

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA  
SITTING IN ITS OCTOBER 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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Charles Walker Brumskine, Harrison S. Karnwea )  
 Presidential & Vice Presidential Candidate, and )  
 All Representative Candidates of Liberty Party )  
 and the Liberty Party.....Petitioners )  
 Versus ) PETITION FOR THE WRIT  
 The National Elections Commission (NEC) and the ) OF PROHIBITION  
 Board of Commissioners of the Republic of Liberia )  
 .....Respondents )

GROWING OUT OF THE CASE

Charles Walker Brumskine, Harrison S. Karnwea )  
 Presidential & Vice Presidential Candidate, and )  
 All Representative Candidate of Liberty Party.....Complainants ) VIOLATION OF THE CONSTITUTION AND  
 Versus ) ELECTIONS LAW, FRAUDULENT ACTS  
 The National Elections Commission (NEC) and the ) AND GROSS IRREGULARITIES DURING  
 Board of Commissioners of the Republic of Liberia ) THE OCTOBER 10, 2017 ELECTIONS  
 .....Defendants )

HEARD: November 3, 2017

DECIDED: November 6, 2017

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT.

In accordance with Article 83(a) of the Constitution of Liberia (1986) which mandates that "Voting for the President, Vice President, members of the Senate and members of the House of Representatives shall be conducted throughout the Republic of Liberia on the second Tuesday in October of each election year," the National Elections Commission (NEC), the respondents, conducted elections for President, Vice President and members of the House of Representatives on October 10, 2017. On October 20, 2017, the NEC concluded the announcement of results of the elections, declaring winners and losers and simultaneously setting the date for the run-off election. In the Presidential election, the NEC declared that George Manneh Weah of the Coalition for Democratic Change (CDC) and Joseph Nyumah Boakai of the Unity Party (UP) were the two presidential tickets that received the greatest number of valid votes cast on the first ballot; the NEC designated them to participate in the run-off election on November 7, 2017.

On October 23, 2017, the petitioners, Charles Walker Brumskine and Harrison S. Karnwea, Presidential and Vice-Presidential Candidates and all Representative Candidates of the

Liberty Party (LP) who participated in the elections filed a complaint with the NEC. The complaint alleged that during the elections, the Constitution and the New Elections Law of Liberia were violated, and that fraudulent acts and gross irregularities were perpetrated by, and /or with the acquiescence of the NEC.

On October 24, 2017, the petitioners wrote a letter to the NEC requesting the NEC to postpone the run-off election scheduled for November 7, 2017, pending the final determination of the complaint filed by the petitioners. The letter reads:

“October 24, 2017

The Board of Commissioners  
National Elections Commission (NEC)  
9<sup>th</sup> Street, Sinkor  
Monrovia, Liberia

Attn.: Hon. Jerome Korkoya  
Chairman

Dear Sirs/Madame:

As you may be aware, on Monday, October 23, 2017, the Liberty Party filed its Complaint with the Board of Commissioners of the National Elections Commission (NEC) to have the legitimacy of the October 10, 2017 Elections determined. A copy of a page of our Complaint, bearing the signature of a staff of the NEC, evidencing receipt of our Complaint, is hereto attached for your easy reference.

We, therefore, most respectfully request the NEC to publish, without delay, an order postponing the run-off, pending the final determination of our Complaint. Should you continue the process of the run-off, and the Liberty Party is ultimately successful with its lawsuit, you would have wasted the taxpayers' money by printing run-off ballots, among other things. Also, a continuation of the run-off process would be an attempt to make any judgment in our favor ineffectual.

Best regards.

Sincerely yours,

Benjamin Sanvee  
National Chairman  
Liberty Party”

The NEC did not postpone the run-off election as requested by the petitioners in the letter quoted *supra*, neither does the record reflect that the NEC responded to the petitioners' letter. This prompted the petitioners to file this petition for the writ of prohibition on October 27, 2017, before our distinguished Colleague, Mr. Justice Kabineh M. Ja'neh, Justice presiding in Chambers. In the prayer of their petition, the petitioners requested the Chambers Justice to

order the issuance of the alternative writ of prohibition and serve same on the NEC, commanding the NEC to stay any and all actions and to halt all proceedings regarding the holding of the run-off election and to require the NEC to file its returns and show cause, if any, why the peremptory writ of prohibition should not be issued.

On October 31, 2017, the Justice in Chambers, after having conducted a conference with the parties, ordered the issuance of the alternative writ of prohibition and directed the NEC to “stay any and all actions in respect of the pending run-off election scheduled for November 7, 2017. The Chambers Justice further ordered the NEC to file returns to the petition for the writ of prohibition. And considering that constitutional issues were raised in the petition for the writ of prohibition, coupled with the fact that election matters are to be expeditiously heard and determined, the Chambers Justice directed the Clerk of the Supreme Court to venue and docket the petition for the writ of prohibition before the Full Bench of this Court for hearing and determination. For the benefit of this opinion, we shall quote verbatim, the petition for the writ of prohibition filed by the petitioners, as well as the returns thereto filed by the respondents, the NEC.

#### “PETITIONERS’ PETITION

AND NOW COME the petitioners, and most respectfully pray Your Honor for the issuance of an alternative writ of prohibition against the above named respondent for the following legal and factual reasons to wit:

1. Co-Petitioners, Charles Walker Brumskine and Harrison S. Karnwea, as Presidential & Vice-Presidential Candidates, respectively, and all Representatives Candidates, as members of Co-Petitioner Liberty Party, participated in the just ended October 10, 2017 Presidential and Representatives elections.
2. On Friday, October 20, 2017, the respondents concluded the announcements of results of the elections, among other things, declaring winners and losers, and the commencement of the run-off process.
3. On October 23, 2017, petitioners filed a complaint with respondents under the authority of Article 83(c) of the Liberian Constitution which states: “Any party or candidate who complains about the manner in which the elections were conducted or who challenges the results thereof shall have the right to file a complaint with the Elections Commission. Such complaint must be filed not later than seven days after the announcement of the results of the elections;” and pursuant to section 6.1 of the Elections Law of Liberia which states that: “Any political party or candidate who has justifiable reasons to believe that the elections were not impartially conducted and not in keeping with the Elections Law, which resulted in his defeat or the defeat of a candidate shall have the right to file a complaint with the Commission; such complaint must be filed not later than seven (7) days after the announcement of the results of

the elections". Copy of the complaint (without exhibit) is hereto attached as petitioners' Exhibit "A".

4. The complaint of the petitioners, referenced in count three (3) of this petition above, alleged "violation of the Constitution and the Elections Law, fraudulent acts and gross irregularities during the elections", perpetuated by, and/or with the acquiescence of, the respondents.
5. On October 24, 2017, petitioners wrote the respondents. The second paragraph of the letter reads thus: "we, therefore, most respectfully request the NEC to publish without delay, an order postponing the run-off, pending the final determination of our complaint. Should you continue the process of the run-off, and the Liberty Party is ultimately successful with its lawsuit, you will have wasted tax-payers money by printing run-off ballots, among other things. Also, a continuation of the run-off process will be an attempt to make any judgment in our favor ineffectual." Copy of the letter to the respondents is hereto attached as petitioners' Exhibit "B".
6. Our letter of October 24, 2017, notwithstanding, the respondents have failed and refused to publish an order, which would reasonably, logically, equitably and lawfully direct the postponement of the run-off election, pending the final determination of the petitioners' complaint. This is against the background that hearing into the matter begins on Friday, October 27, 2017, pursuant to an assignment issued by the respondents, but, the respondents remain adamant in their refusal to stay the run-off/second round elections. Copy of the assignment is hereto attached as petitioners' Exhibit "C".
7. In utter disregard for the rights of the petitioners, and the due process of law, the respondents are proceeding with the run-off/second-round elections. Evidencing the respondents determination to conduct the run-off/second round elections, before the complaints of the respondents is determined, is a press conference held on Wednesday, October 25, 2017 by the respondents. During the press conference of which your Honor is requested to take judicial notice, Counsellor Jerome Korkoya, Chairman of the National Elections Commission, informed the public that the respondents have begun processing ballot papers for the run-off/second-round elections, and that mock ballot for the November 7, [2017] run-off election has already been brought into the country. Petitioners have also attached hereto copy of the news clipping from the website of FrontPage Africa, reporting the press conference of the respondents, as petitioners' Exhibit "D". Also attached, as Exhibit "E" are copies of two pages of the NEW Dawn Newspaper, reporting the respondents have disclosed that, "ballots paper for the November 7 run-off elections will arrived in the country on Saturday, October 28, 2017.
8. The petitioners say that should the respondents be allowed to continue with the run-off process, holding the second-round elections on November 7, 2017, the second-round elections could very well be held and the entire electoral process concluded prior to the final determination of the petitioners' grievances as contained in the

complaint, by the Supreme Court of Liberia. The petitioners submit that the continuation of the run-off process would make any judgment in their favor ineffectual rendering their complaint and their entire lawsuit [a legal nullity].

9. Prohibition is the proper remedial process to restrain an inferior tribunal from taking action in matters in which it is proceeding by rules different from those which ought to be observed at all times. Prohibition will also lie when the petitioners' rights are adversely affected, or whenever a subordinate tribunal proceed by rules contrary to known and accepted practice.

WHEREFORE, and in view of the foregoing, and the urgency of the situation, the petitioners pray that Your Honor will cause an alternative writ of prohibition to be issued and served on the respondents, commanding the respondents to stay any and all actions and to halt all proceedings toward the holding of a run-off/second round elections, which has grown out of the October 10, 2017 elections, the subject of petitioners complaint, and that Your Honor will require the respondents to file their returns at a time to be designated by Your Honor, and to show cause, if any, why the preemptory writ of prohibition should not be issued.

Respectfully Submitted  
Petitioners, by and through their legal counsels

Counsellor James G. Innis  
Counsellor Powo Hilton"

#### "RESPONDENTS' RETURNS

Respondents, in the above entitled proceedings, deny the legal and factual sufficiency of petitioners' Petition for the Writ of Prohibition and request Your Honors and this Honorable Court to deny, overrule and dismiss said petition, for legal and factual reasons showeth the following to wit:

1. That as to the entire petition, respondents say same is a fit and proper subject for denial and dismissal because our Supreme Court has held: "prohibition is the proper remedial process to restrain an inferior court or administrative tribunal from taking action in a case without jurisdiction or having jurisdiction, proceeds beyond its jurisdiction or attempts to proceed by rules different from rules which ought to be observed at all times. *Parker v. Warrell*, 2LLR 525 (1925); also *Boye v. Nelson*, 27LLR 174 (1978).
2. Further to count One (1) herein above, respondents say they, pursuant to the New Elections Law, have the power and duty to "conduct all elections for elective public offices including the chieftaincy elections and all referenda and declared the results thereof." *New Elections Law, 1986, Chapter 2, Section 9, Subsection (g)*.
3. Further to count two (2) herein above, respondents say they have jurisdiction and they have not proceeded by the wrong rules or rules which ought to be observed at all times. For petitioners woeful failure to provide evidence that respondents lack

jurisdiction and/or are proceeding by wrong rules the petition for the writ of prohibition must be denied and dismissed.

4. That counts one (1), two (2), three (3), four (4) and five (5) of the petition present no traversable issue(s). Respondents pray that the said counts be denied and dismissed together with the entire petition.
5. That as to count six (6) of the petition, respondents say that petitioners' request to respondents to publish an order directing the postponement of the run-off election is without any basis in law.
6. Further to count five (5) herein above, respondents say that they have a Constitutional and Statutory mandate to conduct the run-off on the second Tuesday following the expiry of the time provided in Article 83(c) of the 1986 Constitution. Respondents respectfully request the Court to take judicial notice of the fact that they conducted the Presidential and Representatives Elections on October 10, 2017 and the fifteen (15) days, after the casting of ballots provided for under the 1986 Constitution, fell on October 25, 2017. Accordingly, the second Tuesday after the fifteen (15) days provided for under the 1986 Constitution fall on November 7, 2017 for the run-off.
7. Further to count six (6) herein above, respondents say that the relevant provision of the Constitution states: "all except for President and Vice-President, all elections of public officers shall be determined by a simple majority of the valid votes cast in any election. Election of President and Vice President shall be by absolute majority of the valid votes cast. If no presidential ticket obtains an absolute majority in the first ballot, a second ballot shall be conducted on the second Tuesday following the expiry of the time provided in Article 83(c). The two (2) Presidential tickets that received the greatest number of valid votes on the first ballot shall be designated to participate in the run-off election and the ticket with a majority of the valid votes cast shall be the declared winner. *1986 Constitution of Liberia, Article 83(b)*."
8. Further to count seven (7) herein above, respondents admit that petitioners, dissatisfied with the elections results, filed their complaint with the respondents on the 23<sup>rd</sup> day of October A.D. 2017, consistent with the time requirement enshrined in Article 83 (c) of the 1986 Constitution.
9. Further to count eight (8) herein above, respondents say, that consistent with the second paragraph of Article 83(c) of the 1986 Constitution, respondents must conduct the hearing of the complaint within 30 days of the receipt of the complaint. It states: "the Elections Commission shall within 30 days of receipt of the complaint, conduct an impartial investigation and render a decision which may involve a dismissal of the complaint or a nullification of the elections of a candidate. Any political party or independent candidate affected by such decision shall not later than seven (7) days appeal against it to the Supreme Court. *1986 Constitution of Liberia Article 83(c)*."

10. That as to count seven (7) of the petition, respondents admits that prior to the issuance of the stay order of October 31, 2017, served on respondents on today, November 1, 2017, respondents were preparing to hold the run-off elections. Respondents' action was consistent with Article 83(b) of the 1986 Constitution, herein cited above.

11. That as to count eight (8) of the petition, respondents denied petitioners' argument that: "...a continuation of the run-off process will make any judgment in their favor ineffectual, rendering the complaint and their entire lawsuit legally nullities [a legal nullity]." Respondents say that this concern of petitioners is addressed in and by the third paragraph of Article 83(c), which states: "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. *If the Supreme Court nullifies or sustains the nullification of the election of any candidate, for whatever reason, the Elections Commission shall within sixty (60) days of the decision of the Court conduct New Elections to fill the vacancy. If the Court sustains the election of a candidate, the Election Commission shall act to effectuate the mandate of the Court (Emphasis Ours)*".

12. That as to count nine(9) and the prayer of the petition, respondents deny the averments therein contained and say because petitioners have remedy under the law, that is, should respondents and/or the Supreme Court nullifies the elections pursuant to petitioners' complaint, prohibition will not lie.

13. Respondents deny all and singular the averments of fact and law contained in petitioners' petition and which may not have been specifically traversed in these returns.

WHEREFORE, and in view of the foregoing laws, facts and circumstances, respondents pray this Honorable Court and Your Honors to overrule and set-aside petitioners' petition, quash the alternative writ issued, refuse to issue the preemptory writ and grant unto respondents such other and further relief as to this Court may seem just and equitable.

Respectfully Submitted,  
The National Elections Commission  
And the Board of Commissioners  
Respondents by and through their counsels:

Counsellor Joseph N. Blidi  
Counsellor C. Alexander B. Zoe  
Counsellor Frank Musa Dean"

The parties, through their counsels, filed briefs and on November 3, 2017, presented oral arguments during the hearing of the prohibition proceedings before us with eloquence.

The petitioners argued essentially that the NEC should postpone the run-off election until their complaint filed with that body is investigated and a decision rendered and, if need be, the appropriate appeal process to the Supreme Court of Liberia is availed of and the matter is

decided by the Supreme Court. They also argued that proceeding with the run-off election while their complaint before the NEC remained undisposed of is tantamount to a denial of their right of due process guaranteed by the Constitution and the statutory laws of Liberia. They maintained that the NEC is proceeding wrongly; that where an inferior court or an administrative tribunal, such as the NEC, proceeds by rules contrary to known and accepted practice, prohibition will lie.

The respondent NEC, on the other hand, argued essentially that prohibition will not lie in this case because the NEC has jurisdiction conferred on it by law to conduct elections; that the NEC has not exceeded its jurisdiction and has not proceeded by any wrong rule; that prohibition will only lie if the NEC lacks jurisdiction over the matter, or is exceeding its jurisdiction conferred upon it, or is proceeding contrary to rules which ought to be observed at all times. The NEC further argued that the petitioners have remedy at law in the event that they prevail in their lawsuit. The NEC relied on Article 83(c) of the Constitution of Liberia which provides:

“If the Supreme Court nullifies or sustains the nullification of the election of any candidate, for whatever reasons, the Elections Commission shall within sixty days of the decision of the Court conduct new elections to fill the vacancy. If the Court sustains the election of a candidate, the Elections Commission shall act to effectuate the mandate of the Court.”

Having carefully examined the petition, the returns thereto and the arguments presented before this Court by counsels representing the parties, we have determined that there is only one salient issue for the determination of this case. That lone issue is-

whether under the facts and circumstances of this case the writ of prohibition will lie to prohibit the National Elections Commission from conducting the run-off election scheduled for November 7, 2017, until the petitioners' complaint filed before the NEC is decided and, if need be, the appropriate appeal process to the Supreme Court of Liberia is availed of and the matter is decided by the Supreme Court?

The parties in their pleadings and briefs filed before this Court raised ancillary issues such as due process, the authority of the NEC and the lack of authority of this Court to extrapolate the intent of the framers of the Constitution, etc. We are of the opinion that all of these issues which require the interpretation of various provisions of our Constitution and statutory laws can be collapsed into the single issue which we have stated above as cardinal to the determination of this case.

In addressing the issue, let us say, from the onset, that this Court does not dispute that the Constitution, at Article 77 and the New Elections Law, at section 2.9 (g) vest in the NEC the power and authority to conduct public elections, including presidential, legislative and others, within the Republic of Liberia. Indeed, Article 89 of the Constitution specifically sets up the NEC as a constitutional body and delegates to the Legislature the authority to enact elections laws by which the NEC shall operate.

This Court does not dispute, also, that both the Constitution and the New Elections Law, in setting out the procedures and processes for the conduct of elections, provide that there shall be a run-off election where, in the case of a presidential election, no candidate obtains an absolute majority, (50%) plus one vote of the votes cast in the initial election. There is therefore no lack of due recognition that the NEC is the body vested with the authority to conduct elections in Liberia, including run-off election, where the conditions for such elections, as laid down by the Constitution are present.

What is at issue in the case before us is whether or not the provisions of the Constitution and statutory laws, cited and relied upon by the parties, can be interpreted to allow and permit the NEC to set a date and commence the conduct of a run-off election while the complaint of the petitioners is still pending undecided. To this query, the NEC says yes, while the petitioners say no. We must peruse, analyze and interpret relevant provisions of the Constitution, the statutes and our decisional laws in addressing this issue. And we must do so, taking full cognizance of the principle of law which requires that the Constitution be interpreted in light of the entire document rather than a sequestered pronouncement, because every provision is of equal importance and even where there is an apparent discrepancy between the different provisions, the Court should harmonize them if possible. *Garlawolu et al v. NEC*, 41LLR, 377, 384-386 (2003), *THE Liberia Institute of Certified Public Accountants v. Ministry of Finance, et al.*, 38LLR 657 (1998), *The Estate of Frank Tolbert v. Gibson-Sonpon*, 37 LLR 113 (1998). We begin with Article 83(a) of the Constitution which provides:

“Voting for the President, Vice President, members of the Senate and members of the House of Representatives shall be conducted throughout the Republic on the second Tuesday in October of each election year.”

This provision of the Constitution implies that elections for the positions named therein must be held on the second Tuesday in October of each election year. Election year in this context refers to the sixth year of an elected President or Representative or Senator of the first

category elected during general elections. This is so because the tenure of the President and Vice President is six years as provided for under Article 50 of the Constitution. The members of the House Representatives also have the tenure of six years as provided for under Article 48 of the Constitution, while the second category of senators elected during general elections serve for an initial six years as provided for under Article 46 of the Constitution. Thus, save in the case of an emergency, all elections for the President, Vice President and members of the House of Representatives must be held on the second Tuesday in October of each election year except for the midterm senatorial election held in accordance with Article 47, by-election held in accordance with Article 37, or special Presidential and Vice Presidential elections held in accordance with Article 64 of the Constitution.

Unlike Article 83(a) which stipulates a specific day, unless interrupted by emergency, for the conduct of Presidential and Legislative elections, Article 83(b) goes a step further. First, it describes the manner in which a person may be elected in the elections. It states:

“Except for the President and Vice President, all elections of public officers shall be determined by a simple majority of the valid votes cast in any elections. Election of President and Vice President shall be by absolute majority of the valid votes cast.”

The first two sentences in Article 83 (b) of the Constitution quoted above provide that in order for a person to be declared a winner of any election, including all the elections referenced in the articles cited *supra*, such person must, if he/she is contesting for the office of the President or Vice President, have received a total of 50% + 1 of the valid votes cast in a given election. But if he/she is contesting a post lower than the President or Vice President, he/she must simply receive the highest number of votes amongst the rest of the candidates.

The second part of Article 83(b) speaks to what occurs if no Presidential ticket obtains an absolute majority on the first ballot conducted in accordance with Article 83 (a), it reads:

“If no Presidential ticket obtains an absolute majority in the first ballot a second ballot shall be conducted on the Tuesday following expiry of the time provided in Article 83 (c). The two presidential tickets that received the greatest number of valid votes on the first ballot shall be designated to participate in the run-off election and the ticket with a majority of the valid votes cast shall be the declared winner.”

In respect of the above quoted provision, the NEC made the argument that, as a matter of constitutional and statutory construction and interpretation, because Article 83(b) states that: “If no Presidential ticket obtains an absolute majority in the first ballot, a second ballot shall be conducted on the Tuesday following “expiry of the time provided in Article 83(c)” and because Article 83(c) provides that “The returns of the elections

shall be declared by the Elections Commission not later than fifteen days after the casting of ballots”, it follows that the phrase “expiry of the time” referenced in Article 83(b), being the time within which the NEC had to announce the final results of an election, is what the framers intended; hence, the NEC was justified in setting November 7, 2017, as the date for the run-off election, since that date is the second Tuesday following the fifteen days allowed for the NEC to announce the final results of the elections.

We are not persuaded by this argument for a number of reasons. Firstly, the argument ignores or fails to recognize the inter-relationship between Article 83(b) and Article 83(c) in the context of the constitutional history of Article 83(b). Our review of the history of the provision reveals that the current wording of the provision is not the same as the original wording when the Constitution was first adopted in 1984. Here is how the provision of Article 83(b), as adopted in 1984, read:

“All elections of public officers shall be determined by an absolute majority of the votes cast. If no candidate obtains an absolute majority in the first ballot, a second ballot shall be conducted on the second Tuesday following. The two candidates who received the greatest number of votes on the first ballot shall be designated to participate in the run-off election.”

We note that nowhere in the original Article 83(b) is it stated that the run-off election was conditioned on or depended upon any time frame set out in Article 83(c). Therefore, it was typical for the NEC to schedule a run-off election immediately upon announcement of the final results “of the first ballot”. We hold the view that it was due to the many experiences and lessons learned by the NEC over a period of several elections and the views expressed by the Supreme Court in resolving the issues that unfolded after each election wherein there were challenges, that led to the amendment of Article 83(b). That amendment subordinated the scheduling of the run-off election to the events of Article 83(c). In other words, the amendment to Article 83(b) conditioned the time for the holding of any run-off election on “expiry” of the time for conclusion and exhaustion of challenges to an election. This, we believe was in recognition of and in consonance with the due process of law procedures outlined in Article 83(c) and guaranteed in Article 20(a) of the Constitution. Clearly, it seems to us, that the amendment was intended to eliminate, firstly, any ambiguity as to when the second Tuesday is triggered for scheduling the run-off election, and secondly, the uncertainties which the process faced if there were challenges, and therefore avert both the prospect of annulling a run-off election and the enormous costs that could be associated with a new election after a run-off election.

But of equal importance to this Court is that Article 83(c) does not set out a single event, which the NEC cites, as the time period given it to announce the final results of an election.

Rather, the Article sets forth a series of events, all of which are linked together and all of which must be taken into consideration in interpreting what the framers intended when they linked, the run-off election to “expiry of the time provided in Article 83(c)”. It is illogical to single out, from the series of events stated in Article 83(c), just one event as “expiry of the time” to which Article 83(b) alluded. In our opinion, and because all of the events are sequentially tied together, the more rational and legal interpretation under judicial construction is that the reference in Article 83(b) to “expiry of the time provided in Article 83(c)” means the totality of the events stated in Article 83(c), from the announcement of the final results by the NEC to the disposition of any challenge by the Supreme Court.

This Court is of the view that, given that Article 83(c) sets out a series of events upon which the run-off is contingent, if the framers of that Article intended that it would apply to only one of such events, they would have specifically stated the single event that could trigger the setting of the second Tuesday for the run-off election. They would have, for example, said that the run-off election would be held on the second Tuesday following the announcement of the final results by the NEC; or that the run-off would be scheduled upon the expiration of seven days following the announcement of the final results; or that it would be triggered upon the announcement of the disposition of the case by the Board of Commissioners. But Article 83(b) made no such specific statement. Instead, it referred only, to the totality of the sequence of events stated in Article 83(c), to “expiry of the time provided in 83(c)”. This view clearly finds support in the linkage of Article 83(b) and Article 83(c) and the historical tracks of Article 83(b) and the ills which the amendment sought to address.

We take keen note of the argument put forth by the counsel for the NEC on its setting of the run-off election date. In an attempt to justify the setting of November 7, 2017, as the run-off date for the two presidential tickets the NEC declared as recipients of the greatest number of valid votes on the first ballot, the counsel for the NEC contended that NEC’s action was to conform to a constitutional obligation. In support thereof, the counsel cited as reliance two provisions of the Liberian Constitution. These were (1) Article 83 (b) of the Constitution (1986), as amended, which states, *inter alia*, “[I]f no Presidential ticket obtains an absolute majority in the first ballot, a second ballot shall be conducted on the second Tuesday following expiry of the time provided in Article 83 (c)...”; and (2) Article 83 (c) which, in part, speaks the following language: “The returns of the elections shall be declared by the NEC not later than fifteen days after the casting of ballots...” The NEC argued that it set November 7, 2017, as the date of the run-off election because the NEC conducted the Representative and Presidential elections on October 10, 2017. Therefore, the NEC in the light of the fifteen day period claimed to have properly selected the second Tuesday after October 25, 2017, which

Tuesday fell on November 7, 2017. In other words, it is the position of the NEC that the constitutional phrase “not later than fifteen days after the casting of ballots” means that a run-off date shall be set after the fifteen- day period.

In the case at bar, the NEC announced and set the run-off date at November 7, 2017, although it announced the final results of the elections on October 20, 2017, five days before October 25, 2017. We disagree with the interpretation the NEC ascribed to the phrase “not later than fifteen days after the casting of ballots”. We construe that phrase to mean the time frame in which the announcement of the final results must be duly announced by the NEC. The counting of all other run-off activities kicks off from the day and date the announcement is made of the final results of the valid votes cast and of the winners. For example, in the instant case, the NEC announced the final results on Friday, October 20, 2017, in which case the second Tuesday thereafter would have been Tuesday, October 31, 2017. We also construe the sequence of events outlined in Article 83(c) to commence seven days after the announcement of the final results. It therefore follows that if the NEC wanted to set a run-off date, in consonance with the time and sequence of events outlined in Article 83(c), the Commission was duty bound, after the announcement of the final results, to have waited for seven days to see if a challenge would be made as to the manner in which the elections were conducted or as to the results announced by the NEC. If the parties failed to challenge within the prescribed period, then the NEC would be justified to set the date for the run-off election. But where the final results are challenged, as in the case before us, it was incumbent on NEC to have heard and disposed of said challenge and wait for the final determination thereof, should an appeal be taken to the Supreme Court.

During argument before us, also, the counsel for the NEC was asked whether the NEC could properly determine the “*valid votes cast*”, as contemplated under Article 83 (b) of the Constitution, as amended, while a complaint alleging “fraudulent acts and gross irregularities” remains pending before the NEC undecided. His answer was in the affirmative. According to the counsel, the votes cast were counted and the results thereof showed that the two presidential tickets designated for the run-off election received the greatest number of valid votes cast during the October 10, 2017 elections. We were not impressed by this answer.

A constitutional requirement for participating in the run-off election is that the two presidential tickets that received the greatest number of valid votes cast are the only ones that should be designated for the run-off election. This is the mandate of Article 83 (b). Here, we underscore the phrase “valid votes cast.” In other words, where it has not been confirmed that two presidential tickets indeed received valid votes cast, the NEC cannot properly designate them

to take part in a run-off election. Therefore, where a complaint is pending before the NEC, as in the instant case, alleging that the conduct of the elections was marred by irregularities and fraudulent acts thereby raising doubts on votes cast, this Court wonders how the NEC, a body mandated to conduct investigation into the complaint, could properly conclude that the votes cast were indeed valid, and thereupon designate two presidential tickets to participate in the run-off election?

We have reviewed the Liberian Constitution (1986) as amended, as well as the New Elections Law to find an operational definition of the word "voting" against the backdrop of "valid and invalid votes." We did not find such suitable operational definition.

We take note, however, that following a similar exercise in 2011 in the case: *Liberia National Union, 1st Petitioner, H. Varney G. Sherman and Frederick D. Cherue, 2<sup>nd</sup> Petitioners v. The National Elections, Commission*, (Supreme Court Opinion, Special Session, 2011), this Court, under the force and authority of the Reception Statute (General Construction Law, 1956 Code 15:40), adopted a common law definition of the word "voting *vis-a-vis* the definition of valid and invalid vote. Invalid vote was defined as:

"[A] vote that does not count because it was cast by someone not entitled to vote or for an ineligible choice, or in a form or manner that does not comply with the applicable rules. So the opposite holds as what a valid vote is; i.e., a vote that counts as it complies with the governing procedures and rules."

With this guidance, this Court cannot comprehend how the NEC decided on the two designated presidential tickets with the greatest number of valid votes cast on the first ballot when the NEC is yet to finalize investigation into the complaint of alleged irregularities and fraudulent acts filed by the petitioner. In our opinion, the NEC must first investigate the complaint filed by the petitioners; this is the only way the NEC can determine and conclude as to which two presidential tickets received the greatest number of valid votes cast in order to designate them for the run-off election.

The importance to our alluding to the "valid votes cast" is based on the fact that the word "valid" was specifically and deliberately inserted in the original Article 83(b) provision of the 1986 Constitution by the amendment made to the said Article in 2011. An inspection of the original Article 83(b) reveals that it referenced only "votes cast". The framers of the amendment to the provision must have felt that there was a problem and lack of clarity with simply speaking of "votes cast", when in fact the validity of such votes could be questionable. Hence, they decided that in order to ensure that the votes referred to meet the requirements of the law to attain the status of validity, they decided to specifically insert the word "valid", thus making it unambiguously clear that only "valid votes cast" were to be the determining

factor in the pronouncement of a winner. We therefore hold that the NEC cannot designate two presidential tickets for a run-off election when the issue of the votes they received is still shrouded in allegations of invalidity.

We must examine this case in light of another important provision of our Constitution - the right to due process. Due process of law is one of the most sacred tenets of the Liberian nation's democratic cradles. It is the bedrock to the enjoyment of practically every guarantees and rights granted under the Constitution of Liberia. The principle, couched in Article 20(a) of the Liberian Constitution, the highest and most revered Law of the Land, states:

"No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except at the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with the due process of law..."

Under the quoted provision, none of the rights accorded by and/or guaranteed under the Constitution can be taken away or withdrawn by the State or any institution of the State or any agency acting for or under the command or directive of the State, without first according to the person, natural or legal, the opportunity to be heard and to defend against the taking or withdrawal of any of the rights enumerated by the Constitution and the statutory laws of the nation. And whenever this Court has felt that the guaranteed due process right has not been accorded or that a person has been aggrieved by a failure to allow the enjoyment of that right, it has not hesitated in declaring that the principle must be mandatorily adhered to, and that where it is not adhered to, the action taken is unconstitutional and hence null and void.

Mr. Chief Justice Grimes, speaking for the Supreme Court in the case: *Wolo v. Wolo*, 5 LLR 423 set out in a most fascinating expose of the Supreme Court, the principle of due process in the following words:

"It has been defined as: 'A law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial...8 Cyc., 1081.'" 5 LLR 423 (1937); and, quoting from 6 R.C.L., Constitutional Law, 442, he added: "[I]t is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of "a judicial determination; it is judicial usurpation and oppression and can never be upheld where justice is fairly administered."

Important to this principle is that a judgment cannot be concluded where there is a failure to accord or respect the due process right of a party.

Prior to the *Wolo* case and many decades subsequent thereto, the Supreme Court has upheld the principle, even during periods when Liberia was without constitutional governments, that the due process of law can never be made a tenet of sacrifice, even when the respect for it

entails subordinating certain beliefs and values. *Howard v. Republic* [1943] LRSC 6; 8LLR 135,138 (1943); *Mulbah v. Dennis* [1973] LRSC 33; 22LLR 46, 49; *IBM v. Tulay* [1985] LRSC 21; 33LLR 105 (1985); *Wilson v. Firestone* [1986] LRSC 18; 34LLR, 134 (1986); *The Liberty East Trading Company v. Chase Manhattan Bank* [1987] LRSC 13, 34LLR, 419 (1986); *Liberia Telecommunication Authority v. West African Telecommunication Inc.* [2009] LRSC 21 (2009).

Today, we are again faced with the challenge: Can a judgment be concluded without the full opportunity for the exercise and respect for the due process of law. In these proceedings, Charles Walker Brumskine and Harrison Karnwea, Presidential and Vice Presidential candidates, Representative Candidates, and the Liberty Party, the party that fielded the mentioned candidates, believing and alleging that the October 10, 2017 elections were marred by gross irregularities, fraud and like accusations, challenged the final results announced on October 20, 2017, and filed a complaint with the NEC. We hold that the complaint of the petitioners must be heard and decided by the NEC and, if need be, the appropriate appeal process to the Supreme Court of Liberia be availed of and the matter decided by the Supreme Court before the NEC can make a determination as to which two presidential tickets received the greatest number of valid votes cast to be designated by the NEC and for the NEC to set the date for the conduct of the run-off election.

Earlier in this opinion, we stated that a principle of constitutional interpretation is that the constitution be interpreted in light of the entire document rather than a sequestered pronouncement because every provision is of equal importance. We believe that the framers of the Article 83(b) amendment must have been clearly aware of the Article 20(a) due process of law provision of the Constitution. This was the basis for the Article 83(c) provision, the essence of which is that an aggrieved party shall have the right to challenge the results or the manner in which the NEC conducts an election. They were aware that if the elections were conducted and there were challenges, the challenging party could be deprived of the Article 20 due process of law right and conducting a run-off election before the NEC hears and decides the grievances relating to the election could not only be tantamount to depriving the aggrieved party of the due process right, but it could create difficulties in the governance process. Hence, they deliberately amended the original Article 83 (b) and added therein a phrase that the run-off election on the second Tuesday would be subject to the Article 83(c) provisions, "expiry of the time provided in Article 83(c), that time being the due process time recognized as a cardinal part of the Article 20(a) provision of the Constitution. By that

amendment, the framers clearly sought to ensure that Article 83(b) was in harmony with Article 20(a) of the Constitution.

Now, the writ of prohibition will lie where an inferior tribunal or administrative agency with quasi-judicial authority, though having jurisdiction, proceeds contrary to rules which ought to be observed at all times. *Parker v. Worrell*, [1925] LRSC 9; 2LLR, 525 (1925); *Mensah v. Tecquah*, [1954] LRSC 29, 12LLR, 147 (1959); *Roberts v. Kaba et'al* [2004] LRSC 20; 42LLR, 228 (2004); *LACC v. Hage et'al* [1995] LRSC 44; 38LLR, 259 (1995).

As we stated herein above, there is no dispute that the NEC is the body vested with the authority to conduct elections in Liberia, including run-off election, where the conditions for such elections, as laid down by the Constitution and statutory laws are present. So, this being an election matter, the NEC has jurisdiction over this case. The NEC, though having jurisdiction, must proceed properly and legally. But by setting a date and proceeding to conduct the run-off election without first hearing and deciding the complaint of the petitioners which alleged gross irregularities and fraud, etc., the NEC was proceeding contrary to rules which ought to be observed at all times. For this, prohibition will lie.

WHEREFORE AND IN VIEW of all we have said, the alternative writ of prohibition ordered issued by the Justice in Chambers is upheld and sustained, and the peremptory writ of prohibition requested by the petitioners is hereby granted. The NEC is estopped and prohibited from conducting a run-off election until the complaint filed by the petitioners is investigated by the NEC and, if need be, the appropriate appeal process to the Supreme Court of Liberia is availed of and the matter is decided by the Supreme Court.

Given the critical nature of the complaint, subject of these prohibition proceedings and its implication on the governance of the nation, the NEC is directed to give urgent attention to the expeditious hearing and determination thereof. IT IS SO ORDERED.

Counsellors Charles Walker Brumskine, Powo C. Hilton and James G. Innis, Jr., appeared for the petitioners.

Counsellors Frank Musa Dean, C. Alexander B. Zoe and Joseph N. Blidi appeared for the respondent.

Prohibition granted.