

## **CHAPTER ONE**

### **HISTORICAL BACKGROUND OF SIERRA LEONE LEGAL SYSTEM**

Sierra Leone legal system as a subject is principally intended to instruct the student on the important institutions and processes of our legal system. It introduces the student to the court system, the Applicable laws, the hierarchy, composition and jurisdiction of our courts and a bit of the procedure in those courts.

Consequent upon the above, it is imperative that, instructions are commenced with an historical background of our legal system. This would help the student appreciate the evolution of the legal system and it's metamorphosed to what it is today.

Historically, our legal system has evolved under three different and distinct periods under which it operated. These are pre-colonial, colonial and post-colonial eras.

### **PRE-COLONIAL ERA LEGAL SYSTEM**

Although in 1462, **Pedro da Cintra**, a Portuguese Explorer had christened the coastline of Sierra Leone as Sierra-Loya, from which the name Sierra Leone was later derived, during the precolonial era, we did not have the geographical entity that is now called Sierra Leone. What existed were distinct sovereign kingdoms splintered all over the geographical entity now called Sierra Leone. These were separate and independent kingdoms, ruled by individual kings, with absolute autonomy for each territory.

During this period, there was complete fusion of power. The legislative, executive and judicial powers were fused and vested in the hands of one person, the king. There were no formal court systems or legislature. All powers were conferred on the king and his cabinet.

Disputes were resolved by the king and his council of elders. AS custodian of the customs and traditions of the kingdom, he epitomized the law and his word was law.

The decisions of the king and his courtiers were final and there was no room for dissent or an Appeal. Dissent was not only considered an affront to the kings wisdom and authority, but also viewed as disloyalty to the throne and punishable with equal measure. The king proscribed the prohibited conduct and prescribed the sanction for violation.

### **LEGAL SYSTEM UNDER THE COLONIAL PERIOD**

During the era of the transatlantic slave trade, European slave traders established trading posts along the coastal line of West Africa, in places like Bonthe, Bounce and Tasso islands and the Freetown peninsula. The native rulers leased the land to them and this explains why that period is also known as the landlord or stranger era.

With the advent of the industrial revolution, the demand for slaves dwindled and the trade was no longer lucrative. This coincided with an heightened campaign for the abolition of slavery, by the so called philanthropists, like William Wilberforce, Grayville Sharpe and Henry Thornton.

They attached a moral fibre to their campaign, rather than the economic reality that actually necessitated it. Wilberforce and others were more of realists than philanthropists. Machines had taken over the work of slaves and therefore rendered the slave workforce redundant. The west thus needed to fine a more humane way of getting rid of the slaves.

In 1772, a slave named Summerset escaped from the Americas and came to London. He was recaptured by the owner Steward, who wanted to take him back to the Americas. His case attracted the attention of abolitionists like Wilberforce, who took it to court, in the famous case of Summerset vs. Stewards.

The presiding judge Lord Mansfield, delivered the landmark judgement, in which he inter alia pronounced that, the institution of slavery was unknown in the history of Britain and that, any slave that sets his feet on an English soil was a free man.

This decision had unintended and un contemplated consequences. It led to the influx of ex- slaves into England. The streets of London were now riddled with free slaves, known as the black poor and they became a blight in the conscience of the British Government and English people.

There was therefore the urgent need to rid the streets of London of this social menace. The solution was proffered by a Dr. Henry Smearthan, a naturalist that had worked in Sierra Leone. He recommended that, the free slaves be settled along the Sierra Leone peninsula and this was hearkened to by Wilberforce and his cohorts.

The first set of ex-slaves accompanied by sixty Europeans mainly women, landed in Sierra Leone in 1787 and were hosted by King Tom.

They faced a lot of aggression from the natives, who frequently attacked them. This coupled with the unwillingness of the British government then, to declare the settlement a crown colony, forced Wilberforce, Thomas Clarkson and others, to form a company known as the saint George's bay company.

This company took over the administration of the settlement and imposed a quit rent, payable by the settlers annually, to meet the administrative cost and the defence of the settlement.

In 1792, another batch of slaves numbering 1,100 from Nova Scotia arrived in the settlement. The new arrivals revolted against the payment of quit rent. They contended that, the land was acquired for them by the British government and therefore they need not pay a quit rent for it to the company. The revolt was only put down with the help of another set of freed slaves that arrived from Jamaica, known as the maroons

The company continued to struggle to hold the settlement together and again turned to the British government for intervention. In 1799, the company was granted a royal charter, with a governor in council, with legislative powers. This notwithstanding, the company's fiscal constraints persisted.

In 1807, The Company Transfer Act was enacted, with a commencement date of the 1<sup>st</sup> January 1808. The intendment of this Act was to transfer the administration of the settlement, from the company to the British crown.

Consequently on the 1st January 1808, the settlement along the Freetown peninsula, became a crown colony and the settlers British subjects.

The attacks on the settlement by their neighboring natives persisted. By reason of these persistent attacks and the expanding annexation of territories in the hinterland by the French, the British signed treaties of peace, unity and commerce with rulers in the hinterland. This eventually led to the declaration of the protectorate on the 31st August 1896 and the inhabitants of the protectorate became British protected persons.

The introduction of colonialism in 1808 and the declaration of the protectorate, with the resultant indirect rule of the latter, gave birth to the duality in our legal system. What was to become Sierra Leone was now divided into two, the colony which is now the western Area and the protectorate, now the provinces.

The colony was administered directly by the British and governed by English law, whilst the protectorate was still pretty much ruled by their kings, under customary law.

Throughout the colonial period, we had two municipal English courts and one traditional court namely: the Magistrate's courts, the Supreme Court and the native courts respectively.

For purposes of Appeal, we had the West African Court of Appeal (WACA) to which all appeals from the Supreme Court lied and the Privy Council, for appeals from the West African Court of Appeal.

But the highest municipal court during colonial era was the Supreme Court now High Court, by the Interpretation Act. 1971.

### **THE MAGISTRATE'S COURTS**

These courts under colonial period, were constituted by Section 27 of the Courts Act 1946, cap 7 of the laws of Sierra Leone 1960, for each of the judicial districts designated by section 28 of the said Act namely: the headquarter judicial district, the Freetown police judicial district, the Sherbro judicial district and each of the Administrative districts in the provinces was a judicial district.

The magistrate's courts during this period, were in several respects, akin to the magistrate's courts as we have them today, in terms of geographical jurisdiction, personnel and support staff.

However it would seem that, the magistrate's courts then had a wider jurisdiction in terms of subject matter, than they have now.

The magistrates were appointed by the Governor, from amongst fit and proper persons. There were no stated academic or professional qualification requirements.

Therefore any person who in the opinion of the governor, was a fit and proper person, can be appointed a police or stipendiary magistrate. Unfortunately there is no definition of a fit and proper person in the Act.

By section 28(3,4&5) of cap 7 ,the provincial commissioner can serve as a magistrate in any of the districts in his province and Districts commissioners can so serve as well, in their respective districts.

## **JURISDICTION**

Section 29 of cap 7 set out the jurisdiction of colonial magistrate courts as follows:

Civil jurisdiction was for claims or disputes for which the subject matter does not exceed £200 and for the recovery of premises for which the rent reserved did not exceed £100 and the term granted not exceeding ten years.

Criminal jurisdiction is for offences for which the punishment prescribed does not exceed six months imprisonment or a fine of a £100 or both.

## **THE COLONIAL SUPREME COURT**

This by the interpretation Act, was the equivalent of the High Court we have today. During colonial era, it was the highest municipal court in the land. It was established by section 3 of cap 7 aforementioned.

## **COMPOSITION**

This court was composed of the Chief Justice of Sierra Leone and one or more puisne judges and the Chief Justice of the Gambia, who shall be a puisne judge of the supreme court of Sierra Leone.

Qualification for appointment to the Supreme Court was, a person who was qualified to practice law in England, Scotland and Northern Ireland, for at least four years. See Section 4 of cap 7.

## **JURISDICTION.**

The jurisdiction of the colonial Supreme Court was set out in section 11 of cap 7. The court is said to be vested with all the powers of her majesty's High Court of justice in England. It was however expressly precluded from hearing and determining customary law matters arising in the protectorate and dispute between two natives, involving question of title to land situate in the protectorate, claims relating to native marriages or divorce, the administration of the estate of deceased natives situate in the protectorate or any matter intended to oust the jurisdiction of native courts on such matters..

Appeals from this court lied to the West African Court of Appeal, pursuant to Section 22 of cap 7. The west African Court of Appeal was created by the West African Court of Appeal Order in council 1948 and the process of appealing to that court was set out in the case of civil Appeals, in the West African Court of Appeal (civil cases) Act and for criminal Appeals, the West African Court of Appeal (Criminal cases) Act cap 14 and 15 of the laws of Sierra Leone 1960 respectively.

## **NATIVE COURTS.**

These were created by the Native Courts Act cap 8 of the laws of Sierra Leone 1960. This Act created three distinct courts namely, The native Court, which consisted of the paramount chief and other chiefs. The presiding chief was the president of the court and there was a vice president and members of the court.

The President and vice president of the court were appointed by the District Commissioner, from amongst chiefs that constituted the court.

## **JURISDICTION.**

The civil jurisdiction of this courts, was as follows

- a) The administration of the estate of deceased natives, situate in the protectorate
- b) All civil cases between natives triable by Native laws and these included
  - i) title to land situate in the protectorate
  - ii) Customary marriages and divorce.

The criminal jurisdiction was limited to matters in which both the accused and the complainant, are natives and for offences for which the sentence prescribed did not exceed six months imprisonment or a fine of £10.

## **THE COMBINED COURT.**

This was the court established by section 4 of cap 8, for the purpose of hearing and determining matters involving non native settlers in the protectorate. The composition was the Chief and a settler nominated by him and approved by the provincial commissioner.

### **GROUP NATIVE APPEAL COURT.**

This court was provided for by section 14 of cap 8 of the laws of Sierra Leone 1960. This was composed of the chiefs of Chiefdoms that came together and agreed to constitute an appeal court, for the purpose of hearing appeals from their respective native courts.

The composition was the chiefs of the respective Chiefdoms that came together or any persons deputed by them.

The district commissioner shall appoint the presiding chief, each time there is an appeal, provided that, the Chief of the Chiefdom from which the Appeal came shall not preside.

## **POST COLONIAL ERA**

Following the attainment of independence from Britain, on the 27th April 1961, the new Rulers maintain to a very large extent the judicial structure and legal system they inherited from the colonial masters for sometime. However after independence and eventually the Republican status in 1971, we severed all political ties with the British crown completely. We no longer had a Governor General representing the Queen as head of state. We now had an executive president.

With those political developments, went the judicial ties we had with them. The court structure and legal system were restructured to reflect our autonomous and sovereign status. An all inclusive legal system was set up, with a national outlook.

The supreme court then became the High Court, the West African Court of Appeal became The Court of Appeal of Sierra Leone and the privy council, our present day Supreme court.

It is this existing structure of our legal system that would be the focus of our study.

## **CHAPTER** **TWO**

### **DUALITY IN OUR LEGAL SYSTEM**

With the advent of colonialism in 1808, came dualism in our legal system. Dual legal system, is simply the application of two sets of laws in the country. These two laws operate side by side.

The two applicable laws are the English/General law and the customary law. Both laws apply in varying degrees, as we would see presently.

Section 170 of the 1991 constitution gives recognition to the applicability of both laws in the country. Also the interpretation section of the constitution, which is section 171, defines law in Subsection (1)(a&b) as:

- a) Any instrument having the force of law made in exercise of a power conferred by law
- b) Customary law and any other unwritten rules of law.

From the foregoing, it is clear that, the constitution as the ground norm, sanctions the applicability of both customary law and English/General law.

However, the duality in our legal system, is provided for by section 76 of The Courts Act 1965, which is on all fours with and an expressed adoption of section 38 of cap 7 of the laws of Sierra Leone 1960,(the Courts Act 1946),which section 79 of the 1965 Act repealed and replaced.

Section 76 of the Courts Act 1965 is generally to the effect that:

- a) English/General Courts in dealing with civil matters arising in the Provinces, are at liberty to apply existing customary law.
- b) It defines the nature and scope of such applicable customary law.
- c) That in the event of conflict, which of the two laws shall prevail.
- d) The effect of persons whose personal law is the customary law, electing to conduct their affairs or business in accordance with the English/General law.

Section 76(1) authorises all courts to apply existing customary law in dealing with all civil matters arising from the provinces and guarantees the enjoyment of the benefit of such customary law by all, on the proviso that, the said existing customary law is:

- a) not repugnant to natural justice, equity and good conscience
- b) not incompatible directly or by necessary implication, with any Act applying to the provinces.

This provision in my considered opinion, almost renders customary law redundant in general/english courts.

Firstly, what is conscionable, equitable or natural justice, is not defined. It is left in the hands of the presiding benches of those courts, who are trained in English law, with an innate

professional bias, for the prevalence of the law they are trained in and which informs their relevance.

The determination of the repugnancy of customary law, to natural justice, equity and good conscience, being left to the unfettered discretion of English law trained presiding benches, makes the existence of customary law in those courts precarious.

This perhaps explains the dearth of customary law submissions by counsel, in matters commenced or initiated in those courts. The bulk of customary law issues, would often arise almost exclusively, in matters that come to those general courts on appeals from the local courts.

Secondly, customary law can only be applied in those courts, if it is not in conflict with any Act applying in the provinces. This is also restrictive, limiting and makes customary law subordinate to the English law.

Section 76(2) in my view seems to negate subsection one. It provides that, the relevant customary law shall apply in any cause or matter, where it would appear to the Court that, the application of any other law shall occasion substantial injustice to a party, except the circumstances, nature and justice of the case requires otherwise.

Barring the circumstances, nature and justice of a case, it seems to me that, if for instance, strict adherence to an Act applying to the provinces, would occasion substantial injustice to a party, the Courts are at liberty to apply the relevant existing customary law.

This to me, seems to be at variance with the instructive provision in section 76(1) that says, as long as such customary law conflict with an Act applying in the provinces, the customary law would become extinct, with no reference to any injustice that may be occasioned to a party.

Section 76(3), speaks to circumstances in which, a person whose personal law is the customary law, expressly or by conduct adopt the english/general law in the conduct of his affairs. In such a situation, the person is rid of all benefits of the customary law, respecting those transactions.

This is where a native transacts his business under the general law. For instance he enters into a written contract, like lease Agreement, Prepare title Deeds like conveyance, Deed of gift etc, he has expressly adopted the English law in those transactions and would not benefit from customary law relative to them.

Also impliedly, where a party whose personal law is customary law, contract a monogamous marriage or execute a will, upon his demise, his estate would not be administered under the customary law, but under the English law, as he had by conduct elected to be governed by the English law in that behalf.

## **THE SCOPE OF APPLICABILITY OF THE TWO LAWS**

Customary law as defined in Section 170(3) of the 1991 constitution, means, rules of law which by custom are applicable to particular communities in Sierra Leone.

The general/English law on the other hand, refers to all instruments having the force of law and made in pursuance of power conferred by law and the common law and doctrines of equity referred to in Section 74 of the Courts Act 1965.

From the foregoing it is obvious that, both geographically and in terms of subject matter, the general/English law has a wider scope of applicability, than the customary law.

This perhaps explains why, the English law is interchangeably also called the General law. It applies throughout the country and to all categories of persons, that is both natives and non natives.

The customary law however, is applicable only to particular communities in the provinces. It does not to a very large extent, apply in the West area and to non natives.

Sections 15 of the Local courts Act 2011 and 1 (a&b) of the Administration of Estates Act, cap 45 of the laws of Sierra Leone 1960, seem to lend credence to this averment.

Section 15 of the Local courts Act 2011, in setting out the jurisdiction of those courts, limits it to the estates of deceased natives situate in the provinces, customary divorces and title to provincial land.

And by section 4 of cap 122, The provinces Land Act, non natives can not own land in the provinces. The largest estate they can hold in provincial land, is a lease term for 50 years and an option for 21 years. They therefore can not sue or be sued for title to provincial land, as they can not claim what by law they can not have.

Section 21 of the Courts Act 1965, precludes local courts from hearing and determining any matter relating to a cap 122 lease.

Section 1(a&b) of cap 45 which is the Administration of Estates Act, provides that, the said Act shall apply to the estates of deceased non natives situate in the provinces and those of deceased natives situate in the West area.

Consequently, local courts do not have jurisdiction over estates of deceased non natives situate in the provinces and those of deceased natives situate in the Western area, apparently due to the geographical and subject matter limitation of the scope of customary law. Geographically it does not apply in the western Area and in terms of subject matter, it does not apply to non natives.



## **CHAPTER** **THREE**

### **SOURCES OF OUR LAWS**

Section 170 (1) of the 1991 Constitution, sets out the sources of our laws and it states thus: 'The laws of Sierra Leone shall comprise -

- a) this Constitution,
- b) laws made by or under the authority of parliament as established by this Constitution,
- c) any orders, rules, regulations and other statutory instruments made by any person or authority pursuant to a power conferred in that behalf by this Constitution or any other law.
- d) the existing law and
- e) the common law'.

The foregoing are the sources of all laws applicable in Sierra Leone Section 170 (1) (a) talks of the 1991 national constitution, which is the ground norm and the principal source of all our laws. All applicable laws must conform to and consistent with the provisions and legislative intent of the constitution, otherwise they could be challenged in the Supreme Court as being unconstitutional and a nullity ab initio Subsection(1) (b) refers to statutes/Acts passed by parliament or bye laws made by statutory bodies such as local councils, pursuant to powers delegated to them by parliament.

Subsection (1) (c), alludes to rules and regulations made by state institutions pursuant to powers in that regard, conferred in them by either this Constitution or other Acts of parliaments. Examples of such regulations/rules are the High Court Rules 2007, The Court of Appeal Rules 1985, The Supreme Court Rules 1982, Appeals from the magistrate Courts Rules and the magistrate's courts (civil procedure) Rules, all made by the Rules of Court Committee, as constituted by section 145(1) of the constitution, pursuant the powers vested in them by subsection two of same. Rules envisage in section 150 of the constitution, to be promulgated by the Rules of Court Committee, for the regulation of practice and procedure of commissions of enquiry.

Regulations promulgated by parliament in enforcement of any state of emergency proclaimed by His Excellency the president pursuant to Section 29 of the constitution.

Under this subsection, we also have executive orders pronounced by presidents. Example of these include executives orders pronounced by His Excellency President Retired Brigadier Dr Julius Maada Bio, on the export of timber, the single treasury Account and the monthly cleaning exercise.

If the power to make such regulations or rules, is conferred by the constitution, when promulgated, the rules or regulations are constitutional instrument. If the power is conferred by an ordinary Act or statute, when made the Rules or Regulations are statutory instrument.

Section 170(1) (d) refers to existing laws, which by subsection 4 of this section, comprises of the written and unwritten laws of Sierra Leone, as they existed immediately before the coming into force of the current constitution and any statutory

instrument issued or made before that date to take effect on or after that date.

The final source is that contained in section 170(1) (e), which talks of the common law. By its definition in section 170(2) of the constitution, the common law of Sierra Leone includes all unmodified/unwritten laws applicable in the country. The common law is defined in that subsection, as the Rules of law general known as the common law, doctrines of equity and the Rules of customary law.

The customary law, as a source of our laws, falls under common law as referred in Section 170 (1) (e).

Subsection three of Section 170, defines customary law, as rules of law which by custom are applicable to particular communities in Sierra Leone.

Broadly speaking, all of these laws created by section 170(1) of the constitution, could be subsumed into four principal sources namely: statute law, customary law, common law and the doctrines of equity.

### **STATUTE LAW**

There are three types of statutes under our legal system and these are:

- a) **MUNICIPAL/DOMESTIC STATUTES:** These are Acts of parliament passed by our local or domestic legislature, since its establishment. They include colonial and post colonial statutes. Colonial statutes are those contained in the compendium known as the laws of Sierra Leone 1960, contained in volumes and divided into chapters abbreviated as caps.

The post colonial statutes are those passed by our parliament after independence, some of which are contained in the compilation known as 'legislations of Sierra Leone'.

**RECEIVED STATUTES:** These are statutes of general Application in force in England before the 1st January 1880 and which are made applicable in Sierra Leone by Section 74 of the Courts Act No.31 of 1965, our reception clause. They are part of the laws we received from England. Examples of these statutes are: The Offences Against the Person Act 1861 and The malicious Damage Act 1861.

**ADOPTED STATUTES:** These are statutes of general Application enacted in England after 1880 and expressly adopted by our parliament and made applicable to Sierra Leone, by specific Adoption Acts passed in that behalf. Examples of these are: The Perjury Act 1911, The Forgery Act 1913 and The Larceny Act 1916, adopted under The Imperial Statutes(Criminal Law) Adoption Act cap 27 of the laws of Sierra Leone 1960. We also have The conveyancing and law of property Acts 1881 and 1892, The Conveyancing Acts of 1882 and 1911, The settled Land Acts of 1882, 1884, 1889 and 1890 and The Trustees Acts 1888, 1890 and 1893 etc.

These are adopted under the Imperial Statutes (Law of Property) Adoption Act cap 18 of the laws of Sierra Leone 1960.

**CUSTOMARY LAW:** These are rules of law which by custom are Applicable to particular Communities in Sierra Leone.

**COMMON LAW**: This is part of the law received under Section 74 of the Courts Act 1965 and consist of mainly judicial precedents, invoking uncoded laws of England, developed after the Norman conquest and decided before 1880.

**DOCTRINES OF EQUITY**. These are rules of fairness and good conscience, developed by the court of chancery, to soften the harshness of the law.

**CHAPTER**  
**FOUR THE CONTENTS OF OUR RECEIVED**  
**LAW**

Both colonial and post colonial legislature, by Statutes imported certain laws of England into our country and made them applicable here.

The reception clause during colonial period was Section 27 of the Courts Act 1946, cap 7 of the laws of Sierra Leone 1960. This was replicated in Section 74 of the Courts Act 1965, almost verbatim and it is the subsisting post colonial reception clause.

Section 74 of the Courts Act 1965 aforesaid states thus:

"Subject to the provisions of the Constitution and any other enactment, The common law, doctrines of equity, and the Statutes of general Application in force in England on the 1st day of January, 1880, shall be in force in Sierra Leone"

From the above section, three sets of English laws were made applicable in Sierra Leone. They are the Common Law, doctrines of equity and statutes of general Application in force in England on the 1st day of January 1880.

Statutes of general Application enacted in England after 1880, can only applying in Sierra Leone, if expressly adopted by a statute of our domestic parliament.

In terms of the contents of the laws received under our reception clause, any such law, shall only apply in Sierra Leone if:

- a) it is not inconsistent with any of the provisions of the constitution.
- b) not at variance with any Domestic Statute passed by our parliament.
- c) For the received Statutes, they must apply generally to the whole of England and not only parts of the realm. For instance, English statutes that apply to only the municipality of London or any of the other English municipalities, do not apply in Sierra Leone, even if they are within the reception date. The general applicability requirement will still put them, outside the purview of the reception clause
- d) they must have been in force in England before the 1st day of January 1880, which is the reception date.

However, there are heated legal arguments as to the effect of the reception date and the general applicability requirement in the reception clause.

There are those who contend that, the reception date and general Applicability requirement, are referable to all the three sets of laws received, ie the common law, the doctrines of equity and the Statutes. That is all three laws must apply generally in England and must have been in force on the 1st day of January 1880.

There are those who fiercely assert that, both the reception date and the general applicability requirement, are referrable only to the Statutes received.

But those contentions are at the moment, more or less academic. They are yet to be tested in our Courts.

For now, the general trend seems to be that, the reception date and the general applicability requirement, apply to all three sets of laws received. This is so because, when lawyers cite post 1880 English common law or doctrines of equity precedents, they frequently submit that, such citations are persuasive and not binding. And Judges have also held that way, in their judgments.

The foregoing notwithstanding, I am a strong proponent of the school of thought that, both the reception date and the general applicability requirement in the reception clause, are referable to only the Statutes received and not to the common law and doctrines of equity. A careful perusal of Section 74, clearly supports this assertion.

The punctuation mark coma, after the word "equity" and before the conjunction "and" coupled with the absence of such punctuation mark, after the word "application" indicates that, the portion of the reception clause that reads:

"and the Statutes of general Application in force in England on the 1st day of January, 1880," is a stand alone phrase in the reception clause and its contents are exclusive of the other parts of the said reception clause.

You will notice that, from the word "and" to the word 'January' in that phrase, there is no punctuation mark in between.

Also the grammatically unconventional use of the punctuation mark coma, before the conjunction and, is indicative of only one legislative intent. And that is to make the phrase starting with the word "and" and ending with the word "1880", a stand alone phrase and its contents referable to it only

In view of the above, I subscribe to the contention that, both the reception date and the general applicability requirement in our reception clause, are applicable to only the Statutes received.

If the legislative intent was to make both of them applicable to all three sets of laws received, there would not have been a coma after the word "equity" before the conjunction "and" in the reception clause. Also if the draftsman of the Act, wanted the reception date to be applicable to all three laws received, there would have been a coma, after the word "application" in the reception clause.

However, until there is a definitive judicial pronouncement on this, all of the above are mere academic postulations.

Finally, since our legislators look busy and overwhelmed with other state matters, the simplest thing they could have done, to make our laws dynamic, was to have brought the reception date to the 1st January 1990. That would have sufficiently brought us reasonably at par with legal developments in England.

But because the 1965 Act inexplicably retained the reception date in the 1946 Act, we are now saddled with 19th century outdated legislations, that had long been repealed and replaced in England, in 21st century Sierra Leone. We are legislatively Two centuries behind.

Since our revered MPS seem preoccupied or distracted by other "important matters of state", other than the principal reason for their being in parliament, they would have done us a world of good, if they could just amend section 74 of the Courts Acts 1965 and bring the reception date to preferably 1990.

## **CHAPTER** **FIVE**

### **THE COURT SYSTEM**

Section 120(1) of the 1991 Constitution vests all judicial power in the country, in the judiciary, headed by the Honourable Chief Justice.

Subsection 2 confers it with both civil and criminal jurisdiction, in respect of all matters..

Subsection three guarantees the independence of the judiciary in the exercise of its judicial functions. That is, it shall be subject to only the Constitution and any other law and not to the control or directives of any other person or authority.

The judiciary exercises its functions through a system of courts. By Section 171 (1) of the Constitution, a court is defined as meaning, any court of law in Sierra Leone, including a Court Martial.

Consequently, subsection 4 of Section 120 aforesaid, creates two types of courts in Sierra Leone namely:

- a) the superior court of judicature and
- b) such other inferior or traditional courts as parliament may by law established.

The Superior Court of judicature consists of three courts of records namely: the Supreme Court, the Court of Appeal and the High Court.

Under the inferior and traditional Courts, parliament has over the years by statutes, created the following courts

- a) the magistrate Courts, established by section 4 of the Courts Act 1965
- b) the family court established by section 76 of the child right Act 2007
- c) the juvenile court established by section 3 of the Children and Young Persons Act cap 44 of the laws of Sierra Leone 1960.
- d) the local courts created by section 2 of the Local courts Act 2011
- e) the District Appeal Court constituted by section 40 of the Local courts Act 2011.
- f) and arguably the Court martial established by the Royal Armed Forces Act 1961, as amended

## **CONSTITUTION, HIERARCHY, COMPOSITION AND JURISDICTION OF**

### **OUR COURTS SUPREME COURT**

This is the highest court of the land and is constituted by section 120(4) of the constitution, as one of three courts that constitute the superior court of judicature.

### **COMPOSITION**

By Section 121(1), the Supreme Court consists of the Chief Justice, not less than four other Justices of the Supreme Court and such other Justices of the Supreme Court or superior courts of a country that practices laws analogous to Sierra Leone, provided such foreign justices shall not exceed the number of indigenous justices appointed to that court.

For the despatch of its business, the Supreme Court shall be duly constituted by a panel of three. Save that, if the subject matter of the action before it is on question relating to the fundamental rights guarantee in chapter three of the constitution, the panel shall be five (Section 28(6)(a)) of the Constitution.

Or if it is about the determination of interlocutory applications or matters referred to it, by any of the other two constituent courts of the superior court of judicature, a single justice can exercise the court's criminal jurisdiction or a panel of three for its civil jurisdiction. (see section 126 (a&b)).

The chief justice shall preside over all sittings of the Supreme Court, in his absence, the most senior justice in the panel.

### **JURISDICTION OF THE SUPREME COURT**

The Supreme Court has all three jurisdictions that may be vested in a court, namely original, supervisory and appellate jurisdiction.

### **APPELLATE JURISDICTION**

The Supreme Court being the highest court in the land, is the final court of Appeal for Sierra Leone. Section 122(1).

Its decisions are binding on all other courts in Sierra Leone. The only court that has power to depart from its decisions, is itself, by section 122(2).

In the exercise of its appellate jurisdiction, the Supreme Court has all the powers of any other court below it and can make orders, directives, rulings or enter judgements that can be made or entered by any of the lower courts. See Section 122 (3).

For the avoidance of doubt, you do not appeal against the decision of the Supreme Court to the ECOWAS Court or any other international Court. The ECOWAS Court by the protocol setting it up, makes it clear that, it is not meant to be an appellate court against the decisions of municipal courts.

You can only go to the ECOWAS Court or any other Regional or international tribunal, if the judgement of the Municipal court includes an alleged violation of any of the fundamental human Rights, conferred by section 16 to 27 of the Constitution.

You go to the regional court on the issue related to the human right allegedly denied you, not on appeal, but for the consideration by the regional tribunal, of the purported violation(s) only.

This is why, you can take all alleged violations of your fundamental human rights, directly to the appropriate international tribunal, without recourse to municipal courts.

However, where you elect to explore municipal courts for redress and judgement is entered against you, you do not appeal against the Municipal courts' decisions, but rather, for want of a better phrase, renew your action in the regional court.

### **ORIGINAL JURISDICTION**

By Section 124 of the constitution, the Supreme Court has to the exclusion of all other courts, original jurisdiction on all matters:

- a) relating to the enforcement or interpretation of any provision of the constitution.
- b) involving questions as to whether an enactment is made in excess of power conferred on parliament or any other authority in that behalf.
- c) relating to the violation of any of the rights conferred in sections 16 to 27 inclusive of the constitution. (Section 28 (1))



- d) where any of the questions or matters referred to above, arise in any matter in a lower court and is referred to the Supreme Court by the lower court. In such a situation, the proceedings in the lower court are stayed as a matter of course, until the Supreme Court determines the question or issue referred to it.

### **SUPERVISORY JURISDICTION**

Section 125 of the constitution confers supervisory jurisdiction in the Supreme Court, over all other courts and other adjudicating authorities like arbitration tribunal or court martial, inquests etc.

In exercise of this power, the Supreme Court can make or issue orders, directives or writs such as, habeas corpus, certiorari, mandamus and prohibition.

### **COURT OF APPEAL**

This is one of the three constituents courts of the superior court of judicature created by Section 120(4) aforereferred.

### **COMPOSITION**

By Section 128(1) of the Constitution, the Court of Appeal shall consist of the Chief Justice, not less than seven other Justices of the Court of Appeal and such other Justices of the other component courts of the superior court of judicature (that is the supreme court or the High Court), that the Chief Justice may in writing request to sit in that court, for the determination of any particular cause or matter, pending in the said court of Appeal.

From the foregoing, the Chief justice can invite any High Court judge or justice of the Supreme Court, in a court of Appeal panel, for the determination of any cause or matter before that court.

The court of Appeal is duly constituted for the despatch of its business, by a panel of three justices. When constituted, the most senior of the judges on the panel shall preside.

The court is bound by its own decisions and those of the Supreme Court. All courts below it are also bound by its decisions.

### **JURISDICTION**

This is the only component court of the superior court of judicature, that is completely bereft of any original jurisdiction. Its jurisdiction is principally appellate.

All Appeals from the High Court of Sierra Leone lie to the court of appeal. All Appeals against judgements in substantive causes or matters in the High Court, lie to the court of appeal as of right

However, if the appeal is against an interlocutory order or ruling of the High Court, it can only lie, to the court of Appeal, with the leave of the lower court or the court of Appeal itself.

The court of Appeal has some supervisory jurisdiction over the High Court.

In the exercise of its appellate jurisdiction, the court of appeal has all powers vested in any of the Courts below it and can issue orders, directives and make rulings and judgements that, can be made, issued or entered by any of those courts.

### **THE HIGH COURT OF SIERRA LEONE**

This is the lowest of the three courts that make up the superior court of judicature, as established by section 120(4) aforesaid. It is however arguably the busiest of the three constituent courts of that court.

### **COMPOSITION**

The High Court shall consist of the Chief Justice, not less than nine high court judges and such other judges of the superior court of judicature, as the Chief Justice may in writing under his hand request to sit in the High Court, for the disposal of any cause or matter.

### **CONSTITUTION OF THE HIGH COURT**

For the despatch of its functions, the High Court shall be duly constituted by:

- a) a Judge sitting alone
- b) a Judge and a jury
- c) a Judge and Assessors, depending on the nature of the matter that is before it. For all indictable offences, the judge sits with a twelve man jury.

However, apart from the three capital offences known in our jurisdiction ie Treason, murder and Robbery with violence, the judge can dispense with the jury and sit alone, on the Application of the Attorney General. This Application is as of right and the defence is not allowed to object.

For the three capital offences, the judge must sit with a jury. This is why, prosecuting counsel if they are having difficulty with juror attendance in capital offenses and they want to proceed with the matter, they would file a fresh indictment of a lesser offence and thereafter, discharge the Accused of the capital offence.

They would then file the Application for trial by judge alone and proceed with the lesser offence. The most frequent of these instances, is when murder is reduced to manslaughter or Robbery with violence to Robbery.

If the matter is an appeal from the district appeal court to the local Appeals division of the High Court, the judge must sit with Assessors. The court of Appeal is made it clear now that, the judge or counsel can not dispense with the Assessors in such matters, in the Dr. Momodu Yillah vs Augustine Lusine and the Kangu family civil application case unreported. If they sit without Assessors, the proceedings are a nullity, on the ground that, the Court was not properly constituted.

For civil matters governed by the general law, the judge sits alone.

### **JURISDICTION OF THE HIGH COURT**

The High Court like the Supreme Court, has all three jurisdiction of a court namely, original, appellate and supervisory jurisdiction.

### **ORIGINAL JURISDICTION**

The high court has both civil and criminal jurisdiction. The original civil and criminal jurisdiction of this Court is unlimited in terms of subject matter and geography. That is to say, geographically the High Court has jurisdiction throughout the country, as there is only one high court in the country and has jurisdiction throughout the country. .

As regards subject matter, it has power to hear and determine all civil claims in excess of le5,000,000/00 and to try all hybrid and indictable offences. Provided that, for hybrid offences, it has to be at the election of the accused.

Consequently, the only limits to the original civil and criminal jurisdiction of the High Court are:

- a) claims below le5,000,000/00 for civil cases and summary offences for criminal matters, both of which are reserved for the magistrates courts.
- b) matters for the interpretation of statutory and constitutional provisions reserved for the supreme court
- c) and those matters proscribed by Section 21 of the Courts Act 1965.

For civil jurisdiction, all claims below le5,000,000/00 which are to be heard and determined by magistrates courts and for criminal jurisdiction, all summary offences triable in the magistrates courts and hybrid offences, in which the accused elect to be tried at the magistrate's court, are outside the jurisdictional purview of the High Court.

### **APPELLATE JURISDICTION**

All Appeals from magistrates courts and the district appeal courts, lie to the High Court. See section 41 of the local Courts Act 2011 and sections 41 and 42 of the Courts Act 1965. Appeal against final judgements or orders in civil cases of the magistrate's court or the High Court, for appeal against interlocutory orders.

For criminal matters, no appeal shall lie against an acquittal or discharged, except where the trial was by two Justices of the Peace and the appeal is on a question of law.

However, unlike an acquittal which is a bar, a discharge is not a bar to the subsequent rearraignment of the accused or defendant, for the same offence.

An appeal against a conviction where the accused pleaded guilty, shall not lie, unless with the leave of a Judge. To grant such a leave, the Judge must be satisfied that:

- a) The accused did not understand the charge as read to him
- b) He did not intend admitting the Commission of the offence
- c) That the facts reveal that, the accused may not be guilty of the offence he pleaded guilty to, upon full trial.

In the exercise of its appellate jurisdiction, the High Court has all the powers of the Courts below it and can make orders, issue directives and enter judgements and rulings, that can be made, issued and/or entered by any of those courts.

### **SUPERVISORY JURISDICTION OF THE HIGH COURT**

By Section 134 of the constitution, the High Court shall have supervisory jurisdiction over all inferior and traditional Courts in Sierra Leone and any adjudicating authority. In pursuance

thereof, it can issue directions, orders and writs, such as habeas corpus, certiorari, mandamus and prohibition.

### **DIVIISIONS OF THE HIGH COURT**

Section 131(3), makes provision for the creation of divisions of the High Court and the assignment of judges of that court, to those divisions, by the Chief Justice, for the effective conduct of the Court's business.

In pursuance of this Section, constitutional instrument No.4 of 2019, The High Court (divisions) Order 2019, amending constitutional instrument No.1 of 2007, The High Court (Divisions) Order 2007, was promulgated, increasing the Court's divisions to eight from five in 2007 namely:

- ✓ Fast Track Commercial and Admiralty Division.
- ✓ Family and Probate division.
- ✓ Land, Property and Environment Division.
- ✓ Civil general Division . Criminal Division.
- ✓ Industrial and Social Security Division.
- ✓ Sexual Offences Division.
- ✓ And Anti Corruption Division.

Apart from these, there is also the local Appeals division, as established by section 41 of the Local Court Act 2011, to which all appeals from the district appeal courts are lodged.

### **QUALIFICATIONS AND APPOINTMENT OF JUDGES**

All judges of the superior court of judicature, inclusive of the Chief Justice, are appointed by the President, on the advice of the Judicial and Legal Service Commission as established by section 140(1) of the 1991 Constitution and subject to parliamentary approval. (See Section 135( 1&2) of the constitution.).

For appointment to the superior court of judicature, a person must have the following qualifications. That is, the Appointee is entitled to practice as counsel, in a court having an unlimited jurisdiction in civil and criminal matters in Sierra Leone or any other country, having a system of laws analogous to ours and approved by the Judicial and Legal Service Commission and has been so entitled:

- a) For twenty years for appointment as chief justice and justice of the Supreme Court.
- b) For fifteen years for appointment as justice of the court of Appeal
- c) For ten years, for appointment as a judge of the High Court.

### **TENURE OF JUDGES**

Judges of the superior court of judicature have a relatively secured tenure, intended to foster the independence of the judiciary.

At sixty, a judge of the superior court of judicature may retire and at sixty five he or she must retire. However, upon attainment of the age of sixty five years, which is the age of compulsory vacation of their office, a judge may continue in office for a further three months, for the

purpose of delivering judgements or do other things relative to proceedings that were before him.(see section 137(1to 3) inclusive.

### **REMOVAL OF JUDGES FROM OFFICE**

The process of removing a judge from office is procedurally tedious, cumbersome and almost impracticable.

Firstly, a judge can only be removed from office on the following grounds:

- a) for inability to perform his functions, due to either infirmity of the mind or body.
- b) or for stated misconduct.(Section 137(4).

### **THE PROCESS**

For judges other than the Chief Justice, the process is as follows:

- a) the judicial and legal service commission represents to the President that, the question for the removal of a judge has arisen.
- b) the President in consultation with the judicial and legal service commission, shall then constitute a three man tribunal, comprising of a chairman and two others, of persons who are justices of the supreme court or qualified to be appointed as such
- c) the tribunal enquires into the allegations and report their findings and recommendations, to the President. During the pendency of the investigation, the judge in issue shall be suspended from office.
- d) if the tribunal recommends a removal, their recommendation will be put before parliament for approval.
- e) if two thirds majority of members of parliament approves the tribunal's recommendation, the president can then remove the judge in question from office.

### **REMOVAL OF THE CHIEF JUSTICE**

Here the process is began by the presentation of a petition in that behalf, to the President. The constitution is however silent on who the petitioner(s) is or are. A very serious lacuna that is susceptible to abuse.

The President upon receipt of the petition, shall this time, in consultation with his cabinet, appoint a tribunal of five, consisting of three persons, who are justices of the supreme court or qualified to be so appointed and two other persons, who are neither legal practitioners nor members of parliament.

The tribunal after enquiry, shall present their findings and recommendations to the President. During the pendency of the inquiry, the Chief Justice shall be suspended by the President.

If the recommendation is for removal, it shall be forwarded to parliament for approval and if it receives the approval of two thirds majority of the members of parliament, the Chief Justice shall be removed by the President.

## **CHAPTER SIX**

### **INFERIOR AND TRADITIONAL COURTS SO FAR ESTABLISHED BY PARLIAMENT**

These fall under the second category of courts referred to in Section 120(4) of the constitution.

#### **MAGISTRATES COURTS**

A magistrate court is established by Section 4 of the Courts Act 1965, for each of the judicial districts created by section 3(1&2) of the said Act.

The judicial districts aforesaid are: headquarters judicial district, the Freetown judicial district and Sherbro judicial district for the western Area and a judicial district for each of the Administrative districts in the provinces.

Because a magistrate's court is established for each judicial district, the jurisdiction of each of these Courts is geographically limited to their respective judicial district. That is matters arising outside a magistrate's court's judicial district, cannot be tried/heard and determined by that court. The only time a magistrate court can try hear and determine matters arising outside its judicial district, is when they are transferred to it by the High Court pursuant to Section 10 of the courts Act 1965 or by a judge pursuant to Section 43 of the criminal procedure Act 1965.

This geographical limitation is only for trials in criminal matters and hearings for civil cases that fall within its jurisdiction. That is for Preliminary investigations, a magistrate's court has jurisdiction throughout the country. A magistrate's court can conduct a preliminary investigation that is referred to it, irrespective of whether or not the matter arose within or without its judicial district.

However, unlike the court, a magistrate as a judicial personnel, has jurisdiction throughout the country. That is he can be assigned or transferred by the Chief Justice, to any of the judicial districts in the country, as per Section 5 of the Courts Act 1965.

#### **CIVIL JURISDICTION OF THE MAGISTRATE'S COURT**

A magistrate's court is vested with judicial power to hear and determined all civil matters, arising within its judicial district and for which the claim or matter in dispute does not exceed le5,000,000/00. Provided that, the claim or matter is not founded upon libel, slander, false imprisonment, malicious prosecution, seduction and breach of promise of marriage. Section 7 of the Courts Act 1965, as amended by Section 2 of the Courts (amendment) Act No 2 of 2006.

However, the third Schedule to the Courts Act 1965, lists a number of causes or matters, that a magistrate's court is precluded from hearing and determining, the quantum of the claim notwithstanding and these are :

- dissolution or taking of partnership
- Redemption or foreclosure of mortgages.
- Arising of portion or other charges on land.
- sale and distribution of proceeds of property subject to any line or charge
- The execution of trusts charitable or private
- The construction, rectification, setting aside, or cancellation of Deeds or other written instruments.
- specific performance of contracts of sale or lease of land.
- for portions or sale of real property.
- for wardship of infants and care of infants estates.
- administration of the estate of deceased persons
- relating to divorce and matrimonial causes.

#### **CRIMINAL JURISDICTION OF THE MAGISTRATE'S COURT**

Magistrates courts are vested with criminal jurisdiction, to try all summary offences committed within their judicial districts or transferred to it pursuant to Section 43 of the criminal procedure Act 1965.

Summary offences are generally those offences for which the sentence prescribed upon conviction, does not exceed five years imprisonment or a fine of Le20,000/00 or both. See Section 6(1) of the Courts (Amendment) Act No.2 of 1981. From the foregoing, the offence has to be a summary offence as defined above and committed within the judicial district of that court or transferred to it by a judge. For fines, decree No 3 of the NPRC, which is one of the decrees adopted by the decree adoption act 1997, has increased them.

At the election of the Accused, a magistrate court can try and determine an hybrid offence. An hybrid offence is an offence for which the punishment prescribed is over five years but not more than seven years prison term.

It is instructive to note that, the punishment prescribed is not the sole criterium used for the determination of whether or not an offence is triable summarily or on indictment. The wording of the Act creating the offence is also pertinent here.

The sentence prescribed could be less than five years, but the wording of the statute could still make the offence indictable. For example the sentence prescribed for defamatory libel by Sections 26 and 27 of the public order Act 1965 is 2 years, but the wording of that statute makes both offences indictable.

The guiding words or phrases in determine whether an offence is indictable or summary are as follows:

When a statute creating an offence uses words or phrases like, upon trial, upon indictment, upon conviction, they are pointers that the offence is indictable.

Where words or phrases like: upon summary trial, upon summary conviction etc, they are suggestive that, the offence is summary.

The second schedule to the Courts Act 1965 as amended by Act No 2 of 1981 lists a number of offence that are not triable summarily in any event and they are::

- a) Capital offences or offences for which the punishment prescribed is life imprisonment.
- b) Arson, wounding with intent, blasphemy, composing printing publishing blasphemous or seditious libel, conspiracies to commit indictable offences, offences created in the treason and state offences Act 1963, as amended rape, attempted rape, offences against the forgery Act 1915 and offences created by Sections 23 and 26 of the larceny Act 1916.

### **LOCAL COURTS**

The local courts are established by Section 2 of the Local Courts Act 2011, for each of the Chiefdoms in the provinces. Their jurisdiction is geographically limited to matters arising within their Chiefdoms. They can only hear and determine matters within their subject matter jurisdiction, but arising outside their Chiefdoms, if transferred to them by the customary law officer or remitted to them for retrial upon review by the same officer.



Is instructive to note is the fact that, the Local Courts have an exclusively original jurisdiction, with no appellate or supervisory jurisdiction at all.

Section 15 of the Local Courts Act No.10 of 2011 comprehensively set out both the civil and criminal jurisdiction of these courts

### **CRIMINAL JURISDICTION**

BY Section 15(2) of the Local Courts Act 2011, these Courts can hear and determined all customary law offences that are committed within their Chiefdoms, They can also try all English law offences committed within their Chiefdom, for which the sentence prescribed does not exceed six months imprisonment or fifty thousand Leones fine or both such fine and imprisonment.

### **CIVIL JURISDICTION**

In respect of civil cases governed by the general law, local courts can hear and determine all matters arising within their Chiefdoms, for which the claim or subject matter in dispute does not exceed Le1,000,000/00 or for recovery of possession of property, for which the annual rent reserved does not exceed le3,000,000/00 and the lease for tenancy term granted ,does not exceed five years. Section 15(b) of the 2011 Act.

For all civil matters governed by customary law arising in their Chiefdoms, the jurisdiction of the Local courts is unlimited. What this means is that, local courts are vested with power, to hear and determine all civil matters governed by customary law, arising in their Chiefdoms, the value of the subject matter of the claim notwithstanding. This is a very huge jurisdiction conferred in these Courts and that, coupled with the facts that, they service eighty percent of the people in the provinces, underscores their relevance in the administration of justice. Under this, they can inter alia hear and determine the following matters.

1. All matters relating to title to land situate in the provinces, even if the land is valued trillions of Leones.
2. The Administration of the estate of deceased natives, situate in the provinces, even if the estate is worth billions of Leones.
3. Dissolution of customary marriages, even if the matrimonial property involve is worth billions of Leones

In all three cases above, the local courts can only be rid of their jurisdiction, if the native person in question had by conduct or expressly adopted the general law, relating to the said matters, pursuant section to 76(3) of The Courts Act 1965.

Finally the Local courts are precluded from adjudicating on any matter in which the claim is founded on libel, slander, false imprisonment, malicious prosecution, seduction or breach of promise of marriage.

### **THE CUSTOMARY LAW OFFICER**

A very costly inadvertence in the Local Courts Act 2011, is the failure to create the office of Customary law officer. The Act just ascribed functions and powers to this office, without creating it. Legally speaking, there is no such office like customary law officer in the local courts Act 2011 and the question now is, who exercises the powers conferred on this office.

Section 52(1) in my considered opinion, does not in any sense, create the office of customary law officer. It provides for the number of such officers to be appointed for the purpose of performing their functions as contained in section 52(2).

However until this is raised in a court by way of a challenge, we can only for our academic purposes presumed that, the office exist.

This office is to be manned by lawyers. However, lawyers are not attracted to these office, as none applied, when the office was advertised. Consequently, as a makeshift arrangement, all State Counsel posted to the provinces, double as customary law officers, for the district or province they are posted to.

### **FUNCTIONS OF CUSTOMARY LAW OFFICERS**

a) Supervises and monitors proceedings of the Local courts. This is with a view to ensuring that, the courts stay within their jurisdiction and do not act ultra vires their mandate and also they donot extort or mulct litigants in undue hardship. Under this function they have the power of transfer and review.

2. BY Section 52(2) of the Local courts Act, customary law officers can also do the following:

- a) advise local courts on matters of law and organisation.
- b) research the customary law
- c) train personnel of those courts.

### **POWER OF TRANSFER**

Customary law officers by Section 34 of The local Courts Act 2011, are vested with power, acting sou moto or at the instance of the court or litigant, to transfer a matter pending in a local court, to another local court or district appeal court, on reasonable cause shown. Any matter so transferred shall be started de novo.

The most frequent reasons often advanced for such applications are, bias or likelihood of bias, extortionate fiscal and other demands, hostility of the courtiers towards a litigant and/or the complexity of the legal issues involved.

### **POWER OF REVIEW**

Section 35 of the 2011 Act, confers on the customary law officers the power to review all judgements of the Local courts within his region or district. However, unlike the power of transfer, the power of review can only be exercised sou moto. That is, litigants or the Courts can not move the CLO to review a judgement. If aggrieved, a litigant's only option for redress, is to appeal to the appropriate district appeal court. A customary law officer can not review a judgment that is under appeal to the district appeal court.

In the exercise of his power of review, the customary law officer is vested with quasi judicial powers by section 38 and can do any of the following:

- a) Reverse the judgement, order or sentence of the Local court.

- B) Modify or alter the judgement of the Local court, as the justice of the case requires.
- c) Remit the matter to the same court, another local court or magistrate court for retrial.

A customary law officer can only exercise this power conferred on him, if a prima facie case of miscarriage of justice is disclosed or there is an error of law on the face of the records.

A notice to review, when served on the court and the parties, operates as a stay of execution of the judgement in issue.

### **THE DISTRICT APPEAL COURTS**

These are courts that are with an exclusively appellate jurisdiction. They do not have a original jurisdiction because matters are not commenced before it. The only time they hear matters at first instance, is when transferred to them by the customary law officer pursuant to Section 34 of the Local courts Act 2011.

They are devoid of supervisory jurisdiction because, the supervisory power over local courts, is vested in the customary law officer.

The District Appeal Courts are a creation of section 40(1) of the Local Courts Act 2011, for each judicial district in the provinces.

### **COMPOSITION.**

These courts are presided over by the Magistrate of the judicial district, sitting as chairman of the court and two Assessors, selected from a list prepared by the District Officer of the District in which the Court sits.

The role of the Assessors is advisory and the magistrate presiding as chairman is not bound by their advice.

In two recent decisions of local Appeals division of the High Court Holden at kenema, delivered by His Lordship A.I Sesay it was held that:

- a) if a District Appeal Court sits without Assessors, the proceedings are a nullity and the matter will be remitted to the said district appeal court for rehearing.
- b). If the Assessors are from another district, other than the district for which the court is constituted, the Court is not properly constituted, because of the use of the definite article "the" before District Officer, in section 40(1) of the Act.

The legal reasoning is impeccable, but the facts in both matters made the judgements of the court harsh and created undue hardship to the Respondent's.

In Baindu Kallon Vs. Vandi Contractor and Zainab Garber another 2018, unreported. Assessors were actually empanelled and present on all adjourned dates the matter was proceeded with. However the presiding chairman inadvertently omitted to record their presence in some instances, although in some of the instances their presence was not recorded, they actually cross examined witnesses, indicating their presence. His Lordship the learned judge still held that, although the records show that they cross examined witnesses, as long as they were not recorded as present, they were absent.

This with the utmost respect to his lordship was in my view harsh and unfair to the Respondent, as she should not be conscionably mulcted in hardship, by reason only of the presiding chairman's inadvertence.

The other case intituled George Banya and the Banya Family vs Brima Sagba and the Kormoh Family, 2019 unreported. This was an appeal to the District Appeal Court of kailahun district. The resident magistrate kenema was covering kailahun District as well. Because of the condition of the Road to Kailahun then, couple with the fact that, the litigants were resident in kenema and Freetown, the presiding chairman was in kenema and both counsel were in kenema and Bo respectively, counsel and the parties mutually agree that, the Court though still the kailahun District Appeal Court, be sitting in kenema and Assessors from kenema be empanelled. This was mutually agreed on by all concerned, inclusive of the presiding chairman, to soften the cost of litigation for all.

No sooner the Respondents lost the Appeal, they filed an appeal on different grounds other than the constitution of the court.

That notwithstanding, His Lordship in his judgement, set aside the judgement of the lower court, on the ground that the Assessors are not from a list drawn by the District Officer of kailahun.

As stated already, ordinarily the legal reasoning in both cases are sound, but the facts with respect, do not support that reasoning. This is particularly so, for the first matter, where the assessor were actually present, as they cross examined witnesses. The failure of the chairman to record their presence, must not in good conscience be used to saddle the innocent successful litigant in the lower court, to the point of not only rescinding her judgement, but mulcted in huge costs. That in my view and with respect, was plainly hostile.

Although it is again inadvertently not expressly stated in the Act, it is assumed that all appeals from local courts shall lie to the District Appeals Courts. Upon any such appeal, the district appeal court shall hear the case de novo. This is apparently due to the dearth of legal expertise in the court below, which makes it unsafe to rely on their records exclusively.

By Section 39(3&4), appeals in civil cases to the district appeal courts, operate as a stay of execution of the judgement of the Local court, as of right without more.

### **JUVENILE COURT**

A Juvenile court as defined in Section 2 and established by Section 3 of the Children and Young Persons Act ,Cap 44 of the laws of Sierra Leone 1960, is a magistrate court sitting in chambers for the hearing and determining of cases relating to children and young persons.

A child, by Section 2 supra, is a person under the age of fourteen years and a young person, is a person who is fourteen but below seventeen years. But the Child Rights Act No.7 of 2007, now defines a child as a person under the age of eighteen and a young person, as a person between the age of eighteen and twenty five.

However, for purposes of Juvenile proceedings, Section 141 read in tandem with item 2 of the schedule to the Child Rights Act 2007, a young person is now defined as, a person between the age of fourteen to eighteen, by substituting the word 'seventeen' for the word " eighteen in section 2 of cap 44 aforesaid.

Juvenile courts are held in a secluded place, normally the chambers of the magistrate, to the exclusion of the general public. The proceedings are as informal as possible. Lawyers appear as friends and not as counsel and the Child is an offender not an accused. The offender does not take a plea of guilty or not guilty, but simply asked to proffer an explanation.

Close relations and accredited journalists are allowed to attend, on condition that, they do not disclose the identity of the Child offender.

Everything that would traumatised the Child and make him feel rejected by society, must be guided against and avoided. The purpose of juvenile proceedings is not to punish, but to reform the Child offender.

### **FAMILY COURT.**

This court is established by section 76 of The Child Rights Act No 7 of 2007. Its composition is set out in Section 77 of the same Act. It is constituted by a panel consisting of a magistrate presiding as chairman and not less than two but not more four other members, appointed by the Chief Justice, on the recommendation of the Chief Social Development Officer. The other members must be drawn from amongst people with specialised knowledge and experience in child rights issues.

### **JURISDICTION OF THE FAMILY COURT.**

The powers of this court are contained in Section 78 of the Act. It is vested with the exclusive jurisdiction to hear and determine matters relating to child parentage, custody, access and maintenance.

Like juvenile proceedings for children in conflict with law, family courts are not held in public, in the normal court room or normal court days and hours. They are to be held in secluded places, to the exclusion of the general public. Close relations, lawyers and accredited journalists may attend, but there is strict confidentiality rule on the identity and information on the Child, they must abide by.

The proceedings must be as informal as possible.

Unfortunately, since their establishment in 2007, these courts are yet to be constituted by the Hon Chief Justice. This begs the question as to the legitimacy of proceeding relating to the aforesaid matters ascribed to the family court, initiated and prosecuted in magistrate's courts, since 2007.

### **COURT MARTIAL**

This court is established by the Royal Sierra Leone military Forces Act No.34 of 1961, as amended by The Sierra Leone Armed Forces Acts Nos.29 of 1972 and 13 of 2000, for the trial of serving personnel of the Armed forces, for alleged commission of crimes.

The court is presided over by a judge Advocate, who is a justice of the superior court of judicature or a person qualified to be so appointment and other members, who must be officers of the Armed forces, with the rank of major upwards, but in any event, not below the rank of a captain.

The jurisdiction of this court is akin to the criminal jurisdiction of the High Court, save that, it is only created for serving personnel of the military. Therefore it is under the category of

inferior and traditional Courts, because it is not specifically mentioned in Section 120(4) of the 1991 Constitution, as one of the constituent Courts of the superior court of judicature and it is created by a separate Act of parliament. Otherwise its jurisdiction is far above, inferior and traditional courts.

Appeals from court martial lies to the Court of Appeal ,with the leave of the court of Appeal in all cases, except capital offences or death sentence, in which case, the appeal to the court of Appeal is as of right or as a matter of course.

## **CHAPTER SEVEN**

### **INSTITUTIONS AND AFFILLIATE BODIES.OF THE**

#### **JUDICIARY**

There are two institutions and three affiliate bodies of the judiciary, that would be the focus of this discourse. The institutions are the High Court Registry and the Sherff's office and the affiliate bodies are the Judicial and Legal Service Commission, General Legal Council and The Law Officers Department.

#### **THE HIGH COURT REGISTRY**

By Order 1 Rule 2 of the High Court Rules 2007, Registry means, the High Court Registry in Freetown and the District Registries of Bo, Makeni and Kenema.

The High Court Registry is headed by the Master and Registrar (hereinafter called "the master") as established by Section 28 of the Courts Act 1965,assisted by Deputy Masters and Registrars, Principal Assistant Registrars(PARs),Senior Assistant Registrars(SARs), Registrars, Clerks and Office Assistants.

The Registry services all court Registries, inclusive of the Supreme Court, Court of Appeal and the magistrate's courts, as Registrars and clerks attached to those courts, are drawn from personnel of the High Court Registry.

Until very recently when lawyers are assigned to the Supreme Court and Court of Appeal as Registrars, the Registrars of those Courts, though appointed by the Judicial and Legal Service Commission, pursuant to section 141( 1&2) of the 1991 constitution, they were often drawn from personnel of the High Court Registry, with the rank of either Principal Assistant Registrars or Senior Assistant Registrars.

This assertion is further supported by the fact that, both the Supreme Court Rules Public Notice No.1 of 1982 and the Court of Appeal Rules public Notice No.29 of 1985, do not make mention of a Registry. Rule 1 of the Supreme Court Rules defines a Registrar, without reference to a registry, while Rules 1 and 81 of the Court of Appeal Rules, define Registrar, without reference to a registry. Meaning, there is only one reference to a registry in our Rules of Court and that is the one referred to in Rule 1 of the High Court Rules of 2007.

The functions of the master and by extension the Registry he heads, are encapsulated in Section 29 of the Courts Act 1965 and they are:

- a) to perform all such acts as he maybe required by law or a judge to do. This, read in tandem with Orders 6 Rule 7 and 7 Rule 6 subrule 2 of the High Court Rules 2007, includes the issuance of processes commencing actions in the High Court, the sealing and issuance of execution and other coercive processes of the court etc.
- b) tax all bills of cost referred to him by the court or a judge.
- c) receive all applications for and seal probate and letters of Administration.

For appointment as master and Registrar and Deputy master and Registrar, the person must be entitled for enrolment as a Barrister and Solicitor of the High court. See Section 28 of The Courts Act 1965.

This means that, by section 10 of the Legal Practitioners Act No.15 of 2000, the person must have completed his pupillage and is enrolled in the permanent register or is exempted under Section 15 of the same Act.

To be exempted under Section 15, the person must:

- a) Have been admitted and enrolled as a Legal Practitioner in a commonwealth country
- b) The commonwealth country in issue, must have been approved by the General Legal Council as entitled to benefit from such exemption.
- c) Have practiced in the said country for at least ten years.
- d) Be fit and proper for exception from the requirements in Section 10 of Act No.15 of 2000.
- e) The Applicant is a citizen of a commonwealth country.
- F) The Applicant's country must have legal provision for similar exceptions and those exceptions are applicable to citizens of Sierra Leone.

The most non lawyers can go as Employees of the Registry, is to become Principal Assistant Registrar.

In a nutshell, the Registry is the support base of the court. It houses and maintains all its support staff.

### **SHERIFF'S OFFICE**

This is the office through which, the Courts exercise their coercive powers, in their civil jurisdiction. The coercive powers of the Courts in their criminal jurisdiction, is mainly enforced by the police and correctional services.

The sheriff's office is provided for by Section 2 of the sheriffs Act cap 10 of the laws of Sierra Leone 1960. The Inspector General of Police, is the sheriff of the High Court of Sierra Leone and his AIGs in the provinces are his deputies in those regions.

In the Courts, the sheriff's office is headed by a judicial officer called the undersheriff, assisted by Bailiff Superintendents, Senior Bailiffs and Bailiffs.

The principal role of these personnel is the enforcement of mainly civil judgements, orders and rulings of the Courts. They exert the coercive mandate of the Courts, through execution processes issuing from the master's office, in enforcement of court orders and judgements.

By order 10 Rule 1(a) of the High Court Rules 2007, they are also the official process servers of all originating processes, pleadings, Orders, warrants, and all other processes ,documents or written communications of the court.

Although solicitors 'clerks can also effect such services, it is always advisable for private legal practitioners to get the bailiffs to serve their processes than their clerks and thereafter the Bailiff to swear to an affidavit of service. This so because, benches tend to lend more credence to services effected by bailiffs than solicitors' clerks, in default proceedings. The rationale is that, solicitors' clerks are under the employ of solicitors and thus susceptible to their corrupt influence. Whilst bailiffs are employed by the judiciary and are not ordinarily susceptible to sharpe directives from solicitors and they have a job to protect too, in the event they indulge in Sharpe practice.

### **JUDICIAL AND LEGAL SERVICE COMMISSION.**

The Judicial and Legal Service Commission is established by Section 140 (1) of the 1991 constitution.

#### **COMPOSITION.**

The JLSC is comprised of:

- a) The Chief Justice as Chairman
- b) The most Senior justice of the Court of Appeal.
- c) The solicitor General.
- d) A legal practitioner of not less than ten years standing nominated by the Bar Association and appointed by the President.
- e) The chairman of the public service Commission.
- f) Two other members appointed by the President and approved by parliament and who must be non lawyers.



## **FUNCTIONS OF THE COMMISSION**

The JLSC is constituted as aforesaid, to perform the following functions:

- a) Advise the chief justice in the performance of his administrative functions of the judiciary.
- b) They advise the President on the appointment of judges and justices of the Superior Court of judicature.
- c) By Section 141(1) they appoint, promote, discipline, assign,

transfer and dismiss officials mentioned in subsection 2 of the said section 141 inclusive of the Administrator and Registrar General and his Deputy, Registrars and Deputy Registrars of the Supreme Court and the Court of Appeal, master and Registrar and his deputies, any Registrar of the High court, Magistrates, undersheriff, State Counsel, Customary Law Officers and other judicial and legal officers as maybe prescribed by parliament.

e). Prescribe by statutory instrument, the term and conditions of service of officers and other employees of the courts and judicial and legal officers, in consultation with the public service Commission and with the prior approval of the President..

## **THE GENERAL LEGAL COUNCIL**

The General Legal Council is a creation of Section 2 of the Legal Practitioners Act No 15 of 2000, as a body corporate, with perpetual succession and a common seal.

By Section 3 of the said Act, the council consists of

- a) The Attorney General and Minister of Justice or his representative, who must be a Legal Practitioner of not less than 15 years standing at the Bar.
- b) The Solicitor General.
- c) Six legal practitioners elected by the Bar Association, three of which must be fifteen years and above at the Bar and amongst whom the chairman of the Council is elected and the other three must be at least ten years at the Bar.
- d). One legal practitioner appointed by the Attorney General and employed in the public service, but not in the judicial and legal service.

## **THE FUNCTIONS OF THE COUNCIL**

The Council by Section 4 of the Act, is the governing Authority with regard to the conduct of the Legal profession in Sierra Leone and in consequent thereof charged with the following responsibilities.

1. Admit and enrol persons to practice law in Sierra Leone, for now as both Barristers and Solicitors, as the profession is fused.
2. Admit and register pupil Barristers doing their pupillage into the temporary Register.
3. Issue practicing certificate to legal practitioners.

4. Prescribe the standards of professional conduct and code of etiquette for legal practitioners.
5. Discipline legal practitioners
6. Prescribe the fees for non contentious matters.

### **THE LAW OFFICERS DEPARTMENT**

This is the nucleus of The Attorney General and Minister of Justice's office. It embodies the principal functions of that office and it is headed by the Attorney General and Minister of Justice.

As principal Legal Adviser to the Government as ordained by Section 64(1) of the 1991 Constitution, the Attorney General carries out his day to day duties through this department, with the assistance of the Solicitor General, who by Section 65(4) of the constitution, is his principal Assistant.

### **DIVISIONS OF THE LAW OFFICERS DEPARTMENT**

For the effective and efficient despatch of its business, the law officers Department is divided as follows:

1. The Prosecution Division. By Section 64(3&4) of the constitution, 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, who shall have audience in all courts in Sierra Leone save the local courts.

The Attorney General does this prosecution through this division of the law officers department. It is under this division that you have prosecution counsel, headed by The Director of Public Prosecution (DPP).

The office of Director of Public Prosecution, is established by Section 66(1) of the constitution and by Subsection 2 of that section, the DPP is appointed by the President, on the advice of the judicial and legal service commission and subject to the approval of parliament, from amongst persons qualified for appointment as Justice of the Court of Appeal.

Subsections 4 setting out the functions of the DPP and (6&7) of the said section 66, make it very clear that, the DPP is under the direct general and specific superintendence and direction of the Attorney General.

The State Counsel in this division of the law officers Department, are the public face of the Department.

**THE PARLIAMENTARY DIVISION** This is the division housing the Draftsmen of the Department. They are the parliamentary Draftsmen, responsible for the drafting of Statutes, Constitutional instruments, statutory instruments and other instruments that go to parliament for enactment and/or legislation.

This division is headed by the First Parliamentary Counsel, assisted by Second Parliamentary Counsel, Senior Parliamentary Counsel and parliamentary Counsel. They are not courtroom lawyers, because of the nature of their job and you don't see them in court

### **INTERNATIONAL DIVISION**

This division is headed by one of the principal state counsel. They, as their name implies, handle international instruments like Conventions, Treaties, Protocols, Multi and Bilateral Agreements. They are the international face of the Department.

### **CIVIL DIVISION**

This is also headed by a Principal State Counsel and they have conduct of all civil matters at suit of or against Government. They also proffer advices and opinions on all domestic contracts and Agreements, to which the Government is a party. If there are no legal implications, they give the all clear in the form of concurrence.

The Solicitor General who by Section 65(4) of the Constituent, is the Principal Assistant to the Attorney General and Minister of Justice, is the administrative head of the law officers department. He Coordinates the activities of all the divisions of the department, save may be the DPP as head of the prosecution Division, as he is also a constitutional officer and under the direct supervision of the Attorney General.

## **CHAPTER EIGHT**

### **PROCESSES OF THE COURT**

Generally, there are three types of processes that are often issued by a court namely: processes commencing actions in courts, those in aid of proceedings in court and those authorising execution of judgements and Orders of courts.

### **PROCESSES COMMENCING PROCEEDINGS IN COURTS**

These are documents that initiate both criminal and civil matters in courts.

### **MAGISTRATES COURTS**

Criminal matters at the magistratal level are commenced by criminal summons, issued on any one of three documents. A Charge Sheet if the matter is brought by the police, information, if it is a private prosecution and warrant if the Accused is evasive, violent or a flight risk. All three documents mentioned above, set out the offences for which the Accused or defendant is arraigned before court, in paragraphs known as Statement of offence and the

brief facts, in other paragraphs known as the particulars of offence. The Statement and Particulars of offence make up a Count.

Civil matters are begun by a civil summons, issued on the information provided in a document known as Plaint Note. The plaint note set out the claims against the party sued in the Statement of Claim and the brief facts in the particulars of claim.

The person suing in criminal matters is complainant and plaintiff in civil matters. The person sued is the Accused, if the suit is at the instance of the state and defendant, if it is a private matter, in criminal suits

In Civil matters they are the defendants or respondents, depending on the nature of the action.

### **HIGH COURT**

In the High Court, criminal proceedings are instituted by a process known as an indictment. Like the information at the Magistraterial level, an indictment contains the offences for which an Accused is arraigned before the court, numbered in counts. Each count has a Statement of offence, stating the offence charged and Particulars of offence, setting out the brief facts of the alleged commission of the offence by the Accused.

An indictment is preferred frequently on a committal warrant, after a preliminary investigation or on the order of the High Court, after a 136 Application, pursuant to Section 136 of the Criminal Procedure Act 1965.

In the High Court, the complainant is the State and matters are titled, 'the State Vs X', and it is only State Counsel, that is Lawyers in the Employment of Government, that prosecute in the High Court. Police Officers don't have audience in the High Court as prosecutors. At the magistrate court, the State as complainant is represented by the Inspector General of Police. Matters are intituled, 'Inspector General of Police Vs X' and police officers prosecute, although State Counsel can come down and take over the prosecution of Serious Matters before a magistrate, particularly so capital offences and political matters.

Indictments can only be signed by State Counsel.

Even when Private Practitioners are granted fiat by the DPP, to prosecute a criminal matter in the High Court, the indictment still has to be signed by a State Counsel.

The only known exceptions are:

1. Matters brought by the Anti Corruption Commission, whose indictments are now signed by the Commissioner of that commission and their matters go straight to the High Court, without a Preliminary Investigation or 136 Application, because of provisions in The Anti Corruption Act 2008, that give the Commission prosecutorial powers.

But even at that, their Applications for trial by Judge alone are signed by the Attorney General.

2. The other exception is sexual offences. By The Sexual Offences (Amendment) Act 2019, it seems to me that, all indictments for sexual offences, can now be only signed by the Attorney General and they are also now taken to the High Court direct, without the procedural discomfort of a preliminary Investigation or a 136 Application.

### **COMMENCEMENT OF CIVIL MATTERS IN THE HIGH COURT**

By Order 5 Rule 1 of the High Court Rules 2007, civil matters in the High Court are initiated by one of four processes namely:

a). By a Writ of

Summons. b). By

Originating Summons c).

By Originating Motion d).

By Petition.

Matters relating to tortious Claims, damages for breach of duty, either arising from a contract or law and fraud related matter are begun by a Writ of Summons. See Order 5 Rule 2(a b & c) of the High Court Rules 2007.

Proceedings by which, an Application is to be made to the Court or a judge could be begun by an originating Summons.

Matters concerning the construction of a Statute could be begun by Writ of Summons or originating Summons. O5 R3&4 supra.

Matters can only be begun by Originating Motion or Petition if specifically provided for by the High Court Rules, or any other law. For example, divorce proceedings and Elections matters are begun by Petition.

Because of the complexity especially for young lawyers, of knowing the precise mode by which a civil matter is to be initiated, Order 2 Rule 1 subrule 3 provides protection to litigants. It says, no proceedings shall be wholly set aside by a court, simply because they were commenced by the wrong process.

There is a difference between an Originating Summons or Motion and an interlocutory motion or judges Summons. The former initiate matters in the court, whilst the latter are Applications made in pending matters. Interlocutory motions are made to the Court, while judges Summons are made to a judge in chambers.

### **PROCESSES IN AID OF PROCEEDINGS IN COURT**

There is the maxim that, justice delayed is justice denied. Therefore courts must always proceed with proceedings before them with speed and despatch

By reason of the foregoing, there are three processes that aid the courts, in the conduct of proceedings that are brought before them. These are Notice, Subpoena and Warrant.

### **NOTICE**

A Notice is a process that informs litigants and interested parties in proceedings, of happenings in court, for appropriate and necessary action from them.. For instance, in civil proceedings, litigants are ordinarily not under compulsion to attend proceedings. So where a party in civil proceedings is absent from court and by reason of his absence the proceedings can not go on, the court will first send notice to the absence party, informing him of the next adjourned date.

If the Party served the notice, still fails to attend court on the next adjourned date, the court may first award costs for the day against him, as a warning.

If after the award of costs, the defaulting party continues to absent himself, the court can strike out the action with requisite costs, if the absent party is the plaintiff or proceeds with the matter in default, his absence notwithstanding, if the absent party is the defendant.

This is so because, the doctrine of Audi alterem Patem, is to the effect that, the other side must be given an opportunity to be heard and not that he must be heard. What the courts are obligated to do, is to inform litigants of civil claims against them and not to compel them to appear. If the litigant is serious about his claim or the claim against him, he will avail himself of the opportunity to defend his interest.

### **SUBPOENA**

A subpoena is a process that invites or calls a witness or an official to court. Whilst a notice merely informs the recipient of the status of proceedings in court and leave the response to the recipient's discretion, a subpoena invites the recipient to court and in the event the recipient fails to appear, the court may use its coercive power to bring the person before it by warrant.

### **WARRANT**

A warrant is a coercive process of the court, compelling compliance from a person it is directed to. It may impugn on one of three basic rights of an individual namely: his liberty, privacy or property.

Warrants that affect the liberty of an individual are, arrest warrant, remand warrant and committal warrant. An arrest warrant authorises the arrest of an individual and be brought to court.

This could be during the pendency of a criminal matter in court. That is, where the Accused absent himself from court without cause, a warrant could be issued for his arrest and surety(ies).

A warrant could also be used to commence criminal proceedings in court. This could only be done, if the complainant satisfies the court that, the defendant is a flight risk, evading normal service or is a violent person. Then the complainant will be allowed to commence the proceedings by warrant, rather by summons, which is the normal way.

An arrest warrant could be endorsed for bail. That is, if endorsed for bail, the arresting authority can admit the arrested person to bail, on the terms of the recognizance contained in the endorsement, pending his appearance in court. If the warrant is not endorsed for bail, the arresting officer, will keep the arrested person in custody, till he is brought to court.

Because of the geographical limitation of the jurisdiction of a magistrate court, a warrant issued by a magistrate for the arrest of a person outside its judicial district is not effectual, until it is endorsed by the Resident magistrate of the judicial district where the arrested person is resident or staying or is at the moment of his arrest.

Warrants that infringed on the privacy of an individual, are search warrants. These authorise police personnel or bailiffs to enter forcibly, into the property of an individual and look of any thing of police interest, relative to a matter under investigation. No search warrant shall be executed after the hour of 6pm and before the hour of 6am.

Those warrants affecting the property of an individual are eviction warrants, issuing from a magistrate's court, pursuant to cap 49 of the laws of Sierra Leone 1960, for the forcible eviction of a tenant from his premises, upon a successful eviction proceedings against him, at the suit his landlord.

### **PROCESSES IN ENFORCEMENT OF COURT JUDGEMENTS, ORDERS AND RULINGS**

These are coercive processes of the court that ensure the observance of and compliance with Judgements and Orders of courts. They exert the coercive mandate of the courts. Courts adjudicate, whilst chiefs arbitrate to settle disputes between their subjects. The difference is, whilst the Courts can compel compliance with the outcome of their adjudication, Chiefs do not have such coercive powers to enforce the outcome of their arbitration. The kind of process used in enforcement of a court's judgement or Order, depends on the nature of the proceedings and the claims.

### **ENFORCEMENT PROCESSES IN CRIMINAL MATTERS**

In criminal matters, we have two main types of these processes namely: remand warrant and committal warrant.

A remand warrant is when the matter is pending and the Accused is denied bail, the document authorising the keeper of prison to keep him in custody during the pendency of the trial, is the remand warrant.

There are two types of committal warrants. When an Accused is committed to the high Court for trial, the document committing him to the high court for such trial, is the committal warrant. If bail is refused upon committal, there will be a remand warrant attached to the committal warrant, as the committed person will be a remand prisoner.

Also at the end of a trial, if the Accused is convicted and sentenced to a prison term, the process mandating the keeper of prison to hold him in custody, is also known as a committal warrant. It is so called because, it commits the convict to prison.

These days it is interchangeably also colloquially called and title by court personnel, as sentence warrant. But in strict legal parlance, it is a committal warrant.

A committal warrant for convicted persons, could be direct or indirect. It is direct if there is no alternative fine. It is indirect, if there is an alternative fine. In the latter case, the keeper of prison can only keep the convict in custody, if he fails to pay the fine.

### **CIVIL ENFORCEMENT PROCESSES**

There are a plethora of processes by which judgements and Orders of courts, in civil proceedings can be enforced. But for our purpose, we will limit the discourse to the following: a writ of possession, writ of fieri facias aka fifa, writ of delivery, writ of Assistance, committal Order and Garnishee Order.

### **WRIT OF FIERI FACIAS(hereinafter called "a fifa")**

By Order 46 Rule 1(a) of the High Court Rules 2007, one of the ways a judgement for the payment of money not being payment into court is enforced, is by the issuance of a fifa. It is issued by the master and Registrar and executed by the undersheriff. It is a process that authorises bailiffs, to enter forcibly if needful, into the premises of a judgement debtor and

seized his property therein, sell them, to recover the judgement debt due and owing to the judgement creditor and pay over the proceeds to the judgement debtor.

### **WRIT OF POSSESSION**

Order 46 Rule 3 subrule 1(a), a judgement for the giving up of land, shall be executed by a process call a writ of possession, issuing from the master's office, with the leave of the court that gave the judgement. This mandates the bailiffs of the undersheriff's office, to enter forceful and evict the judgement debtor from and surrender vacant possession of the property in issue, to the successful litigant.

### **WRIT OF DELIVERY**

A Judgement or Order for the delivery of goods, can by Order 46 Rule 4 subrule 1(a) of the said Rules, be executed by a writ of delivery, also issuing from the master and enforce by the undersheriff. It mandates the bailiffs to forcibly seize the goods in issue and deliver them to the judgement creditor.

### **WRIT OF ASSISTANCE**

This is an auxiliary process to the principal execution process. It is the writ that mandate the police to assist the bailiffs, in the execution of Judgements and Orders, by providing security cover. For example, in the recovery of land, the police will do a threat assessment and based on their findings, would advise the undersheriff whether to proceed with the execution or not. But the police will only partake in an execution exercise, if there is a writ of Assistance from the court, mandating them to provide security. The normal trend now is that, in applying for leave to issue a writ of execution, counsel will also include a prayer for a writ of possession. It is instructive to note therefore that, in one application, a judgement creditor can ask for more than one execution process. For example on a judgement for the recovery of premises that also awards the successful litigant mesne profit or arrears of rent and cost, the judgement creditor can apply for writ of possession for the recovery of the premises, writ of fifa for the mense profit or arrears and costs and writ of Assistance for police assistance. When granted, the master will issue a three in one writ of execution.

### **COMMITTAL ORDER**

Courts are vested with powers to punish for contempt, relating to any proceedings before them or proceedings before an inferior court, whether in the face of the court or outside the court, in the form of disobedience to its Orders or breach of an undertaking to the court.

Contempt can take various forms, for instance, when an execution process is issued against a judgement debtor and he obstruct or resist its execution either by himself or by his proxies, privies or agents, he is in contempt of the court.

By order 51 of the High Court Rules 2007, the court can make a committal order, committing the contemnor to prison for a specified period stated in the Order.

### **GARNISHEE ORDER**

A Garnishee is a person or institution within the court's jurisdiction, that is either indebted to a judgement debtor, or hold money to the credit of the judgement debtor. A garnishee Order is therefore, an Order of court attaching the judgement debt, to the debt owing to the judgement debtor or moneys to his credit held by the garnishee.



The order may direct that, the judgement debt be paid from those moneys due and owing to the judgement debtor or held to his credit, or in the alternative, be frozen until the judgement debt is discharged.

The Order is often made, through a process known as garnishee proceedings and it is banks in which judgement debtors operate Accounts that are often the target of those proceedings.

This is one of the most effective ways of executing Judgements and Orders against institutions and corporate bodies. Just deny them access to their Account and obstruct their day to day operations. They would come begging for a settlement and a payment plan, that would fully discharge the judgement debt due and owing to the judgement Creditor and give effect to the judgement or Order of the court and preserve its sanctity and respect.