

S.C. 4/2015.

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

**IN THE MATTER OF SECTIONS 124 AND 127 OF THE CONSTITUTION**  
**OF SIERRA LEONE ACT NO.6 OF 1991**

**AND**  
**IN THE MATTER OF THE OFFICE OF THE VICE-PRESIDENT OF**  
**SIERRA LEONE**

BETWEEN:

ALHAJI SAMUEL SAM-SUMANA

- PLAINTIFF

AND

THE ATTORNEY-GENERAL MINISTER OF JUSTICE  
OF SIERRA LEONE

- 1<sup>st</sup> DEFENDANT

VICTOR BOCKARIE FOH

- 2<sup>nd</sup> DEFENDANT

**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:**

C. F. Margai Esq., S. Banja Tejan-Sie Esq., M.P.Fofanah Esq. and R. B. Kowa for the Plaintiff.

Berthan Macaulay Jnr. Esq., Lahai Farmer Esq., Osman Kanu Esq., and Ernest Beoku-Betts for the 1<sup>st</sup> Defendant

A. E. Manly-Spain Esq., L. Dumbuya Esq., S. K. Koroma Esq., B. Koroma Esq., R. A. D. Jones Esq., and R. A. Nylander Esq., for the 2<sup>nd</sup> Defendant.

**JUDGMENT DELIVERED ON THE 9<sup>th</sup> DAY OF SEPTEMBER 2015**

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

The Plaintiff, by Originating Notice of Motion dated 20<sup>th</sup> March 2015 supported by two affidavits, has instituted an action in this Court in its Original Jurisdiction pursuant to section 124 and 127 of the Constitution of Sierra Leone, Act No. 6 of 1991 (the Constitution) for the

determination of two questions and prays that if the answers to those questions are negative, for certain reliefs (hereinafter referred to as "the action").

The provisions of the Constitution pursuant to which the action was instituted state 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."

For present purposes, subsection (2) is not relevant and so I will not reproduce that subsection. \*

"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 purposes 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.

(3) Any person to whom an order or direction is addressed under subsection (1) by the Supreme Court shall duly obey and carry out the terms of the order or direction.

(4) Failure to obey or to carry out the terms of an order or direction made or given under subsection (1) shall constitute a crime under this Constitution."

It is clear from the papers filed by the parties in this action that several provisions of the Constitution call for interpretation before the questions posed by the Plaintiff can be answered by the Court. These questions are as follows:

"(a) Whether the Constitution of Sierra Leone empowers the PRESIDENT "to relieve the Vice-President of his office and duties" in any way Other than by the procedure set out in sections 50 and 51 of the said Constitution?



(b) Whether the "Supreme executive authority" of the President mentioned in Section 40(1) of the Constitution of Sierra Leone includes the power to "relieve the Vice-President of his Office and duties", other than by the procedure set out in Sections 50 and 51 of the said Constitution?"

The reliefs prayed for are in the following terms:

"If the Answer to the questions is NO, then the Plaintiff will seek the following further reliefs:

- (i) For a declaration that the Public Notice announcing that the Vice-President had been relieved of his duties and office (Exhibit A herein) is unconstitutional, null and void, and of no effect.
- (ii) For a declaration that the appointment of Victor Bockarie Foh as Vice-President of Sierra Leone is also unconstitutional, null and void, and of no effect.
- (iii) For an Injunction restraining the said Victor Bockarie Foh from acting in the Office of Vice-President of Sierra Leone, pending the hearing and determination of this action.
- (iv) For a declaration that the elected Vice-President of Sierra Leone (the Plaintiff herein) remains in Office as Vice-President thereof unless and until removed from Office as required by Section 50 and 51 of the Constitution of Sierra Leone."

My appreciation of the issue before the Court is the interpretation to be placed on certain provisions of the Constitution so as to determine whether the President has the power to relieve the Vice President of his duties and office. For reasons to be advanced later in this judgment, the President does not have any power under sections 50 and 51 of the Constitution, nor does he play any direct role in the procedure set out in those sections. The second question posed by the Plaintiff in the action virtually asks the same question but this time it is directed to determining the extent of the President's powers (if any) encapsulated in the expression "supreme executive authority" mentioned in section 40 (1) of the Constitution.

The first 3 paragraphs of the Press Release from the Office of the President dated March 17, 2015 and exhibited as "A" in the Plaintiff's supporting affidavit are instructive in answering the

questions posed by him. I reproduce same and his immediate response thereto hereunder for ease of reference:

"On the 6<sup>th</sup> day of March 2015, the National Advisory Committee (NAC) of the All Peoples Congress (APC) took a decision to expel Alhaji Samuel Sam Sumana from the APC; and by letter dated 6<sup>th</sup> day of March 2015, Alhaji Samuel Sam Sumana was duly expelled from the APC.

The President of the Republic of Sierra Leone, as guardian of the Constitution of Sierra Leone pursuant to Section 40 (3) of the Constitution of Sierra Leone Act No. 6 of 1991, I have taken note of the decision of the public will recall, and I have also taken note of the fact that on Saturday March, 15, 2015, Alhaji Samuel Sam Sumana sought asylum from a foreign embassy demonstrating a willingness to abandon his duties and office as the Vice President of our beloved Republic.

And whereas Alhaji Samuel Sam Sumana is no longer a member of a political party in Sierra Leone and therefore does not have the continuous requirement to hold office as vice President of the Republic of Sierra Leone, provided for in Section 41(b) of the Constitution of Sierra Leone Act No. 6 of 1991, I hereby relieve Alhaji Samuel Sam Sumana of the duties and from the Office of Vice President of Sierra Leone with immediate effect, pursuant to my supreme executive authority as President of the Republic of Sierra Leone as enshrined in Section 40(1) of the said Constitution of Sierra Leone".

In his response to the aforesaid Press Release from the Office of the President, the Plaintiff in a Statement issued by him dated 18<sup>th</sup> day of March 2015, and also exhibited to his affidavit as "B", stated *inter alia*,

"That the President has absolutely no power to "relieve me of the duties of Vice-President" in any part of the Constitution, Act No. 6 of 1991, but the said Constitution makes provision at section 55 thereof for the office of the Vice-President to become vacant either:

- a) On the expiration of the term of office of the Vice-President;
- b) If the Vice-President resigns or retires from the said office (...);
- c) If the Vice-President is removed from Office in accordance with either the provisions of Section 50 or 51 of the Constitution; OR



- d) Upon the assumption by the Vice-President to the office of the President under Section 49(4) of the said Constitution.”

On the 19<sup>th</sup> March 2015, a Press Release was issued by the Office of the President appointing the 2<sup>nd</sup> Defendant as Vice President in the following terms:

“The General Public is hereby informed that following the vacancy which occurred in the Office of Vice-President, and pursuant to section 54 (5) of the Constitution of Sierra Leone 1991 (Act No. 6 of 1991), it has pleased his Excellency, the President to appoint Mr. Victor Bockarie Foh as vice-President of the republic of Sierra Leone with immediate effect.”

The provisions of the Constitution which are relevant in order to answer the questions posed for the Court’s determination, are as follows:

1. Section 35(1) dealing inter alia with the registration and conduct of political parties.
2. Section 40 (1) which states that there “shall be a President of the Republic of Sierra Leone who shall be Head of State, the supreme executive authority of the Republic and Commander-in-Chief of the Armed Forces.”
3. Section 41 which provides as follows: “No person shall be qualified for election as President unless he—
  - (a) is a citizen of Sierra Leone;
  - (b) is a member of a political party;
  - (c) has attained the age of forty years; and
  - (d) is otherwise qualified to be elected as a member of Parliament.”
4. Section 42 (1) which provides that “a Presidential candidate shall be nominated by a political party”.
5. Section 48(4) states that where any person holds or performs the functions of the office of President, no civil or criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official or private capacity.
6. Section 50 which makes provision for the process by which the President “shall cease to hold office and a vacancy shall be deemed to have occurred” by reason of infirmity of mind or body. (mental or physical incapacity).

7. Section 51 which makes provision for the process by which the President "shall cease to hold office and a vacancy shall be deemed to have occurred" where Parliament has resolved that "the President has been guilty of such violation of the Constitution or as the case may (be) such gross misconduct".
8. Section 53(1) which states *inter alia* that subject to the provisions of the Constitution, the executive power in Sierra Leone shall vest in the President. Subsection (4) of this section further states that the functions of the President shall be construed as reference to his powers and duties in the exercise of the executive authority of Sierra Leone and to any other powers and duties conferred or imposed on him as President by or under this Constitution or any other law.
9. The whole of section 54 and in particular subsections (2), (3), (5) and (8) which provide as follows:
  - (2) A person ---
    - (a) shall be designated a candidate for the office of Vice-President by a presidential candidate before a presidential election.
    - (b) shall not be qualified to be a candidate for the office of Vice-President unless he has the qualifications specified in section 41.
    - (3) A candidate shall be deemed to be duly elected as Vice-President if the candidate who designated him as candidate for election to the office of Vice-President has been duly elected as President in accordance with the provisions of section 42.
    - (5) Whenever the office of the Vice-President is vacant, or the Vice-President dies, resigns, retires or is removed from office, the President shall appoint a person qualified to be elected as a Member of Parliament to the office of Vice-President with effect from the date of such vacancy, death, resignation, retirement or removal.
    - (8) The provisions of sections 50 and 51 of this Constitution relating to the removal from office of the President, shall apply to the removal from office of the Vice-President.
10. Section 55 which provides as follows: "The office of the Vice-President shall become vacant ---
  - (a) on the expiration of the term of office of the President ; or
  - (b) if the Vice-President resigns or retires from office or dies; Or
  - (c) if the Vice-President is removed from office in accordance with the provisions of section 50 or 51 of this Constitution; or



(d) upon the assumption by the Vice-President to the office of President under subsection (4) of section 49."

In both the Plaintiff's Statement of Case and in his Counsel's arguments and submissions, emphasis has been laid on the literal interpretation of the provisions of the Constitution. The central pillars of the Plaintiff's Statement of Case are the following submissions, namely: Firstly, "That Section 40 (1) of the Constitution does not make any provision for the President to relieve the Vice-President of his position for any reason whatsoever and no such words are to be found therein..... that Section 40 (1) is merely a general provision setting out the "Style and titles" of the President, and nothing more can be read into it."

Secondly, Plaintiff's Statement of Case relied heavily on the Nigerian Supreme Court decision in Attorney-General of the Federation of Nigeria & Ors. Vs Alhaji Atiku Abubakarr & Ors. (2007), (the Atiku Abubakarr case) and submitted that the President violated the Constitution and acted beyond his powers by purporting to relieve the Vice-President of his office and duties as there is no such provision in the Constitution.

Thirdly, it is further submitted that having regard to the similarity of the Nigerian and the Sierra Leone Constitutions, this Court should accept and adopt the Judgment in the said Nigerian case and illustrated the said alleged similarity by reference to Section 143 (ii) of the Nigerian Constitution and Section 51 of the Sierra Leone Constitution.

Lead counsel for the Plaintiff, C. F. Margai, Esq., in argument, referred to the Plaintiff's Statement of Case dated and filed on the 30<sup>th</sup> March 2015. He contended that the Court has been called upon to answer certain questions by interpreting the relevant provisions of the Constitution and in doing so, every word must be presumed to have its significance and given a reasonable and natural meaning so that the true intention of Parliament is not misrepresented. Counsel cited the case of *Gruderiche vs. Comptroller of Customs* [1920-36] ALR S.L. 157 in support of this proposition. He submitted that the only way the Plaintiff can be removed from office is by the provisions found in section 55 (c) of the Constitution whether or not the word used is relieved or removed from office. He maintained that there is no other provision in the laws of Sierra Leone which addresses the removal of the Vice President from office. Counsel then referred the Court to section 40 (3) of the Constitution as the basis upon which th



President relieved the Vice President of his duties and office and to section 41 (b) of the Constitution. Counsel submitted that section 40 (3) of the Constitution does not give the mandate or authority to the President to remove an elected Vice President from office and that section 41 (b) of the Constitution has been totally misrepresented and misused. He contended that the language used in the relevant provisions of the Constitution are quite plain, simple and not convoluted and that the literal rule in the interpretation of statutes is applicable in the case before the Court. It is Counsel's contention that even assuming that section 41 (b) of the Constitution is triggered by the expulsion of the Plaintiff from the APC Party (which was not conceded by Counsel) all that can possibly do is to trigger an opportunity for invoking section 51 of the Constitution. Counsel finally submitted in respect of section 41(b) of the Constitution that the President's act to relieve the Vice President of his duties and office must be condemned by the Court as unconstitutional, null and of no effect.

Dealing with section 40 (3) of the Constitution, Counsel submitted that the subsection does not clothe the President with executive powers and that it is subsection (4) of section 40 and section 53 (2) that grant executive functions and powers to the President. That these provisions do not give the President any power or mandate to relieve the Vice President of his duties and office and consequently the Plaintiff should be granted the declarations sought. Counsel referred to section 54 of the Constitution and submitted that both the President and Vice President are elected together on the same ticket and their removal from office are governed by the same provisions. That the vacancy mentioned in section 54 (5) of the Constitution is explained in section 55 of the Constitution dealing with vacancy in the office of the Vice President.

Lead Counsel for the Plaintiff further referred the Court to the Atiku Abubakarr case in the Nigerian Supreme Court and said he believed that it is the main authority that should guide this Court in the Plaintiff's action. Counsel referred to page 10 of the copy of the judgment in that case that he supplied to the Court dealing with the general principles of interpretation of statutes including constitutions. The leading judgment in this Nigerian Supreme Court case is that of his Lordship Sunday Akinola Akintan JSC who expressly stated that the approach of the Nigerian courts in interpreting statutes and the Constitution is the literal approach. The learned Justice went on to state that this approach is the one that has been adopted in numerous cases but went on to say that in interpreting the Constitution, "a liberal approach should be adopted". Counsel went on to submit that in Nigeria, section 143 of their Constitution provides that the process of



removal of the President is by impeachment by the Federal National Assembly and that in Sierra Leone, the relevant provision is section 51 of the Constitution and that the two provisions are virtually the same. Counsel in conclusion submitted that unless there is evidence before the Court of an infraction by the Vice President in the performance of his constitutional functions or has committed gross misconduct, sections 50 and 51 of the Constitution cannot be triggered. That even where there is an infraction of the Constitution or gross misconduct by the President, the action to remove from office should be taken by Parliament and not the President.

2<sup>nd</sup> Counsel for the Plaintiff, M. P. Fofanah Esq., addressed the Court on behalf of the Plaintiff in relation to his case against the 2<sup>nd</sup> Defendant. Counsel referred to the 2<sup>nd</sup> relief prayed for in the action which seeks a declaration that the appointment of the 2<sup>nd</sup> Defendant is unconstitutional, null and void and of no effect. Counsel also referred to the Press Release issued by State House announcing the appointment of the 2<sup>nd</sup> Defendant pursuant to section 54 (5) of the Constitution. Counsel contended that membership of a political party is not a continuing requirement for the office of Vice President and submitted that under section 41 of the Constitution, membership of a political party is only a necessary pre-requisite for candidacy to the office of President and Vice President. That after election, membership of a political party ceases to be of any legal consequence and effect. He said this submission is made in tandem with the provisions of the Public Elections Act, 2012 and further submitted that the reason why the 1991 Constitution took away membership of a political party for the offices of President and Vice President upon election is to uphold the sovereign mandate of the people who elected them into office. He referred the Court to sections 2 and 35 (1) of the Constitution in support of his submissions. It was Counsel's view that the provisions of the Constitution are so clear and unambiguous that the Court does not require any legal meaning or interpretative criteria to conclude that where a President has been duly elected together with his Vice President, it is only Parliament that has the mandate to remove either of them. On section 54 (5) of the Constitution, Counsel submitted that it must be construed subject to section 55 which exhaustively enumerates the only instances in which a vacancy in the office of Vice President can be legally created and consequently no vacancy was legally created when the President relieved the Vice President of his duties and office. Counsel submitted that the 2<sup>nd</sup> Defendant is therefore unlawfully occupying a position which legitimately belongs to the Plaintiff. He referred to Halsbury's Laws of England 3<sup>rd</sup> edition, volume 36 paragraph 626, and submitted that since



the Vice President was elected or deemed to be elected, the power to remove him from office rests with the elected representatives (Parliament).

2<sup>nd</sup> Counsel for the Plaintiff, M. P. Fofanah Esq., submitted that membership of a political party under section 41 of the Constitution is not a requirement for the office of Vice President after election but that if the Court is of the view that there is such a requirement, then its breach becomes a violation of the Constitution. Counsel further submitted that the requirement under section 41 of the Constitution of membership of a political party is only referable to candidacy before elections and that one cannot be a candidate after election. But that if the Court holds that there is such a requirement to hold the office of Vice President after elections, then any breach of that requirement can only be addressed under section 51 of the Constitution by Parliament and not the President.

In line with the Statement of Case filed on behalf of the 1<sup>st</sup> Defendant, his Counsel, Berthan Macaulay Jnr. Esq., in argument before the court formulated 5 issues which he contended are to be addressed by the Court in order to answer the questions posed in the action. I shall reproduce the issues hereunder as stated in the said Statement of Case as follows:

1. What is the legal meaning of section 41 and in particular sub-section (1) (b) of the Constitution? And if, as contended by the 1<sup>st</sup> Defendant, it imposes a continuous obligation on the holder of the office of Vice President, and in the instant case, imposed an obligation on the part of the Plaintiff herein, what is the effect, if any, if the holder of that office ceases to meet that obligation or qualification?
2. If as contended by the 1<sup>st</sup> Defendant, section 55 of the Constitution is triggered when the holder of the office of Vice President ceases to meet the obligation or qualification set out in Section 41 (b) of the Constitution, what is the legal meaning and ambit of the said section 55 of the Constitution?
3. If this Honourable Court were to hold that section 55 is triggered, as aforesaid, as contended by the 1<sup>st</sup> Defendant, what is the import, if any of Sections 50 & 51 of the Constitution in relation to the nature of the matter dealt with under section 41(b) of the Constitution?
4. If as contended by the 1<sup>st</sup> Defendant, the holder of the Office of Vice President has ceased to meet the obligation or qualification set out in Section 41 (b) of the Constitution, and section 55 of the Constitution is triggered but sections 50 & 51 of the Constitution do



not apply, on whom does the obligation lie to effect the vacating of the Office of Vice President?

5. Should this Honourable Court accept and adopt the reasoning and conclusions of the Supreme Court of Nigeria in the case of S.C. 31/2007 (Supreme Court of Nigeria) Attorney-General of the Federation & others vs Alhaji AtikuAbubakarr (hereinafter referred to as the "Atiku Abubakarr Case") without having first independently and properly construed the relevant sections of the Constitution as enjoined by Section 124 (1) (a) thereof?

In dealing with the legal meaning of section 41 of the Constitution in argument before the Court, Counsel submitted that the obligations stated in that section are continuous obligations of the holder of the office of Vice President which are not limited to the time of election. He relied on the case of *Dr Sorie Kennedy Conteh & Ors. vs The Minister of Local Government & Ors* (2006), a decision of this Court and the opinions of the editors of Halsbury's Laws of England, 4<sup>th</sup> edition and Bennion on Statutory Interpretation 5<sup>th</sup> Edition. He further submitted that when the literal rule of interpretation is applied to section 41 of the Constitution, it does not produce the interpretation canvassed by the Plaintiff limiting the obligations therein to the period before election to the office because the section does not state that membership of a political party is taken away as a requirement upon election. He further submitted that the plain meaning rule (the literal rule) does not apply in the instant case in relation to section 41 of the Constitution since an informed interpretation will not lead to the conclusion that the legal meaning corresponds to the grammatical meaning.

According to Counsel for the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> issue for determination is the legal meaning of section 55 of the Constitution which deals with vacancy in the office of Vice President. Counsel contended that the list mentioned in section 55 is not exhaustive since it does not contain express words to the effect that the office of Vice President will only become vacant in the instances mentioned in that section. He submitted that if section 41 (b) of the Constitution creates a continuous obligation of membership of a political party for the office of Vice President after election (among other obligations) then a vacancy in the office is created once a holder of the office loses such membership. He submitted that section 54(5) of the Constitution gives one instance of vacancy in general terms and this is relevant in construing section 55 of the Constitution. He urged the Court to apply the purposive approach and the

construction as a whole interpretative criteria in relation to sections 41 (b) and 55 of the Constitution and reject the *expression unius, exclusion alterius* principle (i.e. the express mention of one person or thing is the exclusion of another) which according to Lopes L. J. in *Colquhoun vs Brooks* (1888) 21 Q.B.D. 52 at 65 is "a valuable servant, but a dangerous master to follow in the construction of statutes and documents."

Thirdly, Counsel for the 1<sup>st</sup> Defendant dealt with the import of sections 50 and 51 of the Constitution in relation to section 41 (b) of the Constitution and submitted that the Plaintiff's argument that the Vice President can only be removed pursuant to sections 50 and 51 of the Constitution is not tenable because these constitute only one circumstance in section 55 under which the office of Vice President becomes vacant. Counsel further submitted that sections 50 and 51 of the Constitution deal specifically with mental/physical incapacity and/or gross misconduct in carrying out the functions of the office of Vice President and that ceasing to be a member of a political party (by way of expulsion in the instant case) does not fall within the ambit of sections 50 and 51 of the Constitution.

The fourth issue canvassed by Counsel deals with the person or authority who should act in the event that the Vice President fails to meet the continuous requirement of membership of a political party as provided for in section 41 (b) in situations where sections 50 and 51 are inapplicable. Counsel referred to various sections of the Constitution (including section 40 (1) which describes the President as supreme executive authority) and this Court's decision in *Issa Hassan Scsay & Ors. vs. The President of the Special Court & Ors.* S.C. 1/2003 (Judgment delivered on the 10<sup>th</sup> May 2005) and submitted that in the circumstance where the office of the Vice President has become vacant, other than pursuant to sections 50 and 51 of the Constitution, the President as the supreme executive authority of the Republic of Sierra Leone has the power to relieve the Plaintiff from his office as Vice President.

Lastly on the Atiku Abubakarr case, Counsel noted that the case is at the centre of the Plaintiff's case but urged the Court not to be persuaded by that decision until it has critically analysed the approach and reasoning in the case while independently and properly construing the relevant provisions of our Constitution which the Court is called upon to interpret. In support of his views on the relevance of the Nigerian case to the matter before the Court, Counsel referred to various sections of Halsbury's Laws of England 4<sup>th</sup> Edition.



Counsel for the 2<sup>nd</sup> Defendant, A.E. Manley-Spaine Esq., referred to a number of provisions of the Constitution and said that he relied on the Statement of Case filed on behalf of the 2<sup>nd</sup> Defendant dated the 17<sup>th</sup> April 2015. In that Statement of Case, Counsel made a number of submissions in support of the proposition that all the relevant provisions of the Constitution must be construed and viewed as a whole to determine whether section 41 (b) creates a continuous requirement for the holder of the office of Vice President. Counsel stressed the relevance of section 35 (1) of the Constitution and the fact that party political affiliation is fundamental to the operation of the democracy practiced in Sierra Leone. Counsel relied on the cases of *Attorney-General vs. Wilts United Dairies* (1921) 37 TLR 884 C.A. and dicta of former Chief Justice Tejan-Jalloh in *Charles F. Margai vs. Solomon Berewa* (2007) in support of his several submissions and urged the Court to answer the questions posed in the action in the affirmative and refuse the reliefs prayed for in the action.

In argument before the Court the issue of whether this Court has jurisdiction to determine the action one way or the other was raised by Counsel for the 2<sup>nd</sup> Defendant as a matter which must be decided as an initial first step. In dealing with this issue, Counsel raised 4 points as follows:

1. Whether in the light of section 48 (4) of the Constitution, the action is maintainable at all in view of the fact that while he holds or performs the functions of President, he is immune from any civil or criminal proceedings in respect of anything done or omitted to be done by him either in his official or private capacity. Counsel challenged the formulation of the questions posed in the action.
2. Whether the questions posed in the action for determination by the Court can be answered at all as canvassed by the Plaintiff. As I understand it, the objection taken by Counsel is that the question presupposes that the President has powers under sections 50 and 51 of the Constitution to remove the Vice President from his duties and office.
3. Whether the Plaintiff can avail himself of section 127 of the Constitution in instituting this action.

4. Whether the parties against whom the action has been instituted are the correct parties. Counsel stressed that since the action complained of was taken by the President personally and not by the Government of Sierra Leone, the Attorney-General ought not to have been cited as a party which is possible under the State Proceedings Act, 2000. He said the President acted single-handedly in relieving the Vice President of his duties and office. Counsel also challenged the naming of the 2<sup>nd</sup> Defendant as a party to the action since he has done nothing to be appointed as Vice President and there is no permanent injunction prayed against him.

Nowhere in the papers filed or in the arguments and submissions made by Counsel for the Plaintiff is it alleged that any enactment or anything contained in or done under the authority of any enactment is inconsistent with or in contravention of the Constitution. In these circumstances, it is my view that the action herein should not have been instituted in the matter or pursuant to section 127 of the Constitution. The reference to the Public Elections Act 2012 by the 2<sup>nd</sup> Counsel for the Plaintiff, Mohamed P. Fofanah Esq. in argument, for purposes of comparison with a provision of the Constitution does not constitute a valid basis for maintaining that the action was instituted pursuant to section 127 of the Constitution. Nor is the Public Notice announcing that the Vice-President had been relieved of his duties and office (the Press Release) such an enactment. If authority is needed in support of my aforesaid view that section 127 of the Constitution is inapplicable in the instant case, that authority is the decision of this Court in *Samuel Hinga Norman vs. Dr Sana Banya & Ors.* S.C. 2/2005 (unreported) Judgment delivered on 31<sup>st</sup> August 2005. In my judgment, there is no reason for us to depart from this Court's earlier decision in this case. The decision in the earlier case was that the SLPP Constitution is not an enactment and therefore cannot be the subject-matter for invoking the original jurisdiction of the Court pursuant to section 127 of the Constitution. This action, in my judgment can be maintained only for an interpretation of the relevant constitutional provisions pursuant to section 124(1) (a) of the Constitution.

The parties to the action as instituted by the Plaintiff are as stated above. The issue as to whether the Attorney-General and Minister of Justice (the 1<sup>st</sup> Defendant) ought to have been made a party has been raised in argument by the 2<sup>nd</sup> Defendant against whom relief No. 4 is relevant. I do not recall that Counsel for the 1<sup>st</sup> Defendant took the point. In our earlier ruling on the application for an interlocutory injunction, my brother the Honourable Mr. Justice



Browne-Marke, had opined in paragraph 5 of his separate and concurring opinion that it seems that the action was brought against the Government of Sierra Leone which is why the 1<sup>st</sup> Defendant is named as a party. This possibility is provided for in the State Proceedings Act, 2000. However nowhere in the Public Notice exhibited as Exhibit "A" in the supporting affidavit to the Originating Notice of Motion is there any evidence that the decision to relieve the Plaintiff of his functions and duties of Vice President, was a decision of the Government of Sierra Leone. In my judgment the 1<sup>st</sup> Defendant was incorrectly made a party in the action as the said decision of the President is expressly stated to be that of his, alone. I agree with Counsel for the 2<sup>nd</sup> Defendant on this point. I express this opinion in spite of the provision in the Rules of this Court which provides for the service of an Originating Notice of Motion, as is filed in this Court to exercise its original jurisdiction, on the Attorney-General and Minister of Justice. Once he has been so served as in this case, he is at liberty to respond if he so wishes (see paragraph (4) of rule 92 (2) of the Rules of this Court) and is not named as a defendant in the action. In these circumstances, I opine that the 1<sup>st</sup> Defendant's response is permissible although he has been incorrectly named as a defendant.

Another feature of this action which has been taken up by Counsel for the 2<sup>nd</sup> Defendant relates to the interpretation of section 48 (4) of the Constitution which deals with the immunity of the President in proceedings instituted or continued against him. In my judgment this action is neither civil nor criminal proceedings instituted against the President, it is simply an action for the interpretation of the Constitution and the reliefs prayed for are declaratory in nature. Whether any declaration made by this Court which is effectively against the President can be enforced against him is quite another matter particularly in cases such as this one where he is not named as a defendant. The 2<sup>nd</sup> relief prayed for seeks a declaration challenging the appointment of the 2<sup>nd</sup> Defendant by the President and the question is whether this Court can make such a declaration in light of the current formulation of section 48 (4) of the Constitution? My opinion is that the Court is simply asked to declare what the law is on the questions posed in the action. However, I note that the exercise of the executive power of Sierra Leone which is vested in the President, is declared by section 53 (1) to be subject to the provisions of the Constitution. So that it is appropriate for any exercise of such executive power to be challenged if it is alleged that such exercise is contrary to the provisions of the Constitution. The Court dealt with the 3<sup>rd</sup> relief prayed for in its Ruling dated 5<sup>th</sup> May 2015, and so it is unnecessary to deal with that relief in this judgment.



How is the Court to understand the questions posed in the light of the reliefs that the Plaintiff seeks? The 1<sup>st</sup> question ends with the words "in any way Other than by the procedure set out in sections 50 and 51 of this Constitution". The 2<sup>nd</sup> question also ends with the words "other than by the procedure set out in Sections 50 and 51 of the said Constitution". Both sections 50 and 51 of the Constitution deal respectively with the removal of the President by the actions of the Cabinet and the Legislature for reasons of his mental or physical incapacity, violations of the Constitution and gross misconduct. The latter provision describes the relevant misconduct as "any violation of the Constitution or any gross misconduct in the performance of the functions of his office". Section 54 (8) of the Constitution states that sections 50 and 51 of the Constitution relating to the removal from office of the President "shall apply to the removal from office of the Vice-President". My understanding of the Plaintiff's case as stated in the questions posed for determination is that these are the only circumstances in which the Vice-President can be removed from office or relieved of his duties and office. It is only in the case of mental or physical incapacity to remove the President or Vice-President that the action is initiated by a cabinet resolution. It must be observed that the final decision to remove either of them from office on the ground of misconduct is taken by a two-thirds majority vote in Parliament. Sections 50 and 51 of the Constitution do not give the President any power to remove the Vice-President either expressly or impliedly so that to link the removal of the Vice-President by action of the President to these provisions only creates confusion and befogs the real issue for determination. If I were to put the question before the Court in simple straightforward language, I would say it is concerned with whether the President has any power under the 1991 Constitution to relieve the Vice-President of his duties and office as stated in exhibit A, the Press Release from State House, dated 17<sup>th</sup> March 2015. The Plaintiff's case is that the President does not have any such power, but the 1<sup>st</sup> Defendant's Counsel has strenuously argued (after amendment of his Case which was granted by this Court on the 27<sup>th</sup> July 2015) that on a purposive interpretation of the Constitution, the President does have such a power. The 2<sup>nd</sup> Defendant in the Statement of his Case dated 17<sup>th</sup> April 2015 urged this Court to answer the questions posed in the affirmative and refuse the reliefs, although in argument he has described the questions posed as non-questions because they are based on a premise or presupposition that the President has removal powers under sections 50 and 51 of the Constitution.



The role of the Court, in a matter of this nature which calls for the interpretation to be placed on the constitutional provisions which are relevant in answering the questions posed, and responding to the said submissions made, is to determine the intention of Parliament when it enacted the said provisions. The issue is to determine whether when the provision in section 41 was enacted, particularly as it relates to section 54 (2) (b), the intention of Parliament was to limit its requirements to the time of election of these officials or whether these were requirements that should last throughout their respective tenure in office. I note that no such limitation is expressly stated in the Constitution.

The learned authors in Volume 44 of Halsbury's Laws of England, 4<sup>th</sup> Edition have stated the position thus:

Para.1369: "The Court has the function of authoritatively construing legislation, that is determining its legal meaning so far as is necessary to decide a case before it. This function is exclusive to the court, and a meaning found by any other person, for example an authorizing agency, an investigating agency, an executing agency, a prosecuting agency, or even Parliament itself, except when intending to declare or amend the law, is always subject to the determination of the court".

Para.1372: The object of all interpretation of a written Constitution is to discover the intention of its author as expressed in the instrument. Therefore the object in construing an Act is to ascertain the intention of Parliament as expressed in the Act, considering it as a whole and in its context, and acting on behalf of the people. The meaning of an enactment that corresponds to the intention is known as its legal meaning. The legal meaning may or may not correspond to the grammatical or literal meaning".

This latter point was taken up in the case of *Dr. Sorie Kennedy Conteh & Ors. vs The Minister of Local Government & Ors.* (cited supra) in which the Honourable Chief Justice had to deal with the situation in which the parties were contending for different legal meanings of a provision in the Constitution. I daresay that the same applies in this case where the parties are contending for different meanings to the requirements in section 41 of the Constitution. The Plaintiff says that on a literal interpretation of the section the requirement of membership of a political party

is relevant up to election and not thereafter while the Defendants contend that it is a continuous requirement which is relevant even after election to office.

Some 15 years ago in the case of *All Peoples Congress vs Ministry of Social Welfare* SC No.4/96 (Judgment delivered in October 1999), this Court had to interpret certain provisions of the Constitution and came to the conclusion that the provisions cannot be construed in isolation, one from another. The then Chief Justice, Desmond Luke, C.J., cited the words of Lord Halsbury L. C. in *Leader vs Duffey* 13 A. C. 294 at 301 when he said "*But I agree that you must look at the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it.*" In support of this common sense approach which interprets statutory provisions in the light of their context and purpose, Laws L. J. in *Oliver Ashworth (Holdings) Ltd vs. Ballard (Kent) Ltd* [1999] 2 All E.R. 791 had this to say:

*It is nowadays misleading - and perhaps it always was to seek to draw a rigid distinction between literal and purposive approaches to the interpretation of acts of parliament. The difference between the purposive and literal construction is in truth one of degree only.....the real distinction lies in the balance to be struck, in the particular case, between the literal meaning of the words on the one hand and the context and purpose of the measure in which they appear on the other".*

In the Ghanaian Supreme Court case of *Agyei Twum vs. Attorney-General & Akwetey* [2005-2006] SCGLR 732 at 757, Dr. Date-Bah, JSC put the task before the Court in the following terms:

*In interpreting constitutional language, one should ordinarily start with a consideration of what appears to be the plain or literal meaning of the provision. But that should not be the end of the process. That literal meaning needs to be subjected to further scrutiny and analysis to determine whether it is a meaning which makes sense within its context and in relation to the purpose of the provision in question. In other words, the initial superficial meaning may have to yield to a deeper meaning elicited through a purposive interpretation.*

One feature of the 1991 Constitution of Sierra Leone is that party political affiliation is a *sine qua non* for the positions of President and Vice President. I have come to this conclusion from



sections ~~42~~ (c), 35, 41 and 54 (2) (b) of the Constitution and the Public Elections Act, 2012. There is no provision in the Constitution for a president or vice president to run for office as an independent candidate. Sections 42(1) and 54 (2) (a) and subsection (3) inform me that both the President and Vice President must be members of a political party. This is the basis on which they are elected and deemed to be elected respectively. If I am correct in coming to this view, the appropriate question to ask is whether such affiliation is limited to the period up to the election to these offices or is such an affiliation necessary throughout the period of their tenure in office? When section 41 of the Constitution is read holistically with the other provisions mentioned, I opine that party political affiliation of both the President and Vice President is a prerequisite for holding such positions. This is the context in which this Court should endeavour to determine the scope of section 41 of the Constitution, time-wise. What was the purpose for which the drafters of the Constitution incorporated the qualifications mentioned in section 41 in dealing with the qualifications for the office of Vice President in section 54 (2) (b)? Why should those qualifications be limited to the time of election and no further? As I have considered these questions, I have come to the conclusion that there is no logical reason why those qualifications should be so limited and that was not the intention of the drafters of the Constitution. It is absurd and illogical to come to a different conclusion. The need to avoid absurdity in interpreting statutory provisions has always been recognized by the courts and I hold that this Court should avoid any absurd interpretation of the relevant constitutional provisions.

Truth to be told, there is no provision in the Constitution which ~~specifically~~ <sup>expressly</sup> and in terms, empowers the President to relieve or remove the Vice President from his duties and office. Assuming (without conceding) that this is so on a literal interpretation of the Constitution, the Defendants through their Counsel have argued that this is not the end of the matter because on a purposive interpretation of the several provisions of the Constitution, the intention of Parliament is that section 41 lays down 4 qualifications for the positions of both the President and the Vice President. This in my considered opinion is based on section 54 (2) (b) of the Constitution (cited *supra*) as far as the Vice President is concerned. I note that section 54 deals with the position of Vice President as is stated in the marginal-note to the section. Section 41 deals with the President but the qualifications mentioned in this section relating to the President are expressly incorporated as the qualifications for the office of Vice President without any time limitation. Section 54 (2) (b) states that a person shall not be qualified to be a candidate for the office of Vice President (emphasis mine) unless he has the qualifications specified in section 41.



The qualifications are those cumulative items numbered (a) to (d) in that section. In other words, anyone who should occupy the office of Vice President must have all of those qualifications, both for his election to the office and during his tenure in office. The subsection does not say that a person shall not be qualified to be a candidate for "election to the office of Vice President" but simply that he shall not be qualified to be a candidate "for the office of Vice President". The word "candidate" by definition is not exclusively limited, in my view, to the time of the election and no further. The Oxford Dictionary of English, 3<sup>rd</sup> Edition at page 253 defines this common word "candidate" as follows:

*A person who applies for a job or is nominated for election, as in the example, candidates applying for this position should be computer-literate; a person taking an examination, as in the example, an A-level candidate; a person or thing regarded as suitable for or likely to receive a particular fate, treatment, or position, as in the example, she was the perfect candidate for a biography.*

Based on the 3<sup>rd</sup> definition of "candidate" *supra*, I interpret section 54 (2) (b) alongside section 41 of the Constitution as saying that a person shall not be suitable for the position of Vice President unless he is (a) a citizen of Sierra Leone; (b) a member of a political party; (c) has attained the age of forty years; and (d) is otherwise qualified to be a member of Parliament. That suitability for the office of Vice President extends beyond his/her election to office. Did Parliament intend that the Vice President should only be qualified for the office at the time of the election and no longer, thereafter? I think not and I so hold.

I note that nowhere in section 54 (2) is the word "election" used as in the case of the opening sentence of section 41 which refers to the President. That opening sentence, in my view, is not part of section 54 (2) (b). This section does not say that a person shall not be qualified for election to the office of Vice President unless he has the qualifications specified in section 41. The absence of the words "for election" informs me that this subsection does not deal exclusively with the period before election. Consequently, I hold that section 54 (2) (b) is not dealing only with the time of election of the Vice President in spite of the fact that the word "candidate" is used.



Let me further illustrate the scope of section 54 (2) (b) after the incorporation of the cumulative and qualifying requirements in section 41 of the Constitution. I have no doubt that none of my compatriots whether in-country or in the diaspora would argue with any conviction that a non-Sierra Leonean (according to the Constitution) can be President of Sierra Leone. Where does the conviction that this is so, found in the Constitution? I opine that it is section 41 of the Constitution that makes citizenship a requirement for the position of President either expressly or by incorporation of section 75 of the Constitution. If the Plaintiff is right that the requirements in section 41 are not continuous for the position of President of Sierra Leone (and by virtue of section 54 (2) (b) for the position of Vice President), but are only limited up to the time of election, it would mean that once a president has been elected, he can for example during his tenure as President, renounce his citizenship. Such renunciation of citizenship is a right or privilege granted to him under our citizenship laws, after which election (in the scenario) he can continue to remain President of the country. If he exercises that right or privilege, it cannot amount in my opinion, to a violation of the Constitution as mentioned in section 51 of the Constitution for at least 2 reasons. Firstly what he has done is lawful under a specific Act of Parliament (that is the Sierra Leone Citizenship Act, 1973 Act No. 4 of 1973 as amended) and cannot at the same time be violating the Constitution. Secondly, it cannot be a violation of the Constitution based on the Plaintiff's contention as far as membership of a political party is concerned, as the requirements (which includes citizenship) in section 41 (according to the Plaintiff) do not establish continuous obligations for the position of Vice President after election to the office. Either these cumulative requirements in section 41 are continuous during the currency of the offices of President and Vice President or they are not. If as I have held, they are continuous and any one of them is not present at any time, then the holder is not qualified for the office. His qualification for the office does not end at the time of his election, but must be so qualified throughout his tenure in office.

In my judgment the position in relation to the requirement of citizenship is equally applicable to the requirement of membership of a political party. The requirements are cumulative. The absence of any one of these requirements renders one ineligible for the position of President or Vice President. In the Plaintiff's case, he was expelled from the political party under whose banner, he was designated a candidate for the office of Vice President. He did not resign from the party, so that losing his membership was not his voluntary act and so a violation of the Constitution. It cannot be said that he "committed" any act. Whether or not he ought to have



been expelled from the Party is not an issue before the Court. In my opinion therefore, both sections 50 and 51 of the Constitution are inapplicable in resolving the issue before the Court. The situation that the Plaintiff found himself is not one of the circumstances for removal from office dealt with in those two sections of the Constitution. Losing one's membership of a political party is neither mental/physical incapacity (section 50) nor is it a "violation" of the Constitution or a gross misconduct in the performance of the functions of his office (section 51). The word "violation" connotes some act on the part of the violator.

Once a Vice President loses one of the qualifications specified in section 41 of the Constitution, the next logical question deals with the manner in which the vacancy is to be filled. Does the loss of that qualification mean that the loser can no longer hold office as Vice-President? If so, who or which body should be responsible for relieving him of his duties and office? The role of Parliament is limited in the situation of removal from office to the provisions of sections 50 and 51 of the Constitution which in my opinion do not apply to the situation of the Plaintiff losing one of the qualifying requirements for his office. Counsel for the 1st Defendant has forcefully argued that section 55 of the Constitution which deals with "vacancy in the office of Vice President" is not exhaustive and that once a sitting Vice President loses any one of the qualifications for his office as found in section 41 of the Constitution, a vacancy is thereby created. This is where I believe the purposive interpretation of this provision of the Constitution is helpful in determining the legal meaning of the enactment. The facts of this case are not expressly covered by section 55 of the Constitution. It is the combined effect of other provisions of the Constitution (namely sections 54 (2) (b), and 41 together with 54 (5) which has created a situation not covered by section 55, dealing with vacancy in the office of Vice President. The informed interpretation rule (which is a rule under Common Law) enjoins the Court to *"infer that the legislator, when settling the wording of an enactment, intended it to be a fully informed, rather than a purely literal interpretation."* See Halsbury's Laws of England, 4<sup>th</sup> Edition, para.1414. The editors of this work further state in paragraph 1484 that *"It is one of the linguistic canons applicable to the construction of legislation that an Act is to be read as a whole so that an enactment within it is to be treated not as standing alone but as falling to be interpreted in its context as part of the Act."* I opine, in line with the above propositions, that the provisions in section 55 are by implication modified by the provisions in sections 54 (2) (b) and 41 of the Constitution and thus give rise to the power to appoint a Vice President under



section 54 (5). This in my judgment is a proper and legitimate role of the Court in arriving at the legal meaning of the relevant constitutional provisions.

Section 40 (1) of the Constitution read in tandem with section 53 (1) and (4) of the Constitution is relevant in determining who or which body is responsible for filling the vacancy that is created by giving an interpretation in accordance with the informed interpretation rule. I have come to this conclusion based on the facts that Sierra Leone subscribes to the system of separation of powers and that the Legislature has been given, as noted above, a limited role as far as removal of the Vice President from office is concerned. In section 40 (1) of the Constitution, the President is described as *inter alia*, "the supreme executive authority of the Republic". Section 53 (1) states that "subject to the provisions of the Constitution, executive power in Sierra Leone shall vest in the President and shall be exercised by him directly...". Section 54 (4) cited *supra* goes on to state how the functions of the President are to be construed with reference to his powers and duties in the exercise of the executive authority of Sierra Leone. When read holistically, these provisions inform me that the President is the highest executive authority in Sierra Leone and his executive powers are only limited by the Constitution. Counsel for the Plaintiff and the Defendants have given different interpretations to the powers of the President under section 40 of the Constitution as noted *supra*. My own view of the matter is that when this section under which the President relieved the Vice President of his duties and office is read alongside the provisions in section 53 (1) and (4) of the Constitution, I hold that the President is adequately empowered to relieve his Principal Assistant (the Plaintiff) in circumstances where he has lost one of the qualifications for holding office as Vice President. This is particularly so when the consequence that should follow, after he lost the said qualification under section 41, is not expressly dealt with by the Constitution and the Legislature at the moment does not have powers to act in those circumstances to resolve the Plaintiff's complaint. I hold that there is no provision in the Constitution which curtails the powers and duties of the President in the exercise of the executive authority of Sierra Leone in respect of the vacancy in the office of Vice President that arose when the Plaintiff lost one of the qualifying requirements for his office.

As far as the decision in the Atiku Abubakarr case is concerned on which Counsel for the Plaintiff has placed much emphasis both in the Statement of the Plaintiff's Case and in oral arguments, it is important to note that while the Nigerian Supreme Court on appeal was answering the questions posed in that action in the light of the 1999 Nigerian Federal

Constitution, we are called upon to answer the 2 specific questions set out in the action in the light of the Constitution of Sierra Leone, Act No.6 of 1991. The provisions of the Constitution which we have to consider and interpret are different in terms from the provisions in the Nigerian Constitution which were considered in the Atiku Abubakarr case as can be discerned from the differences in the questions set out for determination in the respective cases. It is my view that this Court is not obliged to follow the decision or reasoning in the Nigerian case without reference to the issue that is before us. I hold that the combined effect of sections 54 (2) (b) and 41 together with section 54 (5) of the Constitution which call for interpretation in this case, was not the issue before the Nigerian Supreme Court. I further hold that it was never the intention of Parliament in enacting the said provisions that a non-Sierra Leonean can contest for and hold the position of President of the independent and republican State of Sierra Leone. If I am right in this view, I equally hold that it was not the intention of Parliament that a candidate can contest for and hold the position of President (or Vice President) if he is not a member of a political party. Both cumulative qualifying requirements are found in section 41 of the Constitution and the Court is called upon to determine the import of one of them (membership of a political party) so as to answer the questions set out in the action. This was not the issue in the Nigerian case.

Further, while it may be true to say that section 143 of the Nigerian Constitution is similar to section 51 of the Constitution, there are significant differences which affect the outcome in interpreting the said provisions. I reproduce relevant portions of the said provisions for purposes of comparison:

Section 143 (1) and (10) of the Nigerian Constitution states as follows:

- (1) "The President or Vice President may be removed from office in accordance with the provisions of this section.
- (10) "No proceedings or determination of the Panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any court."

\*Section 51 (1) of the Constitution, on the other hand, states in part as follows:



“If notice in writing is given to the Speaker signed by not less than one-half of all the Members of Parliament of a motion alleging that the President has committed any violation of the Constitution or any gross misconduct in the performance of the functions of his office and specifying the particulars of the allegations and proposing that a tribunal be appointed under this section to investigate those allegations, the Speaker shall.....”

It is clear from the various judgments delivered by the Nigerian Supreme Court Justices that section 143 (1) cited *supra* was pivotal in the decision reached in that case. For example, his Lordship Akintan JSC who gave the leading judgment said, after quoting Section 143, “*it is clear from the above provisions of section 143 of the Constitution that the process leading to the removal of the President or Vice President is entirely that of the National Assembly.*” Later in the same judgment he said “*The marginal note to the section reads thus: “Removal of President from office” and the section reads, inter alia, thus: “The President or Vice President may be removed from office in accordance with the provisions of the section....”*” We do not have such provisions in our Constitution. Section 51 does not state that the President may be removed from office in accordance with the provisions of that section simpliciter, nor does the marginal note indicate that its provisions are dealing with removal of the President from office as in the Nigerian case. The Constitution does not oust the jurisdiction of the courts in the process of calling into question the misconduct of the President (and the Vice President) as it does in Nigeria. In this case before the Court, the issue is not the gross misconduct or violation of the Constitution by the Plaintiff in the performance of his functions while in office. The issue is the fact that while serving as Vice President, the Plaintiff lost one of the qualifying requirements for holding the office. The power to appoint a vice president in Nigeria is subject to the approval of the National Assembly (see section 146 (3) of the 1999 Nigerian Constitution). There is no such obligation in the Sierra Leone Constitution (see section 54 (5) of the Constitution) where the office of the Vice President has become vacant in circumstances which are not covered on an holistic and purposive interpretation of the Constitution.

It is also clear from the judgments in the Nigerian case that their approach in interpreting their Constitution is the literal approach. After stating that the Indian approach to statutory interpretation is the literal approach, his Lordship Akintan JSC said as follows: “*The approach of our courts in interpreting statutes and the constitution is the same as declared above. This court had stated the position in numerous cases.*” The approach to interpretation that has been

adopted in interpreting the Constitution in recent times is that of the purposive approach, which I have adopted in this case in order to give an holistic interpretation of the several provisions which are relevant to the issue before the Court.

For the foregoing reasons, I answer the questions in the action herein as follows:

1. On an holistic and purposive interpretation of the several provisions of the Constitution of Sierra Leone, Act No.6 of 1991, in particular sections 54 (2) (b), and 41 together with section 54 (5) thereof, I answer question (1) (a) set out in the Plaintiff's Originating Notice of Motion in this action in the affirmative and hold that the President is empowered to relieve the Vice President of his office and duties in circumstances where the Plaintiff as sitting Vice President has lost one of the qualifying requirements for holding his office. The procedure set out in sections 50 and 51 of the said Constitution are inapplicable.
2. On an holistic and purposive interpretation of the several provisions of the Constitution of Sierra Leone, Act No.6 of 1991, in particular sections 40 (1) and 53 (1) and (4) thereof, I answer question (1) (b) set out in the Plaintiff's Originating Notice of Motion in this action in the affirmative and hold that the supreme executive authority of the President includes a power to relieve the Vice President of his office and duties in circumstances where the procedure set out in sections 50 and 51 of the said Constitution are inapplicable and the Plaintiff as Vice President has lost one of the qualifying requirements for holding his office.
3. That the reliefs prayed for by the Plaintiff are refused.
4. That the parties bear their respective costs of the action.

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THE HONOURABLE MR JUSTICE V.V. THOMAS  
ACTING CHIEF JUSTICE



HONOURABLE JUSTICE N.C. BROWNE-MARKE  
JUSTICE OF THE SUPREME COURT

PLAINTIFF'S ORIGINATING NOTICE OF MOTION

1. The Plaintiff has come to this Court by way of Originating Notice of Motion dated Application herein dated 20<sup>th</sup> March, 2015, (hereafter, "Plaintiff's Action"). As I stated in my interlocutory judgment delivered on 5<sup>th</sup> May, 2015, this Action raises issues of immense importance for our jurisprudence.
2. The Motion is made pursuant to Sections 124 and 127 of the Constitution of Sierra Leone, 1991 – hereafter, "*the Constitution*." It seeks the determination of the following questions:
  - (1) Whether the Constitution of Sierra Leone empowers the President "*to relieve the Vice-President of his office and duties*" in any way other than by the procedure set out in Sections 50 and 51 of the said Constitution?
  - (2) Whether the "*Supreme executive authority*" of the President mentioned in Section 40(1) of the Constitution of Sierra Leone includes the power to "*relieve the Vice-President of his office and duties*", other than by the procedure set out in Sections 50 and 51 of the said Constitution?

If the answer to the questions above is No, then the Plaintiff seeks the following further reliefs:

- (i) For a Declaration that the Public Notice announcing that the Vice-President had been relieved of his duties and office (Exhibit A herein) is unconstitutional, null and void, and of no effect.
- (ii) For a Declaration that the appointment of Victor Bockarie Foh as Vice-President of Sierra Leone is also unconstitutional, null and void, and of no effect.

- (iii) For an Injunction restraining the said Victor Bockarie Foh from acting in the Office of Vice-President of Sierra Leone, pending the hearing and determination of this action.
  - (iv) For a Declaration that the Elected Vice-President of Sierra Leone (the Plaintiff herein) remains in Office as Vice-President thereof unless and until removed from Office as required by Sections 50 and 51 of the Constitution of Sierra Leone.
3. The Plaintiff further states that the capacity in which he brings this action is as (i) a citizen of Sierra Leone; (ii) Elected Vice-President of Sierra Leone.

#### PLAINTIFF'S AFFIDAVIT

4. The Plaintiff's suit or action is supported by an affidavit deposed and sworn to by himself on the same day, i.e. 20<sup>th</sup> March, 2015. In it, he deposes to the following matters:
- 1. That I am the Plaintiff in the action herein.
  - 2. That I was elected by the people of Sierra Leone to the office of the Vice-President on the same ticket with President Ernest Bai Koroma in 2007, and again in 2012.
  - 3. That I continued in my office as Vice-President until 17<sup>th</sup> March, 2015 when I heard on the SLBC Radio and Television that the President had relieved me of my duties and from the office of Vice President of Sierra Leone. A copy of the Press Release issued from State House is exhibited hereto and marked "A".
  - 4. That I was totally taken aback and astounded, and I immediately sought the advice of my lawyers, as a result of which I issued a Statement on the 18<sup>th</sup> March, 2015, stating inter alia, that my purported removal from office is both Unconstitutional and Unlawful. A copy of the said statement is exhibited hereto and marked "B."
  - 5. That on the same 18<sup>th</sup> March, 2015 a Former Vice-President and Attorney-General, Dr Abdulai Conteh, wrote an open letter to the President supporting my position that my purported removal from office was Unconstitutional. A copy thereof is exhibited and marked "C".
  - 6. That on the same 18<sup>th</sup> March, 2015 the Sierra Leone People's Party (SLPP) also issued a statement supporting my view that my purported removal from office was Unconstitutional. A copy thereof is exhibited hereto and marked "D".



7. That in complete disregard of all the views expressed by people right across the board against the action of the President, on the 19<sup>th</sup> March, 2015 it was announced that the 2<sup>nd</sup> Defendant Victor Bockarie Foh had been appointed Vice-President and sworn-in to the said office.
  8. That I have been advised by my lawyers, and verily believe that the President has no power under the Constitution of Sierra Leone to relieve me of my office and duties as Vice-President except by the procedure set out in Sections 50 and 51 of the said Constitution, or to appoint someone else in my stead when due process has not been followed.
  9. I therefore ask this Court for the reliefs prayed for accordingly.
5. I shall now turn my attention to the exhibits. Exhibit "A" is a copy of the press release. It reads:

"On the 6<sup>th</sup> day of March 2015, the National Advisory Committee (NAC) of the All Peoples Congress (APC) took a decision to expel Alhaji Samuel Sam Sumana from the APC; and by letter dated 6<sup>th</sup> day of March 2015, Alhaji Samuel Sam Sumana was duly expelled from the APC.

*The President of the Republic of Sierra Leone, as guardian of the Constitution of Sierra Leone pursuant to Section 40(3) of the Constitution of Sierra Leone Act No. 6 of 1991 — of the ~~Constitution of Sierra Leone Act No. 6 of 1991~~, I have taken note of the decision (and) the public will recall, and I have also taken note of the fact that on Saturday March, 14, 2015, Alhaji Samuel Sam Sumana sought asylum from a foreign embassy demonstrating a willingness to abandon his duties and office as the Vice President of our beloved Republic.*

*And whereas Alhaji Samuel Sam Sumana is no longer a member of a political party in Sierra Leone and therefore does not have the continuous requirement to hold office as Vice President of the Republic of Sierra Leone, provided for in Section 41(b) of the Constitution of Sierra Leone Act No. 6 of 1991, I hereby relieve Alhaji Samuel Sam Sumana of the duties and from the office of Vice President of Sierra Leone with immediate effect, pursuant to my supreme executive authority as President of the*

*Republic of Sierra Leone as enshrined in Section 40(1) of the said Constitution of Sierra Leone.*

*I am in consultations with the leadership of the APC, the party under whose ticket I was elected President, in relation to the appointment of another person as Vice President. I shall appoint and announce the name of the Vice President of Sierra Leone, shortly, pursuant to Section 54(5) of the Constitution of Sierra Leone Act No. 6 of 1991."*

#### ASYLUM SEEKING AND DIPLOMATIC IMMUNITY

6. It is quite apparent from the wording of the notice, that two issues precipitated the action of the President: first, the Plaintiff had been expelled from the governing party, the APC, and so did not belong to a political party any longer; this was a requirement of Sub-Section 41(b) of the Constitution, and, according to the press release, was a continuous requirement; second, the Plaintiff had sought asylum in a foreign embassy, and thereby expressed a willingness to abandon his position as Vice President, and the President therefore had to act quickly and decisively in order to avoid an impasse in which the office of Vice President might remain unoccupied, indefinitely. The particular foreign embassy has not been mentioned, but there is the implied averment that such a move on the part of the Plaintiff would have caused grave embarrassment and serious consequences for governance issues in the country. The Plaintiff admits the expulsion, but has said nothing about whether indeed, whilst occupying the office of Vice President of this country, he had for whatever reasons, sought asylum in a foreign embassy. Foreign diplomatic missions and their premises in Sierra Leone, are accorded full diplomatic immunity. Section. This is the effect of the Diplomatic Immunities and Privileges Act, 1961. Sub-Section 3(1) of the Act reads, as follows:

*"Subject to the provisions of this Act every foreign envoy and every foreign consular officer.....shall be accorded immunity from suit and legal process and inviolability of residence, official premises, and official archives to the extent to which they were respectively so entitled under the law in force in Sierra Leone immediately before the passing of this Act."*



This Act was passed to give effect to the Vienna Convention on Diplomatic Relations, 1961 to which Sierra Leone is a party. Article 22 of the Convention states:

- "1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.*
- 2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.*
- 3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution."*

7. So, the situation which according to the press release had arisen, was that our country's Vice President had gone to a place where no one, not even the President, nor our Courts would be able to exercise any form of authority over him. And this was done 8 days after he had been expelled from the party which had taken him to the office of Vice President. And, as I have stated above, the Plaintiff has not said anything about this allegation. The press release was exhibited by him to his affidavit which was freely deposed and sworn to by him, and it must be taken therefore, that he is fully aware of its contents. And as he has not denied its contents, or, any part of it, it must be taken that he admits the whole of it. The seeking and granting of asylum to anyone, not being a citizen of the country in whose foreign mission the asylum is sought, could be embarrassing to the host country, as is evident in the ongoing saga relating to the seeking of asylum by Julian Assange in Ecuador's embassy in London.
8. Exhibit B, is a copy of the Plaintiff's statement issued to the public. There, he asserts that his removal from office was unconstitutional as, in his view, the President had no power to relieve him of his duties, and that the office of Vice President could only become vacant in the instances set out in Section 55 of the Constitution. He asserts also that the President's action was unlawful in that he, the Plaintiff, had been elected by the people of Sierra Leone to the office of Vice President. This statement was issued a day after the press release, exhibit A, was published. Again, there is no rebuttal of the asylum allegation.

## HON DR ABDULAI CONTEH'S OPEN LETTER

9. Exhibit C, is a copy of the open letter written by the Hon Dr Abdulai Conteh, one time, Attorney-General and Minister of Justice of Sierra Leone, between April, 1987 and October, 1991, and a very illustrious one at that, I must say. I can attest to this as one who worked as a subordinate State Counsel under him; he later became 1<sup>st</sup> Vice - President and Minister of Internal Affairs between October, 1991 and April, 1992; and then later, Chief Justice of Belize, and presently a Justice of Appeal in the Eastern Caribbean States Court of Appeal. As I have said earlier, Dr Abdulai Conteh is highly respected in the legal world and he was one of the members of the Constitutional Review Commission set up by the late President Momoh to draw up the present Constitution. He was also, as a member of the Cabinet which submitted the Bill to Parliament for passage into Law. And as a Member of Parliament at the time, he also took part in the debates on the draft Constitution in Parliament. Dr Conteh asserts that since, 1991, the position of Vice President has become elective, and no longer appointive as was the case under the 1971 and the 1978 Constitutions, respectively. The basis of that postulate, is that the Vice President is elected by the electorate. Interestingly, when one studies the Constitution carefully, one would note that though there are copious references to the election of the President in Sections 40, 41, 42, 43, 44 & 45, there is no independent reference to the election of Vice President, save as stated below, nor, is there a separate election for the office of Vice President. So let us look at how the Vice President comes into office. Section 54 deals with this matter. It reads:

*(1) There shall be a Vice-President of the Republic of Sierra Leone who shall be the Principal Assistant to the President in the discharge of his executive functions.*

*(2) A person -*

*(a) Shall be designated a candidate for the office of Vice President by the Presidential candidate before the Presidential election;*

*(b) Shall not be qualified to be a candidate for the office of Vice President unless he has the qualifications specified in section 41.*

*(3) A candidate shall be deemed to be duly elected as Vice President if the candidate who designated him as candidate for election to the office of Vice President has been duly elected as President in accordance with the provisions of Section 42.*



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*(3) A candidate shall be deemed to be duly elected as Vice President if the candidate who designated him as candidate for election to the office of Vice President has been duly elected as President in accordance with the provisions of Section 42.*

In other words, a candidate cannot become Vice President independently, or, on his own. He can only be *deemed* to be elected if the person who designated him as candidate for the office of Vice President, wins the Presidential election. So, whilst the President is '*elected*' according to Sub-Section 42(3) of the Constitution, the Vice President is *deemed to be elected* according to Sub-Section 54(3) thereof. Another distinction between the two offices is that Sub-Section 42(1) of the Constitution states that:

*"A Presidential candidate shall be nominated by a political party."*

But when it comes to the case of the Vice President, Sub-Section 54(2)(a) quoted above states that:

*"A person shall be designated a candidate for the office of Vice President by a Presidential candidate before a Presidential election."*

The party nominates the Presidential candidate, but the Presidential candidate '*designates*' the candidate for the office of Vice President. It follows that the office of Vice President is not truly and exclusively elective as opposed to being appointive, as argued by Hon Dr Conteh. In the final analysis, it is the person elected to the office of President who determines the person who will eventually become Vice President. According to Section 41(b) of the Constitution, both Presidential candidate and candidate for the office of Vice President, must belong to a political party. The evidence presented by the ~~Appellant~~ <sup>Defendant</sup> is that as of 6<sup>th</sup> March, 2015 he did not belong to any, not just a, political party. Could he therefore continue to hold office?

10. Hon. Dr Conteh argues further down the first page of exhibit C that:

*".....after 1<sup>st</sup> October, 1991, when the national Constitution became operational, the people of Sierra Leone stipulated and granted to themselves the right to have a say as to who shall be their Vice President."*

When examined carefully, this statement does not appear to be in strict accordance with the express provisions of Section 54 set out above. And if, as Hon Dr Conteh has postulated, that the people of Sierra Leone as of 1<sup>st</sup> October, 1991 had arrogated to



themselves the right to decide who should be Vice President, this right seems to have been at variance with Sub-Section 178(3) of the Constitution which states:

*"The office of Vice-Presidents under the existing Constitution shall remain in force until the first dissolution of Parliament under this Constitution."*

Hon Dr Conteh was himself appointed to the office of 1<sup>st</sup> Vice-President by President Momoh pursuant to this Constitutional provision after the Hon A B Kamara retired from office, and the late Hon Salia Jusu-Sheriff had resigned from the Government as 2<sup>nd</sup> Vice President. Prior to this, Hon Dr Conteh had been just Attorney-General & Minister of Justice. So, it was not a case of his continuing in office. It follows therefore, that even after the Constitution had been passed, the position of Vice President or Vice Presidents remained appointive in that sense (not until the dissolution of Parliament, because that Parliament was not dissolved - there was a military interregnum) but until the first election under the Constitution in 1996.

11. On the last page of his letter, Hon Dr Conteh states:

*"Therefore, reliance on the expulsion of the Vice President from the APC as a warrant for his removal from office can find no justification in the textual provisions of the Constitution. Membership of a political party is a qualification for election to the office, but nowhere is it stated in the Constitution that membership or continuing membership is a necessary qualification or coterminous with continuing or remaining in office."*

If Hon Dr Conteh is right, then it follows logically, that the President could himself cease to be a member of the APC which nominated him as a candidate in the 2012 Presidential election, but still remain President. Was this the true intent of the framers of the 1991 Constitution? It seems to me that the whole ethos of the Constitution is that to hold office as President or Vice President, but not Minister of Government, one must belong to a political party. To look at it from another view-point, an independent candidate or one who does not belong to a political party, cannot contest a presidential election.

Section 41 of the Constitution makes this clear. Is it sensible then to argue that one can remain a President if one no longer belongs to a Political party? I think not. But the

question which still remains to be answered is that of the removal from office which Hon Dr Conteh argues, cannot be done by the President as to do so would, in his words, on the last page of his letter, *".....defeat, disappoint and render nugatory the people's will."*

12. The last exhibit, is "D" which is a copy of a press statement issued by the SLPP. As I said in the earlier Judgment, it is not as weighty and intellectual as Hon Dr Conteh's letter, but it makes the same point: the Plaintiff's removal from office was unconstitutional.

#### PLAINTIFF'S STATEMENT OF CASE

13. On 30<sup>th</sup> March, 2015 the Plaintiff filed his Statement of Case as required by Rule 90 of the Supreme Court Rules, 1982 – hereafter "SCR, 1982". I shall proceed to summarise his arguments. The Plaintiff was elected Vice President in 2007 and again in 2012 together with the President under the banner of the APC. I have already made my views clear on this whole notion of election of the Vice President. The Plaintiff was relieved of the duties of the office on 17<sup>th</sup> March, 2012. No official communication of this decision was sent to him. He went on to publish the press release dated 18<sup>th</sup> March, 2015. On 19<sup>th</sup> March, 2015, the President appointed Mr. Victor Bockarie Foh in his place. Mr Foh had assumed office and was holding himself out as such. He submits that he was elected by the people of Sierra Leone in 2007 and again in 2012. Section 55(c) of the Constitution read together with Sections 50 and 51 thereof, sets out the circumstances in which he could be removed from office. In removing him from office, the President had purported to exercise his Supreme Executive Authority conferred on him by Sub-Section 40(1) of the Constitution. He submits therefore, *".....that Section 40(1) does not make any provision for the President to relieve the Vice President of his position for any reason whatsoever, and no such words are to be found therein. It is further submitted that Section 40(1) is merely a general provision setting out the "style and titles" of the President, and nothing more can be read into it."*
14. The Plaintiff submits further, that any act inconsistent with a written Constitution is an amendment thereof, which is not permissible when there is adequate procedure for the amendment of same. He cites in support of this submission the case of ATTORNEY-GENERAL v AKAR [1967-68] ALR SL 381 CA; and AKAR v ATTORNEY-



GENERAL [1968-69] ALR SL 274, P.C. He continues by submitting that the only provision for the removal of both the President and Vice President is to be found in Sections 50 and 51 of the Constitution, read together with Section 54(8) thereof. His Counsel relied on the maxim "Generalis Specialibus non derogant" - where there is a specific provision, you cannot rely on a general one.

15. Another submission is that the President violated the Constitution and acted beyond his powers by purporting to "relieve the Vice President of his office and duties" as there is no such provision in the Constitution. He cites in support of this submission the Nigerian Supreme Court case S.C. 31/2007 ATTORNEY-GENERAL OF THE FEDERATION OF NIGERIA & OTHERS v ATIKU ABU BAKARR & OTHERS. In that case, the purported removal of the Hon Atiku Abubakarr from office as Vice President of the Federation, was declared unconstitutional, null and void and of no effect. A sentence from the judgment of AKINOLA AKINTAN, JSC is cited:

*"Unlike the Ministers, the President cannot remove the Vice President. The process of removal of the President or the Vice President is provided for in Section 143 of the Constitution. It is through the process of impeachment which is to be conducted by the National Assembly as set out in that Section."*

He submits further that Section 143 of the Nigerian Federal Constitution is very similar to Section 51 of our Constitution. He submits therefore that the reasoning and arguments of the Learned Justices of the Nigerian Supreme Court are impeccable and that they should be adopted by this Court. He refers to the case of the sacking of the Malawian Vice President, Joyce Banda, by the then President, Bingu Wamutharika, but does not cite the appropriate Report. He asks this Court to answer the questions posed in the negative. He ends with a quote from LORD CAMPBELL in LIVERPOOL BANK v TURNER (1860) 30 L.J Ch 369-381 where the learned Lord of Appeal in Ordinary said:

*"....No universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real*

*intention of the legislature carefully attending to the whole scope of the statute to be construed."*

16. On 8<sup>th</sup> April, 2015, two things happened. First, the 1<sup>st</sup> Defendant filed his Statement of Case through his Solicitor. Second, the Plaintiff deposed and swore to a supplemental affidavit in which additional facts were deposed to, and to which were exhibited additional documents, not forming part of his Statement of Case. On 15<sup>th</sup> May, 2015 when Mr. J B Jenkins-Johnston, then lead Counsel for the Plaintiff began addressing the Court on the Plaintiff's action, he referred to this supplemental affidavit. Mr. Macaulay, Counsel for the 1<sup>st</sup> Defendant informed the Court that it had not been served on him. Initially, on that day, the Court Ordered that it be served on Defendants' respective Counsel, and gave the Defendants leave to amend their respective statements of case. By Notice of Motion dated 19<sup>th</sup> May, 2015 the 1<sup>st</sup> Defendant applied for ~~the~~ those Orders to be set aside. This Court on 1<sup>st</sup> June, 2015 made the following Orders:

#### ORDERS MADE ON 15<sup>th</sup> MAY, 2015

- i. This Honourable Court Orders that the Registry must have served copies of the Supplemental affidavit in support of the Originating Notice of Motion on the Defendants by end of day, Friday 15<sup>th</sup> May, 2015.
- ii. This Honourable Court Grants leave pursuant to Rule 93 of the Supreme Court Rules, 1982 to the Plaintiff, to amend his Statement of Case, if he so wishes, to reflect the additions he has clearly made to the same by way of his said Supplemental affidavit. He shall file and serve the amended Statement of Case not later than Thursday 4<sup>th</sup> June, 2015. If he fails to file and serve such amended Statement of Case, the said Supplemental affidavit shall not be used by any party in these proceedings.
- iii. In the event that the Plaintiff does file an amended Statement of his case as Ordered in sub-paragraph (ii) supra, the Defendants respectively, are hereby granted leave to amend their respective Statements of Case, and to file and serve the same not later than Monday 8<sup>th</sup> June, 2015.
- iv. No Order as to Costs.



17. After these Orders had been made, Mr. Jenkins-Johnston said that he would wish to comply with the Order of the Court. The hearing was adjourned to 10<sup>th</sup> June, 2015. On 4<sup>th</sup> June, 2015, Jenkins-Johnston & Co, then Plaintiff's Solicitors, filed a document intitled, "Notice pursuant to Court Order." It stated as follows:

*"Take Notice that consequent upon the Order of the Supreme Court made on Monday the 1<sup>st</sup> day of June, 2015 the Plaintiff does not intend to amend his statement of case as filed on the 30<sup>th</sup> March, 2015."*

By virtue of this Notice, the Defendants were no longer entitled to amend their respective statements of case. The Plaintiff's case now depended on the un-amended statement of case filed on 30<sup>th</sup> March, 2015.

#### MR MARGAI TAKES OVER AS LEAD COUNSEL FOR PLAINTIFF

18. On 10<sup>th</sup> June, 2015, Mr. Margai appeared as lead Counsel for the Plaintiff. The line-up was now, Mr. Margai, in the lead with Mr. S B Tejan-Sie II, Mr. M P Fofanah and Mr. R B Kowa. Mr. Margai also informed the Court that he intended to file the appropriate Notices of Change and of Appointment of Solicitors, and an application for an extension of time within which to amend the Plaintiff's statement of case. He therefore sought an adjournment of the hearing which was granted.
19. The Application for an extension of time was filed in due course, and was on 15<sup>th</sup> July, 2015 dismissed for the reasons set out in the Judgment of the Learned Acting Chief Justice. Hearing into the substantive Originating Notice of Motion was fixed for 21<sup>st</sup> July, 2015.

#### MR MARGAI MOVES PLAINTIFF'S MOTION

20. Arguments did commence on 21<sup>st</sup> July, 2015 with Mr. Margai formally moving the Motion afresh - as stated above, Mr. Jenkins-Johnston had indeed begun doing so. His arguments were all recorded and a full transcript has been made available to the Court and to Counsel. My view is that oral arguments in this Court when exercising its original

jurisdiction are circumscribed by the statement of case filed by the party, as the Court is entitled to give judgment on the basis of the respective statements of case filed. This is the effect of Rule 97(1) which states in part:

*“The Court may, after considering the statement of the plaintiff’s case and of the defendant’s case, the memorandum of agreed issues and any arguments of law, decide to determine the action and give judgment in Court on a fixed date without argument or may appoint a time at which the parties shall appear before the Court for further hearing of the action.”*

As regards the submission of a memorandum of agreed issues, this was dispensed with at the start as the questions posed for determination were quite clear and unambiguous; and in addition it was not requested by Counsel. So, the arguments advanced by Mr. Margai in support of the Plaintiff’s case, were restricted to the arguments recorded in his statement of case. I shall not set out in extenso these arguments. The Learned Acting Chief Justice has done so, and I do not find it necessary to repeat the exercise. I shall only deal with the salient features of Mr. Margai’s arguments.

#### MR MARGAI’S ARGUMENTS

He referred to all the relevant provisions in the Constitution, relevant to the issues in dispute: Sections 49, 50, 51, 52 and 55. He referred to the Oxford Learners’ Dictionary for the meaning of the words “relieve” and “remove”. Their respective meanings are not in doubt or in dispute. He said that the only way in which the Vice President could be removed from office or relieved of his duties was as provided for in paragraph (c) of Section 55 of the Constitution. He referred to the allegation in the press release relating to the seeking of asylum in a foreign embassy by the Plaintiff. His view was that it was for the Defendants to prove that the Plaintiff had done so. I have dealt with this issue above. I have noted that the Plaintiff has not in any of the documentation filed by him, adverted to this issue. These are civil proceedings. If an allegation is not denied, it is taken to be admitted. Whether or not the President confirmed that the particular foreign embassy had received the request or not, is not really the point. The point is whether he believed this to be true, and whether it formed part of the basis of his decision to relieve the Plaintiff of his duties as Vice President.



21. He then moved on to the Plaintiff's expulsion from the APC. He then referred to Sub-Section 40(3) which states that the President is the guardian of the Constitution. According to Mr. Margai, and according to the dictionary meaning of guardian, that Constitutional provision did not empower the President to remove the elected Vice President. He said further that there was a lacuna in subsection 41(b) - that is the provision dealing with membership of a political party. He said that the letter of expulsion was not before the Court. I do not think this was necessary as it is not a fact in dispute. The Plaintiff has readily admitted that he was so expelled. His view on reading the whole of Section 40 together was that the President had no power to remove the Vice President from office. He argued that the use of the indefinite article "a" rather than the definite article "the" in Section 41(b) was intentional. It meant that the expulsion of the Plaintiff from the APC was not the end of the matter. He had options - he could, for instance, have joined another political party. In his view, the President had acted, in his own words, "*precipitously*" without waiting for the Plaintiff to exercise his right of appeal against the expulsion. He said further, that even if the expulsion triggered into operation Section 41(b), this would also trigger into operation the provisions of Section 50 and 51. In this respect, he adopted the arguments of Hon Dr Abdulai Conteh in his open letter.
22. He referred to the ATIKU ABUBAKARR case briefly at this stage, and mentioned in passing that there, Alhaji Abubakarr had in fact joined another party. He contrasted our Section 41(b) with Section 142(1) of the Nigerian Constitution. It reads as follows:

"in any election to which the foregoing provisions of this Part of this Chapter relate, a candidate for an election to the office of President shall not be deemed to be validly nominated unless he nominates another candidate as his associate from the same political party for his running for the office of President, who is to occupy the office of Vice President and that candidate shall be deemed to have been duly elected to the office of Vice President if the candidate for an election to the office of President who nominated him as such associate is duly elected as President in accordance with the provisions aforesaid."

This is an expanded and perhaps a rather cumbersome version of our Section 54(2) & (3). But I must again point out that inspite of the use of the definite article in this provision, the position in Sierra Leone still remains that the candidate for election to the office of Vice President must belong to a political party. The Plaintiff did, until 6<sup>th</sup> March, 2015 belong to a political party, the APC. And just for record purposes, his expulsion has not been challenged in this or in any other Court. Counsel submitted also that on the question of the exercise of executive power, our Constitution is on all fours with that of the Nigerian Constitution as explained by the Nigerian Supreme Court in the ATIKU ABUBAKARR case.

23. Counsel also did a contrast between the position of a Vice President under the old 1978 Constitution and the present one. Under the present Constitution, unlike the older one, both President and Vice President were elected together on the same ticket. Section 41 was applicable to both of them. This contrast was also dealt with by Hon Dr Conteh in his open letter.
24. As regards the vacancy in the office of the Vice President provided for in Subsection 54(5), Counsel argued that it could only arise in the narrow circumstances set out in Section 55, and not otherwise. He asked the Court to apply the literal meaning of the words used in both sections, and also the words used in Section 40. Counsel referred to Section 143 of the Nigerian Constitution. Before he began expanding on this provision, the Learned Acting Chief Justice asked him whether there was a comparable provision in our Constitution. Counsel's view was that that provision was on all fours with our Sections 50 & 51 as far as the Vice President was concerned. But he also agreed that the opening words in the Nigerian Section 143 were not exactly those used in our Sections 50 & 51.
25. What I have observed is that the opening words of the Nigerian provision are permissive in nature and in effect:

*"The President or Vice President may be removed from office in accordance with the provisions of this section."*



The provision does not state that each or either of them can only be removed from office in accordance with the provisions of the particular section. It is not exclusive. Counsel concludes that on his reading of this provision, a Vice President could only be removed from office in the limited circumstances set out in that provision. He read various portions of the lead judgment in support of his arguments. He said that the Plaintiff in the instant case, had not been accused of gross misconduct whilst performing his duties as Vice President; nor had he been found to be suffering from mental or physical infirmity. Gross misconduct had nothing to do with his conduct in the APC. It had everything to do with the Constitutional duties of a Vice President. At the end, Mr Margai invited the Court to hold that the President's conduct in the removal of the Plaintiff from office was unconstitutional, illegal and of no effect; and that as such, the Orders prayed for must be granted. He indicated at this stage that Mr. Fofanah would be addressing the case presented by the 2<sup>nd</sup> Defendant, the current Vice President, Mr. Victor Foh.

#### MR M FOFANAH'S ARGUMENTS

26. Mr. Fofanah began by postulating the situation where a sitting President elected by the people was expelled from his party by a cabal in that party. That would be catastrophic as it would amount to a denial of the will of the people. He adopted Mr. Margai's arguments in respect of the case against the 2<sup>nd</sup> Defendant. The difficulty he faced in this respect was soon brought home to him. Mr. Manly-Spain objected to his continuing along the lines he had started on the ground that there was nothing in the Plaintiff's statement of case against the 2<sup>nd</sup> Defendant. Mr. Fofanah's response was that the 2<sup>nd</sup> Defendant's appointment was unlawful and unconstitutional, and therefore null and void, and that the 2<sup>nd</sup> Defendant had submitted to the jurisdiction of the Court.
27. The main thrust of Counsel's arguments was that membership of a political party was not a continuous requirement for occupancy of the office of Vice President. It was a prerequisite for candidacy in a Presidential election. He made a comparison between the provisions in Section 41(b) and those in Section 45 of the Public Elections Act, 2012. That provision reads as follows:

*"(1) The nomination of a presidential candidate shall be in writing in the form prescribed in the Third Schedule and shall be subscribed by -*

*(a) the presidential candidate;*

*(b) the candidate designated for the office of Vice President by the presidential candidate in accordance with subsection (2) of Section 54 of the Constitution; and*

*(c) three executive members of the political party which nominated the presidential candidate.*

*(2) A person shall not be qualified to be designated as a candidate for the office of Vice President if the person does not have the qualifications specified in subsection (2) of section 44."*

One would note that paragraph (b) supra uses the expression: "*the candidate designated .... by the presidential candidate*". One has to bear this in mind when one goes back to Section 44 of the Act. Subsection 44(1) states:

*"No person shall stand as a candidate in a presidential election if he is not a candidate nominated by a political party."*

The dichotomy between a presidential candidate being "*nominated*" by his political party, and the candidate for the office of vice president, being "*designated*" as such by the presidential candidate, is maintained. I make this observation at this stage because both Counsel for the Plaintiff have consistently emphasised the apparent election of the Plaintiff as Vice President by the people of Sierra Leone. Mr Fofanah in particular has canvassed the argument that the election of both the President and the Vice President constitutes an expression of the sovereign will of the people.

28. Counsel also referred to the statutory declaration in the 4<sup>th</sup> schedule to the Act and argued that it made no mention of membership of a political party. Section 10(1) of the Interpretation Act, 1971 states that: "*Every schedule to, or table in any Act, together with any notes to such schedule or table, shall be construed and have effect as part of the Act.*"

A schedule is usually made pursuant to a particular statutory provision and, according to RENNER-THOMAS, CJ in ABU BAKARR CONTEH v SOLOMON BEREWA &



ANOR, Ruling delivered 3<sup>rd</sup> August, 2007, “... *the schedule is used to set out some provisions which are too long or detailed to be put in the body of the Act.*” In any event I am not sure that the position taken by Counsel in this respect, advances the argument in any particular way or manner.

29. Counsel also submitted that only the peoples’ representatives in Parliament could remove the Vice President from office. If the non-membership of a political party amounts to a violation of the Constitution, the solution would have been for the matter to be taken to Parliament. As to the supposed vacancy which had arisen in the office of the Vice President by the removal of the Plaintiff, the vacancy had itself been created by the President. None such had been legally created. It followed that the 2<sup>nd</sup> Defendant was occupying the office illegally. He therefore asked that the Plaintiff’s prayers be granted.
30. Mr. Macaulay began his response or answer on the adjourned date, 27<sup>th</sup> July, 2015. He referred to the statement of case filed on behalf of the 1<sup>st</sup> Defendant. He said that on reviewing the Plaintiff’s Motion, he had not been able to identify any matter therein that calls for adjudication in this Court under Section 127 of the Constitution.

*Section 127(1) reads as follows: “A person who alleges that an enactment or anything contained in or done under the authority of that or any 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.”*

In my judgment on the interlocutory application filed by the Plaintiff, I had pointed this out in paragraph 29 thereof. There, I said:

*“The Plaintiff has not contended in this Application that the President has done anything pursuant to an enactment which he now claims is inconsistent with, or, contravenes the Constitution. He is contending, on the contrary, that the President has wrongly utilised the provisions of this Constitution. So, in my view, he cannot readily seek shelter under the Section 127 umbrella. His Application must be dealt with under Section 124(1)”. I still hold the same view.*

31. As regards the invocation of Section 124 of the Constitution, Mr Macaulay submitted that in carrying out the interpretation of several sections of the Constitution that fall for determination, this Court should adopt and follow the principles and guidelines set out in the authorities he was relying on. In the first of them, S.C. DR SORIE KENNEDY CONTEH & ORS v MINISTER OF LOCAL GOVERNMENT & ORS Judgment delivered by RENNER-THOMAS, CJ on 10<sup>th</sup> November, 2006, this is what the Learned Chief Justice had to say about Section 124:

*"The test to be applied where the original jurisdiction is invoked to interpret or enforce the provisions of the Constitution was thus stated by me in my judgment in the Hinga Norman case (supra). 'The first test is that the Plaintiff seeking to invoke the original jurisdiction must be able to point to some provision of the National Constitution that is to be enforced or interpreted. The next test is to show in addition, what act or omission makes it necessary for the provision to be enforced. The third test in my opinion, is an alternative to the second test. The Plaintiff must show that an interpretation of the particular provision of the National Constitution identified under the first test is required as a matter of law.'"*

32. As to statutory interpretation, the Learned Chief Justice said this at pages 11 and 12 of his judgment:

*"Indeed, it is most essential in the process of statutory interpretation to bear in mind the fundamental distinction between the literal meaning of a term or an enactment and its legal meaning. This distinction between literal meaning and legal meaning according to BENNION ON STATUTORY INTERPRETATION 'lies at the heart of the problem of statutory interpretation.... The function of the court as interpreter of an enactment is to determine the legal meaning of the enactment, that is the meaning that correctly conveys the legislative intention. Therefore, the main object in construing an enactment is to ascertain the intention of Parliament as expressed in the enactment considering it as a whole and in its context. For this reason, the legal meaning may or may not correspond to the grammatical or literal meaning. How then do we arrive at the legal meaning? According to Halsbury's Laws of England the legal meaning: 'is arrived at by applying to the enactment taken with any other relevant and admissible material, the rules, principles,*



*presumptions and canons which govern statutory interpretation. These may be referred to as the interpretative criteria or guides to legislative intention.....If on an informed interpretation there is no doubt that a particular meaning of an enactment is to be applied, that meaning is to be taken as its legal meaning. If there is a real doubt, it is to be resolved by applying the interpretative criteria..."*

## SECTIONS 50 AND 51

33. I find this citation helpful, because it helps to bring into sharpe focus what it is, this case is about. I have already set out above the questions asked. As to the first question posed by the Plaintiff, the procedure laid out in Sections 50 and 51 of the Constitution, has nothing to do with the President, and everything to do with a medical board, the Speaker of Parliament, and of Parliament itself in the case of Section 50; and in the case of Section 51, the Chief Justice, the Speaker of Parliament, a Tribunal appointed by the Chief Justice, and of Parliament. Exhibit A to the Plaintiff's affidavit which is a release from the office of the President, does not make any reference to these two sections; nor did the President purport to act pursuant to either or both of them. The President, according to that release relieved the Plaintiff of his duties in the exercise of his Supreme Executive Authority. The exercise of that power, does not, in my view have anything to do with the operation of the procedures laid out in both Section 50 and 51. It follows that perhaps, the proper questions for interpretation and perhaps enforcement, would be what does the Constitution mean by Supreme Executive Authority, and whether by itself, without the addition of the baggage contained in Sections 50 and 51, it could empower the President to take steps to regularise a situation which had arisen due to proceedings taken by the party which nominated him as a candidate in the 2012 election, and which had resulted in the denuding of the Plaintiff of membership of that party.
34. To return to Mr. Macaulay's arguments, he said that Mr Margai had said that the golden rule of interpretation should be applied to the facts of this case. In doing so, he had impliedly acknowledged that applying the literal rule would end in absurdity. According to Counsel, the argument that the requirement of membership of a political party was confined to electioneering, and was not continuous, was unsupported by the plain words of Section 41(b). The words 'candidate' or 'candidacy' did not appear nor were they used

in the provision. It followed that if the literal rule of interpretation were used, it would not produce the interpretation the Plaintiffs have placed on it. In fact, Mr. Fofanah in particular, had, in effect, conceded the point as he had had to bring in the provisions of the Public Elections Act, 2012 in aid of the restrictive interpretation he wished to place on the provisions of Section 41(b). He submitted that Parliament could not have intended that the obligations and qualifications set out in Section 41(b) should only apply up to elections, and cease to apply thereafter.

35. Counsel referred the Court to the Ghanaian case, AGYEI TWUM v ATTORNEY-GENERAL & AKWETEEY [2005-2006] SCGLR 732, S.C., AT PAGES 757 - 758 where DR DATE-BAH, JSC said, inter alia:

*"To answer the highlighted question posed above, let us revisit first principles. Judicial interpretation is about determining the legal meaning of a set of words.....In interpreting constitutional language, one should ordinarily start with consideration of what appears to be the plain or literal meaning of the provision. But that should not be the end of the process. That literal meaning needs to be subjected to further scrutiny and analysis to determine whether it is a meaning which makes sense within its context and in relation to the purpose of the provision in question. In other words, the initial superficial literal meaning may have to yield to a deeper meaning elicited through a purposive interpretation.....Thus, when an interpreter comes to the conclusion that the literal meaning does not make sense within its context and in relation to the purpose of the relevant provision, it becomes necessary for the interpreter to explore other semantic possibilities flowing from the language of the provision. In exploring these possibilities, the interpreter has to bear in mind the purpose of the provision."*

36. A further illustration of this point is provided by the Judgment of RENNER-THOMAS, CJ in the case cited above, CONTEH V BEREWA & ANOR where the meanings of the expressions "*public officer*" and "*public service*" had to be determined, and whether in the particular circumstances of that case, Mr Berewa, as sitting Vice President, was eligible to contest the 2007 Presidential election as flag-bearer for the SLPP. Read in isolation the definition of "*public office*" and "*public officer*" in Sub- Section 171(1) would have denied him eligibility. But when read together with Sub-Section 171(4), it was clear, he was not considered to be ineligible because of his occupancy of that office.



37. Another case cited by Counsel was that of *ASARE v ATTORNEY-GENERAL* [2003-2004] SCGLR 823 per DR DATE-BAH at page 833:

*“What I have stated above has been merely to emphasise that I consider the purposive approach to be more likely to achieve the ends of justice in most cases. It is a flexible approach which enables the judge to determine the meaning of a provision, taking into account the actual text of the provision and the broader legislative policy underpinnings and purpose of the text...”*

38. On this issue of the proper approach the Court should take in interpreting the Constitution, I agree with Mr Macaulay, that the modern approach is to use the purposive rule of interpretation. I shall here refer to the latest edition of *CRAIES ON LEGISLATION* 10<sup>th</sup> Edition, 2012. Beginning at page 715, the Learned Editor of the monograph has this to say:

*“Discussions of statutory construction often focus on whether a court should look strictly and exclusively at the words employed by the legislature or whether they should be prepared to apply a construction which, without doing actual violence to the clear meaning of any of the words used, will reflect the underlying political and social purposes of the legislation in its application to new cases, by elucidating what the words are intended to mean, by supplying technical deficiencies or by resolving ambiguities.”*

At pages 716-717, the Learned Editor continues:

*The following propositions may serve to illustrate the degree of necessary agreement in the matter of the correct approach to construction and the limited scope of disagreement:*

- (1) It is beyond doubt that what the courts must do, and always have done, in construing legislation is to seek the true intention of the legislature.*
- (2) It is equally beyond doubt that the starting point and, very often the end-point, for the search is the natural meaning of the clear language used by the legislature.*
- (3) If the words used import a clear and unequivocal meaning, the courts must give effect to that meaning, even if they suspect that it turns upon a mistake of fact or law but for which the legislature would not have wished to legislate in those terms.*

- (4) *But it has always been generally accepted that legislation is to be drafted in a fluid and not ritualistic way, and that inference therefore has a legitimate and significant part to play in construction.*
- (5) *Inferences are of various kinds, one of which is an inference from context and presumed purpose.*
- (6) *The principle point of disagreement over the years is how far it is permissible to go in presuming the underlying policy intention for the purposes of drawing from it inferences that qualify or strain the words used, in cases of doubt as to their literal application.*
- (7) *A subordinate question is that of the evidence that may be considered in forming those inferences.*

At page 718 the Learned Editor cites the case of *OLIVER ASHWORTH (HOLDINGS) LTD v BALLARD (KENT) LTD* [1999] 2 All ER 791, CA, where at page 805, LAWS, LJ had this to say:

*“By way of introduction to the issue of statutory construction I should say that in my judgment it is nowadays misleading - and perhaps it always was - to seek to draw a rigid distinction between literal and purposive approaches to the interpretation of Acts of Parliament.....The real distinction lies in the balance to be struck, in the particular case, between the literal meaning of the words on the one hand and the context and purpose of the measure in which they appear on the other. Frequently, there will be no opposition between the two, and then no difficulty arises. Where there is a potential clash, the conventional English approach has been to give at least very great and often decisive weight to the literal meaning of the enacting words. This is a tradition which I think is weakening, in face of the more purposive approach enjoined for the interpretation of legislative measures of the European Union and in light of the House of Lords decision in *Pepper (Inspector of Taxes) v Hart*.....”*

At page 719, the Learned Editor cites what LORD BINGHAM said in the House of Lords in *R (QUINTAVALLE) v SECRETARY OF STATE FOR HEALTH* [2003] 2 WLR 692:



*"Such is the skill of parliamentary draftsmen that most enactments are expressed in language which is clear and unambiguous and gives rise to no serious controversy. But these are not the provisions which reach the Courts, or, at any rate, the appellate courts.....the basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty.....The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So, the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."*

At page 721, the Learned Editor cites the opinion of LORD STEYN in the same case. LORD STEYN said that that great American judge LEARNED HAND explained the merits of purposive interpretation as long ago as 1945 in the American case of *CABELL v MARKHAM* (1945) F 2<sup>nd</sup> 737 and at 739. There, LEARNED HAND, J said:

*"Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning."*

39. This seems to me to be the clearest exposition of the modern approach to construction of statutes. When all the relevant Constitutional provisions are read together, it becomes quite clear that continued membership of a political party <sup>or</sup> is indispensable condition for the continuation in office of the President, and of the Vice President. Section 35 tells us what political parties are supposed to be doing; Section 41(b) tells us that in order to become a candidate for the office of Vice President in a Presidential election, the person must be a member of a political party. Section 54(1) tells us that that candidate will be designated as such by the Presidential Candidate, not nominated by the party to which he belongs, as in the case of the Presidential candidate; and Section 55 tells us the circumstances in which the office of Vice President will become vacant. When all of these Constitutional provisions are considered together and not in isolation, it will

become quite clear that the circumstances in which the office of Vice President might become vacant are not dealt with exhaustively in Section 55. I agree with Mr Macaulay that the President as Chief Executive functionary in the State is the only person or authority with the capacity to remedy the situation which arose as of 6<sup>th</sup> March, 2015 when the Plaintiff was expelled from the APC.

40. To return to Mr. Macaulay's arguments, he submitted further, that when one reads Sub-Section 35(1) and Section 41(b) of the Constitution together, it becomes clear that what was contemplated by Parliament in 1991 was that during their tenure of office both President and Vice President should remain members of a political party. Sub-Section 35(1) states:

*"Subject to the provisions of this section, political parties may be established to participate in shaping the political will of the people, to disseminate information on political ideas, and social and economic programmes of a national character, and to sponsor candidates for Presidential, Parliamentary or Local Government elections."*

That anyone who sought to hold the office of President or of Vice President must be members of a political party is quite evident on a plain reading of Section 41(b). An independent candidate cannot run for the office of President. Nor, if one were to stretch the argument, can he be so elected. If the arguments for the Plaintiff are to be accepted, one would have to accept also, that he could himself have resigned from the APC, and yet still remained Vice President. And as also suggested by Mr Macaulay, a Vice President could cease to be a citizen of Sierra Leone, a requirement of the same Section, but yet still, remain in office. Renouncing citizenship would not involve a violation of the Constitution, thereby triggering into effect the impeachment procedure in Section 51. Therefore, this Court ought not to give a literal interpretation to Section 41(b). Counsel cited the case of *WARIOBA v WASSARI & ANOR* [1998] 2 LRC 721, CA of Tanzania, where KISANGA, JA in delivering the judgment of the Court, said, at page 728 citing LORD DENNING in *NOTHMAN v BARNET LONDON BOROUGH COUNCIL* [1978] 1 All ER 1243 AT 1246:



*"The literal method of construction is now completely out of date. It has been replaced by the purposive approach. In all cases now in the interpretation of statute we adopt such a construction as will promote the general legislative purpose underlying the provision....."*

41. Counsel referred next to S.C. C No. 4/2012 - BENJAMIN & 2 ORS v DR CHRISTIANA THORPE & 3 ORS, Judgment delivered 14<sup>th</sup> June, 2013. The issue there was whether Section 48 of the Constitution which grants immunity from suit to the President prevents a petitioner from petitioning the President on the results of the election held in November, 2012. In his Judgment, the Acting Chief Justice who was member of the panel held that the petition should be struck because, in his words, as recorded at page 10 of his judgment:

*"....the Court cannot grant the reliefs sought as the person to be directly affected by such reliefs is not a party in the proceedings."*

Clearly, immunity from suit only applied to his acts whilst holding the office of President and not to his election to that office. I shall return to this issue of immunity below.

42. Counsel submitted that it was of primary importance that the Constitution should be read as a whole. He relied on the same volume of HALSBURY'S LAWS OF ENGLAND, where it is stated at paragraph 1484 that:

*"The essence of construction as a whole is that it enables the interpreter to perceive that a proposition in one part of the Act is by implication modified by another provision elsewhere in the Act. Construction as a whole requires that, unless the contrary appears, every word in the Act should be given a meaning, the same word should be given the same meaning, and different words should be given different meanings."*

This principle was also adopted by our Court of Appeal in TAYLOR v THE SHERIFF & ZIZER [1968-69] ALR SL 35, per TAMBIAH, JA at page 41.

43. In Counsel's contemplation, the Plaintiff had not on the facts of the case, violated the Constitution which would have necessitated his impeachment under Section 51. It was against him that something had been done: he had been expelled from the party which had made it possible for him to hold the office of Vice President, and to remain in that office. Once he had been so expelled, he could no longer hold the office, and the same therefore became vacant. And also, according to Counsel, Section 55 was not exhaustive as regards the circumstances in which a vacancy in that office would arise.
44. Turning to the issue of what was meant by executive power, Counsel submitted that it bore no sinister meaning. It merely meant the President was the chief executive functionary in the State. The Vice President was not a member of the Legislative arm, nor of the Judicial arm of Government. He was a member of the executive arm. Section 55 circumscribed the role Parliament should play when it comes to the question of whether there is a vacancy in the office of the Vice President. Parliament's role would only be invoked if a vacancy in that office had arisen by virtue of Sections 50 and 51. The President being the chief executive, would then be the only authority left to act in circumstances where the Vice President no longer met the continuous requirement of being a member of a political party. Mr Macaulay ended his submissions by giving his own interpretation of the ATIKU ABUBAKARR case. He submitted that it relied on the outdated literal rule interpretation.

#### MR MANLY-SPAIN'S ARGUMENTS

45. Mr. Manly-Spain began his oral submissions. He said he relied on the statement of case filed on behalf of the 2<sup>nd</sup> Defendant. He queried this Court's jurisdiction to grant the reliefs prayed as granting them would be tantamount to making Orders against the President who was not a party to the suit, and who was clothed with immunity from suit by Section 48(4) of the Constitution. He was of the view that the questions posed by the Plaintiff ~~were~~ could not be answered by this Court. The President had not purported to act pursuant to Sections 50 and 51. Those sections, as I have also pointed out above, empower certain State authorities to take certain steps when certain things happen to, or, are done by the President or Vice President. He submitted that the Plaintiff's case should be dismissed as the questions posed by him pre-supposed that the President could only



relieve him of his duties under Sections 50 and 51, and this was clearly not the case. He submitted further that no case had been presented against the 2<sup>nd</sup> Defendant. No wrong doing had been alleged against him.

46. Counsel submitted further that invoking Section 127 of the Constitution was wrong on the part of the Plaintiff, as it had not been alleged, nor argued, that the 2<sup>nd</sup> Defendant had done anything under the authority of any Act which was inconsistent with, or, in contravention of the Constitution. I had made the same point in my earlier judgment at paragraph 23 where I had said: "*The Plaintiff has not contended in this Application that the President has done anything pursuant to an enactment which he now claims is inconsistent with, or, contravenes the Constitution. He is contending, on the contrary, that the President has wrongly utilised the provisions of this Constitution. So, in my view, he cannot readily seek shelter under the Section 127 umbrella. His Application must be dealt with under Section 124(1).*"

47. Counsel moved on to the issue of whether in these proceedings it was right and proper to cite the Attorney-General and Minister of Justice, as a party. These were not proceedings brought against the Government pursuant to the State Proceedings Act, 2000 in which case, the Attorney-General and Minister of Justice would have been the appropriate Defendant. The complaint was about what the President had done in the exercise of his executive powers, and not about what the Government had been done. Here, for emphasis, he referred to the press release, in which the President <sup>Emmanuel</sup> had relieved the Plaintiff of his duties. Again, these were issues which I had anticipated would arise in my earlier Judgment. To quote what I said then:

*"Though the acts and declarations of a sitting President have not been challenged other than as set out above, the Government, as distinct from the office of President has been brought to Court through the provisions of Section 133 of the 1991 Constitution, and the mechanism provided for in the State Proceedings Act, 2000. I mention this Act at this stage, as these proceedings have been brought, it seems, against the Government of Sierra Leone as 1<sup>st</sup> Defendant: thus the Attorney-General and Minister of Justice has been sued as 1<sup>st</sup> Defendant as provided for in the State Proceedings Act, 2000. But, ironically, the act complained of by the Plaintiff, i.e. the appointment of the 2<sup>nd</sup> Defendant as Vice-*

*President, was not the act of the Government of Sierra Leone, but that of the President alone. Sub-Section 58(5) does not state whether he should act "in accordance with his deliberate judgment" in appointing a Vice-President, where the circumstances so require, but even if there was a requirement that he should act in accordance with the advice of any person or authority, this Court and all other Courts, cannot inquire into whether he has received such advice or not - Sub-Section 53(3)."*

*And then, when we move on to Sub-Section 48(4) of the Constitution, it provides as follows: "While any person holds or performs the functions of the office of President, no civil or criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him in his official or private capacity." In other words, the President is immune from suit whether civil or criminal while he is in office....."*

48. The situation in the present case, is different from that in the case of BENJAMIN & ORS v THORPE & ORS cited above. Here, the only questions which call for determination are questions relating to the manner in which the President has performed his duties. The questions are not about his election, but rather his actions as President. Mr Fofanah did, in passing whilst making his submission, suggest that the President could have referred the question of the Plaintiff's continued occupancy of the office of Vice President after having been expelled from the APC, to Parliament. But as Mr Macaulay has pointed out, being expelled from the party he once belonged to for whatever reason does not amount to a violation of the Constitution. Parliament only comes in, in the limited circumstances set out in Sections 50 and 51. In the same way, and in view of the provisions of Sub-Section 48(4), should not those provisions be invoked by the Plaintiff as he complains that the actions of the President are unconstitutional? Civil and criminal suits for things done whilst in office, cannot be maintained against the President whilst he is in office. But if the complaint is that he has acted unconstitutionally, is that not a matter for Parliament?
49. Mr. Manly-Spain ended by submitting that no relief has been sought against the 2<sup>nd</sup> Defendant. No complaint of wrong doing or of acts in contravention of the Constitution has been made. He could not therefore be removed from an office to which he had been



appointed by someone who could not be brought to Court. I had come to much the same conclusion in my earlier judgment on the issue as to whether to grant an Injunction against, or affecting the 2<sup>nd</sup> Defendant. Then, I said, inter alia: “

*“As I have said above, the Order sought by the Plaintiff, though expressed in a negative form, is in reality, mandatory in nature. It is calling upon this Court to tell the person (i.e. 2<sup>nd</sup> Defendant) who has been appointed by someone who cannot be brought to Court (i.e. the President) not do what he (i.e. the 2<sup>nd</sup> Defendant) has been appointed to do. What we have to do is to examine whether we can do as requested by the Plaintiff, bearing in mind at all times, that the 2<sup>nd</sup> Defendant has not imposed himself on the people of Sierra Leone, nor is it alleged, that he has himself acted ultra vires the Constitution, or, otherwise acted or conducted himself in an unlawful manner.”*

50. The 2<sup>nd</sup> Defendant will only be affected if this Court were to answer the two questions posed by the Plaintiff in the negative.
51. After the close of Mr Manly-Spain’s submissions, Mr. Margai was allowed a brief rejoinder. He said that the ATIKU ABUBAKARR case was decided in 2003, much later than the older WARIOBA case decided in 1998, cited by Mr. Macaulay.

I shall now, lastly, turn my attention to the Nigerian Supreme Court case, S.C.31/2007 - ATTORNEY-GENERAL OF THE FEDERATION & 2 OTHERS v ALHAJI ATIKU ABUBAKARR, judgment delivered 20<sup>th</sup> April, 2007. In that case, Mr. Abubakarr was the sitting Vice President, when the office was declared vacant. This case was decided on the basis of the 1999 Constitution. The lead judgment was delivered by AKINTAN, JSC. At page 8, he addressed the issue of a lis. This was an issue I had also addressed in the earlier judgment. There, the Learned Justice said:

*“It is settled law that a lis or cause of action is constituted by a bundle of facts which the law will recognize giving the plaintiff a right of action. It is a situation or state of facts, which would entitle a party to sustain , act, and give him right to seek judicial remedy or redress. Such facts or combination of facts which give rise to a right to sue may consist of two elements - viz: the wrongful act of the defendant, which gives the plaintiff his cause of*

*action; and the consequential damage. Lis therefore means suit, action, controversy or dispute...”*

In his judgment, ONNOGHEN, JSC said at page 33:

*“Learned Counsel for the appellant has submitted that there is no lis between the parties thereby rendering the court incompetent or without jurisdiction to entertain suit. It is settled law that there must exist a matter in actual controversy between the parties to a suit in which the court of law is called upon to determine and that once there is no such live issue between the parties, a court will lack jurisdiction to entertain the matter”.*

In this respect, can there be a lis between the Plaintiff and the Defendants? The act of removal of the Plaintiff from his office was, according to the press release from State House, one done by the President in the exercise of his executive authority. It was not the act of his Government, in which case, the Attorney-General and Minister of Justice may have been a proper Defendant in accordance with the provisions of the State Proceedings Act, 2000. It is true that Rule 89(3) of the SCR, 1982 do provide that where the Attorney-General and Minister of Justice is not specifically named as a Defendant, a copy of a Motion filed, invoking the original jurisdiction of this Court, shall be served on him. But that does not make him a Defendant. In my considered opinion, there is really no lis between the Plaintiff and the 1<sup>st</sup> Defendant; nor, is there one between the Plaintiff and the 2<sup>nd</sup> Defendant. There is no complaint against anything the 2<sup>nd</sup> Defendant has done. The President appointed the 2<sup>nd</sup> Defendant to that office; he did not forcibly take over the office.

52. But over and above all else, in my view the most important distinguishing feature of the ATIKU ABUBAKARR case, vis-a-vis the instant case is that there is no equivalent to our Section 48(4) in the Nigerian 1999 Constitution. The President of the Federation has not been covered with immunity from suit by the Constitution. The Court of Appeal, and later the Supreme Court was therefore able to make the Orders each of them did make. Another feature which distinguishes this case, is that, and in this respect I agree with the Learned Editor of CRAIES ON LEGISLATION, cited above, and with Mr. Macaulay, that modern day practice demands the use of the purposive rule of interpretation of



statutes, and that in my view, the Supreme Court of Nigeria in that case, applied a rule of construction which, in modern day practice, has become, and I say so with the greatest respect, out-moded. I do not believe that the framers of our Constitution envisaged a situation in which the Vice President would not belong to a party to which the President belonged, but they would perforce, still have to work together. I am of the view that the purposive rule of interpretation is in accordance with good sense and that Section 41(b) of the Constitution should be interpreted in that way: that continued membership of a political party was a requirement of a Vice President's continued stay in office; and that a Vice President could be removed from office in those circumstances.

## FINDINGS

53. In the premises, my answer to the questions posed by the Plaintiff, are as follows:

(a) The Constitution does empower the President to relieve the Vice President of his office and duties where he has ceased to be a member of a political party. The provisions in Sections 50 and 51 of the Constitution are unconnected with the exercise of this power.

(b) The Supreme Executive Power of the President mentioned in Section 40(1) of the Constitution empowers the President to relieve the Vice President of his office and duties in a situation where the Vice President has ceased to be a member of a political party.

54. I therefore concur in the Orders made by the Learned Acting Chief Justice.

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

A summary of the facts and particulars of this case as contained in the Statement of the Plaintiff's Case is as follows:

Alhaji Samuel Sam-Sumana the Plaintiff herein was designated as running mate by His Excellency the President Dr. Ernest Bai Koroma in the 2007 election. After the election Dr. Ernest Bai Koroma was duly elected as President by virtue of which the Plaintiff was deemed to have been elected as Vice President of Sierra Leone. The Plaintiff served as Vice President until 2012 when he was again designated and re-elected as Vice President at the 2012 election. The Plaintiff was a member of the All People's Congress (APC) Party in both elections. The Plaintiff continued in office as Vice President until the 17<sup>th</sup> March 2015 when it was announced over the SLBC Radio and Television that the President had "relieved him of his duties and office as Vice President of Sierra Leone." This pronouncement was contained in a Press Release from State House dated 17<sup>th</sup> March 2015.

The Plaintiff then sought legal advice which resulted in his issuing a Statement dated 18<sup>th</sup> March 2015 stating inter alia that his purported removal from office was "unconstitutional and unlawful." On the following day the 19<sup>th</sup> March 2015 the President appointed Mr. Victor Bockarie Foh (the 2<sup>nd</sup> Defendant) as Vice President of Sierra Leone pursuant to Section 54 (5) of the Constitution. The 2<sup>nd</sup> Defendant has since assumed office, and is performing the functions of that office.

The Plaintiff then commenced this action by issuing an Originating Notice of Motion (ONM) dated 20<sup>th</sup> March 2015 praying for the determination of the following questions and reliefs pursuant to sections 124 and 127 of the Constitution of Sierra Leone Act No. 6 of 1991 (the Constitution), namely:

- (a) *Whether the Constitution of Sierra Leone empowers the PRESIDENT "to relieve the Vice-President of his Office and duties" in any way Other than by the procedure set out in Sections 50 and 51 of the said Constitution?*



(b) *Whether the “Supreme executive authority” of the President mentioned in Section 40(1) of the Constitution of Sierra Leone includes the power to “relieve the Vice-President of his Office and duties” other than by procedure set out in Sections 50 and 51 of the said Constitution?*

*If the Answer to the questions above is NO, the Plaintiff will seek the following further reliefs:*

- (i) *For a declaration that the Public Notice announcing that the Vice-President had been relieved of his duties and office (Exhibit A herein) is unconstitutional, null and void, and of no effect.*
- (ii) *For a declaration that the appointment of Victor Bockarie Foh as Vice-President of Sierra Leone is also unconstitutional, null and void, and of no effect.*
- (iii) *For an Injunction restraining the said Victor Bockarie Foh from acting in the Office of vice-President of Sierra Leone pending the hearing and determination of this action.*
- (iv) *For a declaration that the Elected Vice-President of Sierra Leone (the Plaintiff herein) remains in Office as Vice-President thereof unless and until removed from Office as required by Section 50 and 51 of the Constitution of Sierra Leone.*

This ONM was supported by the affidavit of the Plaintiff sworn to on the 20<sup>th</sup> March 2015 to which are attached the following exhibits. Ex. A is a copy of the Press Release issued from State House dated 17<sup>th</sup> March 2015, Ex. B is the Plaintiff's Statement issued on the 18<sup>th</sup> March 2015, Ex. C is a copy of an open letter by Dr. Abdulia Conteh and Ex. D is a copy of a Statement dated 18<sup>th</sup> March 2015 issued by the Sierra Leone Peoples Party.

The Plaintiff then filed a Notice of Motion dated 24<sup>th</sup> March 2014 praying for an interlocutory injunction restraining the 2<sup>nd</sup> Defendant from performing the duties or holding the office of Vice President pending the hearing of this action. That application was opposed by the Defendants and after arguments this Court gave a decision on the 5<sup>th</sup> May 2015 refusing the application for injunction but instead ordered a speedy trial.

The Plaintiff's solicitor had meanwhile filed the Statement of Case for the Plaintiff dated 30<sup>th</sup> March 2015. In his Statement of Case, the Plaintiff stated facts and particulars as already

summarised in the background earlier in this Judgment. The Plaintiff went on to make the following submissions. The Plaintiff submitted that he was elected by the people of Sierra Leone in 2007 and 2012 together with the President, as his running mate. He submitted that he was not appointed as Vice President by the President, in contrast to Ministers and Deputy Ministers who (according to section 56 (4) of the Constitution) “*shall hold office at the President’s discretion*”. The Plaintiff submitted that Section 55 of the Constitution sets out the circumstances in which the office of Vice President shall become vacant.

He submitted that in Ex. A i.e. the Press Release from State House, the President purported to relieve him of the office of Vice President pursuant to his “*Supreme executive authority as President of the Republic of Sierra Leone as contained in section 40 (1) of the constitution of Sierra Leone.*” The Plaintiff submitted that section 40 (1) of the Constitution merely provides that “*There shall be a President of the Republic of Sierra Leone who shall be Head of State, the Supreme Executive Authority of the Republic and Commander in Chief of the Armed Forces.*” He submitted that that section does not make any provision for the President to relieve the Vice President of his position for any reason whatsoever. He submitted that section 40(1) is merely a general provision setting out the styles and titles of the President, and nothing more can be read in it.

The Plaintiff submitted that the only provision for the removal of both the President and Vice President is to be found in sections 50 and 51 of the Constitution read together with section 54(8) thereof. The Plaintiff relied on the maxim “*Generalisspecialibus non derogant*” – *where there is a specific provision you cannot rely on a general one.*

The Plaintiff submitted that the President violated the Constitution and acted beyond his powers by purporting to “relieve the Vice President of his office and duties” as there is no such provision in the Constitution.

In his oral submissions, C.F. Margai, first Counsel for the Plaintiff, stated that section 50 of the Constitution is concerned with the mental and physical incapacity of the President. Counsel stated that the provisions of section 51 mention misconduct but submitted that they go beyond misconduct of the President and that that section also deals with violation of the Constitution or any gross misconduct in the performance of his office.



Counsel referred to sections 50 and 51 of the Constitution submitting that by virtue of Section 55, they apply to the removal of the Vice President as they apply to the President. Counsel referred to the Oxford Advanced Learners Dictionary 6<sup>th</sup> Edition where 'relieve' is defined as meaning "*to remove or reduce an unpleasant feeling or thing..... to replace who is on duty, to remove a driver.....*"

Counsel referred to Ex. A and submitted that the said Press Release referred to the Plaintiff seeking asylum from a foreign country and that the Plaintiff<sup>u</sup> is no longer a member of the political party in Sierra Leone and therefore does not have the continuous requirement to hold office as Vice President of the Republic of Sierra Leone as provided in section 41(b) of the Constitution." Counsel submitted that this Court can only answer the two questions it has been called upon to answer by firstly interpreting the relevant statutory provisions raised. Counsel submitted that in the interpretation of statute, every word must be given its reasonable and natural meaning so that the words do not misrepresent the true intention of Parliament. Counsel submitted that the only way the Vice President can be removed from office is by Section 55 (C) of the Constitution.

Counsel submitted that the Plaintiff was alleged to have sought asylum from a foreign country. Counsel posed the question: Was the asylum granted or refused or is a response still being awaited? Counsel submitted that there is nothing before this Court to confirm that the Plaintiff sought asylum.

Counsel referred to the allegation that the Plaintiff was no longer a member of a political party and therefore does not have the continuous requirement to hold office as Vice President. Counsel referred to Ex. A the Press Release from State House and submitted that the requirement to belong to a Political Party is not continuous, and that neither section 41 nor 54 of the Constitution requires continuing membership of a political party as a qualification to continue to hold the office of President and Vice President.

Counsel submitted that from the date of his expulsion from the APC on the 6<sup>th</sup> March 2015 the Plaintiff had only 11 days to seek any redress, as on the 17<sup>th</sup> March, 2015 he was removed from

office. Counsel submits that the President acted precipitously by removing the Plaintiff on the 17<sup>th</sup> March 2015.

Counsel submitted that it is section 40 (4) that gives the President executive power and functions.

Counsel referred to the decision of the Supreme Court in Nigeria in the case of S.C. 31/2007 *Attorney-General of the Federation of Nigeria & others vs. Alhaji Atiku Abubakarr & others (Atiku Abubakarr case)*. Counsel relied on the decision of the Court in that case, submitting that the issues were identical to the present case, adding that section 143 (1) of the Nigerian Constitution is to the same effect as section 51 read in conjunction with section 54 (8) of the Constitution, in so far as they relate to the removal of the Vice President.

With the leave of the Court M.P. Fofanah 2<sup>nd</sup> Counsel for the Plaintiff continued with respect to the Plaintiff's case against the 2<sup>nd</sup> Defendant. Mr. Fofanah firstly adopted all the submissions of 1<sup>st</sup> Counsel for the Plaintiff. He submitted that on the 19<sup>th</sup> March 2015 the President appointed the 2<sup>nd</sup> Defendant as Vice President pursuant to section 54 (5) of the Constitution. Counsel referred to the 2<sup>nd</sup> order sought in the ONM and submitted that the appointment of the 2<sup>nd</sup> Defendant as Vice President was unconstitutional.

Counsel submitted that membership of a political party as stated in section 41(b) of the Constitution is not a continuing requirement to hold the office of Vice President but that it is only a necessary requisite for candidacy to that office, and after election that requirement ceases to be of any legal consequence and effect. Counsel referred to the Public Elections Act 2012, sections 44 & 45 thereof as well as the 4<sup>th</sup> Schedule and submitted that the requirement for membership of a political party is not specifically mentioned in the 4<sup>th</sup> schedule. Counsel submitted that the requirement for membership of a political party before election is intended by the Constitution to bring organisation to the political process during election. Counsel further submitted that the reason why the Constitution takes away membership of a political party in post-election as a continuing requirement is to uphold the sovereign mandate, the sovereignty of the people, so that it not left in the hands of a political party. Counsel referred to the Public Elections Act 2012 and section 35 (1) of the Constitution. Counsel submitted that the provisions of the Constitution are so clear and unambiguous and are on all fours with the reliefs sought that they do not require any legal meaning or interpretative criteria. Counsel submitted that the provision for removal can only be found in section 55 of the Constitution.



Counsel submitted that in view of the submission that no vacancy was legally created the 2<sup>nd</sup> Defendant was therefore occupying office illegally. Counsel also relied on the *Atiku Abubakarr* case. That concluded the case for the Plaintiff.

In defending this action Berthan Macaulay Jnr of Counsel for the 1<sup>st</sup> Defendant referred to the Statement of the 1<sup>st</sup> Defendant's Case filed on 8<sup>th</sup> April 2015. Counsel referred to the ONM which mentions in its heading section 127 of the Constitution and submitted that he has not been able to identify any matter in the ONM that calls for adjudication by this Court under section 127 of the Constitution. Counsel referred to the case of *Sam Hinga Norman Vs. SamaBanya* (SC 2/2005) and submitted that section 127 deals with situations where an enactment or something done under an enactment that is in conflict with the Constitution. Counsel submitted that the Plaintiff's complaint relates to provisions contained in the Constitution and that there is no contention or complaint of an enactment in contravention with the Constitution. Counsel submitted that in the circumstances the jurisdiction of this Court has not been properly invoked and the reliefs prayed for thereunder cannot be granted.

Counsel referred to section 124 (1) of the Constitution, as well as Halsbury's Laws of England 4<sup>th</sup> Edition pages 34 - 45 and submitted that in interpreting the several sections of the Constitution that call for determination, this Court should adopt and follow the principles and guidelines set out in the passages cited in Bennion and Halsbury's 4<sup>th</sup> Edition together with the Dicta in the case of *Dr. Sorie Kennedy Conteh & Ors V. Ministry of Local Government & Ors*, judgment dated 10<sup>th</sup> November 2006.

Counsel submitted that two questions are posed for determination in the ONM. Counsel referred to Section B3 of the Statement of 1<sup>st</sup> Defendant's Case which refers to the issues to be addressed in answering the questions posed for determination.

Counsel submitted that it is not in dispute that the provisions of section 41 apply to both the President and the Vice President. What is in contention is that the Plaintiff argues that the requirement in section 41 (b) is not continuous and ceases to apply after election. Counsel submitted that neither in the ONM nor in the Statement of the Plaintiff's Case has the Plaintiff disputed the assertion that he was expelled from the APC on 6<sup>th</sup> March 2015.

Counsel submitted that the obligations under section 41 are continuous. Counsel submitted that in interpreting section 41(b) of the Constitution this Court should apply the several interpretative criteria and weigh same before giving an interpretation. He referred to Counsel's submission that the words in section 41(b) should be given their ordinary and natural meaning and also that the golden rule should be applied. Counsel submitted that when you say the golden rule should be applied it suggests that you have some reservations about the literal rule.

Counsel submitted that 2<sup>nd</sup> Counsel for Plaintiff M.P. Fofanah's reference to section 31 of the Constitution and section 45 of the Public Elections Act 2012 is an implicit concession that the literal interpretation is not sufficient to prudently reach the desired interpretation sought by the Plaintiff. Counsel submitted that sections 44 and 45 of the Public Elections Act 2012 do not support the interpretation of section 41 of the Constitution sought by the Plaintiff. Counsel also referred to section 171 (15) of the Constitution.

Counsel submitted that the plain meaning rule does not apply in relation to the interpretation of section 41 of the Constitution. Counsel submitted that if the interpretation of Plaintiff is accepted then in theory we could well have a non-citizen as President, that is, if we accept that the obligations under section 41 cease to apply after election.

Counsel submitted that this Court should read into section 41 of the Constitution that the obligations and qualifications thereunder are continuous and apply after election.

As regards Section 55 of the Constitution Counsel submitted that the said section does not contain express language that the office of Vice President will only become vacant in the instances set out therein nor can such limitation be necessarily implied. Counsel urges the Court to adopt the construction as a whole principle and to take cognisance of sections 41 (b) and 54 (5) in construing section 55 of the Constitution. Counsel urged the Court to give meaning to the word "vacant" having regard to sections 41 (b) and 55 of the Constitution.

Counsel submitted that in the Press Release Ex. A there is no mention of the words "remove", "removal" or "removed" and that it was disingenuous to assert that the President was referring to removal or removed when he used the word "relieved". Counsel submitted that section 51 is



predicated on some deliberate or intentional act by the President or Vice President which amounts to a violation of the Constitution or a gross misconduct in performing his functions or duties, and that ceasing to be a member of a political party by way of expulsion is not a deliberate or intentional act of the Plaintiff and cannot be construed as a violation of the Constitution. Counsel submitted that sections 51 and 55 do not apply to circumstances set out in section 41 of the Constitution whereby Parliament intervenes regarding the removal of the President or the Vice President. Counsel submitted that section 55 does not exhaustively set out the circumstances under which a vacancy in the office of Vice President occurs and that it is only in respect of Section 55 (C) that Parliament has been ascribed a role by the Constitution.

Counsel referred to section 53 (1) of the Constitution which vests executive power in the President. In construing "Executive powers" the Court should look at the whole Constitution. Counsel submitted that having regard to the construction placed on sections 40, 50, 51 and 55 of the Constitution the President can in these circumstances relieve the Vice President from the office where the latter has not met his obligation of continuous membership of a party under Section 41(b) and that sections 50 and 51 cannot be invoked.

Counsel referred to the *Atiku Abubakarr* case relied on by Counsel for the Plaintiff and submitted that this Court is enjoined by section 124 (1) of the Constitution to independently and properly construe sections of the Constitution. Counsel referred to section 139 of the Nigerian Constitution and to section 55 (1) of the Public Elections Act and submitted that in Sierra Leone you can have a petition case against the President but not the Vice president. Counsel referred to section 146 of the Nigerian Constitution submitting that there the power to appoint the Vice President is subject to the approval of each House of the National Assembly, whereas by section 54 (5) of the Sierra Leone Constitution the appointment of the Vice President by the President is not subject to the approval by Parliament. Counsel submitted that in the judgment of Justice Akitan the literal interpretation was applied in construing the provisions of their Constitution. Counsel therefore submitted that that case ought not to be relied on by this Court having regard to the method by which that decision was reached.

Mr. Manly-Spain on behalf of the 2<sup>nd</sup> Defendant adopted the submissions and arguments of Counsel for the first Defendant. He referred to the Statement of the 2<sup>nd</sup> Defendant's Case filed on the 20<sup>th</sup> April 2015. Counsel drew the Court's attention to four main issues. Firstly Counsel

referred to section 48(4) of the Constitution, submitting that the action as brought is not maintainable. Secondly that the questions posed in the ONM cannot be answered at all as posed. Thirdly that the Plaintiff cannot avail himself of section 127 of the Constitution. Counsel submits that the President is immune from prosecution and that the acts complained of are acts of the President and not the government.

Counsel submitted that the questions posed in the ONM presuppose that the President has power to remove the Vice president only under section 50 or 51 and this not being the case the question posed is wrong. Counsel submitted that there is no right to sue the parties under the State Proceedings Acts 2000, adding that the President acted alone and not on behalf of Government. Counsel finally submitted that you cannot remove from office someone appointed by an authority that cannot be sued.

By special leave of the Court, Mr. Margai in response submitted that the WARIOBA case relied on by Mr. Macaulay was decided in 1998 whilst the *Atiku Abubakar* case he relied on was decided in 2007.

At the close of arguments the matter was reserved for Judgment.

A careful examination of the questions posed by the Plaintiff for determination makes very curious reading indeed. The first question posed is:

- (a) *Whether the Constitution of Sierra Leone empowers the PRESIDENT "to relieve the Vice-President of his Office and duties" in any way Other than by the procedure set out in sections 50 and 51 of the said Constitution?"*

This question would no doubt suggest that the Plaintiff is accepting that the President has power under sections 50 and 51 of the Constitution to "relieve" the Vice President of his office and duties, and the question is whether apart from his powers thereunder he has such powers under any other section. This question as couched would pose a bigger difficulty in answering as it is based on a premise that is not necessarily accepted by all the parties. It is in recognition of the awkward wording of the first and even the second question that Counsel for the 2<sup>nd</sup> Defendant was prompted to submit that the questions were wrong and cannot be answered. To better understand what the Plaintiff is asking, I have had to peruse the entire ONM as well as the Statement of Case for the Plaintiff. In doing so it became evident that the Plaintiff had no



intention of suggesting or accepting that the President had any power under section 50 and 51 of the Constitution to relieve him of his office and duties as alleged. In paragraph C (vii) of the Statement of Case for the Plaintiff, the Plaintiff contends as follows: "It is further submitted that the only provision for the removal of both the President and Vice President is to be found in sections 50 and 51 of the said Constitution, read together with Section 54 (50 thereof". The above among other submissions and arguments of Counsel for the Plaintiff have persuaded me to accept and understand the questions posed, though I must state that they were indeed awkwardly worded, to say the least.

Indeed the Plaintiff has approached this Court by commencing this action, invoking sections 124 and 127 of the Constitution. I shall first deal with section 127 (1) of the Constitution which provides as follows:

**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.**

On the legal effect of the above section this was what Dr. Ade Renner-Thomas CJ had to say in the Case of *Samuel Hinga Norman Vs Dr.SamaBanya&Ors SC2/2005* delivered on the 31<sup>st</sup> August 2005 (at page 14 thereof)

*Indeed, this brings me to the consideration of the legal effect of section 127(1) of the National Constitution. In my opinion, this section lays down the procedure for the enforcement of the National Constitution by this Court but only in certain specific circumstances. They are the following:*

*Where -*

*(1) Any person alleges that an enactment is inconsistent with or in contravention of a provision of the National Constitution. That person may then invoke the original jurisdiction conferred upon this Court by section 124(1) for a declaration based on section 171(15) of the National Constitution that to the extent of the inconsistency the said enactment is null and void;*

**Role of Court in interpretation.** The Court has the function of authoritatively construing legislation, that is, determining its legal meaning so far as is necessary to decide a case before it. This function is exclusive to the Court, and a meaning found by any other person, for example an authorising agency, an investigating agency, an executing agency, a prosecuting agency, or even Parliament itself, except when intending to declare or amend the law, is always subject to the determination of the Court.

Indeed the desire of this Court is to arrive at the legal meaning of any enactment that comes before it for interpretation. Sometimes on an informed interpretation, there is not much difficulty in discerning the legal meaning. Quite often however there is some doubt as to the legal meaning as is evident in the present case where the Plaintiff and the Defendants are putting forward conflicting interpretations of the provisions that this Court is called upon to construe. Again in paragraph 1374 at page 836 of Halsbury's Laws of England 4<sup>th</sup> Edition it states as follows: 67446

*Doubt as to the legal meaning.* If on an informed interpretation, there is no real doubt that a particular meaning of an enactment is to be applied, that meaning is to be taken as its legal meaning. If there is a real doubt, it is to be resolved by applying the interpretative criteria

It goes on to state at paragraph 1414 as follows:

**The informed interpretation rule.** The informed interpretation rule is a rule under common law that the Court must infer that the legislator, when settling the wording of an enactment, intended it to be given a fully informed, rather than a purely literal, interpretation. Accordingly, the Court does not decide whether or not there is any real doubt as to the legal meaning of the enactment, and if so in what way to resolve it, until it has first discerned and considered, in the light to the facts to which the enactment is being applied, the context of that enactment, including all such matters as may illumine the text and make clear the meaning intended by the legislator in the factual situation of the instant case.

For this purpose Parliament intends that the Court will permit the citation, whether unconditionally or de benecesse, of any publicly available material which it



*considers it proper to admit and consider having regard to the interpretative criteria.*

Also in *Bennion on Statutory Interpretation* by F.A.R. Bennion 5<sup>th</sup> edition (*Bennion*) at Section 303 it states:

*Parliament is presumed to intend that in construing an Act the Court, by advancing the remedy which is indicated by the words of the Act for the mischief being dealt with, and the implications arising from those words, should aim to further every aspect of the legislative purpose. A construction which promotes the remedy Parliament has provided to cure a particular mischief is now known as a purposive construction.*

I shall adopt and be guided by the various principles above in construing the several provisions that call for determination in this action. In this regard I shall apply the appropriate interpretative criteria as are relevant to the various provisions as the case may be.

The Plaintiff's complaint is that the President wrongfully relieved him of his duties giving stated reason and that it was unconstitutional for him to do so.

Let me first deal with the reasons or circumstances warranting the acts of the President and then proceed to examine under what authority he is purported to have acted.

In Ex. A, the Press Release from State House, it is alleged that the Plaintiff was on the 6<sup>th</sup> March 2015 expelled from the APC party and as such he no longer had the continuous requirement to hold the office of Vice President as required by section 41 (b) of the Constitution. The Plaintiff on his part contends that that section does not require him to be a member of a political party after election into the office of Vice President.

Section 41 states as follows:

No person shall be qualified for election as President unless he -

- (a) Is a citizen of Sierra Leone
- (b) Is a member of a political party
- (c) Has attained the age of forty years; and
- (d) Is otherwise qualified to be elected as a Member of Parliament.

The above provision expressly refers to the President, however by virtue of section 54 (2) of the Constitution this provision is also referable to the Vice President. The question here as regards the Plaintiff's complaint is whether section 41 (b) is a continuous requirement. In my view, the literal and plain meaning of the provision is not clear enough to enable me arrive at the legal meaning. And having regard to the conflicting interpretations urged by the respective parties here, I have had to resort to the interpretative criteria mentioned above. In this regard I have had to first discern and consider the facts and circumstances to which the relevant provision is being applied, the context including all matters that would make clear the intention of Parliament. Having applied the various principles I have come to the considered conclusion that the provision in section 41 including section 41 (b) is continuous. In other words the Vice President must be a member of a political party when he is being designated as a running mate to the President and should continue to be a member of a political party so long as he is in office as Vice President. In coming to this conclusion and interpretation I have also had to consider the effect of holding otherwise. Would holding otherwise have the effect of producing an unworkable, absurd or impracticable result? This is another interpretative method that is often useful in arriving at the legal meaning. In the present, case to hold otherwise would mean that a President or Vice President nominated by a political party to pursue its manifesto could end up representing the interests and pursuing the manifesto of an opposing party even while in office. This would be most unfair and unfortunate to the electorate who had chosen and voted for a President and Vice President from a party whose manifesto they approve and by which they chose to be governed. Again to hold that the provisions in section 41 are not continuous would for example mean that we could have a President or a Vice President who is not a citizen of Sierra Leone, if having been a citizen before election loses such citizenship after election and while in office. See section 41 (a). These are most certainly not scenarios or possibilities that would have been contemplated or intended by Parliament. In Halsbury's Laws of England 4<sup>th</sup> Edition paragraph 1478 and page 910 it states as follows:

*Presumption against unworkable or impracticable result. It is presumed that Parliament intends that the Court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment corresponds to its legal meaning, should find against a construction which produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament."*



In the instant case this Court is therefore enjoined not to give an interpretation to a provision that is clearly impracticable, absurd and most obviously unintended by Parliament.

2<sup>nd</sup> Counsel for the Plaintiff referred to sections 44 and 45 of the Public Elections Act 2012 in aid of his submission that the provision of Section 41 (b) was not intended to be continuous and in fact ceases after election of the President and Vice President. With respect to Counsel I find this argument to be without merit.

Section 44 of the Public elections Act 2012 provides as follows:

44. (1) No person shall stand as a candidate in a presidential election if he is not a candidate nominated by a political party.
- (2) A person is not qualified to be nominated as a candidate in a presidential election unless the person is –
- (a) a citizen by birth;
  - (b) a member of the political party;
  - (c) not less than forty years of age; and
  - (d) otherwise qualified to be elected as a member of Parliament.

2<sup>nd</sup> Counsel for the Plaintiff referred to the 4<sup>th</sup> Schedule to this Act which does not mention membership of a political party. However it is evident that in section 44 quoted above the requirement of membership of a political party is stated. See also Section 45 (2) of that Act. Besides the provision in section 41 (b) of the Constitution is supreme and anything contained in any other enactment which is inconsistent with it is to that extent void (see Section 171 (15) of the Constitution.

Having held that the provision, requirement or qualification in section 41 (b) is continuous, let me now proceed to consider the consequences of the Plaintiff failing to maintain his membership of a political party albeit by expulsion, and the actions taken as per the Press Release from State House.

It is the Plaintiff's contention that even if (which he does not admit) his membership of a political party is a continuous requirement, that it was unconstitutional for the President to remove him from office as he can only be removed from office pursuant to the provisions of

sections 50 or 51 of the Constitution. Counsel for the 1<sup>st</sup> Defendant however contends that the President did not "remove" the Plaintiff from office. Counsel submitted that the list of instances where the office of Vice President shall become vacant was not exhaustive. In this regard let me reproduce here sections 51 and 55 of the Constitution.

51(1) If notice in writing is given to the Speaker signed by not less than one-half of all the Members of Parliament of a motion alleging that the President has committed any violation of the Constitution or any gross misconduct in the performance of the functions of his office and specifying the particulars of the allegations and proposing that a tribunal be appointed under this section to investigate those allegations, the Speaker shall -

- (a) If Parliament is then sitting or has been summoned to meet within five days, cause the motion to be considered by Parliament within seven days of the receipt of the notice; or
- (b) If Parliament is not then sitting, (and notwithstanding that it may be prorogued), summon Parliament to meet within twenty-one days of the receipt of the notice, and cause the motion to be considered by Parliament.

Section 55 The office of the Vice President shall become vacant -

- (a) On the expiration of the term of office of the President; or
- (b) If the Vice-President resigns or retires from office or dies; or
- (c) If the Vice President is removed from office in accordance with the provisions of section 50 or 51 of this Constitution; or
- (d) Upon the assumption by the Vice President to the office of President under subsection (4) of section 49.

Having perused the above sections of the Constitution I do not believe that the Plaintiff has violated the Constitution (as contemplated in section 51) by no longer belonging to a political party, a requirement which has been held to be continuous. His being expelled is not a voluntary or deliberate act amounting to a violation nor is it a "gross misconduct in the performance of his functions."

However in accordance with section 55 of the Constitution, section 51 (1) provides two of several scenarios where a vacancy can be created in the office of Vice President. Interesting in Section 55, it is only in paragraph C thereof that Parliament is involved in removing the Vice



President. In Paragraphs (a), (b) and (d) of section 55 a vacancy is created with no action by any other party and with no involvement of Parliament. The salient question is what happens where the Vice President cease to possess a continuing requirement to hold that office? It is my view that when a Vice President cease to possess the requirement as contained in section 41 (b) of the Constitution a vacancy is automatically created. This is not expressly provided in section 55 but is a construction that is implied and is most consistent with that provision when read in conjunction with section 41 of Constitution. A vacancy is thus created in the same way as it would if the Vice President ceases to be a citizen of Sierra Leone after his election and assumption of office. As I said earlier section 55 does not expressly name or mention failure to belong to a political party as an instance that would create a vacancy in the office of the Vice President but again as stated earlier this must be implied as the list of circumstances in section 55 is not necessarily exhaustive.

In *Bennion*<sup>5th</sup> Edition Section 172 page 487 it states:

*Nature of a legislative implication.* The legislator is presumed to intend that the literal meaning of the express words of an enactment is to be treated as elaborated by taking into account all implications which, in accordance with the recognised guides to legislative intention, it is proper to treat the legislator as having intended. Accordingly, in determining which of the opposing constructions of an enactment to apply in the factual situation of the instant case, the Court seeks to identify the one that embodies the elaborations intended by the legislator.

It goes on in Section 173 page 491 thus:

*"Is it legitimate to draw implications?"* Despite some judicial dicta to the contrary, the finding of proper implications within the express words of an enactment is a legitimate, indeed necessary, function of the interpreter."

And further at Page 495:

*When an implication is 'proper'.* The question of whether an implication should be found within the express words of an enactment depends on whether it is proper or legitimate to find the implication in arriving at the legal meaning of the enactment, having regard to the accepted guides to legislative intention. It is for the Court to decide whether a suggested implication is 'proper'. This may involve a consideration of the rules of language or the principles of law, or both together.

*Where the point is doubtful it will, as always in interpretation, call for a weighing and balancing of the relevant factors.*

The above passages in *Bennion* recognise the Court's power to where necessary fill in textual detail and to notionally expand the wording of any legislation in order to arrive at its legal meaning. Again I shall here adopt the dictum Justice Kisanga JA in the case of *WARIOBA V WASSIRA* LRC 1998 Vol 2 Page 721 where he stated as follows at page 727 of his judgment.

*"However, over the years this position has changed, and the view today is that in interpreting statutory provision the Court may, in a fit case, read words into the provision. Thus, for instance in Kamnis Ballrooms Ltd v Zenith Investments (Torquay) Ltd [1970] 2 All ER 871 at 893 the House of Lords (per Lord Diplock) adopted what was described as the 'purposive' approach, instead of the literal approach, and imputed to Parliament -*

*'an intention not to impose a prohibition inconsistent with the objects which the statute was designed to achieve, though the draftsman [had] omitted to incorporate in express words any reference to that intention.'*

*That approach was re-echoed and elaborated upon by the Court of Appeal in Nothman v Barnet London Borough Council [1978] 1 All ER 1243 at 1246 where Lord Denning MR said:*

*"The literal method [of construction] is now completely out of date. It has been replaced by the "purposive" approach. In all cases now in the interpretation of statute we adopt such a construction as will promote the general legislative purpose underlying the provision. It is no longer necessary for the judges to wring their hands and say: There is nothing we can do about it. Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it - by reading words in, if necessary - so as to do what Parliament would have done had they had the situation in mind.*

*Consistent with such holding, the Court declined to adopt the literal approach, and instead read words into the provision of the statute which it was construing. We find these last two cases to be very persuasive.*

Bearing the above passages in mind I have read the provisions of section 41 (b) as well as section 55 of the Constitution and I hold that by the principle of legitimate implication and giving



section 55 a purposive construction, the Plaintiff having been expelled from his party and thereby failing to possess the continuing requirement provided in section 41 (b) has thus created a vacancy in the office of the Vice President.

Indeed the Plaintiff clearly acknowledged that he was expelled by the APC party and there is no evidence before this Court that he has successfully challenged or overturned the expulsion which would perhaps have presented a different scenario.

As stated earlier, having created a vacancy by ceasing to possess the requirement stated in section 41 (b) of the Constitution, there is no need or necessity to refer the issue to Parliament as this is not a vacancy contemplated in section 50 or 51 of the Constitution. It is important to note that the circumstances creating a vacancy in section 55 (a) (b) and (d) do not require Parliamentary involvement.

Counsel for the Plaintiff referred to the definition of the word "relieve" in the Oxford Advanced Learners' dictionary and argued that by Ex. A the President had removed the Plaintiff from office. Indeed dictionary definitions are no doubt often useful in construing words in a statute but this Court has the right and duty to also use other means and criteria in arriving at the true, intended or legislative meaning of a word or provision as the case may be. In Halsbury's Laws of England 4<sup>th</sup> Edition paragraph 1371 page 834 it is stated as follows:

*To ascertain the meaning of a term used in legislation recourse may be had to a dictionary or other work of reference. This applies even though judicial notice is taken of the meaning of the term. A dictionary cited should be 'well-known and authoritative.' The Court nevertheless remains free to reach its own conclusion, which may be different to that expressed in a work of reference.*

Guided by the above and in consideration of my conclusions earlier in this judgment it is my view that Ex. A the Press Release from State House did not remove the Vice President from office. The Plaintiff, by ceasing to be a member of a political party, had already created a vacancy in the said office.

It would therefore seem that the issue of the Press Release Ex. A was the President informing the Plaintiff and the Public of the existence of a state of affair i.e the vacancy in the office of the Vice President a vacancy created not by him but by the Plaintiff ceasing to possess the requirement in section 41 (b). The issue of the Press Release could not have been done by Parliament as it has no express power to do so. And so it was pursuant to his authority as head of State and Chief executive (as contained in section 40 (1) of the Constitution) that the President caused the issue of the Press Release. Furthermore the Press Release served the purpose of stating the justification and laying the foundation for the appointment of the 2<sup>nd</sup> Defendant. Section 40(1) of the Constitution provides as follows:

There shall be a President of the Republic of Sierra Leone who shall be Head of State, the supreme executive authority of the Republic and Commander-in-Chief of the Armed Forces.

In the absence of any other provision in the Constitution in this regard, it is my view that the above provision enables and empowers the President to relieve from office and duties a Vice President whose office had already become vacant by him ceasing to be a member of a political party as required by section 41 (b) of the Constitution.

Counsel for the Plaintiff referred to and relied on the decision in the *Atiku Abubakarr* case. In that case the then President of Nigeria declared vacant the office of the Vice President. The Vice President challenged the action of the President and sought certain declarations and reliefs from the Appeal Court in its original jurisdiction. On appeal to the Supreme Court of Nigeria it was held among other things that the purported declaration by the President of the Federal Republic of Nigeria that the office of Vice president was vacant was unconstitutional.

I have carefully read the decision in the *Atiku Abubakarr* Case. However I have observed some differences in relation to the present case in terms of a) the text or wording of the respective (corresponding) legislative provisions sought to be interpreted or construed, b) the reasons or circumstances creating the alleged vacancy c) the guidelines for interpretation used in arriving at the decision d) the two Constitutions are certainly not identical. Let me conclude my consideration of the *Atiku Abubakarr* case by reference to the case of *Charles Francis Margai* -



v- *Solomon Ekuma Berewa & Ors SC 2/2007* unreported in which the Hon. Justice U.H. Tejan-Jalloh, CJ had this to say:

*Furthermore it must be remembered that no two Constitutions are the same, hence their interpretations must to that extent also differ and in interpreting the provisions of our National Constitution I have and I must not put any gloss or interpretation from another Constitution or statute. I remind myself also that similar provisions in other Constitutions or statutes are only of persuasive effect and in no way binding on our Courts.*

I therefore do not find it appropriate or useful to adopt the decision in the *Atiku Abubakarr* case.

In the instant case I have indeed employed the interpretative criteria mentioned earlier, bearing in mind that the duty, authority and responsibility for interpreting the various sections of our Constitution rests entirely on this Court pursuant to section 124 of the Constitution. In doing so, I have had to consider among other things, the precise text of the relevant provisions of the Constitution, the context of the enactment and the factual situation of the present case.

In the light of all of my considerations and conclusions above, it is my view that the 2<sup>nd</sup> Defendant was lawfully and properly appointed by the President in exercise of his power pursuant to section 54 (5) of the Constitution. It must be noted that the 2<sup>nd</sup> Defendant was indeed appointed by the President who cannot be sued as his immunity from suit for acts done in his private or official capacity is guaranteed by section 48 (4) of the Constitution. However if the Plaintiff is alleging violations of the Constitution by the President he could well have considered pursuing the route contemplated in section 51 of the Constitution. He no doubt would have had to firstly identify the provision of the Constitution that the President is alleged to have violated, a hurdle which regrettably the Plaintiff has not been able to surmount or address in these proceedings.

In the light of the above considerations and my conclusions in this judgment I shall answer the questions posed for determination in the following terms.

1. As regards the first question my answer is YES. The President has power to relieve the Vice President of his office and duties particularly in the present case where that office had become vacant by virtue of the Plaintiff ceasing to hold or possess the continuing requirement contained in section 41(b) of the Constitution
2. As regards the second question my answer is YES. The President had power pursuant to section 40(1) of the Constitution to relieve the Vice President of his office and duties when that office became vacant in the circumstances as stated above.

In the result the several declarations and reliefs sought by the Plaintiff cannot be justified and are accordingly refused.



HONOURABLE JUSTICE VIVIAN M. SOLOMON  
JUSTICE OF THE SUPREME COURT

PLAINTIFF'S ORIGINATING NOTICE OF MOTION

(1) By an Originating Notice of Motion the plaintiff herein commenced this action against the defendants pursuant to *Sections 124 and 127 of the Constitution of Sierra Leone Act No.6 of 1991* (hereinafter called "*The Constitution*") in which he is seeking the following reliefs to wit:

1. *For a determination of the following questions, to wit;*

- (a) *Whether the Constitution of Sierra Leone empowers the PRESIDENT "to relieve the Vice-President of his Office and duties" in any way other than by the procedure set out in Sections 50 and 51 of the said Constitution?*
- (b) *Whether the "Supreme Executive Authority" of the President mentioned in Section 40(1) of the Constitution of Sierra Leone includes the power to "relieve the Vice-President of his office and duties", other than by the procedure set out in Sections 50 and 51 of the said Constitution?*

If the Answer to the questions above is NO, the Plaintiff will seek the following further reliefs:

- (i) *For a declaration that the Public Notice announcing that the Vice-President had been relieved of his duties and office (Exhibit A herein) is unconstitutional, null and void and of no effect.*
- (ii) *For a declaration that the appointment of Victor Bockarie Foh as Vice-President of Sierra Leone is also unconstitutional, null and void, and of no effect.*
- (iii) *For an Injunction restraining the said Victor Bockarie Foh from acting in the Office of Vice-President of Sierra Leone, pending the hearing and determination of this action.*
- (iv) *For a declaration that the Elected Vice-President of Sierra Leone (the Plaintiff herein) remains in Office as Vice-President thereof unless and*

*until removed from Office as required by Section 50 and 51 of the Constitution of Sierra Leone.*

In support of this motion is the affidavit of Alhaji Samuel Sam-Sumana sworn on the 20<sup>th</sup> March, 2015. The said affidavit contained 4 exhibits to wit: a copy of the Press Release; the Plaintiff's Statement; the Open Letter written by Dr. Abdulai Conteh; and the Press Statement from the SLPP Party all dated 18<sup>th</sup> March, 2015.

- (2) Before the hearing of the Originating Notice of Motion, the plaintiff filed a Motion Paper dated 24<sup>th</sup> March, 2015 in which he sought an interlocutory injunction to restrain the 2<sup>nd</sup> defendant from carrying out the functions of Vice-President of the Republic of Sierra Leone. The 1<sup>st</sup> defendant opposed the application and relied on the affidavit of Julius Fofanah Sandy sworn on the 30<sup>th</sup> day of March, 2015. The 2<sup>nd</sup> defendant relied on the aforesaid affidavit and an affidavit sworn on the 9<sup>th</sup> April 2015 by Ajibola Emmanuel Manly-Spain Esq. This Court by its order dated 5<sup>th</sup> May, 2015 refused the application and ordered a speedy hearing of the Originating Notice of Motion.
- (3) The plaintiff filed a statement of his case on the 30<sup>th</sup> March, 2015 together with the affidavit as required by *Rule 90(2) of The Supreme Court Rules, C.I. No.1 of 1982* (hereinafter called "The Rules"). Attached to this are; a copy of the Press Release from State House dated 17<sup>th</sup> March, 2015; a statement from the plaintiff dated 18<sup>th</sup> March, 2015; and press release dated 19<sup>th</sup> March, 2015 appointing the 2<sup>nd</sup> defendant as Vice-President of the Republic of Sierra Leone. The plaintiff in his case referred to several sections of the Constitution to wit: *Sections 40(1) (3); 41(b); 49; 50; 51; 52; 54(1)(2)(3)(5)(8); 55(c); and 56(4)*. In the submissions therein, the plaintiff contends that he was elected by the people of Sierra Leone in 2007 and 2012 together with the President as his running mate. That he was not appointed by the President as his Vice-President. He contrasted his position with that of Ministers and Deputy Ministers who shall hold their position at the President's discretion. His submission is that *Sections 50 and 51* set out the circumstances under which he can be removed from his office. The former relates to mental and physical incapacity and the latter deals with misconduct though it goes beyond misconduct. He further stated that *Section 40(1)* does not make provision for his removal by the President. This is a general provision setting out the "*style and titles*" of



the President. He finally stated that the President has exceeded his authority in removing him from office and relied on the authority of *S.C. 31/2009 Attorney-General of the Federation of Nigeria; Inspector-General of Police and INEC vs. Alhaji Atiku Abubakarr and Others*, in which Justice Sunday Akinola Akintan JSC. had this to say:

*"Unlike the Ministers, the President cannot remove the Vice-President. The process of removal of the President or the Vice-President is provided for in Section 143 of the Constitution. It is through the process of impeachment, which is to be conducted by the National Assembly as set out in that Section".*

- (4) Mr. Margai submitted that each word must be presumed to be given significance and should be given a reasonable and natural meaning. His argument is that the plaintiff can only be relieved of his duties pursuant to *Section 55(c) of the Constitution*, that is, by the procedures thereof. In referring to *Section 40 (3)* counsel submitted that the word "guardian" means "a person who protects". He referred to *Section 41 (b)* and submitted that the word "a" is used and not "the". Counsel submitted that there were options opened to the plaintiff after his expulsion such as becoming a member of another established political party. He relied and adopted the reasoning in the opinion letter marked "C". He agreed that the Nigerian Constitution is different from the Sierra Leone Constitution as the word "the" is used instead of the word "a" in referring to membership of a political party. Mr. Margai submitted that neither *Sections 40 (4) or 53* clothes the President with the authority to relieve the plaintiff of his duties. He referred to the *Atiku Abu Bakarr* case and the relevant sections of the Nigerian Constitution. He agreed that *Section 143 (1)* of the aforesaid Constitution is not on all fours with *Sections 51 and 54(8)* of the Sierra Leone Constitution as the language is slightly different though its effect is the same. The plaintiff accordingly prayed that the two questions for determination be answered in the negative and that the further reliefs sought (i) (ii) (iii) and (iv) be granted.

- (5) Mr Fofanah made submissions in respect of the case against the 2<sup>nd</sup> defendant. He submitted that the case against the 2<sup>nd</sup> defendant is that the removal of the plaintiff as Vice-President is unconstitutional which has occasioned the appointment of the 2<sup>nd</sup> defendant.

Counsel referred to *Section 45 (3) (4) of the Public Elections Act 2012* (hereinafter called to "The Elections Act") and its fourth schedule. The latter he submitted does not make any reference to membership of a political party and the constitution takes away membership of a political party post election because of the sovereign mandate of the people. Membership of a political party is not a continuous requirement. That the word "remove" can only be found in *Section 55 (c) of the Constitution* and that the President created the vacancy by removing the plaintiff from his office. *Sections 54 (5) and 55* are specific and no vacancy was legally created by the President and the 2<sup>nd</sup> defendant is not occupying that office legally.

- (6) The 1<sup>st</sup> defendant's case was filed on the 8<sup>th</sup> April, 2015 and accompanied by the requisite affidavit pursuant to *Rule 92(2) of the Rules*. In his statement the 1<sup>st</sup> defendant gave a background to the appointment, expulsion of the plaintiff, and the appointment of the 2<sup>nd</sup> defendant. In his case, it is submitted that the obligations and qualifications to the office of Vice-President as stipulated in *Section 41* including *Subsection (b)* are continuous throughout the term of office of the holder of Vice-President. He invited the court to interpret the aforesaid through the purposive interpretation which was used in the case of *Agyci Twum vs. Attorney-General & Akwetey (2005)-(2006) S.C. GLR 732*; and *Sierra Leone Enterprises Ltd. vs. Attorney-General and Minister of Justice & The Minister of Lands Housing & The Environment S.C. 4/2005* delivered on 18<sup>th</sup> July, 2008. The 1<sup>st</sup> defendant's case is that, it is the intention of Parliament

*"that the platform of political activity in the Republic of Sierra Leone should be through political parties and that the holder of office of President and Vice-President should be members of a political party".*

If therefore the plaintiff ceases to be a member of the APC party then *Section 55 of the Constitution* comes into play. His submission is that an Act of Parliament is to be read as a whole such that *Sections 41(b) and 54(5)* are to be considered. On the interpretation of *Sections 50 and 51*, the 1<sup>st</sup> defendant referred to *Section 54(8)* and submitted that the former sections deal specifically with mental, physical, incapacity and/or



gross misconduct; and does not include expulsion from a political party. A fortiori *Section 41(b)* does not fall within the ambit of *Sections 50 & 51* of the *Constitution*. On the interpretation of *Section 40(1)* it is submitted that the whole of *Section 40* is to be read and he relied on the authority of *Issa Hassan Sesay alias Issa Sesay & Others vs. The President of the Special Court & Others S.C. 1/2003*.

- (7) Counsel for the 1<sup>st</sup> defendant submitted that *Section 127 of the Constitution* is been invoked in the matter herein and in the Interpretation Act 1971, the word “*enactment*” is defined but that this matter contains no inconsistency in any enactment and so it cannot be properly invoked. He submitted that the provisions in *Section 41* including *41(b) of the Constitution* apply to both the President and the Vice-President and the qualifications therein are continuous throughout their term of office. He urged the court to apply the several interpretative criteria in interpreting *Sections 41 (b); 50; and 51; of the Constitution*. In the aforesaid provisions there is no mention of “*candidacy*” and in *Section 41* the literal interpretation and the golden rule are inapplicable as it will not in grammatical terms produce the interpretation that has been placed on it. He submitted that *Section 35 of the Constitution* has been invoked and is to be read with *Section 41 (b) of the Constitution* and *Section 45 of the Elections Act*. When these sections are read together, the literal interpretation cannot be applied in the interpretation of *Section 41*. That *Section 35* supports the contention that membership of a political party is a continuous requirement and as it is not met by the plaintiff, the Office of Vice-President became vacant under *Section 55*. He referred to *Sections 44 and 45 of the Elections Act* where reference is made to the words “*nominated as a candidate*” and “*designated*”. Counsel referred to *Sections 108 (7) and 171 (15) of the Constitution* which provides that the Constitution is supreme to any other law. He further submitted that even though the word “*candidate*” is used in *Section 44(2) of the Elections Act* in the strict sense the Vice-President never contested elections as a “*candidate*” as he was not nominated; his name was not put on the ballot papers; and he did not contest the elections. He referred to cases in this court where the literal interpretation have not been used including the *Sierra Leone Enterprises vs. Minister of Lands* and the case of *Asare vs. Attorney General*. On the issue of immunity of the President from civil suit, he urged the court not to take the literal interpretation of *Section 48(4) of the Constitution* and made two submissions to wit: that the court should go beyond the literal meaning of an enactment irrespective of



how grammatically plain and simple the enactment is; and it can read words into a statute. In doing so, in interpreting *Section 48 (4)*, this court in the case of *John O. Benjamin et al. vs. Dr. Christiana Thorpe et al.* read the words in the aforesaid to read: “except in the case of election petition”.

- (8) On the interpretation of *Section 55 of the Constitution*, he invited the court to take cognizance of *Sections 41 (b) and 54 (5)* and he submitted that *Section 54 (5)* refers to various instances and “vacancy” is one such instance and that *Section 55* is not exhaustive. On the interpretation of *Sections 50 and 51* he referred to exhibit “A”. He submitted that the word “remove” is not found therein and the word “relieved” was used. *Section 51* is predicated on some deliberate intention or act by a President or Vice-President which would amount to gross misconduct. But ceasing to be member of a political party is not a deliberate intentional act by the plaintiff and is not a violation of the Constitution. And if the plaintiff’s arguments are upheld that the requirements under *Section 41 of the Constitution* are not continuous, then by ceasing to be a member of a political party he has not violated the Constitution. He submitted that it is only in *Section 55 (c)* that Parliament has the role ascribed to it pursuant to *Sections 50 and 51*.

On the interpretation of *Section 40(1) of the Constitution*, he submitted that “Supreme Executive Authority” means Chief Executive with implicit powers in such position. The President therefore has executive power to relieve the Vice-President from office where he has not met the continuous requirement of membership of a political party.

Mr Macaulay distinguished the *Atiku Abu Bakarr* case in that whereas in Nigeria the appointment of Vice-President is subject to the approval of each House, by *Section 54(5) of our Constitution*, the appointment of the Vice-President is done by the President alone. He finally submitted that the courts have now deviated from the literal interpretation and relied on the case of *Warioba vs. Wassira & Anr (1998)*. He finally urged the court to answer the two questions in the Originating Notice of Motion in the affirmative and to refuse the reliefs sought.

- (9) The 2<sup>nd</sup> defendant filed his statement on 17<sup>th</sup> April, 2015 pursuant to *Rule 90(2) of the Rules* and an affidavit verifying all the facts therein pursuant to *Rule 92(2) of the Rules*. In his case the brief facts were reiterated, that is, from appointment of the plaintiff as the



Vice-President of Sierra Leone to his removal from office. His argument is that the plaintiff lost his membership of the APC Party, and he not being a member of a political party cannot continue to hold the office of Vice-President as membership of a political party is a prerequisite to the holder of that office. That the President's power to remove the Vice-President from office can be implied from his position as "*Supreme Executive Authority*". He adopted the arguments of Mr. Macaulay. His case is that *Section 41(b) of the Constitution* is to be given a purposive construction. In construing *Section 41(b)*, reference is made to *Sections 35(1); 40(1); 41(a)(b); 42(1); 54(1)(5)(8) and 55 of the Constitution*. His submission is that *Section 41* is to be read as a whole and the requirement in *Section 41(b)* is continuous. Reference is made to *Section 41(a)* that if the holder of that office ceases to be a Sierra Leone citizen should he continue in Office as Vice-President? This he submitted cannot be the intention of Parliament. He referred to *Section 35(1) of the Constitution* which provides that political parties should participate in shaping the political will of the people of Sierra Leone as they sponsor candidates for presidential election. He further stated if a President or Vice-President resigns from the political party under whose platform he was elected and he elects to form another political party how can he continue to hold office as President or Vice-President when he was elected to that office under a different political manifesto? Reference was also made to *Section 54(5)* in which the Vice-President is the Principal Assistant to the President and that it does not envisage a situation where both the President and Vice-President do not belong to the same political party. It will be virtually impossible for the President to work effectively with the Vice-President as his Principal Assistant if they are from different political parties. He submitted that not every situation and circumstance is envisaged in the constitution and its interpretation requires a reasonable and common sense approach.

- (10) Mr. Manly Spain made submissions on four issues to wit: *Section 48 (4) of the Constitution*; determination of the questions on the face of the Originating Notice of Motion; *Section 127 of the Constitution*; and the parties herein. He submitted that by virtue of *Section 48 (4)* the President has absolute immunity from suit. On the second issue he submitted that the questions sought for determination presupposes that the President has a right to relieve the Vice-President of his duties pursuant to *Sections 50 and 51*, but that the aforesaid sections do not confer any such powers on him and *Section 54*

(8) buttresses that view. He further submitted that the questions sought for determination do not refer to the 2nd defendant. He referred to exhibit "A" the press release and submitted that it is not an enactment and that even a public notice is not an enactment within *Section 127 of the Constitution*. A fortiori *Section 127* is inapplicable in the instant case. On the fourth issue counsel submitted that the acts complained of by the plaintiff are not committed by the Government of Sierra Leone but by the President. He referred to the press release in which the words used are "*I hereby relieve*". Therefore the action herein ought not to have been instituted against the 1st defendant. He finally submitted that the 2nd defendant cannot be removed from office, as he is appointed by the President who cannot be sued. He finally urged the court to answer the questions in the affirmative and to refuse the reliefs sought.

- (11) Before I embark upon the task of interpretation I must first of all state that interpretation of any constitution more often requires awareness of historical facts than it does knowledge of abstraction. Nearly a century and a quarter ago, then to be a Judge of the Supreme Court of the United States of America Justice Oliver Wendel Holmes Jr. wrote:

*"The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become. We must alternately consult history and existing theories of legislation. But the most difficult labor will be to understand the combination of the two into new products at every stage. The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the*



*degree to which it is able to work out desired results, depend very much upon its past."*

Although he was writing about the evolution of Common Law Doctrine, Holmes could just have been writing about the task of interpreting a Constitution. Bearing this in mind I shall proceed to consider the two questions asked for determination to wit:-

1. *Whether the Constitution of Sierra Leone empowers the President "to relieve the Vice-President of his office and duties" in any way other than by the procedure set out in Section 50 and 51 of the said Constitution?*
2. *Whether the "Supreme Executive Authority" of the President mentioned in Section 40(1) of the Constitution of Sierra Leone includes the power to "relieve the Vice-President of his office and duties" other than by the procedure set out in Sections 50 and 51 of the said Constitution?*

These are the two questions for determination invoking this court's jurisdiction pursuant to *Sections 124 and 127 of the Constitution*. If I am of the view that these questions are to be answered in the negative, then, I will proceed to consider which of the reliefs sought in the *Originating Notice of Motion (i) (ii) (iii) (iv)* ought to be granted. However, if upon my determination, I hold that the two questions sought to be determined are answered in the affirmative, then the reliefs sought will not be considered.

- (12) Before determining the 1st question, I will determine whether if at all, this plaintiff can properly seek the determination of the questions herein by invoking the original jurisdiction of this court pursuant to *Sections 124 and 127 of the Constitution*. By *Section 124* this court has original jurisdiction to the exclusion of the other courts in all matters relating to the interpretation of any provision in the constitution and it 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-*

- (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.

Therefore, by *Section 124* this plaintiff has locus to invoke the original jurisdiction of this court in its determination of the two questions. There is a technical distinction between the words "*Interpretation*" and "*Construction*". Interpretation is the process whereby a meaning is assigned to the words of a statute; whereas "*Construction*" is the process whereby uncertainties and ambiguities in a statute are resolved. Where the words of a statute are clear and unambiguous there is no need for judicial interpretation. However, if the meaning of a statute is uncertain or ambiguous it falls to be interpreted. The two processes for interpretation were clearly distinguished *per Lawson J. in Franklin v. A.G.* (1973) 1 ALL E.R. 879 at P.886 in which he said thus:

*"I approach the answer to the question in two stages, stage one is thus: whether the meaning of the Cyprus Act 1960 in this respect is clear and unambiguous, and if so, what does it mean? At this stage I look at the word of the enactment as a whole, including the schedule, and I use no further aid, no further extrinsic aids in order to reach conclusion as to the clear and unambiguous meaning of the words .....*

*If I find that the answer on the first stage of my inquiry is that the meaning of the Act in this respect is ambiguous, then I have to go to the second stage and consider two possible different meanings..... Now if I get to this second stage, then in my judgment, and then only, am I entitled to look at extrinsic aids, such as the long title, the heading, the side notes, other legislation, then only am I entitled to resort to maxims of construction..."*



The defendants have argued that the plaintiff cannot properly invoke *Section 127* as it refers to “*enactment*”; and the basis of the plaintiff’s complaint is in exhibit “A”, the press release. By *Section 127* any person can institute action and invoke the jurisdiction of this court to enforce the constitution by seeking a declaration to that effect and it 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.*

“*Enactment*” is defined in Jowitt’s Dictionary of English Law as:

*“an act of Parliament or statute or any part thereof”.*

The issue for consideration is whether the Press Release issued on the 17<sup>th</sup> March, 2015 relieving the plaintiff from his duties as Vice-President has any validity. Is it an enactment? In the light of the above definition it is not. It was issued after the expulsion of the plaintiff from the APC Party on the 6<sup>th</sup> March, 2015. As at 17<sup>th</sup> March, 2015 the plaintiff was no longer a member of the APC Party. He issued a statement reacting to that press release on the 18<sup>th</sup> March, 2015. On the 19<sup>th</sup> March, 2015 the 2<sup>nd</sup> defendant was appointed and sworn in as Vice-President of the Republic of Sierra Leone. It is therefore not an enactment for which this court can make declarations pursuant to *Section 127(1)*.

A part of it reads thus:

*“And whereas Alhaji Samuel Sam Sumana is no longer a member of a political party in Sierra Leone and therefore does not have continuous requirement to hold office as Vice President of the Republic of Sierra Leone, provided for in Section 41(b) of the Constitution of Sierra Leone Act No.6 of 1991, I hereby relieve Alhaji Samuel Sam Sumana of the duties and from the Office of Vice President of Sierra Leone with immediate effect, pursuant to my supreme executive authority as President of the Republic of*

*Sierra Leone as enshrined in Section 40(1) of the said Constitution of Sierra Leone".*

In essence *Section 127* has not been properly invoked. However by *Section 124* this plaintiff has locus to invoke the original jurisdiction of this court in its determination of the two questions. I shall therefore now consider the 1st question and its interpretation thereof pursuant to *Section 124*.

- (13) The plaintiff herein is seeking the interpretation of certain sections in the constitution including inter alia; *Sections 41(b); 50 and 51*. To be able to determine whether the President is empowered by the Constitution to relieve the plaintiff of his office and duties other than by *Sections 50 and 51*, I must first consider how he was appointed pursuant to the Constitution vis-à-vis other relevant Legislation. The qualifications to the Office of President are stipulated in *Section 41* and by *Section 54(2)(b) of the Constitution* the qualifications to the Office of Vice-President are the same. I shall now refer to *Section 41* which reads thus:

*41. No person shall be qualified for election as President unless he*

-

*(a) is a citizen of Sierra Leone;*

*(b) is a member of a political party;*

*(c) has attained the age of forty years; and*

*(d) is otherwise qualified to be elected as a Member of Parliament.*

*Section 54(2)(a)(b)* reads thus:

*54(2) A person -*

*(a) Shall be designated a candidate for the office of Vice-President by a Presidential candidate before a Presidential election;*

*(b) Shall not be qualified to be a candidate for the office of Vice-President unless he has the qualifications specified in Section 41.*

Counsel for the plaintiff submitted that he cannot be relieved of his duties unless the procedure spelt out in *Sections 50 and 51* are complied with. His argument is that *Section 41* lays out the criteria requisite to the position of Vice-President and once a



candidate qualifies and is appointed, then the criteria in *Section 41* do not apply. Counsel on behalf of the 1<sup>st</sup> defendant is opposed to that line of interpretation. His submission is that once the plaintiff ceases to be a member of a political party, he ceases to have the requirement to hold the Office of Vice-President as provided in *Section 41(b)* and by the press release of 17<sup>th</sup> March, 2015, the plaintiff was properly relieved of his duties as he ceased to be a member of the APC Party he having been expelled on the 6<sup>th</sup> March, 2015.

The two opposing views of counsel on their interpretation of the criteria in *Section 41* is whether its various criteria are merely criteria to the appointment of holders of President and Vice-President and it ceases once he is appointed; or that these criteria are continuous requirements which the holders of the said offices must meet throughout their term of office.

- (14) This now brings me to the basic approach to statutory interpretation which is to ascertain the intention of the legislature. A statute can be looked at literally or its purpose is determined bearing in mind the intention of the legislature which can be found in the ordinary and natural meaning of the words used. This approach produces a reasonable interpretation of the statute. But the purposive approach is used where the literal approach would produce pervasive results. It was deliberated by their Lordships in the case of *Kammins Ballrooms Co.'s Ltd. vs. Zenith Investment (Torquay), Ltd. (1970) 3 ALL E.R. 871* per Viscount Dilhorne dissenting, he had this to say:

*"If language is clear and explicit, the Court must give effect to it, 'for in that case the words of the statute speak the intention of the legislature'..... 'And in so doing it must bear in mind that its function is jus dicere, not jus dare, the words of a statute must not be overruled by the Judges, but reforms of law must be left in the hands of Parliament (Maxwell on Interpretation of Statutes 12<sup>th</sup> Edn. (1969), P.1)".*

In interpreting a statute it should be read in its entirety, clearly bearing in mind the intention of the legislature and the mischief the legislation seeks to remedy, but is not to be interpreted so literally that it produces pervasive results.

- (15) The purposive approach is very useful as the words are to be interpreted according to their natural, ordinary and grammatical meaning, but only to the extent that they do not produce a manifestly absurd result. I refer to the judgment of *Parke, B in Beck vs. Smith* (1836), 2 M&W, at P. 195 in which he held thus:

*"It is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience but no further".*

A similar view was expressed by Lord Wensleydale in *Grey vs. Pearson* (1857) 6 H.C. Cas 61 at P. 106. This method of interpretation has been used in this court in the *Sierra Leone Enterprises* case.

Therefore in the interpretation of *Section 41* are each of the criterion in *a, b, c, d*, disjunctive or conjunctive and are they to be read holistically? Do these criteria cease to exist once a candidate assumes the office of President or Vice-President? A statute must be read as a whole and any schedules if incorporated into its body must be read with it. This is the ejusdem genesis rule. The preamble is also part of a statute which precedes the enacting words and sets out the reasoning for the statute being passed. My view in determining the interpretation of *Section 41* is that all the criteria listed therein are to be fulfilled by a candidate if he is to be qualified for election as a President or Vice-President. Hence the side note captioned: "*Qualifications for Office of President*".

- (16) I will again refer to *Section 41, of the Constitution*, its legal meaning and the intention of the legislature. The legal meaning of a statute is described in *Halsbury's Laws of England 4<sup>th</sup> Edition Vol 44(1) at paragraph 1373 to wit:*



*"The legal meaning of an enactment, that is the meaning that corresponds to the legislator's intention, is the meaning arrived at by applying to the enactment taken with any other relevant and admissible material, the rules, principles, presumptions and canons which govern statutory interpretation. These may be referred to as the interpretative criteria, or guides to legislative intention".*

Therefore, the interpretative criteria which are to be applied in arriving at the legal meaning of any enactment includes; the rules of construction as are laid down by statute or at common law; judicial decisions as to the nature and content of legal policy; presumptions laid down by the courts and linguistic canons applicable to any passage of prose; and legal policy consists of a collection of principles which the judges consider the law has a general duty to uphold. It is likened to public policy and may indeed be regarded as legal aspect. *See paragraph. 1431 of Halsburys.* Legal policy is not static and in some areas it may change in response to the perceived views of the public needs and attitudes. I am guided by the aforesaid principles and the legal meaning in the interpretation of *Section 41* is based on all the interpretative criteria. There are several cases within the jurisdiction which have been very instructive in this direction. The Constitution as I stated earlier must be given a purposive interpretation and it is not intended to be interpreted as an Act of Parliament or enactment and not all the canons of interpretation apply.

- (17) Counsel for the plaintiff have not argued against that view but that the criteria therein are not continuous requirements. I do hold the view that not only is all the four criteria a prerequisite for election as a President or Vice-President, but that they are continuous requirements which must be held up to the date of vacating the office. What is the purpose of these criteria? What is Parliament's intendment for these criteria? The qualifications are that a candidate is a citizen of Sierra Leone; is a member of a political party; has attained the age of 40 years **AND** is otherwise qualified to be elected as a Member of Parliament. I give the words therein used their natural, literal and ordinary meaning but only to the extent that it does not produce an absurd result. A question I pose is what if for example, a candidate does not fulfil one of the aforesaid criteria? He will never be elected. What then happens if he loses or fails to fully comply will one of





In applying the purposive approach it is desirable to read and consider *Section 41* in line with other provisions of the Constitution referred to supra, including *Sections 35(4)* and *77(1)(k)* so as to get the true intention of Parliament. *Section 35(4) of the Constitution* reads thus:

*35 (4) No political party shall have as a leader a person who is not qualified to be elected as a Member of Parliament.*

*Section 77 (1)(k)* reads thus:

*77 (1) A member of Parliament shall vacate his seat in Parliament -  
(k) if he ceases to be a member of the political party of which he was a member at the time of his election to parliament and he so informs the Speaker, or the Speaker is so informed by the Leader of that political party.*

This buttresses my view that the requirements on membership of a political party are continuous not only for the positions of President and Vice-President but also for all Members of Parliament. See *Sections 35(1) (4); 41 (d); 77(1) (k) of the Constitution*. Members of Parliament are precluded from abandoning their party on whose ticket they were elected to Parliament for another party. It could not be said for Parliament to have a contrary intention for the Offices of President and Vice-President as they are not inter alia qualified to be elected to such offices where they are not eligible as Members of Parliament. There is a similar provision in the Nigerian Constitution in *Section 109 (1) (g)* which reads thus:

*"A member of a House of Assembly shall vacate his seat in the House if:*

*(g) being a person whose election to the House of Assembly was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which the House was elected".*

This provision was deliberated by Justice Aderemi in his judgment in the *Atiku Abu Bakarr* case in which he opined thus:

*"It is manifest from the above quoted constitutional provision that the lawmakers intended to and indeed have made punishable the defection of an elected member, from the political party that sponsored him, to another political party before the expiration of the period for which the House was elected by declaring his seat vacant".*

Though he further opined that there is no such similar provision in respect of the holders of the Offices of President and Vice-President; in our Constitution, eligibility for the position of a Member of Parliament is one such requirement. See *Section 41 (d)*.

- (18) Other enactments which are relevant to ascertain what Parliament has intended include *The Public Elections Act 2012* and *The Political Parties Act No.3 of 2002*. I refer to *Section 170(1)(c) of the Constitution* which provides for other legislation as consisting of:

*170(1)(c) any orders, rules, regulations and other statutory instruments made by any person or authority pursuant to a power conferred in that behalf by this Constitution or other law;*

*The Public Elections Act 2012 Act* is one such relevant legislation. The preamble to this legislation reads thus:

*"Being an act to consolidate and amend the law on public elections, to make provision supplementary to Sections 32 and 33 of the Constitution of Sierra Leone with respect to the electoral Commission and for other related matters".*

This act makes provision *inter alia* for the nomination of candidates for President and candidates designated as Vice-President. I refer to *Section 44(1) of the Elections Act* which reads thus:-

*44(1) No person shall stand as a candidate in a Presidential election if he is not a candidate nominated by a political party.*

*44(2) A person is not qualified to be nominated as a candidate in a Presidential election unless the person is -*



- (a) a citizen by birth;
- (b) a member of the political party;
- (c) not less than forty years of age; and
- (d) otherwise qualified to be elected as a Member of Parliament.
- (e)

*Section 16 (a)* refers to nationality as one criterion and a prerequisite to vote in public elections and it provides that:

.....  
*16. No person shall be registered as a voter or, having been registered as such, shall be entitled to vote at a public election if the person is -*

- (a) a non-citizen;*

The criteria in *Section 44(2) of the Elections Act* are very similar to *Section 41 of the Constitution* save for the words “a” and “the” in *Section 44 (2)(b) and 41(b)* thereof. These are the relevant provisions which relate to the process of how a Presidential or Vice-Presidential candidate is nominated. There is no provision in the Elections Act that a Vice-President is elected on his own ticket in general elections; he was not elected for; nor was his name and photograph on the ballot papers. So although the Office of the Vice-President is an elective one, he is not voted for in a separate election, but on the same ticket of the Presidential candidate. Again I refer to *Section 45(2)* of the said Act which provides thus:

*45(2) A person shall not be qualified to be designated as a candidate for the office of Vice-President if the person does not have the qualifications specified in Subsection (2) of Section 44.*

A candidate is “designated” to hold the Office of Vice-President by the President and all such particulars are entered on the form for nomination by the presidential candidate. By *Section 45 (1) (b) of the Elections Act* it is provided thus:

*45 (1) (b) the candidate designated for the office of Vice-President by the presidential candidate in accordance with Subsection (2) of Section 54 of the Constitution; .....*

The drafters of the legislation relative to public elections took into consideration the criteria the holders of the Office of President and Vice-President must meet. Reference is made to the Vice-Presidential candidature as “*designated*” candidate. Such a candidate is one who has been appointed to a job or position. It is synonymous to indentify, pick, choose, assign, and nominate to carry out the functions of that office. See the Oxford Dictionary & Thesaurus. In the Elections Act there is no mention of a Vice-Presidential Election but Presidential Election and “*Election*” means any election for the President of Sierra Leone, Parliament or Local Council.

- (19) *Section 6(1) of the Political Parties Act 2002 Act No.3 of 2002* (hereinafter called “Parties Act”) stipulates its functions to wit:

*6(1) The object for which the Commission is established is the registration and supervision of the conduct of political parties in accordance with the Constitution and the Act.”*

*(Emphasis mine)*

Its functions in *Subsection 2* includes inter alia, political parties’ compliance with the Constitution; the Elections Act; to monitor the accountability of the political parties to their membership and to the electorate of Sierra Leone. These functions are to be read together with *Section 35 of the Constitution*. Membership to a political party is a prerequisite for a candidate to be nominated in a presidential election. See *Section 44(1) of the Elections Act* referred to supra. Because of this provision, at no time will there be a presidential candidate who runs as an independent candidate. Therefore, the provisions to be interpreted in the Constitution relating to the Offices of President or Vice-President or any Member of the Legislature must be read with the *Elections Act 2012 and Political Parties Act 2002*, by using the interpretative criteria and the purposive approach. Again I refer to *Section 55(1) of the Elections Act* on the challenge of the election of a President. It can only be made by “a citizen of Sierra Leone”. See *Sections 35 (4); 41(a) (d); 75 (a); 76(1) (a) of the Constitution; Sections 16 (a); 44 (2) (a) 55 of the Elections Act*. Reference is made in all these legislations to “a citizen” of Sierra Leone and a President or Vice-President who ceases to be a citizen cannot continue to hold office and he cannot be elected as a Member of Parliament. There is submission on the part of



the plaintiff that the latter is at variance with the former. If there is any variance by *Section 171(15) of the Constitution*, such law or provision is void and of no effect.

(20) Mr Margai in his submissions drew the distinction between *Section 41 (b) of the Constitution* in which the words used are “a political party” and in *Section 44 (2) of the Elections Act* “the political party”. He further submitted that pursuant to the Constitution the plaintiff had rights, that is, to join a political party, but he did not exercise that right. Indeed there is a distinction between the words “a” and “the”. The latter is definitive. There is no evidence that the plaintiff is at the time of commencing this action a member of another political party. It would not be the intendment of Parliament to have a President and his Vice-President from different political parties when all such candidates are sponsored by their respective political parties. See *Section 35 (1) of the Constitution*. This buttresses my earlier findings that the literal interpretation would produce an absurd result, and the purpose of the legislature in its enactment of a legislation ought to be considered with words to be read into a piece of legislation so as to give it its true meaning and the intendment of parliament. In the light of the aforesaid as at the time of the issue of the press release the plaintiff was no longer a member of the APC Party and in the light of my deliberations in paragraphs 12 to 19 that it is a continuous requirement for the holder of the Office of Vice-President to be a member of a political party, then the plaintiff can lawfully be relieved of his duties as Vice-President as one of the criteria in *Section 41* in particular *Subsection (b)* no longer exists. Clearly, it is the intention of Parliament that if any of the criteria stipulated in *Section 41* is not fulfilled he cannot hold the position of Vice-President and that the criteria therein are continuous requirements whilst he is in office.

(21) I shall now proceed to consider *Sections 50 and 51 of the Constitution* which forms the basis of the first question to be determined. I have dealt exhaustively on the interpretation of *Section 41* holistically and vis-à-vis other enactments to wit; the *Public Elections Act 2012* and *Political Parties Act 2002*. The marginal notes in *Section 50* cover situations of mental or physical incapacity of the holder of the Office of President. It applies to cases where Cabinet has resolved that the mental or physical capacity of the President ought to be investigated, and the Speaker shall in consultation with the Head of the Medical Service of Sierra Leone appoint a Board who shall inquire into the matter.

It enumerates the various steps on the inquiry of the Board and where its report is that the President is incapable of discharging his functions as conferred upon him by the Constitution, then, *Section 49(4) of the Constitution* will be invoked. This section has no relevance to the proceedings herein and is not applicable to a sitting Vice-President who is expelled from his political party and relieved of his duties. The President has no powers under *Sections 50 and/or 51* to relieve or remove the Vice-President from his office.

- (22) The marginal notes in *Section 51 of the Constitution* deals with "*Misconduct by President*". By *Section 54(8)* the provisions in *Sections 50 and 51* relating to the removal from Office of the President apply to the Vice-President. *Section 51* deals with the misconduct of the President and has no relevance to the instant case. When a President or Vice-President ceases to be member of a political party or is expelled from a political party is not a situation which falls within the purview of *Section 51*. Therefore failure to fulfil the criterion and requirement in *Section 41(b)* does not fall within the ambit of *Section 51* and definitely not within *Section 50* which provides for mental and/or physical incapacity. The plaintiff did not commit any act in violation of the constitution as anticipated in *Section 51*. Rather he was expelled from the APC Party under which ticket he was elected into the position of Vice-President. Applying the legal meaning to *Section 41 and in particular 41(b) of the Constitution* that is, that they are continuous requirements then *Section 55* would come into play as the Office of Vice President is vacant. There is no need to use the processes/procedures in *Sections 50 and 51* thereof. By *Section 55*, there are other situations which when they arise, will make the Office of Vice-President vacant and removal by *Section 50 and 51* is just one. I refer to *Section 55 to wit:*

*55. The office of the Vice-President shall become vacant -*  
*(a) On the expiration of the term of office of the President; or*  
*(b) If the Vice-President resigns or retires from office or dies; or*  
*(c) If the Vice-President is removed from office in accordance with the provisions of Section 50 or 51 of this Constitution; or*  
*(d) Upon the assumption by the Vice-President to the office of President under Sub-Section (4) of Section 49.*



This sets out the various situations which are not exhaustive, when the Vice-President's Office does become vacant. *Sections 50 and 51* are referred to in *Subsection C* of *Section 55* and in that case removal from office of a Vice-President is through the Speaker; Parliament; Board of Medical Practitioners as the case may be. Based on my deliberations in paragraph 21, I conclude that *Section 50* is related to mental or physical incapacity to discharge the functions conferred on the President or Vice-President by the Constitution where Cabinet has resolved that such question ought to be investigated. *Section 51* relates to impeachment for misconduct if Parliament alleges that the President or Vice-President has committed any violation of the constitution or any gross misconduct in the performance of their functions. There are no ambiguities in these provisions. The words are precise and clear. Therefore there is no reason to apply any of the principles of interpretation. These provisions are meant to apply to the specific instances referred to. They are strictly meant to apply only to impeachment, mental or physical incapacity. To hold otherwise will not only be absurd, and irrational it will also defeat the intention of the drafters as clearly demonstrated by the precise and unambiguous words used in *Sections 50 and 51*.

- (23) *Section 55 of the Constitution* does not provide for situations where a Vice-President ceases to be a member of political party and is subsequently expelled from that party. It provides for various situations where the office is vacant which in my view are not exhaustive. Again, I have to take cognisance of the requisite qualifications to the Office of Vice-President as stipulated in *Section 41*. Clearly it is the intention of Parliament that if any of the criteria stipulated in *Section 41* is not fulfilled he cannot hold the position of Vice-President and that the criteria therein are continuous requirements whilst he is in office. To hold otherwise would create an absurd situation never contemplated by Parliament and the people of Sierra Leone. Parliament never contemplated a situation where the President and Vice-President are from different political parties. The contemplation of Parliament is for both the President and Vice-President to be members of the same political party thereby encouraging political harmony. His expulsion however has created a situation not catered for in this Constitution which is what action should be taken when the Vice-President no longer fulfils one of the qualifications for becoming Vice-President. Therefore, as the Constitution does not provide the action to be taken when any of the qualifications in *Section 41* is not fulfilled, the President

exercised his “*Supreme Executive Authority*” conferred upon him by the Constitution in *Section 40 (1)* and relieved him from his duties. It is not the intention of Parliament that in a situation where a sitting Vice-President is relieved of his duties that office should be left vacant until the next general elections. Let me conclude on this point by saying that the party system is an essential element of democratic governance in Sierra Leone. Any interpretation should strengthen rather than weaken it. In the premises therefore, in the light of the foregoing discourse, and after the interpretation of *Sections 41, 50, 51, 54, 55; of the Constitution* together with *Sections 44 and 45 of the Public Elections Act 2012* and the *Political Parties Act 2002* the answer to the 1st question for determination is in the affirmative.

- (24) This now brings me to the 2<sup>nd</sup> question for determination which is whether the phrase “*Supreme Executive Authority*” of the President mentioned in *Section 40(1) of the Constitution* includes the power to relieve the Vice-President of his office and duties other than by the procedure set out in *Sections 50 and 51*. *Section 40(1)* reads thus:

*40(1) There shall be a President of the Republic of Sierra Leone who shall be Head of State, the supreme executive authority of the Republic and the Commander-in-Chief of the Armed forces.*

*(Emphasis mine)*

Again what is the legal meaning of “*Supreme Executive Authority*”? Like most constitutions, Executive Authority is not defined in our constitution. It is opened to interpretation. In Jowitt’s Dictionary of English Law 2<sup>nd</sup> Ed. The Executive is defined as:

*“.....that branch of the government which puts the laws into execution, as distinguished from the legislative and judicial branches ..... the body which carries the laws into effect or superintends the enforcement of them is executive.....”*

*The Executive is the Crown in its administrative aspect, or the government. It consists of government departments and their officials under the Ministers of the Crown”.*



Though dictionaries do not always precisely capture how a particular word is actually used in statutes, the Oxford English Dictionary confirms that it relates "to the part of political administration with responsibility for putting into effect laws drawn up by the legislature," or "the branch of government responsible for putting decisions and laws into effect." The power and authority to execute the laws is therefore the quintessential executive power. As seen in other parts, the drafters of the 1991 Constitution clearly understood and intended Supreme Executive Authority to be the power to execute the laws. Because the Constitution established that the Supreme Executive Power is his, the Constitution authorizes the President to execute the laws. Vested with the executive power the President may execute any law. As has been stated earlier, this section ought to be read as a whole. What was the intendment of Parliament? The interpretative criteria are to be applied in arriving at its legal meaning. I refer to paragraphs 12 to 23 herein. I refer again to the Kammins case referred to supra. Section 40(1) ought to be read with subsections (2)(3)(4). The marginal notes refer to "Office of President". It clearly states the Office of the President and his several functions and powers. The President is the Head of State which said designation is defined in the Interpretation Act 1971 Act No: 8 as

*"the person in whom the executive authority of Sierra Leone is vested by the Constitution."*

The Office of the President of Sierra Leone provides that the President is the Head of State; the Supreme Executive Authority of the Republic of Sierra Leone; Commander-in-Chief of the Armed Forces; Fountain of Honour and Justice; Guardian of the Constitution; Guarantor of national independence and territorial sovereignty; and to ensure the respect for treaties and international agreements. By Section 40(4) he is given additional functions as stipulated in Section 40(4) a to h. In the S/C: 1/2003 Issa Hassan Sesay & Ors. vs. The President of the Special Court & Ors in the judgment delivered on the 14<sup>th</sup> October, 2005 Renner-Thomas C.J. had this to say when considering Section 40(4). He held thus:-

*"What then is the legal meaning of this provision? To fully appreciate the legal meaning of the provision in Section 40(4) of the Constitution the Section should be read as a whole. The Section*

*establishes the office of the President of Sierra Leone as, inter alia, the Supreme Executive Authority in the country. The Section then goes to outline some of the powers vested in the President in his capacity as such executive Leader”.*

He went further:

*“The provision then lays down certain limitations on the manner of exercise of the executive power where the action taken involves the execution of treaties, agreements and convention in the name of Sierra Leone. The limitation on the exercise by the President of the executive powers listed in the main provision of Section 40(4) consists in the requirement to have action taken by the President ratified by Parliament if the treaty, agreement or convention relates to:-*

- a. any matter within the legislative competence of Parliament;*
- b. any matter which in any way alters the laws of Sierra Leone*
- c. any matter which imposes any charge on; or authorizes any expenditure out of the Consolidated Fund or any other fund in Sierra Leone; and*
- d. the declaration of war by the President”.*

I agree with the aforesaid findings. The expressed limitations of the Executive Power of the President are in relation to treaties and conventions.

- (25) The President being the Guardian of the Constitution as provided in *Section 40(3)* also imposes a duty of watchfulness on him and not only the duty or power to execute the laws. To be a Guardian of the Constitution in its ordinary sense means to be a Guarantor of the Constitution. The clause commands the President to ensure that in the exercise of his Executive Authority his administration must see that the Constitution is executed. Whether He executes it himself or through his Ministers he must strive for a proper execution. This function to Guard the Constitution is vested upon the President to the exclusion of all others. In short Supreme Executive Authority vests on the President the responsibility for carrying into effect the laws as passed by the legislature and making sure that the Constitution is preserved and observed. The drafters consciously made this



choice to secure responsibility efficiency and to give inherent powers to the Office of the President. Being the Guardian of the Constitution vests the President with authority to take some action in order to preserve the dignity and integrity of the Constitution. The President's power of removal is further established as an incident to his specifically enumerated function of appointment of the Vice-President. Unlike the situation in Nigeria where the appointment of a Vice-Presidential candidate is done by the Presidential candidate subject to the approval of the two Houses; in Sierra Leone his appointment is done solely by the President. It must have therefore been the intention of the legislature that with the power to appoint comes the power to remove in circumstances outside the scope of *Sections 50 and 51*. To hold otherwise will make it impossible for the President in case of political or other difficulties with the Vice-President to ensure that the Constitution is guarded. Having interpreted that being a member of a political party as provided in the Constitution is a continuous requirement to hold the office of the Vice-President and he being no longer a member of a Party the President in exercising his executive authority rightfully removed the Vice-President from office, otherwise he will be charged with not discharging his own constitutional duty of guarding the Constitution. Using his inherent executive power he is vested with the authority to remove the Vice-President from office as ceasing to be a member of a political party is not within the scope of *Sections 50 and 51*. The President merely did what he is empowered to do under the Constitution. *Sections 50 and 51* are not to be construed as limitations to the Presidents Supreme Executive Authority. They are meant to be strictly applied to the circumstances clearly and expressly mentioned therein.

- (26) Our Constitution clearly provide for the separation of powers to wit: Chapter V deals with the Executive; Chapter VI the Legislative and Chapter VII the Judiciary. These three arms of Government are distinct and independent of each other. Executive power is vested in the President. *See Section 53(1)* and such power may be exercised by him directly or indirectly through Cabinet Ministers; Deputy Ministers or Public Officers; and by the Vice-President as he is the Principal Assistant to the President in the discharge of his executive functions. The duties conferred on the President are exclusive to his office, including having Supreme Executive Authority; Commander-in-Chief of the Armed Forces; Fountain of Honour and Justice; Guardian of the Constitution and symbol of national unity and sovereignty. No other holder in Public Office is granted such duties.

Therefore the President by being the “*Supreme Executive Authority*” has the power when the Office of Vice-President becomes vacant other than by *Sections 50 and 51* to relieve the plaintiff of his office and pursuant to *Section 54(5)* to appoint a person qualified to hold that office. A holder of the Office of Vice-President shall by *Section 54(1) of the Constitution* “*be the Principal Assistant to the President in the discharge of his executive functions*”. Again, the drafters of this Constitution have made reference to the executive functions of the President. The marginal notes in *Section 53 of the Constitution* reads: “*Exercise of Executive Authority in Sierra Leone*” and it provides thus:

*53(1) Subject to the provisions of this Constitution, the executive power in Sierra Leone shall vest in the President and may be exercised by him directly or through members of the Cabinet, Ministers, Deputy Ministers or public officers subordinate to him*”.

*(Emphasis mine).*

*Section 53 (3) (4)* provides thus:

*53(3) Where by this Constitution or under any other law the President is required to act in accordance with the advice of any person or authority, the question whether he has in any case received or acted in accordance with such advice shall not be inquired into in any court.*

*53(4) The reference in subsection (1) to the functions of the President shall be construed as reference to his powers and duties in the exercise of the executive authority of Sierra Leone and to any other powers and duties conferred or imposed on him as President by or under this Constitution or any other law.*

*(Emphasis mine).*

- (27) *Chapter V in the Constitution* provides for the executive and executive powers of the holder of Office of President with the Vice-President as his Principal Assistant. *Sections 40(1) to (4); 53(1) (3) (4); 54(1)* cannot be read separately or independently of each other. They are to be read as a whole if the intendment of Parliament is to be realized. The Vice-President is an Executive Officer restricted to the performance of executive functions. He is charged with no legislative or judicial authority. It will be absurd to hold that the



intention of the legislature is to unduly restrict the President's power to remove his Vice-President who immediately affects his ability to perform and fulfil his constitutional responsibilities. The right to remove the Vice-President from office for any cause other than mental or physical incapacity or gross misconduct lies with the President and not Parliament. This power of removal remains with the Executive Branch and is an outgrowth of the President's Executive Authority. These provisions in the duties; powers; and functions of the Office of the President are exclusive and do confer supreme executive authority. Executive power in Sierra Leone **SHALL** be exercised only by him and **MAY** be exercised by other members of his executive or public officers. It is impossible for the drafters in any legislation to foresee and provide for all situations and circumstances. As a result statutes are amended or repealed to meet with new situations, circumstances and needs. In the circumstances therefore, the intention of the legislature can be implied if it is not expressly provided for. And all provisions dealing with the Executive and Executive Power are to be considered in the interpretation of the phrase "*Supreme Executive Authority*". The President therefore by his Supreme Executive Authority pursuant to the Constitution has the power to relieve the plaintiff from his office a conclusion confirmed by his obligation to be the Guardian of the Constitution. In the premises therefore, the answer to the 2<sup>nd</sup> question is answered in the affirmative.

- (28) In spite of the aforesaid, I will now address two issues raised by Mr Manly-Spain which relate to *Section 48 (4) of the Constitution* on the immunity of the President; and the parties herein. On a literal interpretation of *Section 48 (4)* the holder of the Office of President has immunity in civil and criminal proceedings in respect "*of anything done or omitted to be done by him either in his official or private capacity*". Mr Macaulay has argued that in the case of *John Oponjo Benjamin et al. vs. Dr. Christiana Thorpe et al*, ruling of 14<sup>th</sup> June 2013, this court read into *Section 48 (4)* "except in the case of election petitions". If absolute immunity is granted, on the literal interpretation, then no one can challenge an incumbent President on the validity or otherwise of his election to that office. This method of interpretation has now changed and a court may read words into a statute. In the Kammins case referred to supra, Lord Diplock adopted the purposive approach and held thus:

*"an intention not to impose a prohibition inconsistent with the objects which the statute was designed to achieve, though the*

*draftsman (had) omitted to incorporate in express words any reference to that intention".*

This view was adopted by the Court of Appeal in the case of *Nothman vs. London Borough of Barnet* (1978) 1 ALL E.R. 1243 at 1246 per Lord Denning M. R. in which he held thus:

*"The literal method (of construction) is now completely out of date. It has been replaced by the approach which Lord Diplock described as the 'purposive' approach..... In all cases now in the interpretation of statute we adopt such a construction as will 'promote the general legislative purpose underlying the provision'. It is no longer necessary for the judges to wring their hands and say: 'There is nothing we can do about it'. Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it - by reading words in, if necessary - so as to do what Parliament would have done had they had the situation in mind".*

I find both cases very persuasive and in view of my findings I will be justified to interpret *Section 48 (4)* as including the words "except in the case of relieving the Vice-President of his duties for failure to meet the continuous requirements in *Section 41* of the Constitution". There are similar provisions on the immunity of a sitting Head of State in other countries within the African Union. *Article 57 of the Ghana Constitution 1992* provides for sovereign immunity and *Article 57(4) (5)* reads thus:

*57 (4) Without prejudice to the provisions of article 2 of this Constitution and subject to the operation of the prerogative writs, the President shall not, while in office, be liable to proceedings in any court for any act done or omitted to be done, or purporting to be done in the performance of his functions, under this Constitution or any other law.*

*57 (5) The President shall not, while in office as President, be personally liable to any civil or criminal proceedings in court".*



*Section 143(1)(2) of the Kenyan Constitution 2010 provides for protection from legal proceedings and it reads thus:*

*"143 (1) Criminal proceedings shall not be instituted or continued in any court against the President or a person performing the functions of that office, during their tenure of office.*

*143 (2) Civil proceedings shall not be instituted in any court against the President or the person performing the functions of that office during their tenure of office in respect of anything done or not done in the exercise of their powers under this Constitution".*

Indeed every constitution has some protection from civil and criminal proceedings on a sitting Head of State, but it cannot be absolute for to do so will be against democratic principles; and the rule of law; the basis upon which the principles this State is based as provided in *Section 5 (1) of our Constitution* that

*The Republic of Sierra Leone shall be a State based on the principles of Freedom, Democracy and Justice.*

- (29) Mr. Manly-Spain also submitted that the defendants are the wrong parties, particularly the 1<sup>st</sup> defendant. The basis of his argument is that in the press release it is stated "*I hereby relieve*" you. Therefore as His Excellency the President has absolute immunity from suit pursuant to *Section 48 (4)*, the Attorney General is not a proper party as he is sued as the Government of Sierra Leone. By *Section 2 of the State Proceedings 2000*, a claim can be brought and enforced against the Government of Sierra Leone and by *Section 4 (1)* all proceedings invoking the original jurisdiction of this court pursuant to *Sections 124 and 127 of the Constitution* need not give the requisite notice of 3 months. The aforesaid Act and the Interpretation Act of 1971 has not defined "*Government*". "*Government*" is defined in Jowitt's Dictionary of English Law 2<sup>nd</sup> Ed. as:

*“that form of fundamental rules and principles by which a nation or a state is government; the state itself; the principal executive officers of a state”.*

The principal executive body is the Cabinet of which the President is the Head. In the light of the aforesaid definition, the 1<sup>st</sup> defendant is part of the executive arm; he is a member of cabinet; he carries the laws into effect and superintends their enforcement. The Executive encompasses not only the President, but Vice-President, Cabinet Ministers, Deputy Ministers and Public Officers. See *Section 53 (1) of the Constitution*. The 1<sup>st</sup> defendant herein is therefore a party that has been properly brought before this court. To hold otherwise, and if his submissions are upheld, and the 1<sup>st</sup> defendant cannot be brought to this court, and if His Excellency the President is absolutely immune from all civil suits, then this plaintiff will be left with no recourse or he would not exercise any legal redress opened to him until the President ceases to hold that office. That cannot be the intendment of Parliament and the basis upon which this State is governed.

- (30) In spite of my findings, I will now address the case of *Atiku\_Abu Bakarr*. This judgment has been dealt with exclusively in the plaintiff's case. Counsel has likened *Section 51 of the Constitution* to *Section 143 (ii) of the Nigerian Federal Constitution*. In view of my findings in relation to *Section 51 of the Constitution*, the aforesaid case is inapplicable and distinguishable. It is very instructive and does have some persuasive effect. The provisions in the *Nigerian Federal Constitution* are not *ipsissima verba* that of our Constitution. Nigeria operates a federal system; Sierra Leone operates a unitary system. Though I do not find it applicable, I do adopt a part of the reasoning of Justice Sunday Akinola Akintan relating to the Executive Powers of the President at page 13 thereof where he had this to say:

*“The Nigerian Constitution, like the American presidential system, envisages single executive for which the President is the head and in whom the executive powers are vested. Article 11 of the Constitution of the United States, just like section 5 (1) of our Constitution, provided that “the executive power shall be vested in a President of the United State[s].” The principle implies the preclusion of a current vesting of the executive powers in two or*



*more persons of equal authority. The Principle also has the effect that the legislative organ cannot take away from the President or confer on others, functions of a strictly executive nature...."*

The appointment of a Vice-Presidential candidate in Nigeria is done by the Presidential candidate subject to the approval of the two Houses; whereas in Sierra Leone his appointment is done solely by the President. I also refer to the case of *S/C No.2/2007 Charles Francis Margai vs. Solomon Ekuma Berewa & Others* in which Hon. Justice U.H. Tejan-Jalloh C. J. had this to say:

*"Furthermore it must be remembered that no two Constitution are the same, hence their interpretation must to that extent also differ and in interpreting the provisions of our National Constitution, I have and I must not put any gloss or interpretation from another Constitution or statute. I remind myself also that similar provisions in other Constitutions or statutes are only of persuasive effect and in no way binding on our Courts. In this respect I refer to Sub Section 122 of the Constitution which among other things provides that the Supreme Court may, while treating its own previous decisions as normally binding, depart from previous decisions, while it appears to do so".*

I do adopt the aforesaid findings though the *Atiku Abu Bakarr* case is distinguishable in several respects.

- (31) The plaintiff's action herein was commenced pursuant to *Sections 124 and 127 of the Constitution* invoking its original jurisdiction in interpreting certain provisions of this Constitution including *Sections 40, 41, 50 and 51*. Having determined the two questions in the affirmative, *Sections 50 and 51 of our Constitution* is not applicable for the several reasons in paragraphs 12 to 29 supra. In the premises therefore, the further reliefs (i) to (iv) sought for several declaratory orders pursuant to *Section 127 of the Constitution* cannot be granted. The plaintiff cannot invoke *Section 127*. The object of a declaratory judgment or order is to declare the legal position of a party who must have

some legal right or legal position which the court can declare. See the case of *Gouriet vs. Union of Post Office Workers* (1977), *The Times* 27<sup>th</sup> July. It enables a party to discover what his legal position is and opens the way to the use of other remedies for giving effect to it. In the light of the foregoing the plaintiff's action is hereby dismissed. Each party to bear its own costs.



HON. JUSTICE P.O. HAMILTON - JUSTICE OF THE SUPREME COURT

By an Originating Notice of Motion dated 20<sup>th</sup> March, 2015 the plaintiff seeks the following reliefs pursuant to *Sections 124 and 127 of the Constitution of Sierra Leone 1991 (Act No.6 of 1991)* namely:

- (1) For a determination of the following questions to wit;
  - (a) Whether the Constitution of Sierra Leone empowers the PRESIDENT "to relieve the Vice-President of his Office and duties" in any way other than the procedure set out in *Section 50 and 51 of the said Constitution?*
  - (b) Whether the "Supreme executive authority" of the President mentioned in *Section 40(1) of the Constitution of Sierra Leone* includes the power to "relieve the Vice-President of his Office and duties", other than by the procedure set out in *Section 50 and 51 of the said Constitution?*

If the Answer to the question above is NO, then the Plaintiff will seek the following further reliefs:

- (i) *For a declaration that the Public Notice announcing that the Vice-President had been relieved of his duties and office (Exhibit A herèin) is unconstitutional, null and void, and of no effect.*
- (ii) *For a declaration that the appointment of Victor Bockarie Foh as Vice-President of Sierra Leone is also unconstitutional, null and void of no effect.*
- (iii) *For an Injunction restraining the said Victor Bockarie Foh from acting in the Office of Vice-President of Sierra Leone, pending the hearing and determination of this action.*
- (iv) *For a declaration that the Elected Vice-President of Sierra Leone (the Plaintiff herein) remains in Office as Vice-President thereof unless and until removed from office as required by Section 50 and 51 of the Constitution of Sierra Leone.*

That facts and particulars are contained in the Plaintiff's statement of case. It is briefly that Alhaji Samuel Sam Sumana the Plaintiff was the running mate of His Excellency the President Dr. Ernest Bai Koroma in the election of 2007 in which he was elected and the Plaintiff herein became Vice-President of the Republic of Sierra Leone and served in that capacity for five years. In the 2012 election the plaintiff was again running mate of His Excellency and re elected again as Vice-President after the election. His Excellency the President and the Vice-President the Plaintiff herein were both members of the All Peoples Congress Party (APC) at both the 2007 and 2012 elections.

.....

The Plaintiff was in office as Vice-President when on 17<sup>th</sup> March, 2015 it was then announced over the SLBC Radio and Television that "he has been relieved of his duties and office as Vice-President" by His Excellency the President. This was contained in a Press Release from State House dated 17<sup>th</sup> March, 2015. The Plaintiff then issued a statement on 18<sup>th</sup> March, 2015 in which he stated that his removal from office was "unconstitutional and unlawful". On the 19<sup>th</sup> March, 2015 His Excellency the President Dr. Ernest Bai Koroma appointed Mr. Victor Bockarie Foh (the 2<sup>nd</sup> Defendant) as Vice-President of the Republic of Sierra Leone pursuant to *Section 54(5) of the Constitution of Sierra Leone 1991 (Act No.6 of 1991)*. The 2<sup>nd</sup> Defendant thereafter assumed office as Vice President and is in that position performing the functions and duties of Vice-President.

The Originating Notice of Motion dated 20<sup>th</sup> March, 2015 is supported with various exhibits as follows: Exh. A, a copy of the Press Release from State House dated 17<sup>th</sup> March, 2015, Exh. B the Plaintiff's statement of 18<sup>th</sup> March, 2015, Exh. C a copy of a letter by Dr. Abdulai Conteh, and Exh. D a copy of a statement by the Sierra Leone Peoples Party (S.L.P.P.).

There was filed by the Plaintiff on the 24<sup>th</sup> March a Notice of Motion praying for an interlocutory injunction restraining the 2<sup>nd</sup> Defendant Mr. Victor Bockarie Foh from performing the duties of Vice-President pending the hearing and determination of this action to which application the Defendants did oppose. After series of arguments this application was refused and the matter had to proceed.

In the Plaintiff's statement of case filed on 30<sup>th</sup> March, 2015 there were various submissions made. He submitted that he was elected in 2007 and 2012 together with the President as he was



his running mate. He further submitted that he was not appointed as Vice-President and does not hold office under *Section 56(4) of the Constitution* which applies to Ministers and Deputy Ministers who hold their office "at the Presidents discretion and that it is *Section 55 of the Constitution* that dictates the conditions of the Office of the Vice-President. He submitted that in Exh. A the Press Release from State House the President purported to relieve him from the Office of Vice-President pursuant to his "Supreme Executive Authority" as President of the Republic of Sierra Leone. He then submitted that this does not give the President the right to relieve the Vice-President of his position. He then submitted that *Section 40(1)* merely sets out the title and style of the President and nothing more. It is *Section 50 and 51 of the Constitution* that is the only provisions by which the President and Vice-President can be removed and only when read together with *Section 54(8) of the said Constitution*.

He further submitted in his statement of case that the President violated the Constitution by acting beyond his powers by relieving the Vice-President of his office and duties as there is no such provision in the Constitution nor was he appointed as Vice-President by the President.

C.F. Margai Esq. the Learned Counsel for the Plaintiff in his oral arguments and submissions refers to *Section 50 and 51 of the Constitution* which refers to the removal of the President also applies to the removal of the Vice-President by virtue of *Section 55 of the Constitution*. Counsel referred to the Oxford Advance Learners Dictionary 6<sup>th</sup> Edition where "relieve" is defined.

Counsel referred to Exh. A and then submitted that the Press Release did refer to the Plaintiff as seeking assylum from a foreign embassy as he is no longer a member of a Political Party in Sierra Leone and does not therefore have the continuous requirement to hold office as Vice-President as provided for in *Section 41(b) of the Constitution*.

He submitted that the two questions in this matter can best be answered if the Court interprets the various provisions raised and in so doing every word must be given its reasonable meaning so that the true intention of Parliament can be seen. He then submitted that only by *Section 55 (c) of the Constitution* that the Vice-President can be removed from office.

In his submission on the asylum claim of the Plaintiff, counsel raised issues as to whether it was granted or not and there is no evidence before the Court on this issue. He referred to the allegation that the Plaintiff is no longer a member of a political party as such does not possess the requirement to hold office as Vice-President. He also referred to Exh. A the Press Release and then submitted that the requirement of belonging to a Political Party is not continuous and that neither *Section 41 nor 54 of the Constitution* requires continuous membership of a political party as a qualification to continue in the Office of Vice-President.

Counsel also referred to the case of the *Supreme Court of Nigeria in SC 31/2007 Attorney-General of the Federation of Nigeria & Others v. Alhaji Atiku Abubakarr & Others (The Atikus Case)* wherein it was held that the purported declaration of the President of the Federal Republic of Nigeria that the Office of Vice-President was vacant was unconstitutional. Counsel relied heavily on this case as being similar to that of this present case as *Section 143(1) of the Constitution of Nigeria* is the same as that of *Section 51 and 54(8) of the Sierra Leone Constitution* in relation to the removal of the Vice-President. This matter will be considered in due course as this ruling proceeds.

M.P. Fofanah Esq. the 2<sup>nd</sup> Counsel for the Plaintiff whilst continuing with the Plaintiffs case argued and submitted in respect of the 2<sup>nd</sup> Defendant by first adopting the submissions of C.F. Margai Esq. the lead Counsel. He submitted that on 19<sup>th</sup> March, 2015 the 2<sup>nd</sup> Defendant was appointed as Vice-President pursuant to *Section 54(5) of the Constitution of Sierra Leone 1991* which appointment was unconstitutional. He submitted that membership of a Political Party which is stated in *Section 41(b) of the Constitution* is not a continuous requirement in that after election it ceases as its requirement is only for election purposes. Referring to the *Political Parties Act 2012 Sections 44 and 45* as well as the *Fourth Schedule* there is no specific mentioning of it in the *4<sup>th</sup> Schedule*. Counsel submitted that the Constitution takes away the continuous holding of membership of a Political Party after the election to uphold the idea of sovereignty of the electorate. *The Public Elections Act 2012 and Section 35(1) of the Constitution* were referred and that they are so clear that no interpretative criteria is needed as the removal provision is in *Section 55 of the Constitution*. He then submitted that no vacancy was created to warrant the 2<sup>nd</sup> Defendant to occupy the office of Vice-President.



Mr. Berthan Macauley Jr. Counsel for the 1<sup>st</sup> Defendant referred to the statement of case for the 1<sup>st</sup> Defendant filed on 8<sup>th</sup> April, 2015 and also the Originating Notice of Motion headed *Section 127 of the Constitution of Sierra Leone* and submitted that there is nothing he can identify in the said motion that needs adjudication by this Court under the said Section 127 of the Constitution and referred to the case of *Samuel Hinga Norman v. Sama Banya S.C. 2/2005 (unreported)* and submitted that the Plaintiffs complain relates to provision in the Constitution and not that of complaint of an enactment that is in contravention with the Constitution, therefore he submitted that the jurisdiction of this Court has not been properly invoked to grant the reliefs sought by the Plaintiff.

He further referred to *Section 124(1) of the Constitution* and Halsbury's Laws of England 4<sup>th</sup> Edition Pages 34 to 45 and submitted that in interpreting the sections that call for interpretation this Court should adopt the principles set out in Bennion on Statutory Interpretation and Halsburys 4<sup>th</sup> Edition. According to counsel for the Plaintiff the main contention is that the requirement in Section 40(b) of the Constitution is not continuous and does not apply after election.

He submitted that neither in the Originating Notice of Motion nor in the Statement of case of the Plaintiff did he deny his expulsion from APC on 6<sup>th</sup> March, 2015. He further submitted that in interpreting *Section 41(b) of the Constitution* the several interpretative criteria should be considered before deciding on an interpretation. He submitted that the words should be given their ordinary and natural meaning applying the golden rule.

The reference by M.P. Fofana's Esq. to *Section 31 of the Constitution and Section 45 of the Public Election Act 2012* clearly shows that the literal interpretation is not sufficient to produce the desired interpretation the plaintiff wants and then submitted that *Sections 44 and 45 of the Public Elections Act 2012* does not support the interpretation of *Section 41 of the Constitution* as required by the Plaintiff.

He further submitted that the plain meaning rule does not apply in the interpretation of *Section 41 of the Constitution* but that the Court should read into *Section 41 of the Constitution* that the obligations and qualifications is continuous and applies even after election and that *Section 55 of the Constitution* does not contain express language that the office of Vice-President will only

become vacant only in the instances set out therein. He urges the Court to adopt the construction as a whole and take cognizance of *Sections 41(b) and 54(5)* in construing *Section 55* by the Court giving meaning to the word "Vacant" considering *Section 41(b) and 55* of the Constitution.

He submitted that Exh. A does not mention the words "remove or removal" and that the President did refer to these words when he used the word "relieved". *Section 55* he submitted does fully set out the circumstances under which a vacancy can arise in the Office of Vice-President. He further submitted that in construing *Section 53(1) of the Constitution* which vests "Executive Power" in the President the whole Constitution should be considered in construing the various sections.

Counsel submitted that in construing *Section 40, 50, 51 and 55 of the Constitution* the President can relieve the Vice-President from office where the Vice-President has failed to meet his obligation of continuous membership of a Political Party as required under *Section 41(b)*. It follows therefore that *Sections 50 and 51 of the Constitution* cannot be invoked, on the Nigerian Supreme Court case of Alhaji Atiku Abubakar which was heavily relied by Plaintiff's Counsel he submitted that *Section 124* of the Constitution enjoins this Court to independently construe Sections of the Constitution and submitted that the Nigerian case should not be relied on by this Court as they are different in facts and particulars as the interpretative method used in construing the Nigerian Supreme Court case is also different.

Mr. Manley-Spain counsel for 2<sup>nd</sup> Defendant adopted the submissions of Counsel for the 1<sup>st</sup> Defendant Mr. Berthan Macauley Jr. referring to 2<sup>nd</sup> Defendant's statement of case filed on 20<sup>th</sup> April, 2015 and submitted that the action of the Plaintiff is not maintainable as the two questions posed for determination are "non questions" which cannot be answered. He submitted that the plaintiff cannot avail himself of *Section 127 of the Constitution* and that the action cannot be maintained by virtue of *Section 48(4) of the Constitution*.

He submitted that the question posed in the Originating Notice of Motion clearly shows that the President has power to remove the Vice-President from office under *Section 50 and 51* and this being so the question posed is wrong and therefore a non question.



This action commenced with the Plaintiff invoking *Section 124 and 127 of the Constitution*. Let me clearly state that *Section 127(1)* is inapplicable as the plaintiff has not alleged that an enactment or anything done under an enactment was inconsistent with or was in contravention of the provisions of the Constitution. This section is totally irrelevant in this case. See: *Samuel Hinga Norman v. Dr. Sana Banya & Others* S.C. 2/2005 delivered on 31<sup>st</sup> August, 2005 (unreported).

In my opinion the questions posed by the Plaintiff for determination and the reliefs sought can only be well considered under *Section 124(1) of the Constitution* which provides:

*"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.*

This section confers on the Supreme Court Original Jurisdiction in all matters relating to the enforcement and interpretation of the provisions of the Constitution. The Supreme Court in exercising its jurisdiction pursuant to *Section 124 of the Constitution* the Court ought to interpret or construe any enactment of the Constitutional provision to determine its legal meaning in such a way as would have been the clear intention of Parliament. It is the duty of the Supreme Court to arrive at the concise legal meaning of any enactment this is before it for interpretation. However there is some doubt in discerning the legal meaning as in this present case wherein the parties are putting various different and conflicting interpretations to the various provision that this Court is called upon to construe.

I have carefully and painstakingly considered the several arguments and submissions canvassed by Counsels on both sides considering the Constitutional importance of this matter. They all seem very attractive but as I see it the answer to the two questions asked will inevitably turn in the interpretation given to the provisions raised for interpretation especially *Section 41, 54 and 55 of the Constitution*. There is a presumption that words in a statute are not used

unnecessarily without meaning or that they are *tantologous* or *superfluous*. See: *Halsbury Laws of England 3<sup>d</sup> Edition Volume 36 Paragraph 583*. A broad and liberal spirit should inspire those whose duty it is to interpret the Constitution but this does not imply that they are free to stretch or pervert the language of the enactment in the interest of any legal Constitutional theory or even for the purpose of supplying omissions or correcting supposed errors.

It is most essential in the process of statutory interpretation to bear in mind the fundamental distinction between the literal meaning of a term in an enactment and its legal meaning. This distinction between legal and literal meaning "lies in the heart of statutory interpretation" (see: *Statutory Interpretation by Bennion 3<sup>d</sup> Edition at Page 343*). The function of the Supreme Court as interpreter of enactments in the Constitution is to determine the legal meaning of the enactment that is the meaning that correctly conveys the legislative intention. Therefore the main objective in the construction of an enactment is to ascertain the real intention of Parliament as expressed in that enactment by considering it as a whole and in its context, for this reason the legal meaning may or may not correspond to the grammatical literal meaning.

How can we arrive at the legal meaning? *Halsbury Laws of England 4<sup>th</sup> Edition Volume 44(1) Paragraph 1373* states:

*"The legal meaning is arrived at by applying to the enactment taken with any other relevant and admissible material, the rules, principles, presumptions and canons which governs statutory interpretation. These may be referred to as the interpretative criteria or guides to legislative intention".*

It is further stated a paragraph 13 of Halsbury supra that:

*"If on an informed interpretation there is no real doubt that a particular meaning of an enactment is to be applied, that meaning is to be taken as its legal meaning if there is a real doubt it is to be resolved by applying the interpretative criteria".*

In this instant case each party is contending for a different legal meaning of the enactment of the Constitution especially *Sections 41(b) and 54(5) of the Constitution*. As it is put in Halsbury Laws of England:

*"When the relevant interpretative factors do not all point one way it is necessary for the Court to assess their respective weight and determine which of the opposing*



constructions on balance, it favours" (see also the dicta of Lord Reid in Mansell v. Olins [1974] 1 All E.R. 16 at 18.

Again in *Halsbury Laws of England 4<sup>th</sup> Edition Paragraph 1374 Page 836* it is stated:

*"Doubts as to legal meaning: if on an informed interpretation there is no real doubt that a particular meaning of an enactment is to be applied the meaning is to be taken as its legal meaning. If there is a real doubt it is to be resolved by applying the interpretative criteria".*

As *Tejan-Sie C.J. (deceased)* in John Akar v. Attorney-General 1968-69 ALR S.L. 374 said on interpretation of statutes:

*"In interpretation of statutes the Court has to tread wearily and with circumspection".*

If the words of the statute are plain, clear and unambiguous they must be taken to be the intention of the framers and no need to look elsewhere to discover their meaning see: *Halsbury Laws of England 4<sup>th</sup> Edition page 857 paragraph 522.*

In the *Supreme Court case of Chanrai & Co Ltd. v. Palmer* 1990 71 ALR S.L. 391 *Livesey Luke C.J. (deceased)* said

*"In my judgment if the words in a statute are plain and unambiguous the Court is bound to construe them in their ordinary sense having regard to the context".*

There is now the recent approach to interpretation referred to as the purposive approach which is adopted to give meaning to ambiguous and misleading words in a statement by examining the background scope subject-matter and the purpose of the statute. Let me add that in some cases and this in my opinion is one such case there is no marked difference between purposive and literal approach in interpretation. In my opinion the words and phrases used in these provisions of the Constitution of 1991 now under scrutiny which calls for interpretation are clear, plain and unambiguous therefore the literal approach applies that is to carry the usual, basis and ordinary meaning in the light of the declarations prayed for in this application.

With these principles in mind let me now use them in applying the proper interpretative criteria relevant to the various provisions in this case.

The complaint of the Plaintiff is that the President wrongfully relieved him of his duties which was unconstitutional based on the reasons given.

Exh. A the Press Release from State House stated that on 6<sup>th</sup> March, 2015 the Plaintiff has been expelled from APC Party and therefore does not possess anymore the continuous requirement to hold office as Vice- President a conditional requirement of *Section 41(b) of the Constitution*. The Plaintiff's contention and submission is that this Section does not require him to be a member of the APC Party or any Political Party after the electoral process is over.

*Section 41 of the Constitution* provides "No person shall be qualified for election as President unless he -

(a) *is a citizen of Sierra Leone;*

(b) *is a member of a Political Party;* (*Emphasis mine*)

(c) *has attained the age of forty years; and*

(d) *is otherwise qualified to be elected as a member of Parliament.*

This provision refers to the President and by virtue of *Section 54(2) of the Constitution* it applies to the Vice-President. The question now is this - Is *Section 41(b)* a continuous requirement or does it apply to the election only? The literal meaning is not clear in my opinion to arrive at its legal meaning. The interpretative criteria should now be considered in order to see the intention of Parliament. In my opinion *Section 41(b) of the Constitution* is continuous in that the Vice-President must be a member of a Political party that is a running mate or co pilot of the President at election and must continue to be a member of a Political Party whilst he is Vice-President. I have held on this view since to hold otherwise would create an absurd position between the President and the Vice-President which is not the intended intention of Parliament in drafting the *Constitution of 1991*.



Mr. Momoh Fofana did cite *Sections 44 and 45 of the Political Parties Act, 2012* and submitted that *Section 41(b) of the Constitution* applies only at election and ceases after election in that there is no continuity between the President and the Vice- President that is to say after election



the Vice-President need not belong to a Political Party but to the electorate or the populace. With respect I disagree with him on this score as *Section 41 of the Constitution and Section 44(2)(b) of the Political Parties Act 2012* speaks of a member of the Political Party which is the party under which he contested the election.

*Section 44 of the Public Elections Act, 2012* provides:

44 (1) No person shall stand as a candidate in a Presidential election if he is not a candidate nominated by a political party. (Emphasis mine)

(2) A person is not qualified to be nominated as a candidate in a presidential election unless .... person is

(a) *a citizen by birth;*

(b) *a member of a Political Party;*

(c) *not less than forty years of age;*

(d) *otherwise qualified to be elected a member of Parliament.*

*Section 44(2)(b) of the Public Elections Act 2012* speaks of Membership of a Political party and *Section 41(b) of the Constitution* has membership of a Political Party. The Constitution therefore prevails.

It has been held by me that continuous retention of membership of a political party is a requirement of *Section 41(b) of the Constitution*. The Plaintiff having been expelled from the APC party. The Plaintiff contention is that even if Section 41(b) of the Constitution makes him to be continuous and with his expulsion now and the Press Release from State House Exh. A that it was Unconstitutional for His Excellency the President to remove him from office as Vice-President since he can only do so by impeachment as contained in *Section 50 or 51 of the Constitution*.

Counsel for the 1<sup>st</sup> Defendant did contend that there are various instances where in the office of the Vice-President can become vacant. *Section 55 of the Constitution* provides the Office of the Vice President shall become vacant -

- (a) On the expiration of the term of office of the President, or
- (b) If the Vice-President resigns or retires from office or dies;
- (c) Or if the Vice-President is removed from office in accordance with the provisions of Section 50 or 51 of this Constitution; or
- (d) Upon the assumption of the Vice-President to the Office of President under Subsection 4 of Section 49.

What happened when the Vice-President ceases to possess his membership of a Political Party as contained in *Section 41(b) of the Constitution* in which it must be continuous. In my opinion wherein he is expelled from the party a vacancy is automatically created although not contained in *Section 55* but can be implied and this is a situation which in my opinion a vacancy can be created. *Bennion 8<sup>th</sup> Edition at Page 187* states "Nature of legislative implication". The Legislator is presumed to intend that the literal meaning of express words of an enactment is treated as elaborated by taking into account all implications which in accordance with the recognized guide to legislative intention, it is proper to treat the legislator as having intended. Accordingly in determining which of the opposing construction of an enactment to apply in the factual situation of the instant case, the Court seeks to indentify the one that embodies the elaborations intended by the legislator."

In *Kammis Ballroom Ltd. v. Zenith Investment (Torquay) Ltd. (1980) 2 ALL E.R. 871 at 893* what was termed the purposive approach to legislative interpretation rather than the literal approach in which Lord Diplock did input to Parliament when he said:

"..... an intention not to impose a prohibition inconsistent with the object which the statute was designated to achieve though the draftsman has omitted to incorporate in express word any reference to that intention".

Having carefully read the provisions of *Section 41(b) together with Section 55 of the Constitution* it is my view that giving *Section 55* a purposive construction in interpreting it the Plaintiff having been expelled from a Political Party (the APC Party) has failed to possess the requirement of continuity of belonging to a Political Party which is an essential requirement of *Section 41(b) of the Constitution* a Vacancy has been created in the Office of Vice-President



with his expulsion from the party Parliament has no need to be involved as the vacancy is not within *Section 50 or 51 of the Constitution* which requires parliamentary involvement.

Mr. Margai in his oral submission did read from the Oxford Advances Learners Dictionary 6<sup>th</sup> Edition at Page 990 on the meaning of the verb "relieve" which means "to remove or reduce an unpleasant feeling or thing", to make a problem less serious to replace who is on duty. to remove a driver etc...." and did submit that remove from the same dictionary means to take always from a place, to get rid of unpleasant dirt, to dismiss from their position. He submitted that the President by Exh. A did remove the Vice- President from office. The use of dictionary in aiding the definition of statutory interpretation is helpful but there are other means to assist the Court to assert the true meaning of words used in legislative drafting of Constitutional Instruments such as reading provisions as a whole to get at the real meaning of the word used in that particular provision. The Plaintiff by not being a member of a Political Party (the APC) on whose ticket he rode to become Vice-President following the Plaintiff's expulsion from the Party a vacancy had already been created in the office of Vice-President.

In my opinion Exh. A. did not remove the Plaintiff from office. All what Exh. A did was that the President was informing the entire populace at large that there is now a vacancy in the Office of the Vice-President. Parliament could not have done so as there is no express provision in the Constitution where a vacancy occurs in the Office of Vice-President following an expulsion from a Political Party as occurred in this case. The President therefore as Head of State and Chief Executive of the State issued Exh. A the Press Release laying a foundation or grundnorm for the appointment of the 2<sup>nd</sup> Defendant as Vice-President since a vacancy has already been created in the Office of Vice-President.

The decision in the Nigerian Supreme Court case of Atiku Abubakarr was very heavily relied upon by counsel for the Plaintiff. Suffice it to say that the case of Atiku is not in all fours with the present case. There are difference in the Atiku's case as the provision in the Nigerian Constitution are not fully the same as our Constitutional provisions. The Context of our enactment and the facts of this case and the facts of Atiku's case are not the same and cannot carry the same method of interpretation.

As Rhodes-Vivor JSC said in the *Sierra Leone Enterprises Ltd. v. The Attorney-General and Minister of Justice and Minister of Lands, Country Planning and The Environment* Judgment Delivered on 18<sup>th</sup> June, 2008 (unreported) at page 37:

*"The Supreme Court of Sierra Leone is not bound by the decision of any Court in the World. Decisions of the House of Lords are only of persuasive authority on the Court".*

In my opinion it can be of persuasive authority where the facts and legislation that is being considered are one and the same.

Considering my thought as fully stated above in this judgment I hold that the 2<sup>nd</sup> Defendant was lawfully appointed by the President in the exercise of his powers pursuant to *Section 54(5) of the Constitution* which provides:

*"Whenever the office of the Vice-President is vacant or the Vice-President dies, retires or is removed from office, the President shall appoint a person qualified to be elected as a member of Parliament to the office of Vice-President with effect from the date of such vacancy, death resignation, retirement or removal". (Emphasis mine)*

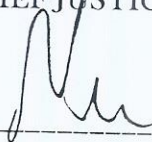
The vacancy having been created by the expulsion of the Plaintiff from the APC party. Based on all what has been discussed in this judgment my answer to the two questions posed for determination is YES to both of them.

In the final analysis all the declarations sought by the Plaintiff are therefore refused.

No order as to cost.

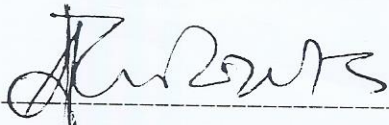


HON. MR. JUSTICE V. V. THOMAS,  
ACTING CHIEF JUSTICE.



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

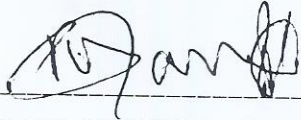




HON. MR. JUSTICE E. E. ROBERTS,  
JUSTICE OF THE SUPREME COURT



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



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