

S.C. 4/2015.

IN THE SUPREME COURT OF SIERRA LEONE
(IN ITS ORIGINAL JURISDICTION)

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT
NO. 6 OF 1991, SECTIONS 35 (2) & 122 & 124 (1) (A)

AND

**IN THE MATTER OF AN ACTION IN REGARD INTERNAL
ORGANIZATION AND PROGRAMMES OF THE SLPP CONTRAVENING
AND FAILING TO CONFORM TO THE DEMOCRATIC PRINCIPLES
CONSISTENT WITH THE PROVISIONS OF THE 1991 CONSTITUTION**

BETWEEN:

PLAINTIFF

ALLIE ESSA BANGURA

(SUING ON BEHALF OF HIMSELF AND AS REPRESENTATIVE OF)

Dr. Wusu Sannoh, Dr. Bobson Sesay, Chief Brima Keita,
Tamba Amara, Joseph Maada Kpulun, Alex M. Musa,
Hon. Helen Kuyembah, Mrs. Isata J. Kabbah, Hariatu H. Turay,
Sahr Nyama, Issa Dumbuya, Navo Kaikai, Suko Kai-Samba
Haja Jalikatu Salaam, Fattah Ibrahim, Jaiah M. Koroma, Amb Joe Biell,
Sulaiman Tejan-Jalloh, Victor Sheriff, Hon. Memunatu Koroma,
Mohamed A. Sandy, Joseph Bob Amara, Sheik Unisa Kamara,
Rev. Simeon D. Kamara
All being persons dissatisfied with the conduct of the elections for the National Officers of
The SLPP)
(C/O Mahereh House, Hill Sloop Drive, Off Regent Road, Hill Station, Freetown).

AND

CHIEF BAI SHEBORA SOMANO KAPPEN III
CHAIRMAN AND LEADER OF THE SLPP

1ST DEFENDANT

27 OTHER DEFENDANTS

2ND TO 27TH DEFENDANTS

CORAM:

The Hon. Mr. Justice V. V. Thomas, Acting Chief Justice - Presiding
The Hon. Mr. Justice N. C. Browne-Marke, JSC.
The Hon. Mr. Justice E. E. Roberts, JSC.
The Hon. Ms. Justice V. M. Solomon, JSC.
The Hon. Mr. Justice P. O. Hamilton, JSC.

COUNSEL:-

Yada Williams Esq. , M.L. Tarawally Esq., and Osman Jalloh Esq., for the Plaintiffs
Dr. BuBuakei Jabbi, A.Y. Brewah Esq., U.A. Jabbie for the Defendants.

JUDGMENT DELIVERED ON THE 15th DAY OF DECEMBER 2015

HON. MR. JUSTICE V.V. THOMAS - ACTING CHIEF JUSTICE

The Plaintiff, by Originating Notice of Motion dated 19th December, 2013 supported by several affidavits, has instituted an action in this Court in its Original Jurisdiction pursuant to sections 35 (2) & 122 & 124 (1) (a) of the Constitution of Sierra Leone, Act No. 6 of 1991 (the Constitution) for certain reliefs (hereinafter referred to as "the action"). He brings this action on behalf of himself and as representative of other members of the Sierra Leone Peoples Party (SLPP), of which he is a member.

The provisions of the Constitution pursuant to which the action was instituted state as follows:

"35 (2). The internal organization of a political party shall conform to democratic principles and its aims, objectives, purposes and programmes shall not contravene, or be inconsistent with, any provisions of this constitution".

While Section 122 of the Constitution makes provision for the extent of the jurisdiction of the Supreme Court and its powers. Section 124 (1) (a) deals specifically with the original jurisdiction of the Court and states that it shall have original jurisdiction to the exclusion of all other courts in all matters relating to the enforcement or interpretation of any provision of the Constitution.

The Plaintiff has prayed for the following reliefs:

"A. A Declaration that the elections held at the annual party Conference 2013 of the SLPP on the 17th day of August 2013 for the election of national Officers of the party more particularly, Chief Bai Shebora Somano Kappen III, the 1st Defendant, as Chairman and leader of the SLPP; Dr. Prince Harding, the 2nd Defendant, as Deputy Chairman & leader of the SLPP; Sulaiman Banja-Tejan-Sie, the 3rd Defendant, as National Secretary General of the SLPP; Amb. Alie B Kamara, the 4th Defendant, as Deputy National Secretary General of the SLPP; Dr. Abass Bundu, the 5th Defendant, as Regional Chairman of the SLPP Northern Region, Hon. Manso Dumbuya, the 6th Defendant, as Regional Chairman of the SLPP, Western Area, Hon. Philip Tondoneh, the 7th Defendant, as Regional Chairman of the SLPP, Eastern Region, Mrs. Lucrecia L Sheriff, the 8th Defendant, as National Women's Leader of the SLPP; Fatmata Sawanneh, the 9th Defendant, as Deputy National Women's Leader of the SLPP; Chief Sheku Kondeh, the 10th Defendant, as National Organizing Secretary of the SLPP; Alhaji Mohamed Fadika, the 11th Defendant, as Deputy National Organizing Secretary of the SLPP; Martha Kanagbo, the 12th Defendant, as of the SLPP; Hon. Tamba Sam, the 14th Defendant, Publicity Secretary of the SLPP; Musa Moigua, the 15th Defendant, as National Young Generation leader of the SLPP; Joseph T.N. Moody, the 16th Defendant, as National Young Generation Secretary of the SLPP; Christian A. Leigh, the 17th Defendant, as National Trustee of the SLPP Western Area; Hon. Rev. Dr. Princess Baba Jigida, the 18th Defendant, as National Trustee of

the SLPP; Alhaji Yayah Khadara, the 19th Defendant, as National Trustee of the SLPP Southern Region; Hon. Sheku T Sankoh, the 20th Defendant, as National Trustee of the SLPP Southern Region; Mohamed L. Tarawally, the 21st Defendant, as National Trustee of the SLPP Eastern Region; Sahr Lamin, the 22nd Defendant, as National Trustee of the SLPP Eastern Region; Rtd. Gen. M.S. Tarawally, the 23rd Defendant, as National Trustee for the SLPP Northern Region; Abu Abu Koroma, the 24th Defendant, as National Trustee of the SLPP Northern Region; Shiek Unisa Kamara, the 25th Defendant, as National Imam of the SLPP; and Bishop Emmanuel Konneh, the 26th Defendant, as National Chaplain of the SLPP, Hon. Edward Soloku, the Regional Chairman southern Region and Dr. James Rogers, the National Financial Secretary were undemocratic, unconstitutional and otherwise improper and therefore null and void.

- B. That this Honourable Court directs that fresh elections for the said positions for the said positions be conducted by the Independent Electoral Board on a date to be determined by this Court.
- C. That the Independent Electoral Board be ordered to compile and circulate the list of delegates eligible to vote at the Elections of the National Officers of the party at least 21 days before the date fixed for the said elections.
- D. Any further or other relief that this Honourable Court may deem fit and just.
- E. That the costs of and/or incidental to this Application be borne by the Defendants jointly and severally

The affidavits filed in support of this action are as follows:

1. That of the Plaintiff, Allie Essa Bangura sworn to on the 19th December 2013 with several exhibits attached in which affidavit he deposes that the Sierra Leone People's Party (the SLPP) is a registered political party under the provisions of the Political Parties Act. No. 3 of 2002. This Party conducted elections for its national officers during its Annual conference for 2013 in Bo on the 16th and 17th August 2013. The constitution of the party stipulates that these officers held office for a two-year period. The Plaintiff and those he represents allege in the said affidavit that both in the preparation for the elections and its conduct the proceedings were fraught with irregularities, were improper and inconsistent with democratic principles and that but for the said irregularities, the outcome of the said elections would have been materially different. The results of the said elections declared that the Defendants were the persons elected to various national offices.
2. That of Joe Kallon sworn to on the 19th December 2013.
3. That of Dr. Shekou Sesay sworn to on the 19th December 2013.
4. That of Gertrude Karimu (Mrs.) sworn to on the 19th December 2013.
5. That of Alimamy Tassoh Dumbuya sworn to on the 19th December 2013.
6. That of Gibril Angel Koroma sworn to on the 19th December 2013.
7. That of Hindowa Momoh sworn to on the 19th December 2013, and who was the chairman of the Independent Electoral Board which conducted the said elections.
8. That of Joe Kallon sworn to on the 28th September 2015, together with several exhibits attached.

The Plaintiff filed his Case on the 30th December 2013.

The Defendants filed their Case on the 9th July, 2015 a long time after the time limited to do so by the Rules of this Court. The affidavit in verification of the said Statement of Defendant's Case sworn to by the 1st Defendant was also filed on the 9th July 2015. In an affidavit sworn to by Dr. Bu-Buakei-Jabbi, one of the Counsel and Solicitors of the Defendants, on the 18th August 2015, the deponent deposed to the circumstances in which the Statement of the Defendants Case was filed and served after the date stipulated by the Rules of the Court. In the Statement of their case, the Defendants assert that the said election of national officers of the SLPP impugned by the Plaintiffs in the action "was conducted perfectly democratically and in regular

compliance and consistency with the relevant provisions" of the 1991 Constitution, the Political Parties Act, 2002 and the Constitution of the SLPP 1995 as amended and published. In paragraph 4 of the Defendants' Statement of Case they assert that the entire election process and proceedings are recorded in DVD cassettes which are exhibited as Exh. AA1 and Exh. AA2 in the verifying affidavit, in support of the contention that the said election was perfectly proper and valid and of no constitutional defect whatsoever. In exhibit BB to the said affidavit is exhibited the report of the Political Parties Registration Commission (PPRC) on the said election which is signed by the chairman of the Commission. I have found this report very helpful in coming to the conclusions I have reached in this action. While it may be true to say the Exhibits AA1 and AA2 do not disclose a chaotic atmosphere during the election process, the preparation for the election by way of the compilation of the Delegates List by the Party's Secretariat and the opportunity to verify the accuracy of that List are factors to be taken into consideration in determining whether the election was undemocratic and unconstitutional. Section 35 (2) of the 1991 National Constitution states inter alia that the internal organization of a political party must conform to democratic principles. The internal organization of a political party such as the SLPP must ensure that its national officers are elected by persons who are the true representatives of party members.

I have had the opportunity of reading in draft form the opinion of Roberts JSC and I am in broad agreement with it, but ~~which~~ to make some observations of my own. It is my considered opinion that the irregularities in the process from the preparation for the election and its conduct in August 2013 demonstrate that it was not conducted consistently with democratic principles. One irregularity in the preparation for and conduct of the election which has stood out in my evaluation of the evidence before the Court is the non-compliance with the Rules and Regulations promulgated by the Independent Electoral Board (IEB), in particular rule 6 of the Regulations for voting, as shown in Exhibit F in the Plaintiff's affidavit in support of the ONM.

That rule states as follows:

"6. Each aspirant will have access to the delegate list that will be used to ascertain persons whether those coming forward for voting are the persons whose names appear on the list"

In my view the purpose of this rule was to give a genuine opportunity to the aspirants to determine whether the right persons voted at the election. In paragraph 28 of the Plaintiff's said affidavit, he avers as follows:

"28. That I saw the list of delegates for the first time when it was handed over to me by the Chairman of the IEB to peruse on the night of 17th August 2013 a short while before the commencement of the voting."

In addition, paragraphs 20 and 21 of the said affidavit aver that throughout the nomination process the IEB did not verify whether the delegates, nominators and/or seconders were fully paid up members of the SLPP for the year prior to the Conference. By the Constitution of the party these were the only persons who were entitled to vote and be voted for. Further, it is alleged that the IEB did not verify the identity of the delegates to the Conference nor did it put in place a mechanism for the verification of the delegates. These are serious and substantial averments made by the Plaintiff which were not adequately dealt with by the Defendants and to my mind, speak to the issue as to whether the election was in accordance with democratic principles.

While the said rule 6 did not state a specific time period prior to the election within which the aspirants should have access to the delegates list, the spirit of that rule requires that it should have been provided some reasonable time before voting commenced. To have handed over the list at the time deposed to by the Plaintiff was unreasonable and in breach of the rule. I so hold. In its Report dated the 4th September 2013, (exhibited as EX. KI) the IEB itself reported that "up to the time the IEB was issuing out nomination forms, it had no access to the delegates list identifying registered and fully paid up members for at least one year". The Report concluded that the "Secretariat might have issued tags to unauthorized persons who manipulated the tense situation to their advantage".

The Constitution of the SLPP is exhibited as "C" to the Plaintiff's said affidavit in support of the action and it provides for the establishment of the National Executive Council (NEC) which is the principal administrative organ of the party, headed by the chairman and leader of the party. The National Secretary-General of the party is in charge and leader of the day to day running of the Party Secretariat. The said affidavit further deposes that at a meeting held on the 3rd and 4th August 2013, the NEC appointed a five man Independent Electoral Board (IEB) with terms of reference which provided that the Rules and Regulations for the conduct of the election should be widely circulated at least one week prior to the elections. These rules and regulations were only brought to the attention of the Plaintiff on the 17th August 2013 immediately before the start of voting at the election. The said rules and regulations provide in clause 6 of the same exhibited in the Plaintiff's said affidavit in support of the action that each aspirant will have access to the delegate list that will be used to ascertain whether those are the actual persons whose names appear on the list. No doubt this is to defeat impersonation. The Plaintiff alleges that this requirement in the Rules and Regulations was not complied with and this has not been denied by the Defendants. Further the Plaintiff has alleged that at the time of voting the IEB did not verify the identity of the delegates who appeared for voting nor was there a mechanism put in place for such verification. The list of delegates was prepared by the 3rd Defendant and indicated that 675 delegates were accredited to vote at the election and when this figure was challenged on a cursory viewing of the same, that number was agreed by both sides to be incorrect and thus reduced to 605. This averment was not denied or challenged by the Defendants which indicate that an incorrect list of delegates was prepared by the party's Secretariat. Both the reports of the IEB and the PPRC chairman confirmed the above mentioned irregularities among others.

In Exh. K1 and K2, the IEB confirmed as follows:

"the Board's expectation was to receive the delegates list, delegate tags with their names and photos and observer cards with names. This was not forthcoming from the secretariat. Even in situations where the national secretariat provided delegates photos they were incomplete and came in late on Friday, a day prior to electionsUp to the time the IEB was issuing out nominations forms, it had no access to the delegate list identifying registered and fully paid up members for at least one yearthe National Secretariat was supposed to have registered aspirants, identify them and ascertain whether they were fully paid up members of the SLPP or not ...the Board was virtually inundated in its secretariat by large crowds demanding tags, observer cards and other information, which seriously compromised the start up of the elections proper. In this confusion, the Secretariat might have issued tags to unauthorized persons who manipulated the tense situation of their advantage".

Given that I have come to the conclusion that the August 2013 election was not conducted in accordance with democratic principles, the next question for determination is whether such irregularities affected the result of the election. This is a requirement of the Common Law in order to declare the result of the election invalid. See **Morgan & others v. Simpson and anor** (1974) 3 All. E. R. 722. The affidavit evidence before the Court has not clearly shown that the irregularities did not affect the result that was declared by the IEB. The onus to prove this rests on the defendant after a case has been made out by the Plaintiff. See Halsbury's Laws of England, 3rd Edition page 150 paragraph 261; also Islington West Division Case. In **Mohamed K. Gamanga v Joseph M Kamanda** (1962) ALRSL. 79, it was held in dealing with the provisions of the Electoral Provisions Act 1962 that the burden of proof to show that the non-compliance with the Act did not affect the result of the election rests on the Respondent.

Although I am of the view that the election was not held in accordance with democratic principles as required by the Constitution, to declare the said election null and void at this stage will serve no useful purpose. The 1st relief (Declaration) prayed for by the Plaintiff is otiose at this stage. National officers of the SLPP are elected biennially and hold office for 2 years at a time before fresh elections are to be held. (see clause 3 (g) of the Party's Constitution). It is now time (some will say past time) for fresh elections for national officers to be held whether or not the Court declares the August 2013 election of national officers valid or invalid. It is the National Executive Council (NEC) as the principal administrative organ of the Party which is the body responsible for the organization of fresh elections for national officers at a properly convened Party Conference after holding lower cadre elections. These are elections which should be held in an atmosphere which indicate that the views of all party members count. I recognize that national officers form part of the NEC. The question of will arise as to which of the officers that were elected at the August 2013 elections should be part of that NEC. It is vital that any such fresh elections should be seen to be fair, transparent and democratic. The views of all members of the Party must be taken into account and only properly elected delegates should be allowed to vote. I can only hope that this matter of fair and transparent elections will be resolved within the Party so as to ensure its continued existence and unity in the country.

The 2nd relief which prays for fresh elections to be held by the Independent Electoral Board ought to be granted with the proviso that a new Board be created for the purpose of conducting such elections and composed of men and women of integrity who may be fully paid up members of the Party. Much criticism has been laid at the feet of the IEB which conducted the

August 2013 elections. The PPRC Report (Ex. BB) exhibited in the verifying affidavit of the 1st defendant states (in part) as follows:

"This was a Board difficult to assess because of it(s) rather casual and dilatory approach to its work. It struck us as a divisive board. They were at each other's throat even before us. We formed the opinion that some of them had compromised their position as members of an independent body. There was a total lack of control by the chairman, we found him to be intelligent but with insufficient self confidence to lead. For instance, he allowed himself to be manipulated by the Secretary-General. He was also not prepared to sacrifice his other avocation for the work as Chairman of the Board. Granted however, it is fair to say that due to the workload of the Board and the closeness of the election there was not enough time to apply all the rules and regulations pertaining to the election. For instance, they received the delegate list from the Secretary-General at 1.00 am - the morning of the election. The nomination form was issued on Friday and returned the following Saturday the day of the election".

It is in line with the finding of the said PPRC Report signed by its Chairman, that *"the Board was divisive, weak which rendered it incompetent, headed by a Chairman who was never in control of the Board"* that I will order that any fresh elections be conducted by a newly constituted Independent Electoral Board of competent and upright persons.

HONOURABLE MR. JUSTICE E.E. ROBERTS, JSC

The Plaintiff in this action Allie Essa Bangura is a member of the Sierra Leone Peoples Party (SLPP) and brings this action on behalf of himself and as representative of several other members of the SLPP who are named on the face of the Originating Notice of Motion (ONM) by which this action is brought.

The Plaintiff was a candidate at the election conducted during the Annual Conference of the SLPP held on the 16th and 17th August 2013, for inter alia the election of National Officers. The election was conducted by the Independent Electoral Board (IEB) appointed by the National Executive Council (NEC) of the SLPP.

The Plaintiff alleges that the Rules and Regulations for the conduct of the said election were only brought to his attention on the 17th August 2013 whilst he was in the conference hall immediately before the start of the election. He alleges that these Rules and Regulations were not widely circulated as required by the Terms of Reference of the IEB. He further complains that the IEB did not verify the identity of the delegates nor was there any mechanism for such verification. And so the nomination process was conducted without verifying the eligibility of aspirants, nominators and seconders.

At the end of the voting for the position of National Chairman and Leader for which the Plaintiff contested, the Plaintiff lost and the 1st Defendant was declared the winner. That as a result of the above irregularities complained of the Plaintiff and several other delegates subsequently withdrew their continued participation in the said election. The Plaintiff also complained that since the said election the Defendants have suspended several members of the

SLPP at various levels of the party hierarchy and that most of these members either supported his (Plaintiff's) candidacy for the National Chairman of the SLPP or were those that he represents in this action.

As a result of the above the Plaintiff has commenced this action by Originating Notice of Motion dated 19th December 2013 (ONM) praying for the reliefs summarized as follows:

1. A declaration that the election hold at the Annual Party Conference of the SLPP on the 17th August 2013 for the election of national officer was undemocratic, unconstitutional and otherwise improper and therefore null and void.
2. That this Honourable Court directs that fresh elections for the said positions be conducted by the Independent Electoral Board on a date to be determined by this Court.
3. That the Independent Electoral Board be ordered to compile and circulate the lists of delegates eligible to vote at the elections of the National Officers of the party at least 21 days before the date fixed for the said elections.
4. Any further or other relief that this Honourable Court may deem fit and just.
5. That the costs of and/or incidental to this Application be borne by the Defendants jointly and severally.

The ONM was supported by the affidavit of Allie Essa Bangura sworn on the 19th December 2013 together with Exhibits attached. The Plaintiff also filed several affidavits sworn to by Joe Kallon, Dr. Sheku Sesay, Gertrude Karimu, Alimamy Tassoh Dumbuya, Gibril Angel Koroma and Hindowa Momoh respectively, (all sworn to on 19th December 2013). The Plaintiff then filed a Statement of the Plaintiff's Case dated 30th December 2013 together with an affidavit verifying same which was sworn to on the same date.

The Plaintiff later filed a Notice of Motion dated 17th April 2015 praying for inter alia an injunction restraining the Defendants from organizing, conducting or carrying on the conduct of election within the SLPP pending the hearing and determination of this action. The Defendants opposed this application and after arguments this court delivered its Ruling on the 30th July, 2015 granting the injunction and ordered speedy trial of this action.

On the 9th day of July 2015 the Defendants filed a Statement of Defendants' case accompanied by a verifying affidavit sworn to on the 9th July 2015 to which were exhibited several documents. The case of the Plaintiff (as can be gleaned from the ONM, its supporting affidavit as well as the Statement of the Plaintiff's Case) is summarized as follows:

The Plaintiff contends that the conduct of the election for National officers of the SLPP held in August 2013 was inconsistent with the principles of democracy and in violation of Section 31(2) of the Constitution of Sierra Leone 1991 Act No. 6 of 1991 (The Constitution) and therefore irregular.

He alleges that several malpractices were committed during the said election. He submitted that the IEB did not widely circulate the Rules and Regulations governing the conduct of the said election held in August 2013. Referring to Exhibits D 1-5 (which were letters signed by the 3rd Defendant as National Secretary General appointing the members of the IEB) the Plaintiff states

that it was in the IEB's Terms of Reference for the Rules and Regulations for the conduct of the election to have been circulated at least one week prior to the conference date.

The Plaintiff also alleges that the list of delegates for the Annual Conference was not published until the day of the elections and a few hours prior to the commencement of voting. This meant that there was little room for the verification of the eligibility of the persons listed in the delegates list. He submitted that the 3rd Defendant represented to the IEB and the Annual Conference that there were 675 delegates but that the actual number of delegates should have been 605. The Plaintiff further alleges that of the 605 delegates 20 were absent from the Annual conference leaving the number of delegates to be 585. He alleges that 12 organizational member delegates were not fully paid up and were therefore ineligible to vote, and also that certain tertiary institutions provided 3 delegates whereas they actually should have provided one each. He mentioned other irregularities and concluded that there should have been only 566 eligible voters and not the 597 votes cast for the election of Chairman and Leader of the SLPP. The Plaintiff further submitted that the IEB could not ascertain the eligibility and identity of voters, adding that some of the tags issued to delegates by the IEB did not have photographs, leaving room for persons to impersonate delegates. The Plaintiff referred to the Rules and Regulations for the Bo Party Conference and highlighted inter alia that voting in absentia was not allowed, that valid total votes cast must not exceed total number of delegates and that in the event valid votes counted exceed the total vote cast, the results of such election will be quarantined and verification immediately conducted. Where the results of the verification confirms malpractice, that election will be cancelled and a fresh election conducted immediately. The Plaintiff therefore submitted that in the light of the above persons not entitled to vote, were allowed to vote, absent delegates were impersonated. That the election were therefore not free, fair and democratic.

The Plaintiff also contends that the IEB had no right to declare 25 aspirants duly elected as national officers without conducting elections for their positions. He alleges that there is no requirement that a candidate has to be physically present on election day. He submitted that the IEB was wrong in failing to conduct election for 25 positions as though absent from their election the candidates had been nominated and seconded and that the 25 officers were not voted for and were not unopposed. The Plaintiff contended that these malpractices affected the outcome of the elections stating that had it not been for these malpractices the outcome of the election would have been materially different. The Plaintiff finally submitted that the election of National officers of the SLPP held in Bo in August 2013 was not free and fair hence contrary to the democratic principles enshrined in the Constitution.

The Defendants' response is contained in the Statement of the Defendants' Case as well as the affidavits filed on behalf of the Defence.

The Defendants contend that the election of National officers of the SLPP held on the 17th August 2013 was in regular compliance and consistent with the Constitution and the SLPP Constitution and therefore regular and valid.

Counsel for the Defendants submitted that a smooth nomination process was conducted in respect of all the positions due for election. He submitted that there was a proper verification of the list of delegates and this was done by the IEB asking everyone in the Conference Hall to move outside so as to allow verification of delegates from all internal and diaspora branches of the party by ensuring that only certified or confirmed delegates would be allowed to come back

into the Hall for the voting process. The delegates were called back into the Hall individually by name, district by district as well as by individual diaspora branches based on the list of delegates presented to the IEB.

The chairman of the IEB then called upon the two nominees for the position of chairman and leader of the SLPP to check and verify the delegates list and to sign the ballot papers. A few objections were raised and resolved under the supervision of the IEB. The two nominees were escorted to the voting area to inspect their respective ballot boxes and for each to lock his box and keep the key.

The delegates were again called out individually, name by name and district by district so that they can come forward to publicly receive a ballot paper each and to go and cast their ballot. After voting the two nominees for the position of Chairman and Leader were called upon to go into the enclosed counting room together with a representative each for the counting to be done confidentially and in their presence. After the counting the 1st Defendant won the election.

Counsel submitted that it was after this and after the position of Deputy Chairman and Leader was called up for the next poll that the Plaintiff and some delegates walked out of the Hall adding that it clearly seemed that the walk out took place because the Plaintiff had lost the election and not as a result of the lack of transparency, irregularities and ineligibilities alleged by him.

Counsel for the Defendants submitted that *“broadly speaking, most of the said shortcomings, irregularities, flaws or imperfections concerned measures in preparation for staging the Conference and holding the biennial National Officers election. There had not been any established stipulations on some of them before the 2013 Conference. On the Rules and Regulations for internal Party elections, for instance, the latest concerned only the internal election of the Party’s Flagbearer candidate for the 2012 national Presidential election. There was no such document for the 2013 National Officers election; and the IEB had to be requested to do a proposed draft that could be used for that purpose, although not necessarily as an established instrument by then. The short time frame within which that had to be done delayed their general availability to the Conference; and election personnel.*

Counsel for the Defendants challenged the Plaintiff’s description of himself as a fully paid up member of the party alleging that whilst he claimed to be a distinguished grand chief patron his payment recorded in his card was Le50,000 for chief patron. He submitted therefore that the Plaintiff was not fully paid up in the status of distinguished Grand Chief Patron of the party.

Counsel submitted that the Plaintiff was part of the post-nomination as well as the pre-voting consultations especially in respect of the election of chairman and leader of the party. This according to him was noted in item 9 of the “findings of facts” by the PPRC in its Report. Counsel reiterated the committed involvement of the Plaintiff in the process leading up to and including the election of the Chairman and Leader which led to the PPRC stating that “the parties (contestants for the Chairmanship) acquiesced or consented to some of the irregularities.” He stated that a video recording which is exhibit AA1 would show the atmosphere of the election which he described as one with no undue problem, adding that the video would show that there were no objections rejected before the voting commenced. He concluded that the election process was not undemocratic but was regular.

During the course of proceedings the Court requested and was provided with a Report by the PPRC dated 22nd August 2013 on the conduct of the said election and Counsel on the either side were permitted to comment on the said Report. In this regard Counsel for the Defendants referred to the conclusion on the last page of the Report, adding that the Defendants by themselves had no control of the electoral process.

Counsel for the Plaintiff commented on the PPRC Report by stating that the second Report was in disagreement with the first Report requested by the Court and that at the date of that first Report the Plaintiff had not submitted his report of the irregularities he observed about the election.

Let me now deal with the several issues raised for determination in this action. As regards the jurisdiction of this Court with respect to this action, there is no doubt in my mind that the subject matter of this action is one that is clearly contemplated in section 35(2) of the Constitution. Section 35(2) provides as follows:

The internal organization of a political party shall conform to democratic principles, and its aims, objectives, purposes and programmes shall not contravene, or be inconsistent with, any provisions of this Constitution.

The substance of the Plaintiff's complaint is that the election of National officers of the SLPP, a political party registered in this country, was conducted in an undemocratic manner and contravened the democratic principles enshrined in the Constitution. This surely relates to Section 35(2) of the Constitution and the Plaintiff is clearly seeking to enforce that section of the Constitution which he alleges has been violated or not complied with. Indeed Section 124 of the Constitution confers original jurisdiction to this court in respect of all matters relating to the enforcement and interpretation of the Constitution. This Court therefore has jurisdiction to hear and determine this matter.

In addressing the issues raised in the Plaintiff's Case I shall first have to determine whether indeed the Plaintiff has adduced sufficient evidence to establish that there were irregularities in the conduct of the said elections. I would then have to analyze the nature and extent of the alleged irregularities with a view to determining whether they were serious or widespread enough to possibly effect the outcome of the election or whether they are such as to warrant the declaration of the election as undemocratic and therefore null and void.

I shall now turn to the several allegations of malpractices and irregularities in the said election as contained in the Statement of Plaintiff's Case. The first allegation was that the Rules and Regulations for the conduct of the elections were not widely circulated by the IEB within the required time. According to the Plaintiff this was to have been done at least one week prior to the conference date. Indeed this requirement is contained in Exhibits D1 - D5 and Exhibit E which are letters of appointment appointing the various members of the IEB. For ease of reference I shall reproduce here only Ex. D1 (which is similar if not identical to Ex. D2 -D5).

*"SIERRA LEONE PEOPLES PARTY
ONE COUNTRY ONE PEOPLE
Hon. Victor L. Thomas
Member
SLPP - Electoral Board*

Freetown

7th August, 2013

Dear Hon. Thomas,

RE: APPOINTMENT AS MEMBER

At the last meeting of the National Executive Council (NEC) held on Saturday and Sunday, 3rd and 4th August 2013, respectively, you were unanimously elected as Member of the SLPP Electoral Board, 2013 National Delegates Conference to be held in Bo from the 16th to 17th August 2013.

Other members of the commission are listed below:-

13. Hon. Mrs. Bintu Myers - member[s] - Eastern Region

14. Hon. Mrs. Elizabeth Alpha-Lavallie - Southern Region

15. Hon. Victor L. Thomas - Western Region

16. Dr. Sheku Sesay - Northern Region

The Secretary to the [commission] is Mr. Michael Musa.

The Terms of Reference (TOR) for the conduct of the said elections is stipulated thus:

That the Rules and Regulations for the conduct of such elections should be widely circulated at least one week prior to the conference date.

That the conduct of the said elections should be simple majority

To ensure that all endorsed delegates are fully registered and paid-up, by demanding proof of payment for at least one year.

Any other Rules and Regulations that the [Commission] may deem necessary for the conduct of the elections.

Thanks for your cooperation.

Yours faithfully,

(Sgd) Sulaiman Banja Tejan-Sie

National Secretary-General

From the above letter it is evident that the NEC of the SLPP met on the 3rd and 4th of August 2013 and elected the members of the IEB but it was only on the 7th of August 2013 that their election or appointment to the IEB was communicated to them. It is not even clear or certain that the members of the IEB received their letters of appointment on the 7th August 2013, that is the date of their letters. What is apparent and rather curious is that these letters were dated the 7th for a conference to be held on the 16th and 17th of August 2013, leaving barely 8 days to the newly constituted IEB to meet, formulate guidelines, Rules and Regulations and circulate same "at least one week prior to the conference." Surely it must have occurred to the NEC of the party that given the time frame it would have been most challenging for the IEB (which is made up of members representing the various regions of the country) to meet, formulate Rules and Regulations and circulate them to members at least one week to the conference, when they were only appointed on the 7th August and the conference was only 8 days away. If therefore the Rules and Regulations were not circulated in time for the conference as required, that cannot be truly attributed to the IEB who had conduct of the election. But when were these Rules and Regulations actually circulated? The Plaintiff alleges that he only saw them for the first time on

the date of the election i.e. 17th August 2013. This was confirmed by the chairman of the IEB Hindowa Momoh in an affidavit sworn to on the 19th December 2013 in which he deposed in paragraph 7 as follows:

That on the 17th August 2013 the IEB circulated the Rules & Regulations for the Bo Party Conference of the 15th to 17th August 2013. The said Rules and Regulations provided inter alia at clause 6 thereof. "Each aspirant will have access to the delegate list that will be used to ascertain persons whether those coming forward for voting are the persons whose names appear on the list.."

Even though the failure to circulate the Rules and Regulations for the conduct of the elections at least one week before the election could not wholly be attributable to the IEB, yet to do so only on the day of the election is irregular as it would not give or afford any or sufficient time or opportunity to delegates to know the rules and prepare to comply with them in time for the election. For example some delegates may not have even been prepared to produce evidence of payment of dues for at least one year as they would not have been aware of that regulation.

The second complaint of the Plaintiff is that the delegates list was not published prior to the election day. To ascertain whether the list of delegates was published in time or not, I must find out what was the time required or stipulated for the publishing of such list. The Plaintiff did not point out any document or instrument in which the time for the publishing of the list of delegates was stipulated. In this regard I have perused the Rules and Regulations (Exhibit F) produced by the IEB. Paragraphs 1,6,7 and 8 of these Rules and Regulations read as follows.

- "1. All delegates will be accredited by the Independent Electoral Board using the approved list provided by the National Executive and signed by the Regional Chairpersons*
- 6. Each aspirant will have access to the delegate list that will be used to ascertain [persons] whether those coming forward for voting are the persons whose names appear on the list*
- 7. Roll call of delegates will be undertaken for every election*
- 8. When a delegate's name is called from the list, he/she moves forward to receive a duly validated ballot paper from the ballot paper issue[r] (one of the Board members) who will be located in an open area visible from all sides of the hall."*

From the above it is clear that no express time is stipulated for the publishing of the delegates list. Paragraph 6 in fact merely stated that each aspirant should have access to the list which will be used to ascertain whether those coming forward to vote are the persons whose names appear on the list. Of course my reading of paragraph one of the Rules and Regulations quoted above suggests that the IEB should have received the list in time in order to use it to accredit the delegates. But what is evident is that there was no express time fixed or laid down for the publishing of the list of delegates. This has made it difficult for me to readily agree with the Plaintiff's complaint as there is no express time stipulated that was breached or not complied with. No doubt the delegates list should have been published within a reasonable time prior to election day. However it would appear from Exhibit F (the Rules and Regulations) and the evidence of what transpired at the election that the purposes and use of the list of delegates were largely accomplished on that day, an argument forcefully advanced by counsel for the Defendants. In other words paragraphs 6, 7 and 8 of the Rules and Regulations quoted above required that on election day a roll call of all delegates should be conducted, that the name of

each delegate would be called up to receive his/her validated ballot paper and perhaps most significantly each aspirant would “ have access to the delegates list” which will be used to ascertain the eligibility of the voter. According to counsel for the Defendants all of the above regulations were followed on election day.

At paragraph 5 (a) and (b) at page 6 of the Statement of Defendant’s Case it was submitted as follows.

- a) *A smooth nominations process was conducted in respect of all the National Executive positions due for elections.*
- b) *Verification of Lists of Delegates: All persons in the hall were asked to go outside so as to allow for a verification of the lists of delegates from all internal and diaspora branches of the Party by ensuring that only certified or confirmed delegates would be allowed to come back into the hall for the voting process on all fronts. The delegates were then called back into the hall individually by name, district by district , and by individual diaspora branches, based on the delegates lists presented to the IEB, signed by the then (now former) National Chairman and Leader, Mr. John Oponjo Benjamin, and also by the then Regional Chairmen and district Chairmen. A few objections or misgivings which were raised were resolved and settled under the supervision of the IEB Chairman .*

Again my viewing of the video recording (Ex. AAI) leaves me with the general impression that paragraphs 6,7 and 8 of the Rules and Regulations were largely complied with as there seemed to be an orderly process of name calling and delegates filing past, thereby leaving little room for impersonation, as well as giving a clear opportunity to object to a delegate who is seen moving up but whom an aspirant or his supporters or any delegate would have some queries against. No doubt publishing of the list on the day of the election and barely hours before voting, caused problems and this was certainly not an ideal preparation for voting. However publishing the list on the day of voting did not breach any express requirement, rule or regulation governing or relating to the said election. Furthermore, as stated earlier, the process followed by the IEB as contained in paragraphs 6,7 and 8 of the Rules and Regulations has persuaded me to conclude that the challenges emanating or resulting from the late publishing of the list were largely addressed and surmounted.

Let me now turn to the other specific complaints of the Plaintiff relating to the allegations of the voting by ineligible persons. In paragraph 5 (page 18 – 21) of the Statement of Plaintiff’s Case, the Plaintiff further catalogued several instances of impersonation, voting by ineligible voters and the unauthorized increase in the number of representatives who could vote for their organizations.

The Plaintiff alleges for example that. Mohamed L. Sesay who is the young generation leader Constituency 106 was impersonated and another person voted in his stead. (See paragraph 37 of the affidavit of Plaintiff sworn to on 19th December 2013 in support of the ONM). The Plaintiff referred to Exhibits H1 and H2 which according to him shows the photograph of the impersonator. I am afraid there is nothing in these exhibits to confirm the allegation that Mohamed L. Sesay was impersonated. Most crucially there is no evidence before me (not in Exhibit G which is the list of delegates or anywhere else) to confirm that indeed someone else actually voted for or in the name of Mohamed L. Sesay. Similarly, the allegation that Jenifer

Sogbande was impersonated was not substantiated and there is no evidence that indeed someone else voted in her name or place.

Also in paragraph 37 (iv) of the Plaintiff's affidavit in support of the ONM it is alleged that IBATECH was accredited a delegate even though it was not a tertiary institution where there is a functional SLPP executive. I am afraid I find this allegation a bit vague and is one that certainly has not shifted the burden of proof to the defence. In the first place it is not clear whether the complaint is that Ibatech is not a tertiary institution or that it is but it does not have a functional SLPP executive. Again it has not been established that the Ibatech delegate actually voted.

The Plaintiff in paragraph 26 of his affidavit of 19th December 2013 in support of the ONM stated that the list of delegates he was shown originally had 675 delegates and that he succeeded in striking out 70 names. Curiously howsoever he has not explained to this court the identity of the delegates he succeeded in striking out and this leaves open the possibility that some if not all the allegations he is now pointing out were or may have already been addressed by the IEB when it struck out these names before the election. I make the above observations particularly in the context of the burden of proof which as admitted by counsel for the Plaintiff, lies with him. It is the obligation of the Plaintiff to prove that there were irregularities and or non-compliance or that such irregularities and non-compliance substantially affected the result of the elections, or perhaps that there were such irregularities as to warrant an annulment of the election.

Again the Plaintiff complained that 20 delegates were absent. In paragraph 34 of the Plaintiff's affidavit in support of the ONM sworn on 19th December 2013 the Plaintiff listed 20 names of delegates whom he alleges were absent. Curiously however it was only 2 of them (Gibril Angel Koroma and Alimamy Tassoh Dumbuya) who deposed to affidavits to confirm their absence. (See also paragraph 5.2 iv of the Statement of the Plaintiff's case). I am not for one moment suggesting that all 20 absent delegates must file affidavits but there is little or no evidence to support the allegation of the absence of the 18 others. In this regard also there is no evidence that any person voted in their place or stead.

As noted earlier in this judgment the Plaintiff has not been able to tell this Court the actual number of delegates who should be on the list as ordinarily entitled to vote (subject of course to verification). Also telling is the Plaintiff's inability to be clear or consistent in his allegation about the total number of ineligible delegates in the list of voters as revealed or confirmed by his own investigations. In this regard I will refer firstly to paragraph 38 of the Plaintiff's supporting affidavit where he deposed as follows:

That in view of the ineligible, abstentions and absent delegates the total number of delegates who should have voted in the said elections for the position of National Chairman and Leader of the Party and other elective offices should not have exceeded 560. This leaves an excess figure of 37 delegates.

On the other hand in paragraph 5.2 x of the Statement of Plaintiff's Case (page 20 thereof) it is stated as follows:

If therefore there are 566 delegates who should ordinarily have voted at the elections certainly there cannot be 597 votes cast in the elections for the election of the Chairman

and Leader of the SLPP. The Plaintiff in regard the elections for the position of Chairman and National Leader of the Party polled 287 votes while the 1st Defendant polled 310; this brings the total votes cast for this position to 597. Certainly this can only mean malpractices were committed at the said elections. The 30 irregular/illegal delegates and the votes they cast at the elections for the position of Chairman and Leader of the Party tilted the elections in favour of the 1st Defendant. Counsel therefore submits that had it not been for the irregularities set out above the Plaintiff would have won the said elections.

It is evident that Plaintiff is making clearly inconsistent allegations in the following respects. In his supporting affidavit of 19th December 2013 the Plaintiff is saying that taking away the ineligible and absent voters the actual number of delegates in the list should not exceed 560 whereas in his written Statement of Plaintiff's Case he alleges that the list should have been 566 voters. Again in his affidavit he claims that there was an excess of 37 delegates whereas in his Statement of Plaintiff's Case he alleges that there were 30 excess or irregular voters.

This lack of clarity or consistency is again most significant within the context of the burden of proof that rests with the Plaintiff as earlier stated in this judgment.

In the light of ~~the~~ all of my considerations above I accept that there were instances of irregularity in the electoral process both prior to and during the voting and this included the failure to circulate the Rules and Regulations prior to the election. But the Plaintiff has clearly failed to persuade me that these irregularities were serious or widespread enough for me to declare the above election as undemocratic and therefore void. It is my view that in the circumstances of the said election the IEB took adequate steps in ensuring that there was reasonably adequate opportunity for checking the identity of delegates who were called up one by one before the voting actually begun. The Plaintiff's case was certainly not helped by the lack of clarity or consistency in some of his allegation, especially when it is observed that the difference in votes between the Plaintiff and the 1st Defendant for the position of chairman and leader was 23.

As regards the conduct of the election of the other officers I am afraid the Plaintiff has not adduced any or sufficient evidence to establish that those officers were not duly elected. The Plaintiff and some other delegates walked out of the Hall after the result of the poll for the Chairman and Leader was announced. According to the Final Report of the IEB (Exhibit K), "contests were very minimal as aspirants either withdrew their candidature or did not show up..... The Board, in order to fully carry out its mandate, had no choice but to continue the election process to cover all the 31 positions. The Board did all it could to the best of its ability to professionally ensure a peaceful outcome of the election." I accept this assessment of the IEB as contained in Exhibit K. The Plaintiff has not adduced any evidence sufficient to persuade me to hold that the election of these other officers was irregular.

I have read the judgment of their Lordships in the case of *Morgan & Others V Simpson and Another* 1974 2 All ER 722. I find the dictum in that case to be very instructive although I must caution that in that case the learned justices were dealing with the conduct of elections under a certain legislation the provision of which had to be construed in the judgment. The guidelines as stated by Lord Denning at page 728 of the judgment are summarized as follow:

- (1) If the election was conducted so badly that it was not substantially in accordance with the law as to election, the election is vitiated, irrespective of whether the result was affected, or not.
- (2) If the election was so conducted that it was substantially in accordance with the law as to elections, it is not vitiated by a breach of the rules or a mistake at the polls provided that it did not alter the result of the election.
- (3) But, even though the election was conducted substantially in accordance with the law as to elections, nevertheless if there was a breach of the rules or a mistake at the polls and it did affect the result then the election is vitiated.

Applying the above guidelines (suggested by Lord Denning) to the instant case, I have come to the conclusion that there was no substantial breach of the rules and regulations governing the conduct of the election. I have also come to the conclusion that the breaches and irregularities complained of have not been shown to have any adverse or material bearing or effect on the outcome of the election. Also I cannot find any other reason why I should declare the election void and undemocratic. The election conducted was substantially in accordance with democratic principles and the rules and regulations governing same. I have also read the case of *Gamanga V. Kamanda* 1962 ALR 31 which I cited with approval in my judgment in the case of *Civ. App. 6/2010 Mohamed Bai Sama Kamara V. Mohamed Bai Maru Kamara delivered on the 25th January 2011*. In the *Gamanga* case it must be noted that Bankole Jones Ag. CJ came to the conclusion that “*corrupt practices extensively prevailed*.” This is certainly not a conclusion I have drawn in the present case. Furthermore I do not think that the stated irregularities could or may have influenced the outcome of the election.

I have carefully read the IEB's Final Report dated 4th September 2013 signed by its members, as well as its corrigendum dated 11th September 2013 (which I note was only signed by the Chairman). I note the challenges faced by the IEB in the conduct of the election, and their efforts to address and surmount them, as recorded in its Final Report.

I have had the opportunity of perusing the Report of the PPRC signed on the 22nd August 2013 in which it was concluded as follows:

In conclusion the Commission is satisfied with the conduct of of the SLPP Delegate Conference. The Commission is of the view that the elections held were Peaceful, Free, Fair and Transparent.

I have also perused the other Report of the PPRC dated 30th December 2013 including its findings and recommendations. Notwithstanding the above and having noted the contents of the said Reports, I have had to go through all the evidence and have thus come to my own conclusion in this judgment.

Again I have not failed to observe that the term of the present executive and national officers of the SLPP (which includes the Defendants) ought to have ended about a couple of months or so ago. This has not affected my considerations and conclusions above and I therefore do not wish to make any further comments in this regard.

Having come to the conclusions that I have stated earlier I hold that the Plaintiff has failed to adduce sufficient evidence to persuade the Court to declare that the election of National officers held on 16 -17 August 2013 was undemocratic or unconstitutional.

Notwithstanding the conclusions arrived at in this Judgment, this Court has noted with regret the irregularities in the conduct of the said election which could most certainly have been avoided. This Court therefore gives the strongest warning that for future elections the relevant electoral body must ensure that not only the rules and regulations governing such elections but also the list of delegates shall be prepared, published and circulated well in time to afford all members of the Party enough time and opportunity to prepare for such elections. It is vital that such future elections are seen to be fair, transparent and democratic. The views of all members of the Party must be taken into account and only properly elected delegates should be allowed to vote.

HONOURABLE MR. JUSTICE V. V. THOMAS - AG. CHIEF JUSTICE

For the foregoing reasons, the Court makes the following orders with accompanying directions:

1. That the 1st relief prayed for is refused. It is the view of the Court that disputes about the manner in which a political party's election is held, is best heard and tried in the High Court.
2. That the elections for national officers of the SLPP are to be organized by the National Executive Council of the Party in view of the fact that the tenure in office of the national officers elected in August 2013 has expired,
3. For the purposes of such elections of national officers of the Party, the Independent Electoral Board that shall be constituted shall publish both the Rules and Regulations for the conduct of the said elections as well as the delegates list at least 21 days before the date fixed for such elections.
4. That the parties shall bear their respective costs of the action.



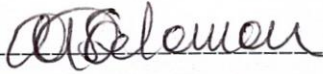
HON. MR. JUSTICE V. V. THOMAS,
ACTING CHIEF JUSTICE.



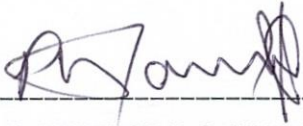
HON. MR. JUSTICE N.C. BROWNE-MARKE,
JUSTICE OF THE SUPREME COURT



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



HON. JUSTICE V. M. SOLOMON,
JUSTICE OF THE SUPREME COURT



HON. MR. JUSTICE P. O. HAMILTON,
JUSTICE OF THE SUPREME COURT