Sup Ct Case No. 2/2018

IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE, 1991 – ACT NO. 6 OF 1991 (AS AMENDED) SECTIONS, 41, 75 & 76

IN THE MATTER OF THE SIERRA LEONE CITIZENSHIP ACT, 1973 – ACT NO. 4 OF 1973

IN THE MATTER OF THE SIERRA LEONE CITIZENSHIP (AMENDMENT) ACT, 1973 – ACT NO 13 OF 1973

IN THE MATTER OF THE SIERRA LEONE CITIZENSHIP (AMENDMENT) ACT, 2006 – ACT NO 11 OF 2006

IN THE MATTER OF AN ACTION PURSUANT TO THE SUPREME COURT RULES, 1982 – PART XVI, RULES 89 -98, S. I. No 1 OF 1982

BETWEEN:

DAVID FORNAH - PLAINTIFF

AND

1. ALHAJI DR KANDEH KOLLEH YUMKELLA - DEFENDANTS
2. THE ATTORNEY-GENERAL & MINISTER OF JUSTICE
3. MOHAMED N'FAH ALIE CONTEH
4. NATIONAL ELECTORAL COMMISSION (NEC)
5. DR DENNIS AYODELE BRIGHT
6. FRANCIS HINDOWA (now deceased)
7. NATIONAL GRAND COALITION

CORAM:
THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT

THE HONOURABLE MR JUSTICE E E ROBERTS
JUSTICE OF THE SUPREME COURT

THE HONOURABLE MS JUSTICE G THOMPSON
JUSTICE OF THE SUPREME COURT

THE HONOURABLE MR JUSTICE ALUSINE S SESAY
JUSTICE OF THE SUPREME COURT

THE HONOURABLE MR JUSTICE SENGU M KOROMA
JUSTICE OF THE SURPEME COURT

COUNSEL:
CENTUS MACAULEY ESQ for the Plaintiff
Hon Dr A O CONTEH, F M DABOR ESQ, & MS YASMIN JUSU SHERIFF for the 1st Defendant
OSMAN KANU ESQ, ABIGAIL SUWU (MS) & P FEWRY(MS) for the 2nd Defendant
MS B E T CUMMINGS, DRUCIL E TAYLOR ESQ & J E KAPUWA ESQ for the 3rd & 4th Defendants
I S YILLA ESQ & M S BANGURA ESQ for the 5th Defendant
S B TEJAN-SIE II ESQ for the 6th Defendant
MS YASMIN JUSU-SHERIFF, ALEX MUSA ESQ & ALHAJI M KAMARA for the 7th Defendant

JUDGMENT DELIVERED THIS 3RD DAY OF SEPTEMBER, 2021

BROWNE-MARKE, JSC

ISSUES IN DISPUTE – WHETHER SUPREME COURT OR HIGH COURT PROPER FORUM

1. My Lords, My Lady, I have had the honour of reading in draft, the judgment of My Lady, THOMPSON,JSC. We concur that the declaration sought by the National Grand Coalition, the 7th Defendant in this action, should be granted, but we have arrived at this conclusion for different reasons. I appreciate the reasons she has laid out in the draft judgment, and I am of the view that they ought to be given the same consideration as mine for the reasons which will appear in the course of this Judgment. I have also read in draft, the judgments of My Lords, ROBERTS, JSC & ALUSINE SESAY, JJSC, and they concur with me in the result that the declaration sought by the 7th Defendant ought to be granted. I have read in draft, the judgment of My Lord, SENGU KOROMA, JSC. We agree in the main, and he has set out his conclusion clearly in his judgment.
2. My Lords, My Lady, this case deals with a matter of great public interest and importance. It deals with the question of who is a citizen of Sierra

Leone in terms of the Constitution of Sierra Leone, 1991 – Act No. 12 of 1991 for the purposes of contesting Presidential and/or Parliamentary elections; and at what point in time that person loses his citizenship, and whether having lost it, he could regain it at a later date. The question also involves the procedure to be followed for divesting oneself of one's citizenship, in other words, how does one renounce one's citizenship under Sierra Leone Law? This question by itself, does not raise any Constitutional issue. It merely deals with the interpretation of a statute, the Sierra Leone Citizenship Act, 1973 as amended in 1976, in 2006 and in 2017, respectively. This issue could have been dealt with in the High Court. Further, as far as issues of eligibility relating to Parliamentary elections are concerned, these are issues which ought to be dealt with by, and in the High Court and in accordance with the Public Elections Act, 2012. Further, s 78(1) of the Constitution of Sierra Leone, 1991 – Act No.6 of 1991 – hereafter, the 1991 Constitution, provides that the High Court shall have jurisdiction to hear and determine any question whether any person has been validly elected as a Member of Parliament. In other words, issues dealing with nomination as a candidate, and contesting Parliamentary elections as a candidate, are matters exclusively for the High Court. The Supreme Court has no jurisdiction to deal with such issues, standing by themselves. Appeals relating to Parliamentary elections, such as those concerning a candidate's eligibility to contest such elections, and the manner in which they have been nominated for such elections, can only be made as far as the Court of Appeal. They can go no further. But, where the issue is the citizenship of a candidate for a Presidential election, that issue can only be brought before, and dealt with by this Court.

JURISDICTION OF THE SUPREME COURT

SECTION 127(1) & (2) 1991 CONSTITION; PUBLIC ELECTIONS ACT, 2012

3. The Supreme Court can only exercise its original jurisdiction to interpret a statute, if it falls within the ambit of section 127(1) of the Constitution, to wit: "*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.*"

4. The Plaintiff herein has not directly invoked section 127(1) of the 1991 Constitution. But in challenging the correctness of the decision taken by the 3rd and 4th Defendants herein, to accept the nomination of the 1st Defendant as candidate for both the Presidential and Parliamentary elections in 2018, he is impliedly, invoking that Constitutional provision. He is saying that both these respective Defendants have done something under the authority of an enactment, the Public Elections Act, 2012 – Act No. 4 of 2012, hereafter, PEA,2012, which is inconsistent with, and in contravention of sections 41, 75 and 76(1)(a) of the 1991 Constitution, namely, that they accepted for nomination someone, i.e. the 1st Defendant, who did not satisfy the eligibility criteria in sections 41, 75 and 76 respectively of the 1991 Constitution. The specific criterion he claims has not been, and was not satisfied by 1st Defendant, was citizenship: that criterion being that the candidate for both elections must be a citizen of Sierra Leone, otherwise than by naturalization; and should not at the same time, be a citizen of another country. He alleges that 1st Defendant was a dual citizen of both the United States, and of Sierra Leone at the time he was nominated as a candidate in both elections .If he is correct in this respect, this Court, in my respectful view, could have made some of the declarations he had sought. Section 127(2) states as follows: "*The Supreme Court shall, for the purpose of a declaration under subsection (1), make such orders and give such directions as it may consider appropriate for* giving effect to, or, enabling effect to be given to, the declaration so made."
5. Theoretically, it follows that, in 2018, had this Court agreed that 3rd and 4th Defendants had acted wrongly, or, in contravention of the provisions of this Constitution, we could have, in the exercise of our discretion, treated the Plaintiff's Originating Notice of Motion, as the objection filed pursuant to the provisions of section 47(3) of the PEA, 2012, which states: "*An objection against the nomination of a presidential candidate shall be heard by the Supreme Court made up of three Justices whose decision shall be given within thirty days of the lodging of the objection.*" The business of this Court in its original jurisdiction, is to adjudicate on claims brought to it. But in order for this Court, theoretically, I must again emphasise, to have entertained any such objection as provided for in section 47(3) of the PEA,2012, assuming that provision did not, and does not contravene any Constitutional provision, the person taking the

objection should have first, complied with the provisions of section 47(2) of the PEA, 2012, which states, inter alia, that: "*The Government Notice referred to in subsection (1) shall direct that any citizen of Sierra Leone may lodge an objection, if any, against the nomination of a presidential candidate but that the objection shall be lodged with the Supreme Court within seven days of the publication of the Government Notice*". That Government Notice is exhibited as "DF1" to the Plaintiff's affidavit of 5th February,2018, i.e. the affidavit was filed within the 7 day period stipulated in section 47(3). The Originating Notice of Motion was filed on the same day.

CONFLICT BETWEEN AN ACT AND THE 1991 CONSTITUTION

6. This Court has decided in SC cases Nos. 6 & 7 of 2018 – DR SYLVIA BLYDEN, DR SAMURA KAMARA & OTHERS v THE CHIEF ELECTORAL COMMISSIONER, THE NATIONAL ELECTORAL COMMISSION, H E PRESIDENT JULIUS MAADA BIO & THE SIERRA LEONE PEOPLES' PARTY (EDWARDS, CJ; BROWNE-MARKE, ROBERTS, A S SESAY, JJSC; A I SESAY, JA) - EDWARDS, CJ delivering the unanimous decision of the Court on 20th April, 2021, that when statute, in particular, the PEA, 2012 provides that any action should be brought to this Court in its original jurisdiction, it has to be brought by way of Originating Notice of Motion. In dealing with the challenge to the election of a President, The Learned CJ, said at paragraph 93 of his judgment: "*The originating process mentioned there as the way of invoking (the) original jurisdiction of the Supreme Court thus becomes the only way and law applicable to challenging the validity of presidential election results pursuant to section 45(2) of the Constitution…….The mention of 'By Petition in the Supreme Court' becomes destitute of any legal effect to the level of its inconsistency with the 1991 Constitution in the sense that there cannot be another process of invoking the original jurisdiction of the Supreme Court by petition when the said Constitution already recognizes and applies Originating Notice of Motion process through the Supreme Court Rules, or, existing law.*" There, this Court was dealing with a challenge to the election of our current President. But, as I shall show hereafter, that conclusion applies equally to a challenge to the eligibility of a candidate to contest a Presidential election

7. Section 122(2) states: "*The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears right so to do…..*". I concurred in, and with that decision, i.e., the Dr Sylvia Blyden and others decision, and I see no reason to depart from it.
8. There are several important implications flowing from this decision. Any such action, i.e. an original action in this Court, should be dealt with in accordance with the Supreme Court Rules, 1982 – S.I. No. 1 of 1982 – (SCR, 1982) made pursuant to powers conferred on the Rules of Court Committee by the 1991 Constitution, and its predecessor, the 1978 Constitution. This means, that the Originating Notice of Motion could only have been heard at the earliest, 21 days after 5th February, 2018, i.e. on 26 February, 2018. The Plaintiff filed his statement of case on 15 February, 2018. Each Defendant had another 10 days within which to file his, or, its, statement of case. That would have taken things up to 25th February. Both Presidential and Parliamentary elections were already fixed for 7 March, 2018, 10 days away from 25 February,2018. But other events intervened.

PRELIMINARY PROCEEDINGS

DIFFERENCES IN S.126 1991 CONSTITUTION & S.47(3) PEA,2012

9. On 27 February, 2018, the 5th, 6th & 7th Defendants filed a Motion in this Court, asking to be joined as parties. That Motion was heard on 1 March, 2018 by a 3 Judge panel, fixed by CHARM, then CJ, viz: BROWNE-MARKE, ROBERTS, THOMPSON, JJSC, as stipulated in section 47(3) of the PEA, 2012. CHARM, then CJ, was right in this respect. He was also acting in accordance with the provisions of section 126 of the 1991 Constitution. The Court first had to consider the application for joinder, which was interlocutory in nature because it did not finally determine a cause or matter, before hearing the Plaintiff's substantive Originating Motion.
10. The Constitutional provision dealing with the quorum for a Supreme Court hearing is section 126 of the 1991 Constitution, referred to above in paragraph 9, which states as follows: "*A single Justice of the Supreme Court acting in its criminal jurisdiction, and three Justices of the Supreme Court acting in its civil jurisdiction may exercise any power vested in the Supreme Court not involving the decision of a cause or*

matter before the Supreme Court, save that: (a) in criminal matters, if any such Justice refuses or grants an application in the exercise of any such power, any person affected thereby shall be entitled to have the application determined by the Supreme Court constituted by three Justices thereof; and (b) in civil matters, any order, direction or decision made or given by the three Justices in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Supreme Court constituted by five Justices thereof."

11. It follows that whatever decision the three man panel gave, would have been subject to reversal or variation by the full panel of five Justices. Also, it was clear that in order not to contravene s 126 of the 1991 Constitution, it was mandatory that a full panel of five Justices should preside over the Plaintiff's Originating Motion. Thus, section 47(3) of the PEA, 2012 is, in this respect, clearly inconsistent with the provisions in s.126 of the 1991 Constitution. A three member panel of this Court, cannot finally decide an original action. S.126 requires no interpretation. Its wording is clear and unambiguous.

THE APPLICATION FOR JOINDER OF 5TH, 6TH & 7TH DEFENDANTS

12. The application made by the 5th, 6th & 7th Defendants, was one which the Court could not refuse. 1st Defendant was the Presidential candidate for the 7th Defendant, the National Grand Coalition. If the Plaintiff succeeded in his action, the party would have to find another candidate. The 5th Defendant was, and is the Chairman of the party; the 6th Defendant was at the time, Secretary-General of the 7th Defendant party. The application was granted. Consequential orders were also made, including, fixing the date of hearing of Plaintiff's substantive Originating Motion on 2 March, 2018 at 2.30pm. Time for filing respective statements of case by the additional Defendants was abridged to 24 hours because of the exigencies of the situation. The 6th Order I made, and in which ROBERTS & THOMPSON, JJSC concurred was, as follows: "*6. In view of the questions raised for determination in the substantive Originating Notice of Motion, the full Court of 5 Justices will be sitting tomorrow.*" In paragraph 11, supra, I have already explained the necessity for such an order.

HEARING BEFORE THE FULL BENCH OF FIVE JUSTICES

TIME LIMITS FOR HEARING AND DETERMINING OBJECTION TO NOMINATION

13. Indeed, at that next hearing on Friday 2 March, 2018, the full bench of 5 Justices did sit. Objection was taken to the presence of two of the Justices in the full panel. Those Justices recused themselves, and two other Justices of the Supreme Court replaced them at the hearing the following Tuesday, 6 March, 2018, after CHARM, (then) CJ, had reconstituted the panel the previous Monday, 5 March, 2018. That being the case, it was quite obvious that a decision could not be given by the Court within 30 days of 5 February, 2018 as stipulated in section 47(3) of the PEA,2012. And again, EDWARDS, CJ, has with the unanimous concurrence of the other Justices in the case cited above, DR SYLVIA BLYDEN & DR SAMURA KAMARA & ORS v C E C. NEC, H E PRESIDENT JULIUS MAADA BIO & SLPP, ruled that the Constitution takes precedence, as it should, over other any other enactment. In this respect also, section 47(3) of the PEA, 2012 is clearly inconsistent with the provisions of section 126 of the Constitution.
14. Having dealt in some measure with the provisions in the PEA, 2012 which deal with the manner in which the challenge to the nomination of a candidate for a Presidential election ought to be carried out, and consequently, pointing out where those provisions are inconsistent with those in the 1991 Constitution, I shall go on to deal with the corollary, and perhaps, the principal issue brought up by the Plaintiff, which is, whether being a citizen of another country while maintaining one's citizenship of Sierra Leone, deprives one of the right to contest election in Sierra Leone for the Presidency.

ISSUE OF 1ST DEFENDANT'S CITIZENSHIP - SECTION 76(1)(a) 1991 CONSTITUTION

15. This issue calls for the interpretation of section 76(1)(a) of the 1991 Constitution. During the course of the hearing, the Plaintiff sought leave to discontinue his entire action against all Defendants. By this Judgment, such leave has been granted. This was done by Plaintiff after all parties had filed, or, had been given leave to file out of time, their respective statements of case. In these circumstances, Counsel for the 7th Defendant requested that this Court make a pronouncement on one of the reliefs it had sought so that there might be clarity on the issue as to

when a citizen of Sierra Leone loses his citizenship, and consequently, his eligibility to contest Presidential and Parliamentary elections. The Court agreed that it would do so, and I shall do so in the course of this judgment.

16. But first, it is necessary to set out the origins of the action, and the course it took in this Court, as this procedure would have some bearing on the issue of Costs at the end of the day.

HISTORY OF THE ACTION

A. THE ORIGINATING NOTICE OF MOTION

17. The Plaintiff, David Fornah, as stated above, on 5 February, 2018, filed in this Court's Registry, an Originating Notice of Motion, posing certain questions which, according to his Solicitors and Counsel, needed to be answered by the Court; and if they were answered in a certain manner, several declarations were sought. The action was brought initially against Alhaji Dr Kandeh Kolleh Yumkella, The Attorney-General & Minister of Justice, The Chief Electoral Commissioner, Mohamed N'fa Alie Conteh, and the National Electoral Commission. Later in the proceedings, as indicated above, on the application of Counsel for the 1st Defendant, Dr Yumkella, and by Order of this Court, the other 3 Defendants were added on, viz: Dr Dennis Bright, Chairman, National Grand Coalition (NGC); Francis Hindowa, Secretary-General, NGC; and the National Grand Coalition party itself.

18. The Plaintiff asked this Court, firstly, to interpret sections 41, 75 and 76 of the 1991 Constitution of Sierra Leone. Interpretation of those Constitutional provisions will help determine:

    (i) Whether a naturalized citizen of Sierra Leone is disqualified from being elected as a Member of Parliament and thereby also disqualified to be elected President.

    (ii) Whether, a citizen of a country other than Sierra Leone, having become one voluntarily (or, otherwise) or, is under a declaration of allegiance to such a country is disqualified from being elected a Member of the Sierra Leone Parliament, and, consequently, disqualified to be elected President.

    (iii) If the answer to question (i) is in the affirmative, what is the effect in law of a naturalized citizen running for election as a

Member of Parliament, and consequently, for the office of President.

(iv) If the answer to question (ii) is in the affirmative, what is the effect of such a citizen running for Parliament, and also for the office of President.

19. Secondly, the Plaintiff posed for determination by this Court , the interpretation of sections 5 and 7 of the Sierra Leone Citizenship Act,1973 as amended by Act No. 11 of 2006

(i) Whether upon a proper construction of section 10 of the 1973 Act as amended, and before the coming into force of the amendment Act in 2006, a person having Sierra Leone citizenship and any other citizenship at one and the same time by operation of the law, ceased to be a Sierra Leonean.

(ii) Whether upon a proper interpretation of section 11 of the 1973 Act as amended, and, before the coming into effect of the 2006 Amendment Act, a person upon attaining the age of 22 years, being a citizen of Sierra Leone, and also a citizen of another country by operation of the Law, ceased to be a citizen of Sierra Leone

(iii) If the answer to question (i) is in the affirmative, can such a person be eligible to contest Parliamentary and Presidential elections?

(iv) If the answer to (ii) is in the affirmative, what is the effect in law of a person who is already a citizen of Sierra Leone, and also a citizen of another country, can such a person be eligible to contest Parliamentary and Presidential elections?

20. The Plaintiff sought the following declarations:

(i) That by virtue of sections 41, 75 & 76 of our 1991 Constitution, no person shall be qualified to be elected a Member of Parliament, or, President if he is a naturalized citizen of Sierra Leone.

(ii) That by virtue of sections 41, 75 & 76 of our Constitution no person shall be so qualified to be elected a member of Parliament or President, if he is a citizen of a country other than Sierra Leone, having become such a citizen voluntarily, or, is under a declaration of allegiance to the other country.

(iii) That by virtue of sections 10 & 11 of the 1973 Act as amended, and before the coming into force of the 2006 Amendment Act, a citizen of Sierra Leone, who was also a citizen of another country, ceased to be a Sierra Leonean.

(iv) That if the declarations sought above are granted, the 1st Defendant, Dr Yumkella is disqualified to be elected a Member of Parliament or, President.

PLAINTIFF'S AFFIDAVITS IN SUPPORT OF HIS MOTION

1ST AFFIDAVIT

21. The Motion was supported by the affidavit of the Plaintiff himself, deposed and sworn to also, on 5 February, 2018. Since the Plaintiff has been given leave to withdraw the action, I shall not dwell on all the matters deposed to therein. I shall only set out, and comment on those which may assist this Court in making the declarations sought impliedly by the 1st Defendant, and expressly by 7th Defendant.

22. The Plaintiff deposed that he was a businessman and also a registered voter. He did not declare his citizenship, whether by birth, or, by naturalization. In this respect, his action would have failed in any event because s,47(2) of the PEA,2012 stipulates that the person taking objection to the nomination of a Presidential candidate should himself be a citizen of Sierra Leone. He exhibited his voter identification card, which does not necessarily, and by itself prove that he is a citizen of Sierra Leone. He goes on to depose to certain matters of a legal nature, which he says, are based on what he was told by his lawyers. One such, was that prior to the 2006 amendment Act, Sierra Leone did not recognize dual citizenship, and that by virtue of the un-amended 1973 Citizenship Act, any person who had attained the age of 22 years, ceased automatically to remain a Sierra Leone citizen, if he held the citizenship of another country. Another matter he deposed to, is that certain persons may have ceased to be Sierra Leone citizens by becoming citizens of another country, and that these persons were not eligible to be elected MPs. He admits that he is aware that the 1st Defendant was born in Sierra Leone, and that the 1st Defendant has been in possession of the country's passport over the years. He goes on to depose that he was informed, and that the 1st Defendant had himself admitted, that he had become a naturalized citizen of the United States of America, and had

been issued with a USA passport. He was aware that the 1st Defendant was the flag-bearer for the NGC, and also a Parliamentary candidate for the same party. He admitted in his paragraph 16, that it is public knowledge that the 1st Defendant had said at a press conference that he had renounced his US citizenship so as to comply with the 1991 Constitution. He deposes further that he was informed by one Abu Bakarr Sankoh, whom he verily believes, that he, the said Sankoh, had taken objection to the candidacy of 1st Defendant in the Kambia Constituency 62 for the Parliamentary election, on the ground that 1st Defendant held dual nationality, but that Sankoh's objection had been ignored by the Returning Officer in Kambia. To further his enquiries about the 1st Defendant's status, he wrote to the Ministry of Internal Affairs asking whether 1st Defendant had resumed his Sierra Leonean nationality. He was informed by the Ministry that it had no record of 1st Defendant resuming his nationality. He was not satisfied that 1st Defendant had truly renounced his American citizenship. 1st Defendant had not provided any proof of his renunciation of American citizenship; nor, of his resumption of Sierra Leone citizenship. In his paragraph 24, he deposes that "*That I honestly believe the only reason why the 1st Defendant has not produced his CLN (Certificate of Loss of Nationality) is because it does not in fact exist, and therefore, his claim of renunciation of US nationality is incorrect.*" I have quoted this particular paragraph verbatim as it has some bearing on the point in time when the Plaintiff realized that in truth, 1st Defendant had indeed renounced his US citizenship. This also has a bearing on the issue of Costs, notwithstanding Plaintiff being granted leave to withdraw his action, subsequently. These facts deposed to by the Plaintiff formed the basis for instituting the action herein.

PLAINTIFF'S 2ND AFFIDAVIT

23. On 12 February, 2018, Plaintiff swore and deposed to a further affidavit. To that affidavit, he exhibited as "*DF5*", a copy of the letter he had received from the Ministry of Internal Affairs. That letter reads: "*I refer to your letter dated 19th January, 2018 on the above subject matter. We have conducted a search of our records and can confirm that Alhaji Dr Kandeh Yumkella has not availed himself as put by you, to ("of", I think it should be) the provisions of the Sierra Leone Citizenship*

(Amendment) Act No 11 of 2006 to resume Sierra Leone Citizenship. Furthermore, our record (sic) do not show any compliance with the conditions precedent as contained in the Sierra Leone Citizenship (Amendment) Act No 13 of 1976 or any other provision (legal or otherwise) in this regard." In that letter, the Minister did not explain why he had concluded that the 1st Defendant had lost Sierra Leone citizenship, and why he, the 1st Defendant needed to "*resume*" the same. In any event, it is the view of this Court that the Minister may have acted outside the Law. No application was made to him under the Right to Access of Information Act, 2012. He, as a Public Officer, though not in the public service, in terms of section 170(1) & (4) of the 1991 Constitution, was therefore bound by the oath of secrecy attached to the public office he held. He may have come close to contravening the provisions contained in section 7(1) of the Treason and State Offences Act, 1963. Section 7(1) states, inter alia: *"If any person having in his possession or control any….document or information…. Which has been entrusted in confidence to him by any person holding an office established by the Constitution or, a public office or, which he has obtained or, to which he has had access owing to his position as a person who holds or, has held any such office as aforesaid or, as a person who holds or has held a contract made on behalf of the Government, or, as a person who holds or has held any such office or contract – (a) communicates…… the document or information to any person, other than a person to whom he is authorized to communicate it, or, a person to whom it is in the interest of the State his duty to communicate it……shall be guilty of an offence."* The Minister had no right to disclose information of a private nature to any individual requesting him to do so in a personal and private capacity.

24. The Plaintiff has repeatedly stressed his independence from any political leanings. He has not said he was a public officer, nor, anyone to whom it was necessary to communicate official information for official purposes. He had no right to the information he requested; the Minister also had no right to respond to his quest for information. If he had, or, has that right, then a person in his position, or, in an equivalent position, is equally entitled to disclose information of a confidential nature to anyone who requests him to disclose the same. In his letter to the Minister, the Plaintiff did not state that he was requesting the information for official

purposes. Disclosing official information for private purposes has serious consequences. As such, the Minister was not obliged to disclose the same to him. I shall return to this issue, later in this judgment.

THE PASSPORT ACT, 1964

25. Further, to show how wrong the Minister was, he certainly did not advert his mind to the Passport Act, 1964 – Act No. 49 of 1964 as amended by section 7 of the Interpretation Act, 1971, and by the Passports (Amendment) Act, 1974, Act No. 15 of 1974, the latter adding on a new section 8. Section 2 of the 1964 Act states: *"2(1) The President acting in accordance with the advice of the Minister of Foreign Affairs and International Cooperation (formerly, Minister of External Affairs), may issue a passport in the existing form, or, such other form as he may prescribe by Notice in the Gazette to any person who is a citizen of Sierra Leone. (2) Where any person has either(a) renounced his citizenship; or, (b) been deprived of his citizenship other than by Order made under the provisions of the Sierra Leone Nationality and Citizenship Act, 1962 (since, repealed by section 28 of the 1973 Citizenship Act), his passport shall be withdrawn from him".*
26. The Plaintiff did not suggest or contend at any point in time that the 1st Defendant's passport had been withdrawn from him. Neither did the Minister, in his letter to the Plaintiff, assert the same. On the contrary, the evidence available in the affidavit and statement of case of the 1st Defendant shows that his passport has been renewed successively since 1980.
27. Section 28 of the 1973 Citizenship Act also amended the relevant provisions in section 1 of the Non-Citizens (Registration, Immigration and Expulsion) Act, 1965; section 1 of the Non-Citizens (Trade and Business) Act, 1969; and section 4 of the Interpretation Act, 1971 – definition of "*native*" for the purposes of the Act. Further, the definition of "Native" in the 1971 Act has been further amended by section 3 of the 1976 Citizenship Act.
28. The Plaintiff deposed further to the state of the law in the United States relating to the naturalization process, and what it entails, principally, the renunciation of the nationality originally possessed by the applicant for naturalization. This rationalization is made notwithstanding that in his first affidavit, he had deposed that he knew the 1st Defendant

was born in Sierra Leone, which automatically made him a Sierra Leonean by birth. What he did not depose to, was the state of the law in Sierra Leone relating to what renunciation of citizenship really means for a citizen by birth. The fact that the 1st Defendant's name did not appear on any list prepared by the USA department responsible for naturalization matters has no bearing on the state of the law in Sierra Leone. Further, there is a principle in international law, and expressed in our Citizenship laws, that a person should not be rendered stateless intentionally. This is a matter I shall return to later.

PLAINTIFF'S STATEMENT OF CASE

29. On 15 February, 2018, the Plaintiff filed his statement of case in accordance with the rules of this Court. In view of the Plaintiff's subsequent application for the withdrawal of his case, and in view of the 7th Defendant's application that this Court should make two of the declarations set out in its statement of case, only two submissions in the Plaintiff's statement of case merit attention. At page 9 paragraph C sub-paragraph (ii)(b), the Plaintiff submits, as follows: "…..*We will submit that this case authority (i.e. Hashi v Secretary of State for the Home Department [2016] EWCA 1136) reiterates the point that citizenship: how one becomes a citizen; how one loses his citizenship, how one is an alien, is a matter of law with regards to the law of citizenship in this case in Sierra Leone, and not with reference to any other document, not even holding a passport.*" He continues further in sub-paragraph (ii)(c) , as follows: "*We will submit on the basis of the submissions above, the 1st Defendant can only be deemed a citizen or non-citizen or, be deemed to have lost his citizenship or be deemed to now be a Sierra Leonean in accordance with what the citizenship laws of Sierra Leone expressly prescribe and not with reference to any other fact.*"
30. These two sub-paragraphs succinctly set out what the Plaintiff's complaint is all about. It is our view, and as I have stated in the opening paragraphs supra, that our Sierra Leone Citizenship Act, 1973 as amended in 1976, 2006 and finally in 2017 by Act No 3 of 2017, sets out the position clearly, and requires no interpretation. It stipulates how one loses one's citizenship, and how one regains it. The Minister's letter exhibited by the Plaintiff to his second affidavit, was inaccurate in the conclusion reached therein. It was clearly tendentious, and made without

proper consideration of the law in question. It follows, that contrary to the submission made by the Plaintiff in sub-paragraph (ii)(q) at the same page 9 of his statement of case, it was not the duty of the 3rd and 4th Defendants to open an enquiry as to the current status of the 1st Defendant, once he had provided the appropriate responses required in the schedule to the Public Elections Act, 2012. Making a false statement in the declaration for nomination is punishable as Perjury. That would have been a matter for a person taking objection to 1st Defendant's nomination as a candidate. For that matter, Plaintiff has not, in all the documents filed on his behalf, himself, provided proof of his citizenship. He has merely exhibited his voter identification card. That is not, by, and in itself, proof of citizenship.

31. It follows also, that the conclusions reached by the Plaintiff at sub-paragraph (iii)(a)&(b) on pages 9 and 10 of his statement of case, are insupportable as of January, 2018. The state of the law as to citizenship in January, 2018 was as is stated in the 1973 Act as amended in 1976, in 2006 and in 2017, respectively. In his conclusions reached, the Plaintiff conflated the meaning of '*ceasing*' to be a citizen and '*renunciation*' of citizenship as one and the same thing. Ceasing to be a citizen is a passive act; you may have ceased to be one because of something you may have done, or not done. But renouncing one's citizenship requires something to be done by both the person concerned, and some other authority connected with the act of renunciation. If the further arguments advanced by the Plaintiff in his sub-paragraph (iii)(e)&(f) are taken to their logical conclusion, it would mean that, the 1st Defendant, having ceased to be a Sierra Leone citizen for all purposes and for all time, by taking on American citizenship, would automatically become stateless, once he relinquished or renounced his American citizenship. There is provision in our laws to prevent such an unfortunate consequence. In their haste, both the Plaintiff and the Minister of Internal Affairs at the time, omitted to advert their respective minds to this provision. In any event, and in order to provide clarity, one cannot, in the nature of things, cease to be a citizen by birth under Sierra Leone Law. This has been clarified by the 2017 amendment to the 1973 Act. One cannot properly deny the circumstances of his birth. One can, however, renounce an adopted nationality or, citizenship – a citizenship conferred by either naturalization or, registration, or, one transmitted to that person by one,

or, both of his birth parents. The Australian case to which reference will be made below, illustrates why, under Australian law, an Australian citizen could still be considered ineligible for election to that country's Parliament because of the transmission to that person of foreign nationality through one or both of his parents.

1ST DEFENDANT'S STATEMENT OF CASE

32. On 1 March, 2018 the 1st Defendant filed his statement of case. In this pleading, the 1st Defendant sets out in detail, the reasons why the Plaintiff's action should fail. First, he avers that he is a citizen by birth and by descent, of Sierra Leone. Second, he admits that he had in 1995, acquired citizenship of the USA by naturalization. He effectively renounced that citizenship in November, 2017, well before the nomination process for the 2018 elections began in January, 2018. He had held a press conference to announce his renunciation to the whole world. As such, the fact of his renunciation of American citizenship was a matter well known, or, must have been well known to Plaintiff. The Plaintiff had earlier in his affidavit admitted that he was aware of the press conference, and what transpired at that event. The main contention in the 1st Defendant's statement of case is that the proceedings were unnecessary. There was a laid down procedure for persons wanting to challenge the candidacy of an individual who wished to contest either election. That procedure could be found in the Public Elections Act, 2012. As such, the Plaintiff's action amounted to an abuse of the jurisdiction of this Court. I have dealt with this aspect of the case, above, and that in view of this Court's decision in the DR SYLVIA BLYDEN & OTHERS case, the Plaintiff could only have come to this Court by way of an Originating Notice of Motion.

1ST DEFENDANT'S AFFIDAVIT

33. On 19 March, 2018, 1st Defendant deposed and swore to his affidavit in opposition to the Plaintiff's Motion. This was done with leave of the Court. There is no express provision in the Supreme Court Rules, 1982 – S. I No. 1 of 1982 – (SCR,1982) for the filing of an affidavit in opposition by a Defendant. Rule 92(2)(a) speaks of an affidavit verifying the facts, particulars, documentary or otherwise contained in the defendant's statement of case. But, in order to aid our deliberations, we allowed the

1st Defendant to do this. In his affidavit, 1st Defendant narrated his ancestry; then, how he became a citizen of the United States of America, and how he renounced his citizenship of that country before being nominated as a Parliamentary candidate, and as a candidate in the Presidential election in 2018. He exhibited to that affidavit, copies of his birth certificate, his current Sierra Leone passport, his voter identification card, his certificate of loss of American nationality together with his oath/affirmation of renunciation of American nationality, and his nomination certificates for the Parliamentary and Presidential elections, respectively. Exhibited also, are copies of the decisions taken by the Kambia District Returning Officer and by the 4th Defendant on objections raised to his candidature in both elections. The last exhibit, is a copy of a document issued by the USA Government, setting out the steps to be taken in renouncing American nationality.

NO AFFIDAVIT OR STATEMENT OF CASE FILED BY AG&MJ

34. The 2nd Defendant, though represented at the hearings by State Counsel, did not file a statement of case.

STATEMENT OF CASE FILED BY 3RD & 4TH DEFENDANTS

35. The 3rd and 4th Defendants filed a joint statement of case through their Solicitors on 27 February, 2018. A Solicitor in the firm, Mr Drucil Taylor, on the same day, deposed and swore to an affidavit verifying his clients' joint statement of case. Several documents are attached to that statement of case, including Sierra Leone Gazette No. 12 published on Tuesday 30th January, 2018, setting out the names of Parties and of their respective candidates for the expected Presidential election on 27th March, 2018. The Statement of Case filed by these Defendants contends that the proper procedure for registering candidates for the Presidential election was followed to the letter; and that the Plaintiff has not adopted the proper procedure to contest the 1st Defendant's eligibility to contest that election. As they did not seek any declaration from this Court, I need not dwell further on the other issues raised in their joint statement of case, save to state that at the hearing on 29 March, 2018, Mr Taylor, Counsel for both 3rd and 4th Defendants stated that the reason they had contested the Plaintiff's claim was because in paragraph 10 of the Plaintiff's statement of case, the Plaintiff had alleged that the 3rd and

4th Defendants had been incompetent in the way they had handled the Plaintiff's objection to the 1st Defendant's nomination as a Presidential and as a Parliamentary candidate. Clearly, as the Plaintiff has withdrawn the case against all Defendants, the result is that the allegation is unfounded and remains unproven. In any event, as will be shown later in this judgment, the 3rd and 4th Defendants were quite right in the way the objections to the 1st Defendant's candidature were dealt with.

ORDER FOR STATEMENT OF CASE OF 5TH, 6TH & 7TH DEFENDANTS TO BE FILED

36. On 1 March, 2018, pursuant to an Order made by this Court, leave was given to the 5th, 6th & 7th Defendants, to file respective statements of case, out of time. This was done pursuant to powers conferred on this Court by Rule 89(5) of the SCR, 1982. They were to be filed against 2pm, the following day, Friday 2nd March, 2018. A statement of case was on the said 2 March, 2018 filed on behalf of both 5th and 7th Defendants. The 6th Defendant did not file any.

RECUSAL AND REPLACEMENT OF 2 JUSTICES

37. On the said 2 March, 2018, Counsel for the 6th Defendant, Mr S B Tejan-Sie II, applied for the recusal of Justices Solomon and Matturi-Jones, respectively. Both Justices recused themselves the following Monday, i.e. 5 March, 2018. The Hon Chief Justice was requested to replace both Justices. The Court was reconstituted, the following day, Tuesday 6 March, 2018, with Justices Alusine Sesay and Sengu Koroma, joining the panel of Justices. A further extension of time was given for the 6th Defendant to file his statement of case against 19 March, 2018, and for any other Defendant to file an amended statement of case against that date. Likewise, the Plaintiff was given leave to file a reply, if necessary, against 21 March, 2018. Hearing was then adjourned to 28 March, 2018.
38. I must state for the record, and as explained above, that the Court was forced to depart from the strict rules of filing because of the exigencies of the situation. The Presidential election, and also the Parliamentary, City and Local Councils elections, respectively, were due to be held, and were held on Tuesday 7th March, 2018, the day after the Court hearing. No candidate was able to gain 55% of the votes cast, and a run-off, as required by law, was fixed for Tuesday 27 March, 2018. The interlocutory

orders granted by this Court will not therefore necessarily be granted in future cases in the absence of such exigencies. Further, another challenge to the holding of the run-off election had to be heard by this Court, coram: BROWNE-MARKE, ROBERTS, THOMPSON, JJSC. That is Sup Ct case Misc App 1 of 2018 – NATIONAL ELECTORAL COMMISSION & ANOTHER v IBHRAHIM SORIE KOROMA. Judgment was delivered two days ago on 1 September, 2021. But for the swift action taken by this Court in that case, the holding of the run-off would have been frustrated by just a single individual.

STATEMENT OF CASE FILED BY 7TH DEFENDANT

39. Pursuant to leave granted as stated above, the 7th Defendant on 19 March, 2018, filed its statement of case dated 16 March, 2018. The 7th Defendant is the political party the 1st Defendant belongs to, and under whose banner, he contested the Presidential election held on 7 March, 2018. It reprises the case filed by the 1st Defendant and there is no need to set it out, here. It has been mentioned specifically because the 7th Defendant's Counsel, Ms Jusu-Sheriff, has applied, as she was entitled to do, for a declaration to be made by this Court in terms of paragraph 4 of that statement of case. It reads: "*The 7th Defendant submits that the question of the meaning and effect of sections 10 & 11 of the Sierra Leone Citizenship Act 1973 (as amended) although of no direct relevance and interest to the 1st Defendant in this particular case, and even though now repealed, is indeed of great moment and concern to the 7th Defendant which is a political party with obligations to promote and protect the rights and interests of its membership (whether in and out of Sierra Leone), and to the entire nation. The 7th Defendant thus invites this Honourable Court not only to refuse to make the declaration H sought in the Plaintiff's Originating Notice of Motion dated 5th February, 2018, but to rather declare that:*

"Any person who upon attaining the age of twenty-two years was or is a citizen of Sierra Leone and also a citizen of any other country did and does not by operation of law or any other means cease to be a Sierra Leonean."

SECTIONS 76(1)(a) , 124, 122 1991 CONSTITUTION & SUPREME COURT RULES, 1982

40. In this respect, the Declaration sought by the 7th Defendant is related not only to the provisions of the Citizenship Laws, but also to the interpretation to be given to section 76(1)(a) of the 1991 Constitution, specifically that portion which reads as follows: "……..*or, is a citizen of a country other than Sierra Leone, having become such a citizen voluntarily, or, is under a declaration of allegiance to such a country*….." The 1st Defendant is clearly a citizen of Sierra Leone by birth, as the documents exhibited to his affidavit, and to his statement of case, clearly show. It is not therefore necessary to embark on an excursus into the eligibility to contest Presidential elections, of one who is a citizen by naturalization.
41. Section 124(1) of the Constitution states: "*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.*"
42. Section 122(1) confers appellate jurisdiction on this Court, and does not concern us here. However, Section 122(3) does. It states: "*For the purposes of hearing and determining any matter within its jurisdiction and the amendment, execution or the enforcement of any judgment or order made on any such matter, and for the purposes of any other authority, expressly or, by necessary implication given to it, the Supreme Court shall have all the powers, authority and jurisdiction vested in any Court established by this Constitution or any other law.*"
43. As indicated in paragraph 40, supra, section 124(1) should be read subject to section 122(3). The general original jurisdiction is conferred in section 124(1). But that Constitutional provision does not go further to stipulate how the jurisdiction could be exercised. There was no need for that, as that had already been done in section 122(3). Further, section 145 of the Constitution, established the Rules of Court Committee, and sets out its purpose. Subsection 145(1) established the Committee. Subsection 145(2) sets out its duties as follows: 145(2): "*Subject to the provisions of this Constitution, the Rules of Court Committee may make Rules of Court for regulating the practice and procedure of all Courts in Sierra Leone, which shall include rules relating to the prevention of frivolous and vexatious proceedings*." The Rules governing practice and procedure in this Court are the Supreme Court Rules, 1982, made pursuant to the now repealed 1978 Constitution of Sierra Leone. By reason of the transitional

provisions contained in subsection 170(5) of the 1991 Constitution these Rules still apply in this Court.

44. Rule 89 is the principal Rule, and sets out the manner in which the original jurisdiction should be invoked. It should be by Originating Notice of Motion, supported by an affidavit setting out, among other things, the relief sought. The Plaintiff's statement of case could be filed at the same time as the Motion, but in any event, not less than 10 days after the filing of the Motion. Rule 92 states that if the Defendant upon whom the Motion has been served wishes to contest the case, he too, must file a statement of case within 10 days, or such further time as the Court may allow. The statement of case shall contain, inter alia, the facts and particulars, verified by affidavit, which the defendant seeks to rely on. The parties may agree, or, the Court may order them, to file a memorandum of agreed issues.

45. Rule 97(1) is relevant to the request made by Counsel for the 7th Defendant for a declaration to be made in 7th Defendant's favour. It states: "*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.*"

46. It is the view of this Court that, notwithstanding the application to withdraw the Plaintiff's case at the stage where arguments were due to commence, this Court has jurisdiction to determine the action brought by the Plaintiff in terms of the declaration sought by the 7th Defendant in its statement of case. It is, as it where, the 7th Defendant's "*counterclaim*". Rule 98 states: "*Where no provision is expressly made in these Rules relating to the Original and the Supervisory jurisdiction of the Supreme Court, the practice and procedure for the time being of the High Court shall apply mutantis mutandis.*"

47. Other than the general pronouncement in Rule 97(1) set out in paragraph 45, supra, there is no specific rule in the Supreme Court Rules, dealing with the situation where, the Plaintiff withdraws from the litigation after filing his statement of case, but where a defendant, at the same time, seeks judgment in terms of his statement of case. This Court had to invoke Order 24 of the High Court Rules, 2007 – HCR,2007 – in order to

permit the Plaintiff to withdraw his claim. That Rule states, as follows: "*24(3)(1) – Except as provided by rule 2, a party may not discontinue an action (whether begun by writ or otherwise), or, counterclaim, or withdraw any particular claim made by him in the action or counterclaim, without the leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counterclaim to be discontinued, or, any particular claim made in it to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action, or, otherwise as it thinks just.*"

48. The 7th Defendant has applied for its claim, so to speak, to be decided by this Court, and this Court thus, has the jurisdiction to do so. The case of Sup Ct case 1/2002- SANKOH v PRESIDENT A TEJAN KABBA, judgment delivered on 29 April, 2002 by WRIGHT, JSC, shows that this can be done. There, the Plaintiff filed his Originating Notice of Motion, and did nothing further. The Defendant applied by Notice of motion for the Originating Notice of Motion to be struck out. The Court held that it had jurisdiction to hear and determine the case on the basis of the Defendant's Motion. Relying on Rule 98 of the SCR,1982, and the Plaintiff's non-appearance, the Plaintiff's originating notice of motion was struck out for .

49. Likewise, in the Republic of The Gambia, the Supreme Court has taken the same stance. The rules governing appeals and original action in the Supreme Court, are in very similar terms. One of the cases in which the issue of what should happen when a party to the litigation in the Supreme Court withdraws, or, abandons its statement of case, is SC Criminal Appeal No 11/2014, JOSEPH WOWO v THE STATE, Coram: H B JALLOW, CJ, BROWNE-MARKE, C S JALLOW, SEY, NJIE, JJSC; Judgment delivered 23 November, 2017 by BROWNE-MARKE, JSC. There, I said, at paragraph 34, page 25 of the judgment of the Court: "*I shall end by recording for posterity that when the appeal came up for hearing during the May – June sittings, Ms Drameh appeared for the Appellant, and Mr Abubakarr appeared as Counsel for the Respondent. Ms Drammeh relied on the statement of case filed by the Appellant's original Counsel, Mr Achigbue. Mr Abukarr sought leave, and was granted leave by this Court on 5th June, 2017 to file the Respondent's statement of case out of time. But when the appeal came up for hearing the following day,*

i.e. 6th June, 2017, Mr Abubakarr surprisingly informed the Court that he wished to withdraw the Respondent's statement of case. The Court granted him leave to do so. On reading through the statement of case, it was clear that considerable thought and research had been put into it, but the Court could not, but accede to Mr Abubakarr's application. Thereupon, Ms Drameh asked that the Appellant's convictions be quashed. This Court took the view, and rightly so, that the withdrawal of the Respondent's statement of case did not amount to a command to this Court to set aside the Appellant's convictions. This Court has made it clear in another case decided during the May/June sittings that even where a Respondent states that he or she no longer wishes to defend the judgment of the Court below, or, to go on with prosecuting his or her case when the original jurisdiction of this Court is invoked, this Court will have to decide such case on its merits once it has become seised of it."

50. The earlier case referred to in that judgment, was Civil Suit SC 003/2016 – OUSAINOU DARBOE & 19 OTHERS v THE INSPECTOR-GENERAL OF POLICE, DIRECTOR OF NATIONAL INTEELLIGENCE AGENCY & THE ATTORNEY-GENERAL; Coram: H B JALLOW, CJ, YAHAYA, BROWNE-MARKE, C S JALLOW, SEY, JJSC; judgment delivered 29 May, 2017, by H B JALLOW, CJ. The Learned Chief Justice, Gambia, at page 2 of his judgment, had this to say after the Attorney-General in person, had applied to the Court for leave to abandon the statement of case filed on behalf of his predecessor in office: *"This Court takes judicial knowledge of the fact that in January, 2017 there was a change of Government in The Gambia. When the case came up for hearing before the full Court on 26th May, 2017, the new Attorney-General, Aboubacarr Tambadou, appearing in person and on behalf of the other Defendants, indicated to the Court that the Defendants had wished for the matter to be resolved other than through litigation in view of what the Learned Attorney-General described as the public commitment of the new Government to uphold the rights and freedoms of the citizens. The Learned Attorney-General stated that the Defendants have determined that they can no longer defend the position taken by the Defendants prior to the change of Government; that as a result, the Defendants wished to abandon their statement of case in this suit; that for the avoidance of doubt, the Defendants admit that the prayers sought by the Plaintiff are in accordance with the relevant provisions of*

the Constitution. In short, the Defendants are no longer contesting the claims of the Plaintiffs. Their request to abandon their statement of case is granted and the statement is accordingly struck out. The Learned Attorney-General is commended for his candour in declining to defend a case he believes to be indefensible. In view of the admissions of the Defendants, Mr Antouman Gaye, learned counsel for the Plaintiffs, has urged the Court to enter judgment for his clients. In the ordinary civil suit that would probably be the consequence of no contest by the Defendants and by their admission of the Plaintiffs' claims. But this is no ordinary case. It is a case where the constitutional validity of legislation is being challenged by the Plaintiffs; the legitimacy of the exercise of the legislative power is being questioned; the Court is being urged to exercise its power and to quash legislation enacted by Parliament; the issues raised in this case are issues of law, not of fact. This case and the issues raised for determination are all of great public interest and importance; their interest and importance go beyond those of the parties to the case. The resolution of the issues concerned cannot be by judgment in default of the claims being contested by the Defendants; or, by the admissions of the Defendants. The nature of the claims, their complexity, their public importance, and the public interest in them all require that they be determined in a full hearing by the Court." The case did proceed to a full hearing. On 23 November, 2017, the Plaintiffs' claims were dismissed in a judgment delivered by H B JALLOW, CJ chairing the same panel of Justices. This Court echoes the sentiments of the Learned Chief Justice, Gambia, that the action under consideration by this Court, is of great public interest and importance. This is why we heard Ms Jus-Sheriff in support of her application for a declaration in terms of paragraph 4 of the 7th Defendant's statement of case.

BACKGROUND TO ACTION

AUSTRALIAN CASE: RE CANAVAN & OTHERS

51. Before going on to determine one's eligibility to contest a presidential election in Sierra Leone, according to the country's citizenship laws, it is necessary to map out how this issue came to the fore in the second half of 2017. Elections had already been fixed for February, 2018 at the time. These elections were then postponed to March, 2018. The citizenship qualification for eligibility to contest Parliamentary elections,

was brought sharply into focus by events in Australia. There, certain Senators and Members of the House of Representatives were found to have had dual nationality, based, in some cases on their respective places of birth, and in others, on their parentage. Section 44(i) of the Australian Constitution provides: "Any person who: *(i) is under any acknowledgement of allegiance, obedience, or adherence to a foreign power, or, is a subject, or, a citizen or, entitled to the rights or privileges of a subject or citizen of a foreign power……..shall be incapable of being chosen or, of sitting as a senator or a member of the House of Representatives……"*

52. The history of challenges to the eligibility of persons to contest Senate and House elections in Australia, began with SARINA v O'CONNOR (1946); CRITTENDEN v ANDERSON (1950); NILE v WOOD and Re WOOD [1988] HCA 22 &30, up to 1992 in the important case of SYKES v CLEARY [1992] HCA 60, when it was decided by the High Court of Australia that to be eligible to contest an election, the candidate must be qualified at the time of nomination as a candidate. In FREE v KELLY (1996) 185 CLR, 296, Kelly was a dual citizen of both Australia and New Zealand at the time of her nomination. That aspect of the case was not pursued because Kelly conceded that she was ineligible while serving as an officer of the Royal Australian Air Force. In SUE v HILL [1999] HCA,30, Hill held dual nationality of both Britain and Australia. The Court held that as such, she was ineligible to take her seat in the Senate. The crisis in 2017 followed. It was discovered that several Parliamentarians in the Australian Parliament, held dual nationality. The Federal Prime Minister, Mr Turnbull, acting in a very statesmanlike manner, as Members of his own party were among the number, referred the matter of their individual eligibility to the High Court of Australia for determination.

53. This was the case of Re CANAVAN, LUDLAM, WATERS, ROBERTS (No 2), JOYCE, NASH [2017] HCA 45. On 27 October, 2017, the High Court handed down its unanimous decision. Section 44(i) of the Australian Constitution was clear and unambiguous. It must be interpreted according to its ordinary and natural meaning. The fact of citizenship was disqualifying regardless of whether the person knew of the citizenship or engaged in any voluntary act of acquisition. Joyce, Ludlam, Nash, Roberts and Waters were, on the facts, ineligible to hold their respective seats in the Senate and in the House of Representatives, respectively. However,

Canavan and Xenophon were eligible due to not holding foreign citizenship. In the summary of the decision issued by the Court, its approach was clearly spelt out. "*The approach to construction urged by the amicus curiae and by Mr Windsor was to give s.44(i) its ordinary textual meaning, subject only to the implicit qualification in s.44(i) that the foreign law conferring citizenship must be consistent with the constitutional imperative underlying that provision, namely, that an Australian citizen not be prevented from participation in representative government where it can be demonstrated that he or she took all steps reasonably required by foreign law to renounce his or her citizenship of a foreign power*…..The Court held that the approach of the amicus and Mr Windsor must be accepted, as it adheres most closely to the ordinary and natural meaning of the language of s.44(i) and accords with the views of a majority of Justices in SYKES v CLEARY [1992] HCA, 60.

SECTION 122 OF THE 1991 CONSTITUTION

54. Our Constitution does not confer an immediate referral duty on our President. What it does is to provide, in the proviso to section 122(1) as follows: "….*notwithstanding any law to the contrary, the President may refer any petition in which he has to give a final decision to the Supreme Court for a judicial opinion.*" All the same, in the name of the national interest of the country, it would seem that it would have been more appropriate for either the Presidency, or, in the least, the 2nd Defendant, the country's Attorney-General & Minister of Justice, to have brought up this all important issue for determination by this Court. The Attorney-General & Minister of Justice was the 3rd Defendant in these proceedings, but remained mum by not filing any statement of case, and by not instructing Counsel who appeared on his behalf, to say anything one way or the other. To do so apparently, by proxy, through the Plaintiff herein may not have served the country's best interests. I use the expression "*by proxy*" advisedly, as the Plaintiff says he is a paid up member of the party which held the Presidency and the majority in our Parliament. This led to Ms Jusu-Sheriff applying for the Court to allow as amicus curiae, the Human Rights Commission to participate in these proceedings so as to represent the public interest.
55. Other jurisdictions have had cause over the years to deal with this thorny issue of the effect of dual nationality on one's chances of

becoming a representative of the people. There are two cases from Kenya, I'll refer to.

THE KENYAN CASES

56. The first is Election Petition 15 of 2008: MAHAMUD MUHUMED SIRAT v ALI HASSAN ABDIRAHMAN & 2 OTHERS [2010] electronic Kenya Law Reports, HC. The 1st Respondent claimed that the Petitioner was not a Kenyan citizen, he having renounced his citizenship, in order to acquire Australian citizenship. The Court was asked to interpret section 35(1) of the Kenya Constitution. It provides that no person shall be qualified to be elected a member of the national assembly, inter alia, if at the time of his nomination by virtue of his own act, is under an acknowledgement of allegiance, obedience or adherence to a foreign state. Section 97(1) of the Kenya Constitution is also couched in similar terms as the now repealed section 11 of the 1973 Act. That is the provision which speaks to a citizen ceasing to be one, when on attaining the age of 22 years, he is still the citizen of another country. As stated before, in our jurisdiction, that obnoxious provision was repealed in 2006. At page 7 of the electronic version of the judgment, KIMARU, J had this to say about the two Kenyan provisions referred to above: Per KIMARU, J at page 7: "*My reading of sections 88, 90, 92, 93, 94, 95 and 97 of the constitution leads me to the conclusion that the said sections of the Law prohibited persons of a particular category who are citizens of other countries at the time of Kenya's independence. It does not apply to citizens of Kenya who acquired citizenship by virtue of their birth from acquiring citizenship of another country after attaining twenty-one years of age. The said sections of the Constitution must be read in the context by which they were enacted. At the time Kenya attained independence, certain category of persons who qualified to acquire Kenyan citizenship, and having the option of retaining British citizenship, were being subtly encouraged to decide whether they desired to be citizens of the newly independent Kenya, or, be subject of the United Kingdom and Colonies. Even assuming that the petitioner had indeed acquired Australian citizenship, there is nothing in the Constitution that specifically prohibits the petitioner from acquiring such citizenship while at the same time retaining his Kenyan citizenship provided that Australian Law allows for its citizens to acquire and have dual citizenship. There is only one*

exception; this is where the petitioner specifically renounces his citizenship of Kenya and acquires citizenship of another country that does not allow dual citizenship. The 1st Respondent placed no evidence before this Court that establishes that the petitioner has renounced his citizenship of Kenya as contemplated by section 97(7) of the Constitution"

57. The Plaintiff herein failed to do the same: he failed to provide evidence to show that 1st Defendant had indeed renounced Sierra Leone citizenship at any point in time. As the Learned Judge pointed out in his judgment, the prohibition in the Kenya Constitution, similar to sections 10 and 11 of the 1973 Act, does not automatically prohibit a citizen by birth from acquiring the citizenship of another country after attaining the age of twenty one years. A citizen by birth would only theoretically lose his citizenship by birth of a country, if, the country whose citizenship he seeks to acquire, requires it. And that could only be done, in this jurisdiction after the procedure laid down in section 15 of the 1973 Act has been followed, so that the person concerned does not become stateless.
58. The second case is that of Civil Appeal 280 of 2013 – BISHOP DONALD KISAKA v ATTORNEY-GENERAL & 2 OTHERS, electronic Kenya Law Reports, CA, GITHINGI, WARSAME, KARIUKI,JJA. I must point out at the start, that 2010 Kenya Constitution recognized dual citizenship, unlike the 1963 Constitution. In that case, the Appellant Bishop Kisaka was a citizen by birth of Kenya. He subsequently acquired United States citizenship, and thus became a dual citizen. That case concerned the interpretation to be given to several provisions in the 2010 Kenya Constitution, in particular, Articles 99, 78, 137 and 148 thereof; and section 22(1) of the Elections Act, 2011. The 2010 Kenya Constitution recognized dual citizenship. Dual citizenship was also recognized in section 8(1) of the Kenya Citizenship and Immigration Act, 2011. At page 8 of the electronic version of the judgment, the Court of Appeal held, inter alia: "….*The recognition of dual citizenship by the new Constitution is a bold milestone and a progressive one considering that many countries even the developed countries are reluctant to allow dual citizenship. It is a measure of our understanding and recognizing the peculiar circumstances that prevail in our legal regime."*

59. This is a timely nod to our own Legislature. At page 10 of its judgment, the Kenya Court of Appeal, had this to say: *"Section 22(1) of the Elections Act provides that a person may be nominated as a candidate for election under the Act only if that person is qualified to be elected to that office under the Constitution and the Act. The Learned Judge relied on that provision and Article 78(2) for the finding that a dual citizen is not qualified for nomination as a candidate for an election. This was an erroneous finding for, as observed above, the proscription is not against a dual citizen vying for election but against a dual citizen holding a State office. That is a point which was missed by the Learned Trial Judge . We think that was a fundamental error….."*

60. In order to deal comprehensively with this thorny issue of who is eligible in terms of section 76(1)(a) of our 1991 Constitution to contest Presidential elections, I must now turn my attention to the cases in our jurisdiction dealing with the eligibility of a candidate to contest Parliamentary or local elections.

SIERRA LEONE CASES ON CITIZENSHIP

61. I shall start with TOUREHKEH v BAYO [1957-60] ALR SL, 72, WACA, Judgment delivered by AMES, Ag CJ, Gambia. The issue there was to determine on whom the burden should lie, where one party alleges that another is not eligible to contest local council elections on the ground that the person was an alien, i.e. not a Sierra Leonean. The Court held that the burden lay on the person who was claiming to be eligible as the matter lay peculiarly within his knowledge. The appellant's appeal was therefore dismissed. He claimed he was a Sierra Leone citizen, holding the passport of a British Protected Person, but could not otherwise prove that he had been born in Sierra Leone. BAYO later sought leave to appeal against that decision to the Privy Council, on the ground that the matter was of public importance. MARKE, J (later, R B MARKE, Ag CJ) in dismissing the application, was unimpressed about the point raised, remarking at page 101 of his judgment that: *"It is difficult to conceive how the question whether the applicant is a British subject merely because he is in possession of British passport can be a matter of any interest to any person other than the applicant."* BAIRAMIAN, CJ (Sierra Leone), and LUKE, J, concurred in the result.

62. The next was JAMES THOMAS REFFELL v R [1963] 3 SLLR, 102, CA, AMES, Ag P, DOVE-EDWIN, JA and MARKE, J. The issue there was whether Mr Reffell was an alien within the meaning of s.15 of the Freetown Municipality Act, Chapter 65 of the Laws of Sierra Leone, 1960, and as such, not qualified to contest the City Council elections. In October, 1962, an alien was one who was neither a citizen of Sierra Leone, nor a British subject. Mr Reffell was charged in the High Court with Perjury in that he had made a false declaration in his nomination paper, to wit, that he was qualified to contest the Council elections. At the trial, the prosecution alleged that he was a Liberian citizen. He was convicted and appealed against his conviction to the Court of Appeal. In giving judgment for the Court, AMES, Ag P, had this to say at page 107: "*In our view, this passport had no probative value in this case. It does not state the appellant to be a Liberian national. There was no evidence before the Court of the law in Liberia concerning the issue of a passport, whether only issued to their own nationals, and what proof is required and so on. The passport states that the appellant was born at Buchanan, which was assumed to be in Liberia (there was no evidence to that effect). So, he may have been a Liberian national at birth. If his parents were not such, he may have had dual nationality at birth. But one cannot be helped by what may have been. Liberian law as to nationality had to be proved as a fact, and there was no evidence on the point. Russell, J said in Stoeck v Public Trustee [1921] 2 Ch.67, 82 which was cited by Mr Macaulay for the respondent: 'whether a person is a national of a country must be determined by the municipal law of that country. Upon this, I think all text writers are agreed…..*' In the result, the Court adjudged that Mr Reffell had not made a false declaration during the nomination process, and was not therefore guilty of perjury. The Learned Trial Judge should have upheld a no case submission made on his behalf. Mr Reffell's appeal was allowed. The important point made here, is that one's citizenship at any particular point in time must be determined by the local law, and not by the law of any other country. I shall return to this point, when dealing with s.15 of the 1973 Act.

63. I will now turn my attention to the case of AKAR v ATTORNEY-GENERAL [1967-68] ALR SL, 283 HC, TEJAN-SIE, CJ; [1967-68] ALR SL, 381, CA, SIR SAMUEL BANKOLE-JONES, P, DOVE-EDWIN, MARCUS-JONES, JJA; [1968-69] ALR SL, 274, HL, judgment delivered by LORD MORRIS

of BORTH-Y-GEST. The issue there was whether the 1961 Constitution which conferred citizenship on the Plaintiff, Joseph Akar, who was of mixed African and Lebanese parentage, could be taken away by a subsequent Act of Parliament. Under section 1 of the 1961 Constitution Mr Akar was considered a citizen by birth of Sierra Leone. The Constitution was amended by the Constitution (Amendment) Act, 1962 – Act No 11 of 1962 and the Constitution (Amendment) (No.2) Act, 1962 – Act No 12 of 1962. These Acts took away Mr Akar's right to citizenship. These two Acts were preceded by Act No 10 of 1962, passed the same day, 17 March, 1962. That was the Sierra Leone Nationality and Citizenship Act, 1962

64. In the High Court, TEJAN-SIE, CJ held that he had not been so deprived of his citizenship, and that the purported amendment of s.1 of the 1961 Constitution by the Act Nos. 11 and 12 respectively of 1962, were ultra vires the 1961 Constitution, and therefore null and void. The Court of Appeal took the opposite view, and reversed the High Court decision. It reasserted the primacy of the legislature to pass legislation which could deprive one of vested rights. Mr Akar then took his case to the Judicial Committee of the Privy Council. The Judicial Committee agreed, unanimously, (LORD GUEST dissenting on just one issue) with the reasoning and judgment of TEJAN-SIE, CJ, and allowed Mr Akar's appeal. It would have been seen that the 1961 Constitution of Sierra Leone as amended, made specific provision for citizenship. But when we attained Republican status in 1971, the Constitution of Sierra Leone, 1971 and the Constitution of Sierra Leone (No 2), 1971 were silent on this issue. The whole issue was finally addressed once more in the Sierra Leone Citizenship Act, 1973.

SIERRA LEONE CITIZENSHIP ACT, 1973 AS AMENDED IN 1976, 2006 & 2017

65. Section 2 of the Sierra Leone Citizenship Act, 1973 provides as follows: "*Every person who, having been born in Sierra Leone before the nineteenth day of April, 1971, or who was resident in Sierra Leone on the eighteenth day of April, 1971, and not the subject of any other State, shall, on the nineteenth day of April, 1971, be deemed to be a citizen of Sierra Leone by birth: PROVIDED that – (a) his father or his grandfather was born in Sierra Leone; and (b) he is a person of negro African*

descent." On the evidence provided, 1st Defendant, was clearly a person of negro African descent, was born to Sierra Leonean parents in Sierra Leone in 1961, and as of 19 April, 1971 was deemed a Sierra Leonean citizen by birth. Therefore, he did not need to go through the process of naturalization. Part III of the 1973 Act did not therefore apply to him.

66. Section 5 of the 1973 Act was replaced and replaced by the 2017 Act, Act No. 3 of 2017. This Act was given the Presidential assent on 6 July, 2017. Section 5 now states: "*Every person born outside Sierra Leone on or after the nineteenth day of April, 1971 of a father or mother who was, or, would but for the death of the person have been a citizen of Sierra Leone by virtue of sections 2, 3 and 4, is a citizen of Sierra Leone by birth.*" The importance of the 2017 amendment cannot be underestimated. It clarifies for all time that one can be a citizen by birth of Sierra Leone even though one was born abroad.

67. Section 10 of the Act states: *"No person shall have Sierra Leonean citizenship and any other citizenship at one and the same time."* In 2006, the Sierra Leone Citizenship (Amendment) Act, Act No. 11 of 2006 repealed and replaced this provision, as follows: "*A citizen of Sierra Leone may hold a citizenship of another country in addition to his citizenship of Sierra Leone.*" In 2006, therefore, it was permissible for the 1st Defendant to hold the citizenship of Sierra Leone, and that of the United States of America.

68. Section 11 of the 1973 Act states: "*Any person who, upon attaining the age of twenty one years, is a citizen of Sierra Leone and also a citizen of another country shall cease to be a citizen of Sierra Leone upon his attaining the age of twenty-two years, (or in the case of a person of unsound mind, at such later date as may be prescribed) unless he has complied with paragraphs (a), (b) and (c) of section 9.*" The 1st Defendant reached the age of 21 years in 1982. According to the un-contradicted evidence before us, he acquired American citizenship by naturalization in 1996, when he was over 35 years of age. He therefore did not become a dual citizen at the age of 21 years. He may have become so in 1995, but by 2006, this was permissible by virtue of the 2006 Act. In any event, section 11 of the 1973 Act, was repealed by section 9 of Act No 11 of 2006 and is no longer law in Sierra Leone. It follows that 11 years before 1st Defendant declared his intention to contest the Presidential election in Sierra Leone, he was entitled to hold dual citizenship.

69. Part V of the 1973 Act applies to the 1st Defendant as well. He was a citizen of Sierra Leone, and ipso facto, a citizen of the Commonwealth.
70. Part VI does not apply to the 1st Defendant. He was never a citizen of Sierra Leone by naturalization or registration. He was always a citizen by birth.

SECTION 15 OF THE 1973 ACT

71. I now turn my attention to section 15 of the 1973 Act. I shall quote it in full: *15(1) Where any citizen of Sierra Leone who is of full age and capacity makes a declaration renouncing his citizenship of Sierra Leone, the Minister shall, if he is satisfied that the person is, on ceasing to be a citizen of Sierra Leone, will become – (a) a citizen of a Commonwealth country, or, the Republic of Ireland; or (b) a national of a foreign country, cause the declaration to be registered, and thereupon that person shall cease to be a citizen of Sierra Leone: PROVIDED that the Minister may withhold registration of such declaration if he is satisfied – (i) that the person is ordinarily resident in Sierra Leone; or (ii) that the person has acquired such rights or interest in Sierra Leone as the Minister considers to be inconsistent with an alien nationality; or (iii) that the registration would otherwise be contrary to the public good. (2) For the purposes of this section, any woman who is or has been married shall be deemed to be of full age, and of full capacity if she is not of unsound mind.*" This is the only way it can be said that a citizen of Sierra Leone has lost his citizenship, and has therefore ceased to be a citizen of Sierra Leone.
72. There is not a scintilla of evidence, to quote, The Hon Dr Abdualai Conteh, lead Counsel for the 1st Defendant, that any Minister of Government, including the author of the letter of 31 January, 2018, exhibited as "*DF5*" to the Plaintiff's affidavit, did any of the things he was supposed to do in the event that a Sierra Leonean citizen renounced his citizenship. And there is certainly no evidence that 1st Defendant renounced his Sierra Leone citizenship and/or nationality in the manner prescribed in the said statutory provision.
73. Further to what I have stated above, for some inexplicable reason, the Plaintiff has proceeded on the basis that 1st Defendant renounced his Sierra Leonean citizenship. He has not explained in his affidavit, nor in his statement of case, how he came to this conclusion. He has not stated that it is requirement of the citizenship laws of the United States that in

order to acquire its citizenship by naturalization, the applicant should first renounce his original citizenship. And for that matter, Sierra Leone does not require such a renunciation before conferring citizenship by naturalization. As I have pointed out already, public policy, and the express provisions of section 15 of the 1973 Act, require that an individual should not be rendered stateless by State authorities. Thus, the express provisions in paragraphs (a) & (b) of section 15(1).

74. The Plaintiff is therefore quite wrong in the quick conclusions he has reached in paragraphs 33, 34, 35 &36 of his second affidavit deposed and sworn to on 12 February, 2018. As to whether 1st Defendant did renounce his American citizenship, his exhibit "KKY4" and "KKY5" respectively, provide clear evidence of this. "KKY4" is a copy of his certificate of loss American nationality; and "KKY5" is a copy is a copy of his oath of renunciation of his American nationality. Both documents support his paragraph 14 where he deposes that he formally renounced his American citizenship on 22 November, 2017, well before allowing his name to go forward for nomination of election to the office of President.

ASSESSMENT OF THE LAW AND THE FACTS OF THE CASE

75. The researches allegedly conducted by the Plaintiff, as deposed to in paragraphs 40 – 44 of his second affidavit are of no moment when put side by side with 1st Defendant's certificate of loss of nationality. The bold assertion made by the Plaintiff in his paragraph 48 that 1st Defendant was not in fact a Sierra Leonean in 2005, is also unfounded, and in fact untrue. 1st Defendant never relinquished or renounced his citizenship in the manner prescribed by section 15 of the 1973 Act. In paragraph A sub-paragraph v of his statement of case, 1st Defendant, through his Counsel, has averred, among other things, that: "*…..but he (i.e. 1st Defendant) always carried a Sierra Leonean passport and manifested keen interest in the socio-economic and political processes of his native land.*" 1st defendant's most recent passport was exhibited to his affidavit of 19 March, 2018 as exhibit "KKY2". Plaintiff has not in any way refuted this averment.

76. It seems to this Court, that whatever may have been Plaintiff's conception or, misconception of, or, about 1st Defendant's status, he was duly notified of the same as of 19 March, 2018 at the latest. But it was only on 28 March, 2018, 9 days thereafter, that he finally conceded in his

affidavit in support of his motion to discontinue the action, that 1st Defendant had duly renounced his citizenship of the United States. His action was in truth unnecessary. The notice of discontinuance bearing date 22 March, 2018 but filed on his behalf on 23 March, 2018 was ineffective, as we ruled at the time, to discontinue the action he had begun.

77. Counsel for the 7th Defendant, the NGC, has stated the reasons why, notwithstanding the Plaintiff's discontinuance of his case, the NGC would still be seeking the declaration referred to above. This is understandable. In the first place, the Supreme Court is not the proper forum for challenging the eligibility of candidates for Parliamentary elections. Also, where objection is taken to the eligibility of a candidate for a Presidential election, the proper method is set forth in clear terms as explained in paragraphs 3 – 9, supra. There is no real need to deal with it here. The focus is on the declaration sought by the 7th Defendant, a declaration well within the remit of this Court. The clear and unambiguous answer to the question posed by Counsel for the 7th Defendant is that a person does not cease to be a citizen of Sierra Leone just because upon attaining the age of 22 years, he had obtained, or, subsequently obtained the citizenship of another country.

78. Section 41 of the 1991 Constitution deals with the eligibility of a candidate for the Presidential election. He should be a citizen of Sierra Leone; he should be a member of a political party; he should have attained the age of 40 years. 1st Defendant met these criteria. The fourth criterion is that he should otherwise be qualified to be elected as a Member of Parliament. This criterion is tied to sections 75 and 76 of the Constitution. He clearly met the criteria laid down in section 75. Section 76 (1) states as follows: "*No person shall be qualified for election as a Member of Parliament – (a) if he is a naturalized citizen of Sierra Leone, or is a citizen of a country other than Sierra Leone, having become such a citizen voluntarily, or is under a declaration of allegiance to such a country.*" The 1st Defendant was and is a Sierra Leonean by birth, and never lost that right. He was not, and is not a naturalized citizen. He did voluntarily become a citizen of the United States of America in or around 1995. He gave up that citizenship in November, 2017, As of 18 January, 2018, he was no longer a citizen of the United States of America. He was therefore qualified for election as a Member of Parliament. A fortiori, he

was qualified to contest the Presidential election. Further, he could only be asked to vacate his seat in Parliament, or would become ineligible to continue to occupy his seat in Parliament, if, according to section 77(1)(d) of the 1991 Constitution, he ceases to be a citizen of Sierra Leone. This specific provision throws open for argument the issue of whether a Member of Parliament elected as such, at a time when he held dual nationality, could be asked to vacate his seat for that reason, though he continues to hold Sierra Leone citizenship. It seems to me that he could not so long as he continues to hold Sierra Leone citizenship. Though possessed of dual citizenship, he would be qualified in terms of section 77(1)(g) of the 1991 Constitution, to be registered as an elector for election of Members to Parliament. There is no disability attached to dual nationality for the purpose of being eligible as an elector under the PEA,2012.

79. Lastly, this Court has been invited by Counsel for all the Defendants to address the issue of Costs. This is clearly not public interest litigation. This action was started by the Plaintiff on his own. Matters of public interest have been canvassed before in these Courts. A case in point is PALMER v THE GOVERNOR [1950 -56] ALR SL , 258, HC. SMITH, CJ. There, Mr Palmer (then, commonly known as 'Bombass Palmer) sued the Governor, claiming that certain legislation passed by the Her Majesty The Queen by way of the Sierra Leone (Legislative Council) Order in Council, 1951, was invalid and could not be applied in Sierra Leone. The action was lost because, according to SMITH, CJ, at page 261, the Governor should not have been sued as such; he should have been sued in his own name. Mr Palmer did not stand to gain anything personally from the litigation. He thought the Order in Council was unlawful. No Order for Costs was made by the Learned Chief Justice. But Mr Palmer was not dissuaded by this defeat. He brought another action, this time round, against the Governor in his own name, but seeking the same relief. The case is PALMER v STOOKE & ATTORNEY-GENERAL [1950-56] ALR SL, 284, HC, SMITH, CJ. He lost again, and SMITH, CJ made no order as to Costs. Mr Palmer's appeal against that decision to the West African Court of Appeal was again dismissed at pages 325 to 330 of the same Report. This time round however, Costs were awarded against him, such Costs to be taxed.

COSTS

80. Counsel for the Defendants have implored this Court to award punitive Costs against the Plaintiff. Their main contention, collectively, is that the action was bound to fail for the reasons stated in this judgment. In their view, it was brinkmanship of the worst kind. In this respect, Counsel jointly for the 1st Defendant, and also Counsel for the 7th Defendant, Ms Jusu-Sheriff, cited to us the relevant case law authority. She cited CHOKOLINGO v LAW SOCIETY OF TRINADAD & TOBAGO [1978] 30 WIR, 372, CA; and also MYERS v ELMAN [1939] 4 All ER 484, HL. We have considered these authorities, but this Court has come to the conclusion that whatever may have been the fault of Counsel for the Plaintiff, he intimated this Court of his instructions to withdraw the action, as soon as he was so instructed. He did not procrastinate, or prevaricate. He may have been mistaken as to the law, as we have pointed out above, but he ought not to be punished for that. The business of Counsel is to present and to argue his case based on the instructions he has received. It is for this reason, that the Court has made reference to PALMER's respective cases in the High Court and in the West African Court of Appeal. Counsel for the Plaintiff in those matters, OTTO DURING ESQ and RONALD BEOKU-BETTS ESQ were well respected lawyers in their day, but they brought an action which was bound to fail, the first time round, because no action was maintainable against the Governor in his official capacity. In the second case in the High Court, SMITH, CJ, at page 294 LL5-7, SMITH, CJ describes Mr Palmer's case as follows: "*It is clear therefore that the plaintiff's first claim is quite hopeless and should not be allowed to proceed further.*" At page 295 of the same Report, the Learned Chief Justice had this to say about Mr Palmer's second claim: "*This claim is too vaguely drawn and does not allege any unlawful act, and I hold therefore that that claim has no hope of success.*" At the end of his judgment SMITH, CJ had this to say at page 297, LL4&5: "*….I dismiss the action summarily. There will be no order as to Costs.*" This Court believes that it should follow the reasoning of the Learned Chief Justice as to the substance of the Plaintiff's claim in that action, but should differ on the issue of Costs. We are of the view that the Plaintiff was well aware of the 1st Defendant's status before he gave instructions to his Counsel. He should therefore bear the Costs of the action up to the date he discontinued the action.

81. In the result, the 7th Defendant's declaration is granted

(1) "This Honourable Court Declares and Orders that "*Any person who upon attaining the age of twenty-two years was or is a citizen of Sierra Leone and also a citizen of any other country did and does not by operation of law or any other means cease to be a Sierra Leonean.*"

(2) The Plaintiff shall bear the Costs of the action up to the date it was discontinued, in favour of the 1st, 3rd and 4th Defendants. The 5th and 6th Defendants were joined at the instance of the 1st Defendant. The 2nd Defendant did not participate actively in the action and is not therefore entitled to Costs."

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