105, 262. 00 was withdrawn and paid out as salaries to absentee and retired staff without verification and had remained unaccounted for.

From the above findings therefore, the total amount of le16, 008, 534, 574. 00 were misappropriated and unverified and remained unaccounted for.







### Recommendations

- I. The following persons shall jointly and severally refund and pay into the consolidated Revenue fund of the Government of Sierra Leone the sum of le2,429,843,000.000.00 as monies from the proceeds of the Japanese food aid not paid into the bank account and had remained unaccounted for, namely: i. Alhaji Usman Boie Kamara;.....
  
- II. The following persons shall jointly and severally refund and paid into the consolidated Revenue fund of the Government of Sierra Leone the sum of le229, 088, 300. 00 as monies withdrawn and expended on procurement of good and services but without supporting documents or verification and had remained unaccounted for, namely: i. Alhaji Usman Boie Kamara;.....
  
- III. All amount due and recommended to be refunded shall be refunded and paid into the consolidated Revenue fund of the Government of Sierra Leone within 30 days from the date of the ratification of the recommendations by the Government of Sierra Leone.
  
- IV. In the event of failure or neglect or refusal to make refunds and payments into the consolidated Revenue fund of the Government of Sierra Leone within the 30 days period by anyone as indicted above, the Government shall use all lawful means to confiscate all monies standing to the credit of any of the indicted persons in any bank account and the properties, moveable and immovable , including houses, vehicles and stocks belonging to any of the indicted persons for the purposes of selling them to recover the said amounts.

The following public officials: i. Alhaji Usman Boie Kamara;..... be barred from holding any public offices on subvention or howsoever funded by the Government of Sierra Leone for a period of five years from the date of acceptance of this recommendation by the government of Sierra Leone.

The Appellant being dissatisfied with the findings and recommendations of the Learned Commissioner, filed the following grounds of appeal:

- I. The sole commissioner of commission of Inquiry Constitutional Instrument No. 64 of 2018 erred in law and in fact when he held in volume one (1) of his report that Ministers of Government, of which the Appellant was, should bear ultimate responsibility and be accountable for the affairs and finances of the Ministry they headed.
- II. The adverse findings and recommendations of the Hon. Justice Biobele Georgewill contained in volume one(1), chapter 10 (ten) of his report on commission Inquiry Constitutional Instrument No. 64 of 2018 date March, 2020 relating to the Japanese Food Aid and Procurement of Goods and services in the Ministry of Trade and Industry are against the weight of the evidence presented at the proceedings.the facts and evidence adduced and available to the honorable Justice Biobelle Georgewill, sitting as sole commissioner during the proceedings of on commission Inquiry No. 64 of 2018 did not support his specific findings.
- III. The honorable Biobelle Georgewill erred in law and acted in violation of section 150 of the constitution of Sierra Leone, Act No.6 1991, when he proceeded to conduct the commission of Inquiry without the "rules relating to the practice and procedure" of all commissions of inquiry to be prescribed by the Rules of Court Committee (ROCC) through a constitutional Instrument, as provided for under section 150 aforesaid. Section 150 of the constitution provides "subject to the provisions of this chapter, the Rules of Court committee shall, by constitutional instrument, make rules regulating the practice and procedure of all commissions of inquiry."
- IV. The adoption by Hon. Justice Biobelle Georgewill of the practice Direction formulated by the three sole commissioners of constitutional instruments. 64,65, and 67 of 2018 is unconstitutional and an improper arrogation and usurpation of the functions reserved for the Rules of Court Committee in section 150 of 1991 constitution of sierra Leone.
- V. That by failing to publish the complete (5) volume of the report of the Hon. Justice Biobelle Georgewill, Commission of Inquiry Constitutional Instrument No. 64 of 2018, section 149(2) of the 1991 constitution of Sierra Leone has been violated as a partial publication of a commission







report is not a publication of the whole report for the purposes of section 149(2) of the 1991 constitution of Sierra Leone.

#### VI. Reliefs Sought from the Court

1. That the Court do set aside, reverse or quash the adverse findings against the Appellant in volume one (1) of the report of the Hon. Sir Justice Biobelle Georgewill Commission of Inquiry Constitutional Instrument No. 64 of 2018, dated 25<sup>th</sup> March 2020 with respect to Japanese Food Aid and the Procurement of Goods and Services between November 2007 and April 2018 and all subsequent actions taken by the government.
2. That this Court do enter judgment for the Appellant.
3. That this Court do declare that the partial publication of only two (2) volumes of the five (5) volume report of the said Commission of Inquiry is null and void as it violates Section 149 (2) of the 1991 Constitution of Sierra Leone.
4. That the Court do declare null and void the said Judge's proceedings, reports and all subsequent actions thereon taken by the Government due to the lack of Rules formulated by the Rules of Court Committee to regulate its practice and procedure as provided for in Section 150 of the 1991 Constitution of Sierra Leone.
5. That cost of this proceeding and that in the Commission of Inquiry be borne by the Respondent.

#### An Analysis of the Law, Facts and Evidence

1. In this matter, the Appellant relied on sections 56 (5), 62 and 107 (2) of the Constitution of Sierra Leone (Act No.6) of 1991. The sole commissioner in his report volume 1 held that, a Minister bears the ultimate responsibility and accountable for the affairs and finance of the ministry, which to the appellant is an error in the law and they hold the position that a minister can only bear ultimate responsibility and accountability if he is the only one responsible and under no directions, which under Section 56 (6) of the 1991

Constitution, the Minister is under the direction of the President in carrying out his responsibility for such department.

2. The question remains to what extent could the president direct the minister? Could the Appellant be under the direction of the President to commit an offence? The definition of being 'under direction' is yet to be provided for by the Supreme Court in any matter. However, the doctrine of Ministerial Responsibility comes into play. This is a constitutional principle according to which ministers are responsible to the president for the conduct of their ministry and government. Section 56 (4 and 5) of the 1991 constitution of Sierra Leone. Ministers are directly responsible for the affairs of their ministries. Pursuant to section 62, they have general directions and control over their department and the department remains under the supervision of a permanent secretary and they also give account to parliament under section 107 (2).
3. The question now is whether the words of the sole commissioner 'ultimate responsibility' is adverse to the appellant remains a question for interpretation. The literal interpretation of the word may prove adverse, notwithstanding, the golden rule of interpretation could help in advancing the true intent of the sole commissioner. To be ultimately responsible could in the literal meaning mean 'solely responsible' but under the golden rule, it could be deduced that the provisions the appellant seek to rely on provided him with the authority to look over the affairs of the ministry.
4. The directions of the president, neither the supervision of the permanent secretary or his accountability to parliament does not remove his responsibility to the ministry. He remains responsible for the affairs, and ultimately could mean as the first man in the ministry, he is the head. Therefore, the appellant is not solely (ultimately) but mainly responsible for the affairs of the ministry under the golden rule of interpretation.
5. Secondly, the weight of evidence in any case is determined by the Judge. It is the Judge who decides how much weight to attach to the evidence presented in court. In the appellant's second ground of appeal, reliance was placed on the statements of CW1 and CW2, as well as Exhibit P2D. The total evidence related to a disputed fact is considered "sufficient" if its cumulative weight supports a finding that the facts exist, rather than the







quantity of evidence. This principle was upheld in Shagang Shipping Company Limited v HNA Group Company Limited [2020] UKSC 34.

6. Thirdly, Section 150 of the Constitution provides that the Rules of Court Committee shall make rules regulating the practice and procedure of all Commissions of Inquiry, as set out in a Constitutional Instrument. This provision is clear and unambiguous.
7. However, despite the above, the facts and evidence adduced in the investigation into the Japanese food aid and the procurement of goods and services in the Ministry of Trade and Industry did not support the specific findings made by the Honorable Biobelle Georgewill. Counsel for the appellant submitted that the alleged acts or omissions occurred during a period when the appellant was not the Minister of the Ministry of Trade and Industry. The Honorable Justice Biobelle Georgewill, in his report (Volume 1, Chapter 10, page 71, paragraph 10.1), states that the Ministers during the period under review were: Alhaji Usman Boie Kamara..... In paragraph 10.6 of the same report (page 15 of the court records), Justice Georgewill states that Alhaji Usman Boie Kamara is among those required to refund the sum of Le..... jointly and severally 229,088,300.00 into the Consolidated Fund for monies withdrawn and expended on the procurement of goods and services without verification or supporting documents.
8. The appellant's counsel argued that the appellant was appointed Minister of the Ministry of Trade and Industry in January 2013 and replaced in a cabinet reshuffle on 13th March 2016. Despite this, the sole commissioner concluded, in an arbitrary manner, that the appellant was jointly and severally responsible for the alleged infractions related to the procurement of goods and services, without considering whether the appellant held the position of Minister at the time those procurement transactions took place. The Court agrees with the appellant's counsel, who clearly pointed out that the appellant was not the Minister during the period under review in relation to the Japanese rice issue. The Auditor General's Annual Report for 2016 confirms the correct bank account number into which payments were made, and further indicates that the total sum from the sale of the Japanese rice was fully satisfied.



9. This is further supported by the Japanese Government's audit report dated February 2016. It is therefore clear, as pointed out by the appellant's counsel, that the appellant was not the Minister of Trade and Industry when the transactions in question occurred, particularly those concerning the procurement of goods and services.

### CONCLUSION

In Conclusion, having reviewed the evidence expansively, there is no evidence to justify the findings of the commissioner. I have not been able to see a nexus between the evidence before the sole commissioner that supports his findings.

Therefore, in view of the above analysis and findings I HEREBY ORDER that:

1. The all the adverse findings against the Appellant, Alhaji Usman Boie-Kamara, in volume one (1) of the report of the Hon. Sir Justice Biobelle Georgewill Commission of Inquiry Constitutional Instrument No. 64 of 2018, dated 25<sup>th</sup> March 2020 with respect to Japanese Food Aid and the procurement of goods and services between November 2007 and April 2018 and all subsequent actions taken by the Government BE SET ASIDE.
2. JUDGMENT IS ENTERED IN FAVOUR OF THE APPELLANT.
3. That the partial publication of only two (2) volumes of the five (5) volumes report of the said Inquiry is NULL AND VOID.
4. That the said Commission's proceedings, its reports and all subsequent actions thereon taken by the Government are NULL AND VOID.
5. No Order as to Costs.

~~Kamanda~~ - I agree  
Hon. Mr. Justice Komba Kamanda - Chief Justice - Presiding

 26/02/2025  
Hon. Mrs. Justice Fatmatta Bintu Alhadi JA

 - I agree  
Hon. Mrs. Justice Tonia Barnett JA

