MIS/CCP 3 / 2023 2023 NO. 2

IN THE HIGH COURT OF SIERRA LEONE

GENERAL CIVIL DIVISON

BETWEEN

ABDULAI ALIMAMY KAMARA - PLAINTIFF

AND

ALIE BADARA MUNU - 1ST DEFENDANTS

THE PROVINCIAL SECRETARY - 2ND DEFENDANT

NORTHWEST PROVINCE

THE NATIONAL ELECTORIAL COMMISSION

WELLINTON, FREETOWN - 3RD DEFENDANT

A. KONDOWA Esq. for the Plaintiff

E. SARKOH Esq. for the 2nd Defendant

RULING DELIVERED ON THE 25TH DAY OF MARCH, 2024

The present application by notice of motion dated the 9th day of January, 2024, the applicant applied to this Court seeking the following orders:

1. That this Honourable Court hear this application notwithstanding that the required notice had not been given.
2. A declaration that the Declaration Officer/Provincial Secretary, North/ West in establishing the claim of persons to be qualified to contest as candidates in the TALLA CHIEFDOM, KAMBIA DISTRICT PARAMOUNT CHIEFTAINCY election conducted on the 12th day of January, 2023, erred in law to wit:
   Section 5(b), 8(1) & (2), 13(2), (3) & (4) of the Chieftaincy Act, 2009 and the customs of the Talla Chiefdom to have qualified the 1st defendant/respondent herein, for the election as Paramount Chief in a Declaration of Rights held at Bamoi Munu, Talla Chiefdom, Kambia District on the 9th December, 2023.
3. A Declaration that the Declaration Officer/Provincial Secretary, North/West Province in establishing the claim of persons to be qualified to contest as candidates in the Talla Chiefdom, Kambia District Paramount Chieftaincy election to be conducted on the 12th day of January, 2024 erred in law to wit:
   Section 5(b), 8(1) & (2), 13(2), (3) & (4) of the Chieftaincy Act, 2009 and customs of the Talla Chiefdom to have disqualified the plaintiff/ applicant herein, for election as Paramount Chief in a declaration of Rights meeting held at Bamoi Munu, Talla Chiefdom, Kambia District on the 9th December, 2023.

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4. A Declaration that the plaintiff/applicant herein disqualified for election as Paramount Chief in the Talla Chiefdom, Kambia District in the North/West Province of the Republic of Sierra Leone, pursuant to Section 8(1) & (2) of the Chieftaincy Act of 2009.
5. A Declaration that the 1st defendant/respondent herein is not qualified to contest as a candidate in the Talla Chiefdom Paramount Chieftaincy election to be conducted on the 12th day of January, 2024 as he has no linage to the BAI NANI KASI RULING HOUSE or any other Ruling House whatsoever in the Talla Chiefdom, Kambia District pursuant to Section8(1) & (2) of the Chieftaincy Act, 2009.
6. That this Honourable Court grants interim injunction restraining the restraining the 1st defendant/respondent herein from contesting as candidate in any Paramount Chieftaincy election to be conducted in the Talla Chiefdom, Kambia Chiefdom on the North/West Province of the Republic of Sierra Leone, pending the hearing and determination of this action.
7. That this Honourable Court grants an Interlocutory Injunction restraining the 1st defendant/respondent herein from contesting as candidate in any Paramount Chieftaincy election to be conducted in the Talla Chiefdom, Kambia District in the North/West Province of the Republic of Sierra Leone, pending the hearing and determination of this action.
8. That this Honourable Court grants an Interim Injunction restraining the 1st defendant/respondent herein from carrying out any campaigning activities regarding the Paramount Chieftaincy election to be conducted in Talla Chiefdom, in the Kambia District in the North/West Province of the Republic of Sierra Leone, pending the hearing and the determination of this action.
9. That this Honourable Court grants an Interlocutory Injunction restraining the 1st defendant/respondent herein from carrying out any campaigning activities regarding the Paramount Chieftaincy election to be conducted in the Talla Chiefdom, Kambia District, in the North/West Province of the Republic of Sierra Leone, pending the hearing and determination of this action.
10. That this Honourable Court grants an Interim Injunction restraining the 2nd & 3rd defendants/respondents herein, and each by them, by themselves, their servants, workmen, privies, agents or however called from conducting any Paramount Chieftaincy election in Talla Chiefdom, Kambia District in the North/West Province of the Republic of Sierra Leone, pending the hearing and determination of this action.
11. That this Honourable Court grants an Interlocutory Injunction restraining the 2nd and 3rd defendants/respondents herein, and each of them, by themselves, their servants, workmen, privies, agents and however called from conducting any Paramount Chieftaincy election in Talla Chiefdom, Kambia District, North/West Province of the Republic of Sierra Leone, pending the hearing and determination of this action.
12. That this Honourable Court grants an order compelling the 2nd & 3rd defendants/respondents herein to exclude the 1st defendant/respondent herein to exclude from the candidates List for the conduct of the Talla Chiefdom paramount Chieftaincy election.

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13. That in the event Order 12 supra is granted, this Honourable Court grants an order compelling the 2nd and 3rd defendants/respondents herein to set a new date for the conduct of the Talla Chiefdom Paramount Chieftaincy elections.
14. Any other or further Order(s) that this Honourable Court may deem fit and just in the circumstances.
15. Cost of the action.

The application is supported by the affidavit of Abdulai Alimamy Kamara (applicant herein) sworn to on the 8th day of January, 2024. The most relevant averments are as follows:

That he is a candidate for the Paramount Chieftaincy election in Talla Chiefdom, kambia District, North/West province of the Republic of Sierra Leone.

He further deposed that he knows as a matter of fact and custom that the BAI NANI KASI RULING HOUSE is a recognized Paramount Chieftaincy Ruling House in the Talla Chiefdom, Kambia District in the North/West province.

That he is a member of the Bai Nani Kasi Ruling House mentioned in paragraph 4 supra, and fully qualified to be a candidate for paramount chieftaincy election to be held in Talla Chiefdom, kambia District as per Section 8 of the Chieftaincy Act, 2009 but he was disqualified from contesting as candidate.

That the 1st defendant/respondent also declared his intention as an aspiring candidate to the Declaration Officer at the Declaration of Rights meeting held in the chiefdom on the 9th December, 2023

That he objected to the candidacy of the 1st defendants/respondent while the 1st defendant/respondent also objected to his candidacy in the forth coming election in the said chiefdom.

That during the Declaration of Rights meeting held in the chiefdom, 1st defendant/respondent claimed to have hailed from Bai Kasi nasi Ruling House.

That the 2nd defendant/respondent pronounced to the aspiring candidates that they had references and that they should meet him in Port Loko City.

That on the 17th December, 2023, the 2nd defendant/respondent asked him to collect a letter from the District Officer, Kambia District. And upon the receipt of the letter dated 15th December, 2023, he was surprised to learn that he has been disqualified by the 2nd defendant/respondent from contesting in the forthcoming election, while he declared that the 1st defendant was fit and proper to contest in the said election,

That the 1st defendant/respondent was declared qualified by the 2nd defendant/respondent without following due process of the law in that he failed to put the objection to the chiefdom councilors to vote on same.

Attached to the affidavit are several exhibits:

Exhibit AAK1- is a copy of the applicant's identity Card

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Exhibit AAK2 – is a copy of his Local Tax receipt

Exhibit AAK3 &4 – are a copies a of section 8 and 10 of the chieftaincy Act, 2009

Exhibit AAK5 – is a copy of receipt of declaration rights

Exhibit AAK6 – is a letter of disqualification authored by the 2nd defendant

Exhibit AAK7 – is a letter written by his solicitor addressed to the 2nd defendant dated 21st December, 2023.

Exhibit AAK8 – are copies of pictures showing the 1st defendant campaign trail.

The application was opposed by counsel for the 2nd defendant, attached to the Law Officers Department, by filing an affidavit in opposition dated the 11th day of March, 2024.

He deposed that on the 9th day of December, 2023 the Declaration of Rights meeting was held at Bamoi Town, Kambia District for the Paramount Chieftaincy election scheduled for 12th day of January, 2024.

That at the Declaration of Right Meeting, nine (9) aspirants came forward to represents two (2) Ruling Houses in the declaration of rights meeting for which two Assessors Chiefs were present to exercise their statutory duty under the Chieftaincy Act No. 10 0f 2009.

That the plaintiff/applicant was disqualified on the grounds that he could not properly establish his claim to the (Bai Nani kasi) Ruling House on the night of declaration dated the 9th day of December, 2023. According to a report dated 18th day of November, 2020 submitted to the Ministry of Local Government and Community Affairs was not different from the 9th December, 2023 declaration which shows that he did not know is linage and was subsequently disqualified.

That the plaintiff/applicant dissatisfy with his disqualification at the end of the Declaration of Rights Meeting came to this Court to have the election slated for the 12th January, 2024 to be injuncted.

That the Chieftaincy Act of 2009 makes it very clear when to challenge a Paramount Chieftaincy Election and any process leading to the election can form part of the grounds for petitioning the said Paramount Chieftaincy election after but not before.

That no undertakings were given and exhibited by the plaintiff/applicant as to damages the injunction he is seeking for and even if such undertakings were exhibited, it would not be sufficient to mitigate the balance of convenience or guarantee damages which will not be sufficient as the plaintiff/applicant will not be in a position to compensate the state if such injunction ought not to have been granted.

In support of the affidavit in opposition are two exhibits:

Exhibit ES1 – is a copy of the declaration report

Exhibit ES2 – is an order of this Court dated 10th day of January, 2024

Submission for the Applicant

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Counsel for the plaintiff/applicant, A. Kondowa Esq. commenced by submitting that they relied on the entire content of the affidavit and the exhibits attached thereto. He submits, that the plaintiff/applicant hails from the BAI NANI KASI Ruling House, which is a recognized Ruling House that has been in existence long before April 1960.

He further submits, that the plaintiff/applicant is qualified as a candidate to contes in that election, pursuant to Section 8 of the Chieftaincy Act of 2009. And the plaintiff did declare his intention to contest as a candidate in the fourth coming election.

He submits, further that the plaintiff/applicant on the night of Declaration of Right he did object to the right of the 1st defendant in contesting in that election, according to him the 1st defendant is not a member of the Bai Nani Kasi Ruling House. Subsequently thereafter the 2nd defendant announced to all aspiring candidates to meet him in his Port Loko office.

He submits, that the plaintiff/applicant was to later received a letter from the 2nd defendant, disqualifying him from participating in the election that was slated for the 12th day of January, 2024 and he qualified the 1st defendant to contest in that election. And he did so without following the law, that is Section 13(2) of the Chieftaincy Act of 2009. The application is made pursuant to Order 35 Rule 1(1) of the High Court Rules of 2007.

Submission for the 2nd Defendant

Counsel submitted that he relied on the entire content of his affidavit and the exhibits attached thereto. He referred this court to Section 18(1)(2) of the Chieftaincy Act, 2009 which provides that one can only challenge an election of a paramount chief after the election itself has been conducted. The process now being challenged forms part of the entire process leading to the election in that chiefdom, this application he submits is premature. He relied on the case of **ALIE TAMBA MARRAH vs THE DIRECTOR OF LOCAL GOVERNMENT AND NATIONAL ELECTORIAL COMMISSION (2024)**. This ruling he submits that are very instructive on the point that the election process cannot be challenged, whoever is dissatisfied with the process leading to the election of the paramount chief would have to wait till the election is conducted.

He further argued that counsel is praying for injunctive reliefs but has failed to file any undertakings as to damages, should it turn out the injunctive reliefs he is seeking ought not to have been granted. He relied on the **American Cyanamid case.**

Analysis

The first order prayed for in this application is now spent, so I will for deal with the second to forth relief sought on the motion paper together.

To determine if this application has any merit particular attention should be paid to **Section 5, 6(2), 8 and 13 of the Chieftaincy Act of 2009.**

Section 5 provides:

Before the pooling day is fixed for election of a paramount chief, a declaration of rights meeting shall be convened by the provincial secretary, for that purpose of

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a. *Identification of both the chiefdom councilors entitled to vote at that election and*
b. *Established the claims of persons to be qualified to stand as candidates in the election*
c. *Affording the provincial secretary, the opportunity to explain to all parties their responsibilities under the act.*

The evidence before this court is that indeed the meeting for the declaration of rights was held and in that meeting the plaintiff/applicant objected that the 1st defendant was not qualified to contest in that election as he did not hail from the BAI NANI KASI chiefdom. The 1st defendant also raised similar objection on the candidacy of the plaintiff/applicant.

Section 8 of the Chieftaincy Act 2009 deals with the qualification of a person to be elected as paramount chief. It provides:

A person is qualified to stand as a candidate in a paramount chief election if: -

a. *He was born in a wedlock to a rightful claimant in a recognized ruling house in the chiefdom or*
b. *Where tradition so specifies, he or she has direct paternal or maternal linage to a rightful claimant in a recognized ruling house, whether born out of wedlock or not.*

The crux of this application is based on this section which the applicant claim was violated or that the 2nd defendant did not adhere to the rules as provided by Section 13 of the Chieftaincy Act, when an objection is raised as to the eligibility of a candidate to contest in a paramount chieftaincy election. The applicant submitted that on the night of declaration of right, nine (9) people came forward including himself to be considered fit and proper to contest in that election. The 2nd defendant objected to the eligibility of the plaintiff/applicant on the grounds that he has no linage to any of the ruling houses in that chiefdom.

As provided by **Section 13(3)** .... *that in an event an objection is raised against the candidacy of any aspirant, it is incumbent on the provincial secretary to ensure that the persons named and two-thirds majority should vote by secret ballot if the objection is to be succeed.*

The evidence clearly shows that the provincial secretary did not follow the provision of the law stated above. What he did was to refer the candidates to his Port Loko office, instead of putting the objection to two-thirds majority of the councilors. He later wrote a letter to the 1st defendant informing him that he was qualified to contest and similar letter to the plaintiff/applicant that he was disqualified, only he can tell how he reach that conclusion.

Counsel for the 2nd defendant had argued relying on **Section 18(1)(2),** which provides that a person aggrieved with the process of electing a paramount chief, can only challenge the election or the process leading to same after the election itself has been conducted. He submits therefore this action is premature and should not be countenance.

In the case of **Dumbuya and Dumbuya v Minister of Internal Affairs & Others (MISC APP 16 OF 2010**) The Honourable Justice Brown-marke JA as he was then had this to say when similar argument was raised. "I agree with counsel that there are no express provisions in the act for bringing an action in relation to Declaration of Rights. But as pointed out in the Bondi case, the court will not shut it eyes to a manifest irregularity in the conduct of a person exercising

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Quasi-judicial function such as the 2nd defendant when he acts in the role as Declaration Officer.... this court cannot wash its hands off, Pilate-wise and turn away a litigant, where it is clear, an express legislative provision, such as Section 13(3) of the Act has been breached.

I entire agree and endorse His Lordship position on this point.

Let me now deal with the sixth to eleventh relief sought that is for this court to grant in injunction restraining the 2nd defendant from conducting the Talla Chiefdom Paramount Chieftaincy election until this application is heard and determined.

The granting of an injunction is an exercise of judicial discretion as was discussed in the case of **Equator International Distributors Ltd vs Beiersdorf East Africa Ltd & Co 2014.**

It should be noted that where there is a legal right either at law or in equity, the Court has power to grant an injunction in protection of that right. I further state that that a party is entitled to apply for an injunction as soon as his/her right is invaded.

The Court must be satisfied that the claim is not frivolous or vexatious and that there is a serious question to be tried. **(See American Cyanamid v Ethicon (1975) ALL ER 504)**

That there is a prima facie case with the possibility of success.

That the applicant is likely to suffer irreparable injury or loss which will not be adequately compensated by award of damages, if the injunction is denied.

The court will decide where the rights are equal on the balance of convenience and the applicant must give an undertaking as to damages, if it turns out that the relief sought ought not to have been granted.

The whole purpose of granting an injunction is to preserve the status quo. An order to maintain the status quo is intended to prevent harm or preserve the existing conditions so that a party's position is not prejudice in the meantime until the resolution of the issues in dispute. It is the last, actual, peaceable, uncontested status which preceded the controversy.

The plaintiff/applicant argues that if he is disqualifying now, he will not only lose the right to contest but also that of his generations to come, he prays that the proper procedure be followed as prescribed in section 13(3) of the Chieftaincy Act of 2009.

By reason of the above I make the following orders:

1. This Honourable Court Grants an injunction RESTRAINING the 2nd defendant herein, The Provincial Secretary, the 3rd defendant herein, The Electoral Commission Sierra Leone, and any of its officers from holding a Paramount Chieftaincy Election in the Talla Chiefdom, Kambia District Until a fresh Declaration of Rights is held or conducted by the 2nd defendant/Respondent herein.
2. This Honourable Court Orders that a fresh Declaration of Rights Meeting be held as soon as possible in accordance with the relevant provisions of the Chieftaincy Act of 2009.

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3. That the undertaking filed with this application shall remain enforceable against the plaintiff/applicant in an event this injunction is Set Aside by a Superior court or it turns out that the plaintiff/applicant in not entitled to the relief sought.
4. No Oder as to cost.

SIGNED. ALFRED A.T. GANDA
23/5/24
(JUSTICE OF THE HIGH COURT)

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