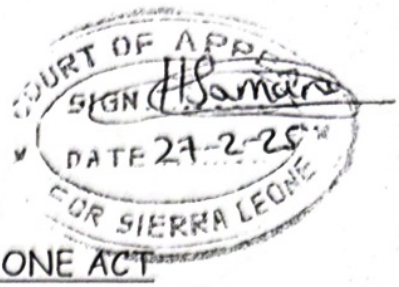
COI.APP.NO.32/2020



IN THE COURT OF APPEAL OF SIERRA LEONE
IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT NO.6 OF 1991, SECTIONS 147 -150
AND
IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE ACT NO.6 OF 1991, SECTION 21
AND
IN THE MATTER OF CONSTITUTIONAL INSTRUMENT NO.67 OF 2018, (HON. JUSTICE W.A. ATUGUBA COMMISSION OF INQUIRY)

BETWEEN:

ALHAJI IBRAHIM KEMOH SESAY - APPELLANT
No.2 Sesay Court
Off Regent Road
Hill Station
Freetown

AND

The Attorney-General and Minister of Justice - RESPONDENT
Guma Building
Lamina Sankoh Street
Freetown.

CORAM:

Hon. Mr. Justice Komba Kamanda - Chief Justice - (Presiding)
Hon. Mrs. Justice Fatmatta Bintu Alhadi JA
Hon. Mrs. Justice Tonia Barnett JA

ADVOCATES:
M. Nicol-Wilson Esq &
L. Dumbuya Esq - for the Appellant

M. P. Bangura Esq
T. J. Freeman Esq &
A. Lansana Esq - for the Respondent

JUDGMENT DELIVERED ON THIS 26TH DAY OF FEBRUARY 2025

1. **Alhadi J A**: On the 19th day of October 2020, a Notice of Appeal was filed by the Appellant on five (5) grounds of appeal. Synopsises were filed by both parties and on the 14th of December 2022 an oral hearing was held. Before I state the grounds of appeal, let me enumerate a brief fact of the case.

BRIEF FACTS

2. The President of the Republic of Sierra Leone set up The Justice William A. Atuguba Commission of Inquiry with the said Judge as Chairman and sole Commissioner by virtue of section 147 of the Constitution of Sierra Leone Act No.6 of 1991. Pursuant to section 149(4) of the 1991 Constitution, the President appointed the Judge as Sole Commissioner of a Commission of Inquiry by virtue of Constitutional Instrument No.67 (COI CI NO.67).

3. The Commissioner's Terms of Reference was in accordance with section 4 of the said Constitutional Instrument. The commission investigated whether persons who were in control of government resources did willfully, dishonestly, complacently, and/or abuse their offices for private benefits that caused financial loss or damage to the government and people of Sierra Leone either by their actions or inactions. Volume one (1) of the Judge's report and the corresponding government white paper contained adverse finding and recommendations touching and concerning the Appellant during his tenure in office as Minister of Works, Housing, and Infrastructure, Minister of Political and Public Affairs and Minister of Transport and Aviation from 2007 - 2018.

4. The investigation further proceeded to ascertain whether these persons of Interest directly, financial and material gains, fraudulently and/or improperly to the detriment of the government of Sierra Leone. Upon completion of the investigation, a report was provided in section 149 of the 1991 Constitution of Sierra Leone to the President of Sierra Leone and published together with the Government White Pape.

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Findings and Recommendations of the Commissioner

5. Fraudulent compensation of land:

The Appellant's conveyance numbered 117/2014 appearing at volume 122 page 85 of the Registrar - General's records that the land was granted and conveyed to the Appellant as compensation for his demolished building on a land situate at Regent Road, Regent Hill Station.

6. The report discountenanced the legitimacy of the Appellant's tittle to the land and that the Appellant voluntarily chose to do the demolition himself to save his tons of iron rods involved in the construction of the property. It was reported that this amounts to an act of trespass by the Appellant.

7. The report stated that the said land on which the demolished structure of the Appellant stood belongs to the Ministry of Education and that the then Director of Lands and Surveys brought it to the attention of the then Minister who undertook to take up the matter with the former President to ensure its demolition.

8. The Director also stated when he signed the site plan of the Appellant, he did not know that the said land belonged to the Ministry of Education. The report notes that the Appellant has no evidence of tittle to the land, and none was referred to in the Recitals as root of tittle of the property that was allegedly surrendered to the state.

9. The report also noted an impropriety of the transaction for the procurement of the said land. That there was undue pressure on the state official who had to have the grant of the said land processed. The Commissioner found that the Conveyance of the land was a fraudulent act of compensation for the land therein recited as belonging to the Appellant. He also found that the Appellant sold the two portions of state land granted and conveyed to him aforesaid for USD75,000 and USD60,000 each.

10. The report further noted that the former President had abused his office by ordering the grant of the land to the Appellant as compensation for his demolished building. The Commissioner opined that the right to compensation is to bona fide owners of land appropriated by the state, but not to trespassers or squatters like the Appellant.

11. The Sole Commissioner thereon recommended that the Appellant refund the state the total amount of UDS 135,000 he realized from the fraudulent grant to him of the said land.

Commerce and Mortgage Bank:

12. The Appellant and other Persons of Interest were charged with over-bloated purchase prices of land. The Appellant, among other accused persons in respect of the land at Songo- Mokoyama Village, received Le.200 million (old leones). Other unknown persons are said to have unjustifiably received various payments of the said amount. The Sole Commissioner in his recommendation mentioned that it is not clear whether the purported purchase prices were over bloated but that the vendors for the said properties had merely been defrauded.

13. He recommended that the said amount involved be recovered from the persons involved and paid to the vendors and/or to the state. In the alternative, that the Attorney General takes appropriate legal action against those who perpetrated the fraud in these land transactions.

Real properties

14. The Appellant, formerly being Minister of Works and Public Assets, Minister of Political and Public affairs, and Minister of Transport and Aviation between 2007 – 2018, constructed a house at Bintumani Ring Road, Aberdeen, Freetown valued at Le.29,900,000,000(old leones) acquired for his daughter – Miss Zuada K. Sesay.

15. The Appellant argues that the construction of the said house was financed from a loan of Le.250,000,000.00 by the Sierra Leone Commercial Bank in 2017, a loan from $100,000.00 by the HFC bank in 2011, and from a family business yielding over $12,000 per annum.

16. The Appellant relies on his earnings during his various tenure of offices between 1996 - 2007. The Sole Commissioner found that the Appellant did not give an idea of the total amounts of these varied sources which went into the acquisition of this property.

17. Further, the Appellant also constructed a house at No.19 Wharf Road, Port Loko valued at Le.6,040,000,000. He did not deny ownership of the

property, rather, his counsel only disputed the valuation of the house. the Appellant also owned another house at Port Loko Estate with the same observations.

18. The Sole Commissioner noted that the Appellant only made one declaration of his assets in 2017, which discloses a house in Freetown with an estimated value of $6 million USD, purportedly acquired in 2008 financed from his salary and business, and another house at Port Loko with an estimated value of $5million acquired around 2011.

19. The Sole Commissioner stated in his findings that one of the houses in Port Loko in his asset declaration form could be considered as honestly acquired. However, he stated in his recommendations that the other houses at Bintumani Ring Road, Aberdeen Freetown and at No.19 Wharf Road, Port Loko were dishonestly acquired by the Appellant during his term of office as Minister between the years 2007 - 2018. He further recommended that the said properties should be confiscated and vested in the State. That the total value of his net salaries Le.1,276,640,160 for the period 2007 - 2018 cannot warrant the acquisition of these properties by him.

Pecuniary assets:

20. That the Financial Intelligence Unit of Sierra Leon has submitted a report on the bank accounts of the Appellant. The Sole Commissioner in his recommendation stated that it is quite apparent that the Appellant had multiple bank accounts during his Ministerial tenure between 2007 - 2018, all with heavy deposits from undisclosed or unjustifiable sources.

21. That the best course to take in fairness to both the Appellant and the State, is for the Audit service to conduct a thorough audit into the transactions of the bank accounts of the Appellant as revealed by the Financial Intelligence Report, to ascertain the sums of money that should be recovered from Appellant by the state.

Vehicles:

22. The Appellant is listed as having two (2) private vehicles and one (1) commercial vehicle. The Sole Commissioner found that the Appellant provided no explanation as to their acquisition and that the said vehicles should be confiscated and vested in the State.

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23. Being dissatisfied with the findings and recommendations of the Learned Commissioner, the Appellant filed the following grounds of appeal:

Ground 1

24. The Hon. Justice William Annan Atuguba erred in law and acted in violation of section 150 of the Constitution of Sierra Leone, Act No.6 of 1991, when he proceeded to conduct the Commission of Inquiry without the rules regulating the practice and procedure of all Commissions of Inquiry to be prescribed by the Rules of Court Committee ("ROCC") through a constitutional instrument, as provided for under section 150 aforesaid.

PARTICULARS

a. Section 150 of the Constitution provides "subject to the provisions of this Chapter, the rules of Court Committee shall, by Constitutional instrument, make rules regulating the practice and procedure of all Commissions of Inquiry".
b. The Hon. Justice Williams Annan Atugba found and ruled on the 12th day of February 2019 on the preliminary objection raised by A. S. Sesay, Esq. Counsel for the Appellant in respect of paragraph (a) supra, holding that the separate Commissioner has jurisdiction to proceed with the inquiry and to make rules of procedure jointly which should be applicable to the Commissioner's proceedings.
c. The Hon. Justice William Annan Atuguba erred in law and acted outside the remit of his mandate, when he illegally and without due constitutional process reached the conclusion that the "Commission of Inquiry is constitutional, legal and valid in law".
d. The power to make rules regulating the practice and procedure of all commission of inquiry is vested in the Rules of Court Committee as required under section 150 of the constitution, when it passed the Constitutional Instrument No.67 of 2018 that established the said Commission of Inquiry. Parliament did not amend, add to or repeal the aforesaid section to give any residual, consequential and inherent powers to Hon. Justice William Annan Atuguba.
e. Constitutional Instrument No.67 of 2018 that established the said Commission of Inquiry, can in no way be said that to amend, add to or repeal Section 150 of the Constitution in express terms. Section 108 (7) of the Constitution provides that "No Act of Parliament shall be deemed to amend, add to or repeal or in any way alter any of the provisions of this Constitution unless it does so in express terms".

f. Section 171(15) of the Constitution states "This constitution shall be the supreme law of Sierra Leone, and any other law found to be inconsistent with any provision of this constitution shall, to the extent of inconsistency, be void and of no effect".

g. Hon. Justice William Annan Atuguba's failure to comply with the Constitution rendered his legal findings on jurisdiction of the commission of inquiry, inconsistent with section 150 of the Constitution aforesaid, and to that extent, void and of no effect.

GROUND 2

25. The Hon. Justice William A. Atuguba erred in law when he proceeded in making adverse findings against the Appellant on the issue: Grant of Government Land to the Appellant; and recommended that the Appellant refunds to the State the sum of USD135,000.00 for a land that was granted and vested in him in fee simple absolute in possession by the Government which he subsequently sold. Considering the fact that the said grant was a compensation for a land and a three (3) storey building erected thereon which he surrendered to the government.

PARTICULARS

a. Hon. Justice William Annan Atuguba made adverse findings, against the Appellant herein, at paragraph 2 of page 8 of the Commission's Report, volume one under the rubric "The Evidence", when he stated, "On the Grant of Government Land to Kemoh Sesay". "I therefore find that the conveyance of the land (per exhibit AZ) which was a nursery ground for the Forestry Division of the Ministry of Agriculture, Forestry and Food Security was a fraudulent act of compensation for the land herein recited as belonging to the Person of Interest upon which his house was destroyed under an alleged agreement whereunder the State acquired the same in exchange for the nursery land granted and conveyed to him aforesaid.

b. The Hon. Justice William Annan Atuguba failed to consider Section 21 of the Sierra Leone Constitution Act No.6 of 1991 which states: (1) No property of any description shall be compulsorily taken possession of, and no interest in right or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say: -

- The taking of possession of acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or

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utilization of any property in such a manner as to promote the public benefit or the public welfare of citizens of Sierra Leone; and

- The necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having any interest in or right over the property; and
- Provision is made by law applicable to that taking of possession or acquisition:
  I. For the prompt payment of adequate compensation; and
  II. Securing to any person having an interest in or right over the property, a right of access to the court or other impartial and independent authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled and for the purpose of obtaining prompt payment of that compensation.

c. The provisions of the law mentioned in the above section in respect of the prompt payments of the compensation in the paragraph above is section 15 of CAP 116 of the Laws of Sierra Leone 1960 which provides that: " The owners and occupiers of, and all other persons interested in, any land which any be appropriated, and taken or entered upon as aforesaid, shall be entitled to, and receive compensation for the value of the land so taken and appropriated, and for all damages sustained by such owners, occupiers and other persons, by reason of the exercise, as regards such land, of the powers granted by this ordinance, the amount of such compensation to be ascertained as hereinafter provided".

d. That by virtue of the provisions of section 21 of Act No.6 of 1991 and section 15 of Cap 116 of the Laws of Sierra Leone 1960 supra, it is explicitly clear that no property or interest in property or right over property will be compulsorily taken possession of from any person without adequate compensation being made to such person.

e. The Appellant herein, had a leasehold interest in the said land and a 3-storey building having been constructed thereon. He surrendered same to the Government for the construction of the Limkowing University so he could be relocated somewhere else. The Government granted and vested in the Appellant fee simple absolute in possession

of another piece and parcel of land situate lying and being at Regent Road, Regent-Hill Station Freetown. The said compensation was in line with the above stated provisions of the law.

f. Despite these legislations presented to the Hon. Justice William Annan Atuguba, he discarded their existence and went further at page 9 under the rubric: Recommendation and stated that: "Alhaji Ibrahim Kemoh Sesay should refund to the state the total amount of U$D135,000.00 he realized from the fraudulent grant to him of the said Nursery land by way of sales of plots of the same to Hilal Toufic Kange and Winners Chapel which sales are said to cover the entire nursery land".

GROUND 3

26. The Hon. Justice William Annan Atuguba erred in law when he failed to consider that Appellant had an initial Government Lease in 2013, and a survey plan of the said land issued and signed on the 19th April 2013 and the Government Grant dated 12th May 2014 with a survey plan dated 5th May 2014. Both survey plans having been countersigned and approved without any defects by Dr. Lewis Farmer (but Dr. William Farmer; being rightly called). This acts by the Director of Surveys and Lands granted to the Appellant the initial leasehold interest in the piece and parcel of land upon which he had erected a 3-storey building prior to him surrendering same to the Government of Sierra Leone. That the subsequent freehold grant from the Government of Sierra Leone as compensation to the Appellant for surrendering the leasehold interest that had been developed had on it attached survey plan. It is the duty of care of the Director of surveys and Lands to have raised any warning before authenticating and endorsing on the Appellant's survey plans as having defects before countersigning them.

PARTICULARS

a. The Hon. Justice William Annan Atuguba stated at the last paragraph of page 7 in his judgment or decision: "The sole question is did Alhaji Ibrahim Kemoh Sesay own the land on which his demolished building stood? The answer, on the evidence is clearly in the negative.....". The Hon. Justice William Annan Atuguba misapplied section 21(1) of the 1991 Constitution of Sierra Leone Act No.6 1991 in that the said section is not limited to ownership of land; but also interests in land. At the material time the said building was demolished, the Appellant had a leasehold interest in

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the said land, and it matters not whether he was the fee simple owner of the same.

b. In the first paragraph of page 8, at line 8, stated that: In evidence before this commission Dr. Lewis Farmer testified under cross examination that when in 2013, he signed a site plan, exhibit AZ5 intended for the Person of Interest he did not know that the land belonged to the Ministry of Education.

As per the provision of section 15 of Cap 128 of the laws of Sierra Leone 1960 which states: "A licensed surveyor who shall prepare any plan to be used in connection with any instrument which is required to be registered under the provisions of the Registration of Instrument Ordinance may if he so desires send two copies of the plan signed by himself to the Director of Surveys and Lands for his counter-signature, together with such information as may be required by the Director of Surveys and Lands. The Director of Surveys and Lands shall retain one copy of the plan and shall, if he is satisfied that there is no defect on the face of the plan, return the other copy duly countersigned to the licensed surveyor".

c. From the above provision, it is evidently clear that it is the duty of the Director of Surveys and Lands to raise any objections or query in respect of any plan and not that of the Appellant. And that it is as a result of the omission on the part of Dr. Lewis Farmer (but Dr. William Farmer; being rightly called), who happened to have been the Director of survey plans given to the Appellant in 2013 and 2014.

d. Further to that, the Appellant cannot be blamed or held accountable to have been in possession of a land leased to him by the Ministry of Lands in 2013 and a subsequent Government grant given to the Appellant in 2014. Dr. Farmer ought to have known that survey done for the Appellant fell on the land belonging to the Ministry of Education, Science and Technology and then the Forestry Division. The Hon Justice William Annan Atuguba erred in law when he totally disregarded these provisions of law.

GROUND 4

27. The Appellant argued that the valuation report was from a valuation which was done purely on approximate presumptions that was estimated by eye view and years of experience and not scientific and structured measurements. He submitted that it is very unconventional to value a property without measuring its dimensions. The Appellant submitted that this external distance that valuation process was compromised because there cannot be an actual valuation of a property without measuring its dimensions. The Appellant submitted that regardless of the foregoing, the Learned Sole Commissioner and Chairman used the erroneous valuation in reaching his decision and recommendation.

28. Counsel submits that given the security of the valuation and the inaccessibility of some of the properties at the time, the method of valuator used by the valuator was the most convenient way to value those properties. It is clear from the above and from his declaration of his assets (ADF 2019), dated October 2017, Exhibit B18, the only one valuation process. Where the evidence showed that the Appellant made valuation report provided vital information for the Commission. The purpose of the valuation is to ascertain the value of the Appellant's property. The basic valuation adopted is purely on approximate external distances that was estimated by eye view and years of experience. It is not unconventional even though he did his estimate by eye view on experience, as the valuer is experienced.

29. Counsel also submits that given the value of the Appellant's properties - at Ring Road, Aberdeen, Freetown which according to a letter from his lawyer was a provision made for his daughter, Ziada K. Sesay (see page 229 of the Records) valued at US $3,737,500; Wharf Road, Loko valued at US $758,000; and at New Road, Port Loko valued at US $1,537,968 could not be recorded with his lawyer to pay the later's university courses at the Fourah Bay College, University of Sierra Leone from the period 2014 - 2018 while the Appellant was Minister of Works. Thus on note 37 of the Records, " on all the analysis above, I find that the house at Bintumani/Dish Road, Aberdeen Freetown and the house at 19 Wharf Road, Port Loko were dishonestly acquired by the rubric recommendation, " the Learned Sole Commissioner Chairman stated, "... The Person of Interests during his terms of office as Minister between the years 2007 - 2 -18 and should be confiscated and vested in the State."

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GROUND 5

30. On this ground, the Appellant's argument that Learned Sole Commissioner and Chairman erred in law when he included a right to private ownership of property which belonged to Ms. Ziada K. Sesay as a private citizen and therefore should not be subjected to public hearing as she is part of the estate of the Appellant's property. Counsel for the Respondent submited that the investigation was not about Ziada K. Sesay but her father, the Appellant, who is a Person of Interest and the person who built the property with funds he acquired to make provision for his daughter. It was submited that this ground lacks merit and should be dismissed.

31. Counsel also submits that the Learned Sole Commissioner and Chairman did not err in law when he consider the Report of the FIU. It seems that the Appellant did not understand or perhaps appreciates the mandate of the FIU. The mandate of the FIU is to collaborate as well as coordinate the fight against money laundering, fraud and other related financial predicate offences including corruption, bribery, fraud financing of terrorism and crimes enshrined in the Anti-Money Laundering and Combating the Financing of Terrorism Act 2012. The role of the FIU was to assist the Commission with financial intelligence relating to bank accounts held at various commercial banks by officials of the former administration. Matter of fact, the Appellant should not pay more attention to who did the job, than to whether the job was done well. Counsel, submit that the FIU did a thorough job and provided the financial intelligence required by the Commission.

32. Counsel further submits that it is on the basis of the FIU reports that the Learned Sole Commissioner and Chairman recommended that Audit Service conducts a thorough audit of the Appellant's numerous bank accounts at different banks to ascertain the sums of money that should be recovered by the State, which the Appellant now considers as adverse.

33. On the argument that the reports from the FIU mere spread sheets which the Commission claimed to be financial statements of the Appellants, and that the authenticity of the said spread sheets were never ascertained as there were no seal or signature from any bank or any personnel from the FIU to prove that the said spread sheets were indeed the bank statements of the Appellant. Counsel submits that the request of the Commission was for statements of accounts indicating deposits, withdrawals and transfers made for the period October 2007 to April 2018, this piece of information can only be better presented on a spread sheet which the FIU did very well. There was

no need for signature from FIU. Besides, there is no evidence that the two FIU Reports or challenged the information contained in the FIU Report.

34. The Appellant denied detailing deposits, withdrawals, and transfers by the Appellant of huge amounts of money in USD and Leones accounts kept in more than five banks in the country have not been challenged by the Appellant. Counsel therefore submits that this ground lacks merit and should be dismissed.

35. RELIEFS SOUGHT FROM THE COURT OF APPEAL

a. That the adverse finding of the Hon. William Annan Atuguba made and directed against the Appellant herein, be set aside and/or quashed.
b. That this Honourable Court declares void the acceptance of the Government in the White Paper dated September 2020 on matters affecting Alhaji Ibrahim Kemoh Sesay, as a Person of Interest.
c. That this Honourable Court enters judgment in favour of the Appellant.
d. That the Costs of these proceedings and that which was in the Commission of inquiry to be borne by the Respondent.

Summary of Submission made by Counsel for the Appellant

36. On ground 1, Counsel the Respondent submmitted that the Learned Sole Commissioner and Chairman did not violate section 150 of the 1991 Constitution, and he relied on the judgment of this Honourable Court in COL. APP.11/2020 between Finda Diana Konomanyi and The Attorney-General and Minister of Justice.

37. Counsel also referenced Section 147(1&2) of the 1991 Constitution, that empowers the president to appoint a Commission of Inquiry to inquire into any matter of public importance as he may deem fit. Counsel also submitted that section 2 vested jurisdiction on the Chairman/Sole Commissioner and that it is therefore erroneous to state that his jurisdiction ought to have been derived from the Rules of Court Committee.

38. Counsel postulates that Section 150 of Act No. 6 of 1991 mandates the Rules of Court Committee to make rules for all Commissions of Inquiry and that Section 147 of the Constitution cannot be inoperative until section 150 is effected by the Rules of Court Committee. Counsel relies on the Supreme Court decision in SC No. 4/96 The All-People's Congress (Vs) NASMOS &

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Ministry of Social Welfare, Youth and Sport (unreported) delivered on the 26 October 1999, where all the judges held that section 147 is not inoperative until section 150 is effected by the Rules of Court Committee. Counsel also submitted that the judges also held that the rules in force which is the High Court rules can apply to put the section into operations. In his opinion, this is just what the Learned Judge/Sole Commissioner has done and even further relying on Section 6(f) of Constitutional Instrument No. 67 of 2018.

39. Furthermore, he submitted that Chapter 54 of Laws of Sierra Leone (as Amended) has not been revoked and is still part of our laws, thus Section 9 thereof has been invoked by the Commission to regulate its proceedings hence the directions made to ensure fairness to all persons appearing before the commission.

40. Counsel referred the court to take judicial notice of the several Commissions that have been set up between 2007- 2017 without rules from the Rules of Court Committee and were still proceeded with.

41. Counsel sought the leave of the Court to argue Grounds 2 & 3 conjunctively. He submitted that on these grounds, the Appellant argued that the learned Sole Commissioner and Chairman made adverse findings against him. Counsel then submits that the land on which the Appellant built the three-storey building belonged to the Ministry of Education, Science and Technology. Counsel relied on Exhibits AZ3 and AZ8. He also submitted that the lease the Appellant reffered to was a lease in error due to pressure mounted on staff of Ministry of Lands by the Appellant, which resulted to the cancellation of the said lease by the Ministry. Counsel relied on the testimony of Tamba S. Dauda.

42. Counsel further submitted that the Appellant, as the then Minister of Political Affairs, used his position to do things and assert his political power to get what he wanted, with absolute impunity.

43. Counsel also maintained that the Appellant had no land and lease no lease, which he surrendered and for which he should be compensated and that he was a trespasser. Counsel referred the Court to the principle of Nemo dat quad non habet. He also submits that the Appellant's act of erecting a structure on a land belonging to the Ministry of Education, even before seeking to obtain the requisite papers from the Ministry of Lands, is an act of trespass and an apparent abuse of political power by the Appellant.

44. On the Appellant's argument that the Learned Sole Commissioner and Chairman failed to consider Section 21 of the Constitution of 1991 (Act No. 6 of 1991), counsel for the Respondent submits that the import of section 21 is for compulsory acquisition of (private land) for public purposes. He states that the said land has always been State land belonging to the Ministry of Education and therefore the Learned Sole Commissioner and Chairman did not violate Section 21. He argues that compensating the Appellant would be tantamount to legalizing illegality and that the right to compensation belongs to bona fide owners of land appropriated by the State, but not to trespassers or squatters, like the Appellant.

45. Counsel finally submitted that there is no miscarriage of justice as grounds 2 & 3 of appeal lacks merit and should be dismissed and the proceeds from the sale of the land by the Appellant was a fraudulent transaction, and thus the proceeds must be returned to benefit the State, not the Appellant.

46. On ground 4, Counsel argues that given the security of the valuator and the inaccessibility of some of the properties at the time of valuation, the method adopted by the valuer was the most reasonable under the circumstances. He submits that the method did not compromise the valuation process as the valuator is a trained valuator and had years of experiences.

47. Counsel submits that the value of the Appellant's properties could not be reconciled with his total net salaries for the period 2007 to 2018. He also emphasized that the latter houses were all built after the Appellant left the Ministry of Transport and Infrastructure in December 2018. Counsel relied on page 4 paragraph 8 of the Recommendations of the Sole Commissioner/ Chairman and submitted that the houses of the Appellant were dishonestly acquired during his terms of office as Minister between the years 2007 - 2018 and should be confiscated and vested in the State.

48. Counsel also submits that the Appellant's argument that the Learned Sole Commissioner and Chairman erred in law when he included as part of the estate of the Appellant a property which belonged to Ms. Ziada K. Sesay, who is a private citizen and therefore should not be subjected to public hearing as she has a right to private ownership of property, lacks merit. Counsel argues that the investigation was about her father who built the said property with funds he acquired to make provision for his daughter.

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49. On ground 5, Counsel for the Respondent submits that the Learned Sole Commissioner and Chairman did not err in law when he consider the Report of the FIU. Counsel argues that the mandate of the FIU is to collaborate as well as coordinate the fight against money laundering, the financing of terrorism and predicate offences including corruption, bribery, fraud, and other related financial crimes enshrined in the Anti-Money Laundering and combating the Financing of Terrorism Act 2012. He argues that their role was to assist the Commission with financial intelligence relating to bank accounts held at various banks by former state officials. Counsel argues that the FIU did a thorough job and provided the financial intelligence required by the Commission.

50. Finally, Counsel submits that the request of the Commission was for a statement of accounts indicating deposits, withdrawals and transfers made for the period October 2007 to April 2018. That this information can only be better presented on a spread sheet which the FIU did very well. Counsel argues that there was no need for signature from FIU and that the Appellant denied or challenged the information contained in the FIU report. The FIU Report detailing deposits, withdrawals, and transfer by the Appellant and that this ground of appeal lacks merit and should be dismissed.

Analysis of the Facts, Law and Evidence

51. I will now deal with an analysis of the law, facts, and evidence as I consider each ground of appeal seriatim.

52. On the Appellant's first ground of appeal, he argues that the Commissioner erred in law and violated Section 150 of the 1991 Constitution when he conducted the Commission of Inquiry without rules regulating the procedure, and that he acted outside the remits of his mandate. That the failure of the Commissioner to comply with the Constitution requirement rendered his legal findings inconsistent with Section 150 of the Constitution aforesaid, and to the extent null, void and of no effect.

53. However, looking at the provisions of Section 147 (1) & (2) it clearly provides that the President shall by a constitutional instrument appoint a Commission of Inquiry into any matter of public interest. Subsection 2 further provides that it may consist of a Sole Commissioner and two or more persons, one of whom shall be appointed Chairman of the Commission.

54. Though the Appellant argues that the Commission is illegal and invalid, Section 147 (1) & (2) gives the President the authority, by a constitutional

instrument to appoint a Commission of Inquiry into any matter of public interest. Pursuant to Constitutional Instrument No.67 of 2018, the President appointed a commission to investigate possible corruption, mismanagement, misappropriation of public funds and abuse of office by some Persons of Interest (the Appellant included) of the former government.

55. In this regard, it is evident that proper authority was vested in the Commissioner. It is therefore baseless to say that the Commission was illegally constituted, and that jurisdiction of the Commission ought to have been drawn from the Rules of Court Committee. In my opinion, this ground lacks merit and ought to be dismissed. Ground 1 is accordingly dismissed.

56. The second and third grounds of appeal by the Appellant are both similar and I would hence address them jointly. The Appellant submitted that that the Sole Commissioner erred in law when he recommended that the Appellant return the proceeds of sale of the land granted to him. From the evidence, the Appellant did not follow due process to acquire the land from the Ministry. He claimed that he had a subsisting lease on a land belonging to the Ministry of Education. He had commenced construction on the said land with no documentation or proof of the alleged subsisting lease, neither did he provide evidence of any other form of interest on the said land.

57. The Appellant alleged that the former President, by way of an Executive Order, ordered that he be compensated for the demolition of his previous structure. This compensation was made by granting the Appellant another piece of land belonging to the Ministry of Agriculture with a freehold interest therein.

58. It is baffling that the Appellant claims that he was given a freehold interest in another land when he clearly had no evidence of ownership of the previous land. He claimed that he had a leasehold interest but could not show any evidence to that effect. Even if he had a lease on the land, he still needed to observe the procedure laid down in the acquisition of state land.

59. We saw in evidence that almost all the witnesses who prepared the document for the Appellant testified that they were pressured to prepare the said documents. In this regard, it is the opinion of this Court that the Appellant had no interest in the said land that he would have surrendered, and for which he should be compensated. Here is a clear case of "Nemo dat

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quod non habet". It is settled law that the Appellant could therefore not give what he does not have.

60. It is also in evidence that the land was allegedly granted to the Appellant by an Executive Order that was never seen and/or evidenced in writing. In Sierra Leone, state lands are not granted merely by an Executive Order. There are procedures geared towards that direction.

61. The Appellant also referenced section 21 of the Constitution; in that he is entitled to be compensated because his previous structure had been demolished on another piece of land. This provision respectfully does not apply to the Appellant's case, by reason that he never had any form of legal and/or equitable interest in the land on which his building was demolished.

62. This provision makes it clear that no property or interest in property shall be compulsorily taken away or acquired unless it is in the interest of public safety, order, morality etc.; and even when taken the person is entitled to a compensation in relation to the said property taken away. This provision is indexical to section 15 of CAP 116 of the laws of Sierra Leone 1960, which is instructive in the same direction. The Crown Lands Act of 1960 is instructive on how to acquire state land. The procedures involve applying for a lease, paying the appropriate fees for the land, developing that land, and subsequently applying for a freehold of that land. All these requirements were not met by the Appellant. It is the position of the Court therefore, that Section 21 of the Constitution does not fit well in the Appellant's position and this Section was therefore not violated by the Commission. In view of the above, I hereby hold that <u>grounds 2 & 3 are hereby dismissed.</u>

63. On the 4th ground of appeal, the Appellant argues that the Commissioner erred in law when he allowed an eye-view valuation report of a property belonging to him and his daughter be tendered in evidence. The Appellant also argues that the valuation report was from a valuation which was done purely on approximate external distance that was estimated by eye view of the valuator. He also submits that in the measurement of the respective properties, it is very unconventional to value a property without measuring its dimensions. That regardless of the foregoing, the Sole Commissioner and Chairman relied on the erroneous valuation in reaching their decision and recommendation.

64. It is the view of this Court that this was indeed erroneous on the part of Commissioner and Chairman. I agree with Counsel for the Appellant that it is quite unconventional to value a property without measuring its dimensions. Based on this fact, it would be unconscionable for this court to rely on a valuation report that was fraught with challenges. In this regard, I hereby hold that this ground has triable issues and should be allowed on appeal. Ground four is therefore Upheld.

65. On the fifth and final ground, the Appellant submitted that the Learned Sole Commissioner and Chairman erred in law when he considered an intelligence report from the Financial Intelligence Unit (FIU) instead of a report from the Anti-Corruption Commission. The Appellant submitted that the Learned Sole Commissioner and Chairman made adverse findings against him and recommended that the Audit Service conducts a thorough audit on the Appellant's bank accounts, to ascertain the sums of money that should be recovered from the Appellant. The Commissioner also recommended that the state confiscates 3 of the vehicles belonging to the Appellant.

66. Pursuant to the Anti-Money Laundering and Combating the Financing of Terrorism Act 2012, the mandate of the FIU is to collaborate as well as to coordinate the fight against money laundering, the financing of terrorism and predicate offences including corruption, bribery, fraud, and other related financial crimes.

67. The role of the FIU in the Commission of Inquiry was to assist the Commission with financial intelligence relating to bank accounts held at various commercial banks by officials of the former administration.

68. From the facts of the case, Counsel for the Appellant did not deny or challenge the contents of the report of the FIU reported to the commission. By virtue of this fact, I hold that the Commissioner did not err in law when he chose to rely on the financial reports of the Appellant by the FIU. The Appellant's failure to controvert the report prima facie, means that he avers to the contents therein. In this regard, I hold that ground 5 lacks merit and is accordingly dismissed.

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Conclusion

69. In conclusion therefore, Grounds 1, 2, 3 and 5 of Appeal are Dismissed and Ground 4 is upheld.

70. In the light of the conclusion reached, the following Orders are made:

a. The adverse findings of the Hon. Justice William Annan Atuguba made and directed against the Appellant, Alhaji Ibrahim Kemoh Sesay are HEREBY UPHELD.

b. That the acceptance of the Government in the White Paper dated September 2020 on matters affecting Alhaji Ibrahim Kemoh Sesay as a Person of Interest is HEREBY UPHELD.

c. That Judgment is entered Against the Appellant, Alhaji Ibrahim Kemoh Sesay.

d. That costs of these proceedings and that in the Commission of Inquiry be borne by the Appellant and to be taxed if not agreed upon.

_____ - I agree
Hon. Mr. Justice Komba Kamanda - Chief Justice - Presiding

_____ 26/02/2025
Hon. Mrs. Justice F. Bintu Alhadi J.A.

_____ 26/02/2025 - I agree
Hon. Mrs. Justice Tonia Barnett JA

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