

OPENING ADDRESS OF HIS HONOR FRANCIS S. KORKPOR, SR.
CHIEF JUSTICE, SUPREME COURT OF LIBERIA
OCTOBER 2017 TERM
OCTOBER 9, 2017

Madam President;

Mr. Speaker & Members of the House of Representatives;

Mr. President Pro Tempore & Members of the Senate;

My Colleagues of the Supreme Court;

Former Chief Justices & Associate Justices of the Supreme Court;

Mr. SRSG & Members of United Nation Mission in Liberia;

The Doyen & Members of the Diplomatic Corps;

The Minister of Justice & Dean of the Supreme Court Bar;

Circuit and Specialized Court Judges;

The President & Members of the Liberian National Bar Association;

The President & Members of the Association of Female Lawyers;

The President & Members of the Association of Public Defenders;

The Court Administrator & Staff of the Judiciary;

Members of the Press;

Distinguished Guests, Ladies and Gentlemen:

As always, it is my pleasing duty, on behalf of the Supreme Court Bench and the entire Judiciary, to welcome you to the opening of another term of this Court. We thank God for the successful completion of the March 2017 Term of Court and beseech Him for His continued guidance as we begin the October 2017 Term. We must count our blessings as a nation and as a people and always praise God for being so good to us. The Bible tells us in *Luke 17: 11-19* that Jesus healed ten lepers, but only one of them, a stranger who was not a Jew, returned to say thank you to Him. We are told that the gratefulness of this man earned him the explicit assurance of salvation. This is a testimony that when we are grateful and show appreciation to the Lord for what he has done for us, He will continue to provide bountifully for us. Certainly, we need the Lord's blessings, particularly at this time in the history of our country.

During the course of the last Term of this Court, we lost to the cruel hands of death, a number of judicial workers. We lost His Honor Benedict W. Holt, Resident Circuit Judge, 2nd Judicial Circuit, Grand Bassa County. He passed on May 19, 2017. Judge Holt's service in the Judiciary spanned over 21 years.

Other members of the Judiciary who passed are:

No.	Names:	Position:	Date of Death:	Assignment:
1.	His Honor Bropleh Greenfield	Stipendiary Magistrate	September 25, 2017	Grand Kru County
2.	His Honor Julius Kumeh	Stipendiary Magistrate	July 2, 2017	Montserrado County
3.	His Honor Forkpah Zayzay	Associate Magistrate	June 20, 2017	Montserrado County
4.	His Honor Wellington Sayee	Associate Magistrate	July 4, 2017	Montserrado County
5.	E. Portee Broh	Clerk of Court	July 17, 2017	Maryland County
6.	F. Manneh Johnson	Asst. Clerk of Court	September 18, 2017	Bomi County
7.	Joe S. P. Blamo	Traffic Clerk	September 12, 2017	Bomi County
8.	Alieu V. Donso	Magisterial Clerk	June 5, 2017	Bong County
9.	Cllr. Elijah Cheapoo	Public Defender	April 23, 2017	Montserrado County
10.	Nathaniel Gildersleeves	Bailiff	April 8, 2017	Montserrado County
11.	James C. Kuieh	Bailiff	May 20, 2017	River Cess County
12.	Joseph W. Nimene	Bailiff	July 2, 2017	Montserrado County
13.	David Rennie	Bailiff	September 2, 2017	Montserrado County
14.	James Stevens	Painter	June 19, 2017	Montserrado County

May their souls rest in peace and may light perpetual continue to shine on them.

In my Opening Address at the beginning of the October 2016 Term of Court, I said that the members of this Court had decided and committed themselves to work through, and not take a break beginning the March 2017 Term until the Presidential and General Elections are held and a new administration is inaugurated. The intent was for the Full Court to be available during the campaign period and during the conduct of the ensuing elections to ensure that all elections and related cases are promptly heard and decided. Keeping to that commitment, we adjourned *sine die* the March 2017 Term on Wednesday, October 4, 2017, just four days ago, to allow for the preparation for this opening ceremony today.

The law does not set any specific date when this Court should adjourn. Thus, on our own determination, whenever it is practical, and considering the caseload, we set the time to close. However, the law requires that we open on the second Mondays in March and October each year to commence proceedings for the conduct of such business as may lawfully come before the Court. So, it is upon the dictates of the law that we are assembled here today. As you can see, all members of this Court are here, ready and prepared for the dispatch of business before this Court, especially the challenge of post-election cases to come.

During the just ended March 2017 Term of Court, we heard and decided a total of thirty (30) cases. Nine (9) of them were pre-election cases to which we gave first priority; they were expeditiously heard and decided. We are pleased to note that currently, there is no pre-election case pending before this Court.

We have heard the many criticisms, mainly growing out of our recent decisions in the pre-election cases. This is understandable, as during election time, the country is divided and polarized into diverse political configurations, each with the sole objective of vying to assume state power. Any court decision perceived to be against their interests is likely to provoke untold and unwarranted criticisms. As we have said time and again, the Supreme

Court welcomes constructive criticisms of its decisions which draw support from the Constitution and statutory laws. Such criticisms aid the process of developing our jurisprudence, help promote the rule of law and assist in our unending quest for full transparency in our justice system. This Court is a constitutional court. A constitutional court is obliged not only to protect, defend and serve as the living voice of that sacred instrument, but to make decisions based on the dictates of the Constitution purposely and primarily for the advancement of the nation and effectuation of the aspirations of the people as expressed in the Constitution.

In the words of Chief Justice James A. A. Pierre:

“Entrusted with the custody of the Constitution and with the responsibility of measuring the behavior of citizens [and residents], as well as the conduct of Government by that sacred document, we in the Judiciary hold in our hands the ultimate responsibility for the administration of good government and for the safety of the autonomy of the State.”

We are very much aware of the enormity of the responsibility we have to uphold, protect, and defend the Constitution and the rights guaranteed therein. Over the years, we have endeavored and will continue to endeavor to measure up to this constitutional responsibility in each and every case that comes before us. We spend countless hours deliberating and sleepless nights pondering not only on the right decisions to make in all cases, but more importantly, the ramification of such decisions for our nation.

But let me hasten to say that the members of this Court are not infallible. In fact, we sometimes disagree with each other, as reflected in the many dissenting opinions issued by members of this Court. But once we have decided a case, whether unanimously or by the majority members, that decision becomes final and binds all parties to the case. The principles expressed or enunciated therein become a part of the law of the land.

Article 66 of the Constitution of Liberia (1986) states:

“The Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies, autonomous agencies or any other authority, both as to law and fact except cases involving ambassadors, ministers, or cases in which a county is a party. In all such cases, the Supreme Court shall exercise original jurisdiction. The Legislature shall make no law, nor create any exceptions as would deprive the Supreme Court of any of the powers granted herein.”

Mr. Justice Robert H. Jackson of the United States Supreme Court once said: “We are not final because we are infallible, but are infallible only because we are final”. So, other jurisdictions, particularly common law jurisdictions with which our laws are similar, subscribe to the same principle that their supreme courts exercise final appellate jurisdiction in all cases. One may disagree with such decisions, but the decisions put an end to the controversies and compliance therewith is required and expected as a matter of law.

In a number of cases involving pure political questions or wherein this Court was urged upon to take a position tantamount to making law, we have always declined to do so. It is a settled maxim of constitutional law that where the constitution has located the power conferred on an agency, there it must remain. This Court will not sail in unchartered waters; ours is to interpret the law in non-political cases involving real parties with justiciable issues. We do not pass on political questions; neither do we legislate. These are functions ascribed to the political branches of our Government, particularly the National Legislature.

Colleagues of the Supreme Court Bench, Members of the Bar, distinguished ladies and gentlemen, Article 73 of the Constitution of Liberia (1986), in aid of Article 66 quoted above, provides 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, misdemeanor or breach of the peace.

Statements made and acts done by such officials in the course of judicial proceedings shall be privileged, and, subjected to the above qualification, no such statements made and acts done shall be admissible into evidence against them at trial or proceedings.”

Despite the clear, cogent and mandatory language of the constitutional provision quoted above, which prohibits judicial officials from being summoned on account of judicial opinions rendered or expressed, judicial statements made and judicial acts done, it is no secret that an attempt was made about a month ago to impeach three members of this Court on account of unanimous Opinions and Judgments entered in two cases. On August 2, 2017, Senators Dan Morais, Peter S. Coleman, Jim Tornola, and Representatives Numene Bartekwa, and George S. Mulbah, Members of the House of Senate and the House of Representatives, respectively, filed a petition before the House of Representatives for the impeachment of Mr. Justice Kabineh M. Ja’neh, Madam Justice Jamesetta H. Wolokolie and Mr. Justice Philip A.Z. Banks, III. The action of the Senators and Representatives grew out of the Opinions and Judgments entered in two pre-elections cases: *Harrison S. Karnwea, Sr., and Liberty Party vs. The National Elections Commission* and *Jeremiah C. Sulunteh and the Alternative National Congress (ANC) vs. The National Elections Commission*. The Justices were summoned to appear before the Judiciary Committee of the House of Representatives on August 14, 2017, to answer in the impeachment proceedings.

As a consequence of the action of the House of Representatives, the Supreme Court, on its own initiative, as in keeping with law and precedence, instituted a proceeding on August 8, 2017, captioned: “In Re: the Constitutionality of the action of the Judiciary Committee of the House of Representatives...” and thereafter, issued a writ against the House of Representatives and its Judiciary Committee, directing them to appear before the Supreme Court *en banc* on or before August 18, 2017, to answer to the action instituted against them. The Court further ordered that the House of Representatives and

its Judiciary Committee return to *status quo ante* pending the disposition of the In Re Proceedings. Counsellors James E. Pierre, David A.B. Jallah, Frederick D. Cherue, G. Moses Paegar, T. Negbalee Warner, George E. Henries and Tiawan S. Gongloe were appointed as Amici Curiae to submit briefs in respect of the constitutionality of the action of the House of Representatives and its Judiciary Committee.

Also, on August 9, 2017, the Justice & Public Interest Consortium Africa (JUPICA) and Honorable Counsellor Edwin K. Martin filed a petition for a writ of prohibition before the Chambers Justice of the Supreme Court against the House of Representatives and its Judiciary Committee. The petition averred essentially that the conduct of the House of Representatives and its Judiciary Committee was in violation of several constitutional provisions, in particular, Articles 3, 66, and 73, which guarantee and protect the independence of the Judiciary.

Because the subject matter of the petition for writ of prohibition involved Mr. Justice Philip A.Z. Banks, III, who was presiding in Chambers, Madam Justice Sie-A-Nyene G. Yuoh was appointed by me to preside in Chambers for the singular purpose of handling the petition for prohibition filed by JUPICA and Honorable Counsellor Edwin K. Martin. Justice Yuoh, after reviewing the petition, deemed it proper to order the issuance of the alternative writ of prohibition, along with a stay order, commanding the House of Representatives and its Judiciary Committee to stay all proceedings and return to *status quo ante* pending the hearing and determination of the petition for the writ of prohibition. The alternative writ of prohibition was accordingly issued.

The situation created a constitutional impasse between the House of Representatives and the Supreme Court, which created serious concern in the Country. This necessitated the intervention and mediation by the National Christian Council of Liberia (NCCL), the United Nations Missions in Liberia (UNMIL), The African Union (AU) the Economic Community of West African States (ECOWAS), the Inter-Religious Council of Liberia (IRCL), the Mano River Union (MRU), the Traditional Council of Chiefs and Elders and others for an amicable resolution to the constitutional dilemma.

On August 22, 2017, during the 56th Day's Sitting of the 6th Session of the House of Representatives a Resolution was adopted wherein the impeachment charges against the three (3) Associate Justices were dropped.

On October 3, 2017, the Supreme Court called for the hearing of the case, In Re: the Constitutionality of the action of the Judiciary Committee of the House of Representatives. Counsellor Fredrick D. Cherue, Minister of Justice/Attorney General and Dean of the Supreme Court Bar, on behalf of the Amici Curiae, made a submission on the records of Court as follows:

“That the Amici Curiae observed that on August 22, 2017, the House of Representatives resolved dropping the impeachment proceedings against the three (3) Associate Justices, which had given rise to the In Re proceedings instituted by the Supreme Court. This action by the House of Representatives, in the opinion of the Amici Curiae, rendered the In Re proceedings moot; we therefore pray that the matter should be quashed and dismissed.”

The Court took note that indeed on August 22, 2017, during the 56th Day's Sitting of the 6th Session of the House of Representatives, a Resolution was adopted wherein the impeachment charges against the three (3) Associate Justices were dropped. The Court therefore fully agreed with the position of the Amici Curiae that the In Re proceedings instituted by the Supreme Court had become moot. Accordingly, the In Re: proceedings questioning the constitutionality of the action of the House of Representatives and its Judiciary Committee was considered moot. The matter was therefore dismissed and ordered stricken from the docket of the Supreme Court, and the Clerk of the Supreme Court was ordered to communicate with the House of Representatives informing that august body of the Court's decision.

On the same day, October 3, 2017, the Court also called for the hearing of the petition for the writ of prohibition filed by the JUPICA and Honorable Counsellor Edwin K. Martin. The Court, however, observed the absence of Counsellor Sayma Syrenius Cephus, Counsel representing the petitioners. Upon inquiry the Clerk of Court informed us that Counsellor Cephus had filed a letter of excuse on October 1, 2017, informing the Court that he would not be present for the hearing of the case because he had to travel abroad to be at the

side of his wife who was ill. Based on this compelling reason, the excuse was granted and the matter postponed pending the return of Counsellor Cephus to Liberia. We should note, however, that the matter of the petition for the writ of prohibition has also become moot and will be passed upon as soon as possible.

We wish to thank all who played mediatory roles to bring the matter to an end. Additionally, we thank the Trial Judges Association, the Liberian National Bar Association and all well-meaning Liberians who firmly stood by the Supreme Court in preserving the sanctity of the Constitution during that testing time.

We are happy that the issue is now behind us and that the constitutional fabric of our nation remains intact. We, in the Judiciary, cherish cordial relationship with the other branches of the Government. True, Article 3 of our Constitution provides for the separation of powers of the branches of Government and that no person holding office in one of the branches shall exercise any of the powers assigned to either of the other two branches. This is clear. But the same Article 3 also speaks of coordinate branches. Therefore, each branch of Government, while operating independently of the others, must do so in a coordinated way with the other branches for the effective conduct of Government. We see the three branches as organs of the same sovereign state established by and for the people, for the purpose of promoting unity, liberty, peace, equality and justice, amongst others, for themselves and posterity. Article 3 of our Constitution was not intended to create exclusive enclaves or compartments of the branches of the Government without collaboration and cooperation from the others, as there can be no “absolute separation” of one branch from the other branches. In fact, the powers of one branch of Government have always depended on those of the others. So we need friendly and harmonious relationships to forge ahead with the people’s work, but we must, at the same time, meticulously observe and respect confines of the other branches of Government. And particularly we must always ensure that no action is taken or attempts made that would have the Constitution of this land subordinated to our individual desires, no matter how strongly we may feel of the issues involved.

There is no denial that members of the Legislature have the inherent power to impeach judges of subordinate courts and Justices of the Supreme Court. That authority is expressly conferred upon them by *Article 43* of the Constitution. But there are limitations. In other words, for the Legislature to impeach judges or Justices, the judges or Justices must have committed impeachable offenses. No judge or Justice can be impeached merely because the Legislature disagrees with his/her judgment or opinion. Such exercise would be *ultra vires* and an utter violation of *Article 73 of the Constitution*.

Mr. Justice Henries addressed the issue this way:

“...For any one of the three equal and coordinate branches of government to police or supervise the operation of the others strikes at the very heart and core of the entire structure.” From this separation of the departments is derived the doctrine that certain functions, because of their essential nature, may properly be exercised only by a particular branch of the government. Hence, the function of the Legislature is to make laws; of the Executive to enforce them; and of the Judiciary to hear and decide cases, according to the facts and the law, and to interpret laws enacted by the Legislature. Under the doctrine of separation of powers, such functions cannot be delegated to any other branch, and one department cannot interfere with another...Reviewing judgments of the Supreme Court, or any court for that matter, as a basis of determining their legality or enforceability does not fall within the purview of the Executive or Legislative branches of government. No department of government other than the Judiciary can exercise judicial functions...”

Distinguished ladies and gentlemen, we open this Court today on the eve of elections. Our Country is at the crossroad. Tomorrow will mark yet another important day for democracy in our nation. Tomorrow, our citizens will exercise their political franchise in electing leaders of their choice. These elections are extremely vital to maintaining peace and the many gains we, as a nation and people, have made over the last fourteen (14) years. As Liberians, we are of one common body politic, irrespective of our political ideologies and/or persuasions. Our first loyalty is to our nation, Liberia. As such, we share mutually binding obligations to ensure that our country is safe and on the right path to democratic governance. Democratic governance has a role to play in the development of

economies, as well as the enforcement of rights and the maintenance of the rule of law. There is a strong consensus that democratic governance creates stable environments in which businesses can thrive, and an impartial court system can exist that are more responsive to public needs. Because democracy demands the popular will of the people, expressed through competitive, free and fair elections, elected officials are more inclined to respond to social needs. Democracy has checks and balances: open flow of information, transparency, zero tolerance for corruption, smooth leadership succession, and more predictability with firmer commitment to the rule of law.

Our courts, especially the Supreme Court, have an extremely important role to keep our country stable and on the path of democracy and ensure a peaceful transfer of power from this Government to another democratically elected government. Ours is manifested through the fair application of the rule of law to ensure the protection of all. We are quite aware that in order to avoid recourse to dissent and rebellion as experienced in our recent past, the rule of law must be based on the principle of justice where the freedom of the individual is guaranteed. The rule of law must provide a framework for the exercise of free choice and equal opportunity. So, we in the Judiciary will remain focused and fair in our judicial actions and decisions. We will abstain from all political frays and alignments during these elections in order to remain above reproach and uphold our independence and neutrality. It is important that by our judicial actions and decisions, we create an enabling environment for the free and fair conduct of the elections. We assure all that we shall dispense with fairness, transparency and impartiality, all cases growing out of the ensuing elections. We give the further assurance that the wishes of the Liberian people, as expressed through their ballots will be fully respected. Elections is about mass participation for the electorate to decide; no court will act otherwise to suffocate the process.

Madam President, this should be your last appearance at the opening program of this Court in your capacity as President of the Republic of Liberia. When we shall next meet at the opening of the March Term of this Court on the second Monday in March, 2018, we

will have a new President who, as protocol demands, we shall invite to the opening ceremony of this Court. We must say, Madam President, that when you took over the helm of this nation, various institutions of the Country were in disarray. The educational system, the health system, roads, rule of law, etc. There were competing priorities. But you saw the need to strengthen the rule of law, realizing that in a country coming out of war, instilling law and order was of vital importance. Transitioning citizens from arbitrary actions was essential in getting the country back to normalcy. Your support, along with the international organizations has brought the Judiciary a long way in its recovery process.

On the occasion of the formal seating of the Supreme Court on March 13, 2006, in the first term of your administration, this is what you said, Madam President:

“Under my administration, the Judiciary will be recognized and accorded its proper place as one of the separate, coordinate, and co-equal branches of our Government, equal in importance to the Legislative and Executive Branches.”

You further said:

“I also give you my words that I will seek to empower the Judiciary to enable it perform its constitutional role. This was the thinking of the framers of our Constitution, that [the] branches of our Government would work as truly independent and co-equal... it is the proper thing to do, for only by empowering our Judiciary do we help restore public trust and confidence in its ability as the forum where justice is served to all---the poor and indigent, the orphaned, the lowly, the rich and powerful.”

We acknowledge, Madam President that you kept the promise to seek to empower and build the capacity of the Judiciary. As a result, conditions have improved within the Judiciary. More courthouses have been built across the Country to address the infrastructure need of the Judiciary and ensure greater access to justice; salaries and remunerations in the Judiciary are relatively better; and training, an essential component of the work of the Judiciary, is being conducted by the James A.A. Pierre Judicial Institute with support from the Government and development partners, which your Government has encouraged.

Given the state of affairs of the Judiciary in 2006 and what obtains today, we can say, with great credit to you that tremendous progress has been made in many areas. It has been great working with you as the head of the Executive Branch of our Government. On behalf of my Colleagues of the Supreme Court Bench, and on behalf of the entire Judiciary, we thank you for your leadership and we thank you for your administration's support to the Judiciary.

And now, by the power vested in me, I announce the October 2017 Term of this Court duly opened. May God bless the Supreme Court and may He save the State.

I THANK YOU.