

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA  
SITTING IN ITS MARCH TERM, A.D. 2017

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE  
BEFORE HIS HONOR: KABINEH M. JA'NEH.....ASSOCIATE JUSTICE  
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE  
BEFORE HIS HONOR: PHILIP A.Z. BANKS, III .....ASSOCIATE JUSTICE  
BEFORE HER HONOR: SIE-A-NYENE G. YUOH .....ASSOCIATE JUSTICE

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Abu Bana Kamara, Assistant Minister for Administration, )  
Ministry of Posts and Telecommunications, Government )  
of the Republic of Liberia, of the City of Monrovia, Republic )  
of Liberia.....Petitioner )  
Versus ) PETITION FOR A  
The National Elections Commission by & thru its ) WRIT OF PROHIBITION  
Chairman Counselor Jerome Kokoyah & Members of )  
The Board of Commissioners including all Elections )  
Magistrates, Directors and Supervisors under their control )  
of the City of Monrovia, Liberia.....Respondent )

Heard: July 11, 2017.

Decided: July 17, 2017.

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

This petition for the writ of prohibition is filed by Abu Bana Kamara, Assistant Minister for Administration, Ministry of Posts and Telecommunications, Republic of Liberia, (“hereinafter known as petitioner”) against the National Elections Commission (NEC), (“hereinafter known as respondent”). A brief summary of the facts, as culled from the certified records reveal the following:

As part of its statutory responsibilities, the NEC, amongst other things, is authorized to “screen all candidates for elective public office and accredit their candidacy, and/or reject the candidacy of anyone who is not qualified...” In line with this responsibility, the NEC, on June 19, 2017, commenced the registration process of candidates for the ensuing elections scheduled for October 10, 2017. For this purpose, the NEC developed various forms, amongst which was a form labeled as: “ASPIRANT QUESTIONNAIRE TO ESTABLISH RESIDENCY, DOMICILE AND COMPLIANCE WITH CODE OF CONDUCT FOR PUBLIC OFFICIALS.” Question 7 on this form puts a query thus: “Have you held any appointed government position(s) during the last three (3) years that is, the period from June 2014 to the present?” And question 8 reads: “If yes, state the positions and time of occupancy (please

include date/month/year)". The petitioner obtained and filled in the form. To question 7, the petitioner answered "yes" and to question 8 he listed Assistant Minister for Administration, Ministry of Post and Telecommunications, a position he indicated, he has held from March 2016 to present. The petitioner also stated on the form that he held the position of Assistant Minister for Land and Rails at the Ministry of Transport from February 12, 2012, until he was appointed to the present position.

On June 30, 2017, the petitioner submitted his application to the NEC, hoping to be certified to run as a candidate for the House of Representatives, District #15, Montserrado County. On the same day, June 30, 2017, the NEC reviewed the answers given by the petitioner to the stated questions on the aforementioned form and informed the petitioner that his application had been rejected. The NEC stated as a reason for the petitioner's rejection: "Candidate is barred from contesting by the Code of Conduct for Public Officials." On July 3, 2017, the Chairman of the NEC, in a communication addressed to the petitioner, confirmed the rejection of the petitioner's application.

On July 10, 2017, the petitioner filed a petition for the writ of prohibition alleging that his rejection by the NEC was wrongful in many respects. The petitioner prayed, amongst other things, for the Chambers Justice to order the issuance of the alternative writ of prohibition against the respondent, and by it, order the stay of the printing of ballot papers and other electoral processes that will deprive the petitioner from contesting in the elections and to stay and further restrain the respondent from pursuing any action or decision related to, or growing out of this matter, until a final disposition of this petition has been had at a time and date to be determined by the Chambers Justice. For the full benefit of this opinion we quote verbatim the petitioner's twenty-one count petition:

"PETITIONER'S PETITION

And Now Comes Petitioner and petitions this Honorable Court for [a] writ of prohibition in order to prevent, restrain, enjoin, stop and prohibit Respondent, the National Elections Commission (NEC) from denying Petitioner admission as a representative aspirant in the 2017 Presidential and General Elections, as it has done and showeth the following legal and factual reasons, to wit:

1. That Petitioner is a law abiding citizen of the Republic of Liberia and a resident of Electoral District Number 15 in Montserrado County and currently occupies the position of Assistant Minister for Administration at the Ministry of Posts and Telecommunications in the

Government of the Republic of Liberia, and like every other member of the Executive Branch of Government and the citizenry as a whole, falls within the protective enclave of Article 20 (a) of the Constitution of the Republic of Liberia (1986) which mandates that “No person shall be deprived of life, liberty, security of the person, property, privilege or any right except as an outcome of a hearing consistent with provisions laid down in the Constitution and in accordance with due process of law.”

2. Further to Count 1 above, Petitioner had previously held the position of Assistant Minister of Land and Rails at the Ministry of Transport from February 10, 2013 and was reappointed as Assistant Minister for Administration, Ministry of Posts and Telecommunications and commissioned on March 8, 2016 by the President of the Republic of Liberia, Her Excellency Madam Ellen Johnson Sirleaf. Since the commissioning, the Petitioner continues to perform his duty as Assistant Minister for Administration at the Ministry of Post and Telecommunications.

3. Petitioner says further that because the Constitution of Liberia and Elections Law provide for the holding of Presidential and General Elections in Liberia after every six (6) years, the Petitioner [being] desirous of contesting as a candidate in said elections applied [at] the National Elections Commission (NEC), Respondent, to be allowed to contest as a candidate to participate in the 2017 General Elections. Petitioner says that his application is to contest for the position of Representative for District #15, Montserrado County, Republic of Liberia.

4. Further as to Count 3 of this petition, Petitioner did file an Application/Letter of intent to contest as a Representative candidate for District #15, Montserrado County, which required the filing of series of forms to complete the exercise of application and the submission of relevant documents for determination by Respondent consistent with law. Attached hereto are the Petitioner's Exhibits marked as P/1 in bulk representing Letter of intent; Abu Movement for positive change's meeting minutes petitioning the petitioner to contest for District #15, Montserrado County, Central Bank of Liberia Payment Slip and NEC Receipt; Declaration of Aspirant to abide by the Political Parties Code of Conduct. Information on established Office for Independent Candidate Form; Candidate Nomination Printout; Notice of Receipt of Nomination Application; Aspirant Questionnaire to establish Residency; Domicile and Compliance with Code of Conduct for Public Officials Form; Nomination Application Checklist Independent Candidate Form; Tax Clearance Certificate; Candidate

Financial Disclosure Form; Affidavit of Confirmation of Domicile, and Affidavit of Confirmation of Liberian Citizenship, all to form a cogent part of this Petition.

5. Petitioner says that having met all of these requirements by completion of the filing process prescribed by the Respondent, the Respondent without any legal basis and support consistent with due process denied and rejected the Petitioner on ground that the "Candidate is barred from contesting by the Code of Conduct for Public officials, "Petitioner herein attached copy of the "Notice of Rejection of Nomination Application" marked as Petitioner's Exhibit P/2 to also form a cogent part of this Petition.

6. Petitioner says that the action and ground relied upon by the Respondent/NEC to summarily reject the Petitioner is inconsistent with law; thus, in violation of Chapter 3, Article 20(a) of the 1986 Constitution of Liberia which states that "No person shall be deprived of life, liberty, security of the person, property, privilege or any right except as an outcome of a hearing consistent with provisions laid down in the Constitution and in accordance with due process of law." In substance, the Respondent failed to accord the Petitioner the right to be heard, neither was there an administrative proceedings that provides Petitioner a notice of the specific violation; the right to appeal a judgment growing out of the hearing, amongst others.

7. Further to Count 6, Petitioner says the ground for disqualifying him is vague and ambiguous on the face of the Notice of Rejection. Petitioner also says that the Notice of Rejection failed to state specifically the provision of the Code of Conduct for Public Officials that was alleged to be violated or breached by the Petitioner. Therefore, this Honorable Supreme Court has the legal authority to declare Respondent's unlawful action complained of as arbitrary and unconstitutional.

8. Further as to Count 7 of this Petition, Petitioner says, though the Petitioner did not resign two years prior to the 2017 General Elections, it does not warrant disqualification to contest as contained in Section 15.1 of the Code of Conduct; which states that "sanctions for any breach of this Code of Conduct shall be those prescribed by the Standing Order of Civil Service or any other laws covering the public service. Notwithstanding, depending on the gravity of the offence or misconduct, one or more of the following penalties may apply; dismissal, removal from office in public interest; Reprimands, Fine or making good of the loss or damage of public property/assets, demotion (reduction in ranking); Seizure and Forfeiture

to the State of any property acquired from abuse of office; and interdiction/suspension from duty with half pay.

9. Further to Count 8 of this Petition, Petitioner says neither did this Court in the interpretation of the Code of Conduct Act uprightly disqualify persons who did not resign in two and/or three years, but rather this Court is unequivocal in its opinion as to when an applicant can be disqualified for not resigning in time in the case *Selena Mappy-Polson vs. The Government of Liberia*, decided March 3, 2017. In the said opinion this Court maintained that "...the sanction of disqualification from running for elected public office where egregious violation of the Code of Conduct Act has been established, in our opinion is amongst those other sanctions that would properly apply relevant to the office in breach.

10. Petitioner says that further to Count 9, above, this Court states that "in some instances, the sanction applicable to the magnitude or severity of the violation would be nothing other than disqualification of the obtrusive and blatant violator from running for public office." In the instant case, the Petitioner says that the Respondent has failed to show any record that he has obtrusively and blatantly violated the Code of Conduct Act for which Petitioner is being disqualified.

11. Petitioner says that assuming without admitting that any applicant who is in egregious violation of the Code of Conduct Act, it is required by law to be established in accordance with due process of law which includes the right to notice of the alleged violation(s), the right to notice of the nature of the alleged violation, the right to be heard before condemnation, and the right to appeal from the judgment growing out of the hearing.

12. Petitioner says it is within the province and duty of this Honorable Court to say what the law is, and for which this Court has already done in the *Polson's* case and gave a conspicuous interpretation of the Code of Conduct Act. This Honorable Court in its opinion clearly sets the standard upon which a person may be disqualified to contest for public office, as enumerated above. Petitioner says that the Respondent's action is in clear violation of the interpretation of this Court, therefore Prohibition will lie. Petitioner also says that it is the authority of this Court to determine the constitutionality of any Act as contained in Chapter 1, Article 2 of the Constitution of Liberia.

13. That because of the imminent threat and risks pose[d] to exclude the Petitioner from participating in these elections to include the printing of the name and face on ballot papers,

Petitioner caused his legal counsel to file a Petition for the Writ of Prohibition, to prohibit and restrain the Respondent from further proceeding with the printing of ballots and the conduct of other electoral processes that would deny the Petitioner from contesting in the 2017 General Elections, particularly District # 15 in Montserrado County, Republic of Liberia.

14. Petitioner says that assuming that he was serving [in] an appointed position prior to the coming into force of the Code of Conduct Act, the said Act does not apply to him because Petitioner was already serving when the Act became effective. Petitioner relies on the Doctrine of Retroactivity, Constitution of the Republic of Liberia Article 21(a) which states: "No person shall be made subject to any law or punishment which was not in effect at the time of commission of an offense, nor shall the Legislature enact any bill of attainder or ex post facto law."

15. That pursuant to the Supreme Court interpretation of the Code, this Court opined that "there is at present no forum of first instance to receive and address complaints of alleged violation of the Code of Conduct Act. This is of critical concern as the law solely vests the Office of Ombudsman with original jurisdiction not only to have oversight, monitor, and evaluate adherence to the Code of Conduct Act, but also to receive and investigate all complaints in respect of adherence thereof. This is critical as the provision by the Legislature of the wide range of sanctions seems to suggest imposition of sanctions to commensurate with magnitude and severity of the violation measured by the violator's accessibility to public resource accessibility and acquisition of leverages over other candidates, "In view of the Court's opinion, the President of the Republic of Liberia has appointed the Ombudsman consistent with the law, but subsequent to that the Code of Conduct Act was amended.

16. Petitioner says, further to Count 15 above, that because the Code of Conduct Act seeks [to] address ethics in Government when the Legislature amended the Code and transferred the aspect of the Code of Conduct Act that deals with "Political Participation" to the National Elections Commission, the Respondent herein, such responsibility cannot be treated as an eligibility requirement of the aspirants in that to allow that will amount to changing the Elections Law of Liberia less than six (6) months to the 2017 Presidential and General Elections.

17. Petitioner further says that Liberia has signed and rectified ECOWAS Protocol on Elections (Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution,

Peacekeeping and Security) which provides that “No substantial modification shall be made to the electoral laws in the last six (6) months before the elections, except with the consent of majority of political actors..” Attached hereto is a copy of the said protocol marked as Exhibit P/3. Petitioner also says that all the eligibility requirements for aspirants are well outlined within the Constitution of the Republic of Liberia and Elections Law.

18. Under Liberian law, prohibition is a special proceeding to obtain a writ ordering the Respondent to refrain from further pursuing an action or proceeding specified therein. Title 1, chapter 16, Section 16.21(3). Prohibition will lie where the tribunal has assumed jurisdiction not ascribed to it by law, or has exceeded its designated jurisdiction, or in the exercise of its lawful jurisdiction is proceeding by wrong rules other than those which ought to be observed at all times. Garlawolu et al v. the Elections Commission et al, 41 LLR, 177 (2003) | Gaigue v. Jallah, 20 LLR 163 (1971); Thomas v. The Ministry of Justice, et al 26 LLR 129 (1977).. Prohibition will undo what has not been legally done, and where anything remains to be done, prohibition will not only prevent what remains to be done, but will also give complete relief by undoing what has been done. Mathies & Fina Capital Corp. v. Alpha Internationa Investment, Ltd. 40 LLR 561 (2001); Avad v. Dennis, 23 LLR 165 (1974); Kamara Butchery v. Uppo et al, 36 LLR 181 (1989).

19. Prohibition does not only apply to ongoing acts but to threats of future acts as well. “Prohibition is granted to prevent some great outrage upon settled principles of law and procedure, in cases where wrong damage and injustice are likely to follow such action. Togba v. Republic of Liberia, 15 LLR 389, 400 (1988); Broh v. The Honourable House of Representatives, Opinion of the Supreme Court of the Republic of Liberia (Decided 24<sup>th</sup> January 2014).

20. Petitioner says that further to Counts 10, 11 and 12 of this Petition, Petitioner relies on the settled principles of law cited and says that this Petition will lie against the Respondent.

21. Petitioner says the issues raised in this Petition are constitutional matters which require the full bench of the Honorable Supreme Court to sit and decide. Petitioner [therefore] respectfully prays Your Honor to forward this petition to the full bench for determination.

WHEREFORE, AND IN VIEW OF THE FOREGOING, it is the most respectful prayer of the Petitioner that Your Honour:

1. Issue the alternative writ of prohibition against the Respondent; and by it, order the stay of the printing of ballot papers and other electoral processes that will deprive the

Petitioner from contesting in these elections and to stay and further restrain the Respondent from pursuing any action or decision related to, or growing out of this matter, until a final disposition of this petition has been had at a time and date to be determined by Your Honour;

2. Rule that the acts and conduct of the Respondent complained of herein is in violation of the Constitution of the Republic of Liberia (1986).
3. Require Respondent to file its appearance and show cause on a date and time fixed by Your Honour, as to why the peremptory writ of Prohibition should not be issued; and,
4. Grant unto Petitioner any and all other such further relief deemed by Your Honour to be just, equitable and legal, as in keeping with law.

Respectfully Submitted:

Petitioner/Abu Kamara/Assistant Minister for  
Administration/Ministry of Posts & Telecommunications,

By and thru his legal counsel

Sesay Johnson & Associates Law Chambers  
Broad & Gurley Streets, Monrovia, Liberia

Arthur T. Johnson  
COUNSELLOR-AT-LAW

Swaliho A. Sasay  
COUNSELLOR-AT-LAW"

To the foregoing petition, the respondent, National Elections Commissions, filed returns which we also quote verbatim:

#### "RESPONDENT'S RETURNS

Respondent, in the above entitled proceeding, denies the legal and factual sufficiency of Petitioner's Petition to warrant the issuance of the Peremptory Writ of Prohibition and respectfully requests Your Honours, and this Honourable Court, to deny and dismiss same, for the following legal and factual reasons, showeth to with:

1. That as to the entire Petition, Respondent National Elections Commission ("NEC") says same is a fit and proper subject for dismissal because Petitioner has



proceeded by the wrong form of action, in that after Respondent NEC rejected Petitioner's Application on July 1, 2017, which rejection was consistent with and pursuant to NEC's powers and duties to screen all candidates for elective public office(s) and accredit or reject their candidacy (ies) in accordance with the Guidelines, Petitioner should have excepted to Respondent's Ruling, filed a bill of exceptions and perfected his appeal to the Honourable Supreme Court of Liberia within seventy-two (72) hours. Regarding who may contest elections, the relevant part of the Candidate Nomination Regulations states; "In order for political parties, coalitions, or alliances to nominate a candidate, or for an independent candidate to apply for an elected office, he/she must: a) Meet the candidate eligibility criteria established in the Constitution, Elections Law, other laws and the NEC Regulations". For reliance, see Candidate Nomination Regulations, Article 3.3 subsection (a), May 6, 2016. Respondent respectfully requests Court to take judicial notice of the fact that Petitioner's Application/ Candidacy was rejected on July 1, 2017 and the said Rejection was confirmed and affirmed by the Board of Commissioners on July 3, 2017. Copy of the Confirmation by the Board of Commissioners of the said Rejection and the Receipt, evidencing receipt by Petitioner of the said Confirmation of Rejection on the selfsame July 3, 2017, are hereto attached in bulk as Respondent's Exhibit "R/1".

2. Further to Count one (1) herein above, Respondent say the New Elections Law delegates to Respondent the right and duty to "screen all candidates for elective office and accredit their candidacy, and/or reject the candidacy of any one who is not qualify..."under the Elections Law and the guidelines laid down by the Commission. For reliance, see new Elections Law, Chapter 2, section 2.9 (n), (1986). In regard to the remedy available to a rejected applicant and the time period within which he/she should avail himself/herself of the remedy, the relevant part of the Candidate Nomination Regulation states: "The NEC shall notify all aspirants in writing of its decisions to accept or reject their requests to stand for elections. An aspirant whose application has been rejected may appeal the NEC's decision to the Supreme Court within three days of the NEC's determination". For reliance, See Candidate Nomination Regulation, Article 11.4 (May 6, 2006).
3. Further to count two herein above, Respondent submits and says Petitioner was accorded due process; a hearing was held at the point of registration, followed by review of the matter at the National Elections Commission, based on Petitioner's initial appeal. The Law requires Petitioner to announce an appeal from the decision of the Elections commission and, within seventy-two (72) hours, file with the

Supreme Court the appropriate and necessary papers and documents to perfect his appeal. Petitioner, having abandoned this statutorily prescribed procedure to confer appellate jurisdiction on the Supreme Court, is not properly before this Court. Hence, Respondent submits that the entire petition is a fit and proper subject for denial. Our Supreme Court has held that “a complaint alleging a wrong form of action will be dismissed”. Rached v. Knowlden, 13 LLR, 68 (1957). The Honourable Supreme Court has also held that Prohibition is not a substitute for appeal. Prohibition extends only to restraining a trial tribunal from usurpation and cannot be used to substitute for an appeal”. For reliance, see: Fazzah v. National Economy, 8 LLR 85 (1943).

4. Further to Count three hereinabove, Respondent says prohibition will not lie because petitioner’s application and candidacy have been rejected and NEC’s action thereby completed. In a long line of cases the Supreme Court has held that prohibition will not undo what has already been done. For reliance, see Congress For Democratic Change (CDC) et al v. National Elections Commission (NEC); decided February 17, 2015, text at pages 57 to 58. Moreover, prohibition concerns itself with preventing inferior courts or tribunal from assuming jurisdiction which is not legally vested in them. Moniboe v. Page, et al, 30 LLR 600 (1983); Greenfield v. Tubman and Badio, 30 LLR 823 (1982).
5. Further to count four hereinabove, the court is respectfully requested to take judicial notice of count thirteen of Petitioner’s Petition which spells out the relief been sought by Petitioner, viz: “...to prohibit and restrain Respondent from further proceeding with the printing of ballots and a conduct of other electoral processes that would deny the petitioner from contesting in the 2017 General Elections, particularly [in] District # 15, Montserrado County, Republic of Liberia”. Thus, by his Petition, Petitioner is seeking to prevent and restrain Respondent from performing its statutory duty, the holding of free and fair elections. Our Supreme Court has held that prohibition will not lie to prevent, prohibit or obstruct an administrative agency of government from exercising its lawful and administrative duties and responsibilities. Wesseh et al, v. Tubman and Granddoe, 28 LLR 3 (1979).
6. Further to Count Five (5) herein above, Respondent says Petitioner was given the opportunity to be heard, was heard and a ruling from the hearing confirmed by the National Elections Commission. Petitioner’s remedy lies in appeal. The Court is respectfully requested to take judicial notice of count six (6) of the

Petition which maintains that Petitioner was not given his day in Court. Though this assertion is not supported by the records, Respondent says assuming, without admitting, that the said assertion is true, Petitioner's remedy would lie [in] Writ of Error. Our Supreme Court has held "where the petitioner claims that he was denied his day in court, the remedy available to him is error and not prohibition". Monboe vs. Page, et al., 301 LLR 600 (1983).

7. Further to Count Six (6) herein above, Respondent says Petitioner has come by the wrong remedial writ, namely Prohibition; firstly, because Petitioner's remedy lies in appeal, he having participated in the investigation of the matter at the Registration Center, received an adverse ruling, appealed the said adverse ruling to the National Elections Commission, which confirmed the said adverse ruling. Remedial Writ is not available to Petitioner, but assuming without admitting that any form of remedial writ would be available to petitioner, such a writ would be Mandamus. Instead of preventing Respondent from performing its statutory and legitimate duties, Petitioner should have prayed for a writ that compels Respondent to perform its statutory and legitimate duties. "Mandamus is one of five remedial writs which a justice in chambers may order issued; it commands performance of a legitimate duty imposed by a law, performance of which must have been neglected or refused by a public officer responsible for such performance". Mitchell and Sons Distillery vs. Nelson, 22 LLR 67 (1973).
8. That Counts One (1), Two (2), Three (3) and Four (4) of the Petition raise no traversable issue (s). Respondent prays that the said counts One (1), Two (2), Three (3) and Four (4) are overruled and the entire Petition dismissed.
9. That as to Count Five (5) of the Petition, Respondent denies the averments therein contained and says further that Petitioner did not meet all of the requirements for eligibility, especially as spelled out in the enacted Code of Conduct. Respondent says Part V, Section 5.1 of the Code of Conduct, states:  
"5.1 All Officials appointed by the President of the Republic of Liberia shall not:  
(a) Engage in political activities, canvass or contest for elected offices;  
(b) Use Government facilities, equipment or resources in support of partisan or political activities;  
(c) Serve on a campaign team of any political party or the campaign of any independent candidate".

2. Part V, Section 5.2 states:

" 5.2 Wherein, any person in the category stated in Section 5.1 hereinabove, desires to canvass or contest for any elective public position, the following shall apply:

- a) Any Minister, Deputy Minister, Director General, Managing Director and Superintendent appointed by the President pursuant to Article 56 (a) of the Constitution and a Managing Director appointed by a Board of Directors who desires to contest for public elective office shall resign said post at least two (2) years prior to the date of such public election;
- b) Any other official appointed by the President who holds a tenured position and desires to contest for public elective office shall resign the said post three (3) years prior to the date of such public elections.
- c) However, in the case of impeachment, death, resignation or disability of any elected official, any official listed above, desirous of canvassing or contesting to fill such position must resign the said position within thirty (30) days following the declaration by the National Elections Commission of the vacancy."

10. Further to Count Nine (9) herein above, Respondent respectfully requests Court to take judicial notice of Count One (1) of Petitioner's Petition and his admission that he currently "...occupies the position of Assistant Minister for Administration at the Ministry of Posts and Telecommunications in the Government of Liberia..." Under our Law, "All admissions made by a party himself or by his agent acting within the scope of his authority are admissible ...." Civil Procedure Law, 1 L.C.L. Rev., tit. 1 Section 25.8 (1973).

11. That as to Counts six (6) and seven (7) of the Petition, Respondent denies the averments therein contained and further respectfully requests Court to take judicial notice of the Form filled in by the Petitioner; and his admission in several parts of the instant Petition, that he is currently Assistant Minister for Administration at the Ministry of Posts and Telecommunications. The Form is entitled: Aspirant Questionnaire To Establish Residency, Domicile, And Compliance With Code of Conduct For Public Officials. Petitioner having clearly placed on record when he filled in the said Form that he is currently Assistant Minister for Administration at the Ministry of Posts and Telecommunications, after which admission he was accorded a hearing during which he admitted and confirmed what was contained in his completed Application Form, Respondent properly and legally made the decision to deny him registration by rejecting his candidacy, which decision was duly communicated to Petitioner, as seen in Petitioner's "Exhibit P/2."

12. That as to Counts Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12) and Thirteen (13) of the Petition, Respondent denies the averment therein contained. Respondent says the Honorable Supreme Court was clear in its opinion in the case: Selena Mappy-Polson vs. The Government of the Republic of Liberia, decided March 3, 2017, when it opined: "The exhaustive sanction theory

- subscribed to and advanced by Petitioner Polson-Mappy on this question is hugely flawed. We note the primary object of the Code of Conduct was disqualification from running for elected public offices of all public officials appointed by the President pursuant to Article 56 (a) of the Liberian Constitution. It was the wisdom of the Legislature that these officials tend to acquire obvious undue advantage over other candidates which most likely than not, is employed for personal electoral leads. To accept the exhaustive sanction theory proposed by Petitioner Polson-Mappy is to render the Code of Conduct Act meaningless and ineffectual”.
13. Further to Count Twelve (12) herein above, Respondent says disqualification from running for elected public offices, where violation of the Code of Conduct in respect of failure to resign within three (3) years before the Elections is found, is a sanction contained in the Code of Conduct. The Supreme Court in Polson-Mappy declared: “The work of the Ombudsman and its findings on the egregious nature of a violation provides a logical basis for imposition of sanctions, including disqualification to run for public office” (Emphasis ours). The Ombudsman has been replaced by the Elections Commission, pursuant to the amendment enacted on June 20, 2017 and published on June 23, 2017. Thus, the Elections Commission, having found Petitioner to have committed egregious violation of the Code of Conduct, was legally justified in its rejection of his registration.
  14. That as to Counts Fourteen (14) Fifteen (15) and Sixteen (16) of the Petition, Respondent denies the averment therein contained and says further that the law is not being retroactively applied; rather, it is legally applicable to all government officials appointed by the President, consistent with Article 56 (a). The Court is respectfully requested to take judicial note of the fact that the law was duly enacted and approved on March 31, 2014 and published on June 10, 2014, more than three (3) years ahead of elections which are scheduled to be held on October 10, 2017. As Petitioner had ample time to resign two (2) years before October 10, 2017, latest October 10, 2015, he was well within the time frame of the law to take the approach that the law did not exist when Petitioner was appointed and is, therefore, not applicable to him, is to adopt the approach that no law can be made to affect Petitioner while he is serving as Assistant Minister, or until his next appointment in government.
  15. That as to Count seventeen (17) of the Petition, Petitioner has not shown that Liberia acceded to the ECOWAS Protocol on election. But assuming, without admitting that Liberia acceded to the Protocol, the sanction of the Protocol cited by the Petitioner is not applicable in the instant case. The law was passed in March

2013, more than three (3) years before the scheduled elections in October 2017. The law was amended on June 20, 2017. The amendment transferred the aspect of the Code of Conduct Act that deals with qualification and/or disqualification for public office to the National Elections Commission. No new law was made. How have the Petitioner's rights been affected? What disadvantage has the Petitioner suffered by the amendment? Would Petitioner not have been affected in the same way if the Ombudsman, instead of the National Elections Commission, were charged with the responsibility to determine violation (s) under the Code of Conduct? Can Petitioner rightly say that the Code of Conduct is a 2017 and not a 2014 law? Certainly, the Code of Conduct was enacted more than three (3) years before the date of pending elections and not six (6) months before the pending elections.

16. Further to Count Fifteen (15) herein above, Respondent says the penalty of disqualification is contained in the Code of Conduct and falls within the range of punishments prescribed by the Code, especially for egregious violation of the Code of Conduct. Petitioner has committed egregious and flagrant violation of the Code of Conduct by the fact that he is still serving as Assistant Minister for Administration at the Ministry of Posts and Telecommunications and intends to use Government resources to canvass and contest in the pending elections. The decision to reject the Petitioner's candidacy was consistent with the New Elections Law, the Code of Conduct in the Candidate Nomination Regulations, Article 3.3 subsection (a), May 6, 2016. Article 3.3 subsection (a), of the Candidate Nomination Regulations mandates that all aspirants must meet the candidate eligibility criteria established in the Constitution of Liberia, the Elections Law, other laws and NEC Regulations. The Court is respectfully requested to take judicial notice of "Other Laws" and the fact that the Code of Conduct would qualify as "other law(s)".
17. Further to Count sixteen (16) herein above, Respondent says that the Code of Conduct is not being retroactively applied as it was enacted more than three (3) years before the pending elections. Respondent had ample time to resign. The Code is, therefore, applicable to him.
18. Further to Count seventeen (17) herein above, the Respondent says the six (6) months rule contained in the ECOWAS Protocol is also not applicable in the instant case, because the Code was passed in 2014 more than six (6) months before 2017 elections.

WHEREFORE, AND IN VIEW OF THE FOREGOING, Respondent respectfully prays Your Honor to quash the Alternative Writ of Prohibition issued, deny the issuance of the peremptory

writ of prohibition, thereby denying and dismissing the Petition for the writ of prohibition in its entirety, and grant unto the Respondents any other and further relief as Your Honor may deem just, legal and equitable in the premises.

Respectfully Submitted, the National Elections Commission, Respondent,

By and thru its Counsel:

Joseph N. Blidi

COUNSELLOR-AT-LAW

Frank Musah Dean, Jr.

COUNSELLOR-AT-LAW"

C. Alexander B. Zoe

COUNSELLOR-AT-LAW

We take note that in count twenty one (21) of the petition for the writ of prohibition, the petitioner asserts that he had raised constitutional issues and therefore requested the Chambers Justice to order his petition for prohibition placed before the Full Bench of this Court for hearing and determination. As a consequence of this, the Chambers Justice determined, and rightfully so, that the petition related to national elections which the Constitution placed in a special category. Thus, based on the "expeditious nature of the matter," the Chambers Justice immediately ordered that the case be forwarded to this Court *en banc*. The Clerk of this Court was then ordered to inform the respondent (National Elections Commission) to file returns to the petition; and for the two parties to the case to file their respective briefs.

The Clerk was further ordered to cite the Attorney General/Minister of Justice to appear and file returns and brief in defense of the law, the petitioner having stated that his petition for writ of prohibition involved constitutional issues. The citation to the Attorney General/Minister of Justice to intervene in this matter is in line with Chapter 5, Section 5.64, Title 1 of the Liberian Code of Law Revised, which provides:

"When the constitutionality of an act of the Legislature affecting the public interest is drawn in question in any action to which the Republic of Liberia or an officer, agency, or political subdivision thereof is not a party, the court shall so notify the Attorney General or a County, District, or Territorial Attorney, who shall have the right to intervene in support of the constitutionality of the statute."

In obedience to the citation, the Minister of Justice/Attorney General and the Solicitor General of the Republic of Liberia filed returns on behalf of the Ministry of Justice in which they stated that the petitioner's petition for the writ of prohibition did not squarely challenge the

constitutionality of the provision of any statute or other laws of the Republic of Liberia. Rather, according to the position of the Ministry of Justice, the petitioner's prime objective was to seek an appellate review of the National Elections Commission's decision rejecting the application of the candidacy of the petitioner in the ensuing elections as an aspirant for the post for Representative in District #15, Montserrado County. Hence, there was no need for the intervention of the Ministry of Justice, especially given that *Section 2.1 of the New Elections Law* provides for a Legal Section within the National Elections Commission.

When the case was called for hearing on July 11, 2017, and upon the appearance of the Attorney General/Minister of Justice and the Solicitor General of Liberia, this Court, in due consideration of the position of the Ministry of Justice and in the Court's own wisdom, decided to relieve and did relieve the Ministry of Justice of the need to appear in this case.

Further, when the case was called for hearing, the petitioner, by and through his Counsel, argued essentially that he currently serves as Assistant Minister for Administration, Ministry of Posts and Telecommunications; that on July 1, 2017, he filed an application with the NEC to contest as a candidate for the post of Representative in the House of Representatives for District # 15, Montserrado County, in the ensuing elections; that he complied with all of the requirements, but that NEC, without according him due process, rejected his application, stating as a reason: "Candidate is barred from contesting by the Code of Conduct for Public Officials." The petitioner further argued through his Counsel that there is no provision in the Code of Conduct, specifically Section 5.1, that disqualifies him from contesting the ensuing elections; that the Office of Ombudsman by law is to exercise original jurisdiction over violations of the Code of Conduct; that the purported amendment to the Code of Conduct by the National Legislature transferring electoral matters to NEC violates the ECOWAS Protocol on Elections; and that the Code of Conduct cannot be applied retroactively, since he was already serving as a presidential appointee before the enactment of the Code of Conduct.

The National Elections Commission, through its counsel, also presented argument, contending that the petitioner was accorded due process; that the petitioner neglected to pursue his appeal process as provided in *Article 3.3 of the Candidate Nomination Regulation of the NEC*; that the writ of prohibition cannot be substituted for appeal; that the petitioner by virtue of his own admission that he is currently an assistant minister, disqualifies him from contesting in the ensuing elections; that the Code of Conduct is not retroactive since the petitioner had more than two years to resign before the 2017 elections; and that the ECOWAS



Protocol on Elections alluded to by the petitioner is not applicable in this case since the Code of Conduct was passed about three (3) years ago.

After having carefully perused the petition, the returns thereto, and having read the briefs submitted by the counsels representing the parties and listened to their arguments presented before us, we have determined that there are four (4) principle issues for the determination of this case. They are:

1. Whether or not the Code of Conduct Act is applicable to the petitioner and if yes, whether he is in violation?
2. Whether or not the amendment to the Code of Conduct by the National Legislature is in violation to the ECOWAS Protocol?
3. Whether or not the petitioner was accorded due process?
4. Whether or not the writ of prohibition will lie in this case?

We shall address the issues in the order as presented above, starting with the first issue, whether or not the Code of Conduct is applicable to the petitioner, and if yes, whether he is in violation?

The Petitioner has argued that the Code of Conduct Act is not applicable to him for two reasons. First, petitioner says that the Constitution of Liberia, at Article 21(a), states that:

“No person shall be made subject to any law or punishment which was not in effect at the time of commission of an offense, nor shall the Legislature enact any bill of attender or *expo facto law*”.

The petitioner takes the position that he was already serving in the Government as an assistant minister before the enactment of the Code of Conduct Act. Therefore, the said Act cannot and should not apply to him retroactively. This contention is not tenable. First of all, we say that the Code of Conduct is applicable to all officials appointed by the President.

For the purpose of clarity and avoidance of doubt, we quote Sections 5.1 and 5.2(a) of the Code of Conduct Act:

Section 5.1 provides:

All officials appointed by the President of the Republic of Liberia shall not:  
a) Engage in political activities, canvass or contest for elected offices;

- b) Use government facilities, equipment or resources in support of partisans or political activities;
- c) Serve on a campaign team of any political party, or the campaign of any independent candidate.

Section 5.2(a) provides:

Wherein, any person in the category stated in Section 5.1 hereinabove, desires to canvass or contest for an elective public position, the following shall apply:

- a) Any Minister, Deputy Minister, Director General, Managing Director and Superintendent appointed by the President pursuant to Article 56 (a) of the Constitution and a Managing Director appointed by a Board of Directors, who desires to contest for public elective office shall resign said post at least two (2) years prior to the date of such public elections;

As clearly seen, the Code, at *Section 5.1*, states that the provision of that section is applicable to all public officials. Thus, even if in section 5.2 of the Code, the position of assistant minister is not specifically named, the lack of mention of the position does not thereby reduce the coverage stated in section 5.1 from “all” officials to some officials. In the case: *Selena Mappy-Polson v. Republic of Liberia*, decided by this Court on March 3, 2017, this Court pointed out that the defining intent of the Legislature can be found in Article 56(a) of the Constitution which names the officials who are appointed by the President. Article 56(a) states:

“All cabinet ministers, deputy and assistant cabinet ministers, ambassadors, Ministers and Consuls, superintendents of counties and other government officials, both military and civilian, appointed by the President pursuant to this Constitution shall hold their offices at the pleasure of the President”. [Emphasis supplied].

We reiterate and affirm the interpretation given in the *Polson* case in respect to which officials are covered by the Code of Conduct. Further, we take due note that the Code of Conduct Act was enacted and approved on March 31, 2014, and published into law on June 20, 2014, more than three years ahead of the ensuing elections scheduled to take place on October 10, 2017. According to the petitioner’s own statement, as seen on his application form, he was appointed to the position of Assistant Minister for Administration, Ministry of Posts and Telecommunications in March 2016, just last year; a position he currently occupies. This means that the law was passed before the petitioner was appointed to his current position. However, although the law was passed before the petitioner was appointed to his current position, we hold that he was given due notice of the inclusion of his position under the Act after the interpretation by the Supreme Court of the Code, when the Court declared that all persons not specifically listed in Section 5.2 were in fact intended to be included under the Code by virtue of Article 56(a) of the Constitution of Liberia (1986).

Moreover, the petitioner cannot link his current position of Assistant Minister for Administration at the Ministry of Post and Telecommunications, to which he was appointed on March 8, 2016, with the previous position held by him as Assistant Minister of Land and Rails at the Ministry of Transport, as the two are separate and distinct positions. In the former position, which he held at the time the Code of Conduct was passed, he asserted no challenge to the Code. Instead, he voluntarily gave it up for appointment to a new position subsequent to the enactment of the Code. Under the circumstances, and having been in due knowledge of the existence of the Code, he cannot assert the claim that the Code has a retroactive effect on him, since at the time of passage of the Code he did not hold the current position he now holds. Therefore the issue of non-retroactivity raised by the petitioner cannot be sustained.

The petitioner's next contention on this issue is that the Code of Conduct as was passed in 2014, did not place any legal duty on assistant ministers; therefore, an assistant minister had no notice to have resigned two years prior to the holding of elections until the Supreme Court, by its decision in the case: *Selena Mappy-Polson v. Republic of Liberia*, included assistant ministers and placed explicit duty on them as Presidential appointees under Article 56(a) of the Liberian Constitution to act in consonance with Sections 5.1 and 5.2(a) of the Code of Conduct. We hold that this argument, also, is not tenable. As we have said, while it is true that the Code of Conduct, under Sections 5.1 and 5.2 did not specifically name assistant ministers, Section 5.1 of the Code made particular reference to "all officials appointed by the President." The petitioner, who is a presidential appointee as stated under Section 56(a) of the Constitution, cannot claim innocence of the law. Indeed, this Court succinctly alluded to this point in its Opinion in the *Polson case*, wherein the Court reasoned that as the Code referred to "all" officials appointed by the President and that as Article 56(a) of the Constitution of Liberia named the officials who are appointed by the President, this means that no officials named in the referenced Article 56(a) of the Constitution were precluded from the ambit of the Code, including the petitioner who holds the position of assistant minister. We hold therefore that the Code of Conduct Act is applicable to the petitioner.

Now, is the petitioner in violation of the Code of Conduct? We hold yes. We take due note of petitioner's petition for the writ of prohibition wherein he stated emphatically that he currently occupies the position of Assistant Minister for Administration at the Ministry of Post and Telecommunications in the Government of Liberia. In addition to this averment which is contained in Count one (1) of his petition for the writ of prohibition, the petitioner, in answer to questions 7 & 8 on the Aspirant Questionnaire to Establish Residency, Domicile and

Compliance with Code of Conduct for Public Officials, stated that he has held and was still holding the position of assistant minister in Government. This is a glaring admission. Under our law "All admissions made by a party himself or by his agent acting within the scope of his authority are admissible..." *Section 25.8, 1LCL Revised, Civil Procedure Law.*

In the *Polson case* cited above, the Code of Conduct Act was challenged as being unconstitutional. But this Court validated the Code of Conduct Act; we held that the Code of Conduct Act was constitutional. Mr. Justice Kabineh M. Ja'neh, speaking for the majority of the Court in that case, said the following:

"The Legislature acted properly in exercise of the powers and authority granted to it by inclusion of the prior resignation eligibility requirement. In the wisdom of the Legislature, the inclusion of Sections 5.1 and 5.2 in the Code of Conduct Act was compelling necessity to ensuring curtailment of wanton abuse of public resources and misuse of public offices or positions to acquire undue electoral advantage. Not having been able to find any law upon which we could rely to question the wisdom of the Legislature in this regard, we hold that the Code of Conduct Act, whether in whole or in part does not violate the Constitution..."

In our opinion, as at the date of the decision of this Court in the *Polson case*, every imaginable shadow of doubt regarding whether or not the Code of Conduct Act promulgated by the National Legislature was constitutional was removed. This Supreme Court, a Constitutional Court duly vested with the power under Article 2 of the Constitution to declare any law repugnant to the Constitution unconstitutional, spoke clearly in support of the Code of Conduct Act. This Court expected, as a part of the rudiment of adherence to the rule of law, that everyone, especially public officials appointed by the President, including the petitioner in this case, should have taken due note, not only of the Court's declaration of the constitutionality of the Code but also of the coverage of the Code. In holding the Code to be constitutional the Court also declared that it covered "all" officials of the Executive appointed by the President, including assistant ministers. But the petitioner failed or refused to take due note of the Opinion handed down by the Court and to comply with the decision that a person situated as the petitioner was in fact covered by the Code. Instead, the petitioner decided to flaunt the decision of the Court. Up to the date of the hearing of this case, and even to the date of this Opinion, the petitioner is still maintaining and holding onto the position to which he was appointed by the President of Liberia, while at the same time, applying to the NEC to vie for an elective public office. This act of the petitioner, in retaining his position while at the same time seeking public elective office, is not only in violation of the Code of Conduct but an utter affront to the decision of this Court. It is sheer anomaly that the petitioner, having displayed gross disrespect to this Court by a refusal to comply with the Code of Conduct Act

and to this Court's interpretation of the Code, has now fled to the very Court for protection. Under the circumstance, we do not see the need to reverse the decision of the NEC, though lacking due process. We hold that the conduct of the petitioner amounts to an egregious violation of the Code, and we concur with the NEC's rejection and disqualification of him from contesting an elective position in the 2017 elections, while still holding onto his current appointed position.

We address next the issue, whether or not the amendment to the Code of Conduct by the National Legislature is in violation to the ECOWAS Protocol?

The petitioner asserts that the June 20, 2017, amendment made by the National Legislature to the Code of Conduct Act of 2014 contravened the ECOWAS Protocol on Elections [Protocol A/SPI/12/01 On Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security], to which Liberia, upon due legislative ratification, had become a party. In the amendment, the National Legislature outlined the structure and operations of the Ombudsman Commission provided for in the 2014 Code of Conduct Act, and at section 12.3(g), it removed from the ambit of the Office of the Ombudsman Commission, prerogatives relating to Chapter V of the Code of Conduct Act pertaining to elections to public offices, and vesting the said prerogatives instead in the NEC. The specific provision of the amendment, which was approved June 20, 2017 and published on June 23, 2017, to which the petitioner referred, states:

"Section 12.3(g), Scope of Authority of the Office of the Ombudsman, Part V of the Code of Conduct, including sections 5.1 through 5.11 as appertaining to elections matters, shall be adjudicated by the National Elections Commission (NEC), as prescribed under the Elections Law; and any remedy sought from such adjudication shall be referred to the Supreme Court as provided for under the laws and Constitution of the Republic."

The petitioner's contention is that the provision quoted above contravenes the ECOWAS Protocol, referenced above, in that the amendment was enacted less than six months prior to the scheduled constitutional date of October 10, 2017 for the holding of the ensuing Presidential and Legislative Elections. The ECOWAS Protocol, at Article 2, sub-section (1) states:

"No substantial modification shall be made to the electoral laws in the last six (6) months before the elections, except with the consent of a majority of political actors."

For its part, the Respondent National Elections Commission argued that (a) the petitioner had failed to show that the ECOWAS Protocol was ever ratified by the National Legislature and (b) that even if one assumed that the Protocol was ratified by the Legislature as required by law, the amendment made to the Code of Conduct did not contravene the Protocol, since the change referred to by the petitioner was not substantial, a requirement under the Protocol, and since the Code of Conduct Act was passed in 2014 rather than 2017, as wrongly asserted by the petitioner. The respondent maintained that as it had been a period of three years since the passage into law of the Code of Conduct and the amendment made thereto by the Legislature in June, 2017, not being substantial, the ECOWAS Protocol was not applicable.

As regard the first contention of the respondent with respect to the ECOWAS Protocol on Elections, we take judicial notice of the public historical records of the State which show that the Protocol in question was approved on September 16, 2016, and published on September 19, 2016. Therefore, it has become part of our law, as correctly stated by the petitioner. We therefore reject any inference that the said Protocol was never ratified and hence did not have the force of law.

We are however in agreement with the respondent in regard to its contention that the Protocol is not applicable to the instant case. The Code of Conduct was enacted into law in June, 2014, a period of three years prior to the scheduled ensuing 2017 elections. The ECOWAS Protocol inhibits the passage of new national legislation affecting elections only if the Act is passed within six months prior to the holding of the elections and if it has a substantial effect on the elections or the rights of the participants or actors. Neither of those obtains in the instant case. Firstly, the Act was passed in 2014. As such, it is clearly without the prohibitive period stipulated in the ECOWAS Protocol.

Secondly, the change of certain prerogatives from the Ombudsman Office to the National Elections Commission is more of a procedural element than a substantive element. All of the substantive rights and substantive deprivations stipulated in the Act remain the same as when the Act was passed in 2014. All that Section 12.3(g) of the amendment does is to remove from the Ombudsman Commission the power to adjudicate matters pertaining to the provisions of the Code that affect the eligibility of candidates for political offices and to place those powers in the National Elections Commission. This procedural change from one public agency to another public agency is not substantial in nature and therefore not within the prohibition of the ECOWAS Protocol. The Protocol anticipates changes in rights and opportunities of the political actors or contestants, not a mere change of agency in respect to

the adjudication of disputes arising from the provisions of the Code dealing with political parties and elections. We therefore hold that the amendment made by the National Legislature to the Code of Conduct Act did not contravene the ECOWAS Protocol.

The next issue is whether or not the petitioner was accorded due process?

During argument before us, the petitioner, through his counsel, contended that he was summarily rejected without due process; that he was never cited to a hearing to enquire into his eligibility, did not have the opportunity to state his case at a forum, and was never confronted before a decision was made rejecting his application for his alleged violation of the Code of Conduct for Public Officials. The petitioner said that he only received a communication addressed to him from the Chairman of the NEC informing him that he had not met the qualification requirement laid down in the Code of Conduct for Public Officials. He contended that the respondent should have invited him to a hearing, after which he would have appealed to the Board of Commissioners of the NEC for administrative review, and if he was still not satisfied, he would have then proceeded to the Supreme Court, as stipulated in the Elections Law.

The respondent, by and through his counsel, on the other hand, argued that the petitioner was accorded due process. The respondent informed this Court that its Nomination Team/Committee comprises trained and qualified lawyers to investigate registration related-election matters; that following the submission of his completed form, the petitioner was invited to meet with the Nomination Team/Committee for investigation; that during the investigation, the petitioner did not contradict his answers to questions numbers seven (7) and eight (8) on the form; but rather, confirmed that he is currently serving in the Government as Assistant Minister for Post and Telecommunications at the Ministry of Post and Telecommunications. The respondent further contended that The Nomination Committee/Team then took the decision to disqualify the petitioner; that the matter traveled to the Board of Commissioners of the NEC which hears appeals from decisions of the Nomination Committee/Team; that the Board of Commissioners of the NEC affirmed the Nomination Committee/Team's decision on July 3, 2017; and that the said affirmation was communicated to the petitioner on the same day, July 3, 2017. Therefore, according to the respondent, the petitioner was accorded every due process.

We have taken due note and consideration of the manifold contentions advanced by the parties on the issue of due process and have reached the conclusion that there is no evidence

that the petitioner was accorded due process. We do not see in the records certified to this Court that he was accorded the opportunity to a hearing, at which he would or could have explained the reasons or rationale for his conduct. The right to due process is a fundamental constitutional protection; no person can be deprived of that right by any agency of the Government, whether of the Legislature, the Executive, the Judiciary or any other forum. The right was couched in the Constitution of Liberia from the very inception of the nation's independence in 1847 and it remained enshrined in our present Constitution (1986). Even when our country experienced the trauma of a military coup and a civil armed conflict, the right was maintained and adhered to by this Court. Due process is therefore at the very core of our jurisprudence. Thus, we are not prepared to tolerate any departure from this long standing valuable principle which we have upheld in a long line of cases.

In accord: IBM v. Tulay, [1985] LRSC 21; 33 LLR 105, 112 (1985); Wilson v. Firestone Plantations Company and the Board of General Appeals, [1986] LRSC 18; 34 LLR 134 (1986); The Middle East Trading Company v. Chase Manhattan Bank, [1987] LRSC 13; 34 LLR 419, 429-430 (1986); Express Printing House, Inc. v. Reeves, [1988] LRSC 77; 35 LLR 455, 464 (1988); Mensah v. Wilson, [1994] LRSC 38; 37 LLR 656, 662 (1994); Salala Rubber Corporation v. Garlawolu, [1999] LRSC 29; 39 LLR 609, 616-617 (1999); Republic v. The leadership of the Liberian National Bar Association [2001] LRSC 26; 40 LLR 635 (2001); Snowe v. Some Members of the House of Representatives, led by Honourable Kettehkumehn Murray, Supreme Court Opinion, October Term, 2006, decided January 29, 2007); Liberia Telecommunications Authority v. West Africa Telecommunications, Inc., Supreme Court Opinion, March Term 2009, decided July 23, 2009.

As noted earlier, we have seen nothing in the records that indicate that any hearing was conducted by the NEC, either by a Nomination Team/Committee or by any other component of the NEC prior to the issuance of the decision letter from the Chairman of the NEC; and there are no records evidencing that a hearing was conducted before the Board of Commissioners of the NEC. We see only that the Chairman of the NEC signed onto an instrument which informed the petitioner that his application had been denied and that he was disqualified from participating in or contesting any elective position because he had failed to meet the resignation requirement laid in the Code of Conduct. The mere allegation that hearings were conducted, without any supporting records, does not constitute proof and is insufficient in law for this Court to accord credence. This Court has held that mere allegation is not proof. Morgan v. Barclay et al. [2004] LRSC 22; 42 LLR 259 (2004); Salala Rubber Corp. v Garlawolu [1999] LRSC 29; 39 LLR 609 (1999); American Life Insurance Co. Inc. v Holder [1981] LRSC 14, 29 LLR 143 (1981).



We have emphasized before in numerous Opinions and we herein reiterate that the National Elections Commission is an independent administrative forum of record and that proceedings held before that Body are expected to be recorded, with appropriate minutes being taken. The Constitution, statutes and decided cases of the Supreme Court all require that such a course should be pursued at all times by the Commission. The Constitution, the highest law of the land, clearly sets out that decisions of the Commission are appealable directly to the Supreme Court for final determination. How else is the Supreme Court, which cannot take evidence in such a case, to determine whether the Commission acted properly or legally, or that its decisions are supported by the records (minutes) taken before that Body, if there are no records evidencing that proceedings were had.

We must state here in no uncertain terms that while we have determined herein below that a proper basis for the issuance of the peremptory writ of prohibition does not exist, and hence that the petition warrants denial, henceforth in all applications placed before the NEC by any aspirant or candidate for certification or qualification to contest any elective public position, the NEC must ensure that a hearing is conducted, that the hearing is duly recorded, that the aspirant is given the opportunity to explain any deficiency (ies) or perceived deficiency (ies) in his/her application to set the basis for a determination as to the penalty to be imposed; otherwise, the imposition of a penalty could cast doubts on the process before the NEC.

The final issue we address is whether or not the writ of prohibition will lie in this case?

The facts show that after the petitioner was informed through a communication that his application filed with the NEC to be certified to run as a candidate for the House of Representatives for District #15, Montserrado County, was rejected, he fled to the Chambers Justice praying for the alternative writ of prohibition. He did not first seek administrative review from the Board of Commissioners of the NEC, and if still dissatisfied, file a bill of exceptions in pursuit of an appeal to the Supreme Court, as required by law. The petitioner contends that he was summarily rejected without due process; therefore, the opportunity did not avail for the pursuit of a regular appeal. We have already addressed hereinabove the issue of whether or not the petitioner was accorded due process. Be that as it may, we have concluded that prohibition is not the proper remedy in this case for several reasons:

1. This is an election matter which requires expeditious hearing and determination. *Article 83(C) of the Constitution of Liberia* provides in part: "...The Elections Commission shall, within seven days of receipt of the notice of appeal, forward all the records in the case to the Supreme Court, which not later than seven days thereafter, shall hear and make its determination..." By taking the route of prohibition (a remedial

process), the petitioner in this case did not only pursue the wrong course but risked undue delay in this election matter which was clearly against the intent of the law. This is why the Justice in Chambers, before whom this writ of prohibition was filed, made the determination that due to the "expeditious nature of the matter," it needed to be immediately forwarded to the Full Bench of this Court for its urgent consideration.

2. Elections Regulations provide that "The NEC shall notify all aspirants in writing of its decision to accept or reject their requests to stand for elections. An aspirant whose application has been rejected may appeal the NEC's decision to the Supreme Court within three days of the NEC's determination." (See *Candidate Nomination Regulations, Article 11.4*, May 6, 2016.)
3. The Supreme Court has held in a long line of cases that prohibition cannot be used as a substitute for an appeal. *Fazzah v. National Committee et al.*, 8 LLR 85 (1943). Thus, since the decision of the NEC rejecting the petitioner's application was a final decision from that administrative forum, the alternative available to the petitioner was to come directly to the Supreme Court by regular appeal and not by prohibition.
4. As we have indicated, even though there is no evidence that the NEC's decision rejecting the petitioner was done after a hearing had, either before any initial Committee or Team, or before the Board of Commissioners of the Commission, or that the decision was signed by the majority members of the Board of Commissioners, but rather that it was signed only by the Chairman of the National Elections Commission, the action was nevertheless a final decision; therefore it should have been made the subject of an appeal to the Supreme Court as prescribed by both the Constitution and the Elections Law. Clearly then, the failure of the petitioner to adhere to the procedure laid down by the law on appeal governing election matters rendered the petition for the writ of prohibition dismissible.

Therefore, for the reasons stated above, we hold that prohibition will not lie in the circumstances of this case.

WHEREFORE, AND IN VIEW of the foregoing, the alternative writ of prohibition issued is ordered quashed and the peremptory writ of prohibition prayed for is hereby denied.

Petition denied.

Counsellors Arthur T. Johnson and Swaliho A. Sesay of the Sesay, Johnson & Associates Law Chambers Inc., appeared for the petitioner.

Counsellor Joseph N. Bliidi of the NEC and Counsellors Frank Musa Dean, Jr., and C. Alexander B. Zoe appeared for the respondent.