

Neutral Citation Number; (COI 46/2020) SLCOACOI 0003 (Civil Division)

Case No: 40/2020

IN THE COURT OF APPEAL FOR SIERRA LEONE.  
ON APPEAL FROM THE COMMISSIONS OF INQUIRY MARCH 2020  
THE HON JUSTICE SIR BIOBELE GEORGEWILL

Law Court Building  
Siaka Stevens Street  
Freetown

Date: 4 May 2022

Before:

THE HONOURABLE MR JUSTICE A I SESAY JA (PRESIDING)  
THE HONOURABLE MR JUSTICE ALHAJI MOMOH-JAH STEVENS JA

and

THE HONOURABLE MR JUSTICE A FISHER J

Between:

Dr ERNEST BAI KOROMA                      Appellant/Applicant

-and-

THE ATTORNEY GENERAL & MINISTER OF JUSTICE Respondent

Joseph F Kamara, AS Sesay Ady Macauley, I Mansaray of Counsel for the  
Appellant/Applicant.

RB Kowa, TJ Freeman, A Suwu, P Williams State Counsel for the Respondent

Hearing dates: 20 January, 24 February, 19 July 2021

APPROVED ORDER

We direct, that copies of this version as handed down may be treated as authentic.

**The Honourable Mr Justice Adrian J Fisher J: (Giving the Judgement of the Court)**

1. This is the ruling of this court, to which all members have contributed.
2. In pending proceedings before this court, the appellant/applicant, hereinafter referred to as the applicant in this ruling, is seeking a constitutional reference to the Supreme Court, pursuant to Section 124 (1)(a) and 124 (2) of the Constitution of Sierra Leone, Act No 6 of 1991, for an interpretation of the provisions of Section 48(4), 147, 148(a)(b), and 149(4) of the said constitution and Rule 99 of Supreme Court Rules 1982, statutory instrument no 1 of 1982, by way of a notice of motion dated 19<sup>th</sup> July 2021.
3. The question sought to be interpreted represents fundamental issue of law and policy both at national and international levels. The issue of ex-head of state immunity is subjected to the international world order and there exists a need to assess whether the policy interests of justice for all in the world order are served or sacrificed by offering a former head of state a shield against suit in the international courts and in this case, the Sierra Leone courts.
4. I consider it necessary to set out, if even in summary form, the claim to immunity made by the applicant in this case. The applicant raises the following points:
  1. That the applicant, a former president of Sierra Leone, now an appellant in the pending appeal, seeks a case reference to the Supreme Court by way of interpretation of sections 48(4), 147, 148 (a)(b) and 149 of the Constitution to determine the scope, function and relationship, and on a true and proper construction, to

determine the meaning and what constitutes the term proceedings under section 48(4).

2. Whether to subject a former president of Sierra Leone to commission of inquiry proceedings for executive decisions taken whilst holding office, without the express waiver of parliament is valid and efficacious in law. If the question is answered in the negative, whether that renders a breach of Section 48(4) and therefore null and void and ultra vires the constitution.
3. Whether sections 147-149 of the Constitution are to be read conjunctively and with contemplation to the provisions of section 48(4).
4. That the issues raised are novel points of law, which cannot be argued barely on the periphery or examined before the Supreme Court, without any definitive pronouncement from that court. Further, it is the Supreme Court that has been given exclusive jurisdiction to interpret the Constitution and interpretation involves determining the scope of provisions and discovering the intent of the framers of the Constitution.
5. The applicant admits that whilst there is judicial precedent showing that the provision of section 48(4) is clear and unambiguous in the case of *Ahmed Tejan Kabba v Firetex Company (SL) Ltd CIV.APP 76/95*, he nonetheless argues that the presiding judge Hon Justice Gelega King JA thought it fit to refer the matter for interpretation to the Supreme Court.
6. He further argued that Hon Justice Timbo JA opined that all section 48(4) of Constitution does is to confer immunity on the

Ruling approved by the court for handing down

Dr Ernest Bai Koroma v The Attorney-General

head of state whilst he holds office against criminal or civil process in respect of anything done or omitted to be done by him in his official or private capacity.

7. Council further relied upon the cases of James Allie and Others v The State v John Oponjo Benjamin, Dr Christiana Thorpe and others SC No 4/2012, Zouzouki Degui v The State 1981, Court of Appeal Reference no 1 of 1981, and All Peoples Congress v Nasmos Misc 4/96.

8. The applicant further conceded that not all constitutional questions may necessarily involve or entail and interpretation of the Constitution, as was the case in Wellington Distilleries v Ectrodia P Clarkson Misc App No 4 1981. Counsel referred to the issue of the legitimate forensic test and argues that an issue of enforcement or interpretation of a provision of the Constitution arises in a number of situations:

1. Where the words of the provision are imprecise or unclear or ambiguous.
2. Where rival meanings have been placed by litigants on the words of any provision of the Constitution.
3. Where there is a conflict in the meaning and effect of two or more sections of the constitution and the question is raised as to which provision should prevail.
4. Where on the face of the provisions, there is a conflict between the operations of particular institutions set up under the constitution and thereby raising problems of

enforcement and of interpretation of the presidency v  
Commission of Inquiry.

5. In response the respondent argues that the issue of immunity is one of interpretation and worthy of a case reference to the supreme court. However, this was a response to the substantive appeal. During arguments Mr Kowa, did say that he was not conceding to the application made by the applicant, notwithstanding the fact that his response in his synopsis appears to amount to a concession, he was only responding to the applicant's grounds of appeal.
6. In the light of the above, the applicant submits the following questions as fit for interpretation by the Supreme Court:
  1. Whether section 147 of the Constitution of Sierra Leone should be read in conjunction with section 48(4) of the Constitution? If the answer is in the affirmative what effect would that have on a former president for executive decisions taken whilst holding office?
  2. Whether the exercise of powers conferred under the constitutional provisions of section 147 exercised in non-compliance of section 48(4) render the exercise of that power a nullity/nugatory and ultra vires the constitution, having regard to the particular circumstances of the case?
  3. Whether section 148(1)(a) and (b) of the Constitution, that is to say, enforcing the attendance of witnesses, examining them on oath, affirmation or otherwise; and compelling the production of documents amount to proceedings as contemplated under section 48(4) of the Constitution.

4. Whether it can be said in the light of questions 1, 2 and 3 it can be said that section 149(4) of the Constitution which provides that a commission of inquiry making an adverse finding against any person, resulting in penalty forfeiture or loss of status for the purposes of the constitution, be deemed a judgement of the High Court of Justice, is an outcome borne out of proceedings as contemplated in section 48(4).
5. Whether section 4 of the Constitutional Instrument No 67 of 2018 expressly or by necessary implication conflict with section 48(4) of the Constitution? If the answer is in the affirmative, does it render the impugned provision null and void and ultra vires of the Constitution?
6. Whether on a true and proper construction of constitutional provisions of section 48(4), whether a president of the Republic of Sierra Leone is vested with presidential immunity. If the answer is in the affirmative can the immunity be characterised as personal functional or both?
7. Whether presidential immunity is extended to cover executive decisions only during the currency of the term of office of the President or is it in continuum, that is to say, the immunity continues in respect of those executive decisions while in office, even after he or she has vacated the presidency.
8. Whether a former president upon vacating office is exposed to civil or criminal proceedings for executive decisions whilst holding office.

neral

9. Whether, if the court holds there is immunity, whether such immunity is absolute or subject to limitation.
10. Whether immunity continues after a president has vacated office and whether such immunity is limited and subject to parliamentary waiver? Can it be said that under section 48(4) of the Constitution, parliament confers immunity while a person holds or performs the functions of the Office of the President and by necessary implication only parliament can waive that immunity in express or unequivocal terms.
11. Whether on a true and proper construction of section 48(4) of the Constitution, can it be said that to subject a former president of the Republic of Sierra Leone, to commission of inquiry proceedings for conduct during his tenure of office without the express waiver by resolution of parliament, renders a breach of Section 48(4) of the Constitution and therefore null and void and ultra vires the Constitution.
7. He further prayed that the proceedings in the instant action be stayed pending the reference to the Supreme Court, by way of case stated by the court.
8. It is necessary for this court to consider the legal issues raised by this application. I would commence my deliberations with the relevant legal provisions.

The constitution of Sierra Leone, Act no 6 of 1991

9. The constitution of Sierra Leone makes provisions for the jurisdiction of the Supreme Court and the Court of Appeal, in the following sections.

10. Section 124 of the Constitution provides:

124. (1) The Supreme Court shall, save as otherwise provided in section 122 of this Constitution, have original jurisdiction, to the exclusion of all other Courts—

- a. in all matters relating to the enforcement or interpretation of any provision of this Constitution; and
- b. where any question arises whether an enactment was made in excess of the power conferred upon Parliament or any other authority or person by law or under this Constitution.

(2) Where any question relating to any matter or question as is referred to in subsection (1) arises in any proceedings in any Court, other than the Supreme Court, that Court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the Court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.

11. Section 127 of the Constitution provides:

127. (1) A person who alleges that an enactment or anything contained in or done under the authority of that or any other enactment is inconsistent with, or is in contravention of a provision of this Constitution, may at any time bring an action in the Supreme Court for a declaration to that effect.

12. With respect to the Court of Appeal and its previous decisions, section 128 provides as follows:



(3) Subject to the provisions of subsection (1) and (2) of section 122 of this Constitution, the Court of Appeal shall be bound by its own previous decisions and all Courts inferior to the Court of Appeal shall be bound to follow the decisions of the Court of Appeal on questions of law.

13. It is appropriate to state the provisions of section 122, which provides:

122. (1) The Supreme Court shall be the final court of appeal in and for Sierra Leone and shall have such appellate and other jurisdiction as may be conferred upon it by this Constitution or any other law: Provided that 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.

(2) 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; and all other Courts shall be bound to follow the decision of the Supreme Court on questions of law.

(3) For the purposes the hearing and determining any matter within its jurisdiction and the amendment, execution or the enforcement of any judgement 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.

14. The provisions outlined above deals with the manner in which this court will approach the determination of the issues raised. The Supreme Court has on a number of occasions decided the issue of how to deal with questions of interpretation of the Constitution We shall deal with that

subsequently. For present purposes, the Supreme Court has original jurisdiction to the exclusion of all other courts (including this court) in all matters relating to the enforcement or interpretation of any provision of this constitution.

15. To that extent, this court is required in accordance with the provisions of section 124 (2) to refer any question relating to any matter or question as is referred to in subsection (1) of section 124 where such question or matter rises in any proceedings in any court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination. By necessary implication, this court must be satisfied that:

1. A question relating to a matter or question has arisen in these proceedings.
2. That the question or matter relates to the enforcement or interpretation of any provision of the constitution.

16. Where the court is not so satisfied as to both of the above stated limbs, this court has no legal basis to refer any such question or matter to the Supreme Court as the original jurisdiction of the Supreme Court would not be invoked in those circumstances.

17. In addition, regard must be had to the provisions of Rule 99 of the Supreme Court Rules 1982, which provides that the courts shall state a case to the Supreme Court for determination where the question, cause or matter is pursuant to any provision of the Constitution or of any other law.

18. The question for determination by the court in this application can be shortly stated as follows:

1. Whether a question or matter relating the interpretation or enforcement of any constitutional provision has arisen in these proceedings and involves a question of law?
2. If the answer is in the affirmative, then the court shall stay the proceedings and refer the said point of law to the Supreme Court for determination.

19. The central feature of the applicant's case is the interpretation of the provisions of sections 48(4) of the 1991 Constitution and whether it confers immunity on a former head of state. The said section 48(4) of the said Constitution provides:

*(4) While any person holds or performs the functions of the office of President, no civil or criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official or private capacity.*

20. The said provisions are of such a nature that counsel has argued that it requires an interpretation and that such an interpretation can only be done by the Supreme Court, pursuant to the provisions of section 124 of the said Constitution. Prior to dealing with the issue of referral, it behoves this court to deal with the question of immunity prior to determining whether firstly the issues raised are constitutional issues and whether they do require an interpretation by the Supreme Court.

### Immunity

21. The issue of immunity for heads of state do not only rest within national law but also within the domain of international law. Whilst in many jurisdictions heads of state are granted immunity from suit whilst in office, there are a number of schools of thought that have argued that

such immunity extends to the former heads of state on the basis that the potential suit would be for actions against the former head of state whilst in office.

22. The traditional doctrine of head of state immunity stems largely from early notions of sovereign immunity, which considered the state and its leader to be one indivisible entity. Up until the middle of this century, a de jure doctrine of absolute immunity extended to foreign states and their leaders. Traditionally, heads of state have enjoyed immunity in the international jurisdictions. However, there is little international consensus regarding the legal contours of ex-head of state immunity. Consequently, authority on ex-head of state doctrine continues to lack coherence.

23. The concept of immunity is of fundamental importance in a democracy. The dignity of the office of the president and its preservation is of utmost importance. To subject a sitting president to criminal and or civil proceedings whilst in office would inevitably affect the smooth running of government. The President has a unique position in the constitutional scheme, that is, it was derived from inquiry of a kind of 'public policy' analysis of the policies and principles that may be considered implicit in the nature of the President's office in a system structured to achieve effective government under a constitutionally mandated separation of powers.

24. Although the Constitution expressly afforded Members of Parliament and Judges' immunity in matters arising from their official functions, no arguable case can be made for affording a sitting head of state such immunity. Presidential immunity, involves a functionally mandated incident of the President's unique office, rooted in the constitutional tradition of

the separation of powers and supported by our history and colonial heritage to a large extent, the fact remains that the President is distinguishable from all other executive officials. He is charged with a long list of supervisory and policy responsibilities of utmost discretion and sensitivity and diversion of his energies by concerns with private lawsuits would raise unique risks to the effective functioning of government, thereby devaluing the integrity of the office.

25. Moreover, the presidential privilege is rooted in the separation-of-powers doctrine, the courts need to tread carefully before intruding, save for situations where the law requires the intervention of the courts either as a matter of national or international law.
26. Some interests are important enough to require judicial action particularly where the interests of the country as a whole are at stake and where the broad public interest necessitates the courts to act.
27. A fundamental tenet of modern constitutionalism and an offshoot of its core principle of constitutional supremacy is that nobody, regardless of his status, is above the law. In fact, constitutionalism proceeds from an assumption of human fallibility, the corrupting influence of power and the need to limit it. It treats all citizens and government officials from the highest to the lowest as creatures of the law who are bound to obey and act in accordance with the law. A concomitant of this is personal responsibility for any violations of the law.

28. Professor A V Dicey in his book *Introduction to the Study of the Law of the Constitution*, was of the view that there are 3 conceptions of the rule of law the first of which indicates that no man is punishable or can be lawfully made to suffer in body or deprived of their goods unless they had violated the law which has been established in an ordinary way and applied by an ordinary court. There is also an absolute supremacy or predominance of regular law over arbitrary power and the state could not act in an arbitrary manner which was unlawful.

29. The second aspect of Dicey's conception of the rule of law indicates that in terms of the equality before the law, no man is above the law. Regardless of what an individual's rank or condition is, he is subjected to the ordinary law of the realm and be bounded to the jurisdiction of the ordinary tribunals. As a result, no matter an ordinary private citizen or a state official breached the same law, they would be treated in the same way. It denoted that the state officials were not given any special privileges or protections from the law of the land. Thomas Fuller had also quoted that "Be you ever so high, the law is above you."

30. The third aspect denotes that the principles of the constitution are the result of the ordinary law of the land. A distinguished Law Lord, Lord Bingham in the lecture entitled the rule of Law in the House of Lords on 16 November 2006, outlined 8 subrules which he believed comprised the rule of law and these 8 principles enunciated by Lord Bingham had been regarded as the modern version of the rule of law. Lord Bingham declared that "the core of the existing doctrine of the rule of law was that all public and private persons should be bound by and entitled to the benefit of laws publicly and prospectively issued and publicly administered by the courts." The view of Lord Bingham could be said as filling in the gaps of

Dicey's conception as it is more modern and concerning the latest issue.

The 8 principles are as below:

Sub rule 1: The law must be accessible so far as possible, intelligible, clear and predictable.

Sub-rule 2: Questions of legal right and liability should generally be decided by application of the law and not the exercise of the discretion.

Sub-rule 3: The law must apply equally to everyone, unless differences can be justified.

Sub-rule 4: The law must provide appropriate protection of essential and basic human rights.

Sub-rule 5: The parties in civil disputes must be able to resolve disputes without facing a huge legal cost or excessive delays.

Sub-rule 6: The executive must use the powers given to them reasonably, in good faith, for the proper purpose and must not exceed the limits of these powers.

Sub-rule 7: There must be adjudicative procedural fairness.

Sub-rule 8: The state must comply with the obligations of international law which whether deriving from treaty or international custom and practice governs the conduct of nations.

31. In the UK case of *Entick v Carrington* (1765) the courts declared that the government must act within the law. The court further held that: The executive could not act outside of the law and would be treated in the same way as ordinary citizens if they breached the law". The rule of law is therefore an essential element of constitutionalism and upholding the democratic system of government. The rule of law is also inevitably linked

Ruling approved by the court for handing down

Dr Ernest Bai Koroma v The Attorney-General

with the independence of the judiciary as upholding the various principles supporting the rule of law is one of the constitutional responsibilities given to the judiciary. Thus, the rule of law must be supported by a judicial system which is free and independent from any extraneous interference which emphasizing the importance of the doctrine of separation of powers. It had been proven that many of the countries' practical of the rule of law are on the wane as they are departing away from the pathway of upholding the rule of law bit by bit. Proper measures should be taken in order to uphold the supreme of the rule of law and one such measure is careful consideration of the grant of immunity to a former head of state.

32. It is noteworthy to mention that section 40(3) provides that the President shall be the guardian of the constitution and it is for this reason that section 53(1) of the constitution provides that:

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

(2) In the exercise of his functions, the President may act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where, by this Constitution or any other law, he is required to act with the approval of Parliament or in accordance with the advice of any person or authority other than the Cabinet:

33. In support of these provisions, is the second schedule of the 1991 Constitution which is the presidential oath, which reads as follows:

proved

"I do he  
all times



*"I do hereby (in the name of God swear) (solemnly affirm) that I will at all times well and truly discharge the duties of the office of the President of the Republic of Sierra Leone according to law, that I will preserve, support, uphold, maintain and defend the Constitution of the Republic of Sierra Leone as by law established, and that I will do right to all manner of people according to law, without fear or favour, affection or ill will. (So help me God.)"*

34. The combined effect of the constitutional provisions set out above and the presidential oath, clearly stipulates that the President is expected to at all times act in accordance with the laws of the country, in particular the constitution. The exercise of his functions as president is subject to the constitution at all times. A president therefore must act in compliance with the law if he is to attract immunity as a former head of state.

35. It is for this reason that Lord Bingham views the principles of judicial review as having their foundation in the rule of law. Thus, he states that 'ministers and public officers at all levels must exercise the powers conferred on them reasonably, in good faith, for the purpose for which the powers were conferred and without exceeding the limits of such powers', and 'adjudicative procedures provided by the state should be fair'.

36. Professor Jowell in his book 'The Rule of Law Today', in Jowell and Oliver (eds.), *The Changing Constitution* (Oxford University Press, 5th ed., 2000), Chap. 1, was of the view that the rule of law has a substantive dimension. He perceives the rule of law as a principle of institutional morality and as a constraint on the uninhibited exercise of government power. The practical implementation of the rule of law takes place

primarily through judicial review. Its substantive dimension is manifest in the judiciary's willingness to strike down administrative or executive action if it is unreasonable, arbitrary or capricious.

37. With these principles in mind, this court has to deal with the position at law of state immunity in relation to international crimes for which there is arguably no immunity available to a head of state or a former head of state.

United Nations Convention against corruption.

38. The United Nations Convention against Corruption is the only legally binding universal anti-corruption instrument. The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem. The convention came into force on the 14 December 2005. Sierra Leone signed the said convention on 9<sup>th</sup> December 2003 and ratified the same on 30 September 2004. The Convention was adopted by the General Assembly of the United Nations on 31 October 2003 at United Nations Headquarters in New York.

39. Thus, corruption has been categorised as an international crime for which there cannot be a justification and therefore such acts were suspected are taken outside of the realm of official acts. In the United States, section 353 of the Corrupt and undemocratic Actors report, revoked visas to the USA for officials of a number of countries because of credible allegations of corruption by these officials. The US memorandum on establishing the fight against corruption as a core United States National security interest, has proposed a new international initiative to stop corruption.

40. In 1982 the Supreme Court of the United States held in *Nixon v Fitzgerald*, that President enjoys absolute immunity from civil litigation for official acts undertaken while he or she is President. In *Trump v Vance*, the court held that the President is subject to subpoenas in criminal prosecutions for personal conduct with the same legal threshold as anyone else. In *Clinton v Jones* 520 U.S. 681 (1997), the court held that the President does not possess absolute immunity from civil litigation surrounding acts he took before becoming President.

41. It is significant to note that the common law in *Harlow v. Fitzgerald*, 457 U.S. 800, 806 (1982) recognised immunity of a head of state whilst in office on the basis that this immunity is necessary to protect public officials from excessive interference with their responsibilities and from "potentially disabling threats of liability".

42. I would now go on to consider the position of presidential immunity in other African Countries.

#### African Countries

43. No state practice exists in Africa where a sitting president or the King has ever been prosecuted whilst in office. However, some have been prosecuted before national courts in African states, but only after expiry of the office term. This trend is observed in Malawi and Zambia where former presidents were put on trial, but for domestic crime. Article 50(1) of the Constitution of Lesotho provides for functional and personal immunity of the King whilst in office. In Liberia, the President is immune from proceedings, judicial or otherwise, and from arrest, detention on account of any act done by him or her while being the President of Liberia, subject to the constitution and any other law. However, the

Approved by the  
Botswana  
Proc

President is not immune from prosecution upon removal from office for the commission of any kind of any criminal act done while President.

44. article 43(2) of the Constitution of Zambia protects a person holding the office of the president or performing the functions of the president from being held criminally responsible. However, upon ceasing to be president, and subject to the resolution by the National Assembly, a person who has held the office of the president may be prosecuted, in the interest of the state. In Sudan, the President and First Vice President are immune from any legal proceedings and are not supposed to be charged in any court of law during their term of office. In Botswana, the president is immune from criminal proceedings 'in respect of anything done or omitted to be done by him either in his official capacity or in his private capacity.

45. The emphasis is on functional immunity and personal immunity during service. It can be contended that the president may be prosecuted after the term of office. Indeed, this is the position stated by the High Court of Botswana at Lobatse. The sitting president of Botswana, Seretse Khama Ian Khama, was sued in a civil suit before the High Court of Botswana, a matter arising from his role as President of the Botswana Democratic Party and at the same time being the President and Head of State of Botswana. The High Court interpreted section 41(1) of the Constitution of Botswana which grants immunity to the president in respect of all matters, civil and criminal, when the president is still in office. The High Court of Botswana concluded and held that section 41(1) gives immunity to the president, and as such, the president could not be sued even for civil matters arising from his role as president of the ruling party, who at the same time, is the president and head of state of

Botswana. In Seychelles, whilst the president is still in office, no criminal proceedings shall be instituted or continued against such person in respect of anything done or omitted to be done in official or personal capacity.

46. In the Gambia, the president is immune from criminal proceedings during office term. The Namibian Constitution, 1990 recognises immunity of the president from criminal proceedings whilst holding office or performing the functions of the president.

47. It is arguably the case that in all the countries mentioned above, the practice has been to grant immunity to a head of state whilst in office but not so when they are no longer in office. Notwithstanding this trend, the position in Sierra Leone needs careful consideration.

#### The position of in Sierra Leone.

48. I have earlier alluded to the provisions of section 128(3), which provides that this court shall be bound by its own previous decision on questions of law. With respect to the Ahmed Tejan Kabba v Firetext Company Ltd CIV.App.76/95, the majority decision of this court was not in favour of referral. Seloga King JA was of the opinion that the said section 48(4) needs no interpretation. Timbo JA was of a similar opinion, relying on the Supreme Court case in Wellington Distilleries and refused to state a case to the Supreme Court. Alhadi JA was of the opinion that the proposed question was one of jurisdiction which the court had full powers to determine. The question in the jurisdiction of the court is not provided for in Section 124. I see no reason to depart from this reasoning either as a matter of law or principle.

approved by  
purpose  
n:

49. As I have pointed out above, section 48(4) of the 1991 Constitution provides that *"While any person holds or performs the functions of the office of President, no civil or criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official or private capacity"*. This requires the court to examine the meaning of the provision by means of Statutory Interpretation.

50. In general, there are four Rules of Statutory Interpretation, these are the literal rule, the golden rule, the mischief rule and the purposive approach. The literal rule requires courts to interpret statutes in their plain, literal and ordinary sense. The courts will not examine the intention of Parliament. The literal rule of statutory interpretation should be the first rule applied by judges. Under the literal rule, the words of the statute are given their natural or ordinary meaning and applied without the judge seeking to put a gloss on the words or seek to make sense of the statute. In *Whitely v Chappel* 1868 LR 4 QB 147, the court applied the literal rule in determining a statute which made it an offence 'to impersonate any person entitled to vote.' The defendant used the vote of a dead man. The statute relating to voting rights required a person to be living in order to be entitled to vote.

51. The aim of statutory interpretation is to arrive at the legal meaning of legislation, or in other words, the meaning that conveys the legislative intention. The primary indication of legislative intention is the legislative text, read in context and having regard to its purpose. The court should aim to give effect to the purpose of legislation by interpreting its language, so far as possible, in a way which best gives effect to that

purpose. In other words, the courts' basic approach to interpretation is purposive, and every enactment is to be given a purposive construction.

52. There is a presumption that the grammatical meaning of an enactment is the meaning intended by the legislator. Where an enactment is capable of only one meaning and other interpretative principles or factors do not raise any real doubt as to that meaning, the enactment is to be given its plain meaning. In this case, the plain meaning will align with the legislative purpose. The literal rule of interpretation is the primary rule. Under this rule of interpretation, the Courts interpret the statutes in a literal and ordinary sense. They interpret the words of the statute in a way that is used commonly by all. It is incumbent on the court to use the grammatical meaning. The statutes should be construed in such a manner as though there is no other meaning except the literal meaning.

53. The court having realised that the said provision of section 48(4) falls to be interpreted as to its true meaning, has to decide whether to interpret the said provision itself or whether it raises a constitutional issue that requires a case to be stated to the Supreme Court. In order to do this, the court has to have due regard to the provisions of section 124 of the 1991 Constitution and any previously determined cases on the issue.

54. As I have pointed out above the provisions of section 124 are limited in scope. The original jurisdiction of the Supreme court is only invoked in situations where the matter in question relates to the enforcement or interpretation of any provision of the constitution. Section 122 (2) of the Constitution provides that " (2) 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; and all other Courts shall be bound to follow the decision of the Supreme Court on questions of law."

This court is therefore bound to follow decisions of the Supreme Court on a point of law.

55. In the State v Adrian Joscelyne Fisher SC.2/2009, the Supreme Court at para 15 of the said judgement had this to say:

*"This Court has pointed out on numerous occasions that a reference should not be treated lightly and referring issues to the Supreme Court does not relieve the High Court or any Court for that matter of the responsibility of the issues itself. It is not the purpose of section 124 of the Constitution that the High Court should refer every question of law - contentious or not - affecting the Constitution. The reference should be on matters relating to the enforcement or interpretation of any provision of the Constitution and the issues must be of law".*

56. The Supreme Court in the case of The State v Harry Will SC/Misc 399 (unreported) per Luke CJ, Joko Smart and Warne JJSC had this to say.

*"I hold the view that every Court must invoke its inherent jurisdiction in such a case to prevent an abuse. The indictment before Mr. Justice TajuOeen is one having as its foundation, a consent order in writing under the hand of a Judge of the High Court of Justice. Where is the constitutional issue in that matter which is outside the jurisdiction of the Judge? What is the constitutional issue to be received by the Supreme Court? I see none.*

57. In the Adrian Joscelyne Fisher case, the Supreme Court was of the view that in appropriate cases the High Court and by necessary implication this court, can decide cases on the interpretation of constitutional provisions without a reference to the Supreme Court. It referred to the case of



Major St. Mellons Rural District Council v Newport Corporation 1952 AC 189 at 191, where it was said that:

*"The duty of the Court is to interpret words that the legislature has used, these words may be ambiguous, but if they are, the power and duty of the Court to travel outside them on a voyage of discovery are strictly limited."*

58. The court was of the view that questions of interpretation arise only where there is doubt as to the meaning to be attached to any of the provision of the constitution. Where there is no such doubt, questions of interpretation do not arise as they do not raise constitutional issues such that a referral is necessary.

59. In considering this matter, I have carefully considered the said provisions in Section 48(4). The questions to the reference sought by the applicant are clear and unambiguous. The use of the words "while any person holds or performs the functions of President" in Section 48(4) are clear and unambiguous, to the extent that this court has a duty to interpret the words that the legislature has used. As the Supreme Court has pointed out, referring issues to the Supreme Court does not relieve the court below of responsibility of the issues itself.

60. The words used in section 48(4) of the Constitution clearly show that the clear intention of parliament was to grant immunity to persons who were holding or performing the office of President and not to those who held or had previously performed the office of President. Had Parliament intended to grant such immunity to previous office holders, it no doubt would have used language to the effect. The expressed wording of the statutory provision does not raise a constitutional issue that needs to be

interpreted or enforced by a reference to the Supreme Court and such a reference to the Supreme court is refused. In the light of my decision, I see no need to go into the other areas of interpretation sought, as in my opinion, they do not raise constitutional issues fit for determination by the Supreme Court by way of a case reference. The statutory provisions of section 147 -149 of the Constitution are clear and unambiguous.

61. The matter would now proceed to a substantive hearing of the appeal on its merits. The costs of this application shall be cost in the cause.

The Hon Justice AI Sesay JA (Presiding)

62. My Lords, for the reasons given by My Lord Justice Adrian J Fisher J, I too would refuse this reference to the Supreme Court.

The Hon Justice Alhaji Momoh-Jah Stevens JA

63. By notice of Application dated the 19<sup>th</sup> July 2021 moved by Lead Counsel for the Applicant herein seeking reference to the Supreme Court pursuant to Section 124(1)(a) and Section 124 (2) of the Constitution of Sierra Leone 1991 for an interpretation of Section 48(4), 147, 148 (a) (b) and 149 (4) of the Constitution of Sierra Leone Act No. 6 of 1991 and the Supreme Court Rules, 1982 Statutory Instrument No. 1 of 1982 Rule 99 thereof.

64. Counsel for the Applicant herein referenced several case law authorities but with specific reference to AHMED TEJAN KABBA VS FIRETEX COMPANY (SL) LDT CIV.APP 76/95 AND JAMES ALLIE AND OTHER VS. THE STATE MISC. APP: NO. 3/81. In the Ahmad Tejan Kabba's case I submit it was a majority decision refusing referral to the Supreme Court. In the James Allie case, it was a decision of the Court of Appeal of its own, to refer the question of Law involved to the Supreme Court. For

me the Ahmad Tejan Kabba's case makes clear reference to Presidential immunity in relation to a sitting President. So for instance it is up to a sitting President to pursue any legal remedies in pursuit of his rights in Court. Further, by the same dictum and ratio decidendi, a sitting President if he elects, so to do, can even serve as a witness in Court in pursuit of his legal remedies. But on the hand, no civil or Criminal prosecution can be brought against a sitting President in a Court of law whether in his private or official capacity.

65. Learned Senior Counsel J.F. Kamara Esq. of Counsel for and on behalf of the Applicant herein relied on the under mentioned Constitutional provisions in support of the said Notice and also Rule 99 of the Supreme Court Rules 1982. I shall have a look at these laws separately and indicate my legal position whether in fact there is any ambiguity to warrant an interpretation by the Supreme Court as provided for under Section 124 of the Constitution or even warrant a 'Case Stated' as required by Rule 99 of the Supreme Court Rules 1982 to the Supreme Court.

By Section 124(1) (a) of the 1991 Constitution the Supreme Court shall save as otherwise provided ... 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

Section 124(2) of the 1991 Constitution states 'where any question relating to any matter or question as is referred to in subsection (1) arises in any proceedings in any Court, other than the Supreme Court, that Court shall stay the proceedings and refer the question of Law involved to the Supreme Court for determination, and the Court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court'.

66. Section 48(4) of the 1991 Constitution 'While any person holds or performs the functions of the office of President, no civil or criminal

proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official or private capacity'. By a close scrutiny, I humbly submit that Section 48(4) of the Constitution is limited to an incumbent occupying the Presidency and not otherwise. I therefore submit that it is clear, straightforward and explicit and does not require interpretation by the Supreme Court.

67. Section 147 of the 1991 Constitution deals with an occasion where the President shall by Constitutional Instrument appoint a Commission of Inquiry same supported by a resolution of Parliament and such Commission shall be presided by a person qualified to be appointed as a Judge of the Superior Court of Judicature in Sierra Leone. Again I will submit without any iota of doubt that the procedure was duly complied with before the Commission of Inquiry commences hearing, hence the various Constitutional Instruments creating same.

68. By section 148 of the 1991 Constitution, a Commission of Inquiry shall have such powers rights and privileges as in the High Court ----- in respect of:

- a. enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise.
- b. compelling the production of documents.

69. Section 148 of the 1991 Constitution speaks for itself as witnesses were subpoenaed and documents produced at the Commissions of Inquiry, hence referenced to the Records of this Court. Section 148(4) of the 1991 Constitution reads "Where a Commission of Inquiry makes an adverse finding against any person, which may result in penalty, forfeiture or loss of status the report of the Commission of Inquiry shall for the purposes

of this Constitution, be deemed to be a judgment of the High Court of Justice and accordingly an appeal shall lie as of right from the Commission to the Court of Appeal'. For me this is a straightforward direction as required by Section 149(4) of the Constitution. The Applicant did the right thing by appealing to the Court of Appeal due to the adverse findings against him which is the better option to follow procedurally.

70. The Supreme Court Rules 1982 Statutory Instrument No. 1 of 1982 Rule 99 thereof makes provision for a situation where a Court below shall refer a case before it to the Supreme Court by a means known as 'case stated' for the determination of any law which is within the sole competence of the Supreme Court to the exclusion of any other Court. Here I beg to defer absolutely, that there is need for a case stated to the Supreme Court because the Court of Appeal is seized of the appeal and generally the Court of Appeal has what is known as 'Appellate Jurisdiction' to hear and determined judgments from the High Court, judgments from a Court Martial and any adverse findings of a Commission of Inquiry and by Rule 31 of the Court of Appeal Rules 1985, the jurisdiction of the Court of Appeal to hear appeals are well founded and established.

71. Lead Counsel for the Respondent, R.B. Kowa Esq. maintained that the appeal must be heard in this Court but eventually that decision to refer this case to the Supreme Court is subject to the opinion of the bench. The simple way for me to conclude is thus, the genesis of this action is that the President set up a Commission of Inquiry, same supported by a resolution of Parliament, the Commission of Inquiry conducted its hearing and by law any aggrieved person can only proceed to the Court of Appeal

after any adverse findings by the Commission of Inquiry, by way of an appeal simpliciter.

72. As maintained earlier, Section 48(4) of the 1991 Constitution is simple, straightforward and explicit, and in fact has no question of ambiguity for my consideration. It is mainly limited to a sitting President and not otherwise. In fact in furtherance of the said simplicity, openness and clarity, Section 48(4) of the 1991 Constitution is not a bar to proceedings conducted by Parliament under Section 51 of the 1991 Constitution which deals with impeachment proceedings. So I submit it is clear that an incumbent President can be impeached under Section 51 of the 1991 Constitution by Parliament but not prosecuted under Section 48(4) of the 1991 Constitution by anyone or persons in a Court of Law until he or she ceases to serve as President, thereafter, of course, an action can lie in a Court of Law.

73. For the reasons above, I will dismiss the Notice filed by Counsel for the Applicant herein seeking a referral to the Supreme Court for interpretation and by way of 'Case Stated', and I hereby ruled that the appeal proceed.

74. Costs shall remain costs in the cause.

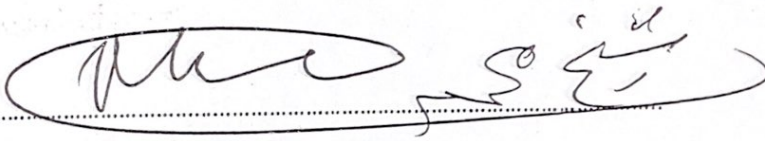
v-General

The Hon Justice AI Sesay JA (Presiding)



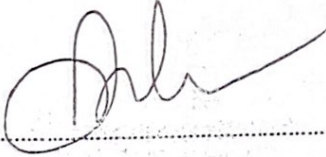
---

The Hon Justice Alhaji Momoh-Jah Stevens JA



---

The Hon Justice A J Fisher J



---