

IN THE SUPERIOR COURTS OF THE GAMBIA



IN THE SUPREME COURT OF THE GAMBIA

SC CIVIL APPEAL NO. 002/2020

BETWEEN

SHERIFFO SONKO

.... **PLAINTIFF**

AND

INDEPENDENT ELECTORAL COMMISSION **1ST DEFENDANT**

THE ATTORNEY GENERAL **2ND DEFENDANT**

DATED: 18TH MARCH, 2021

CORAM: Hon. Justice H.B. Jallow CJ

Hon. Justice R.C. Sock JSC

Hon. Justice M.M. Sey JSC

Hon. Justice A. Bah JSC

Hon. Justice E.F. M'Bai JSC



REPRESENTATION: I. D. Drameh for Plaintiff

K. Sanyang for 1st Defendant

**Binga D. with K. Tah, A.A. Ceesay and
B. Jeng for 2nd Defendant**

JUDGMENT

BAH JSC – The High Court, pursuant to *Section 61 of the Rules of the Supreme Court* made a reference to this Honourable Court on the 8th day of October, 2020 in Civil Suit No. HC/434/20/MF/096/F1 between the Plaintiff (herein) and the 1st Defendant (herein), seeking for the interpretation (in that matter) of *Section 194(c) of the Constitution 1997*. By virtue of Order of this Court of 24th day of November, 2020, the High Court reformulated the reference to read:

“Whether Section 194(c) of the Constitution renders Section 19(1)(g) of the Local Government Act 2015 unconstitutional and invalid, so that the Plaintiff’s expulsion from the UDP will not deprive him of his seat as Chairman of the Brikama Area Council, a position to which he was directly elected albeit under UDP ticket.”

As a result of the reference to this Honourable Court, the proceedings in the High Court were stayed pending the determination of this Honourable Court pursuant to *Section 127(2) of the Constitution 1997*. At the hearing before this Court, the Honourable Attorney General who was not a party in the High Court was invited and joined as a defendant since the issue was of a constitutional nature.

The Plaintiff in his suit before the High Court is claiming against the 1st Defendant (sole Defendant in the High Court) for the following reliefs:-

- (i) An injunction restraining the Defendant, its servants, agents or otherwise howsoever from acting in any manner contrary to the Constitution or the Local Government Act or being urged by a registered political party;
- (ii) A declaration that the Defendant has no right to interfere with the Plaintiff’s position as Chairman of the Brikama Area Council or to declare the said position vacant or to conduct an election to the said position;

- (iii) An order that the Defendant should comply at all times with the provisions of the Constitution and the Local Government Act in its operations;
- (iv) A declaration that whilst Section 19(1)(g) of the Local Government Act (passed in July, 2015) provides one of the ways in which a councillor could cease to be a member of a local government council, the said amended section having been passed prior to the amendment of the Constitution by the Constitution (Amendment No.2) Act, 2017 which amended Section 194 of the Constitution calling for "*the direct election of Mayor or Chairperson of the authority*" had to be read in a manner which was consistent with the Constitution;
- (v) A declaration that the Defendant has no right or power to declare a position vacant and thereafter call an election to such a position there having been a valid election held in April, 2018, the Plaintiff having been elected to his office for a term of 4 years;
- (vi) A declaration that Section 19(1)(g) of the Local Government Act has no effect or application since in any case the Plaintiff has not ceased to be a member of the United Democratic Party whether voluntarily or otherwise;
- (vii) A declaration that the Defendant ought not to allow the United Democratic Party to remain registered as a political party unless its internal organization conforms with democratic principles and it undertakes not to subvert either the Constitution of (sic) the Rule of Law;
- (viii) Costs;
- (ix) Such further or other orders as this Court shall deem fit.

Accompanying the Writ and Statement of Claim filed by the Plaintiff is his Affidavit of Statement and List of Documents in support of his case. The Plaintiff's case as averred in his Statement of Claim and Affidavit of Statement and canvassed in his Statement of Case before

this Court, is that he is, and has been for several years, a member of the United Democratic Party (UDP) a political party registered with the 1st Defendant. He was elected to the position of Chairman, Brikama Area Council on the ticket of the United Democratic Party in a public election held in April, of 2018, in the Brikama Local Government Area. The said election was the first direct election to the position of Chairperson of the Brikama Area Council, following the amendment to *Section 194 of the Constitution 1997*. The Plaintiff was elected for a four year period.

Section 194 of the Constitution 1997 (as amended) makes provision for the establishment of a local government authority and it provides thus:-

“An Act of the National Assembly by or under which a local government authority is established shall include provision for:

- a) *the election of members of the authority from among residents of the area within the authority’s jurisdiction at intervals of four years, and the qualifications for election;*
- b) *the additional representation on the authority of District Seyfolu and representatives of local commercial, occupational or social interests or groups, whether by election or otherwise;*
- c) *the direct election of mayor or chairman of the authority;*
- d) *the tenure of office of members of the authority;*
- e) *the recall by their wards of members of the authority;*
- f) *the appointment of committees from amongst the members of the authority including finance, establishment and appointment, and development committees; and*

- g) *The appointment of a chief executive for the authority to be responsible to the authority for the administration of its services and the implementation of the policy and programmes; and for the terms and conditions of his or her appointment.* (emphasis supplied)

Now, the amendment to Section 194 supra being referred to is published in Supplement "C" to The Gambia Gazette No.1 of 11th January, 2018, titled *Constitution (Amendment No.2) Act, 2017* (assented to on 5th day of January, 2018) and the amendment is only in respect of paragraph (c) of Section 194 which originally read: "*the election of the Mayor and the election of the Chairperson of the authority, by the Councillors, from among themselves*". The purpose of the amendment it appears was to provide for the direct election of the Chairperson of a local government authority. The said paragraph (c) as amended now reads: "*the direct election of Mayor or Chairperson of the authority*" and thereby ushered in the first public election to the position of Chairperson, Brikama Area Council, which was not previously the procedure for appointment to that office. The Plaintiff as averred was elected as the Chairman in the direct election in April, 2018.

The Plaintiff was thus elected in a direct election to the position of Chairman, Brikama Area Council standing on the ticket of United Democratic Party. However, by a letter dated the 29th day of June, 2020, the United Democratic Party wrote to the Plaintiff, informing him of his expulsion from the party. The consequence of such an expulsion was stated in a subsequent letter dated the 2nd day of July, 2020, emanating from the Brikama Area Council and addressed to the 1st Defendant, to be that, "the Plaintiff (and others) had ceased to be a member of the Brikama Area Council from the date of his expulsion on 29th June, 2020, in accordance with *Section 19(1)(g) of the Local Government Act*". The 1st Defendant, the Independent Electoral Commission, responsible for conducting public elections in The Gambia, was being urged in that letter to declare as a result, the position of Chairperson vacant and to conduct a fresh election before the end of the Plaintiff's four year term.

The Plaintiff further averred that whilst *Section 19(1)(g) of the Local Government Act* (passed in July, 2015) provided one of the ways in which a person could cease to be a Member of the Council, he would not cease being the Chairman as a result of the amendment to *Section 194 of the Constitution* which called for direct election of Mayor or Chairperson of the authority, even if as alleged by the United Democratic Party, he had been purportedly expelled. The 1st Defendant, it is therefore contended, cannot legally act on any purported expulsion by the United Democratic Party to call an election to the position of Chairman of the Brikama Area Council, whilst the Plaintiff has neither vacated nor otherwise lost his position, nor ceased at any time to be a member of the United Democratic Party.

The record of proceedings of the High Court before this Court as well as in the Plaintiff's Statement of Case further show that in the absence of a Statement of Defence filed by the 1st Defendant, the Plaintiff had filed a motion on the 9th day of September, 2020 seeking for judgment to be entered in his favour in default of the 1st Defendant's Statement of Defence. However, instead of determining that application, the Learned Trial Judge proceeded to make an order on the 8th day of October, 2020 and therein stated that she was of the opinion that the time was not ripe to consider entering judgment for the Plaintiff and that having had the opportunity to study the Plaintiff's claim, *"it was clear to her that it would inevitably require an interpretation and enforcement of Section 194(c) of the Constitution for the determination of whether or not same has any effect on Section 19(1)(g) of the Local Government Act and whether or not Section 19(1)(g) goes against the spirit and letter of Section 194(c) so as to be ineffective and invalid or enforceable and valid"*. As a result the Learned Trial Judge made a reference of that question to the Supreme Court suo motu and accordingly stayed the proceedings before her court. This is concisely the background of the reference to this Honourable Court.

In his Statement of Case, the Plaintiff formulated a sole issue for determination to wit:

"Whether the High Court ought properly to made (sic) the order it did on the 8th day of October, 2020 staying the proceedings and referring the issue she has formulated to this Honourable Court".

Similarly, the issue submitted by the 1st Defendant for determination is *"Whether the High Court was right in referring the High Court Suit to the Supreme Court for interpretation and enforcement?"* Whilst the 2nd Defendant raised the sole issue of *"Whether Section 194(c) of the 1997 Constitution renders Section 19(1)(g) of the Local Government Act 2015 unconstitutional and invalid".*

The reference as rightly contended by learned counsel for the Plaintiff in their statement of case was made suo motu by the Learned Trial Judge and without any invitation to parties to address on it. The Plaintiff also vehemently questioned the propriety and appropriateness of the order staying the proceedings in the High Court and of the issue referred to this Court in his arguments in support of the sole issue so raised.

The anomaly of the procedure adopted by the Learned Trial Judge i.e failure to afford the parties the reasonable opportunity to address the court on the issue she raised suo motu, must be stressed on, as it occasioned a breach of the principle of fair hearing. This Honourable Court per Semega – Jannah JSC in ***Fatoumata Taal v. Saihou Taal (2014-2015) GSCLR page 94 – 98***, held on the point as follows:-

"A court must always afford the parties reasonable opportunity to be heard on an issue raised suo motu even in a situation where the court has absolute confidence in the outcome. Failure in this regard, in a way, undermines the root of the adversarial system of law and conflicts with the principle of fair hearing both of which are enshrined in the practice of the Common Law."

See also the case of ***Senchim AG v Sangol Holding Company Ltd (2010 - 2012) GSCLR 406***.

However, having brought the referral to this Honourable Court, the parties have now been given the opportunity to be heard on the issue so raised by the Learned Trial Judge instead of sending it back to the High Court with an order for the parties to be heard on it. This Honourable Court must therefore lay the issue to rest to enable the proceedings so stayed at the High Court to be dealt with accordingly.

In the Plaintiff's Statement of Case, it is submitted that, considering the stage at which the referral was made, it is quite clear that the Judge had made a case quite different from the parties. Learned counsel for the Plaintiff argued that the processes of the Plaintiff (contained in the records before this Court) do not contain any suggestion that the case of the Plaintiff is that *Section 194(c) of the 1997 Constitution renders Section 19(1)(g) of the Local Government Act 2015 unconstitutional and invalid*, so that the Plaintiff's expulsion from the United Democratic Party will not deprive him of his seat as Chairman of the Brikama Area Council, a position to which he was directly elected albeit under United Democratic Party ticket (the reference before this Court).

I have earlier stated that the decision to make a reference was taken after the Plaintiff had filed a motion for judgment to be entered in his favour in default of the 1st Defendant filing a Statement of Defence. Upon consideration of the claim of the Plaintiff in particular, claims (iv) and (vi) as well as his Affidavit of Statement, I am in agreement with the Learned Trial Judge that there is the need for an interpretation of *Section 194(c) of the Constitution (as amended) vis-à-vis its effect on Section 19(1)(g) of the Local Government Act* before a determination could be made. The said issue is clearly thrown up by the case of the Plaintiff. The position is also supported by the 1st Defendant in their Statement of Case and submissions before this Court. The 1st Defendant contends that the High Court Suit raises constitutional issues for interpretation and enforcement by the Supreme Court and refers this Court to its decision in ***Jammeh v. Attorney General (1997-2001) GLR 839 at page 852.***

Given that such an interpretation could only be made by the Supreme Court which is the Court with the exclusive original jurisdiction to do such by virtue of *Section 127 of the Constitution 1997*, the High Court was therefore right in making the reference to this Court. The reference so made properly falls within the ambit of *Section 127(1)(a) and (b) of the Constitution*. The said *Section 127* supra provides at *subsection (1)(a) and (b)* that:

"The Supreme Court shall have an exclusive original jurisdiction:-

- a) for the interpretation or enforcement of any provision of this Constitution other than any provision of Sections 18 to 33 or Section 36(5) (which relate to fundamental rights and freedoms);*
- b) on any question whether any law was made in excess of the powers conferred by this Constitution or any other law upon the National Assembly or any other person or authority;.."*

Thus the Supreme Court's interpretation on the delegated power of the National Assembly under *Section 194 of the Constitution* vis-a-vis *Section 19(1)(g) of the Local Government Act* is therefore necessary to enable the High Court to proceed with the matter to the final determination of the Suit.

I, however, do not think with due respect to learned counsel for the Plaintiff that there should be an issue with the stage at which the reference was made so long as it is necessary to serve the ends of justice. The Learned Trial Judge was of the opinion after properly studying the case, that there was the need for such a reference before the determination of the case and rightly so.

The Plaintiff and the 1st Defendant are, however, in agreement and have urged that this Court ought to hold that the provisions of *Section 19(1)(g) of the Local Government Act* are inconsistent with the provisions of *Section 194(c) of the Constitution 1997* (as amended). On the other hand, the 2nd Defendant, the Attorney General, holds a

contrary position. It is submitted in the Statement of Case of the 2nd Defendant, premised on reasons I will later get into, that *Section 194(c)* of the Constitution (as amended) does not invalidate *Section 19(1)(g)* of the *Local Government Act* and that *Section 19(1)(g)* contravenes neither the letter nor the spirit of *Section 194(c)* of the *Constitution*, (as amended).

Undoubtedly, the supremacy of the Constitution of our land cannot be over-emphasized and all laws must be consistent with it and be interpreted in line with the Constitution. *Section 4* of the *Constitution 1997* enshrines the supremacy of the Constitution and states as follows:

"This Constitution is the Supreme law of The Gambia and any law found inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void."

See: per Tobi JSC (as he then was) in ***United Democratic Party v Attorney General (2002-2008) 1GLR 326*** where he reasserted the supremacy of the Constitution in very colourful language.

The doctrine of constitutional supremacy was also reiterated by this Court in its decision in the case of ***The Gambia Press Union & 2 Ors v. The Attorney General SC Civil Suit No. 1/2014 (unreported) delivered 9th day of May, 2018 at pages 7- 8*** when the Court stated as follows:

"The supremacy of the Constitution over all other laws is clearly outlined in Section 4 thereof and any such laws that are inconsistent with the Constitution are void to the extent of the inconsistency..."

In ***Jammeh v. Attorney General (1997-2001) supra*** the Supreme Court further expatiated on the doctrine of constitutional supremacy and the consequences for failure to adhere to it in enacting legislation, when the Court held as follows:

"It cannot be over-emphasised that given the supremacy of the Constitution over all other laws and acts or omissions of

public authorities, it is important for all those involved in the exercise of legislative authority of the state to exercise due care and caution to ensure that such legislation is consistent with the provisions of the Constitution and that it is enacted in accordance with the requirements and procedures of the Constitution. Failure to comply with the legal requirements will attract the kind of consequences which have befallen the purported amendments to Section 1(1) and paragraph 13 of Schedule II to the Constitution".

Now what does Section 19(1)(g) of the Local Government Act (as amended) provide. It states as follows:

- "1. Subject to subsection (2) of this Section, a person shall cease to be a member of a Council-
 - a) Upon his or her death;
 - b) Upon revocation of his or her original mandate and shall be disqualified from standing as a candidate for the two terms immediately following the revocation;
 - c) If by writing addressed to the Chairperson of the Council he or she resigns as a member;
 - d) If he or she becomes disqualified under any of the circumstances specified in subsection (3) of Section 17 of this Act;
 - e) If he or she is removed from office under Section 20 or 22 of this Act;
 - f) If he or she absents himself or herself from more than three consecutive ordinary meetings of the Council without the written permission of the Chairperson of the Council; or
 - g) If he or she ceases to be a member of the political party of which he or she was a member at the time of his or her election". (emphasis supplied)

Section 19(1) of the Local Government Act was amended by Act No.7 of 2015 and the purpose clearly was to add a new ground for cessation of a Council membership by including a new paragraph - (g) to the already existing paragraphs (a-f) which detailed the different conditions/grounds upon which a person could cease to be a member of a Council (a local government council). Paragraph (g) reproduced above, made provision for the additional ground of cessation of membership of a Council, by "*ceasing to be a member of the political party of which a person was a member at the time of the person's election*".

The Plaintiff certainly recognizes the purport and effect of this provision as it is his case that the amendment passed in July, 2015 provides one of the ways in which a councillor ceases to be a member of a local government council but goes further to argue that *Section 19(1)(g)* has no effect or application since in any case he has not ceased to be a member of the United Democratic Party whether voluntarily or otherwise. The Plaintiff is however of the opinion that the said *Section 19(1)(g)* is not consistent with the letter and spirit of the constitutional amendment of *Section 194(c)*. The contention of the Plaintiff is that:

"The said amended section having been passed prior to the amendment of the Constitution by the Constitution (Amendment No.2) Act 2017 which amended Section 194 of the Constitution calling for "the direct election of Mayor or Chairperson of the authority", had to be read in a manner which was consistent with the Constitution."

In reply to the Statement of Case of the Attorney General, learned counsel for the Plaintiff further contended that "the Constitution is the Supreme Law of the land and should be the final and (sic) source of legality and constitutional authority and that therefore, there cannot and should not be any other legal document which may be claimed to have superior or concurrent authority to it and certainly the Local Government Act cannot be that document". It is additionally submitted that the Local Government Act could not be

read in such a way that the Plaintiff would be hampered in his right to join or belong to a political party not by voluntary action of his but by way of the actions of the party itself especially where the Constitution ensures his appointment by a method other than that which existed previously.

Certainly, as I have stated earlier and this is settled, the Constitution 1997 is the supreme law of the land and if I may reiterate, any other law found inconsistent with its provisions shall be null and void to that extent. The Local Government Act obviously is not and cannot be superior to or be of concurrent authority with the Constitution. The said Act itself is a creation of the Constitution pursuant to *Section 194* therein and derives its legitimacy from the Constitution as does *Section 19(1)(g)* of the said *Local Government Act*. The issue at hand clearly then is *whether Section 19(1)(g) of the Local Government Act is inconsistent with the provisions of Section 194(c) of the Constitution which calls for direct election of the Mayor or Chairperson of the authority.*

Section 194 (reproduced earlier) delegates the National Assembly the power not only to enact a legislation for the establishment of a local government authority but further makes provision for some of the matters that should be contained in any such legislation. The matters so provided for are listed in *paragraphs (a) to (g)* of *Section 194* (reproduced earlier) and which includes the direct election by the people of a Mayor or Chairperson of a local government authority.

I cannot agree more with the contention of the 2nd Defendant that the said *Section 194* creates a framework and sets out the minimum provisions to be contained in an Act of the National Assembly under which a local government authority is established. The provisions set therein are therefore not exhaustive. *Section 194* is however silent on how or when a Mayor or Chairperson of the authority or in fact a member of the authority would cease to be a member or would lose his or her seat, other than the recalling of members by their wards (*S. 194(1)(e)*).

These important matters amongst others not provided for in the said *Section 194* are by inference therefore delegated to the National Assembly to determine in a local government enactment by all intents and purposes for the better carrying out of the administration of a local government authority. *Section 194 of the Constitution*, I concur with the 2nd Defendant, does not contain an exhaustive list of the provisions to be contained in any such local government enactment, hence the use of the phrase "*shall include*" by the framers in providing for the matters to be dealt with in a local government enactment.

The 2nd Defendant, in support of its argument on the point, has referred to the dictionary meaning of "shall include" or "include" in the ***Black's law Dictionary 8th Edition at page 2229*** and which means:

"To contain as a part of something. The participle including typically indicates a partial list".

In addition, I shall add the meaning provided by ***Stroud's Judicial Dictionary 5 ed. Pt.3 I-0 page 1263*** which states that:

"shall include" is a phrase of extension, and not for restrictive definition ; it is not equivalent to "shall mean" (***R. v. Kershaw, 26 L.J.M.C. 19; R. v. Hermann, 4 Q.B.D. 28***). See per Channell J., ***Savoy Hotel Co. v. London County Council (1900) 1 Q. B. 666***.

The phrase "*shall include*" is *very* simple and clear and its ordinary meaning should be ascribed to where applicable. However, in the circumstances of this case, while it is true that *Section 194 of the Constitution* uses the phrase "*shall include*" (which is generic in nature) in relation to what may be contained in a local government enactment, it must nevertheless be interpreted within context.

The Plaintiff in his Reply to the Statement of Case of the 2nd Defendant contended that in construing constitutional provisions, a broad and generous approach was required to give individuals the full measure of the rights and freedoms referred to in the

Constitution, having argued that the right to associate is a fundamental right given to the Plaintiff by Section 25 of the Constitution. Undoubtedly, the said Section 25 (1) at paragraph (e) gives the Plaintiff the right to associate freely and which right includes the freedom to form or join a political party.

The rights and freedoms guaranteed in Chapter IV of the Constitution 1997 are undoubtedly, fundamental and protected. According to this Court in the case of **The Gambia Press Union & 2 Ors v. The Attorney General supra**, "the nature of the protection is such that the provisions are entrenched, thus demonstrating the higher value placed on them by the framers of the Constitution". Their Lordships of the Supreme Court further posited that: "It is correct that a constitution, no less the Constitution of the Republic of The Gambia, must be given a broad and purposive construction", referring to the case of **The Attorney General of Gambia v. Momodou Jobe (1984) AC 689 at p.700H; (1984) UKPC 10**, where the Judicial Committee of the Privy Council held that:

"A constitution, and in particular that part of it which protects and entrenches fundamental rights and freedoms to which all persons in the State are to be entitled, is to be given a generous and purposive construction."

Their Lordships went on to hold however that:

"The first rule of this Court when the constitutionality of an act of Parliament is challenged is to presume the Act of Parliament to be constitutional unless shown otherwise. This is a heavy burden on the Plaintiffs. (Steven Grant v The State (2006) UKPC 2 (16th January 2006); Mootoo v the AG of Trinidad & Tobago (1979) 1 WLR 1334 at pages 1338-1339 referred)."

I fully adopt the above position of their Lordships on that principle of constitutional construction which I find applicable under the circumstance of this case. The issue at hand certainly questions the exercise of the fundamental right of the Plaintiff to join a political party vis-a-vis whether having been elected into office on the ticket of

a political party, he could be removed by virtue of *Section 19(1)(g) of the local Government Act*.

It is not disputed that before the constitutional amendment in 2017 to *Section 194 (c) of the Constitution* (which came into effect in January 2018), a different procedure for election of a Chairperson of a local government authority existed, and which was that the Chairperson was elected from among the elected Councillors of a local government area. The amendment however ushered in the new procedure by way of a public election to the position of Chairperson and which was first held in 2018.

Election to an office where the people determine who should be elected is a fundamental power given to the people and that power in my considered view could only be limited in a reasonable and constitutional way. *Section 194 of the Constitution* delegates the power to the National Assembly to enact laws relative to the qualifications for election to a local government authority but made no provision regarding disqualifications. It can be argued however that inherent in the act of determining qualifications is also the power to determine which acts would constitute disqualifications for an elective.

Where a person is directly elected to an elective office by the people, then unless the Constitution limits or in any way restricts the removal from office of that person, it would be in excess of its legislative authority for the National Assembly to enact a law barring the person from continuing to hold office simply because the person ceases to be a member of a political party. Such a critical restriction can only be valid if it is specifically provided in the Constitution or where the Constitution specifically and unambiguously delegates such power to be contained in an enactment passed by the National Assembly. It would run counter to the ideals and precepts of the Constitution to enact an ordinary piece of legislation to introduce a measure that renders a person ineligible to hold office on the basis that the person's party has expelled/removed him or her from the party. Therefore, the phrase "*shall include*" used in *Section 194 of the*

Constitution cannot be limitless in terms of the disqualifications or qualifications that the National Assembly may enact in relation to an elective office of a local government authority.

Fundamentally, the Constitution cannot on the one hand give the people the power to elect their representatives into office and the National Assembly on the other hand, enacts a legislation imposing a disqualification (on that elective) that goes to the root of the power of the people vested under the franchise, as *Section 19(1)(g) of the Local Government Act* seeks to do. If it had been intended to make provision for such a disqualification, it should clearly and specifically be provided for on the Constitution as it did in the case of the National Assembly members (before the subsequent amendment) where a similar cessation provision was made in *Section 91(1)(d) of the Constitution* that, "A member of the National Assembly shall vacate his or her seat in the National Assembly if he or she ceases to be a member of the political party of which he or she was a member at the time of his or her election". Where disqualification powers form part of the delegation to the National Assembly, then such delegation must be specific and unambiguous.

Moreover, the Local Government Act at *Section 20* specifically provides for the procedure for removal of a Chairperson from office. It states at *subsection (1)* as follows:

"Subject to subsection (2), a Chairperson, Deputy Chairperson or other member of a Council may be removed from office by a resolution supported by two-thirds of all the members of the Council on any of the following grounds -

- (a) abuse of office;
- (b) corruption;
- (c) misconduct; or
- (d) such physical or mental incapacity as would render him or her incapable of discharging the duties of the office."

These measures are the general legal framework for qualifications and disqualifications of elected representatives.

In that context therefore, the provisions of the Constitution read as a whole (as this Court and indeed any other court, must do) in relation to *Section 194(c)* live on a sacrosanct pedestal. The people decide on their elected representatives and, effectively, determine their period of service (as provided under the Constitution and the relevant applicable laws). Where any elected representative is to lose his or her elected seat, then that must be based on clear and unambiguous language either prescribed in the Constitution or specifically authorized by the Constitution.

It follows therefore that, reading the Constitution as a whole, in particular the provisions on the right to and exercise of the franchise by the people, coupled with the right to associate freely, *Section 19(1)(g) of the Local Government Act* cannot properly place limitations on the period of service in an elective office on the basis that the person directly elected to that office has been removed or expelled by his or her party.

Consequently, it is for the foregoing reasons that in response to the question referred to it by the High Court on the 8th day of October, 2020:

“Whether Section 194(c) of the Constitution renders Section 19(1)(g) of the Local Government Act 2015 unconstitutional and invalid, so that the Plaintiff’s expulsion from the UDP will not deprive him of his seat as Chairman of the Brikama Area Council, a position to which he was directly elected albeit under UDP ticket.”

This Court finds and holds that:

Section 194(c) of the Constitution 1997 (relating to the direct election of Mayor or Chairperson of the authority) renders *Section 19(1)(g) of the Local Government Act 2015* (which disqualifies a member of a local government authority from continuing to hold office on account

of that member ceasing to be a member of a political party) unconstitutional and invalid.

Accordingly, this case is remitted to the High Court for determination of the Suit.



(Signed)
Hon. Justice A. Bah JSC

I agree

(Signed)
Hon. Justice H.B. Jallow CJ

I agree

(Signed)
Hon. Justice R.C. Sock JSC

I agree

(Signed)
Hon. Justice M.M. Sey JSC

I agree

(Signed)
Hon. Justice E.F. M'Bai JSC