

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

THE STATE

Vs

ADRIAN JOSCELYNE FISHER

CORAM:

HON. MS. JUSTICE U.H. TEJAN-JALLOH CJ

HON. MRS. JUSTICES. BASH-TAQI JSC

HON. MR. JUSTICE P.O. HAMILTON JSC

HON. MRS. JUSTICE V.A.D. WRIGHT JSC

HON. MR. JUSTICE G.B. SEMEGA-JANNEH JSC

ADVOCATES:

C.T. MANTSEBO ESQ. AND L.M FARMAH ESQ. FOR THE STATE

J.B. JENKINS-JOHNSTON ESQ. FOR THE DEFENDANT

RULING

RULING DELIVERED THIS 12th DAY OF JUNE

2009

1 **TEJAN-JALLOH CJ:** This is a reference to the Supreme Court by way of case stated by Sey J. under the provision of *Section 124(2) of the Constitution of Sierra Leone 1991 Act No.6 of 1991* (Which I shall thereafter refer to as the Constitution) and *Rule 99(1) of the Supreme Court Rules; 1982 Public Notice No. 1 of 1982*

This section of the Constitution empowers the lower Court to refer matters or questions to the Supreme Court for determination reads as follows:

"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

(a) in all matters relating to the enforcement or interpretation of any provision of this Constitution, and

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

2. Where any question relating to any matter or question as is referred to in subsection (1) arises in any proceedings in any Court, other than in the Supreme Court that Court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the Court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court".

Rule 99(1) of the Rules of the Supreme Court provides:

"A reference to the Court for determination of any question cause or matter pursuant to any provision in the Constitution or of any other law shall be by way of case stated by the Court below making the reference".

2 The criminal session of the High Court holden at Freetown on the 23rd day of February 2009 pursuant to *Section 89 of the Anti-Corruption Act 2008, Act No.12 of 2008* Adrian Joscelyne Fisher was arraigned before Sey J. on an indictment containing 20 (twenty counts) of misappropriation of public funds contrary to *Section 12(1) of the Anti-Corruption Act 2000* (as was amended). He pleaded not guilty to all the charges. Prosecuting Counsel C.T. Mantsebo Esq. then applied for an order that Adrian

Joscelyne Fisher be tried by Judge alone instead of Judge and Jury as well as informing

the Court that the relevant certificate certifying that interest of Justice would be served had been filed by A.F. Serry-Kamal Esq Attorney-General and Minister of Justice

3. J.B. Jenkins-Johnston Esq. Counsel defending the defendant objected to the application on 6 **(six)** grounds namely:

- I. That the said application contravenes the Constitution of Sierra Leone (Amendment) Act 2008 - Act No.9 of 2008, which specifically removes the Attorney-General and Minister of Justice and the Director of Public Prosecutions from their involvement in any prosecution of offences under the Anti-Corruption Act 2000.*
- II. That by virtue of Section 171 (15) of the Constitution, the Constitution shall be the supreme Law of Sierra Leone.*
- III. That the Criminal Procedure Act 1965 Act No.32 of 1965 makes provisions as to prosecution of cases contra to the Anti-Corruption Act No.12 of 2008 which has laid down specific provision dealing with prosecution of cases involving corruption.*
- IV. That in terms of the Amendment to Section 144(2) of the Criminal Procedure Act 1965 Act No.32 of 1965 by Act No.11 of 1981 it is only the Attorney-General and Minister of Justice and the Director of Public Prosecution who can make the application.*
- V. That the specific provision of the Anti-Corruption Act 2008 overrides the general provisions of the Criminal Procedure Act No.32 of 1965 in so far as they provide for the conduct of Criminal Proceedings for offences under the Anti-Corruption Act 2000.*
- VI. That the application for trial by Judge alone be refused on the basis that it is unconstitutional.*

4 C.T. Mantsebo Esq prosecuting counsel requested an adjournment to prepare his reply. The application was granted and the case was adjourned to the 27th February, 2009. At the resumed hearing prosecuting counsel relied on the written submission he had filed in response to the objections raised by the defence. He highlighted the following points.

- I. That it is untenable to argue that the Constitution of Sierra Leone 2008 - Act No. 9 of 2008 has removed the Attorney-General/ and Minister of Justice and the Director of Public Prosecutions from all involvement in Criminal Proceedings for offences under the anti-Corruption Act.*
- II. That their involvement in Criminal Procedure in all Courts for any and all offences has been retained in Section 64(3) and 66(4) of the Constitution.*
- III. That the amendments to those Sections have in precise and unambiguous terms removed only one power of these two functionaries, namely, the Attorney-General/ and Minister of Justice no longer bring offences under the Anti-Corruption Act 2000 before the Court i.e. no longer at his suit. In the case of the Director of Public Prosecutions he can no longer institute and undertake Criminal Proceedings for offences under the Anti-Corruption Act 2000.*
- IV. Despite the Amendment of Section 66(4)(a) of the Constitution relating to the institution and undertaking of Criminal Proceedings, Parliament has reserved these powers of these functionaries to take over and continue any such criminal proceedings that may have been instituted by any other person or authority. See Section 66(4)(b) of the Constitution.*
- V. That Section 66(4)(c) of the Constitution is retained by Parliament i.e. the power of Attorney-General and Minister of Justice and Director of Public*

Prosecutions to discontinue at any stage before judgment is delivered in

respect of criminal proceedings instituted or undertaken by them or any other person or authority.

Vi. That, Section 3 of the Criminal procedure (as amended) Act No 31 of 1965 and 18(3)(a) of the Courts Act 1965 (as amended) - Act No.31 of 1965 have not been repealed.

VII. That an application by the Attorney-General and Minister of Justice and the Director of Public Prosecutions under Section 144(2) of the Criminal Procedure Act 1965 - No.32 of 1965 does not require their personal attendance before the Court.

VIII. That in Sub Section 2 to 6 of Section 89 of the Anti-Corruption Act No.12 of 2008 the procedure to be adopted by the Commissioner in the conduct of criminal proceedings for offences under the Anti-Corruption is elaborated and detailed.

IX That the arraignment of the accused and all subsequent proceedings are clearly placed outside the jurisdiction of the Constitution and remain the preserve of Attorney-General and Minister of Justice and the Director of Public Prosecutions.

5 Sey J. having considered the above submissions was of the view that the objection raised is a very contentious Constitutional matter and that what ever decision she might arrive at would ultimately be the subject of an appeal. She opined that the objection raised by the defence borders on interpretation and must first be determined by the Highest Court of the land. In the circumstances, she invoked Section 124(1) of the Constitution and referred the question of law involved to the Supreme Court for determination.

The question of law posed by Sey J. to the Supreme Court for determination are as follows

1. *Should the Constitution of Sierra Leone (Amendment) Act, 2005 be read as having removed the Attorney-General and Minister of Justice and the Director of Public Prosecutions from prosecuting offences under the Anti-Corruption Act 2000?*
2. *If so, what effect if any would that have on the power of the Attorney-General and Minister of Justice to make application for trial by Judge alone instead of by Judge and Jury pursuant to Section 144(2) of the Criminal Procedure Act, No.32 of 1965 as repealed and replaced by Section 3 of the Criminal Procedure Act (Amendment) Act No.11 of 1981?*

6 In accordance with the provision of Sub Rule 3 of Rule 99 of the Supreme Court Rules 1982. C.T. Mantsebo Esq. and L.M Farmah Esq. for the State and J B. Jenkins-Johnston Esq. for the defendant filed their respective cases for their clients in the Supreme Court Registry and on the hearing of the reference relied on the submissions in their cases. We accepted them and form part of the evidence. In the main, they were submissions made to the Presiding Judge. I have therefore highlighted those that I consider to have merits. For Mr. Mantsebo, he submitted that the Attorney-General and Minister of Justice has power in terms of section 44 of the CPA 1965 (as amended) to effectively control private prosecutions, which are presented in the name of the Complainant and those in the name of Inspector-General of Police. Secondly, offences under the Anti-Corruption Act 2000 are prosecuted in the name of the Republic of Sierra Leone, like all other criminal proceedings save for private prosecutions

7 The significant change the Constitution of the Sierra Leone (Amendment) Act 2008 - Act No.9 of 2008 is merely to remove from the Attorney-General and Minister of Justice and the Director of Public Prosecutions proceedings to institute or commence or initiate such prosecution. He argued that the Amendment does not remove or limit any other power of those two law officers. Thirdly, he referred to section 89(2) of the Anti- corruption Act 2008 Act No.12 of 2008 that once an Indictment is preferred under that

Subsection, it is deemed in all respects to have been preferred pursuant to consent in writing by a judge under sub-section 1 of section 136 of the Criminal Procedure Act 1965 (as amended) and Fourthly, that the power of the Attorney-General and Minister of Justice under the CPA 1965 (as amended) and in particular section 14 (2) apply to all criminal proceedings and the section has not been amended and is still in force.

8 For Mr. F.M. Farmah, Counsel representing the Attorney-General and Minister of Justice, he referred the Court to the dictionary meaning of the word "suit", to **suit**, a claim or complaint against somebody, that a person or organization can make in a Court of law. He argued that the phrase at the **"suit"** of the Attorney-General and Minister of Justice means proceedings to be brought, instituted by him, that the Constitution of Sierra Leone (Amendment Act) 2008 only removed the power of both the Attorney-General and Minister of Justice and the Director of Public Prosecutions to institute criminal proceedings involving offences under the Anti-Corruption Acts 2008, but they retain the power to take over and continue same or discontinue same pursuant to the combined effect of section 66 (4)(b) and (c) of the Constitution and sections 1 and 2 of the Constitution of Sierra Leone (Amendment) Act 2008 - Act No.9 of 2008.

9 Mr. J.B. Jenkins-Johnston for the Defendant (Accused) submitted first, that the Anti-Corruption Commission has no prosecutorial power under the Anti-Corruption Act 2000 nor the Commission control over which matters were deemed to be worthy of prosecution. Secondly, he pointed out that the title of the Constitution of Sierra Leone (Amendment) Act 2008 - Act No.9 of 2008 grants the Anti-Corruption Commission power to prosecute offences involving corruption and this was a recognition of the desirability of making the Anti-Corruption Commission independent of the Government in matters of prosecution of offences involving corruption.

10 Thirdly, it was the Constitution and not the Anti-Corruption Act that was amended and proffered as a reason that before the amendment of (section 64(3) of the Constitution all offences prosecuted in the name of the Republic of Sierra Leone were at the suit of the Attorney-General and Minister of Justice or some other person authorised by him in accordance with any law governing the same. Fourthly, that the amending Act

provides that the Director of Public Prosecutions to institute and undertake criminal proceedings against any person before any Court in respect of any offences against the laws of Sierra Leone except offences involving corruption under the Anti-Corruption Act 2000. Fifthly, that the contents of the long title to the Anti-Corruption Act 2008 are not a coincidence but deliberate. Sixthly, that Part VI - Prosecution of offences in the Anti-Corruption Act 2008 - Act No.12 of 2008 regarding the prosecution of offences under section 89 was absent in the Anti-Corruption Act 2000 and he refers to the marginal note to section 89(1) of the Anti-corruption Act 2008. Finally, that Parliament having amended the Constitution for the purpose of granting the Anti-Corruption Commission the power to prosecute offences involving corruption envisaged absolutely no role for the Attorney-General and Minister of Justice or Director of Public Prosecutions.

11 Mr. Jenkins-Johnston has based some of his submissions on the long title to both the Constitution of Sierra Leone (Amendment) Act 2008 and the Anti-Corruption Act 2008. An examination of the Interpretation Act 1971 - Act No.8 of 1971 does not contain any definition of the words short or long **"title"**. And I remind myself that ordinary dictionaries are some how delusive guides in the construction of statutory terms. No doubt reference to the better dictionaries does afford either by definition or illustration, some guide to the use of a term in a statute, but it is for the Court to interpret the statute as best it may. There is an absence of an interpretation under our Interpretation Act and in elsewhere jurisdiction, the long title is part of the Act itself and it is legitimate to use it for the purpose of interpreting the Act as a whole and to ascertain its scope But a title is never allowed to affect or restrain the plain meaning of a statute. but only to act as an aid in resolving a difficulty. The principle is that where something is doubtful or ambiguous, the long title may be looked at to resolve the doubt or ambiguity but in the absence of doubt or ambiguity, the passage under construction must be taken to mean what it says, so that if its meaning is clear, that meaning is not to be narrowed or restricted by reference to the long title. I intend and I shall adopt this principle in the present case. Counsel for the Defendant (accused) has also made submissions to the marginal note to section 89(1) of the Anti-Corruption Act 2008. Our interpretation Act states that Marginal notes do not form part of an Act, but shall be deemed to have been inserted for convenience of reference only. The use of marginal notes has had a

Chequered history and the modern trend in most jurisdiction is that they cannot be as aid to construction. They are mere catchwords and cannot be said to make the same sense as the long title or any part of the body of the Act.

12 Mr. Mantsebo, Counsel for the **State** also relied on section 41 of the Interpretation Act 1971 - Act No.8 of 1971. It reads:

"41 where legal proceedings are directed to be brought in the name of or by or on behalf of any Public officer, it shall not thereby be intended that such public office shall be required to appear in person before the Court before _such proceedings are taken".

13 In Counsel's opinion, the Attorney-General and Minister of Justice is a public officer. Section 171(1) of the Constitution defines "Public Office" "Public Officers' and sub-section 4 of that section 171 states that the Attorney-General and Minister of Justice is not a Public Officer. This is not the end of the matter and the question is at whose instance is the present proceedings brought? It is clear that it is not the Attorney-General and Minister of Justice or Director of Public Prosecutions or a private person or institution. By the combined effect of sections 1 and 2 of the Constitution of Sierra Leone (as amended), section 171(1) of the Constitution, sections 6 and 89 of the Anti-Corruption 2008 Act No.12 of 2008, "it is the Commissioner of Anti-Corruption Act 2008, who in the words of section 89 of that Act *"is of the opinion that the findings of the Commission on any investigation warrant a prosecution under this Act"*.

14 I shall now proceed to examine the reference by way of case stated sent to this Court by Sey J. Inadvertently, it is undated. Paragraph 6 of the reference reads:

"Having considered all the above objections, I am of the view that the objection raised is a very contentious constitutional matter and whatever decision I may arrive at would ultimately, be appealed against. To my mind the objections raised by the defence borders on interpretation and this must first be determined by the Highest Court of the land".

15 This Court has pointed out on numerous occasions that a reference should not be treated lightly and referring issues to the Supreme Court does not relieve the High Court or any Court for that matter of the responsibility of the issues itself. It is not the purpose of section 124 of the Constitution that the High Court should refer every question of law - contentious or not - affecting the Constitution. The reference should be on matters relating to the enforcement or interpretation of any provision of the Constitution and the issues must be of law. I agree that in section 124 the auxiliary verb "shall is used which in legislative drafting denotes compulsion. However, I must make clear that the question of reference must be referable to and/or connected with, section 124(1) (a) and (b) of the constitution. This can be illustrated by two contrasting decisions of the Supreme Court.

16 In *Adel Osman v. The State* 1988 LRC one the questions of law for reference by Wright J. (as she then was) whether "*a person could be properly tried and convicted for an alleged offence under the Emergency Regulation 1988 in circumstances where the offence did not exist at the lime of commission of the alleged act which formed the basis of the indictment in the light of the Constitutional guarantees of the protection of the law to an accused person*". The answer was in the affirmative. This case can be contra5ted with the case of *the State v. Justice M.O. Taju-Deen ex parte Harry Will* sc misc 3/99 (unreported). The presiding Judge Mr. Justice M.O Taju-Deen in the case of *The State v. Harry Will and others* on a conspiracy charge, had refused a Constitutional reference by defence counsel on the grounds that he does not have to grant the application as a matter of course. The defence counsel for Harry Will then move the Supreme Court on several grounds including a stay of proceedings in the High Court pending the reference. The Supreme Court Luke CJ, Joko Smart and Warne JJSC gave the following ruling: "*I hold the view that every Court must invoke its inherent jurisdiction In such a case to prevent an abuse. The indictment before Mr. Justice Taju-Oeen is one having as its foundation a consent order in writing under the hand of a Judge of the High Court of Justice. Where is the constitutional issue in that matter which is outside the jurisdiction of the Judge? What is the constitutional issue to be received by the Supreme Court? I see none*".

17 It seems to me that in Adel Osman's case, the Supreme Court recognised that there was a constitutional issue involved and answered the questions posed in the affirmative. Whereas in Taju-Deen's case the Court outrightly rejected the stay and reference. However, there are several cases decided by this Court on the interpretation of the constitutional provisions and are available in the Supreme Court Archives and in appropriate cases the High Court can decide such questions without reference. In the case of Major St. Mellons Rural District Council v Newport Corporation 1952 AC 189 at 191, it was said that:

"The duty of the Court is to interpret words that the legislature has used, these words may be ambiguous, but if they are, the power and duty of the Court to travel outside them on a voyage of discovery are strictly limited".

18 The Defendant (accused) is charged under the Anti-Corruption Act, 2000 Act No.1 of 2000 and according to section 64(3) of the Constitution all offences prosecuted in the name of the Republic of Sierra Leone shall be at the suit of the Attorney-General and Minister of Justice. Then on the 31st July, 2008 Parliament enacted the Constitution (Amendment) Act 2008, a two section Act - excluding the Attorney-General and Minister of Justice from prosecuting in the name of the Republic offences involving corruption under the Anti-Corruption Act 2000 and in the case of the Director of Public Prosecutions from instituting and undertaking criminal proceedings involving offences of corruption under Anti-Corruption Act 2000.

19 To my mind, the answer to the questions of the reference is clear and unambiguous. Question of interpretation arises only where there is doubt as to the meaning to be attached to any of the provision of the constitution. There is no doubt about the interpretation of the amendment made by the Constitution of Sierra Leone (Amendment) Act 2008 and I hold that it is not a constitutional issue and ought not to have been referred by the Presiding Judge.

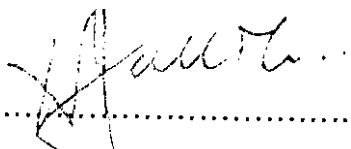
20 The second question is the effect, if any, the constitution of Sierra Leone

(Amendment 2008) would have on the power of the Attorney-General and Minister of Justice to make an application pursuant to section 144(2) of the Criminal Procedure Act No. 32 of 1965 repealed and replaced by the Criminal Procedure Act 1981 - Act No. 11 of 1981. The Criminal Procedure Act 1965 (as amended) is in daily use in Court and as far as the two recent legislations, which are the subject matter of the present proceedings, they have not amended or repealed the Criminal Procedure Act 1965. The only reference to that Act is the marginal note to section 89(1) of the Anti-Corruption Act 2008 Act No. 12 of 2008, which refers to section 136 of that Act. I have earlier on discussed the effect of marginal notes that they are not part of the Act and are for the purpose of convenience of reference only. A law is not repealed by becoming obsolete. Admittedly, the Criminal Procedure Act 1965 is a statute of general application and the Anti-Corruption Act 2008 is not an Act passed on the same subject, and therefore, it will be wrong to say that the subsequent Act impliedly repeals the former. Sub-section 1 of section 141 of the Anti-Corruption Act 2008 repeals the Anti-Corruption Act 2000, but sub-section 4 of section 141 of the Anti-Corruption Act 2008 provides that all investigations, prosecution.....instituted or commenced under the Act hereby repealed (the Anti-Corruption Act 2000) and which have not been concluded before the commencement of the Act (the Anti-Corruption Act 2008) shall be continued and concluded in all respect as if the Act (Anti-Corruption Act 2000) had not been repealed. The irresistible conclusion is that the power of control over criminal proceeding by the Attorney-General and Minister of Justice pursuant to section 44 of the CPA and his power to apply for trial by Judge alone instead of Judge and Jury and to be granted as of course under section 144(2) of the CPA 1965 by extension Sections 3 and 5 of the Law Officer's Act 1965 are still vested in that law officer i.e. the Attorney-General and Minister of Justice.

21 Consequently the answers to the two questions are as follows:-

1. *Question 1 the answer is that it is not a Constitutional issue.*

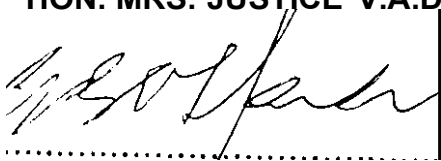
2. Question 2 the Attorney-General and Minister of Justice has power to
make the application and need not do so personally in Court.


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HON. MS. JUSTICE U.H. TEJAN-JALLOH J.S.C.

..... : V. I AGREE
HON. MRS. JUSTICE S. BASH-TAQI JSC

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..... I AGREE
HON. MR. JUSTICE P.O. HAMILTON JSC

..... ' c , / r I AGREE
HON. MRS. JUSTICE V.A.D. WRIGHT JSC


..... I AGREE
HON. MR. JUSTICE G.8. SEMEGA-JANNEH JSC