

DRAFT

MISC. APP 1/2019

IN THE SUPREME COURT OF SIERRA LEONE

(ORIGINAL JURISDICTION)

BETWEEN:-

CHANG YOUNG CHI & 10 OTHERS - APPLICANTS/RESPONDENTS

AND

THE INSPECTOR GENERAL OF POLICE - RESPONDENTS/APPLICANTS

&

THE ATTORNEY GENERAL & MINISTER OF JUSTICE - “

CORAM:-

HON. MRS V. M. SOLOMON JSC

HON MR. JUSTICE A. B. HALLOWAY JSC

HON MR. JUSTICE A. S. SESAY JSC

HON MR. JUSTICE M. DEEN TARAWALLY JSC

HON MR. JUSTICE SENGU KOROMA JSC

COUNSEL:-

Mr. O. I. Kanu Esq. and Fewry (Ms) for the Respondents/Applicants

Mr. C. F. Margai Esq. for the Applicants/Respondents

RULING

1) BACKGROUND/APPLICATION:

A brief background necessitating this present application is vital to its consideration. The applicants herein (hereinafter called “The Accused”) were the accused persons in Magistrates Courts No.1 holden at Freetown. The accused pleaded guilty and were fined Le558,849,400/00 as per the judgment dated 4th September, 2009. They filed an application to the Court of Appeal which was dismissed by the Court in its ruling of 21st October, 2010. By solicitor’s letter of 9th October, 2009 their solicitors wrote to the then Hon. Chief Justice seeking a summary review pursuant to Chapter 17 of the Laws of Sierra

Leone 1960. The review was denied as it was her Ladyship's view that it was not a matter for judicial review.

- 2) The accused persons by an Originating Notice of Motion dated 17th November, 2009 applied to High Court for judicial review by way of Certiorari and Mandamus. The orders sought were refused and leave to appeal to the Court of Appeal was granted with directions thereto. The Court of Appeal allowed the appeal and the accused persons filed for consequent orders which were refused by a ruling of 21st October, 2010. Then an appeal was filed to this Court for the decision of the Court of Appeal be set aside and substituted by one in their favour and for further orders as may be just. This Court granted the first relief sought and refused the second.
- 3) The Master & Registrar by letter of the 12th April, 2018 forwarded all requisite documents to the Financial Secretary of the Ministry of Finance and Economic Development. Thereafter the accused persons filed a Judges Summons in which the Financial Secretary was the respondent and that the latter was to pay the sum of Le558,849,400/00. The respondents therein herein the applicants objected to the application in the grounds to wit, that the respondent is not a party to the action herein; that the file number used Misc.App.SC 1/2018 is at variance with the original and substantive matter which was intituled SC. CR. App 1/2010 and lastly that the application as filed has not complied with the proper procedure laid down for enforcement of judgments against the Government of Sierra Leone. By ruling of 23rd July, 2018 this Court refused the application and ordered that the correct procedure is that laid down in the State Proceedings Act 2000 (hereinafter called "The Act").
- 4) By another application to this Court by Judges Summons dated 15th October, 2018; all the orders sought were refused by its ruling of 4th February, 2019. The applicants thereafter filed another Notice of Motion dated 19th February, 2019 seeking 5 (five) orders from this Court constituting of 5 (five) Judges.

5) The present application is filed by the respondents/applicants herein in which they are seeking the following orders to wit:-

1. *That this Honourable Court grant an order dismissing the notice of motion dated 19th February, 2019 (hereinafter referred to as the notice of motion) filed on behalf of the Applicants/Respondents for irregularities on the grounds that the Applicants/Respondents failed to invoke the original jurisdiction of this Honourable Court in seeking a declaration that Sections 18 (1) (a & b); Section 18 (2); and the proviso to Section 21 (3); of Act No. 14 Of 2000; violate and are inconsistent with Section 133 (1) of the Constitution of Sierra Leone 1991 (Act No. 6 of 1991).*
2. *That this Honourable Court do make an Order dismissing the notice of motion on the grounds that the application ought to have been made pursuant to Order 23 Rule 10 of the High Court Rules, C.I No. 8 of 2007 to cure an accidental slip of omission made in the Ruling of 4th February, 2019.*
3. *That this Honourable Court do make an Order staying all further or other proceedings in this action pending the hearing and determination of this application herein.*
4. *An order for costs against the Applicants/Respondents.*
5. *Any other Order that this Honourable Court will deem fit and just.*

Their application is supported by the affidavit of Precious Fewry with several exhibits thereto. There is no affidavit in opposition.

6) SUBMISSIONS BY THE APPLICANTS:

Counsel Mr. O. I. Kanu Esq. for the respondents/applicants herein relied on the affidavit in support. Counsel submitted that the application on Notice of Motion dated 19th February, 2019 is invoking the original jurisdiction of this Court and that the format of the said paper is not proper. He relied on Section 124 of the Constitution of 1991 (hereinafter called "the Constitution") and submitted that by invoking the original jurisdiction of this Court the Motion Paper of 19th February, 2019 is not proper in its proper form, a fortiori this Court is deprived of the jurisdiction to entertain the application as the process is not initiated by an Originating Notice of Motion.

7) In relation to the 2nd order to cure the clerical error, counsel referred to Order 23 of the High Court Rules 2007 (hereinafter called "The Rules").

He submitted that the application of 19th February, 2019 is filed as Misc/App.S.C 1/2019 which referred to another matter and so the application is irregular and should be dismissed. Counsel referred to 3rd order on Motion of Motion dated 19th February, 2019 and submitted that the Ruling of 20th March, 2018 is intitled S/C C.R. App 1/2010 in which 5(five) judges gave that ruling. Section 126 of the Constitution does not allow the Court to revisit its decision when its coram is 5 (five) Justices. He concluded that Section 126 of the Constitution is not applicable.

- 8) Mr. Kanu in reply to Mr Margai submitted that the 2nd order sought on motion paper of 19th February, 2019 invokes the original jurisdiction of this Court pursuant to Rule 89 of the Supreme Court Rules 1982 (hereinafter called "The Rules") and Section 127 of the Constitution tells of its effects. He submitted that counsel for the respondents cannot complain about a defect and then seeking several orders. The defect on the judgement should be corrected first before the other orders can be sought pursuant to that judgement.

9) SUBMISSIONS BY THE RESPONDENTS:

Counsel for the respondents submitted that the application is misconceived as his application based on an application to review ruling of 3 (three) justices to 5 (five) justices. He submitted the matter is on-going and that the case of Hinga Norman is distinguished from proceedings herein. He submitted that his application is based under Sections 16(3); 127; (7)(5) of the Constitution of 1991 (hereinafter called "The Constitution"). He submitted that the coram of 5 (five) justice can correct a clerical error of 3 (three) justices. That if the numbering of the case is incorrect, that is an administrative matter. He concluded that the application is without merit.

10) FINDINGS:

The present application is seeking orders for the dismissal of the Motion Paper dated 19th February, 2019. My consideration will be limited to the various issues raised on the said motion though I am bound to consider the orders sought on the Motion Paper of 19th

February, 2019. I shall only be considering the orders as filed and not their merits. I shall commence my consideration of the 1st order sought by the respondents/applicants. Counsel has raised several irregularities bordering on the Act and the Constitution.

- 11) The gravamen of counsel's submission is that the Motion Paper of 19th February, 2019 as filed seeks orders which invoke the original jurisdiction of this Court a fortiori the proper format should have been by Originating Notice of Motion and not by Notice of Motion. In brief counsel for the respondents is seeking a declaration from this Court that Sections 18(1)(2); 21(3) of the Act of 2000 are inconsistent with Section 133(1) of the Constitution; that a clerical error be corrected by Order 23 Rule 10 of the High Court Rules 2007 in that Section 24(1) of the Act should read Section 21(4) of the Act. Counsel is also invoking Sections 122(2); 126(b) and 127(1) of the Constitution.
- 12) The question for my consideration is whether the orders sought on the Motion Paper of 19th February, 2019 fall under the original jurisdiction of this Court. I have referred at great length and detail to the chronology of events of this matter since its commencement in the Magistrates Court as not to have done so would have left the facts in a vacuum. Counsel for the respondents is invoking a declaration that Sections 18(1) (2); 21(3); of the Act are inconsistent with Section 133(1) of the Constitution. Does a declaration pursuant to Section 133(1) of the Constitution invoke the original jurisdiction of this Court? Mr. Kanu has argued that it is, hence he has filed this application. On the other hand Mr. Margai has argued that the proceedings are a continuation from the ruling of this Court delivered on 4th February, 2019 hence the Motion Paper of 19th February, 2019 is in its proper format as filed. Permit me to refer to the provisions of the Constitution which are germane to my consideration.
- 13) There was a ruling of this court on 4th February, 2019 comprising of three (3) justices in which the application of Mr. Margai was refused and no costs awarded. He then filed this Motion Paper seeking in the 1st order that a panel of 5 (five) justices been panelled pursuant to

Section 126(b) of the Constitution. That is his right pursuant to Section 126(b). But counsel has gone further to seek Orders 2 and 3 which Mr. Kanu claims invoke this Court's original jurisdiction. Rule 89 of the Supreme Court Rules 1982 (hereinafter called "The Rules") provides that every action invoking the original jurisdiction of this Court **SHALL** be commenced by Originating Notice of Motion in Form 8 in the First Schedule and it states further the contents of the said application. There are several cases relating to the construction of Section 133 relating to claims against the Government. Section 133(1) reads thus:

"133 (1) where a person has a claim against the Government, that claim may be enforced as a right by proceedings taken against the Government for that purpose, without the grant of or the use of the process known as Petition of Right.

(2) Parliament shall, by an Act of Parliament, make provision for the exercise of jurisdiction under this section."

This Court is granted its original jurisdiction in Section 124 of the Constitution which reads thus:

"124 (1) The Supreme Court shall save as otherwise provided in Section 122 of this Constitution, have original jurisdiction, to the exclusion of all other courts;

and

(a) in all matters relating to the enforcement or interpretation of any provision of this constitution;

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

By seeking a declaration that Sections 18(1) (2); 21(3) of the Act 2000 are inconsistent with Section 133(1) of the Constitution fall within the

ambit of Section 124(1) of the Constitution? The answer is yes and the process for invoking this Court's original jurisdiction is by an Originating Notice of Motion and not by Motion Paper. Several authorities have been furnished to this court in which the facts are similar to the present proceedings and they were initiated by an Originating Notice of Motion. To wit: S/C No. 4/96 All Peoples Congress and NASMOS & Ministry of Social Welfare Youths and Sports which was a reference to this Court by way of a case stated; and S/C No.1. 2005 Ngandi T. A. Sokoyama & three others and The Attorney-General and Minister of Justice. These cases relate to Section 133 of the Constitution and Petition of Rights Cap 23 of the Laws of Sierra Leone and Cap 60 of the Laws of Sierra Leone which were brought to this Court by Originating Notice Motion. Provision is made in Section 127 of the Constitution for the enforcement of the Constitution which reads thus:-

"127 (1) A person who alleges that an enactment or anything contained in or done under the authority of that or any other enactment is inconsistent with, or is in contravention of a provision of this Constitution, may at any time bring an action in the Supreme Court for a declaration to that effect.

(2) The Supreme Court shall, for the purpose of a declaration under subsection (1), make such orders and give such directions as it may consider appropriate for giving effect to or enabling effect to be given to, the declaration so made."

- 14) Before I conclude, I wish to address the issue whether a party can seek orders which invoke the original jurisdiction of this court with other orders such as seeking to rectify a clerical error. The latter can be brought a Motion Paper but orders seeking construction of any enactment in this case the State Proceedings Act 2000 as being inconsistent with Section 133 of the Constitution can only be brought to this Court by an Originating Notice of Motion as it is invoking this

Court's original jurisdiction. The argument whether the CC number should have read 1/18 instead of 1/19 is one which in my view is de-minimis and can be cured by invoking Order 2 of the High Court Rules 2007 as this Court does not have express provision for amendments in its rules. Rule 98 of the Rules is hereby applicable. But this Order cannot assist a party who has commenced a matter by the wrong process in this case filing an application by a Motion Paper when the correct process is by an Originating Notice of Motion. It is not the practice of this Court to dissect the orders sought in an application and to grant the application for one order sought and refuse the other orders on the grounds they have not been sought by the correct process. The whole application must fail and counsel must comply with the requisite process. Rule 89 of the Rules and Section 124 of the Constitution are mandatory and ought to be strictly complied with. Non-compliance with these provisions will render the proceedings a nullity.

- 15) In the premises therefore, the Notice of Motion dated 19th February, 2019 is dismissed. No Order as to costs.