Neutral Citation Number Misc.App/001/25 W1 General Civil Division

Case No: Misc.App 001/25

IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN
COMMERCIAL AND ADMIRALTY DIVISION

Law Court Building
Siaka Stevens Street
Freetown
Date: 12 June 2025

HON. JUSTICE A FISHER
12 JUN 2025
SIGN.....
JUSTICE OF THE SUPERIOR COURT
OF JUDICATURE

Before:

THE HONOURABLE MR JUSTICE FISHER J

.....

Between:

Zhou Wenje **Applicant**

-and-

Pioneer Power Engineering Company (SL) Ltd **Respondent**
Attorney General and Minister **1st interested Party**
Kiptieu Debs **2nd Interested Party**

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SK Koroma, RA Nylander and R Payne for the Applicant
Leon Jenkins-Johnston, R Mahoi, MN Koroma and M Mansaray for the Respondent
YI Sesay (State Counsel) for the 1st Interested party
Ms ES Banya for the 2nd Interested party
Hearing date: 5 March 2025

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APPROVED JUDGEMENT

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I direct, that copies of this order as handed down, may be treated as authentic,

THE HONOURABLE MR JUSTICE FISHER J

The Honourable Mr Justice Fisher J:

Introduction

1. By this claim for judicial review, Zhou Wenjie ("the applicant") seeks a number of orders as set out on the face of the Originating Notice of Motion.

2. The said Originating Notice of Motion dated 16th January 2025, seeks the following orders:

    1. That the applicant applies for an order of certiorari to be directed to the Magistrates Court to quash the proceedings now pending before His Worship Santigie Bangura (as he then was) at the magistrates' court intituled **"Pioneer Power Engineering Company (SL) Limited v Zhou Wenjie",** on the grounds of errors of law on the face of the records and proceedings.

    2. That an interim stay of proceedings be granted pending the hearing and determination of this application.

    3. Any further or other order that the court may deem fit.

3. The application is supported by the affidavit of Zhou Wenjie sworn to on the 16th July 2025, with exhibits attached.

4. I have been greatly assisted by the written and oral submissions from all counsel I am grateful to them.

Procedural background

5. Subsequent to the filing of the originating notice of motion on the 16th January 2025, I granted leave to the applicant to proceed with the judicial review application on the 11th February 2025. I also granted an order adding the Hon Attorney General and Minister of Justice as a party to the action in the light of the issues raised in this application.

6. On the 21st February 2025, I granted an order adding the 2nd respondent as an interested party to these proceedings as the issues raised in her case touches and concerns the issues raised in this case. I also granted a stay of proceedings in the Magistrates' court before his Worship Magistrate Santigie Bangura (as he then was).

7. On the 25th February and 26th March 2025, I granted further orders and directions for the proper conduct of the matter. The applicant then filed his statement of case followed by the Respondent. The interested parties did not file a statement of case, ostensibly relying on the statements of case filed by the principal parties.

Factual Background

8. The factual background to this application can be gleaned from the affidavit in support of the application, sworn to by Zhou Wenjie, the applicant, sworn to on the 16th January 2025, with exhibits attached. In summary, he deposed to the following matters which I consider relevant for the determination of the issues.

    1. That he is a shareholder of the respondent company which was incorporated on the 7th day of November 2018, under the laws of Sierra Leone.

    2. The main shareholder Zhang Ke became ill and went to China, and he was running the business with his approval and consent.

    3. That prior to his death, he gave him instructions as to how the shares were to be arranged and it was after his death that the issues began.

    4. That after the death of Zhang Ke, his son Zhang Jiakai and wife Zhang Xi Hong came to Sierra Leone and tried to physically remove him from the Companies business and tried to change the company name and block him from all activities of the company. Notices were served on him informing him of the same.

5. That on the 30th day of April 2024, he went to the Criminal Investigation Department (CID) and made a report against Zhang Kiakai and Zhang Xi Hong on account of their conduct towards him and a case file 2077/2024 was opened.

6. That Zhang Kiakai went to the Criminal Investigation Department (CID) and made a counter report against him alleging that he has committed fraud and forgery against the company and a case file 2184/2024 was opened against him. After the completion of the investigation, both matters were sent to the office of the Director of Public Prosecutions for advice.

7. That by correspondence dated 10th September 2024, the Director of Public Prosecutions (DPP) advised that the matter is a civil matter and both parties should seek civil redress.

8. That following the advice of the DPP, he was served with a private criminal summons, by solicitors for the company, which led to his arraignment before the Magistrate Court No 2 on the 9th Day of October 2024 and he has been attending proceeding since.

9. That he later contracted the services of a solicitor Sulaiman Kabba Koroma Esq who issued a writ of summons on his behalf against the respondent and others.

10. That he was advised by his solicitor that the company has no right in law to be a prosecutor but can only prosecute through the Office of the Director of Public Prosecution or the Corporate Affairs Commission (CAC).

11. That he was informed by his solicitor that the Office of the Director of public Prosecutions is vested with powers to institute criminal proceedings in Sierra Leone and once it declined to prosecute it is against the law for a private individual or company to take a private criminal summons.

12. That he is informed by his solicitors that if a company wants to sue there are procedures laid out in the Companies Act that he must follow and when those procedures are followed then the DPP can decide whether to prosecute or not.

13. That he is informed by his solicitor that the offences he is now standing trial for are in the Companies Act no 5 of 2009 and that the Companies Act have specific offences that deal with any situation that affects the company adversely.

14. That he is seeking the whole proceedings before the Magistrates Court to be quashed by this court because it is an error on the face of the law.

15. That his solicitor advised him that his erstwhile solicitors should have filed this application earlier when he received the criminal summons and the interest of justice requires it to be heard notwithstanding it being out of time.

16. That if the proceedings before the Magistrates Court continue, it will be a miscarriage of justice and an error on the face of the law.

17. That the Respondent is a registered company with office at 12 Main Road Kyubu Village Newton and incorporated under the laws of Sierra Leone.

The Respondent's affidavit in opposition

9. The respondent filed an affidavit in opposition, sworn to by Alusine Hud Jalloh on the 30th January 2025, with 2 exhibits attached. In summary, he deposed to the following matters, and I will only refer to the relevant matters for the determination of this application:

    1. That he is the director of the respondent company and has been so since its inception in 2005.

    2. That it is the applicant who has been causing problems for the family.

3. That even if the DPP provides such advise as he has done nothing in law precludes the respondent from instituting a criminal matter against the applicant as forgery can be tried as both a civil and or a criminal matter.

4. That contrary to the averment in para 15 of the affidavit in support, the company is a separate entity on its own, duly registered and incorporated under the laws of Sierra Leone that can sue and be sued and the company is not precluded from bringing an action against a former employee who has been in breach of the rules and law laid down by the company in its M and A.

5. That private solicitors are also empowered to institute a private criminal summons on behalf of a company and that such right is not exclusively vested on the DPP and the Corporate Affairs Commission.

6. That if assuming only the DPP and the Corporate Affairs Commission are empowered to institute a criminal matter, the effect of that would mean that all previously issued criminal maters that have been instituted by private solicitors were wrong in law and all rulings and judgements that have been handed down in such cases are questionable.

7. That contrary to the assertion by the applicant, the DPP dd not decline from prosecuting the case but rather advised that the parties seek civil redress. The DPP advised that the parties seek civil redress because civil matters are beyond his jurisdiction as conferred on him by the 1991 Constitution.

8. That his solicitors followed the procedures in instituting the criminal matter in court by following the laid down rules in the Courts Act and the Criminal Procedure Act 1965. Forgery is provided for in the Forgery Act 1913.

9. That it will be a denial of justice if the whole proceedings before the Magistrates Court is quashed as the said proceedings are almost at an end and all witnesses for the company have testified.

10. Tat it is wrong in law for the applicant to seek judicial review of a matter that is already before he Magistrate Court for forgery as the issue is not against a company but against an individual who was once an employee oof the company and who had wronged the company which is a private body when he was entrusted with the Companies affairs.

11. That it will not be in the interest of the company for the orders prayed for to be granted.

The applicant's case.

10. The applicant filed his statement of case which he set out in support of the case for judicial review. In summary, the applicant pleaded the following matters:

    1. That his claim for judicial review is predicated on principles that even though the Magistrates Cour has powers to hear charges before it, the mode of instituting proceedings against him is wrong in law and the court has no judication to continue the proceedings.

    2. That the Constitution of Sierra Leone Act No 6 of 1991 sets out the powers of both the Attorney-General and the DPP with regard to prosecution of criminal matters, pursuant to section 64(3) and 66(4) of the 1991 Constitution of Sierra Leone.

    3. That public notice No 33 of 1965 granted police, powers to investigate offences in Sierra Leone and to charge to court and prosecute. However, before charging any one for such offences the Attorney General and DPP must be informed.

4. That following advise from the office of the DPP, that both parties should seek civil redress, the respondent being dissatisfied with the advise from the DPP, instituted a private criminal summons on the 25th day of September 2024, which is now the subject matter of the judicial review application.

5. That the Attorney General and the DPP performing public functions pursuant to powers conferred upon them by the Constitution and where a person is aggrieved by their decision, a person aggrieved should seek a judicial review of the decision and not to institute fresh proceedings by way of a private criminal summons. They rely upon **R v DPP 1995 1 Cr App Rep 136 and R v DPP and ORS Ex parte Timothy Jones 2020 QBD 3088/99.** They argued that in both cases, the refusal by the DPP to advice for the preferment of charges was challenged by judicial review. They submitted that Judicial review is the remedy available to challenge the actions of public bodies.

6. The respondent ought to have challenged the decision of the DPP rather than charging the matter to court by private summons and against the advise of the DPP. It is therefore wrong in law to discard the advice of the DPP and institute fresh criminal actions.

7. The practical effect of the decision of the respondent to institute criminal proceedings by way of private summons is that it will lead to legal chaos where the applicant to be committed for trial in the High Court. The DPP would have to sign the indictment or authorise the signing of the indictment by a state counsel or give a fiat to a prosecuting counsel to prosecute. These actions would have to be undertaken by the DPP who has already advised that the matter was not criminal in nature,

8. With respect to the right to prosecute, the complainant in the criminal summons is the company who is the respondent in this case. Whilst a company

has a right to sue and institute proceedings, it does not have the right to prosecute under its name. Any prosecution must be done by the DPP or the Corporate Affairs Commission and not under its corporate name as complainant in a criminal trial. They relied on **Halsbury laws of England 3rd edition volume 6 at pages 440to 443.** They submitted that there is a distinction between public law and private law, and criminal prosecution is a public function.

9. The submitted that leaving the prosecution in the hands of a private entity will create chaos and disorder for society and will undermine the peace and security of the State. It is for this reason that the constitution empowers the DPP and the Attorney General to oversee criminal prosecutions. They relied upon the case of **R V CPS2012 (UK SC) 52 and R V Panel on takeovers and mergers Ex parte Data Fin 1987 QB 815.** The institution of a private criminal summons under the name of a company against individuals in a private capacity is wrong in law and certiorari is the appropriate remedy that should lie to quash such proceedings.

10. With respect to proceedings under the Company Act, the Companies Act 2009 governs the relationship of a company and its affairs and any proceedings must be conducted under the provisions of Company law and not general law. The applicant is a 10% shareholder of the company and cannot be criminally prosecuted by the company when he is still a shareholder except under certain circumstances. Furthermore, the validity of the removal is currently the subject of litigation before the fast-track commercial court.

11. That the offences for which the appellant is facing trial in the Magistrates Court are covered by Company law and it is therefore improper in law to charge the applicant under general law. They submitted that the proceedings should be quashed, and the applicant be acquitted.

12. They also relied upon a number of authorities which I shall review in due course.

The Respondent's case

11. The Respondent similarly filed a statement of case. The factual background is similar to that relied upon by the applicant, save for the assertion that the applicant misappropriated company property and monies for his own benefit and refused to give monthly reports.

12. A board resolution removed the applicant on account of misconduct and subsequently reported to the CID for forgery. The matter was referred to the DPP who advised the matter was a civil matter. In January 2025 the respondent was served with an Originating notice of motion seeking leave to apply for judicial review. An information for preliminary investigation for forgery was instituted against the applicant by the company and the proceedings were at an advanced stage when the application for judicial review was instituted.

13. The respondent argued that the advise from the DPP does not amount to a decision and his advice that the parties should seek civil redress is not sacrosanct or grounded on any law. The DPP had commenced an information against the applicant and whilst the process was in progress the respondent had gone on to institute criminal charges against the applicant.

14. That there has never been any case law, act or statute which states that not following the advise of the DPP to institute a civil matter warrants a judicial review of the action of a private company. It was open to the applicant to seek a discharge before the magistrates in the same proceedings relying upon the DPP'S advise rater than seek judicial review proceedings, assuming without conceding that the respondent followed the wrong procedure in instituting a private criminal charge against the applicant. On

the other hand, it is the office of the DPP is public in nature and he argued that the respondent being a company could not institute action against the DPP.

15. He argued that no actions warrant a private company like the respondent to be brought before the court for judicial review and he relied upon the decision of the Court of Appeal in **R on the Application of Holmcroft Properties Limited v KPMG LLP 2018 EWCA Civ 2093**. This is an issue I shall deal with later.

16. Mr Jenkins-Johnston questioned the ability of a private company being able to bring judicial review proceedings against the DPP and raise the issue of the floodgates if any advice given by the DPP can be subject to Judicial review and he submitted that a company has the right to institute judicial review proceedings against the DPP, but the applicant has no standing to bring a private company for judicial review for failing to bring the DPP to court for judicial review and he relied upon the case of **R v DPP 1995 (1 Cr App R 136)**. He argued that it should have been the company bringing the DPP to court if it felt aggrieved by the advise of the DPP and not the applicant bringing a private company which did not carry out the functions as to be labelled as public duty to review its decision to seek justice in a criminal court.

17. He finally argued that the application before the court for judicial review lacks merit as it fails to satisfy the test laid down to be passed to enable an applicant to apply to the court for judicial review. The respondent does not meet any of the requirement and it will be a fundamental abuse of process for judicial review to be granted in these circumstances. He argued that leave ought not to have been granted in the first place and the proper procedure for the applicant was to have mounted a challenge in the proceedings themselves before the Magistrate court in which the matter was pending. The DPP had the power to institute and take over or discontinue the prosecution as he deems fit.

18. The concept of Judicial review is being overstretched and being exposed to abuse to the whims and caprices of the applicant who is due to make his no case submissions as indicated to the Magistrates Court.

The case for the interested parties
The 1st interested party

19. The first interested party did not file a statement of case nor did they file an affidavit in opposition. The chose instead to address the court in oral submissions

20. Mr Yl Sesay, State Counsel, who appeared for the Attorney General and Minister of Justice and sought leave to make oral submissions. He adopted the arguments of the applicant and submitted that his submissions are predicated by the authority to prosecute in the criminal courts on behalf of the state. He submitted that the Attorney General is not just concerned about private criminal summons, but they are concerned about the bigger picture and it is important for this court to determine the issue of the general authority to prosecute and the advise of the DPP IS crucial.

21. In this case, the files were counter files which were sent to the DPP for advise. The parties were complaining about forged documents When the DPP exercises his discretion, he does so on the basis of the case and has no special interests. The DPP had advised on the issue of criminal sanctions and concluded that the matters were civil in nature and consequently outside of his powers. A preliminary investigation is being conducted in the Magistrates Court and if the appellant is to be committed to the High Court for trial, an indictment would have to be signed by the DPP and this would amount to a waste of time.

22. The power of the DPP to discontinue proceedings have not been taken away and those powers are granted to the Attorney General and DPP by the constitution. The court has a supervisory jurisdiction and needs to determine the authority to prosecute at the

Magistrates Court. The court has to deal with the issue. The powers to prosecute vests on the Attorney General and the DPP.

The 2nd interested party

23. Ms ES Banya who represents the 2nd interested party did not file a statement of case. She however relied upon the ex parte notice of motion she had filed in support of her application dated 20th February 2025 and elected to make submissions. She also adopted the submissions of SK Koroma Esq for the applicant and her submissions are not entirely different.

24. It is necessary for me to deal with the affidavit sworn to by Ms Banya herself in support of her case. The relevant portions can be summarised as follows:

    1. That she is the managing partner at the firm of ES Banya and Co and is in charge of this matter and duly authorised to depose to the affidavit.

    2. That on the 31st day of October 2024, a private criminal summons was issued by the firm of Abdulai and Associates against the 2nd interested party, who is legally qualified, by the complainant, one Adama Sesay.

    3. That following several appearances before two justices of the peace, and after a series of objections, by the then solicitor for the interested party on account of serious irregularities with the papers filed by the complainant, Adama Sesay, she offered no further evidence against the interested party, which led to the matter being thrown out of court.

    4. That without any police investigation, the said complainant, now suing as Adama Jalloh caused another private criminal summons to be issued against the interested party for the same offences as those that were thrown out of court.

5. That these criminal summonses were issued by the complainant in person, albeit through a law firm, without a police investigation and without reference to the Attorney General and Minister of Justice, at whose suit all prosecutions in Sierra Leone are instituted.

6. That she is informed by Kiptieu Debs, the interested party/applicant and verily believes that there is an ongoing matter in the High Court intituled FTCC: APP: 001/2025 W NO 1 which seeks to challenge the issuance of a private criminal summons which is instituted without reference to the Attorney General and Minister of Justice or the police.

7. That the applicant being faced with similar issuance of a private criminal summons against her wishes to be joined as a party to the ongoing matter in order to challenge the institution of the criminal summons against her.

25. When the matter resumed before me, Ms Banya for the interested party informed the court of the background to this matter. She stated that the matter was instituted in the Magistrates court and as a result of the institution of the action, solicitors for the interested party had cause to institute an action in the High court to challenge the institution of the private criminal summons and to seek a stay of proceedings. She submitted that they have not had access to the file but believe in the light of the above that they have sufficient reasons to join the action.

26. She submitted that she relies upon the entirety of the affidavit. She submitted that there is nowhere in the Criminal Procedure Act 1965, which permits a private criminal summons to be issued by any person, save for specific legislation like the National Social Security and Insurance Trust Act 2001, the Anti-Corruption Act 2008 without reference to the Attorney General and Minister of Justice and most importantly without adequate safeguards, to protect fair trial rights as guaranteed by Section 23 of the 1991 Constitution. She added that these applications are flooding the Magistrate

Courts and are mainly designed to embarrass defendants and on occasions, the summonses are not properly drafted and are designed to waste the court's time as well as the defendants' time.

27. She submitted that the second criminal summons was filed after the first summons had been thrown out of court for irregularities. This issuance of these summonses are designed to get at the interested party and to make the offences appear grave, by adding a count for conspiracy, and other counts of a much more serious criminal offence. The interested person is a well-respected person who is legally qualified and has been involved in the law for over 25 years and is currently one of a few female directors at Africell Company and a busy person. She has contributed to the growth of children in Sierra Leone.

28. The aim of these summonses is to embarrass the interested party. They can issue a summons legally but not illegally. The police can investigate any matter and charge to court, if necessary. They have sufficient reasons on the above facts to take action. She submitted that the matter was scheduled to come up this morning and whilst the interested party has been in court since 8.30am waiting to see where the matter was assigned to, in order to avoid any issues of a bench warrant being issued on account of her absence, and no action had been taken and the said complainant had not shown up in court whilst she was required to be in court. She has had to spend the entire day in court whilst the said complainant chose to be absent.

29. She added that on the first occasion when the summons was issued, the interested party was out of the country and notwithstanding the fact that the complainant knew she was out of the country, she got the court to issue a bench warrant and got bailiffs to enforce the warrants against her.

30. She further submitted that section 64(3) of the 1991 Constitution vests all criminal proceedings at the suit of the Attorney General. The law is clear. All such summonses

must go through the Attorney General failing which defendants are caused hardship and are issued simply to embarrass defendants. In this case, the 1st summons was thrown out, and the complainant then re-filed the summons. The constitution requires it has to be through the Attorney General, notwithstanding section 16 of the Criminal Procedure Act 1965. She relied upon the submissions of Mr Koroma and Mr YI Sesay for the 1st interested party.

The Issues

31. Having reviewed the cases of the respective parties, I have to consider what the issues are in this case. The issues for consideration can be summarised as follows:

    1. Is the applicant's claim amenable to Judicial review?

    2. Are there provisions of law that allow the initiation of criminal proceedings by a company incorporated under the laws of Sierra Leone?

    3. Are there provisions of law that allow the institution of criminal proceedings without reference to the Attorney General and Minister of Justice?

32. I shall treat these issues in a rolled-up manner as they are all inter-related. I shall first deal with the issues of the interested parties as Mr Jenkins-Johnston submissions in his statement of case in which he argued that the applicant has no standing in law to bring a private company for judicial review for failing to bring the DPP to court for Judicial Review. I have dealt with this matter firstly, in view of the fact that the interested parties have relied upon the applicant's case to a large extent, albeit the fact that the applicant's case is presented in a unique set of circumstances, the Respondent being a company. Notwithstanding the general issue abound in relation to the institution of private criminal summons without reference to the Attorney General and Minister of Justice who has the constitutional powers to do so.

Judicial Review and interested parties.

33. The High Court Rules 2007, Order 18 rule 6 makes provisions for the joinder of parties to an action. However, in Judicial Review applications, a party cannot simply be added as a party to an action. A party may be added to an action where there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter, which in the opinion of the court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

34. A person seeking to be joined in a judicial review application, must show that they have locus standi, meaning a sufficient interest in the matter. In considering the question of standing, particularly on the facts of this case, this court in determining whether the plaintiff has locus standi, must consider the doctrine of *actio popularis*. This court therefore has the power to either stretch the standing rules or even to depart from the standing requirement altogether. In *R v Independent Broadcasting Authority, ex parte Whitehouse* (1984) *Times* 14 April, a television licence holder was found to have sufficient standing to challenge a decision to broadcast a controversial film. It was indicated that every television licence holder would have *locus standi* in litigation relating to the broadcast of programmes likely to give offence. Thus, the fact that the applicant was a licence-holder, rather than simply a viewer, was enough to give her sufficient standing.

35. At common law, the test for standing is whether the plaintiff has a "special interest" in the subject matter of the action. The common law focussed on the issue of locus standi in administrative law and in any event, it has long been a feature of the common law as way back in 1858, in the case of **Ware v Regent's Canal Co**. Upon a review of a number of authorities, the question of standing has been part of public law, in particular applications for judicial review.

36. In upholding the "actio popularis" doctrine, the concern is often expressed that to permit this doctrine is to allow a private individual to decide which laws should be enforced. However, there is a greater good. The doctrine allows and permits the individual the opportunity to argue that the law should be enforced. In this case, where the law provides a lawful mechanism for the institution of criminal proceedings, that procedure should be followed and a person affected by such institution of proceedings which they allege to be unlawful, has sufficient interest in ensuring that the law is followed and applied correctly.

37. It is necessary to recognise that an interested party is someone who is identified by either the claimant or the defendant as being directly affected by the case (in particular, the relief that may or may not be granted) by the court depending on whether it finds for or against the plaintiff. This was the case in ***R v Rent Officer and another ex parte Muldoon [1996] 1 WLR 1103,*** where the House of Lords held *"that a person is directly affected by something connotes that he is affected without the intervention of any immediate agency"* (per Lord Keith).

38. A similar conclusion was reached by the Court of Appeal in ***Celtel (SL) Ltd and Registrar of Companies House v Alie Basma Civ.App. 9/2009,*** in which Roberts JA (as he then was) distilled the definition of the words "persons directly affected".

39. I have no doubt in my mind that the applicant and the interested parties have sufficient interest in these proceedings as their liberties are at stake in terms of the institution of criminal proceedings which could have a serious effect on their livelihoods and liberty. With respect to the 1st interested party, he has a constitutional role with respect to criminal proceedings It is therefore axiomatic that all proper lawful procedures must be correctly followed prior to putting a person through the rigours of a criminal trial and in particular, Constitutional provisions cannot simply be ignored.

40. Section 15 of the 1991 Constitution provides that it is a fundamental human right that every person is entitled to protection of law. Where a person shows sufficient interest in litigation, the court cannot prevent them from being heard in the proceedings, as it raises an access to justice and protection of law issue.

Is the applicant's claim amendable to Judicial review

41. The respondent has strongly argued that the applicant's claim is not amendable to judicial review. He relied upon the decision of **Council of Civil Service Unions v Minister for the Civil Service 1992 4 All ER 97**. His primary argument was for a decision to be susceptible to Judicial Review, the decision maker must be empowered by public law and not merely by agreement between private parties.

42. He further relied upon the case of **Ridge v Baldwin 1964 AC 40** and the case of **Alie Basma v The Registrar of companies and Celtel Limited 2008.** He further relied upon the decision of the Court of Appeal in **R v Panel on Take overs and mergers ex parte Datafin 1987 1 QB 815 at 838** in which the Court of Appeal held that the source of a body's power is the sole test for determining amenability to Judicial Review

43. In essence, he argued that judicial review proceedings can only brought against a public body or a private entity performing statutory duties. He argued that the respondent does not meet the requirements, and it would be an abuse of process for judicial review to be granted against it.

44. The Respondent, with the greatest respect, appears to have fundamentally misunderstood the basis of the applicant's claim for judicial review. The applicant's primary complaint relates exclusively to the mode of institution of criminal proceedings, firstly by a company for which there is no basis in law and secondly even if there was a basis in law, the mode of institution of the proceedings is equally unlawful on the basis

that it offends against the constitutional powers conferred on the Attorney General and Minister of Justice and the Director of Public Prosecutions. The respondent has not taken a decision in the sense of a decision in the manner contended for by the respondent. He has however taken a decision to institute criminal proceedings, which arguably is a public law decision and such a decision can only be taken by compliance with e applicable law and principles.

45. Where proceedings before a Magistrate court have been instituted, arguably by unlawful means, it is not satisfactory for the respondent to state that the issue can be raised before the Magistrate in the proceedings. It is correct that the issue can be raised in front of the Magistrate, but does the Magistrate have adequate powers to address the issues. Where the Magistrate rules in favour of continuing the proceedings, albeit arguably unlawfully, the applicant would still have to approach this court for relief. If the applicant's complaint is accurate, the Magistrate has no jurisdiction to hear or proceed with the claim that has been instituted unlawfully and in particular in breach of a constitutional provision. Where there is such a breach, the High Court has supervision jurisdiction over the Magistrate court, it being an inferior court, to step in and exercise those supervisory powers, pursuant to section 134 of the 1991 Constitution, which provides:

"134. The High Court of Justice shall have supervisory jurisdiction over all inferior and traditional Courts in Sierra Leone and any adjudicating authority, and in the exercise of its supervisory jurisdiction shall have power to issue such directions, writs and orders, including writs of habeas corpus, and orders of certiorari, mandamus and prohibition as it may consider appropriate for the purposes of enforcing or securing the enforcement of its supervisory powers.

46. The decision complained about in this case is not necessarily a decision by the respondent to institute and proceed with a criminal summons, but rather the decision

of the Magistrate to proceed with a criminal trial, on the face of the records of the court, has arguably been unlawfully instituted.

47. I am reinforced in this position of the law by the decision of the Court of Appeal in ***R (on the application of Holmcroft Properties Ltd) v KPMG LLP* [2018] EWCA Civ 2093**. In that decision the point of principle of the Court of Appeal was that public principles can still be applicable even when the relevant decision emanates from contractual arrangements. The Court of Appeal took the view that the High Courts's judgement had too narrowly focused on KPMG's source of power, despite reaching the same conclusions as the High Court. The Court made reference to the decision in ***R (Datafin plc) v Panel on Takeovers and Mergers* [1987] QB 815**, the Court of Appeal looked beyond the merely contractual source of the Panel on Takeover and Mergers' powers to find that it was amenable to judicial review, due to the public duty it was exercising.

48. In *R (Aegon Life) v Insurance Ombudsman Bureau* [1994] 1 CLC 88, Lord Justice Christopher Rose set out the principle that a body whose powers are derived from contract may be amenable to judicial review where it is woven into the fabric of public regulation or a system of government control, is integrated into a system of statutory regulation, is a surrogate organ of government, or, but for the body's existence, a governmental body would assume control.

49. Questions of amenability to judicial review turn on function not form. The key issue is the nature of the function in question. If the applicant's case is correct that the power to institute criminal proceedings vests in the Attorney General and Minister of Justice at whose suit such proceedings are instituted, then the respondent in instituting such criminal proceedings is assuming a public function, which makes the said institution of proceedings amendable to Judicial review. There is therefore a need to look at the decision in context and not rely too heavily on the course of the decision-makers'

powers and in this case, the Respondent cannot take a decision as to the outcome of the proceedings. It is a matter for the court and the Magistrate court is subject to the supervisory jurisdiction of this court. Where it is argued that the institution of criminal proceedings are arguably unlawful, the Magistrate Court would be deprived of jurisdiction to hear the case, and any proceedings are a nullity.

50. In support of this principle, I shall refer to the decision of this court in **Union Trust Bank v Sierra Construction Systems Misc. App. 032/20,** in which jurisdictional objection was raised by Mr. CF Margai, counsel for the defendant and in that case I made reference to the decision of the Supreme Court in **The Peoples Movement for Democratic Change (P.M.D.C.) and the Secretary General for the Peoples Movement for Democratic Change (PMDC) v The Sierra Leone Peoples Party, June 2007, unreported,** in which Renner Thomas CJ held as follows:

"The issue of jurisdiction is fundamental and its being raised in the course of proceedings cannot be too early, nor premature nor too late. This is because if there is want of jurisdiction, the proceedings of the court will be affected by a fundamental vice and would be a nullity, no matter how well conducted the proceedings might otherwise be."

51. I also relied on the decision of Mohamed M'bakui and another v **The State (Misc.App.5/2016, SLCA 1150**, a decision of Fynn JA in the Court of Appeal in which he relied on the PMDC case. I also set out a statement of principle at para 16 of that judgement in the Union Trust Bank case in the following terms:

"Having regard to the M'bakui decision, it reinforces my conclusions that jurisdiction is invariably conferred upon a court by legislation and not simply by other principles of law. Fynn JA in the M'bakui decision whilst interpreting section 129 of the Constitution, Act no 6 of 1991 was clear that the phrase "or any other law" should not be read in isolation and that whilst other laws may confer jurisdiction on a court, it does not detract from the fact that

invariably, such conferment of jurisdiction on a court is normally and invariably conferred by statute. Whilst the other sources of law as provided for in section 170 of the Constitution Act no 6 of 1991 are part of the Laws of Sierra Leone, where jurisdiction is conferred by any of these alternative forms of law, the overriding basis for such conferment would undoubtedly be the 1991 Constitution, Act no 6 of 1991, which is itself statutory".

52. I am therefore satisfied for the reasons given above, that the applicant's complaint is amendable to judicial review in the context of the supervisory powers conferred on this court to supervise the activities of inferior courts and tribunals, pursuant to section 134 of the 1991 Constitution.

Are there provisions of law that allow the initiation of criminal proceedings by a company incorporated under the laws of Sierra Leone?

53. In the light of my conclusions above, this court needs to determine whether a company incorporated under the laws of Sierra Leone can institute criminal proceedings against any person.

54. Mr SK Koroma of counsel in his statement of case argued that the Companies Act 2009 governs the relationship of a company and its affairs. The general law cannot be used to determine the affairs of a company. The respondent is a shareholder of the company with 10% of the shares and cannot be criminally prosecuted by the company when he is a shareholder, except under certain circumstances. The validity of his removal is currently being litigated in the civil courts. The offences for which he is standing trial in the Magistrates Court are offences covered by the Company Act 2009 and it is improper to charge him under the general law. He relied upon a number of authorities which I would refer to subsequently.

55. Mr Jenkins-Johnston for his part, did not specifically address the question of whether a company can institute criminal proceedings in its capacity as a company. I have reviewed

the relevant provisions of the Companies Act 2009 and the companies memorandum and articles of Association as submitted by the applicant.

The Companies Act 2009.

56. This Act provides for the registration and regulation of the activities of companies. Part 11 of the Companies Act 2009 makes provisions for actions by or against a company. Sections 255 to 264 deals with this issue. Section 255 specifically provides:

"255. Subject to this Act, where any irregularity has been committed in the course of a Companies affairs or any wrong has been done to the company only the company can sue to remedy that wrong and only the company can ratify the irregular conduct".

57. The Act makes provision for the court to grant an injunction or declaration in the circumstances provided for in section 256. Similarly, section 258 (1) makes provision for the institution of an action on behalf of the company and subsection (2) specifically provides that an action may only be brought subject to certain conditions as set out in subsection 2 para a-d. These conditions do not appear to have been satisfied by the respondent and specifically the first hurdle for the respondent to satisfy is that the wrongdoer is a director of the Company, which the applicant is clearly not. In addition, reasonable notice ought to have been given to the directors of the company to take action. In any event, the proceedings are civil in nature as provided by section 259 and the powers of the court are set out in sub section 2 para a-d, none of which are criminal in nature.

58. I am therefore satisfied that the Companies Act 2009, makes no provision for the institution of a criminal prosecution by a company, more specifically against a shareholder of the said company.

The Memorandum and Articles of Association

59. The said M and A clearly provides for the applicant to hold a 10% share in the company. Article 14 clearly shows that the applicant is not listed as a director. There is no provision in the M and A for the company to institute criminal proceedings. Having reviewed the laws of Sierra Leone, it clear from the above analysis that a company in Sierra Leone cannot directly institute criminal proceedings. The responsibility for initiating criminal prosecution lies with the Attorney General and the Director of Public Prosecutions (DPP). These state officials have the exclusive power to commence criminal proceedings against any individual or entity, including a company, for alleged violations of the law. This is an issue I will deal with in due course.

Are there provisions of law that allow the institution of criminal proceedings without reference to the Attorney General and Minister of Justice

60. In the light of my conclusions above, companies can only initiate civil proceedings in line with relevant provisions of the Companies Act 2009. A company has no legal basis to institute criminal proceedings on its own accord. Criminal matters are the responsibility of the State and are handled by the state, specifically through the office of the Attorney General and the DPP. The DPP, in consultation with the Attorney General, has the authority to decide whether to prosecute a case and to initiate criminal proceedings. Companies cannot directly file criminal charges against individuals or other entities. They can, however, report suspected crimes to the police or other relevant authorities.

The Regulatory Regime for criminal proceedings

The 1991 Constitution

61. It is axiomatic that I consider this issue in considerable detail. The office of the Attorney General who also holds the position of Minister of Justice, is the principal legal adviser to the Government of Sierra Leone. He is empowered to prosecute all offences

committed within the territory of Sierra Leone, or to authorize some other person to do so in his stead. This is significant. He has audience in all courts except local courts. Section 64(3) of the 1991 Constitution provides:

"(3) All offences prosecuted in the name of the Republic of Sierra Leone shall be at the suit of the Attorney-General and Minister of Justice or some other person authorised by him in accordance with any law governing the same."

62. This provision requires an exercise of statutory interpretation as to the meaning of those words in Section 64 (3) of the 1991 Constitution. Prior to embarking upon this interpretation of statute exercise, there has been a lot of confusion and misinterpretation over constitutional provisions in the light of section 124 (1) of the Constitution which vests original jurisdiction to the Supreme Court on constitutional matters. The said section 124 provides as follows:

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.

63. This issue was dealt with in the Supreme Court Case of he state v Adrian Joscelyne Fisher SC.2/2009, NI WHICH Tejan -Jalloh CJ 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.

64. By this decision of the Supreme Court, this court is not relieved from responsibility for the issues with respect to section 64(3) of he 1991 Constitution, which requires some interpretation, albeit being a constitutional provision. In the case of State v. Justice M.O. Taju-Deen ex parte Harry Will SC misc 3/99 (unreported), the Supreme Court Supreme Court Luke CJ, Joko Smart and Warne JJSC gave the following ruling:

"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 Taju Deen 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".

65. This is a matter within the realm of the High Court to deal with supervisory matters arising out of Magisterial proceedings and in determining whether such proceedings are in breach of constitutional provisions, the provisions of section 64(3) need judicial interpretation. In the case of **Lansana Kainchallay and 64 others CC.395/15,** I had this to say at para 15 of the said ruling:

(15)"In order to discover the true meanings of these provisions, an exercise of statutory interpretation falls to be conducted. The starting point for consideration is that the court must recognise that it has a duty to obey legislation, as was considered in the case of Secretary of State for the Home Department v Nasseri 2009 1 All ER 116. The court's duty is to discover the true meaning of the legislation and apply it to its determination.

(16) In PC Dr Alpha Madseray Sheriff II v Attorney General and Minister of Justice SC No 3/2011, the Supreme Court interpreting relevant legislative provisions referred to two different rules of interpretation, which are the literal rule and Purposive rules. The court relied upon the decision of Tindele CJ in the Sussex Peerage case 1844 11 CL 7 F 85 in which the learned Chief Justice had this to say:

"If the words of the statute are so plain and unambiguous, then no more is necessary than to expound them in the sense. The words themselves in such a case best declares the intention of the law giver".

66. I made further references to the dictum of Livesey Luke CJ Chanrai and Co v Palmer 1970-71 ALR SL 391 in which the learned Chief Justice has this to say:

"In my judgement if the words used in a statute are plain and unambiguous, the court is bound to construe them in their ordinary sense having regard to the context".

67. A similar issue was dealt with in Sierra Leone Association of Journalists v Attorney General and Ors, SC.1/20, Tejan Jalloh CJ had this to say:

"This brings me to the issue of the duties of Judges, when the question of doubt arises in a statute or constitution. Judges are expected to observe and apply the provision of the Constitution where that application has been raised in a matter, and it is their duty to do so. They will be failing in that duty, if they refrain from doing so. This is where the application of the law involves questions of interpretation as to the meaning of the law and the purpose of its application the Court will determine the question. But if the question referred to the Court as in this case does not involve any interpretation, but its application merely it will not. On the other hand, if there is a doubt, as to the meaning to be attached to the words of the sections both in the Constitution and the Act it is the duty of the Court to give effect to their literal meaning".

68. It is clear on the face of the said section 64(3) of the 1991 Constitution that the words used are clear and unambiguous that *"All offences (without exception) emphasis mine, prosecuted in the name of the Republic of Sierra Leone shall be at the suit of the Attorney-General and Minister of Justice or some other person authorised by him in accordance with any law governing the same.* He is assisted in this task by similar constitutional provisions conferred on the DPP. By the provisions of section 66(1) of the Constitution of Sierra Leone, Act no 6 of 1991, the Office of the Director of Public Prosecutions is directly responsible for the prosecution of all infractions of the law in Sierra Leone, consequent upon the Director of Public Prosecutions (DPP) obtaining the authority to do so from the Attorney-General, which he is deemed to have by virtue of the provisions of section 66(4). The powers of the DPP are set out in section 66 (4), which can be stated as follows:

(4) Subject to subsection (3) of section 64, the Director of Public Prosecutions shall in accordance with the provisions of section 66(4) of the 1991 Constitution, have power in any case in which he considers is desirable so to do—

a. *to institute and undertake criminal proceedings against any person before any court in respect of any offences against the laws of Sierra Leone;*

b. *to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and*

c. *to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.*

69. Most significantly, subsection 5 provides as follows:

"(5) The powers of the Director of Public Prosecutions under subsection (4) may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions."

70. It is clear from the above that the DPP is also empowered under the constitution to delegate his responsibilities to persons acting under him and in accordance with his general or special instructions. However, the exercise of this power shall be subject to the general or special direction of the Attorney-General/Minister of Justice.

71. It is unarguably the case that the Constitutional powers vested in the Attorney General and Minister of Justice, outlines the Attorney-General's powers for controlling criminal proceedings. These include the power to discontinue criminal proceedings at any time before the delivery of judgment. This power is also provided for under the provisions of sections 44 and 45 of the Criminal Procedures Act. In any criminal case and at any stage thereof, before verdict or judgement, the Attorney-General may accordingly enter a *nolle prosequi* by informing the court in writing that the Crown intends that the proceedings shall not continue. Where this is the case, the accused or the defendant shall at once be discharged in respect of the charge for which the *nolle prosequi* is entered. Where the accused has been committed to prison, he shall be released and if on bail, his recognisance shall be discharged. Discharge in this case shall not operate as an acquittal and is not a bar to subsequent prosecution of the accused on the same facts. Some of the powers vested in the Attorney-General by virtue of section 44(1) of the Criminal Procedures Act can be delegated by him to law officers.

72. In addition to the constitutional powers listed above, by section 24 of the Police Act of 1964, police officers are authorised to prosecute infractions of the law before any court of summary jurisdiction, i.e. inferior courts of record such as Magistrates' Courts. This section provides:

"Any police officer may conduct in person all prosecutions before any court of summary jurisdiction whether the information or complaint be laid in his name or not and whether or not the offence was committed in his presence or that of any other police officer"

73. Having reviewed the above legislation, the power to prosecute criminal cases by instituting, undertaking, or taking over and continuing in Sierra Leone vests with the Attorney General and the DPP, or some other person authorised by him in accordance with any law. With respect to the Attorney General, subsection 3 provides that the vesting of the suit for all prosecutions vested in him can also best in "*some other person authorised by him in accordance with any law governing the same*" emphasis mine.

74. Similarly, the powers of the DPP which are subject to the provisions of section 64 (3) gives him the power to "*institute and undertake, take over and continue and discontinue any criminal proceedings, undertaken by himself or any other person or authority*" emphasis mine. Subsection 5 provides for those powers to be exercised by him in person or through other persons acting under his instructions or with his general or special instructions.

75. The key provision in all of this is section 64(3). The simple and literal interpretation of those provisions is that all offences that may be prosecutable in Sierra Loene must be at the suit of the Attorney General of if not at his suit, it must be authorised by him or any other law governing the same. A prosecution thus initiated has to be at his suit or authorised by him or by law. Prosecutions initiated by the DPP are authorised by him, by law. There are other laws that authorise prosecutions which are not at the suit of the Attorney General. Where the Attorney General issues a fiat to prosecute, such prosecutions are authorised by him. The question for consideration is what are the laws that permit a prosecution not authorised by the Attorney General or the DPP.

<u>Laws permitting prosecution by persons or authorities other than the Attorney General and the DPP</u>.

76. I made reference above to the police Act 1964, which authorises police officers to prosecute cases in court. The Nassit Act 2001 permits the institution of criminal proceedings by section 33 of the said Act. The Anti-Corruption Act 2008 by virtue of

section 89(1) vests powers in the Commission to institute criminal proceedings. These are two examples where the law authorises a prosecution without reference to the Attorney-General and Minster of Justice or the DPP. The Supreme Court in the case of the State v Adrian Joscelyne Fisher SC.2/2009, had an opportunity to consider the powers of the Attorney General and Minster of justice and the DPP in relation to prosecutions.

77. The court held as follows:

"The irresistible conclusion is that the power of control over criminal proceeding by the Attorney-General and Minister of Justice pursuant to section 44 of the CPA and his power to apply for trial by Judge alone instead of Judge and Jury and to be granted as of course under section 144(2) of the CPA 1965 by extension Sections 3 and 5 of the Law Officer's Act 1965 are still vested in that law officer i.e. the Attorney-General and Minister of Justice".

78. Further, the Law Officers Act 1965 is also relevant. Section 5 of the said Act and makes provision for the powers of Attorney General as provided for in the Constitution to issue general or special instructions governing the conduct of the prosecutions of offences and such instructions may confer powers and impose duties on any constable, a public officers or other person (other than the accused) concerned in or otherwise connected with the prosecution of any criminal proceedings respecting the conduct of those proceedings. These instructions can be found in the Law Officers (conduct of prosecutions) instructions 1965, PN no 33. It is interested to note that by virtue of para 2 of these instructions, a legal practitioner or other persons are not precluded from commencing a prosecution.

79. Having ruled that a company has no legal powers to institute criminal proceedings, I now need to consider the statutory regime for the institution of Criminal Proceedings, which are for all intents and purposes considered to be privately initiated criminal

prosecutions, without reference to the Attorney General and Minster of Justice, the DPP or the police.

The institution of criminal proceedings

80. Criminal procedure is primarily governed by the Criminal Procedure Act 1965. It is necessary to consider specific provisions in the said Act. Section 44 deals with the control of the Attorney General over criminal proceedings and provides as follows:

"44. (1) In any criminal case, and at any stage thereof before verdict or judgement, the Attorney-General may enter a nolle prosequi either by stating in Court or by informing the Court in writing that, the Crown intends that the proceedings shall not continue and thereupon the accused or the defendant as the case may be shall be at once discharged in respect of the charge for which the nolle prosequi is entered, and if he has been committed to prison shall be released or if on bail his recognisances shall be discharged; but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts."

81. Section 46(2) is of relevance and provides as follows:

(2) The powers conferred upon the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (1) shall be vested in him to the exclusion of any other person or authority: *Provided that, where any other person or authority has instituted criminal proceedings nothing in this paragraph shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the Court.*

82. The wording of section 46 (2) is significant in the sense that the instituting of criminal proceedings may be withdrawn prior to the person being charged to court. From the above, it appears that a person or authority may institute criminal proceedings against

another person. Section 1 of the 1965 describes a prosecutor in these terms as *""prosecutor" includes complaint and means a person who gives information or causes information to be given on his behalf against the accused or the defendant and who intentionally associates himself with the prosecution of however that the mere signing of an indictment or ..... sheet by a law officer or other person authorised that behalf by the Attorney-General shall not make the person a prosecutor*;

83. Again, this section is significant in that a person can only be a prosecutor where that person is authorised to do so, ostensibly by the Attorney General pursuant to his powers under section 64(3). Where a person is not so authorised, his role as a prosecutor is limited to giving or causing information, to be given or intentionally associating himself with the prosecution. The mere signing of the indictment or sheet by a law officer or other person authorised so to do by the Attorney General shall not make that person a prosecutor. It appears that to initiate criminal proceedings, there must be specific instructions or general instructions provided by the Attorney General in that regard.

84. Notwithstanding the above, consideration must be given to the initiation of proceedings against the accused, having regard to the above section. The provisions of section 16 are therefore relevant and provides as follows:

"16. (1) In every case the Court may proceed either by way of Summons to the accused or the defendant or by way of warrant for the arrest of the accused in the first instance, according to the nature and circumstances of the case."

85. It is pursuant to this provision that a number of privately issued criminal summonses are initiated in the magistrate court. This is an issue I will deal with subsequently. I shall however deal with the current mechanisms being employed in the initiation of criminal proceedings.

The institution of criminal proceedings

86. Section 36 of the Criminal Procedure Act 1965 provides authority for a court to have brought before it persons charged with an offence committed in Sierra Leone or which may be dealt with as if committed within Sierra Leone. Section 3 of the said Act provides that all criminal offences shall be enquired into, tried and otherwise dealt with in accordance with the Act. Most importantly section 12 provides that when a private person arrests any person, they must hand the person over to a constable as soon as possible. Significantly, section 10 provides that where a person is arrested, he shall be brought before the court as soon as possible. The institution of criminal proceedings must be examined carefully.

87. When a person is arrested the police would carry out an investigation pursuant to its powers. Statements would be obtained from the complainant who reported the offence and from witnesses. Statements would also be obtained from the suspect. Other tools of investigation may be obtained as exhibits following searches pursuant to search warrants issued under the provisions of section 30 of the 1965 Act. Subsequently the exhibits and all the statements in the case and enquiry file would be submitted for legal advice to the police legal and justice unit or the DPP. The DPP may authorise charges or may request additional investigations be carried out by the police or may decide not to authorise charges.

88. What is significant about these procedures is that there are safeguards provided to ensure the accused would eventually receive a fair trial and these safeguards include observance of the judges' rules when interviewing suspects and the ability of the police to confront suspects with incriminating evidence. A suspect also has the right to remain silent and to avoid self-incrimination which is a right at the cornerstone of the criminal justice system. In some instances, a suspect may be placed on police bail, pursuant to section 80 of the Criminal Procedure Act 1965.

89. When contrasted with the institution of private criminal summonses regime, a person simply turns up at a magistrate court and get officials to prepare a private criminal summons, charging felonious offences, punishable by huge sentences, which is then put before a Magistrate. Invariably these summonses are not served on the defendants to appear in court. The defendants consequently do not appear in court and a bench warrant is issued. The first the unsuspecting defendants get to know about the summons is when bailiffs and police turn up at his door and effect an arrest on him. When he is taken to court eventually, it is almost certain that he will be refused bail on account of his previous non-appearance in court. In many cases, once the suspect is in custody and has been sent on remand, the complainant no longer appears in court to prosecute the matter.

90. Where the trial continues, the defendant has no access to previous witnesses' statements made by the complainant or his witnesses and in many instances, he only gets to see and hear the complainant and witness for the first time in court. He does not have a statement taken from him by the police and he has none of the safeguards which a defendant who is investigated by the police has. This course of conduct may arguably be contrary to section 23 of the 1991 Constitution which guarantees fair trial rights, which requires accused persons to be given a fair trial, particularly in the absence of disclosure of material evidence against him. It is evident that the use of private criminal summonses are being abused and titled heavily against defendants.

91. What makes the abuse more egregious is the fact in some instances, a person may have allegedly committed an offence and may well be under an investigation by the police for an offence of wounding, contrary to section 20 of the Offences Against the Person Act 1861, for example. During the period he is under investigation, he may simply turn up at a Magistrate court and issue a criminal summons for wounding with intent, contrary to section 18 of the Act in a bid to get that defendant who is a complainant in a matter

being investigated by the police incarcerated. At the time bail is refused to the defendant, or a bench warrant issued for the absent defendant, the Magistrate is unaware that there is a pending police investigation as that fact was not disclosed to him, or in some instances the complainant is an accuse din another court.

92. In other instances, an advise may have been provided by the DPP charging him with an offence and he would again issue a private criminal summons against the complainant. The end result is he will be appearing in one court as a complainant and the complaint would be appearing in the adjacent court as an accused person. Such a state of affairs is plainly unsatisfactory and, in many instances, the courts are being used as a weapon to perpetrate injustice, through no fault of its own.

93. It is grave to confer prosecutorial powers on litigants in person, without any adequate safeguards. The courts however have a fundamental responsibility to ensure the legal system functions fairly and justly. This includes the duty to prevent actions that could undermine the integrity of the proceedings or lead to an unfair trial. This duty extends to protecting its processes form abuse, including the power to stay proceedings if necessary to safeguard the integrity of the criminal justice system. This duty arises from the inherent powers of the court to ensure a fair trial and maintain public confidence in the legal system. Magistrates should not hesitate to stay such proceedings for abuse of process, where it comes to their knowledge, stopping the hearing from proceeding where such a stay is necessary to protect the integrity of the justice system by preventing the use of unfair or oppressive or abuse of the courts system. Magistrates should be vigilant and maintain a high standard of vigilance against abuses of the criminal justice system, by staying proceedings where necessary to achieve the stated aim.

94. In *Connelley v DPP [1964] AC 1254.*, the House of Lords held that the courts have „an inescapable duty to secure fair treatment for those who come or are brought before them". In *R v Beckford [1996] 1 Cr App R 94*, the Court of Appeal held "that the courts

have the power and the duty to protect the law by protecting its own purposes and functions from abuse." A similar ruling was given in *R v Derby Crown Court ex parte Brooks [1985] 80 Cr App R 164* in which the court held *"It may be an abuse of process if either (a) the prosecution have manipulated or misused the process of the court so as to deprive the defendant of a protection provided by law or to take unfair advantage of a technicality, or (b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation or conduct of his defence by delay on the part of the prosecution which is unjustifiable"*

95. In the light of the considerations above, there is a clear and compelling case to employ extra vigilance in the case of privately issued criminal summons. I shall deal with that in the overall context of the Criminal Procedure Act 1965, which is the current law and the relevant constitutional provisions and also the impending Criminal Procedure Act 2024.

The Criminal Procedure Act 2024

96. At the time of writing this judgement, the Hon Attorney General and Minster of Justice has laid before parliament the Criminal Procedure Act (Commencement) Regulations 2025, bringing the Criminal Procedure Act 2024 into force, which said commencement date shall be the 16th September 2025. Consideration must therefore be given to its provisions as to whether it makes provisions for the institution of criminal proceedings without reference to the Attorney General and Minster of Justice.

97. As I have pointed out above, it is a grave matter for members of the public to be conferred with the right to institute criminal proceedings without reference to the police or the Attorney General and Minister of Justice. Notwithstanding, where it is the intention of Parliament to do so, the courts are duty bound to apply the legislative intention. However, this court has to warn of the grave dangers in doing so. It will not be long before private criminal summonses are issued for serious offences like rape, or

other serious felonious offense without any or adequate procedural safeguards. Private prosecutions by their very nature merely serve only private parochial interests in many instances which are designed to imprison defendants. In contrast, public prosecutions conducted by the Attorney-General are in the public interest and are subjected to two key considerations.

1. Whether there is sufficiency of evidence, i.e. the sufficiency of evidence test, and
2. Whether it is in the public interest to prosecute.

98. A private prosecution in contrast is invariably not subject to any such test, which has procedural safeguards and the remedy of Judicial review to speedily remedy infractions of the law, if a mistake is made by the Attorney General's office. A private person cannot be subjected to judicial review and by the time the court gets to review the case in its entirety injustice would have been done to the defendant and equally, by the time the Attorney General is notified, unsuspecting defendants would have been deprived of their liberty and their reputations destroyed, by malicious allegations which may never be recovered or adequately compensated. Fair trial rights provided for under section 23 of the Constitution may have also been violated.

99. The said Act which has been enacted by Parliament specific provisions in relation to the institution of criminal proceedings in the Magistrates Court. This is set out primarily in section 18(1) of the Act. The Act provides and clarifies that the law by bring clarity to the institution of proceedings, which may be instituted by:

a. A police officer, acting pursuant to the powers of the Attorney General and Minister of Justice and the DPP may institute criminal proceedings by;

   I. Bringing with or without a warrant of arrested, an arrested person before the court.

II. Laying an information before a Magistrate for the issue of a warrant or summons

b. a person or legal practitioner, making a complaint or laying an information before a Magistrate for the issue of a warrant or summons in respect of the complaint or information provided.

(i) the complaint shall be in writing: and

(ii) if a warrant is requested the complaint shall be on the oath of the person making the complaint or a witness to the offence

100. In section 18(2) of the Act, it provides as follows:

(2) It shalt be sufficient if in the title of the proceedings, in committal proceedings or in a summary trial, the prosecutor is

(a) a Police Officer, the prosecutor is described as the "Inspector-General of Police"; and (b) a private person, his name shall appear in the title of the proceedings as the prosecutor.

101. Section 19 of the Act makes similar provisions to section 16 of the current 1965 Act. The current section 16 makes no provisions for the institution of a private criminal summons in the way the new section 18 does. The insertion of a specific provision in section 18 in addition to the section 19 which is in similar terms to the current section 16, clearly show that there is a gap in the institution of a criminal summons in a way not envisaged previously under the 1965 Act.

102. The constitutional powers of the powers of the Attorney General and the DPP cannot be ignored. The use of the words *"All offences prosecuted in the name of the Republic of Sierra Leone shall be at the suit of the Attorney-General and Minister of Justice or some other person authorised by him in accordance with any law governing the same."* Must

be upheld by a court. In the light of this provision, the current section 16 of the 1965 Act and the proposed section 18 of the 2024 Act, do not make provision for a reference to the Attorney General and Minster of Justice under whose suit these matters are being prosecuted. To that extent, these provisions are inconsistent with section 64(3) of the 1991 Constitution.

103. In Halsbury's Laws of England, 4th edition volume 44 statutes para 933 the learned editors had this to say: *"No universal rule can be laid down for determining whether provisions are mandatory or directory; in each case the intention of the legislature must be ascertained by looking at the whole of he scope of the statute and in particular at the importance of the provisions in question in relation to the general object to be secured."*

104. It is therefore within the bounds of permissible interpretation to give effect to the Parliaments purpose, by giving effect to the intention of parliament and statutes were to be read accordingly. The use of the word may in section 16 of the 1965 Act shows a clear intention of parliament that a court is not duty bound to proceed against a defendant by way of a summons and can equally do so by way of a warrant in the first instance. In that respect the new section 18 also entitles the court to proceed by way of summons or warrant and in addition a police officer may also brig an arrested person before the court or by making a complaint or laying an information. Under the 2024 Act, when a police officer does so, he is acting pursuant to the constitutional powers of the Attorney General and or the DPP. In the case of a private person, they are acting under no such powers and to do so would in my judgement be inconsistent with the powers of the Attorney General and the DPP as vested to them, by the constitution.

105. The provision in section 16 of the 1965 and section 18 of the 2024, are arguably inconsistent with the provisions of section 64(3) and 66(4) and (5) of the 1991 Constitution, in that in the case of the latter, the said section 18 provides for the institution of criminal proceedings by issuance of a private criminal summons in the

name of a private individual, contrary to the provisions of the constitution which provide that all such matters prosecuted are at the suit of the Attorney General, and to that extent, the said provision is arguably void pursuant to section 171 (15) of the said Constitution, which provides:

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

106. However, it must be pointed out that notwithstanding the fact that the provisions of section 16 of the 1965 Act and section 18 of the 2024 Act on their face appear inconsistent with the provisions of section 64 of the 1991 Constitution, in the case of section 18 of the 2024 Act it should be clearly stated that notwithstanding this provision, the Attorney General retains the constitutional powers to have these matters prosecuted at his suit. However subject to sub section 3 of section 64, he retains the powers through the DPP to undertake the said criminal proceedings, take over and continue and to discontinue such proceedings. He can only so act if he has knowledge of the said proceedings.

107. Thus, the new section 18 of the 2024, can utilise measures that would allow it to be read in line with the 1991 Constitution, thus making it consistent with the said constitutional provisions. The powers that the Attorney General has are to be utilised at his discretion. Having a power does not mean one has to use those powers at all times. He may choose not to exercise any of the powers he has pursuant to section 66(4) and (5) provided he has notice of a prosecution having been instituted by way of the provisions of section 18(1)(b).

108. Consequently, all private criminal summons instituted pursuant to section 18(1)(b) of the 2024, would have to be notified to the Attorney General and/or the DPP, to ensure the said provisions can be consistent with sections 64(3) and 66 (4) and

(5) of 1991 Constitution and are lawfully issued. Having been so notified, it is a matter for the Attorney General and or the DPP as to whether they invoke their powers under the said 66(4) and (5) of the Constitution. To that extent the Attorney General would have to put in place the necessary authorisation processes within his office to receive such notifications and to decide what to do in each individual case, where such notifications are received.

The current position

109. With respect to the current section 16 of the 1965, the provisions of the said section of the Act cannot be read in a manner that is consistent with the 1991 Constitution. With respect to the two private criminal summonses before this court, neither the Attorney General nor the DPP authorised the institution of these proceedings and they were also not notified of their institution. In particular, with respect to the applicant's case, this is a matter which the DPP had advised was entirely civil in nature and civil redress should be sought. Rather than challenge the decision of the DPP by judicial review, the respondent issued a criminal summons for a matter that had been adjudged to be a civil matter, with no breaches of the criminal law and without the necessary authorisation in accordance with the provisions of section 64(3) of the 1991 Constitution. I entirely agree that should the Magistrate commit the applicant for trial, the DPP is almost certainly going to refuse to sign an indictment, on the basis of his previous advice. Instituting a criminal case on a matter where there is a civil law remedy may amount to an abuse of the process.

110. With respect to the 2nd interested party, those private criminal summonses issued, also bear the hallmarks of an abuse of the process. Neither the Attorney General nor the DPP authorised the issuance of proceedings and were also not notified of the said issuance. Further, the first summons was struck out and another was reissued. This course of conduct is inconsistent with the provisions of section 64(3) and

66(5) of the 1991 Constitution, which requires all criminal offences to be at the suit of the Attorney General. The process used to institute the private criminal summons was therefore unlawful, they being inconsistent with the Constitutional provisions mentioned above.

111. I have a say a few words about criminal matters. Notwithstanding the provisions in the new 2024 Act in section 18 sub section 2 para b, the fact that the title in the proceedings provides for the private person's name to appear in the title as prosecutor, does not make the offence a personal offence. The offence remains an offence under the laws of Sierra Leone and can only be prosecuted as such and in the name of the Republic of Sierra Leone and consequently falls at the suit of the Attorney-General.

Disposal

112. In the light of my conclusions above, a private company cannot lawfully institute a private criminal summons, as there is no lawful basis in law to do so.

113. With respect to the 2nd interested party, the private criminal summons was not lawfully issued as their institution were not authorised by the Attorney General or the DPP in accordance with their constitutional powers.

114. With respect to other ongoing criminal summonses in the Magistrate court with respect to the 2nd interested person, their institution was also not in accordance with the provisions of the Constitution mentioned above, and they cannot have been lawfully issued having regard to constitutional powers of the Attorney General and the DPP.

115. With respect to newly issued private criminal summonses, there has to be a procedure to bring these summonses to the attention of the Attorney General and the DPP. In accordance with my findings above, a private criminal summons cannot be instituted at the suit of the Attorney General without him knowing about it. Where he is aware and takes no action, he can be deemed to have acquiesced in the institution of

the action as it was brought to his knowledge, and it is for him to exercise his discretionary powers or not to.

116. The way forward is to bring these prosecutions to his knowledge and a suggested way forward is for the Deputy Assistant Registrar to bring to the attention of the Attorney General all newly issued private criminal summonses, or the Hom Chief Justice may issue practice directions in this regard to ensure that all privately issued criminal summons are served on the Attorney General and Minister of Justice at the time they are instituted or Parliament may make an amendment to the proposed new Criminal Procedure QACT 2024, to give effect to the Constitutionals provisions.

117. Save for the Parliamentary intervention mentioned above at para 115, it would then be a matter for the Attorney General should these measures be invoked, as to what he does next. I bear in mind that this may create a backlog in authorisations, but Constitutional provisions cannot be sacrificed at the altar of administrative nightmare. It is therefore in my judgement, appropriate for there to be a notification mechanism that would alert the Attorney General of these matters instituted in his name and he nevertheless has the necessary powers to prevent injustice, if the issuance of private criminal summons is to be in accordance with constitutional provisions. The Attorney General having been vested with the discretionary powers in the Constitution is not always bound to use discretionary powers at all times. While he is generally expected to exercise these powers when necessary to fulfill his statutory role, there are situations where non-exercise of a power may be permissible, and these must always be subject to notification.

118. Magistrates are equally required to be vigilant with private criminal summonses and to exercise the power to stay proceedings where necessary in the interest of justice.

119. In the circumstances, I shall make the following orders.

UPON HEARING Ms SK Koroma of counsel for the applicant, Mr I Jenkins-Johnston for the Respondent, Mr YI Sesay State Counsel for the 1st interested party and Ms ES Banya for the 2nd interested party **AND UPON CONSIDERATION of** the application in the Originating notice of motion and affidavit in support and exhibits

IT IS HEREBY ORDERED AS FOLLOWS:

1. An order of certiorari is granted, directed to the Magistrates Court to quash the proceedings now pending before it, intituled "**Pioneer Power Engineering Company (SL) Limited v Zhou Wenjie" and the defendant in those proceedings should be discharged forthwith.**

2. An order of certiorari is granted, directed to the Magistrates Court to quash the proceedings now pending before it, intituled "**Adama Jalloh v Kiptui Debbs" and the defendant in those proceedings is discharged, forthwith.**

3. The costs of this application shall be set out as follows:
    1. The Respondent shall pay the costs of this application to the applicant, pursuant to Order 57 rule 1, and 2 sub rule 1 of the High Court Rules 2007, to be assessed by the court.
    2. The Respondent shall pay the costs of this application to the 1st interested party pursuant to Order 57 rule 1, and 2 sub rule 1 of the High Court Rules 2007, to be assessed by the court.
    3. One Adama Jalloh shall pay the costs of this application to the 2nd interested party pursuant to Order 57 rule 1 of the High Court Rules and Rule 2 sub rule 1 of the said Rules, to be assessed by the court.

HON. JUSTICE A FISHER

The Hon Mr Justice A Fisher J

SIGN ..... JUSTICE OF THE SUPERIOR COURTS OF JUDICATURE