

**CHARGE DELIVERED FOR THE OPENING OF THE FIRST JUDICIAL CIRCUIT
CRIMINAL ASSIZES A, B, C, D, E**

BY

YUSSIF D. KABA (JUDGE)

ON BEHALF OF JUDGES ASSIGNED TO PRESIDE OVER THIS CIRCUIT

**IN THE NAME OF GOD ALMIGHTY, THE MOST GRACIOUS, THE MOST
MERCIFUL**

His Honor Francis S. Korkpor, Sr. Chief Justice of the Supreme Court of Liberia, Justices of the Honorable Supreme Court of Liberia, Assigned judges of the First Judicial Circuit and other judges of Courts of Record, The President and members of the Liberia National Bar Association, The President and members of the Montserrado County Bar, The prosecutorial arm of government, The Director and members of the Public Defense team, Magistrates and other judges of lower courts, Members of the fourth estate, Members of the venire, Clerical and ministerial officers, party litigants, distinguish ladies and gentlemen.

I am highly honoured and very humbled to have been requested by my colleague assigned judges of this Circuit to speak on their behalf at the opening ceremony of the Circuit for the August A.D. 2017 Term of Court. I beg your indulgence and prayerfully implore you all to join me in recognizing and appreciating the manifold blessing of the Most Merciful and Most Beneficent God, the Creator of the heaven and the earth and the Sustainer of life and health. We need to be thankful to God, the Self-Subsisting Sustainer of all, for the life that we enjoy and the health in which we live that life. As we embarked upon these sacred chores of ours, we beseech the All Knowing and the Infallible Teacher for wisdom and guidance without which we, as humans, cannot resolve the multitude of challenges that are pertaining to our calling. Let us recognise that without the intervention of The All Capable, The Most

Able, The Most Powerful, we will be unable to meet the challenges of our calling. We however owed it to ourselves and the people of this nation to be conscious of our responsibility if the All Powerful Creator is to be a True Helper to us as a people and a nation.

Your Honors, Colleagues, judges of subordinate courts, members of the bar, fellow citizens, today we are at a very important crossroad of our national existence. As a developing nation emerging from the scorch of a devastating civil crises which resulted into the decimation of national institutional, social, economic and political fabric, and after about 12 years of constitutional governance during which time efforts have been made to restore some semblance of order and tranquillity to the nation, we are yet again about to transition from one leadership to another. The outcome of this process will determine whether we as a people and a nation will continue on the path of reconstruction and enhance development, or regress to chaos and self-destruction. We are all challenged therefore to ensure an orderly transfer of authority and a sustain process of development. The responsibility for this orderly transfer rests most especially upon the shoulders of those who are charged with the duties to manage the process of transition. The continuing peace, tranquillity and progress of this benighted nation certainly depend on how we soberly and maturely manage this process so that the aircraft which is Liberia will have a smooth and uneventful landing.

The role of the population in this process is political and therefore those who manage the thought process of the people are solely responsible for that. Being a member of an apolitical wing of government, it is not our office to lecture on how this process is to be managed by the protagonist upon whose shoulder that mind forming process is placed. It suffices to say, however, that regardless of how much interest we have in the authority to govern, we all have an obligation to ensure that the outcome of the political process should lead to the further consolidation of the peace that we are enjoying and a further improvement in the condition of life in our country. We anticipate that our political leaders will be nationalistic and patriotic and that above all else, the national interest will be placed first and foremost.

It is worth mentioning however that the greatest responsibility for the smooth landing of this aircraft that is Liberia lies with the governing institutions of the

people. The people of this country, in the Sacred Covenant that is the Constitution, delegated the superintending of their affairs to a government structured in three independent, but yet, coordinating branches. Fashioned along the line of that of the United States, the Constitution entrusts distinct responsibilities to each of the three branches while ensuring that the function of each of the three is inter-connected and intertwined with the other two. Yet, beautifully, this national compact established safe guides against the interference of one branch in the affairs of the others while at the same time preventing the abuse of power. This system of governance has worked very well for the American people. Except for discriminatory imputation based on historical factors, it has also worked very well for this nation. This is evidence by the fact that in spite of the overthrow of the government of the first Republic, the people introduced very little change to the structural nature of the constitution. Even our civil crisis did not affect the belief of the people of this nation in this constitutional arrangement. From all indications, we do not foresee any urge on the part of the people to affect changes in this arrangement in the near future.

Evidently, all three branches of the government have a pivotal role to play in protecting the independence of our body politics, ensuring that peace and tranquillity reign in the nation, and preserving the freedom and liberty of the people. One of the greatest threats to such beautifully woven administrative system is interference. The exercise of authority in excess of that delegated without check will obviously lead to threading into the arena of the other branches which may lead to the erosion of the capacity of the other branches to be responsive, and by that result into creeping dictatorial tendency leading to the defeat of the people's desire for self-governance. Alternatively, such interference may lead to clashes in government thereby leading to the collapse of the process of governance. It may require an entire dissertation to address the effect of interference by any one branch in the affairs of the other. Considering the current state of affairs in the government, we will limit our enquiry to the effect of interference in the affairs of the judiciary branch by any of the other two branches without in anyway compromising the issues that are the subject of judicial scrutiny.

The Black's Law Dictionary, Abridged Eighth Edition defined the Judiciary as "that branch of government responsible for interpreting the laws and administering justice". It is also referred to as "a system of courts". The Constitution provided for the judicial branch of Government in Chapter VII, Article 65 as follows:

The Judicial Power of the Republic shall be vested in a Supreme Court and such subordinate courts as the legislature may from time to time establish. The courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature. Judgments of the Supreme Court shall be final and binding and shall not be subject to appeal or review by any other branch of Government...

The object of the judicial institution in our system of government therefore is to give meaning to the law and by that give effect to the will of the people. This institution of government proceeds to achieve this objective by the adjudication of differences between the inhabitants and the institutions existing in the Republic, and by defining the scope and authorities of the other institutions of government. The process of judicial review is the cardinal means by which the judicial institution places checks on the authority of the other institutions of Government. At Chapter I, Article 2, the Constitution clearly places within the realm of the authority of the Supreme Court the responsibilities to counter-check the law making authority of the legislature, customary authority, and executive and autonomous administrative agency by determining the constitutionality of the enactments of those bodies.

In order for the judiciary to achieve this lofty responsibility therefore, it cannot be beyond expectation that mechanism be fashion to preserve the independence of that body and to ensure protection for officers manning this institution in the performance of their duties. By independence, it is meant that this branch of government should not be subjected to improper influence from the other branches of government, or from private or partisan interest. Judicial independence is vital and important to the idea of separation of power. It is only an independent and impartial judiciary that can effectively guarantee the process of preserving and protecting the fundamental rights and liberty of the people. Without independence and protection, the judicial system and process will be a mockery because it will be susceptible to

manipulation by other powerful institution of government. This is truer considering that the judicial institution relied upon the other branches of government for the purpose of facilitating its operation, and for the enforcement of its determination. It must have been in light of concerns including those express hereinabove that the framer of our constitution took away from the other branches of government the definition of the scope of the judicial power thereby precluding any acts on the part of the other branches to interfere therewith. It must have also been for the concern of the framer that provisions were provided in the constitution to preserve the independence of this sacred institution and to ensure protection for its officers.

Recognizing the need for the preservation of the independence of, and for ensuring protection of those charged with the responsibility of administering justice, the Organic Compact provided at Chapter VII, Article 73 as follows:

No judicial official shall be summoned, arrested, detained, prosecuted or tried civilly or criminally by or at the instance of any person or authority on account of judicial opinions rendered or expressed, judicial statements made and judicial acts done in the course of a trial in open court or in chambers, except for treason or other felonies, misdemeanour or breach of the peace. Statements made and act done by such officials in the course of a judicial proceeding shall be privileged, and, subject to the above qualification, no such statements made or acts done shall be admissible into evidence against them at any proceeding.

In the face of this clear and unambiguous language of the Constitution, it is stunning and very concerning when a judicial official – whether a magistrate, a circuit judge or a justice of the Supreme Court – is subjected to a summon, arrest, prosecution, detention or a trial civilly or criminally at the instant of any person or authority whatsoever because of “judicial opinion rendered or expressed, judicial statement made and judicial acts done in the course of a trial in open court or in chambers”. In the absence of the commission of the exceptional offenses enumerated in the article quoted herein supra, any attempt to question a judge in the performance of his judicial duties within the scope of the constitutional and statutory authority conferred upon the judge

by whosoever from any of the branches of the government constitute a desecration of and an onslaught on the clear provision of the Constitution.

Certainly it is not unhealthy for our democracy if we have disagreement with the opinion of the Supreme Court. Certainly, even the Supreme Court itself sometimes disagrees with some of its opinion and recalled such opinion. The judiciary is an institution for the healthy development and evolution of ideas. But for such disagreement to be reduced to accusation against the court of usurping authority when it review legislative acts, or of exercising naked power is to certainly jeopardize the very institution of judicial review. There are several ways of addressing disagreement with the opinion of the court short of attacking its members. Changes in judicial opinion may be achieved through application for re-argument, statutory enactment or repeal, or better still, constitutional amendment. It is certainly through this process that the people and the other branches of government will stand as the ultimate authority.

Additionally, the Constitution provides safeguards to ensure that those who are appointed as judges are imbued with integrity and honor. Articles 68 and 69 of Chapter VII clearly spell out the process of selection and vetting of those who are elevated to man this sacred branch of our government. It is clear that the legislature, through the Senate, has the right, power, authority and opportunity to prevent the confirmation of anyone appointed to a judicial office. If members of the legislature do not like the current core of officers of the judiciary, they should accept their share of responsibility for the presence of those officers in the judiciary. But to attempt to violate the security of tenure of those officers as provided for by the Constitution on ground that you disagree with their opinion will lead to the erosion of the confidence of the people in the judicial structure. This is a clear recipe to chaos. We cannot afford this during this very fragile state of the nation, and during this period of transition.

Realizing however the need to ensure public confidence in the integrity of the officials of the judiciary, it is provided at Article 71 of the same chapter as follows:

The Chief Justice and the Associate Justices of the Supreme Court and judges of subordinate courts of record shall hold office during good behaviour. They

may be removed upon impeachment and conviction by the Legislature based on proved misconduct, gross breach of duty, inability to perform the function of their office, or conviction in a court of law for treason, bribery or other infamous crime.

As much as we may want to express opinions on these provisions of the constitution, however because they relates to issues that are currently the subject of litigation, we shall refrain therefrom. It suffice however to say – paraphrasing Judge Robert Ewing Thomason’s assertion in his Article captioned **THE UNITED STATES SUPREME COURT** – the Supreme Court as an institution ‘is the highest and most honoured court of the land with the most glorious history in all recorded time. It was born with the Republic.’ ‘The framers of our judicial system had the idea that there should be one branch of the government that was independent of political changes in the executive and legislative branches.’ As this nation aged above one hundred and seventy years now, this system of administering justice has ‘survived the ravage of time, criticism, war, bitter elections and changes in political administrations. It has been the refuge and protector of our liberties during all changing years and the birth of new and complex problems. It has been the citadel of justice in a tragic and devastating civil war... The innocent find sanctuary and the weak refuge’.

It is also worth quoting hear a portion of a 1956 report issued by a meeting of distinguished members of the American Bar to decry attacked on the courts:

The Constitution is our supreme law. In many of its most important provisions it speaks in general terms, as is fitting in a document intended, as John Marshall declared, “to endure for ages to come”. In cases of disagreement, we established the judiciary to interpret the Constitution for us. The Supreme Court is the embodiment of judicial power, and under its evolving interpretation of the great constitutional clauses – commerce among the states, due process of law, equal protection of the law, to name example – we have achieved national unity, a nation-wide market for goods, and government under the guarantees of the Bill of Rights. To accuse the court of usurping authority when it reviews legislative acts or of exercising “naked power” is to jeopardize the very institution of judicial review. To appeal for “resistance” to decision of the court “by any lawful means” is to utter a self-contradiction, whose ambiguity can only be calculated to promote disrespect

for our fundamental law. The privilege of criticizing a decision of the Supreme Court carries with it a corresponding obligation – a duty to recognize the decision as the supreme law of the land as long as it remains in force.”

We therefore call upon all involved in this unfortunate debacle to let reason prevail and thread the course of the law, justice and reason. Let all buried selfish pride and focus on the greater good of our one patrimony which is Liberia. Let us consider the hardship and difficulties that have been rained upon the people of this nation and not move along the path of confusion, instability and chaos. Let us not allow our nation to again be recorded in the Guinness World Book of Record as the first nation that led itself to self-destruction on a matter that is so glaring and not susceptible to doubt.

Mr. Chief Justice and members of the Supreme Court, my colleagues, distinguished ladies and gentlemen, we assure you of our commitment to our sacred oath which we took before assuming this elevated office “to discharge faithfully and impartially the duties and functions of our offices as judges, and to preserve, protect and defend the Constitution and laws of the Republic. We equally charged those who will be working with us to equally re-affirm their oath and allegiance to the process. Lawyers, Ministerial and clerical staff, members of the venire of jury all have a role to play in ensuring that our system of justice remains responsive to the need of our people. We should not only be concern with the process of administering justice, we should equally be concern with the perception of the people of our system of justice. In other words, we should also be seeing as doing justice. In this way, this very important arm of government will regain its stature and status among the institutions of this Country.

Finally, With the authority in us vested by virtue of mandates of His Honor Francis S. Korkpor, Chief Justice of the Supreme Court to hold and preside over the affairs of the First Judicial Circuit, Criminal assizes A, B, C, D, E, for the August 2017 Term of Court, we respectively through this charge hereby declare the said Circuit open for the transaction of business. IT IS HEREBY SO ORDER.