

IN THE HONORABLE 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'NEHASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIEASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A.Z. BANKS, IIIASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOHASSOCIATE JUSTICE

Ambassador Jeremiah Congbeh Sulunteh, Vice Presidential)
Aspirant of the Alternative National Congress of Airfield)
Shortcut, Tubman Boulevard, Sinkor, Montserrado County)
Republic of Liberia.....1ST APPELLANT)

AND)

Alternative National Congress represented by its)
Chairman, Mr. Lafayette Gould of the City of)
Paynesville, Montserrado County, Liberia.....2ND APPELLANT)

VERSUS)

APPEAL)

National Elections Commission of the Republic of Liberia)
(NEC) represented by the Board of Commissioners, by and)
Thru its Chairman, Cllr. Jerome G. Korkoya, of 9th Street,)
Monrovia, Montserrado County, Liberia.....APPELLEE)

GROWING OUT OF THE CASE:

IN RE: The National Elections Commission of the Republic of Liberia
Rejection of Co-appellant Jeremiah Congbeh Sulunteh to contest the October
2017 General Elections as Vice Presidential Aspirant on the ticket of the
Alternative National Congress (ANC).

HEARD: July 17, 2017

DECIDED: July 2017

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION

In consonance with Article 83 (a) of the Liberian Constitution, Liberians will be going to the polls on Tuesday, October 10, 2017, to elect a President, Vice President and members of the House of Representatives. The National Elections Commission (NEC), the agency constitutionally and statutorily responsible to conduct national elections, has embarked on activities in preparation for these elections. One of such activities is the screening of aspirants desirous of running for public elective offices. Accordingly, political parties and independent aspirants are required, consistent with NEC's regulations, to fill in various forms issued by NEC, responding to questions in

regard to their adherence to the elections laws, guidelines, regulations, and the Code of Conduct Act (2014). A checklist of forms provided by NEC for political aspirants desirous of contesting the elections are letter of intent, affidavit attesting to residency/domicile, tax clearance, financial disclosure, affidavit attesting to citizenship, compliance with the Code of Conduct for Public Officials, amongst others.

Co-appellant, the Alternative National Congress (ANC), one of the political parties registered and licensed by NEC to participate in the elections, submitted the name of Co-appellant Jeremiah Congbeh Sulunteh, as its Party's vice presidential nominee. Co-appellant Sulunteh, consistent with NEC's guidelines, was required to file an application with NEC, filling in all the relevant forms and questionnaires made out for all aspirants. He having done so on July 6, 2017, the appellants alleged that the NEC sent an email on July 7, 2017, to the Co-appellant Sulunteh captioned "Notice of Rejection", informing him of NEC's rejection of his application to contest the post applied for. The Notice of rejection attached to appellants' bills of exceptions, noted that Co-appellant Sulunteh's denial was based on the fact that he did not resign pursuant to the Code of Conduct Act (2014). Co-appellant Sulunteh and the ANC separately appealed the decision of the NEC to the Supreme Court, challenging this rejection. A motion to consolidate the two bills of exceptions was filed by Co-appellant ANC pursuant to the Rev. Code, Civil Procedure Law 1:6.3 and same was granted by the Court, thereby consolidating both appeals.

Considering that both bills of exceptions were ordered consolidated, which we find substantially identical, we quote below Co-appellant Sulunteh's seventeen (17) count bill of exceptions:

"AMBASSADOR JEREMIAH CONGBEH SULUNTEH, Aspirant for the position of Vice President on the ticket of the Alternative National Congress (ANC), excepts to the ruling and/or decision of the Board of Commissioners of the National Elections Commission of the Republic of Liberia rejecting his application to contest the October 2017 General Elections as Vice President on the ticket of the ANC, and reasons showeth the following to wit:

1. That the decision of the NEC summarily rejecting the application of the aspirant and for the vague reason stated therefor is erroneous, illegal, prejudicial and therefore reversible.
2. Aspirant says that the respondent's conduct in outrightly rejecting his application without giving him any prior notice and/or a meaningful opportunity to be heard and to assert his position directly or through counsel denied him due process of law, and is therefore illegal, prejudicial and reversible.

3. Further to Counts 1-2 of this bill of exceptions, aspirant says the NEC received his application on July 6, 2017, but gave him no notice that it had reservation or needed any explanation from the aspirant relative to his compliance with the Code of Conduct or any applicable Liberian statute. Instead, within less than 24 hours after receiving the aspirant's application and without any notice whatsoever to the aspirant, the NEC proceeded to publishing its rejection of aspirant's application even before notifying aspirant; thus, the first time aspirant heard of the rejection of his application *was* through the media, and not a communication directed to him from the respondent as ought to have been.

4. Aspirant submits that the instant conduct and action of NEC violate Article 20(a) of the 1986 Constitution of the Republic of Liberia, which provides that *"No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing/judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law."* (Emphasis adds.) Aspirant says that as a matter of law, he is entitled to a fair and transparent hearing prior to any adverse decision or rejection of his application by the NEC, and the failure to do so is a flagrant violation of his constitutionally guaranteed right to due process of law. Further, Aspirant respectfully requests the respondent to take judicial notice of the fact that his appearance before the NEC on June 6, 2017, was solely for the purpose of submitting his application and taking his photos as well as fulfilling other requirements established by the respondent in connection with submission of his application. Certainly, such appearance especially without a hearing does not and cannot satisfy the due process required by the Constitution, and the procedural aspects of which are well articulated in the Administrative Procedures Act of Liberia.

5. Aspirant submits that pursuant to law, the respondent should have, following its review of the aspirant's application, (i) notified him that it had reasons to reject his application or inform him of any deficiencies it may have noticed therein, and give him the opportunity to remedy any such deficiencies, (ii) conducted an administrative hearing of the factual or legal reasons it may have had to reject the application of the aspirant, and (iii) give the aspirant the opportunity to respond to and confront those factual and legal basis the NEC relied on to reject the application. The NECs deliberate failure to do so is a wanton disregard for the constitutional rights of the aspirant and the dignity of the individual liberty for which an appeal will lie to review and reverse its decision.

6. That the entire action and circumstances of the respondent's rejection of the application of the aspirant and publishing said rejection in the media even before notice to him are arbitrary, capricious and an abuse of authority/discretion.

7. Further to Counts 1-6 of this bill of exceptions and with specific reference to the reason given by the respondent for rejection of the aspirant's application, aspirant denies that he has violated the Code of Conduct in any form or manner.

8. Further to Count (7) of this bill of exceptions, aspirant says that the Code of Conduct's prior resignation requirement is applicable to a person who desired or intended to run, but is wholly inapplicable

to him because he did not desire to canvass or contest these elections as a Vice Presidential candidate or in any capacity until he was approached and selected by the political leader of the Alternative National Congress (ANC), Hon. Alexander B. Cummings, following the end of his (aspirant) tour of duty as Liberia Ambassador to Washington, USA, in December 2016. Aspirant says and submits that the nature of the Office of a Vice President is evidently a position that is generally known and reserved to be filled by a presidential candidate and not one for which individuals desire and canvass. In any event, aspirant says he never desired or intended to contest in the October 2017 Elections as a Vice Presidential candidate, and that no evidence has been adduced by the respondent to the contrary. For the respondent to have simply concluded without any evidence and/or hearing that the Aspirant did desire to run for the position of Vice President is baseless, improper, illegal, prejudicial and reversible.

9. That the Code of Conduct Act applies to any person listed in the category of persons in Section 5.1, who *"desires to canvass or contest for elective public position"*; not one who is approached and selected as a running-mate after the end of his tour of duty in public service. Section 5.1 of the Act states, "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; and,
- c) Serve on a campaign team of any political party or the campaign of any independent candidate".

10. In furtherance of Section 5.1, Section 5.2 states, "Wherein any person in the category stated in Section 5.1 herein above, *desires to canvass or contest/or 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(c) of the Constitution and a Managing Director appointed by a board of Directors, *who desires to contest/or public elective office* shall resign said post at least two (2) years prior to the date of such public elections."

11. That the NEC committed prejudicial and reversible error because it failed to conduct the appropriate hearing to ascertain whether the aspirant had or expressed the *"desires to canvass or contest"* for the position of Vice President on the ticket of the Alternative National Congress (ANC), considering the well-known political history that, in all political institutions, the political leader or standard-bearer of the political party has the exclusive political right to select his running-mate, without the would-be running-mate expressing or having the desire to canvass or contest for such position.

12. That the NEC's conclusion that the aspirant is barred by the Code of Conduct Act from contesting as a running-mate to a presidential aspirant because he was *an* official appointed by the

President of the Republic of Liberia, without a hearing to determine with certainty whether he had or express the required *"desire to canvass or contest* is not only violative of the constitutional right of the aspirant, but also arbitrary, capricious and an abuse of authority.

13. Besides (i) the inapplicability of the prior resignation requirement of the Code of Conduct to the aspirant, and (ii) the respondent's failure to accord the aspirant due process of law, the aspirant says that even assuming that the Code of Conduct was applicable to him, the very drastic and harsh decision of rejecting his application *is* not warranted and need not to have been taken unless there is a showing that its application was compelling.

14. Further to Count (13) of this bill of exceptions. aspirant says that while the Honorable Supreme Court of Liberia has held that disqualification of aspirant(s) is within the array of sanctions provided for violation of the Code of Conduct Act the Supreme Court did not indicate that disqualification was automatic, but that it would be one of seven) sanctions that a competent body such as the respondent deciding penalty for any violation of the Code would consider. Hence, the respondent's automatic rejection of the aspirant's application without a sanction hearing to determine the appropriate sanction warranted by a given violation is inconsistent with the Supreme Court's decision in the Selena Mappy Poison case.

15. Aspirant further submits that the Code of Conduct Act is not applicable to him because the Act did not include or apply to the position of Ambassador at the time it was enacted by the legislature, printed into handbill and published by the authority of the Ministry of Foreign Affairs on June 20, 2014. The position became inclusive and covered by the Act following the interpretation of the Act in March, 2017, by the Honorable Supreme Court of Liberia, prior to which the aspirant was no longer in public service because he ended his tour of duty with the foreign service as Liberia Ambassador to Washington on December 31, 2016, two months prior to the rendition of the Supreme Court's Opinion on the Code of Conduct Act; Hence, the decision of the NEC to reject the aspirant is retroactive and unconstitutional.

16. That pursuant to Section 6.8 of the New Elections Law, and other applicable Guidelines and Regulations of the NEC, which requires the aspirant/contestant to enter into a recognizance for payment of costs incurred on the appeal, the aspirant has accordingly entered into the required recognizance by the deposit of *US\$5,000.00 (Five Thousand United States Dollars)* into the NEC designated account, evidenced by the attached deposit slip indicating the deposit thereof.

17. Aspirant says that in keeping with Sections 6.3, 6.4, 6.5, 6.6 and 6.7 of the New Elections Laws, Article 11 of the Candidate Nomination Regulation, approved May 6, 2016; Article 12 of the

Sections Hearing Procedures, approved May 6, 2016; Article 5, Section 5.1 of the Regulations on Complaints and Appeals, approved May 6, 2016; and the National Elections Commission Regulations and Guidelines Relating to Political Parties and Independent Candidates this bill of exceptions is prepared and being submitted for approval of the respondent in order to have the matter transferred to the Honorable Supreme Court of Liberia on appeal of the aspirant for the following reliefs:

- i) Reverse the determination of the National Elections Commission, rejecting the application of the aspirant for the reasons stated, and order the NEC to immediately reinstate the application of the aspirant;
- ii) Order the NEC to proceed with the processing of the Aspirant's application in keeping with law;
- iii) Order the NEC to accord the aspirant due process of law in the event of any inquiry it may have in respect of the aspirant's application; and
- iv) Grant unto the Aspirant any and all reliefs the Court may deem just and equitable under the circumstances.

Both the appellants and the appellee, NEC, having filed their briefs and the Court having reviewed the contentions raised by the appellants in their bills of exceptions, perused the appellants' and appellee's briefs, and listened to the arguments put forth by the parties, the Court finds three issues determinative of this matter:

1. Whether Co-appellant Sulunteh had the desire or intent to contest the forthcoming elections as vice presidential candidate as contended by the Appellee NEC?
2. Whether the NEC accorded the appellants due process before rejection of the ANC's vice presidential nominee?
3. Whether Notice, a fundamental requirement of our jurisprudence was provided to ambassadors by Section 5.2 of the Code of Conduct Act as promulgated in 2014?

The appellants contend in Count 3.12 of their briefs that the Code of Conduct applies to any person listed in the category of persons in Section 5.1, who "desires to canvas or contest for elective public position"; not one who is approached and selected as a running mate after the end of his tour of duty in public office.

In responding to this contention of the appellants, Appellee NEC argued in Count 3.5 of its brief asserting as follows:

"There are no laws or provisions which require the Presidential candidate to name the Vice Presidential Candidate. The Office of Vice Presidential Candidate should be opened to contest by all members of the Party desiring to contest. This is why Appellant Sulunteh was elected at the Congress of the ANC in Kakata, in keeping with international democratic tenets, particularly the United States of America. To accept the argument to desire will open a flood gate, because it is the practice for all candidates for the House of Representatives, the Senate, Vice President and President to be petitioned. The same way Co-appellant Sulunteh claims he was asked by the Standard Bearer of his Party, is the same way a candidate for the House of Representatives may claim he was petitioned or asked to contest at which time he developed the desire. Moreover, Appellant has always harbored a political desire; that he contested the 2005 General and Presidential election as Vice Presidential Candidate on the ticket of the National Democratic Party of Liberia (NDPL) confirms this fact. The Court is requested to take judicial notice of historical facts."

This Court says that a presidential appointee's desire or intent to run is the bedrock of Section 5.2 initiating resignation of appointed officials, and was a similar argument made before this Court in the case Liberty Party and Harrison Karnwea v. NEC. This Court in the Liberty Party and Harrison Karnwea v. NEC Opinion just rendered by Justice Banks held:

"...the definition ascribed to the term and the application made of the definition to the events as they unfolded fails to take into consideration that the term is subjective rather than objective. It thus to take into account that a person may have the desire to seek a particular public office but may not outwardly show the desire; that he may harbor such desire and work towards it but do so in secret. The fact that the person desiring a particular office refrains from openly expressing the desire and chooses instead to work in secret to achieve the goal does not mean that the person does not harbor a desire for a particular office. In this particular, the Court cannot speculate that Co-appellant Karnwea did not secretly impress upon Counsellor Brumskine that he, the Co-appellant, be considered for the position and that he may have made such overtures for a number of reasons, including securing the vote of a large population base, injecting substantial financial contributions to the campaign efforts, etc. But all of those would lead the Court into the realm of speculation, which the law forbids the Court to indulge in. This point out only that in defining desire, it cannot be perceived in the narrow context which appellants have placed it.

By the same token, the fact that a person is selected to seek a certain office at a particular time cannot be interpreted to mean, as the appellee impresses upon this Court, that the person has all along been desirous of seeking the public office to which he or she has been selected to contest. It is true that some instances, the person may out rightly express the desire to contest for the office or the desire may be inferred from the fact that the person failed to rebut or reject political advocacies being made in his or her name by "friends" for particular elective office. But the mere fact that a person is nominated at a particular time to seek an elective public office cannot be interpreted

to mean that the person may have harbored or desired the intention to seek such office two or three years prior to the event."

It is a general practice that a vice presidential candidate is selected. Pronouncement of the vice presidential nominee is usually made by the standard bearer/presidential candidate of a party during the elections year. The selection of a vice presidential candidate does not require the taking of votes by partisans at the convention and which exercise might require canvassing for votes as with a presidential candidate. Co-appellant Sulunteh said that his selection by the ANC's presidential candidate, Mr. Alexander B. Cummings, to serve as his running-mate on the ANC ticket was subjective and in no way related to any intent by him to run on the ANC ticket as its vice presidential candidate. Though the NEC argued Co-appellant participated in the 2005 elections, this is not sufficient for the Court to form a basis to conclude that he desired or intended to run in the 2017 elections or that he desired to run as vice president on the ANC ticket.

This Court therefore holds that the Appellee NEC showed no evidence that the co-appellee canvassed or outwardly manifested his desire to run for the vice presidency prior to his selection as vice president of the ANC. Besides, the Appellee NEC having conceded that it did not conduct a hearing in consonance with due process of law, during which evidence would have been taken to establish the desire and intent of the Co-appellant, there is no basis, factual or legal, that Co-appellant Jeremiah Congbeh Sulunteh harbored the intention or desire to run as vice presidential candidate of the Alternative National Congress (ANC).

Relative to the issue of whether appellants were accorded due process, we note that this Court has been inundated in recent weeks with election matters in which appellants consistently raised the issue of NEC's failure to accord them a hearing before rejecting their nominations. The appellants in this case similarly assert that Co-appellant Sulunteh was rejected by NEC without prior notice and a hearing on his application; that NEC did not conduct an administrative hearing of the factual or legal reasons based upon which it rejected the application; that the NEC did not give the aspirant the opportunity to respond to those factual and legal grounds the NEC relied on to reject the application. Appellants further assert that Co-appellant Sulunteh was in no violation of the Code of Conduct Act as alleged by NEC, and therefore an out-right imposition of the sanction of disqualification was prejudicial, capricious and thus reversible.

Though the appellee NEC in its argument before this Court conceded that it did not accord the appellants a hearing on their application consistent with due process, this Court must reiterate that this process must form the basis for all NEC's decisions. This is an absolute necessity so that NEC is not accused of contravening not only its own rules but also flouting a constitutional safeguard of the fundamental rights of Liberians as contained in Article 20(a) of the Constitution. And it reads:

*"No person shall be deprived of life, liberty, security of the person, property, **privilege** or any other right except as the outcome of a hearing judgment consistent with the provision laid down in this Constitution and in accordance with due process of law. Justice shall be done without sale, denial or delay; and in all cases not arising in courts of record, under courts martial and upon impeachment, the parties shall have the right to trial by jury"*

Further, the NEC, consistent with its constitutional and statutory mandate, promulgated a number of regulations in furtherance of its enabling laws. Among those is the Regulation on Complaints and Appeal, which under Article 9, sets forth the due process requirement of a party-respondent before NEC, beginning with a hearing by NEC's magistrate whose decision (which may include sanctions if the respondent is liable) is appealable within forty-eight (48) hours to NEC's Hearing Officer; the Hearing Officer's decision after hearing appealable within forty-eight (48) to the Board of Commissioners; a hearing of the appeal by the Board of Commissioner and an appeal of the Board's decision to the Supreme Court within forty-eight (48) hours.

NEC's Regulations and Guidelines Relating to Political parties and Independent Candidates (February 13, 2017), Section 3.5, *Submission of List of Political Party Nominees to the Commission*, subparagraph (b) states:

"The Commission reserves the right to reject any candidate/nominee submitted by a political party for any elective public office who is not qualified under the Constitution of Liberia, the New Elections Law, or who does not meet the requirements of these regulations and guidelines."

Although NEC reserves the right to reject any candidate under Section 3.5 above Article 4.1 and 4.2 of *NEC's Regulations* provide that NEC may *sua sponte* initiate its own investigation to determine whether or not a candidate on the provisional list is qualified.

NEC's Candidate Nomination Regulation (May 6, 2016), Article 11. *"Scrutiny of the Candidate Nomination Application"*, Paragraph 11.1, also states:

“During the Candidate Nomination Period, the NEC may take all lawful steps that it deems necessary, **including the holding of hearings**, (emphasis ours) to verify that information and documentation submitted by potential candidates are accurate and that the candidate is qualified under the Constitution, the New Elections Law, other laws of Liberia and NEC Regulations.”

With the authority given to the NEC to *sua sponte* initiate and investigation to determine whether or not a candidate is qualified to contest an election, NEC admitted in count 1.2 of its brief filed before this Court that it conducted no hearing from which a decision was made to disqualify the ANC’s vice presidential nominee; that NEC’s rejection of the nominee was based solely on the nominee’s answer to question number eight (8) of the NEC’s questionnaire, that he served in government and resigned in December, 2016. We reject NEC’s position in this regard that application forms can suffice for a hearing.

In the Supreme Court Opinions, particular in elections matters, this Court has emphasized that an investigation evidencing due process is vital to NEC in reaching a decision to disqualify a candidate running for a political office since it hinges on said candidate’s due process rights and said right is sacrosanct. In our recent Opinion delivered in the case *Abu Bana Kamara v. NEC*, delivered on July 17, 2017, this Court reiterated that the Constitution of Liberia has mandated judicial and quasi-judicial or administrative bodies to observe the due process of law before curtailing or depriving a citizen of his or her right or privilege.

Additionally, the NEC outright rejection of the Co-appellant Sulunteh’s application, disqualifying him from participating in the elections was arbitrary as the Code of Conduct Act prescribes varying and multiple sanctions against the abuse of public resources and misuse of public office. The Code does not specify or match its violation with any specific sanctions; rather, in Article 15.1 of the Code, it lists a number of sanctions which could be applied by NEC following the determination of the severity of the violation of the Code. It is also public knowledge that though the Code of Conduct Act did not expressly list that disqualification from participating in elections was part of the sanctions to be applied for violating the Code of Conduct, it was this Court, in interpreting the constitutionality of Sections 5.1 and 5.2 of the Code, held that disqualification was intended to be part of the sanctions applicable to violator of the Sections where the institution in charge has determined that the violator’s conduct was egregious.

The question the Court asks is whether there can be a rational application of any of the sanctions to a violator without a hearing. How would one determine whether a violator's conduct is egregious to warrant a disqualification absent such hearing.

This Court holds that the rejection of the Co-appellant Sulunteh by NEC was grossly arbitrary and that same undermines the tenants of due process.

The Court must now turn its attention to the issue of the appellee's contention that Co-appellant Sulunteh, as a presidential appointee pursuant to Article 56 (a) was covered under Section 5.1 and 5.2 of the Code of Conduct when promulgated in June 2014.

Sections 5.1 and 5.2 respectively referred to, read:

"5.1 All Officials appointed by the President 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."

"5.2 Wherein any person stated in section 5.1 herein above, 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 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;
- b) Any other official appointed by the President who holds a tenured position and desires to contest for public elective office shall resign 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 an elected official, any official listed above, desirous of canvassing or contesting to fill such position must resign said post within thirty (30) days following the declaration by the National Elections Commission of the vacancy."

Appellee NEC contends that Co-appellant Sulunteh was covered by the Code of Conduct Act when promulgated in 2014 as he was a presidential appointee and served as Ambassador from 2012 to December 31, 2016, at which time he resigned from Government.

In refuting this argument, appellants argued that the post of ambassador not being expressly named in Section 5.2 of the Code, co-appellant nominee and all others similarly situated could not have reasonably construed that said Section was applicable to them when promulgated in 2014. They further argued that the position of ambassador became included and covered by section 5.2 of the Act following the interpretation of the Act in March, 2017, by the Honorable Supreme Court of Liberia, but at which time Co-appellant Sulunteh was no longer in public service two months earlier; and that the effect of the opinion could not have applied to him retroactively.

This Court observes here that while the language of Section 5.2 of the Code does not specifically include or list ambassadors so as to place that category of presidential appointees on prior resignation notice, Section 5.1 does refer to all presidential appointees listed under Article 56(a); hence, the omission by the Legislature of ambassadors from the listing contained in Section 5.2 of the Code does not remove them from the coverage of the Code or exclude them from compliance with the Code. This position was clearly articulated by this Court in the case of *Selena Mappy Poison v. Republic of Liberia*, delivered on March 3, 2017, at the October 2016 Term of the Court, and wherein this Court said:

“As can be seen, the petitioner has contended that the exclusion of certain public officials listed in the language of Article 56 (a) from prior resignation as an eligibility requirement, tends to expose Section 5.2 of the Code of Conduct Act, if not the entire legislation, to justifiable attack for want of equal treatment under the law. This Court concurs. Clearly, the language of Section 5.2 of the Code of Conduct Act does not appear to expressly measure up to the language and standard of equal protection and equal treatment. This language deficit notwithstanding, the core issue now confronting this Court is two-fold: whether the language of Section 5.2 of the Code of Conduct Act, by which certain public officials appointed by the President are named pursuant to Article 56 (a) of the Constitution and expressly excluding others similarly situated public officials appointed by the President, discriminates; and if determined as such, whether such apparent discrimination renders the code of Conduct Act unconstitutional.

This court accepts that the language of Section 5.2 of the Code of Conduct Act suffers grave language or textual deficit. That is the reason we concur that the language of Section 5.2 of the Code of Conduct Act is troubling. But the equally vital question is whether this deficit in the language of the Code of Conduct Act justifies it being declared as unconstitutional?”

We reiterate that notwithstanding the “textual deficit” of Section 5.2 in not referencing all of the presidential appointees listed in the Constitution, recognized by this Court in the *Polson* case, Co-appellant Jeremiah Sulunteh cannot claim any benefit of that “textual deficit” and thereby contend that he

is precluded from coverage of the provision. Accordingly, the Court holds that as Co-appellant Sulunteh did not resign his position in line with the Code, he was in violation of the Code.

This Court notes, however, that although Co-appellant Sulunteh was in violation of the Code, the records clearly reveal that he had taken step, in compliance with the mandate of the Code, to resign his position even prior to the clarity provided by this Court in the Polson case, handed down on March 3, 2017, the time he obtained actual notice that his position was covered by the Code. The question then is what penalty should be imposed on Co-appellant Sulunteh in such situation. In our opinion, the penalty to be imposed by the NEC cannot rise to the level of his disqualification from contesting elective public office in the ensuing elections.

Given all that we have said in this Opinion regarding how the proceedings were handled by the NEC prior to notifying Co-appellant Sulunteh of the rejection of his application to contest for the position of vice president in the ensuring 2017 elections especially the failure of NEC to conform to due process requirement, we remand this case to the NEC with instructions that an appropriate due process hearing be conducted for the sole purpose of determining the penalty to be imposed on Co-appellant Sulunteh in conformity with this Opinion

WHEREFORE AND IN VIEW OF THE FOREGOING, the decision of the Appellee NEC rejecting the appellants' nomination is hereby reversed and this case is remanded with instruction that the NEC makes a determination within forty-eight (48) hours as of the receipt of the mandate of this Supreme Court of the appropriate penalty to be imposed.

The Clerk of this Court is ordered to inform the parties of this Court's decision. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLORS T. NEGBALLE WARNER AND ABRAHAM B. SILLAH, SR. OF THE HERITAGE PARTNERS AND ASSOCIATES, INC. APPEARED FOR THE APPELLANTS. COUNSELLORS FRANK MUSAH DEAN, JR., C. ALEXANDER B. ZOE AND JOSEPH N. BLIDI APPEARED FOR THE APPELLEE.