

CIV. APPEAL NO. 9/2020

**IN THE COURT OF APPEAL OF SIERRA LEONE**

**IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT NO. 6 OF 1991, SECTION 48 (4)**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT NO.6 OF 1991, SECTION 53 (1) (2) & (3)**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF SIERRA EONE ACT NO.6 OF 1991, SECTIONS 108 (7), 124(1)(a)**

**AND**

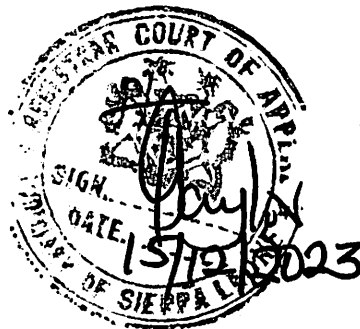
**IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT NO. 6 OF 1991, SECTIONS 147-150, 171 (15)**

**AND**

**IN THE MATTER OF THE CONSTITUTIONAL INSTRUMENT NO. 64 OF 2018 (HON. JUSTICE BIOBELLE COMMISSION OF INQUIRY)**

BETWEEN:

DR. ERNEST BAI KOROMA  
RO-BURREH HOUSE  
TEKO  
MAKENI CITY



- Appellant

AND

ATTORNEY-GENERAL & MINISTER OF JUSTICE  
LAW OFFICERS' DEPARTMENT  
GUMA BUILDING  
LAMINA SANKOH STREET  
FREETOWN

- Respondent

**Coram:**

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

- Presiding

**Counsel for the Appellant**

Joseph F. Kamara Esq. Africanus S. Sesay Esq. Brima Koroma Esq. Ibrahim I. Mansaray Esq Ady Macauley Esq

COI Judgment in Dr. E.B. Koroma v Att-Gen and Min. of Justice Civ. App. No. 9/2020. Panel of Hon. Mrs Justice F. Bintu Alhadi J.A. (Presiding), Hon. Mr. Justice Komba Kamanda J.A. and Hon. Mrs. Justice Tonia Barnett J.A.

### Counsel for the Respondent

R.B. Kowa Esq, A. Suwu-Kendoh (Mrs), M.P. Bangura Esq, T. J. Freeman Esq,  
P. Williams Esq.

**JUDGMENT DELIVERED THIS 14<sup>th</sup> DAY OF DECEMBER 2023**

**ALHADI J.A.:** On the 13th day of October 2020, a Notice of Appeal was filed by the Appellant on 7 Grounds. The background to this appeal is thus:

### BACKGROUND

1. A Commission of Inquiry was established by Constitutional Instrument No. 67 of 2018 pursuant to the appointment of the Chairman and Sole Commissioner by the President of Sierra Leone to investigate allegations of corruption against the immediate past Government from November 2007- April 2018.
2. The President instituted the Commissions of Inquiry to carry out thorough, independent, fair and impartial investigations into the allegations of corruption and abuse of public office and to make relevant findings and proffer appropriate recommendations to the Government of Sierra Leone for its considerations.
3. The Chairman's Terms of Reference of the Commission as provided for in Section 4 (a) to (e) of the said Constitutional Instrument were thus:
  - A. To examine the assets and other related matters in respect of
    - i. Persons who were President, Vice Presidents, Ministers, Ministers of State, Deputy Ministers; and
    - ii. Heads and Chairmen of Boards of Parastatals, Departments and Agencies within the period from November 2007 to April 2018
  - B. To inquire into and investigate whether assets were acquired lawfully or unlawfully.
  - C. To inquire into:
    - i. Persons who were President, Vice Presidents, Ministers, Ministers of State and Deputy Ministers
    - ii. Heads of Parastatals, Departments and Agencies
  - D. To ascertain as to whether the Persons referred to in paragraphs (a)-(c):
    - i. Maintained a standard of life above that which was commensurate to their official emoluments.

- ii. Owned or were in control of pecuniary resources or property disproportionate to their official emoluments or there are evidence of corruption, dishonesty, or abuse of office for private benefit by them
  - iii. Collaborated with any person in respect of such corruption, dishonesty, or abuse of office
  - iv. Acted willfully or complacently in such a manner so as to cause financial loss or damage to the Government, Local Authority or Parastatal, including a Public Corporation
  - v. Acquired directly or indirectly financial or material gains fraudulently, improperly or willfully to the detriment of the Government, Local Authority or a Parastatal, including a Public Corporation, Statutory Commission, Body or any University in Sierra Leone
- E. To inquire into and investigate any persons or matter as may from time to time be referred to the Commission by His Excellency, the President.
4. The Sole Commissioner, the Hon. Justice Biobele Georgewill, after the asset investigation of individuals then referred to as persons of interest; as stated in Section 4 (a) – (c) of the said Constitutional Instrument No 64 of 2018 including the Appellant, reduced his findings into a report and submitted same to His Excellency the President as required by Section 149 (2) of the 1991 Constitution on 25<sup>th</sup> March 2020. The President in fulfilment of the obligations imposed by Section 149 (3) of the 1991 Constitution published the COI CI No. 64 Report together with a Government White Paper dated September 2020.
5. In the Report of the Hon. Justice Biobelle Georgewill, reached adverse findings against the Appellant herein, Dr. Ernest Bai Koroma, when he dealt with matters following:
- i. Whether the former President Dr. Ernest Bai Koroma, abused his office by making payment of terminal benefits to staff of the Petroleum Directorate. The particulars of the adverse findings are that:
 

"The following persons shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of Le 70,294,264,....that had remained unaccounted for as monies not transferred to the Single Treasury Account in 2017 and monies paid out illegally as terminal benefits to staff whilst still in the service of the Petroleum Directorate: i. H.E. Dr. Ernest Bai Koroma.....;" (Chapter 9.6 paragraph 1)

- ii. Whether Dr. Ernest Bai Koroma, former President of the Republic of Sierra Leone, by granting approval Re: US\$ 3 Million United States Dollars Ministry of Finance Loan for the procurement of Election materials. The particulars of the adverse findings are that:

"The following persons shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of US\$ 3,000,000 (Three Million US Dollars) that had remained not refunded as monies given out illegally as loan by the Petroleum Directorate through the Ministry of Finance to SMRT Co. Ltd for supply of Biometrics Machines: i. H.E. Dr. Ernest Bai Koroma....." (Chapter 9.6 paragraph 4)

- iii. Whether Dr. Ernest Bai Koroma, former President of the Republic of Sierra Leone, by granting approval for the securing of a loan of US\$14 Million as Recapitalisation for the Sierra Leone Rokel Commercial Bank. The particulars of the adverse findings are that:

"The following persons shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of US\$ 12,263,821.00 that had remained not refunded as monies given out illegally as loan by the Petroleum Directorate through the National Commission for Privatisation to Rokel Commercial Bank: i. H.E. Dr. Ernest Bai Koroma." (Chapter 9.6 paragraph 5).

6. 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 recommendation by the Government of Sierra Leone.
7. The Appellant being dissatisfied with the adverse findings against him contained in the said Report which by virtue of Section 149 (4) of the Constitution of Sierra Leone (Act No. 6) 1991 is deemed to be a judgment of the High Court for purposes of the Constitution, filed this appeal to the Court of Appeal.

#### **GROUND 1**

- (i) The Hon. Justice Biobele Georgewill erred in law when he failed to consider and apply the Head of State Immunity clause as provided under Section 48(4) of the Constitution of Sierra Leone. Section 48(4) of the Constitution provides "while any person holds or performs the function of the office of President, no civil or criminal proceeding shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official or private capacity".

## PARTICULARS

- a) The Hon. Justice Biobele Georgewill inquired into and reached an adverse finding against the Appellant, a former President of the Republic of Sierra Leone, and erroneously construed his mandate to include an inquiry into the Appellant functions, as a person who held and performed the duties of the Office of President of the Republic of Sierra Leone, for the relevant period (2007-2018) contrary to Section 48(4) of the Constitution.
- b) The Hon Justice Biobele Georgewill erred in law and acted outside the remit of his mandate, as Parliament did not amend, add to or repeal Section 48(4) of the Constitution, when it passed the Constitutional Instrument No. 64 of 2018, that established the said Commission of Inquiry.
- c) Section 108(7) of the constitutional provides that "No Act of Parliament shall be deemed to amend, add to or in any way alter any of the provisions of this Constitution unless it does so in express terms". No express amendment was made to section 48 (4) of the Constitution when the Constitutional Instrument No. 64 was enacted.
- d) Unless the Head of State Immunity (Appellant) is directly waived by Parliament, Hon. Justice Biobele Georgewill does not have jurisdiction to inquire or adjudge over the official functions of a Former Head of State. O'Reilly vs Mackman [1982] 3 ALL ER 680.
- e) A person who has held, but no longer holds, the office of President shall not be charged with a criminal offence or be amenable to the criminal jurisdiction of any court/tribunal, in respect of any act done or omitted to be done by him in his personal capacity while he held office of President, unless Parliament clearly and unequivocally has, by resolution, determined that such proceedings would not be contrary to the interests of the State. Chiluba v Attorney General (Appeal Number 125 of 2002) [2003] ZMSC3 (18<sup>TH</sup> February 2003);
- f) Section 171(15) of the Constitution states "This Constitution shall be the supreme law of Sierra Leone and any other law found to be inconsistent with any provision of this constitution shall, to the extent of the inconsistency, be void and of no effect"

## GROUND 2

Hon. Justice Biobelle Georgewill erred and reached an adverse finding against the Appellant herein, Dr. Ernest Bai Koroma, former President of the Republic of Sierra Leone, when he adjudged the "the deliberate judgment of the President of the Republic of Sierra Leone" in the exercise of executive authority, contrary to section 53 sub- section (3) and (4) of the Constitution of Sierra Leone.

## PARTICULARS:

- a) Section 53(3) of the Constitution provide that "whereby 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 has in any case received or acted in accordance with such advice shall not be inquired into in any court".

COI Judgment in Dr. E.B. Koroma v Att-Gen and Min. of Justice Civ. App. No. 9/2020. Panel of Hon. 5  
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Justice Tonia Barnett J.A.

- b) Hon Justice Biobelle Georgewill at Page 66 of the Commission's Report Stated that "upon the coming into effect of the Fiscal Management and Control Act, 2017, all monies with MDAs should be transferred to the Consolidated Revenue Fund and this was to affect the terminal benefit account of the Petroleum Directorate. Thus, on the directive of the former DG and approval of the former President, terminal benefits were paid to all the staff rather than transferring the accrued money into the Consolidated funds."
- c) The question whether the Appellant herein "received or acted in accordance with advice of the petroleum DG, shall not be inquired into in any court as per section 53(3) of the Constitution.
- d) Notwithstanding the imposed limitations by the Constitution, Hon. Justice Biobelle Georgewill illegally inquired into the "deliberate judgment" of the President of Sierra Leone in the exercise of executive authority and adversely found, against the Appellant herein, "among others, acts of impropriety, misappropriation, corruption, gross abuse of office and maladministration."
- e) The evidence on record, did not show any wrongdoing. The payment of terminal benefits are monies already accrued and owed to staff. No beneficial interest was attached to the former President. Rather, it reduced the debt liability of Government to the staff of the Petroleum Directorate.

### **GROUND 3**

That the Hon. Justice Biobelle Georgewill usurped the functions of the Supreme Court when he offered to interpret Section 62 of the Constitution of Sierra Leone. A function that is the domain of the Supreme Court of Sierra Leone, to the exclusion of all other courts.

### **PARTICULARS:**

- a) The Hon Justice Biobelle Georgewill made adverse findings against the Appellant herein, when he erroneously interpreted section 62 of the Constitution of Sierra Leone, to wit:
- b) At page 20 of the Commission's Report, volume one, interpreted the Constitution when he rhetorically posed the question "in Sierra Leone, who is truly the Government official ultimately in charge of the funds and resources of a Ministry or Department and is the real "vote controller" in the Ministry or Department of Government under the Constitution of the Republic of Sierra Leone 1991, Act No. 6 of 1991, as between a Minister and a Permanent Secretary?
- c) The Hon. Justice Biobele Georgewill answered the question posed and directly interpreted section 62 of the Constitution thus: "there is no doubt in my mind howsoever, that the power of supervision of a Ministry or Department by a Permanent Secretary is clearly and unambiguously subject to the powers of general direction and control of a Minister over the Ministry or Department of Government."

d) The attempt to interpret section 62 (Administration of Ministries) of the Constitution of Sierra Leone, the Hon. Justice Biobelle Georgewill, without due regard, violated section 124(1) of the Constitution, which reserves its interpretation function to exclusively to the Supreme Court.

e) Consequent upon the error and quest to interpret section 62 of the Constitution, Hon Justice Biobele Georgewill adversely found against the Appellant, to wit:

"the following persons shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of Le 70,294,264,523.00 that had remained unaccounted for as monies not transferred to the single treasury account in 2017 and Monies paid out illegally as terminal benefits to staff whilst still in the service of the Petroleum Directorate:  
i. H.E. Dr. Ernest Bai Koroma.....'(Chapter 9.6 Paragraph 1);

The following persons shall jointly and severally refund and pay Into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of USD 3,000,000.00 that had remained not refunded as monies given out illegally as loan by the Petroleum Directorate through the Ministry of Finance to SMRT Co. Ltd for supply of a Biometric Machines i. H. E. Dr. Ernest Bai Koroma... (Chapter 9.6 paragraph 4);

The following persons shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of USD 12, 263, 821.00 that had remained not refunded as monies given out illegally as loan by the Petroleum Directorate through the National Commission for Privatization to Rokel Commercial Bank: i. H.E. Dr. Ernest Bai Koroma (Chapter 9.6 Paragraph 5)

f) Ex arguendo, the Hon. Biobele Georgewill's interpretation of section 62 of the Constitution, whether valid or not, cannot stand, because the Honourable Judge, illegally usurped the functions of the Supreme Court of Sierra Leone and exercised a power he did not have. Therefore, the adverse findings against the Appellant, consequent upon the fatal interpretation of the Constitution, are void and of no effect.

#### **GROUND 4**

The Hon. Biobele Georgewill erred in law and acted in violation of Section 150 of the Constitution of Sierra Leone Act No. 6 of 1991, when he proceeded to conduct the Commission of Inquiry without the "rules regulating the practice and procedure" of all Commissions of Inquiry as prescribed by the Rules of Court Committee (ROCC) through a constitutional instrument.

#### **PARTICULARS**

COI Judgment in Dr. E.B. Koroma v Att-Gen and Min. of Justice Civ. App. No. 9/2020. Panel of Hon. Mrs Justice F. Bintu Alhadi J.A. (Presiding), Hon. Mr. Justice Komba Kamanda J.A. and Hon. Mrs. Justice Tonia Barnett J.A.

- a) 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.
- b) The Hon. Justice Biobelle Georgewill found and ruled at Paragraph 1.5 page 19 of volume one of the Commission's Report that, "Regrettably, and in a practice that leaves much to be desired, Joseph Fitzgerald Kamara, Esq., learned Senior Counsel to H.E. Dr. Ernest Bai Koroma, former President of Sierra Leone, a Person of Interest before this Commission of Inquiry had once again canvassed extensively the issues of Jurisdiction and legality of the Commissions of Inquiry in his written final submissions. This Commission reiterates, adopts, and incorporates its valid and subsisting ruling delivered on this issue on 14/2/2019, and once again holds firmly that this Commission of Inquiry is constitutional, legal, and valid in law".
- c) The Hon Justice Biobelle Georgewill erred in law and acted outside the remit of his mandate, when he illegally and without due constitutional process reached the conclusion that the "Commission of Inquiry is constitutional, legal and valid in Law".
- d) The power to make 'rules regulating the practice and procedure of all Commissions of Inquiry is vested in the Rules of Court Committee as required under Section 150 of the Constitution, when it passed the Constitutional Instrument No. 64 of 2018 that established the said Commission of Inquiry. Parliament did not amend, add to or repeal the aforesaid section to give any residual or consequential powers to the Hon. Justice Biobelle Georgewill.
- e) Constitutional Instrument No. 64 of 2018, which established the said Commission of Inquiry, can in no way be said to amend, add to or repeal Section 150 of the Constitution in express terms. Section 108 (7) of the Constitution provides that "No Act of Parliament shall be deemed to amend, add to or in any way alter any provision of this constitution unless it does so in express terms."
- f) Section 171(15) of the Constitution states "this Constitution shall be the Supreme law of Sierra Leone and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void and of no effect.
- g) Hon. Justice Biobelle Georgewill's failure to comply with the Constitution rendered his legal findings on jurisdiction of the Commissions of Inquiry, inconsistent with section 150 of the Constitution aforesaid, and to that extent, void and of no effect.

#### **Ground 5**

The Hon Justice Biobelle Georgewill erred and without authority, indicted the Appellant for the offence of Abuse of Office and Abuse of Public Trust, a power that was not conferred by the Constitutional Instrument 64, that established the Commission. The Commission was rather empowered to inquire/investigate/examine and make recommendations but never to "INDICT".



The Hon. Justice Biobelle Georgewill, with respect, acted beyond the powers conferred by Parliament under the Constitutional Instrument No. 64.

#### PARTICULARS

- a. The Hon. Justice Biobelle Georgewill erred in law when he proceeded to indict the Appellant for the offence of "Abuse of Office," an offence provided for under Section 42 of the Anti- Corruption Act 2008 and the offence of "Abuse of Public Trust". The Commission of Inquiry is an investigating mechanism with limited adjudicatory powers, but never a trial Court for criminal offences established under the common law or statutory law.
- b. Hon. Justice Biobelle Georgewill made adverse findings, against the Appellant herein, at Page 9 of the Commission's Report, volume one under the rubric "Persons Indicted", when he stated, "On Abuse of Office:

The following indicted public officials and their collaborators who were all involved in gross abuse of their offices in the reckless manner in which they dealt with the finances of the Ministry or Department, or agency of Government put under their care and failure to provide the required leadership, direction control and supervision, namely 1. Dr. Ernest Bai Koroma....."

Further at paragraph 6 of the Conclusion: Persons Indicted: The Hon. Justice Biobelle Georgewill found that "At the conclusion of the investigations, and upon consideration of evidence and the findings made thereon, the following 84 persons made up of former and serving public officials and their collaborators were indicted and recommendations made against them, namely: One indicted former President of the Republic of Sierra Leone, Dr. Ernest Bai Koroma, de facto Minister of Petroleum Affairs.

- c. The purposes for which the Commission was appointed are to, inter alia, investigate whether assets were acquired lawfully or unlawfully in respect of persons who were (i) Presidents (ii) Vice Presidents (iii) Ministers and Deputy Ministers (iv) Heads Of Departments and Agencies within the period covering the reign of the former President Ernest Bai Koroma (Appellant Herein) and not to conduct a criminal trial and impose sentence on the Appellant, in the guise of adverse findings.

#### Ground 6

The Adverse Findings against the Appellant cannot be supported by the evidence presented and challenged. The Hon. Justice Biobelle Georgewill erred in law when he wrongly construed and analyzed the standard of proof, and prima facie case in reaching his conclusions as contained in the Commission's Report.

#### PARTICULARS

- a) The Hon Justice Biobelle Georgewill erred and misapplied the law when he opined that "it is the law that Courts, as well as commissions of Inquiry come to

their findings and decision by putting the evidence called by either side on an imaginary scale of justice to weigh them to see on which side the evidence preponderates. However, where a defendant or a Person of Interest fails or refuses or declines to call any evidence in rebuttal of Prima facie evidence led against him by the State, despite being given the opportunity to do so, he would have only himself to blame for the risk he is taking. The Court or the commission would be left with no option than to consider the only case as presented by the State on the merit, since there is nothing by way of evidence of proof in such uncontested and unchallenged or uncontroverted by the other party, it is good evidence to be acted upon by the Court or Commission to make relevant findings and reach appropriate decisions."

- b) On the issue of Prima facie evidence, the very same Hon. Justice Biobelle Georgewill contradicted his position held above in the Nigerian case of *Ubanatu V COP* (2001) 22 ACLR 312 @ p 335. See also *Ajidagba V. IGP* (1995) 8 NWLR (Pt. 414) 408" PER BIOBELE ABRAHAM GEORGEWILL J.C.A. When he opined that "this is why where even if prima facie case has been made out against a defendant, he may yet at the end of the trial still be discharged and acquitted if the Prosecution failed to prove its case against him beyond reasonable doubt as required by law, notwithstanding the fact that at the close of its case, it made out a prima facie case against him. In other words, prima facie case is not synonymous with proof beyond reasonable doubt. Hon. Justice Biobelle Georgewill while sitting as a Justice of Appeal in Nigeria, reached different conclusions on the issue of prima facie evidence, when he sat as Sole Commissioner, in the Commission of Inquiry in Sierra Leone. The Nigerian position he held is correct in law but, that in Sierra Leone is blatantly in error.
- c) The Hon Justice Biobelle Georgewill also erred in law, when he failed to consider cross-examination on behalf of the Appellant, as against the weight of the evidence of the case presented by the State. Counsel for the Appellant vigorously and successfully challenged, contradicted, and dismantled the cracked edifice of a case against the Appellant. Regrettably, nowhere, is mentioned made of any of the contradictions and inconsistencies exposed through cross-examination of witnesses for the State. The Hon Justice Biobelle Georgewill exclusively focused on State Witness and exhibits without regard to challenges on cross-examination and closing addresses.
- d) In our system of administration of criminal justice, a Defendant, who is constitutionally presumed innocent until the contrary is proved, carries no duty under the law to prove his innocence and therefore, where the Prosecution fails to make out any prima facie case against him, he is entitled to be discharged without much ado by the Court. "This is also the position where at the close of the Prosecution case, the evidence led by the Prosecution has become so discredited as a result of cross examination or is so manifestly unreliable that no reasonable tribunal can safely convict on it. *Onagoruwa V The State* (1993) 7 NWLR (Pt 303) 49. See also *The State V Bello* (1989) CLRN 370.

## **Ground 7**

Violation of Section 149(2) & (4) of the Constitution of Sierra Leone as the purported Published Commission Report is incomplete and therefore, cannot be deemed in law as a "Judgement."

### **PARTICULARS**

- a) That there are five (5) volumes of the report of the Hon. Justice Biobele Georgewill, Commission of Inquiry Constitutional Instrument No. 64 of 2018, only two (2) volumes were published by the Government of Sierra Leone.
- b) At paragraph 1.2 structure: "The Reports of this Commission are in five volumes. Volume one: is the Main Report, while Volume Two of the Report contains the record of proceedings as recorded by the Chairman and Sole Commissioner. Volume Three contains the verbatim record of the proceedings. Volume Four contains the copies of written statements of witnesses made to the Commission pursuant to the Practice Directions made by in these proceedings by the State and the Person of Interest the Judges of the Commission of Inquiry. Volume Five Contains copies of all the documents tendered as Exhibits".
- c) The process of a transparent investigation goes a long way to fulfilling the purposes of a public inquiry. The report is the real product of any inquiry. Publication of the full report of an inquiry is an important way to maximize public confidence in the inquiry.
- d) A white Paper contains the government's policy statement which is issued for the information of the Parliament and the Public. A White Paper is clearly not a report of Commission of Inquiry but a document containing statement of government policy on matters, flowing from report of Commission of Inquiry.
- e) The right of appeal is granted against an adverse finding in the report of the Commission of Inquiry. For that is the report deemed by the Constitution to be the High Court Judgment. The missing Reports touch and concern the record of proceedings as recorded by the Chairman and Sole Commissioner, the verbatim record of proceeding, the copies of written statements of witnesses made to the Commission pursuant to the Practice Directions made by in these proceedings by the State and the Persons of Interest the Judges of the Commissions of Inquiry and contains copies of all the documents tendered as Exhibits."
- f) Without these, no appeal will be adequately heard or adjudicated. The rights of the Appellant to exercise his appeal has been violated and unduly constrained.

### **RELIEFS SOUGHT FROM THE COURT OF APPEAL**

- a. That the incomplete Report be declared null and void and of no legal effect.

- b. That the adverse finding of Hon. Biobelle Georgewill made and directed against the Appellant herein, be set aside and/or quashed.
- c. That this Honourable Court declares void the acceptance of the Government in the White Paper dated September 2020 on matters affecting Dr. Ernest Bai Koroma, as a Person of Interest.
- d. That this Honourable Court enters Judgment in favour of the Appellant.
- e. That the costs of these proceedings and that in the High Court be borne by the Respondent.

### **SUMMARY OF SUBMISSIONS MADE BY THE RESPONDENT**

#### **Ground 1**

On ground 1 dealing with the immunity provision of section 48(4) of the 1991 Constitution of Sierra Leone, Counsel submitted that this amounts to a question of interpretation of the said Constitution. He said that it therefore cannot be formulated by way of an appeal and brought before this Court for interpretation. He argued that Section 124 of the Constitution makes provision for the forum to which issues of interpretation of the Constitution should be directed and as such, urged the court to dismiss this ground of appeal.

Mr. Kowa argued that in the alternative, the following submission in answer to this ground of appeal is made herewith:

1. That the Chairman/Sole Commissioner was not given the mandate to interpret the 1991 Constitution of Sierra Leone. He was bound by the terms of Reference stated in Section 4 of Constitutional Instrument No. 65 of 2018, which was to investigate persons who were Presidents, Vice Presidents, Ministers, Ministers of States and Deputy Ministers within the period November 2007 to April 2018.
2. Constitutional Instrument No. 65 is not in any way inconsistent with the constitution of Sierra Leone as Section 4 (a)-(d) therein and the Instrument itself have not been found by any adjudicating authority in Sierra Leone to be inconsistent with Section 48(4) of the 1991 Constitution of Sierra Leone and is therefore part of the laws of Sierra Leone pursuant to section 170(1) of the 1991 Constitution.
3. By reason of 1 and 2 above, the Appellant herein was the President of Sierra Leone from November 2007 to April 2018 and there is no law preventing the Chairman/Sole Commissioner from investigating him pursuant to section 4 of Constitutional instrument no 65 of 2018.
4. Counsel for the Appellant in his synopsis argued, that for the Appellant to be prosecuted, his immunity must be directly waived by parliament. He said that although

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this court is not a court to interpret the constitution, the invocation of section 147 of the 1991 constitution to set up a commission of Inquiry to investigate the former president, defeat the argument and lends credence to the process. The Tribunal merely investigated the Appellant. There is no law (statute or common law) in Sierra Leone granting absolute immunity to any person in Sierra Leone including the President from investigation and may be subsequent prosecution for gross misconduct amounting to criminal offences including corruption offences even when he is in office, let alone when he is out of office.

An immunity may be qualified based on the fact of the issue in question when the office holder is acting within the ambits of his/her official duties. Qualified immunity applies when certain official including the president violate clearly established constitutional provisions or other national laws.

Acquisition of unexplained wealth amounting to corruption clearly does not fall within the ambit of the president's duties. One may tend to set a standard by asking whether the conduct of the president was lawful or whether his act violated the law. Mr. Kowa referred the court to the Second Schedule of 1991 Constitution which is the Presidential Oath.

## **GROUND 2**

On ground 2, Counsel for the Respondent submitted that the Commission was not a court, and neither was the Commissioner sitting as a Court to adjudicate or inquire whether the Appellant has in any case received or acted in accordance with an advice of any person or authority as required by the 1991 Constitution or any other law. The terms of reference of the Commission are clearly set out in Section 4 of Constitutional Instrument No. 64. He argued that Section 2 of the Court Act No. 31 of 1965 interprets Court to mean, any court of law in Sierra Leone including a Court Martial. Whilst a Commission of Inquiry under section 171(1) of the Constitution, is specifically interpreted to include a Committee of Inquiry.

Counsel therefore submitted that the Appellant's submission on ground 2 is misplaced, since the Commission of Inquiry did not constitute an interpretation of being a Court of law but an investigating tribunal.

Furthermore, commission of Inquiries do not adjudge, they report in writing the result of the inquiry; Section 149(1)(b) of the Constitution of Sierra Leone. The report of a Commission of Inquiry shall for the purpose of the constitution be deemed to be a Judgment of the High Court of Justice; Section 149 (4) of the said Constitution of Sierra Leone.

Mr. Kowa argued that the Appellant has failed to substantiate his grounds of appeal with the relevant particulars and facts backed up with legal arguments. He opined

that; the arguments of the Appellant seem to be adrift as against his ground of appeal. He urged the court to dismiss this ground of appeal.

### **GROUND 3**

On ground 3, Counsel argued that the Commissioner did not usurp the functions of the Supreme Court by interpreting Section 62 of the Constitution. The Commissioner merely cited the provision of Section 62 in simple and plain terms in reference to Ministerial responsibilities. Contrary to the argument of the Appellant, he was the President and falls within the terms of Reference of Section 4 of Constitutional Instrument No. 64 of 2018. Counsel prayed for this ground of appeal to be dismissed as it is frivolous and lack merit.

### **GROUND 4**

On ground 4, Mr. Kowa submitted that the Chairman/Sole Commissioner did not violate section 150 of the 1991 Constitution. Pursuant to Section 147 (1) & (2) of the 1991 Constitution of Sierra Leone, the President appointed a Commission of Inquiry by Constitutional Instrument No 65 on the 1<sup>st</sup> of August 2018. Section 2 thereof, vested jurisdiction on the Chairman/Sole Commissioner and section 4 outlines the Terms of Reference of the Commission. Section 170 (1) of the said Constitution ratified Constitutional Instrument No. 65 as part of the laws of Sierra Leone, while Section 149 (1) of the said Constitution requires the Commission to report in writing the result of the inquiry and give reasons leading to the conclusions arrived at or reported. Mr. Kowa therefore submitted, that the chairman/Sole Commissioner was by virtue of the combined effect of the provisions cited herein (section 147(1), 149(1) and 170(1) of the 1991 Constitution of Sierra Leone and Constitutional Instrument No. 65 of 2018) clothed with Jurisdiction and possesses the power to inquire into facts, apply the law, make decisions and declare its findings.

Counsel said that the Appellant has failed or reneged in his submission, to direct this Court to any law or any section of the provisions of Constitutional instrument No. 65 of 2018 which has been found to be inconsistent with any provision of the 1991 Constitution that will necessitate the invocation of section 171 (15) of the 1991 Constitution.

He maintained that Section 150 of Act No. 6 of 1991 mandates the Rules of Court Committee to make rules regulating the practice and procedure of all Commissions of Inquiry. Constitutional Instrument No 65 of 2018 did not amend, add to or repeal or in any way alter any Constitutional provision, inclusive of Section 150. He admitted that Section 150 of the said Constitution of Sierra Leone has not been given effect to or acted upon by the Rules of Court Committee by making any rules to regulate the practice and procedure of Commissions of Inquiry.

He opined that, the question that therefore demands an answer is: whether Section 147 of the 1991 Constitution remains Inoperative until Section 150 of the said Constitution is effected by The Rules of Court Committee?

Counsel submitted that the answer to this question can be found in the Supreme Court decision of: SC No. 4/96 The All Peoples Congress Vs. Nasmos & Ministry of Social Welfare, Youth and Sports (unreported) delivered on the 26 October 1999. He said that all 5 of the Judges answered a similar question in the negative. He said that they proceeded to further state, that the rules in force which is the High Court Rules can apply to put the said section into operation.

He pointed out that this was just what the Learned Judge/Sole Commissioner did and even further relying on section 6(1) of Constitutional Instrument No. 65 of 2018. By section 6(1) & (2) of Constitutional Instrument No 65, the President did not under any stretch of imagination grant the Chairman/Sole Commissioner coercive powers. The Constitutional Instrument only allowed for full, faithful, and impartial inquiry by enabling all parties to the investigation, to make full use of whatever directions that may be given. The beneficiaries were unlimited.

Furthermore, he submitted that in the absence of any other law to regulate Commissions of Inquiry, the existing law can be utilized. Chapter 54 of the Laws of Sierra Leone (as Amended) has not been revoked. It is still part of our laws and Section 9 thereof has been invoked by the Commission to regulate its proceedings hence, the Directions were made to ensure fairness to all persons appearing before the Commission.

The Constitution he said, came into effect after Cap 54, particularly section 9 thereof and it did not explicitly revoke it and there has been no subsequent rule/s or Act to govern the rules of procedure of Commissions of Inquiry. Therefore, the existing law prevails if it is in the interest of Justice.

Mr. Kowa invited the Court to take Judicial notice of the practice of various Commissions of Inquiry set up between 2007-2017 devoid of rules and procedures from the Rules of Court Committee and were proceeded with. He cited C.I. NO. 1 OF 2008 set up the Commission of Inquiry into: Recent Disturbance Involving Koidu Holding Mining Company and Koidu Community; C.I. No. 16 of 2010 set up the Commission of Inquiry into the Help a Needy Child in Sierra Leone (Hanci-SL)(The Hanci-MAPS Adoption); and the Justice Bankole Thompson Commission of Inquiry of 2009 to investigate the attack and alleged rape at the Sierra Leone People's Party Office and so on.

The Learned Judge/Sole Commissioner, therefore, did not fail to comply with Section 150 of the Constitution. He opined that in fact, it is the Rules of Court committee that

has for almost thirty years failed to effect its responsibility under Section 150 of the Constitution. That he said, could not hold the Chairman and Sole/Commissioner in abeyance and bereft of Jurisdiction to sit and conduct the investigations. He said that he conducted the investigations as required by Law.

#### **GROUND 5**

On ground 5, Counsel suggested that the Appellant failed to show proof that he was indicted and tried for the offences stated in his appeal rather than, that he was investigated pursuant to Section 4(d) (ii) & (iii) of Constitutional Instrument No. 64 of 2018, which deals with "abuse of Office" as part of the Terms of Reference of the Commission. He said that the Learned Judge admittedly used the word 'Indicted' at page 10 of the report under the heading 'Executive summary' of the report but did not proceed to indict the Appellant or anybody. He explained that The Sole Commissioner never used the word "indict" in his specific findings against the Appellant. The Commissioner in his findings at page 74-75 of volume 1 of the records after the various findings concluded thus:-

"The following public officials: H.E. Dr. Ernest Bai Koroma:..... were involved in gross abuse of their offices in the reckless manner in which they dealt with the finances of the Government under their care and failure to provide leadership and supervision of the Ministry or Department or Agency put under their charge."

In the opening paragraph at page 10 under the rubric 'Persons Indicted'; the Judge stated thus:-

"At the conclusion of the investigations, and upon consideration of the evidence and the findings made thereon, the following 84 persons made up of former and serving public officials and their collaborators were indicted....."

He said that it does not in any way constitute an indictment to put one on trial neither, does it amount to the Commissioner proceeding to investigate, indict and convict in one stretch for the offence of abuse of office.

Mr. Kowa explained that 'Indict' means to officially charge somebody with a crime (Oxford Advanced Learner's Dictionary 8<sup>th</sup> Ed. at 764) and an Indictment is a document containing the charge against an accused signed by a Law Officer; Section 2 of the Criminal procedure Act No. 32 of 1965. Counsel informed the Court that no proof of Indictment has been provided before this court to show that the Commissioner indicted the Appellant.

Furthermore, he said that section 149(4) of the 1991 Constitution gives a right to the Appellant to appeal against the 'Adverse Findings' of the Commission.



He opined that the Appellant is contesting on the grounds that he was tried with the offence of abuse of office pursuant to the Anti-Corruption Act of 2008 as amended. He said that the Appellant has again failed to show proof of this. He pointed out that Section 4(d) (ii) & (iii) of Constitutional Instrument No 64 of 2018 deals with "abuse of office" as part of the Terms of Reference of the Commission. It authorises the Judge/Sole Commissioner to ascertain 'abuse of office'. This could not have been said and proceeded with pursuant to the Anti-Corruption Act of 2008, but by the provisions of the Constitutional Instrument, and could therefore not be a ground for which a decision reached by the Commission could be set aside. He urged the court to dismiss this ground of appeal.

#### **Ground 6**

On ground 6, Counsel opined that the evidence before the Commissioner in respect of the allegations were uncontroverted. He said that the Appellant was represented by Counsel at the investigation but did not appear in person to defend or put forward evidence in rebuttal. There is therefore sufficient evidence from the State to warrant the findings of the Commissioner.

Mr. Kowa informed the court that the State called several witnesses amongst which, were CW 1 E. B. Osho Coker, who was the Secretary to the President and assisted the President in the administration of the Petroleum Regulation Agency. He said that Mr. Coker was aware of the conflict of interest, and reluctant to let out the premises, in which he had 50% interest, to the Agency but was convinced by the Appellant to do so.

#### **GROUND 7**

On ground 7 Counsel said that the Commissioner indicated the number of volumes that were to be released. He argued that what the Appellant need to tell us is, whether any part of the report has been deliberately hidden or not published and whether the hidden or unpublished information amount to an 'adverse findings' against him. He pointed out that Section 149(4) of the Constitution of Sierra Leone, gives the right to the Appellant to appeal against an adverse finding and not a missing part of the report. He said that the Appellant may seek other remedies if he has issues of missing parts of the report but not to appeal.

Furthermore, Mr. Kowa advanced that the Report caused to be published by the President pursuant to section 149(2) of the Constitution of Sierra Leone is presumed to be the complete report until there is evidence to the contrary. Counsel therefore submitted that this ground of appeal lack merit and should be dismissed.

Counsel implored the Court to dismiss all the grounds of appeal by reason of the submissions made.

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

I will now give an analysis of the law, facts and evidence, as I deal with each ground.

#### **Ground 1**

Did the Hon. Justice Biobelle Georgewill err in law when he failed to consider and apply the Head of State Immunity clause as provided under Section 48 (4) of the Constitution of Sierra Leone? What does this section espouse? Section 48 (4) of the said Constitution states that:

"While any person holds or performs the functions of the Office of President, no civil or criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his office or private capacity."

I have considered the submissions of counsel for the Appellant and the Respondent. I have taken note of the fact that the Learned Commissioner was mandated to a) examine the assets and other related matters in respect of persons who were President amongst others; b) inquire into and investigate whether assets were acquired lawfully or unlawfully; c) inquire into persons who were president amongst others; d) to ascertain as to whether the persons referred to maintained a standard of life above that which was commensurate to their official emoluments and so on. In other words, the Sole Commissioner was mandated by C.I. No. 64 of 2018 to investigate and examine the Appellant who was a former President of the Republic of Sierra Leone.

The issue of section 48 (4) of the Constitution dealing with Head of State Immunity does not come into play, since the former President, the Appellant herein, is no longer in office. The legal decisions he took whilst he was in office, in my opinion are not being inquired into. What is being inquired into is whether some of those decisions were lawful or whether some of those acts violated the law. Under those circumstances, it was the duty of the Commission of Inquiry to examine and make a finding or findings. Whether the Head of State Immunity Clause should have been considered, is for the Supreme Court to interpret. But from my analysis of the ground of appeal, the Learned Commissioner acted within his remit. That is the Terms of Reference in Section 4 of Constitutional Instrument No. 65 of 2018 (supra).

The Court accepts that 'there is no law (statute or common law) in Sierra Leone that grants absolute immunity to any person in Sierra Leone including the President from investigation

and even subsequent prosecution for gross misconduct amounting to criminal offences including corruption offences when in office, let alone out of office.'

In view of the above stated, **Ground 1 of the Appeal is DISMISSED.**

### **Ground 2**

Did the Sole Commissioner err in law when he adjudged "the deliberate judgment of the President of the Republic of Sierra Leone" in the exercise of executive authority, contrary to Section 53 (3) (4) of the Constitution of Sierra Leone?

This is a ground of appeal that I have found difficult to grapple with, simply because it was a Commission of Inquiry into the activities of Persons of Interest as described above including former Presidents and son on. It was not a Court where judgment was handed down. The Sole Commissioner had terms of reference and from what I could see, he stuck to it and made certain findings and recommendations.

I agree with Counsel for the Respondent, when he said that this ground of appeal is "misplaced since the Commission of Inquiry did not constitute an interpretation of being a court of law but an investigating tribunal. **Ground 2 is therefore Dismissed.**

### **Ground 3**

Did the Hon. Justice Biobelle Georgewill usurp the functions of the Supreme Court? Did he attempt to interpret Section 62 of the Constitution of Sierra Leone?

It is the opinion of the Court that the Learned Judge did not usurp the functions of the Supreme Court. Indeed, he shared his opinion on Section 62 of the said Constitution, which would ordinarily slip into his deliberations as a Judge. Is there anything wrong with that? He did not violate the said section and I agree that this ground of appeal lacks merit and ought not to be allowed. **Ground 3 is therefore Dismissed.**

### **Ground 4**

Did the Sole Commissioner err in law and acted in violation of Section 150 of the Constitution of Sierra Leone Act No 6 of 1991, when he proceeded to conduct the Commission of Inquiry (COI) without the rules regulating the practice and procedure of all Commissions of Inquiry to be prescribed by the Rules of Court Committee?

In the absence of any law to regulate COIs, the existing laws prevail; and that is Chapter 54 of the Laws of Sierra Leone 1960 (as amended) which is still part of our laws as it has not been

revoked. Counsel referred to other COIs that were set up and proceeded with, without any rules made by the Rules of Court Committee.

Furthermore, the Commission was mandated by Section 6 (1) of Constitutional Instrument No. 64 of 2018 to give directions for the conduct and procedure of its deliberations. The Commission also had power to adopt the Sierra Leone High Court Rules of 2007 with such modification and exceptions as necessary to guide the proceedings of the Commission. Section 150 of the 1991 Constitution does not constitute a condition precedent to the operation of the Commission and therefore cannot invalidate the proceedings of the Commission since in law, the said provision envisages the existence of a Commission of Inquiry for the application of Section 150 of the 1991 Constitution to come into operation.

Also, there is no reference to "Rules of Evidence" under Section 150 or under any provision of the 1991 Constitution of Sierra Leone as would render rules of evidence applicable to a COI. The Court also takes note of the fact that, there is no inconsistency between the provisions of Section 150 of the 1991 Constitution and Section 9 of Chapter 54 of the Laws of Sierra Leone 1960 in that both Sections are merely complementary and not contradictory.

This ground of appeal is therefore well-settled and I agree with Counsel for the Respondent that the Learned Commissioner did not err in law and did not act in violation of Section 150 of the Constitution of Sierra Leone. The COI was conducted in accordance with Constitutional Instrument No. 64 of 2018. **Ground 4 of the Appeal is therefore DISMISSED.**

#### **Ground 5**

Did the Hon. Justice Biobelle Georgewill indict the Appellant for the offence of "Abuse of Office" an offence provided for under Section 42 of the Anti-Corruption Act of 2008 and the offence of "Abuse of Public Trust"?

This issue of indictment has been coming up in different guises throughout these appeals and the Court has sought to answer it in terms of how it has been submitted. In this instance, the question that needs to be asked is: what is an indictment? An indictment is a formal written accusation of a crime, made by a grand jury and presented to court for prosecution against the accused person;" Black's Law Dictionary, 10<sup>th</sup> edition at page 891. In Sierra Leone, Section 2 of the Criminal Procedure Act No. 32 of 1965, under "interpretation," it is defined as "a document containing the charge against the Accused signed by a Law Officer and every indictment purporting to have been signed as aforesaid, shall be presumed to be signed until the contrary is shown."

Furthermore, a Law Officer is defined in Section 2 of the said Criminal Procedure Act as "the Attorney-General, the Solicitor-General, the First Parliamentary Counsel and every other Crown Counsel or Parliamentary Counsel.

Based on the definition of an "Indictment," was there any formal written accusation of the offences of Abuse of Office and Abuse of Public Trust against the Appellant? No evidence has been adduced to show that there was one because it was not a criminal trial. There was no trial. There was no conviction and a sentence. I think that the Sole Commissioner used the word "indictment" loosely and for want of a better word. He should have been mindful. His role was that of an investigator, to publish his findings and make recommendations, which he

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did. In my opinion, this ground lacks merit and ought to be disallowed. **Ground 5 is therefore Dismissed.**

### **Ground 6**

On ground 6, the question that arises is, whether the adverse findings against the Appellant cannot be supported by the evidence presented? To answer this question, let me first enumerate the applicable laws. Firstly, the Petroleum Directorate of Sierra Leone (PDSL) is a government regulatory and administrative body, which is governed by the Petroleum (Exploration and Production) Act No. 7 of 2011. Under this Act of Parliament, Section 3 states that the Minister is responsible for the general management of the petroleum resources and the administration of the Act.

This Directorate is under the President's Office and as such the President is the de facto Minister of Petroleum Resources. Under Section 7 (1) of the said Act, the Minister may give directives in writing to the Directorate with respect to the policy to be observed and implemented by the Directorate, and the Directorate shall comply with the directives. Furthermore, Section 7 (2) of the said Act, states that the Minister shall not issue directives under subsection (1) that would adversely affect or interfere with the performance of the functions and exercise of the powers of the Directorate under this Act.

Also, under Section 8 (1) of the said Act, although the Directorate shall be headed by the Director-General, he/she shall under Section 8 (4) be responsible to the Minister for the : (a) day to day administration of the affairs of the Directorate; (c) preparing an annual report on the activities of the Directorate for the approval of the Minister who shall lay it before Parliament and (d) performance of such other functions as are assigned by this Act or as directed by the Minister.

Second, as a statutory body, it means that it is a budgetary agency, and it is subject to the Public Financial Management Act of 2016, which is an Act that makes provision for the prudent, efficient, effective, and transparent management and use of public financial resources and other related matters. So, even though the Vote Controller, who is the head of the administration of the Directorate, that is, the Director – General, is responsible for the prudent, effective, efficient, and transparent use of the resources of the budgetary agency in accordance with Section 13 (1) of the said Act, he/ she is accountable to the approval of the Minister.

Section 28 of the said Public Financial Management Act of 2016, stipulates what State Revenue is. It includes (a) taxes of any kind; (b) current revenues, such .....holding of financial and other assets, fines and other revenues compelled by the law, transfers.....(d) proceeds of sale of financial and other assets .....

Pursuant to Section 67 (1) and subsection (3) of section 118 of the Constitution, no borrowing may be made on behalf of the State otherwise than by or under the authority of an Act of Parliament. Under Section 71 (1) of the said Public Financial Management Act, pursuant to subsection (1) of Section 118 of the Constitution, no loan shall be granted on behalf of the State, unless it is explicitly authorized by an Act or resolution of Parliament. Section 71 (2) and subsection (1) of section 118 of the Constitution, only the Minister may enter into an agreement for the granting of a loan from the Consolidated fund. (3) In accordance with subsection (2) of Section 118 of the Constitution and Section 15 of the Public Debt Management Act, 2011, an agreement entered pursuant to subsection (2) shall be laid before Parliament and shall not come into operation until it has been approved by Parliament and the agreement shall contain a clause to that effect.

On the issue of terminal benefits, what do the terms and conditions of service for staff of the Petroleum Directorate provide? Section 8 rule 801 of the terms and conditions of service for staff of the agency provides that, "terminal benefits will be paid to staff who have served continuously for a period of not less than a year and are leaving the employment of the Directorate as a result of retirement, resignation, Redundancy or Death. Rule 802 states that "every employee shall retire on reaching the age of 60 years."

It also states that "on the recommendation of the Director-General and with the Approval of H.E. the President, the Directorate may for special reasons relating to the efficient operation of the Directorate engage the service of any employee on a contractual basis upon retirement."

However, from the facts of the case, no proof has been shown to the court that any of the employees paid terminal benefit, had retired on attaining the age of 60 or had sent in a letter of resignation or had been made redundant by the Directorate. According to CW2 (Commission Witness 2) at page 310 of the records, he said that the Director-General informed them (i.e., the staff) that he had succeeded in getting the end of service benefit and told the Supervisor to disburse it to staff members. (See page 314 of the records on "request for approval to pay staff end of service benefit and letter addressed.... Exhibit D2.

Also, at page 317 of the records, CW2 said that after receiving his terminal benefit, he continued to work by signing a fresh contract on 1<sup>st</sup> January 2018. No evidence was produced to the court of the employment contract signed by the staff to establish the terms of the contract. Furthermore, at page 317 of the records, CW2 said that the Director-General continued to work after receiving his terminal benefit of Le 2,160,241,477 (Two Billion One Hundred and Sixty Million Two Hundred and Forty-One Thousand Four Hundred and Seventy-Seven Leones). Even if some of the staff members had resigned, how could they all be approved and engaged again en masse on a contractual basis? Assuming that on the recommendation of the Director-General and with the approval of the former President, former employees were given contracts of employment, on what basis were they given fresh contracts? What were the special reasons for their re-employment?

Counsel for the Appellant, Mr. Kamara, said that by paying terminal benefits to staff of the Directorate at a time when the Directorate was losing its autonomy as entrenched in Section 6 of the Petroleum (Exploration and Production) Act of 2011, it lessened a huge liability of government. He also argued that the payment of these benefits accrued to staff of the Directorate and the decision to retain them was the best decision taken by the Directorate in good faith, considering how much the Directorate would have spent in the recruitment and training of new staff to fill in the gaps at the Directorate.

I find it difficult to understand and I am not persuaded by the reasons for paying out the terminal benefits. There was no evidence of staff having attained retirement age, nor redundancy or resignation. I am also convinced that it was "illegal and unlawful and was merely intended to circumvent the provision of the Fiscal Management Act of 2017". This adverse finding against the Appellant is supported by the evidence presented and I am not persuaded by the challenge made by Counsel for the Appellant.

On the issue of the US\$ 3,000,000 (Three Million United States Dollars) as loan by the Petroleum Directorate through the Ministry of Finance to SMRT Company Limited for the supply of Biometric Machines, and loan to Rokel Commercial Bank, the law is quite clear as stated above. Section 118 (3) of the Constitution of Sierra Leone No. 6 of 1991 (supra) states that "No loan shall be raised by the Government on behalf of itself or any other public institution or authority otherwise than by or under the authority of an Act of Parliament."

Also, Section 118 (1) (supra) states that Parliament may by a resolution passed in that behalf and supported by the votes of a majority of all the Members of Parliament, authorise the Government to enter into an agreement for the granting of a loan out of any public fund or public account. Additionally, Section 118 (2) aforesaid, says that an agreement entered pursuant to subsection (1) supra, shall be laid before Parliament and shall not come into operation, unless the same has been approved by a resolution of Parliament.

According to the Public Financial Management Act of 2016, which is an Act to make provision for the prudent, efficient, effective, and transparent management and use of public financial resources, Section 26(1) states that, public money may not be spent, except as expressly authorised by the Constitution of Sierra Leone or an Act of Parliament or an Appropriation under the Appropriation Act. Subsection (2) states that the authority to spend public money provided by an appropriation under an Appropriation Act – (a) shall be limited to the amount specified for the appropriation, under the Appropriation Act and may not be exceeded.....

From the facts of the case, no evidence has been adduced to show the court that Parliament approved these transactions, which were approved by the Appellant, the former President of Sierra Leone, Dr. Ernest Bai-Koroma and he was the de facto Minister of the Petroleum Directorate. Counsel for the Appellant argued that the Ministry of Finance acknowledged receipt of the said sum for the purpose of meeting government contribution for the payment of Biometric equipment for the conduct of National Elections in 2018. He said that the contractors confirmed receipt of the said amount and delivered the Biometric equipment.

Also, he said that there was executive approval from the President to meet the government's obligation to conduct credible elections as a democracy.

Mr. Kamara opined that, it was the Government of Sierra Leone who benefitted from all the actions and decisions made by the Petroleum Directorate. He said that when the Rokel Commercial Bank received a loan from the Petroleum Directorate through the National Commission for Privatisation in the government's recapitalisation decision, the said bank received the sum of US\$ 12,263,821 (Twelve Million Two Hundred and Sixty-Three Thousand Eight Hundred and Twenty-One United States Dollars) and it increased Government's stake from 51% to 65.2% because of the said loan. He said that Government can now sell its shares if it so desires at a higher rate than if it were to sell when it had a lesser share.

There is no doubt that part of the function of the Petroleum Directorate is to contribute to national budgetary planning and control and perform any other function incidental or consequential to its functions as prescribed by Section 5 (2) (j), (i) of the Petroleum (Exploration and Production) Act No. 7 of 2011.

Also, the said Act prescribes that the Directorate shall.....consult and co-operate with ministries, departments and agencies of Government having duties, aims or functions related to those of the Directorate; Section 5(3) aforesaid. Furthermore, the said Act provides inter alia, that the Directorate shall, subject to subsection (1) of Section 7 and subsection (2) of Section 8, be independent in the performance of its functions and duties and the exercise of its powers.

Counsel for the Appellant canvassed these points vociferously in court and I do understand his standpoint. However, the Constitution of Sierra Leone of 1991 takes precedence. Nowhere in the Petroleum Act was it stated that the Directorate is empowered to grant loan without the authority of Parliament. Nowhere is it stated in the Act of the Petroleum Directorate that it is independent of Government. The fact that Section 2 (1) of the said Act states that "all rights of ownership in and control of petroleum.....are vested in the Republic of Sierra Leone.....tells you that it is a public body and is not independent of Government. The Directorate cannot give out loans without the authority of Parliament.

I agree with counsel for the Respondent when he said that the investigation into the activities of the Petroleum Directorate disclosed that there was a blatant breach of the provisions of the National Constitution of Sierra Leone of 1991 and the Public Financial Management Act of 2016 to wit sections 118 of the 1991 Constitution and section 28 respectively. I also agree that there was no legal mandate to give out the bridging loan amounting to US\$ 14,000,000 given through the National Commission for Privatisation (NCP). I also agree that the Appellant acted contrary to law in the discharge of his duties as the de facto Minister of the Petroleum Directorate.

The Court is of the view that by reason of the above, the Appellant's actions were either willful or complacent and caused the government financial loss. Therefore, the complaint that the commissioner had no evidence and therefore erred in law and fact to have found the



Leone.....tells you that it is a public body and is not independent of Government. The Directorate cannot give out loans without the authority of Parliament.

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The Court is of the view that by reason of the above, the Appellant's actions were either willful or complacent and caused the government financial loss. Therefore, the complaint that the commissioner had no evidence and therefore erred in law and fact to have found the Appellant wanting is wrong in law and must be dismissed. There has not been a rebuttal of the evidence adduced against the Appellant. Instead, Counsel has only justified the necessity of the actions of the Appellant without adducing any legality of the actions. **Ground 6 is therefore DISMISSED.**

#### **Ground 7**

Has there been a violation of Section 149(4) of the Constitution of Sierra Leone Act No. 6 of 1991? Is the published Commission Report incomplete that it cannot be deemed in law as a judgment?

From the evidence that has been adduced to the Court including the adverse findings as stated in volume 1 of the court records, except Counsel has evidence that the missing records contain adverse findings, I cannot see how Section 149 (4) of the 1991 Constitution has been violated. The adverse findings have been stated in Volume 1 and the Appellant has appealed against them, which Section 149 (4) aforesaid, gives him a right to appeal against and not a missing report.

The Court will take the view that Counsel for the Respondent, Mr. Kowa, has submitted that the allegations and issues raised against the Appellant as submitted in the Reports of the Sole Commissioner and the White Paper are complete. The Court accepts it as complete. **Ground 7 is therefore Dismissed.**

#### **Conclusion**

In conclusion therefore, all seven (7) grounds of appeal are **Dismissed**.

In the light of the conclusion reached, the following consequential Orders are hereby made:

1. The adverse findings of the Hon. Justice Biobelle Georgewill made and directed against the Appellant, Dr. Ernest Bai Koroma are HEREBY UPHELD. That is:
  - (a) that the former President, Dr. Ernest Bai Koroma shall jointly and severally refund and pay into the Consolidated Revenue Fund of the Government of Sierra Leone the sum of Le 70,294,264,523 (Seventy Billion Two Hundred and Ninety-Four Million Two Hundred and Sixty Four Thousand Five Hundred and Twenty Three Leones);
  - (b) that the former President Dr. Ernest Bai Koroma, former President of the Republic of Sierra Leone, shall jointly and severally refund and pay into the consolidated revenue fund of the Government of Sierra Leone the sum of US\$ 3,000,000 (Three Million United States Dollars) that had remained and not refunded, as monies given out illegally as loan by the Petroleum Directorate through the Ministry of Finance to SMRT Co. Ltd for the supply of biometrics machines;
  - (c) that H.E. Dr. Ernest Bai Koroma, former President of the Republic of Sierra Leone shall jointly or severally refund and pay into the consolidated revenue fund of the Government of Sierra Leone the sum of US\$ 12,263,821 (Twelve Million Two Hundred and Sixty Three Thousand Eight Hundred and Twenty One United States Dollars) that had remained and not refunded as monies given out illegally as loan by the Petroleum Directorate through the National Commission for Privatisation to Rokel Commercial Bank.
  - (d) All amount due and to be refunded shall be paid into the Consolidated Revenue Fund of the Government of Sierra Leone within 30 days from today's judgment.
2. That the acceptance of the Government in the White Paper dated September 2020 on matters affecting Dr. Ernest Bai Koroma as a Person of Interest is HEREBY UPHELD.
3. That Judgment is entered AGAINST THE APPELLANT, Dr. Ernest Bai Kargbo.
4. That the Report of the Commission of Inquiry is DECLARED COMPLETE.
5. That the costs of these proceedings and that in the Commission of Inquiry be BORNE BY THE APPELLANT AND TO BE TAXED IF NOT AGREED UPON.

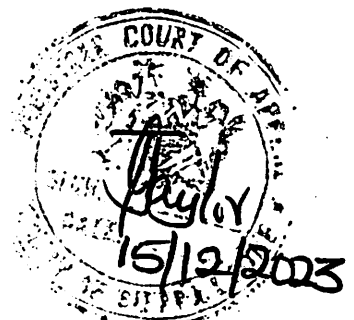
Hon. Mrs. Justice Fatmatta Bintu Alhadi J.A. (Presiding) Badi

Hon. Mr. Justice Komba Kamanda J.A. Kamanda

Hon. Mrs. Justice Tonia Barnett J.A. Barnett

Dated: 14<sup>th</sup> December 2023

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Justice Tonia Barnett J.A.



CIV.APP. NO. 9/2020

IN THE COURT OF APPEAL OF SIERRA LEONE

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT NO.  
6 OF 1991 SECTIONS 48(4)  
AND

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT NO.  
6 OF 1991 SECTIONS 53(1), (2) & (3)  
AND

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT NO.  
6 OF 1991 SECTIONS 108 (7), 124 (1)(a)  
AND

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT NO.  
6 OF 1991 SECTIONS 147-150, 171(15)  
AND

IN THE MATTER OF CONSTITUTIONAL INSTRUMENT NO. 64 OF 2018  
(HON. JUSTICE BIOBELLE COMMISSION OF INQUIRY)

BETWEEN:

DR. ERNEST BAI KOROMA  
RO-BUREH HOUSE  
TEKO  
MAKENI CITY

APPELLANT

AND

THE ATTORNEY-GENERAL &  
MINISTER OF JUSTICE  
LAW OFFICERS DEPARTMENT  
3<sup>RD</sup> FLOOR, GUMA BUILDING  
LAMINA SAKNOH STREET  
FREETOWN

- RESPONDENT



CORAM;

HON.MRS JUSTICE FATTMATA BINTU ALHADI JA (PRESIDING)

HON.MR JUSTICE KOMBA KAMANDA JA

HON. MRS JUSTICE TONIA BARNETT JA

ADVOCATES;

J. F. KAMARA ESQ

APPELLANT

R. B. KOWA ESQ, A SUWU

RESPONDENT

M.P. BANGURA ESQ, T.J. FREEMAN ESQ

JUDGMENT DELIVERED ON THE 14<sup>TH</sup> DAY OF DECEMBER 2023

KAMANDA J.A.

BARNETT J.A.

We have read the Judgment of our learned colleague and sister the Hon. Mrs Justice Fattmata Bintu Alhadi J.A. and agree with same but however we need to most respectfully add our voice to the said Judgment.

### BACKGROUND

The President of Sierra Leone by Constitutional Instrument No.64 of 2018 pursuant to Section 147 of the Constitution of Sierra Leone, Act No. 6 of 1991 set up the Justice Biobele Georgewill Commission of Inquiry with the said Judge as Chairman and Sole Commissioner .

The terms of reference of the Commission of Inquiry known as COI were laid down in Section 4 of the aforementioned Constitutional Instrument thus;

- A. To examine the assets and other related matters in respect of;
  - i Persons who were President, Vice President, Ministers of State, Deputy Ministers; and
  - ii Heads and chairmen of Board of Parastatals, Departments and Agencies within the period from November 2007 to April 2018.
- b. To inquire into and investigate whether assets were acquired lawfully or unlawfully
- c. To inquire into;

- i Persons who were President, Vice President, Ministers, Ministers of State, Deputy Ministers and
- ii Heads and chairmen of Boards of Parastatals, Departments and Agencies within the period November 2007 to April 2018.
- d. To ascertain as to whether the Persons referred to in paragraph a- c
  - i Maintained a standard of life that which was commensurate to their official emoluments
  - ii Owned or were in control of pecuniary resources or property disproportionate to their official emoluments or there is evidence of corruption, dishonesty or abuse of office
  - iii Collaborated with any person in respect of such corruption, dishonesty or abuse of office
  - iv Acted wilfully or complacently in such a manner so as to cause financial loss or damage to the Government, Local Authority or Parastatal including a Public Corporation
  - v. Acquired directly or indirectly financial or material gains fraudulently improperly or wilfully to the detriment of the Government, Local Authority or Parastatal including a Public Corporation, Statutory Commission, Body or university of Sierra Leone
  - vi. To inquire into and investigate any persons or matter as may from time to time be referred to the Commission by His Excellency, the President.

The Appellant being dissatisfied with the findings, conclusions and recommendations of the sole Commissioner filed a Notice and Grounds of Appeal on the 12<sup>th</sup> day of October, 2020. The Appellant's appeal is based on seven (7) grounds which are:

1. That the Sole Commissioner erred in Law when he failed to consider and apply the Head of State Immunity clause as provided under Section 48(4) of the Constitution of Sierra Leone.
2. That the Sole Commissioner erred in law when he adjudged "the deliberate judgment of the president of the Republic of Sierra Leone" in the exercise of executive authority, contrary to Section 53 (3) & (4) of the Constitution of Sierra Leone.
3. The Sole Commissioner usurped the functions of the Supreme Court when he offered to interpret Section 62 of the Constitution of Sierra Leone.

4. That the Sole Commissioner erred in law and acted in violation of Section 150 of the Constitution of Sierra Leone Act No. 6 No. 6 of 1991 when he proceeded to conduct the Commission of Inquiry without the rules regulating the practice and procedure of all Commission of Inquiry.
5. The Sole Commissioner erred and without authority, tried the Appellant for offence of abuse of office and of public trust a power that was not conferred by CI No. 64.
6. That the adverse findings against the Appellant cannot be supported by evidence presented and challenged.
7. That there is violation of section 149(1) & (4) of the Constitution of Sierra Leone as the purported published Commission Report<sup>6</sup> is incomplete and therefore cannot be deemed in law as a “judgment”.

## ANALYSIS OF EVIDENCE AND LAW

### GROUND 1

Counsel for the Appellant J.F. Kamara Esq. submitted that the Appellant Dr. Ernest Bai Koroma is covered by Head of State immunity on the basis that the infractions complained of if any were during the term of office of the Appellant as president of the Republic of Sierra Leone. He relied on Section 48 Sub Section 4 of the 1991 Constitution of Sierra Leone Act No. 6 of 1991. He argued that based on the aforesaid provision, the Appellant during his tenure of office was covered by both personal and functional immunity and that such immunity does not come to an end even when the relevant state organ relinquishes his official position. In essence, counsel is stating that the immunity conferred on the holder of the office of President of Sierra Leone is permanent and not transient or ephemeral. He relied on the case of *HATCH V BAE2* (1876) 7 HUN 596 in support of the aforesaid submission. He also referred to the provisions of Section 170 Sub Section 1 to further argued that the constitution being part of the Laws of Sierra Leone precludes any criminal or civil action to be brought against the Appellant former president of Sierra Leone for acts done in the performance of his functions. He further argued that Section 48 (4) of the Constitution is operative and that it was not amended or repealed by Parliament and therefore, he submitted that the sole Commissioner acted outside the remit of his mandate.

Counsel further argued that immunity granted to the Appellant can only be waived or revoked by Parliament and in the absence of that, the Sole Commissioner lacks jurisdiction to adjudge over the official functions of a former Head of State.

Conversely, Counsel for the Respondent R.B. Kowa Esq. submitted that the Appellants appeal dealing with the immunity provision of Section 48(4) of the 1991 Constitution of Sierra Leone amounts to a question of interpretation of the said constitution and that same cannot be formulated by way of an appeal but that Section 124 of the constitution makes provision for the forum to which issues of interpretation of the constitution should be directed. He is asking this Court to dismiss the appeal. In the alternative Counsel submitted that the sole Commissioner acted within the terms of reference stated in Section 4 of Constitutional Instrument No. 64 of 2018 which was to investigate persons who were President, Vice President, Ministers, Ministers of State and Deputy Ministers within the period November, 2007 to April 2018. He also argued that the Constitutional Instrument itself is not inconsistent with the Constitution of Sierra Leone. He submitted that the invocation of Section 147 of the 1991 Constitution to set up the Commission of Inquiry to investigate the former President defeats the argument and lend credence to the process. He submitted also that there is no law either by way of statute or common law in Sierra Leone granting absolute immunity to any person in Sierra Leone including the President from investigation and subsequent prosecution for gross misconduct amounting to or including corruption offences.

The gravamen of this ground of appeal touches and concerns immunity as applicable to a former Head of State. The legislation relied on that is Section 48 Sub Section 4 of the 1991 Constitution Supra states:

“while any person holds or performs the functions of the office of President, no civil or criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official or private capacity”.

In our considered view, the aforesaid provision is simple, crystal clear and unambiguous to the extent that it needs no further or any interpretation that calls for the invocation of Section 124 1a of the 1991 Constitution which states;

“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 and interpretation of any provision of this Constitution”.

Counsel for the Appellant throughout his legal arguments and submissions has not invited this Court to invoke section 124, 1 of the Constitution *supra* and we shall therefore decline any invitation to do so as it may amount to a fruitless endeavour.

The issue of immunity in the instant case can only apply to the President while he continues to hold office. Such immunity cannot be transported to any individual after he may have ended his tenure. It will be inconceivable and a dangerous precedent if this Court may consider immunity, granted to the President to be eternal meaning even after he may have left office. Such interpretation of immunity by the Appellant if granted by the Court may be a breeding ground for holders of such coveted and revered office to become monsters and dictators. It will further be a setback in an effort to halt the theft of public resources by government elites. No individual is immune from investigation and prosecution for criminal offences committed whilst in office. It is our considered view that ‘the law is the king and not the king the law’. We take judicial notice of the various trials pending of the former President of the United States of America Donald J. Trump. Also the case of Jacob Zuma former president of South Africa and Dr. Frederick Chiluba former president of Zambia are all pointing to the fact that immunity does not exist in perpetuity. We therefore agree with Douglas B Mckechnie in his book ‘Rethinking Presidential Immunity in the time of twitter’ University of Miami Law Review Vol 72 ,2017 that ‘though the ambit of presidential immunity is wide, it is not unlimited. Their acts should be in the outer perimeter of their official duties’. Sierra Leone has signed (9/12/2003) and ratified (30/09/2004) the United Nations Convention on Corruption. The said Convention fosters presidential immunity and put mechanisms in place for prosecution of corrupt government officials who by the dictates of the Convention include presidents and former presidents (Article 30). It is a testament to the fact that immunity cannot be used as a leeway to escape criminal investigations or an inquiry. This is the position of the law and we shall apply same in the instant case *mutatis mutandis*. In the circumstance the appeal on this ground is untenable, frivolous and bereft of positive legal standing. It is therefore dismissed.



## GROUND 2

The Appellant argued that the sole Commission erred in Law when he adjudged the deliberate judgment of the President of the Republic of Sierra Leone in his exercise of Executive authority contrary to Section 53(3) and 4 of the Constitution of Sierra Leone.

It is relevant to reproduce the aforesaid legislation which deals with the executive powers of the President. The said provision states:

(3) “whereby 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 has in any case received or acted in accordance with such advice shall not be inquired into in any Court”.

Counsel for the Appellant is of the view that the Commission of Inquiry has no power to question actions of the Appellant when he was serving as President of the Republic of Sierra Leone by virtue of the aforementioned legislation. He maintained that any attempt to question the Appellant as regards his actions or omissions amount to a nullity and that the sole Commissioner had no such power to do so.

On the other hand, counsel for the Respondent R.B. Kowa Esq. submitted that the Commission of Inquiry was not a court of Law neither did it sit as a Court but rather it came into existence as a result of Constitutional Instrument No 64 and that pursuant to Section 4 of the said instrument the Terms of Reference were clearly spelt out. He also referred to Section 171 sub section 1 of the 1991 Constitution which states that ‘Commission of Inquiry includes a Committee of Inquiry.’

The provision of Section 53 Sub Section 3 of the Constitution is crystal clear in that it refers to a Court. It is not applicable in the instant case because a Commission of Inquiry is not a court but rather an investigative body whose functions are well spelt out in the instrument that created it. This position of the law as regards Commissions of Inquiry is well settled in the case of *M.A. KHARAFI AND SONS LIMITED V ATTORNEY GENERAL OF THE GAMBIA*, GCA CIV. APP 0461 2019 that ‘a Commission of Inquiry does not adjudicate between the state and a person who appears before it; but it carries out an investigation into the issues and matters that are within its terms of reference as per the legal instrument that established it. Its report submitted to the Executive Branch of Government, is neither a judgment, neither an order which is capable

in itself of being executed as perceived by the Law”. This position of the law has been applied severally by the Court of Appeal in our jurisdiction and we have no reason to depart from same.

I have also perused the Provisions of Section 149 sub section 1 of the Constitution dealing with Commissions of Inquiry. It provides:

“The Commission of Inquiry shall (a) make a full, faithful and an impartial inquiry into any matter specified in the Commissions of appointment

(b) report in writing the result of the Inquiry and

(c) furnish in the report the reasons leading to the conclusions arrived at or reported.

The aforesaid legislation clearly shows that the Commission of Inquiry is not a court and therefore the provision Section 53(3) of the Constitution is not applicable. The combined legislations cited by both counsel each in support of his case gives a clear picture that the sole Commissioner did not go beyond his mandate and invariably, he did not do anything ultra vires the functions conferred on him that should warrant the intervention of the court, to reprimand his action by way of presenting a report of his findings, conclusions and recommendation. This ground of appeal is also untenable and therefore dismissed.

### GROUND 3

The Appellant’s contestation on this ground is that the sole Commission usurped the powers of the Supreme Court by explaining or interpreting the content of Section 62 of the Constitution of Sierra Leone which deals with the administration of Ministries. It state;

‘Where any Minister has been charged with responsibility for any department of Government, he shall exercise general direction and control over that department and, subject to such direction and control, the department shall be under the supervision of a Permanent Secretary, whose office shall be a public office ‘

The aforesaid provision is also simple and unambiguous in that it deals with Ministers and Permanent Secretaries. It has nothing to do with the Appellant in that he never occupied those positions.

We have read the records of proceedings at the Commission of Inquiry including the findings, conclusions ,recommendations and the report of the sole Commissioner and have realised that no adverse findings were made against the

Appellant touching and concerning what is complained of in this ground of appeal. All the Sole Commissioner did was to reference Section 62 which has nothing to do with the Appellant. Reference made by the sole Commissioner to Section 62 of the Constitution was not the ratio in the matter before him, therefore it is unnecessary to build capital out of nothing. In the absence of adverse findings against the Appellant who was not a Minister, what was he appealing against. This ground of appeal is unnecessary and frivolous. It is therefore dismissed.

#### GROUND 4

The Appellants complaint is that the sole Commission Hon. Justice Biobele Georgewill erred in law and acted in violation of Section 150 of the Constitution of Sierra Leone Act No. 6 of 1991 when he proceeded to conduct the Commission of Inquiry as prescribed by the Rules of Court Committee through a Constitutional Instrument. Counsel submitted that the power to make rules regulating the practice and procedure of all Commissions of Inquiry is vested in the Rules of Court Committee and not in the sole Commissioner. In essence Counsel's submission hinges on the fact that the sole Commissioner had no jurisdiction to proceed with the Commissions of Inquiry. He referred to the case of *MADUKOLU V NKEMDI LIM* (1962) 2 SCNLR 341 to support the aforesaid legal argument that a case must come to court initiated by due process of the Law and upon fulfilment of a condition precedent.

Counsel also submitted that Section 147 of the Constitution which brought to life the Commissions of Inquiry, did not amend or repeal Section 150 of the Constitution which provides that rules regulating the Commissions of Inquiry are to be created by rules of Court Committee.

In contrast, Counsel for the Respondent R.B. Kowa Esq. submitted that the Chairman and sole Commissioner did not violate Section 150 of the Constitution of Sierra Leone on the basis that the President pursuant to Section 147 Sub Section 1 and 2 of the Constitution brought into life the Commissions of Inquiry and that Section 4 of the Constitutional Instrument No. 64 spelt out the Terms of Reference of the Commission. He argued that Section 170 Sub Section 1 of the Constitution ratified Constitutional Instrument No. 64 as part of the Laws of Sierra Leone while Section 149 Sub Section 1 requires the Commission to report in writing the result of the inquiry and give reasons leading to the conclusions arrived at or reported. He submitted that the Appellant failed to direct this court to any law or any section of the provisions of Constitutional Instrument No. 64 of 2018 which has been found to be inconsistent with any provision of the 1991

Constitution. Counsel also submitted that Section 137 of the 1991 Constitution is not inoperative until Section 150 is effected by the Rules of Court Committee. He relied on the Supreme Court decision in the case of THE ALL PEOPLES CONGRESS V NASMOS AND MINISTRY OF SOCIAL WELFARE YOUTH AND SPORT SC NO. 4/96 (unreported) delivered on the 26<sup>th</sup> October, 1999 to buttress his submission that in the absence of any other rules, the rules in force which is the High Court rules is put into operation.

We have realised that the said ground deals with jurisdiction which is fundamental in judicial and quasi - judicial proceedings. It is obvious that where such processes lack jurisdiction, however good the proceedings were conducted amounts to a nullity, in essence a waste of time. In the case of A G FEDERATION V. A G ABIA STATE AND 35 ORS (2001 ) 7 SC (P T 100, Per Karibi Whyte (JSC) as he then was defined jurisdiction to mean ; the authority the court has to decide matters before it or take cognisance of matters presented in a formal way for its decision.’ I have also stated in numerous judgments that jurisdiction is the life line and backbone in every judicial and quasi-judicial proceedings.

We have read the submissions on this point of law and the decision arrived at by the Supreme Court in the case of ALL PEOPLE’S CONGRESS V NASMOS AND MINISTRY OF SOCIAL WELFARE , YOUTH AND SPORT SC NO. 4/94 unreported where it was vividly said that in situations akin to the instant case where there are no rules in force at the material time of the commencement of proceedings ,the rules in force at the time ,and herein the High Court Rules apply .We have also not seen any other Judgment delivered by the apex court which is diametrically opposed to the aforesaid Judgement .We therefore have no reason to depart from the said Judgment that has given us the clear and unambiguous pathway to follow. We have also read Chapter 54 of the Laws of Sierra Leone 1960 Volume as amended. It speaks hand in hand with the ratio in the case of APC V NASMOS supra. We have also taken judicial notice of the fact that Commissions of Inquiry were set up from 2008 -2017 when there were no rules made by the Rules of Court Committee and the proceedings went ahead. It is uncontroverted that C.I No. 1 of 2008 set up the Commission of Inquiry into the ‘RECENT DISBURBANCES ‘involving Koidu Holding Mining Company and Koidu Community and C.I. No. 16 set up the Commission of Inquiry ( Hanci – Maps Adoption ). The Justice Bankole Thompson Commission of Inquiry of 2009 was also set up to investigate the attack and alleged rape at Sierra Leone People’s Party office. These aforementioned Commissions of Inquiry went on without rules from the Rules of Court Committee in compliance with the aforementioned judgment of the Supreme Court which is the locus classicus in dealing the jurisdiction of Commissions of Inquiry. With these glaring instances, the law and

the judgment of the Supreme Court, this ground of appeal has no legs to stand on, it is therefore dismissed.

## GROUND 5

The aforesaid ground of appeal also deals with jurisdiction which is fundamental in all judicial processes. I have in numerous judgments opined that jurisdiction is the life line in all judicial and quasi-judicial proceedings. In essence if Constitutional Instrument No 64 of 2018 is bereft of jurisdiction then whatever it may have done amounts to a nullity.

Counsel for Appellant J.F.Kamara Esq submitted that the Commissioner had no authority to indict the Appellant in his report and recommendations and that by doing so he assumed the powers of a court which such powers he did not have.

Conversely, Counsel for the Respondent argued that the Appellant has failed to show that he was indicted. He stated that the use of the word indicted at page 10 of the report under the rubric 'Executive Summary' did not in any way indict the Appellant and that the Sole Commissioner did not use the word indict in his specific findings against the Appellant. He referred to pages 68-69 paragraphs 9.5 number 1-9 and the report at page 74-75 of volume 1 of the records after the various findings and conclusions.

I have noted in several judgments also that a Commission of Inquiry is not a Court but rather an investigative body that present its report, findings and conclusions to the Executive branch of Government. We have noted also that adverse findings were made against the Appellant at pages 74-75 of Volume 1 of the records to wit "The following public officials: HE Dr. Ernest Bai Koroma... were involved in gross abuse of their offices in a reckless manner in which they dealt with the finances of the Government under their care and failure to provide leadership and supervision of the Ministry or Department or Agency put under their charge".

Even though the report indicated 'persons indicted'. The sole Commissioner, stated thus "At the conclusion of the investigations, and upon consideration of the evidence and the findings made thereon, the following 84 persons made up of former and serving public officials and their collaborators were indicted. Even with the said findings and recommendations it does not amount to an indictment which in itself refers to an official charge against a person with a crime.

The Appellant was never charged because the sole Commissioner has no jurisdiction to indict and he indeed never indicted the Appellant. This ground of Appeal is dismissed.

## GROUND 6

The instant ground is based on the Appellants complaint that the adverse findings against the Appellant cannot be supported by evidence presented and challenged. Counsel for the Appellant argued that on the issue whether the former President Dr. Ernest Bai Koroma abused his office by making payments of terminal benefits to staff of the Petroleum Directorate was not substantiated to warrant an indictment in any form. He also submitted that the offence of Abuse of Office is statutory and the elements clearly defined by Law as provided for in Section 42(1) of the Anti-Corruption Act 2008 to wit 'Any Public Officer who uses his office to improperly confer an advantage on himself or any other person commits an offence.'

Counsel referred to the evidence of CW2 Amadu Mansaray, Senior Administrative Officer exhibit P3 that the Petroleum Directorate has Terms and Conditions of Service that governs the general administration of the office and that Section 801 of the Terms and Conditions of Service makes provision for payments for gratuity/terminal benefits and redundancy payments. That additionally, CW2 Amadu Mansaray also gave evidence that the Director General Raymond Kargbo, in a letter dated 18<sup>th</sup> October, 2018 addressed to the Secretary to president requested for approval to pay staff benefits and by exhibit D-2A to avoid the consequences of the introduction of the fiscal control and Management Act 2017 which provides agencies of Government to 'transfer revenue or other monies received by the agencies into the Consolidated Revenue Fund. Counsel submitted that in order for someone to confer an advantage includes an element of impropriety. He further referred to the case of FOFANAH KOMEH AND JOHN MANS V THE STATE CA unreported judgment delivered on the 27<sup>th</sup> November 2021 to submit that causing money to be paid to a person to whom it is not due was held insufficient in the absence of proof of dishonesty and not a sufficient serious departure especially because the evidence did not disclose that the Accused intended to use his office for a purpose other than the Public good.

Counsel further stated that CW3 Sabieu Conteh, Monitoring and Evaluation Officer testified that the payments were made equitably, fairly and impartially

across all members of staff and that such payments reduced Government liability in terms of debt exposure by way of benefit payment.

As regards the loan of US\$3,000,000 Three Million United States Dollars issue to the Ministry of Finance from the coffers of the Petroleum Directorate was meant to meet overdue payments to the supplier of the biometric machines for civil registration process. The Ministry of Finance was to pay the loan in equal quarterly instalments, effective January 2018. Counsel argued that the importance of the loan could not be underrated because it was meant to assist in the successful conclusion of the elections. He referred to the evidence of CW4 Zainu Deen who manifested the priority that government attached to the successful conclusion of the elections.

Counsel also referred to the loan secured by Government from the Petroleum Directorate for the recapitalization of the Sierra Leone Rokel Commercial Bank in the sum of \$14 million United States Dollars and that the said sum still remains outstanding, due and owing to the Petroleum Directorate. He stated that Exhibit P4A shows the fundamental requirements necessary pursuant to Section 19(1) of the Banking Act, 2011 that banks are to maintain paid up capitals prescribed by the bank of Sierra Leone. He stated that by Exhibit P4 a confidential memo from the Secretary to the President conveyed the President's approval of the Ministers recommendations and eventually the loan was issued.

Conversely, Counsel for the State R.B. Kowa Esq submitted that the state provided uncontroverted evidence against the Appellant. He argued that the Appellant had no authority to allow E.B. Osho Coker Secretary to the President to rent his house at a higher amount in excess of the budgeted amount. He regarded the approval of such payment as conflict of interest.

As regards the issue of terminal benefits Counsel referred to the evidence of CW2 Amadu Mansaray at page 72 of Volume 1 of the records. Counsel submitted that the payment of terminal benefits in the instant case is contrary to Section 801 of Exhibit P3A which is clear as to who should be paid benefits.

As regards the loans granted by the Petroleum Directorate through the approval of the Appellant, Counsel submitted that they were unlawfully done in violation of the provisions of the Constitution of Sierra Leone and the Financial Management Regulation Act. He further submitted that the Petroleum Directorate as an agency of Government has no mandate in Law to use Government monies to give out loans and also that even where the Rokel Commercial Bank was in

need of a bailout, in order to avoid a collapse, Petroleum Agency are not the institution responsible to issue out loan.

Counsel further submitted that the monies generated by Petroleum Directorate are public monies pursuant to Section 1 of the Public Financial Management Act No. 13 of 2016 and that by Section 28 of the said Act, it was state money and that by Section 29(2) of the same Act the money was unlawfully retained by a budgetary agency. Counsel also stated that the money referred to herein was unlawfully spent pursuant to section 26(1) of the Act. Reference is also made by counsel that cabinet ought to have approved the proposal for acquisition of shares and ownership pursuant to Section 4d of the said Act but that was not done. He also referred to a blatant violation of sections 67(1) and 71(1) of the Act. Counsel also submitted that the Appellant was in complete breach of Section 118 of the 1991 Constitution of Sierra Leone and also said that with a couple of these infractions the, Appellant became the law himself through executive clearance which were grossly abused.

In determining this ground of appeal, it is imperative to examine the legal and constitutional framework so as to determine whether the Appellants conduct falls within the ambit of the Law as regards his dealings with the Petroleum Directorate. It is important to note that the former President Dr Ernest Bai Koroma became the defacto Minister of the Petroleum Directorate. In essence he had direct supervisory role and got involved in the final decision making process involving significant approvals. The then Secretary to the President E.B. Osho Coker also became an integral part of that agency by virtue of the fact that the President became the defacto Minister. As regards the renting of the premises owned by E.B. Osho Coker and the approval given by the Appellant to pay the rent in advance of \$150,000 (One Hundred and Fifty United States Dollars annually) for a period of five years above the approved rental value did not amount to an abuse of authority but a glaring example of conflict of interest. The proposal for an increase in rent was never taken to cabinet for approval which ought to be the correct process rather it was an agreement between the Appellant who was the defactor Minister of the Petroleum Directorate and his Secretary. The Appellant ought to have taken the issue to cabinet for approval instead of unilaterally given approval when he was not public body. Section 45(1) of the Anti-Corruption Act of 2008 (as amended) is very clear on this point. It state that:

“where a public body in which a public officer is a member, director, employee is otherwise engaged proposes to deal with any company, partnership, or other undertaking in which that public officer has a direct or indirect, private or



personal interest that public officer shall forthwith disclose in writing to that public body, the nature of such interest”.

It is relevant to reiterate the fact that while dealing with this issue in the case of EMMANUEL BERESFORD OSHOBA COKER AND THE ATTORNEY GENERAL AND MINISTER OF JUSTICE COI NO. 18/2020 the Court of Appeal in a unanimous judgment while rebuking the Appellant said ‘Throughout these proceedings the Appellant has not given any justifiable reason(s) while he received such a whooping sums of money from Government coffers beyond the normal rate. It creates a lot of suspicion and disbelief that a man of such knowledge and repute should allow himself enter into such suspicious and illegal contract”. I shall adopt this same position in the instant case to the Appellant herein, a man who took oath to abide by the Constitution and invariably the Laws of the land.

In dealing with the issue of terminal benefits, there is uncontroverted evidence that the staff of the Petroleum Directorate were paid their terminal benefits. Terminal benefits are defined as ‘the entitlements an employee has upon termination of an employment contract whether the employee is terminated by the employee or resigns.” The evidence of CW2 the Administrative Officer at the Petroleum Directorate confirmed in his testimony that most of the staff at the said institution were paid their terminal benefits and still continued in employment. There is no evidence that their contracts were terminated and that they were reemployed. Such conduct of the Appellant to approve of such huge payments from Government coffers is not only strange but it boggles my mind as to how the Appellant would even indulge in such illegality in the presence of a comprehensive legal framework dealing with the subject matter .

It is obvious that a loan of \$14,000,000 (Fourteen Million United States Dollars) was given to the Sierra Leone Rokel Commercial Bank for recapitalization from the funds owed by Petroleum Directorate and invariably the Government of Sierra Leone pursuant to Section 1 and 28 of the Public Financial Management Act No. 13 of 2016. It is important to underscore the fact that by Section 29 (2) of the aforesaid Act, the monies referred to ought not to have been retained by the Petroleum Directorate and by section 26(1) of the said Act, they had no authority to spend the said monies as they did with the approval of the Appellant who had no such authority to authorise such payments. I have also perused the Provisions of Section 118 (1) (2) and (3) of the Constitution of Sierra Leone Act No. 6 of 1991. It state:

“Parliament may by a resolution passed in that behalf and supported by the votes of a majority of all the members of Parliament authorise the Government to enter into an agreement for the granting of a loan out of any public fund or public account.

(2) An agreement entered pursuant to subsection (1) shall be laid before Parliament and shall not come into operation unless the same has been approved by a resolution of Parliament.

(3) No loan shall be raised by the Government on behalf of itself or any other public institution or authority otherwise than by or under the authority of an Act of Parliament”.

The aforesaid provisions are very clear, simple and unambiguous speaking to the fact that no authority is bestowed on the Appellant to raise and approve loans on behalf of the Government. With such glaring provisions, where did the Appellant derive such authority to authorise the loan of such a whooping sum of USD14,000,000 Million Dollars from the coffers of Government. Also there is uncontroverted evidence that Rokel Commercial Bank did not receive all the USD 14,000,000 Million Dollars. With these several grave breaches so apparent, the Appellant acted as law to himself undermining the relevant state institutions and bodies responsible to take action.

In view of the overwhelming evidence against the Appellant, this ground of appeal is completely untenable and therefore fails.

#### Ground 7

The Appellants contestation on this ground of appeal is that there is violation of Section 149 (2) and (4) of the 1991 Constitution of Sierra Leone on the basis that the purported published Commissions Report is incomplete and therefore cannot be deemed in law as a judgment.

It is important to note that the Appellant who asserts that the Commissions of Inquiry report is incomplete has the primary onus to show that the unavailable report is adverse to his case. Merely stating that the report is incomplete with nothing more cannot aid the party asserting same.

It is also necessary to reproduce Section 149 (2) of the said constitution. It states:

“The President shall subject to the provisions of subsection (4), cause to be published the report of a Commission of Inquiry together with the White Paper thereon within six months of the date of the submission of the report by the Commission”.

The Appellant has also not shown the type or kind of missing report he is referring to. To merely suggest that a report is incomplete does not in any way violate section 149 (2) of the Constitution. The Appellant ought to have gone a step further to identify portions of the missing or incomplete report. This ground of appeal is also dismissed.

HON MR JUSTICE KOMBA KAMANDA J.A. ... *Komanda* .....

HON. MRS. JUSTICE TONIA BARNETT J.A. .... *th. neft* .....

