

A critique of the Supreme Court of Sierra Leone's conviction of Augustine Marrah for criminal contempt

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1 Introduction

The Legal Practitioners Act of 2000 authorises the Sierra Leone Bar Association to elect six legal practitioners for membership of the General Legal Council (Council), which is the regulatory body of the legal profession in Sierra Leone.¹ In April 2019, Ibrahim Sorie was among the legal practitioners elected to the Council. Subsequently, I—another legal practitioner—objected to and

¹ Sections 2 & 3, *Legal Practitioners Act 2000* (as amended), Sierra Leone.

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petitioned in the High Court of Sierra Leone Sorie's election to the Council on the basis of ineligibility.

The thrust of my objection was that Sorie, a two-term ex-president of the Sierra Leone Bar Association had not yet attained the necessary fifteen-year standing qualification at the date of his appointment to the Council, based on his year of enrolment into the Permanent Register or Roll of Court in 2011.

Sorie filed an action in the Supreme Court against the Council invoking the exclusive original jurisdiction of the Supreme Court to interpret certain portions of the Constitution of Sierra Leone vis-à-vis the eligibility provision for membership to the Council in the Legal Practitioners Act.² The Supreme Court delivered a controversial 97-page judgment on 27 October 2020.³ I had appeared in the action as co-counsel for the Defendant, the Council. The following morning, I reacted to the judgment on the main lawyers' digital open forum in Sierra Leone dubbed 'E-Bar' as follows:

Yesterday's judgment is certainly landmark—but only posterity will judge whether it is for good or otherwise. When I took up this matter I was very aware that my position and interpretation of the law was adverse to me. I finished Law School in 2009 but didn't sign the Permanent Register until 2012. If it were for personal interest, I'd simply zip it up since the interpretation which I was opposed to and which has been endorsed by the highest court of the land favours me as a matter of fact. But as it has always been for me, the law is superior to my interest and even those of my relatives and friends. The judgment may have clarified the issue for some colleagues and benchers but to my mind, it has further obfuscated the legal profession and flattened its nobility. It has rendered the cornerstone of our profession—pupillage—terribly uncertain and I dare say, worthless. No doubt, one who aspires for public office or judicial duty does not have to bother again with the training and discipline of pupillage. One can now leave the Law School, scurries to the Caribbean for another ten years and returns only to be appointed a High Court judge. Such is the effect of the judgment. The imperative of pupillage has always been that the practical training aspects of legal practice, whether in government or private, ought to be added to those called to the Bar to be ultimately sealed as a Legal Practitioner. In my opinion, politics has yet again been elevated above the law in yesterday's judgment by the Supreme Court. This is egregious chipping of the sanctity of the law and this is not a sour loser's doomsday alarm. We raised this same eyebrow when the [Vice President's] illegal sacking was judicially laundered—less than half a decade later, chickens are coming home in droves to roost. Only those allied with politics and self-serving interests will be jubilating, those of us on the side of the law, will weep for posterity. Weep we will but dither, we will not. *A Luta Continual!*

That same day, the Supreme Court issued out a notice of hearing to the

² Section 124, *Constitution of Sierra Leone* (Act No. 6 of 1991). See also, Section 3, *Legal Practitioners Act 2000* (as amended).

³ *Ibrahim Sorie v General Legal Council* (2020), SC No.6/2019, Supreme Court of Sierra Leone.

respective counsels of the parties to re-convene after delivery of their judgment. First, the notice sent to me was wrongly addressed; it was not my address on record and so I was never served. Second, my client was adequately represented by my co-counsel. However, the five justices of the Supreme Court, irked by my absence, ordered for my arrest on warrant and revoked my right of audience in all courts in Sierra Leone pending my arrest. On 30 October 2020, I appeared before the Supreme Court where summary contempt proceedings were initiated and conducted against me leading to my conviction for contempt of court. I was sentenced to publish a retraction on the front covers of two widely-read newspapers and a written apology to the five justices. Further, the Supreme Court referred the matter to the Disciplinary Committee of the Council for additional disciplinary measures.

In light of this background, this article examines the multiple defects inherent in the summary proceedings which prompted my conviction and exposes the many procedural excesses by Sierra Leone's highest court in what appears to be a hasty attempt to punish me for contempt owing to my social media post. Undoubtedly, I disagree with the reasoning in the said judgment, but for the purpose of this work, I eschewed every temptation to conduct a vindictive scrutiny of the same.

2 The character of criminal contempt: Does a social media post fit the bill?

The Supreme Court was obviously exasperated by my critique of their judgment. They viewed the post as a contemptuous piece, which disparaged the dignity of their court. Contempt of court by speech or writing, according to Halsbury's Laws of England, is described as follows:

Contempt by speech or writing may be by scandalising the court itself, or by abusing parties to actions, or by prejudicing mankind in favour of or against a party before the cause is heard, because in the latter instances, injurious misrepresentations concerning parties may cause them to discontinue the action, or to compromise, or may deter other persons with good causes of action from coming to the court. Any act done or writing published which is calculated to bring a court or a judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the court, is a contempt of court. **Any episode in the administration of justice may, however, be publicly or privately criticised, provided that the criticism is fair, temperate and made in good faith.**⁴ [Emphasis added]

⁴ Halsbury's Laws of England (Contempt of Court-Coroners), 3ed, volume 8, at 6-7.

The Supreme Court did not indicate in my charge which portion of the post it construed as contemptuous. Nonetheless, while judges may be uncomfortable with certain sentiments expressed by either counsel or members of the public, such displeasure should not be elevated to contempt if comments, remarks or statements are fair criticism and are not meant to scandalise the court. In *R v Gray* [1900], Lord Russell of Killowen opined that ‘judges and courts alike are open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no court could or would treat that as contempt of court.’⁵ To my mind, the powers of contempt are not meant to be used to protect the sensibilities of judges but to preserve the dignity of the courts and its administration of justice.

During the summary contempt proceedings, while being cross-examined by my counsel, I mentioned that my characterisation of the judgment as *inter alia* ‘elevating politics above the law’ was informed by the following portions of the judgment.

First, the learned judges held that a contrary holding (that is, fifteen years’ standing should be computed from the date of signing or enrolment in the Permanent Register) would connote that

...appointment of such person as Judges of the Superior Courts of Judicature may be challenged and/or bring into disrepute the Judiciary of Sierra Leone and embarrass successive Governments...Similar to the situation above, which could bring the Judiciary of Sierra Leone into disrepute, other institutions of the Government of Sierra Leone...will be placed in jeopardy...⁶

On pages 79 to 80 of the judgment, the learned judges asserted that:

It follows from the above that in all the situations above, these being Presidential appointments, upholding the Defendants/Respondents position that the interpretation of how standing is computed to be from date of signing or enrolment in the Permanent Register of Legal Practitioners, the respective Government institutions involved would not only be subject to disrepute, the President of Sierra Leone would be put to considerable embarrassment and ridicule.

Lastly, the learned judges, on pages 82 to 83, stated that:

Clearly, these persons who were appointed based on the Plaintiff/Applicant’s position which has been upheld, that standing is computed from date of call, were only named so as to show the consequences that would occur if the Defendants/Respondents position were upheld, the said consequences which would include an immense embarrassment to His Excellency, the President of Sierra Leone and definitely not to impugn those persons.

⁵ *R v Gray* (1900), Queen’s Bench Division, United Kingdom.

⁶ *Ibrahim Sorie v General Legal Council* (2020), at 77-78.

3 Was the contempt in *facie curiae*?

The Halsbury's Laws of England define contempt in the face of the court (*in facie curiae*) as follows:

The power to fine and imprison for a contempt committed in the face of the court is a necessary incident to every court of justice. It is a contempt of any court of justice to disturb and obstruct the court by insulting it in the presence and at a time when it is actually sitting. ... Misconduct in the presence of a judge at chambers or in the precincts of the court is a contempt.⁷

It is a well-established judicial practice and procedure that 'in cases of contempt in the face of the court the offender may be committed instanter, and no notice is necessary, but the contempt must be distinctly stated and an opportunity of answering given.'⁸

Unlike contempt *in facie curiae*, acts or conduct of contempt done outside the presence or precincts of the court (*ex facie curiae*) are prosecutable by summary processes of attachment and committal.⁹ The writ of attachment 'commands the sheriff to attach a person and bring him before the court touching a contempt alleged' and such writ can only be issued with leave of the court, which is applied for on notice to the party affected.¹⁰

The act of contempt that the Supreme Court complained about was my social media post, which was clearly outside its presence or the precincts of the court. Through Order 51 of the High Court Rules 2007,¹¹ the High Court of Sierra Leone is charged exclusively with the power to punish for contempt outside the court by a summary process. Consequently, given that the Supreme Court lacks summary jurisdiction to punish for such acts of contempt, the Supreme Court should have referred the matter to the Master of the High Court to apply for leave to issue a writ of committal or attachment.¹² The Supreme Court, therefore, erroneously treated its alleged contempt as *in facie curiae* when the facts did not suggest that and ignored the correct procedure to punish for contempt while seeking to protect its nobility. In my view, the cradle of nobility is the use of lawful procedure to enforce rights and to discharge powers and duties. Absent that,

⁷ Halsbury's Laws of England (Contempt of Court-Coroners), at 5-6.

⁸ Halsbury's Laws of England (Contempt of Court-Coroners), at 40.

⁹ Halsbury's Laws of England (Contempt of Court-Coroners), at 3.

¹⁰ Halsbury's Laws of England (Contempt of Court-Coroners), at 31.

¹¹ Constitutional Instrument No. 8 of 2007.

¹² Halsbury's Laws of England (Contempt of Court-Coroners), at 31.

any process or procedure intended to protect the integrity and administration of justice is counterproductive.

In essence, the Supreme Court invoked an improper procedure and arrogated to itself powers which Parliament has not assigned to it. The Supreme Court may be supreme in the adjudication of laws but seemingly not in the dispensation of justice.

4 Breach of natural justice: The Supreme Court judged its own cause

By summoning me through a mere notice of hearing and sitting on a contempt matter that concerned them, the five Supreme Court justices were judges in their own cause. It is an age-old principle that ‘in the absence of statutory authority or consensual agreement, no man can be a judge in his own cause.’¹³ In addition, ‘where persons who have direct interest in the subject matter of an inquiry before an inferior tribunal take part in adjudicating upon it, the tribunal is improperly constituted and is without jurisdiction...’¹⁴

The Supreme Court violated a fundamental natural justice principle by presiding over the summary contempt proceedings. They complained of contemptuous conduct but treated the principle of natural justice with utter contempt. Moreover, judges fuming with rage ought to be restrained by the laws and principles of justice and fairness. They must not, while punishing contemnors, deviate from those governing principles.

5 Referral to the Disciplinary Committee: A double jeopardy

After sentencing me to publicise a retraction and tender a written apology, the Supreme Court referred the matter to the Disciplinary Committee of the General Legal Council.¹⁵ Black’s Law Dictionary defines double jeopardy as ‘the fact of being prosecuted or sentenced twice for substantially the same offence’¹⁶ while Section 23(9) of the Constitution of Sierra Leone states that:

No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other offence of which he could have been convicted at the trial for that offence save upon the order of

¹³ *Dimes v Proprietors of Grand Junction Canal* (1852), House of Lords, United Kingdom.

¹⁴ Halsbury’s Laws of England, 3ed, volume 11, at 67.

¹⁵ Established in Section 6(1), *Legal Practitioners Act 2000* (as amended).

¹⁶ Black’s Law Dictionary, 10ed, at 598.

a superior court made in the course of appeal proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence...

The Supreme Court's referral can only be characterised as double jeopardy since the Disciplinary Committee is a statutory tribunal charged with the responsibility to enquire into matters of professional misconduct and to recommend appropriate sanctions.

It is a cardinal principle of law that a person cannot be prosecuted or punished twice for a crime. As opposed to pursuing self-conceited contempt proceedings, the Supreme Court could have elected to have the Disciplinary Committee hear and determine its complaints against me. But once they chose, in excess of jurisdiction, to conduct the proceedings themselves, convict and sentence me, any further punishment pursuant to the same matter would be double jeopardy.

6 Breach of fundamental rights

The Supreme Court's order revoking my right of audience until I appeared before them was not just prejudicial to me as counsel but also as a litigant if I sought to challenge the same. This was a clear abridgement of my right to secure protection of the law. Section 23(1) of the Constitution of Sierra Leone states: 'Whenever any person is charged with a criminal offence he shall unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.'

Even the most notorious accused persons enjoy the full access and protection of the law and the courts. My crime was nowhere close to notoriety, yet the Supreme Court shut the doors of every court to me. There cannot be a more profound deprivation of legal protection and security than that. It seems the Supreme Court was overly consumed with its ire that its sacred duty to protect fundamental rights was lost on it.

The Supreme Court ought to have been aware that while seeking to assert its right to be respected, the constitutional right and/or defence of freedom of expression and the right to due process must be countenanced and lawful enhancement should not be stripped. The Supreme Court cannot while aiming to punish contempt, deny protection of the law. That order was essentially a punishment before prosecution and conviction. The right to be heard and to seek protection of the courts is one of the cornerstones of the justice system; they cannot be removed arbitrarily and certainly not by the gatekeepers of justice.

7 Conclusion

Justice Felix Frankfurter held: ‘Certainly, courts are not, and cannot be immune from criticism, and lawyers, of course, may indulge in criticism. Indeed, they are under a special responsibility to exercise fearlessness in doing so.’¹⁷ Raymond Moley, a political analyst, also opined that ‘the court is a responsible, human institution. To elevate it above criticism would be to create a tyranny above the law, and above the government of which it is a part.’¹⁸ Therefore, the court should for the sake of public accountability, refrain from any conduct that would discourage public scrutiny of its processes and systems.

When the Supreme Court ordered my arrest without obtaining a writ of committal granted by a judge of the superior court of judicature and conducted summary contempt proceedings in its own cause, they were not protecting the sanctity of justice. They were desecrating the sanctity of the administration of justice. Sadly, the same day the President of Sierra Leone assented to the repeal of the 55-year-old criminal libel law,¹⁹ the Judiciary was out of sync with that progress, occupied with entrenching a judicial conduct of suppressing my freedom of speech. Commenting on this irony, Professor Chidi Odinkalu tweeted that ‘it is part of an emerging trend of rampant judges using the cover of judicial power & appearance of legal process to foreclose accountability.’²⁰

The courts have the responsibility of balancing the power to ensure respect to its personnel and processes and the right of counsel and the public to scrutinise them and to demand public accountability for their actions and conduct. Obviously, the Supreme Court of Sierra Leone did not bother to strike that balance when it conducted the procedurally-flawed criminal contempt proceedings.

¹⁷ In *re Sanyer* (1959), Supreme Court of United States, at 669.

¹⁸ Raymond Moley, ‘Criticism of the Court’ *Newsweek*, 16 March 1959, at 100.

¹⁹ Office of the President of Sierra Leone, ‘Sierra Leone’s President Julius Maada Bio repeals criminal libel law, expresses hope for media development and democratic spaces’ State House Media and Communications Unit, 28 October 2020, <<https://statehouse.gov.sl/sierra-leones-president-julius-maada-bio-repeals-criminal-libel-law-expresses-hope-for-media-development-and-democratic-spaces/>> on 21 January 2021.

²⁰ Chidi Odinkalu is a leading human rights practitioner in Africa. Twitter post by @ChidiOdinkalu on 31 October 2020.