

MISC/APP 20/21

2021

T.

IN THE SUPREME COURT OF SIERRA LEONE
(CIVIL DIVISION)

AND

IN THE MATTER OF SECTIONS 119, 122, 124 AND 125 OF THE CONSTITUTION OF
SIERRA LEONE 1991, ACT NO. 6 OF 1991

IN THE MATTER OF SECTION 137 OF THE CONSTITUTION OF SIERRA LEONE 1991,
ACT NO. 6 OF 1991

IN THE MATTER OF THE SUSPENSION OF THE PLAINTIFF FROM OFFICE AS AUDITOR
GENERAL BY LETTERS DATED 9th AND 29th DAYS OF NOVEMBER 2021

IN THE MATTER OF THE SETTING UP OF A TRIBUNAL TO INVESTIGATE THE
PLAINTIFF BY PUBLIC NOTICE DATED 17th DAY OF NOVEMBER 2021 AND BY LETTER
DATED 29th NOVEMBER 2021

IN THE MATTER OF THE COMMENCEMENT OF PROCEEDINGS FOR THE ULTIMATE
REMOVAL FROM OFFICE OF THE PLAINTIFF AS AUDITOR GENERAL

IN THE MATTER OF AN ACTION PURSUANT TO THE SUPREME COURT RULES 1982

PART XVI, RULES 89 - 98 STATUTORY INSTRUMENT NO.1 OF 1982

BETWEEN: -

MRS. LARA TAYLOR-PEARCE
5 ALPHA KANU DRIVE
OFF SCAN DRIVE
WILBERFORCE
FREETOWN

- PLAINTIFF

AND

THE ATTORNEY GENERAL & MINISTER OF JUSTICE
LAW OFFICER'S DEPARTMENT
GUMA BUILDING
LAMINA SANKOH STREET
FREETOWN

- 1ST DEFENDANT

JUDICIAL AND LEGAL SERVICE COMMISSION
LAW COURTS BUILDING
SIAKA STEVENS STREET
FREETOWN

- 2ND DEFENDANT

THE HON. JUSTICE NYAWO JONES (RETIRED)
KABBA DRIVE
JUBA HILL
FREETOWN

- 3RD DEFENDANT

THE HON. JUSTICE IVAN SESAY J.A
C/O LAW COURTS BUILDING
SIAKA STEVENS STREET
FREETOWN

- 4TH DEFENDANT



LAHAI FARMER ESQ.
77 HABIB DRIVE
HILL STATION
FREETOWN

- 5TH DEFENDANT

ABU BAKARR KING ESQ.
2 OLD CITY ROAD
CONGO WATER
WELLINGTON
FREETOWN

- 6TH DEFENDANT

ORIGINATING NOTICE OF MOTION

TAKE NOTICE that the Supreme Court will be moved at the expiration of 21 days from service upon you of this notice, or so soon thereafter as Counsel can be heard for the following reliefs, pursuant to Sections 119, 122, 124, 125 and 137 of the Constitution of Sierra Leone Act No.6 of 1991:

- I. The interpretation of sections 137 (4), 137 (5) & 137 (6) of the Constitution of Sierra Leone 1991 by the determination of the following questions: -
 - i. Whether upon a true and proper construction of section 137 (5) of the Constitution of Sierra Leone 1991 the 2nd Defendant established under section 140 of the Constitution of Sierra Leone can represent to the His Excellency the President that the question of the removal of the Plaintiff from the office of the Auditor General of the Republic of Sierra Leone be investigated without first having received any prior complaints from any 3rd party?
 - ii. Assuming, without conceding, that there were complaints before the 2nd Defendant and that such complaints contained allegations (which is not conceded) set out in either the 1st letter dated the 9th day of November 2021 or the 2nd letter dated the 29th day of November 2021: did those complaints fall within the ambit of section 137(4) of the Constitution of Sierra Leone 1991, to wit: inability to perform the functions of her office arising from infirmity of her body or mind or for stated misconduct as provided for under that section?
 - iii. Assuming, without conceding, that there was a complaint properly before the 2nd Defendant, can it, having regard to the well recognised rules of natural justice, properly exercise its powers under the said section 137(5) of the Constitution of Sierra Leone 1991 by making a representation to his Excellency the President, that the matter be investigated, without first giving the Plaintiff an opportunity to be heard?
 - iv. Having regard to the express language to be found in section 137(5)(a) and (6), which provide for the appointment of a tribunal and the referral to that tribunal, can the President validly exercise his power to suspend the plaintiff prior to such appointment and/or before such referral?
2. A Perpetual Injunction restraining the 3rd, 4th, 5th and 6th Defendants either individually and/or collectively acting as "The Tribunal" established by His Excellency The President either by way of Public Notice dated the 17th day of November 2021 and/or by way of a Letter dated 29th November 2021 from convening and/or adjudicating upon the question of an inquiry with respect to the Plaintiff on the basis that the establishment of The Tribunal was ultra vires section 137(5)(a) Of the Constitution of Sierra Leone 1991 and therefore null and void.
3. A Declaration that the decision of the Judicial and Legal Service Commission to make a representation and/or recommendation to His Excellency The President purportedly pursuant to the provisions of Section 137(5) of the Constitution of Sierra Leone 1991 for the setting up of the Tribunal to investigate the Plaintiff and her deputy was made ultra vires Constitution of Sierra Leone 1991 and was done in violation of not only due process, but also the principles of natural justice and the Plaintiff's legitimate expectation as a public official and therefore null and void.

4. An Order of certiorari quashing the representation/recommendation of The Judicial and Legal Service Commission to His Excellency the President purportedly pursuant to the provisions of Section 137(5) that the question of removing the Plaintiff from office as the Auditor General of the Republic of Sierra Leone, ought to be investigated; on the basis that it was ultra vires the Constitution of Sierra Leone 1991 as it was done in violation of; not only due process, but also the principles of natural justice, and the Plaintiff's legitimate expectations as a public official and therefore null and void.
5. A Declaration that the suspension of the Plaintiff from office as contained in the letter from the Office of The President dated the 9th day of November 2021 addressed to the Chairman Audit Service Sierra Leone issued prior to the receipt by His Excellency the President of; (i) any representation/recommendation from the Judicial and Legal Service Commission to His Excellency the President, and also (ii) prior to the referral to the Tribunal by the President of the question of the removal from office of the Plaintiff as the Auditor General of the Republic of Sierra Leone was ultra vires section 137(6) of the Constitution of Sierra Leone 1991 and therefore null and void and in violation of the principles of natural justice, devoid of due process and the Plaintiff's legitimate expectation as a public official.
6. A Declaration that the suspension of the Plaintiff from office as contained in the letter from the Office of the President dated 9th day of November 2021 constitutes an attempt at unlawfully amending an entrenched clause of the Constitution of Sierra Leone 1991 to wit; section 137(5) thereof, which referred entrenched clause like all other entrenched clauses can only be amended by the prescribed process as contained in section 108(3) of the Constitution of Sierra Leone 1991.
7. A Declaration that the suspension of the Plaintiff from office as the Auditor General of the Republic of Sierra Leone as contained in the letters from the Office of the President dated 9th day of November 2021 and 29th day of November 2021 respectively, even if it had been valid; constitutes a constitutional mischief, to wit: that it was in breach of the express provision of section 119 (6) of the Constitution of Sierra Leone 1991 and ultra vires same in so far as the effect of the suspension will be to prevent the Plaintiff from publishing the authentic audited Report of Sierra Leone as compiled and prepared by her, which said publication was most imminent.
8. An Order of certiorari quashing the purported suspension of Plaintiff from office as the Auditor General of the Republic of Sierra Leone for the first time by letter dated 9th November 2021 and the second time Plaintiff as contained in the letter from the Office of The President dated 29th November 2021 respectively on the grounds that it was premature, lacked the constitutional foundation and ultra vires the Constitution of Sierra Leone 1991 and therefore null and void and in violation of the principles of natural justice, due process and the Plaintiff's legitimate expectation as a public official.
9. A Declaration that any Tribunal purportedly established pursuant to the provisions of section 137 (5) (a) of the Constitution of Sierra Leone 1991 comprising any of the 3rd, 5th and 6th Defendants as established by Public Notice dated 17th day of November 2021 and/or a letter from the office of the President dated the 29th day of November 2021 is not properly constituted on the basis that the 3rd, 5th and 6th Defendants lack the qualifications to be members of the Tribunal in so far as all three of them are neither substantive Justices of the Supreme Court of Sierra Leone, nor have they ever been appointed substantive justices of the Supreme Court and finally are not eligible to be so appointed thereby making their nomination/appointment ultra vires section 137(5)(a) of the Constitution of Sierra Leone 1991 and therefore null and void.
10. An Order of certiorari quashing the decision of His Excellency the President of the Republic of Sierra Leone to appoint the 3rd, 5th and 6th Defendants as members of a Tribunal pursuant to Public Notice dated 17th day of November 2021 and/or a letter from the office of the President dated the 29th day of November 2021 on the basis that the Tribunal is not properly constituted, in so far as all three of the nominated/appointed members, to wit: the 3rd, 5th and 6th Defendants lack the fundamental qualification for membership of the Tribunal established under the provisions of section 137 (5) (a) the Sierra Leone Constitution of 1991, and their nomination and/or appointment is therefore ultra vires section 137(5)(a) of the Constitution of Sierra Leone 1991 and therefore null and void.
11. A declaration that the Terms of Reference of the Tribunal as contained in both the Public Notice dated 17th day of November 2021 and the letter from the office of the President dated the 29th day of November 2021 are in violation of the express provisions of section 137 (4) of the Constitution of Sierra

Leone 1991 null and void in so far as any investigation of the Plaintiff in her capacity as Auditor General of the Republic of Sierra Leone is strictly limited to: (a) "infirmity of body or mind" or (b) for stated "misconduct", and not for any other purpose whatsoever, inclusive of (i) "professionalism or lack thereof" or (ii) "to investigate Audit Service Sierra Leone with particular reference to the performance or lack thereof of Mrs. Lara Taylor-Pearce as Auditor General...".

12. An order of prohibition restraining the 3rd, 4th, 5th and 6th Defendants either as individuals or jointly as members of either the Tribunal as established by way of Public Notice dated 17th day of November 2021 and/or the Tribunal as established by way of letter from the office of the President dated 29th day of November 2021 from convening and/or adjudicating upon the question of an investigation of the Plaintiff based upon the referred null and void Terms of Reference.
13. An Order of prohibition to be directed against the executive arm of government of Sierra Leone through the office of the Attorney-General and Minister of Justice from, in any way; whether directly or indirectly, interfering with, obstructing and/or preventing the Plaintiff from returning to her duties and/or more specifically publishing her "Annual Audit Report on the Accounts of Sierra Leone 2020".
14. Any further Order or orders that this Honourable Court may deem fit and just.
15. Costs.

AND FURTHER TAKE NOTICE that at the hearing of this Application, Counsel for the Plaintiff intends to use and rely on the Affidavit(s) of LARA TAYLOR-PEARCE sworn to on the 20th day of DEC 2021 and any other Affidavit(s) sworn to by any other Deponent(s) in support of this application that Counsel may seek leave to use and rely upon.

DATED THE 20th DAY OF DECEMBER 2021


ROWLAND S. V. WRIGHT ESQ.
COUNSEL FOR THE PLAINTIFF

- TO: 1 THE REGISTRAR
SUPREME COURT
LAW COURTS BUILDING
SIAKA STEVENS STREET
FREETOWN
2. THE ATTORNEY GENERAL & MINISTER OF JUSTICE
LAW OFFICER'S DEPARTMENT
GUMA BUILDING
LAMINA SANKOH STREET
FREETOWN
3. JUDICIAL AND LEGAL SERVICE COMMISSION
LAW COURTS BUILDING
SIAKA STEVENS STREET
FREETOWN

4. THE HON. JUSTICE NYAWO JONES
KABBA DRIVE
JUBA HILL
FREETOWN
5. THE HON. JUSTICE IVAN SESAY
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FREETOWN
7. ABU BAKARR KING ESQ.
2 OLD CITY ROAD
CONGO WATER
WELLINGTON
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THE CAPACITY IN WHICH THE PLAINTIFF IS BRINGING THE ACTION IS AS FOLLOWS:

The Plaintiff herein brings the action in her capacity as the substantive holder of the office of the Auditor-General of the Republic of Sierra Leone, who has been unconstitutionally suspended from office, which said position has been occupied by her since her appointment in 2011. The referred office is constitutionally protected and is also governed by other legislations.