

In the Honorable Supreme Court of the Republic of Liberia  
Sitting in its October Term, A.D. 2017.

Present: His Honor: Francis S. Korkpor, Sr. ....Chief Justice  
Present: His Honor: Kabineh M. Ja’neh.....Associate Justice  
Present: Her Honor: Jamesetta H. Wolokolie.....Associate Justice  
Present: His Honor: Philip A. Z. Banks, III .....Associate Justice  
Present: Her Honor: Sie-A-Nyene G. Yuoh.....Associate Justice

The National Elections Commission .....	MOVANT/APPELLEE	)	
VERSUS		)	<b>MOTION TO DISMISS</b>
		)	<b>APPEAL</b>
Charles Walker Brumskine and Harrison S. Karnwea,		)	
Presidential and Vice Presidential Candidates at the		)	
October 10, 2017 Elections, and the Liberty Party		)	
.....	Respondents/1st APPELLANTS	)	
GROWING OUT OF THE CASE:		)	
Charles Walker Brumskine and Harrison S. Kamwea, Presidential		)	
and Vice Presidential Candidates at the October 10, 2017		)	
Elections, and the Liberty Party.....	1st APPELLANTS	)	
		)	
AND		)	<b>APPEAL</b>
		)	
Joseph Nyumah Boakai and James Emmanuel Nuquay,		)	
Presidential and Vice Presidential Candidates at the		)	
October 10, 2017 Elections and the Unity Party, all of		)	
Liberia .....	2nd APPELLANTS	)	
VERSUS		)	
		)	
The National Elections Commission .....	APPELLEE	)	
GROWING OUT OF THE CASE		)	
		)	
Charles Walker Brumskine and Harrison S. Karnwea,		)	<b>Violation of the</b>
Presidential and Vice Presidential Candidates at the		)	<b>Constitution and</b>
October 10, 2017 Elections, All Representative Candidates		)	<b>Elections Law,</b>
of Liberty Party and the Liberty Party, all of		)	<b>Fraudulent Acts,</b>
Liberia.....	1st COMPLAINANTS	)	<b>and Gross</b>
		)	<b>Irregularities</b>
AND		)	<b>During the October</b>
		)	<b>10, 2017 Elections</b>
Joseph Nyumah Boakai and James Emmanuel Nuquay,		)	
Presidential and Vice Presidential Candidates at the		)	
October 10, 2017 Elections and the Unity Party, all of		)	
Liberia.....	2nd COMPLAINANTS/INTERVENORS	)	
VERSUS		)	
		)	
The National Elections Commission.....	DEFENDANT	)	

Heard: December 1, 2017

Decided: December 7, 2017.

MR. JUSTICE JA'NEH *dissents:*

As the *final arbiter* in the land, Liberian laws undoubtedly impose a sacred duty on the Supreme Court of Liberia to take every legal action at ensuring “*accurate determination of the results of voting*” in public electoral competitions. *Article 28, Referendum Regulations, (NEC), May 6, 2016*. This means that the ultimate constitutional object and role of the Supreme Court is the just determination of the will of the Liberian electorate. Hence, the Constitutional phrase “*valid votes cast*”, provided under Chapter VIII, Article 83 (c) of the Liberian Constitution (1986), as amended, imports profound significance. This catchphrase, “*valid votes cast*” has become the absolute guide and overriding legal principle in deciding all matters of public elections. The Majority Opinion put it this way:

*“The Instrument [reference to the Liberian Constitution] allows for no deviations or violations that would dilute the will of the people in determining the government that would govern the nation and the expectation is that the institutions that are set up to superintend the process through which the will of the people are expressed, will similarly not deviate in any manner as would dilute the expression of the people’s will.”*

Core to determining the accuracy of any public elections results is that: (1) persons casting votes be qualified under the law to exercise this sacred franchise; and (2) that the process of voting be carried out strictly in accordance with the laws, rules and regulations thereto applicable. Mindful of this sacred responsibility, the Supreme Court of Liberia has endeavoured over the years to ensure the prevalence of the popular will. “[*V*]alid votes cast” is the only measured manifestation of that popular will. The fidelity of this Court to this essential “*valid votes*” principle was validated most recently in an Opinion, without dissent. Mr. Chief Justice Francis S. Korkpor, Sr., speaking for the Supreme Court in that unanimous Opinion, said:

*“...[W]here a complaint is pending before the NEC...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...could properly conclude that **the votes cast were indeed valid...**”* [Emphasis Supplied]. See: *Brumskine et al. v. National Elections Commission et al.*,

Supreme Court Opinion, October Term, 2017.

Today, Thursday, December 7, A.D. 2017, the Supreme Court of Liberia has not only meted ultra-violence to the long-established principle of law on fraud but also demonstrated colossal lack of courage to ensuring that only *“valid votes cast”* forms the foundation of the sacred will of the Liberian electorate. Speaking for my Esteemed Colleagues of the majority, Mr. Justice Philip A. Z. Banks, III, has held:

*“We hold ...that the appellants [Charles Walker Brumskine and Harrison S. Karnwea of the Liberty Party and Joseph Nyumah Boakai and James Emmanuel Nuquay of the Unity Party] did prove that indeed fraud did occur during the October 10, 2017 Presidential and Legislative Elections.”* My Emphasis.

Today, my Distinguished Brethren of the Majority have introduced a rather eccentric legal principle, heretofore unknown in our jurisprudence; they are holding that notwithstanding a finding by this Court of justice of the occurrence of fraud and irregularities during the conduct of the October 10, 2017 Presidential and Representatives Elections, that finding of fraud will not *“vitate transaction”*, in this case, electoral outcomes unless the fraud perpetrated rises to a scale or gauge.

For almost a Century, the Supreme Court of Liberia not only adopted a common law definition of fraud, but firmly laid down the rule that where fraud has been perpetrated, the entire activities thereto relating, is vitiated as a matter of law. The Court has consistently affirmed the established principle of law that *“fraud vitiates...contractual obligations ab initio; Nassre & Saleeby v. Elias Bros., 5 LLR 108 (1936); Lamco J. V. Operating Company v. Azzam and Azzam, 31 LLR 23, 35 (1983).* While in *Murdock v. United States Trading Company*, this Court defined fraud as:

*“all acts, omissions, or concealments, which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscious advantage is taken of another; ....fraud consists in anything which is calculated to deceive, whether it be a single act or combination of circumstances, whether it be by suppression of the truth or suggestion of what is false, whether it be by direct falsehood, or by innuendo, by speech or by silence, by word of mouth, or by a look or a gesture. In short, fraud is defined to be any artifice by which a person is deceived to his disadvantage.”* 3 LLR 288 (1932).

My reading of the Majority Opinion, eloquently delivered by Mr. Justice Philip A. Z. Banks, III, impresses me that my Colleagues did undertake a painstaking review and analysis of the facts and circumstances revealed by the records. As you just heard, Mr. Justice Banks scrupulously catalogued the several irregularities committed and the perpetration of fraud which attended the conduct of the Presidential and Representatives elections, mandated by Chapter VIII, Article 83 (a) of the Constitution (1986), as amended. The Opinion of the Brethren of the majority has provided considerable details and accounts of both the irregularities and the conduct of fraud and scheme. However, following such elaborate exercise by Mr. Justice Banks, I find myself utterly bewildered as to; (1) how, in the light of their own findings of both fraud and irregularities, the Brethren of the Bench arrived at the conclusion they reached; and (2) the legal utility of the Court's mandate of December 7, 2017 to the National Elections Commission simultaneously issued with the lifting of the stay order placed on the run-off Presidential Polls.

It is interesting to note that following a laborious review of the records transmitted to us by the National Elections Commission and making the finding that fraud and irregularities were committed, my Distinguished Colleagues yet posed the following query:

*"The question growing out of the said holding, however, is whether the evidence [of fraud and irregularities] reached such magnitude or showed that the violations were grave enough to warrant the setting aside of the October 10, 2017 Elections and ordering of a re-run."*

Answering this vital question, my distinguished Colleagues of the Bench said:

*"Our review of the records reveals two important points: (a) that indeed and infact there were elections violations and irregularities by persons employed by the NEC to participate in the conduct of the October 10, 2017 Presidential and Representatives Elections; and (b) that although there were violations, they were not shown to be so overwhelming as to enable us to draw the conclusion that the results would have been different had the violations and irregularities not occurred."*

As you can see, my Distinguished Colleagues are on record for finding that the appellants did prove by the evidence presented that persons associated with the appellee National Elections Commission indeed perpetrated fraud during the conduct of the October 10, 2017 elections. As a matter of law, to the extent that my Esteemed Colleagues found and declared that fraud was committed, it appears to me that the issue of scale of the fraud and other anomalies attendant to the October 10, 2017 elections becomes completely immaterial and entirely irrelevant. This Court has also held that:

*“Fraud is a generic term which embraces all the multifarious means which human ingenuity can desire and are resorted to by one individual to gain an advantage over another by false suggestions or by suppression of the truth. In its general or generic sense, it comprises all acts, omissions and concealment involving a breach of legal or equitable duty and resulting to damage to another. ...[It is] also any cunning deception or artifice used to circumvent, cheat or deceive another. Wilson versus Firestone Plantations Company and The Board of General Appeals, Ministry of Labour. 34 LLR 134, 143 (1986).*

In *Griffiths versus Wariebi*, the Supreme Court of Liberia held that “*fraud vitiates every transaction...*” 35 LLR 110, 117 (1988). Fraud vitiates all contracts and a deed procured by such means [i.e., by means of fraud] *will be set aside*. [Emphasis Supplied]. It is also a law of universal application that in proving that fraud has been perpetrated, it is not necessary that direct and positive evidence be produced; *circumstantial evidence is not only sufficient, but in most cases, it is the only proof that can be adduced. Watson versus Ware, 10 LLR 158, 163 (1949); Rea versus Missouri, 84 U.S. (17 Wall.) 532, 543, 21 L. Ed. 707 (1873).*

But the conclusion reached by my Colleagues, that the irregularities and fraud demonstrated by the Unity Party and Liberty Party were not such as to upset public elections outcome, massively defies the established principle of fraud. This position assumed by my Colleagues is therefore deeply disconcerting, to say the least.

I guess you already have had enough; so, I will resist the temptation to bore you with a lengthy discourse. But let me beg your forbearance as I take you on a journey of inspection. According to my Esteemed Colleagues, the weight of the evidence of irregularities, fraud and violations of the Constitution and Elections Laws committed did not demonstrate that *“the results would have been different had the violations and irregularities not occurred.”*

Sadly, this verdict announced by my Distinguished Colleagues callously ignores certain undeniable truths: (1) that no *“Mini God”* exists amongst us proven to be capable of peeping into the *“dark rooms”* of the National Elections Commission and finding out what obtained therein. Unless we submit to such a pretence, we have to accept the brutal truth that there is absolutely no way for anyone of us, as ordinary human beings, to (1) inspect the authentic records of the elections and, as a result thereof, (2) determine the candidates who actually received the greatest number of *“valid votes”*, under the contemplation of Chapter VIII, Article 83 (b) of the Liberian Constitution (1986), as amended. Given the evidence demonstrating incontrovertibly that fraud and irregularities attended the conduct of the October 10, 2017 elections, it is speculation of gigantic proportions on the part of my Brethren of the Bench to insist that a rational conclusion cannot be drawn that *“the results would have been different had the violations and irregularities not occurred.”* I am stunned to see the Majority Court insist that unless the evidence of fraud perpetration upsurges to a *“magnitude”*, it cannot vitiate the results of public election. A new legal principle has been set in motion by my Colleagues of the Majority; that in order for fraud to warrant this Court’s serious attention in public elections, as those of October 10, 2017 in Liberia, the complainant must demonstrate that such fraud was *“committed throughout the national electoral spectrum.”* [Emphasis Supplied].

In their desperate attempt to sort of rewrite the universally known, established and accepted principle of law on fraud, my Esteemed Brethren postulated further that:

*“[w]hat is required, in our view, is not merely a demonstration that there was massive fraud or irregularities at a few polling centers, but rather that there were fraud and/or irregularities committed at **an enormous number of polling** places such that a conclusion could be drawn that absent such fraud or irregularities, the results of the elections would be different.”*

I vehemently disagree.

Let’s embark on the inspection journey beginning with the issue of fraud and the evidence proffered by the appellants showing that fraud was indeed committed during the conduct of the October 10, 2017 elections. Here again my Brethren of the Majority performed an excellent job in cataloguing occurrences and events clearly pointing to perpetration of fraud and irregularities and violations of the Constitution, Elections Law as well as Regulations applicable.

According to the records certified to us by the National Elections Commission, both the 1<sup>st</sup> appellants and 2<sup>nd</sup> appellants squarely raised the issue of fraud. They accused the appellee, National Elections Commission of perpetrating fraud and irregularities in the conduct of the October 10, 2017 Presidential and Representatives polls. This was one of the pivotal issues the Majority Opinion addressed. I herewith quote their discourse as follows:

*“The third issue is whether or not the appellants proved by a preponderance of the evidence that the October 10, 2017 elections were steered with irregularities in violation of the Constitution and Elections Law, and if so whether they reached the magnitude as to [declare] those elections void and to warrant a rerun. In order to answer this issue, we take recourse to the allegations levied by the first and second appellants in their respective complaints and the oral and documentary evidence produced by them in support of the allegations, on the one hand, and the NEC’s responses and/or rebuttal testimonies to these allegations on the other hand.”*

The Majority Opinion, further elaborating, indicated:

*“This Court has said in a large number of Opinions that it is the law that evidence alone enables the court to pronounce with certainty the matter in dispute, and that the best evidence which the case admits of must always be produced as no evidence is sufficient which supposes the existence of better evidence.”*

*Reynolds v. Garfuah*, 41 LLR 362, 371 (2003); *Liberia Agricultural Company (LAC) v. Associated Development Company (ADC)*, Supreme Court Opinion October Term A.D. 2012, and that no matter how logical a complaint might be stated, it cannot be taken as proof without evidence. *The Management of International Bank v. Wilfredo C. Ochoada*, Supreme Court Opinion, October Term, 2012.

Further surveying the testimonies of appellants' witnesses, my distinguished Colleagues wrote:

*"All of these testimonies of 1<sup>st</sup> appellants' witnesses regarding allegations of gross irregularities in violation of the Constitution and Elections Law during the October 10, 2017 elections were similarly buttressed by witnesses of the 2<sup>nd</sup> appellants. Primary amongst them were 1) Atty. Jerold Cole Bangalu who testified that the Final Registration Roll was marred with massive irregularities and fraud; that the provisional registration roll was never published to magisterial areas as required by the elections law and NEC regulations; that there was huge discrepancies between the provisional roll and final roll; that although the exhibition period for the provisional roll should have been for a week to allow voters make corrections to the roll but was unusually cut off due to many outcries from the public as to the discrepancies on the provisional roll; and that instead of addressing those discrepancies the NEC chairman announced that all those with valid voters registration card would be allowed to vote. Some of the discrepancies pointed out by the witnesses were: a) names of voters did not match with the photos, (b) males were taken for females, c) duplication of names, amongst others. The witness also stated that the FRR was never published as required by law and that it was only after thorough engagement with the NEC that seven political parties were given the FRR on a pen drive.*

*According to the witness, the FRR given them was dissimilar to that which was posted on the NEC's website indicating that the NEC operated two separate and distinct FRR; that the SMS system of verification of names on the FRR constituted an addition to the FRR since names that were not found on the FRR given the parties could be found through the SMS system and that there were more than four thousand people who had voter cards but could not vote because their names were not found on the FRR. The witness further testified that the ballot papers used during the October 10, 2017 polls were without serial numbers and that the ballots found in Grand Gedeh County had features of valid ballots contrary to the NEC's claim that they were 'Know Your Candidate' ballots. 2) Josiah Flomo Joekai testified that his name appeared on the provisional registration roll but that during the voting he did not find his name on the final registration roll but was allowed to vote when the presiding officer used the SMS to verify his number; that there was no queue controller to where he voted."*

Having concluded a survey of the facts as well as the overwhelming cogent and incontrovertible evidence before us, the Court of final arbiter of justice in the land, my Brethren of the Majority elected to reach the following conclusions:

*“The testimony of the witness was impressive, but we are unable to conclude that it did convey or demonstrate that the violations were of such high magnitude that it altered or could have altered the results of the elections.*

*Thus, while we do not dispute the testimonies and do not believe that the appellee sufficiently rebutted the said testimony, we say that as important as it was, it did not, standing alone, overwhelmingly show that it impacted the final results in such manner that if not committed the results would have been different or that the positions of the parties would have changed, as for example, from first position to second position or from second position to third position.”*  
[Emphasis Supplied].

With the conclusions aforementioned, the Majority Court, as if playing the blame game, appear to be suggesting that the appellants, Liberty Party and Unity Party, failed to act as required under the circumstances; hence, were therefore equally culpable for the irregularities and fraud committed. This is what the Majority Court intimated as it sought to ascribe those responsibilities and blames to the appellants:

*“What it means for the Court is that the parties, knowing and/or suspicious of how the NEC was playing its role in the elections should have so positioned themselves, both with the mechanics and with the personnel, to ensure that any perceived attempts by the NEC would not materialize and that in the event they saw that the NEC was deviating from the dictates of the law or committing acts not in consonance with what it was expected to be doing, they should have sought recourse to the courts to prevent the NEC committing such violations.”*

I find it truly unsettling that in one breadth, the Majority Court found that fraud was indeed perpetrated in the conduct of the October 10, 2017 Elections at the instance of the Appellee National Elections Commission, but yet proceeded, in the next breadth, to insinuate that the party appellants is to blame for sort of abdicating in their duties to supervise each and every polling place. Such a stance is not only stropy but somehow incomprehensible.

Let’s return to the records and seek to highlight some of the fraudulent perpetrations placed at the feet of the Appellee National Elections Commission. Again, I must mention that these acts by the Appellee NEC did not escape the insightful scrutiny of my Distinguished Brethren of the Bench.

For instance, in count 14 of 2<sup>nd</sup> Appellant/Intervenor's Complaint, the Unity Party sets out, in the following manner, its allegations of fraud against the NEC:

*"At many polling places, to perpetuate fraud, the presiding officers and polling staff created addenda to the voter roll on which they included the names of persons who allegedly had voters' cards but whose names were not on the voter roll at the precincts or polling places where they registered to vote. Copies of these addenda were not made available to poll observers for political parties and independent candidates and as such, presiding officers and polling staff were able to fraudulently list names and voter registration card information on these addenda and allowed voting for persons who had not registered to vote or who had registered to vote and did not appear to vote."*

Further raising the issue of fraud perpetration by Appellee National Elections Commission, 1<sup>st</sup> Appellant Liberty Party, set forth in its bill of exceptions to wit:

- "1. 1<sup>st</sup> Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, like the Hearing Officer, in his Final Ruling, failed to take judicial notice of the public historical fact, which is so well known, that serial numbers were placed on the ballots, and not on ballot stubs, used during the 1997, 2005 and 2011 Presidential and General Elections. The failure of the Appellee to take judicial notice of its own records was obviously to justify it allegedly placing serial numbers on the stubs of ballots, instead of on the ballots, as has been the practice in this jurisdiction.*
- 2. 1<sup>st</sup> Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC in its Final Ruling, confirmed the assertion of witness Lighe of the Appellee that placing serial number on the ballots would be a violation of the voters' secrecy. 1<sup>st</sup> Appellants say that it is not likely that the confidentiality of a voter, who marked a ballot behind a screen or other enclosed compartment, and deposited the ballot in a secured sealed ballot box be compromised because a ballot carried a serial number which would have provided accountability and credibility to the electoral process. 1<sup>st</sup> Appellants submit that if it could have been done in the 1997 elections, it certainly should have been done in 2017.*
- 3. 1<sup>st</sup> Appellant say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, failed to take into consideration the refusal of the Appellee to use the Presiding Officer Worksheet.*

*Among other things, the Presiding Officer's Worksheet would have indicated the starting and ending serial numbers of ballots used at the Polling Place, making it difficult for ballots in the ballot boxes to be replaced while in transit from the Polling Place to the Magistrate. Also, the Presiding Officer's Worksheet would have been signed by Party/Candidate Agents. In the absence of serial numbers on the ballots, not ballot stubs, there is no way of knowing whether the ballots in the ballot boxes were those that were assigned and delivered to polling places, ballots that were cast at the polling place, or ballots that were surreptitiously stuffed in the ballot boxes after polling had closed. The Presiding Officer's Worksheet is found on page 90 of the "Polling and Counting Manual For Staff", prepared and published by the Appellee for governing the "Presidential and Representatives Elections 2017."*

4. *1<sup>st</sup> Appellants say and aver that the Board of Commissioners (BOC) committed a reversible error when the BOC, in its Final Ruling, failed to take into consideration that the refusal of the Appellee to use the Presiding Officer Worksheet created a cloud of doubt over the entire elections. Information that the Presiding Officer inserted on the Record of Count, such as, "Total of unused, spoiled and discarded ballot papers" "Number of ballot papers that should be in the ballot box," "Number of ballot papers taken from the ballot box," and "Discrepancy if any," should have been copied from rows, B, C, D, and E, respectively, of the Presiding Officer's Worksheet. The Presiding Officer's Worksheet required the Appellee's Presiding Officer to insert information/statistics in the Presiding Officer's Worksheet four times during the day- in the morning (before polling), during the day, at the end of polling, and at the end of reconciliation. None of this was done; instead, the Appellee's Presiding Officer used only the Record of Count, at the end of polling, while deceptively indicating the information on the Record of Count was taken from the Presiding Officer's Worksheet."*

Certain points should be made here for the benefit of those reading this dissenting opinion. I recognize that it is settled principle of law that results of public elections are presumed to be accurate. Therefore, courts of justice, in examining claims of irregularities and probable fraud against the results of public elections ordinarily take it that the results announced by an electoral body is accurate; that those outcomes were borne out of a process stipulated by the laws and regulations thereto appertaining. Those results are therefore deemed to be the true reflections of the will of the voters.

This is the primary reason why courts of justice, in reviewing claims of election irregularities and allegation of fraud, must commence from the firm assumption that those elections were conducted in keeping with the dictates of the laws. *Tokpa v. NEC*, Supreme Court Opinion March Term, 2015; *The Concerned Group of Eminent Citizen vs. National Elections Commission/Government of Liberia*, Supreme Court Opinion, October Term 2014.

Accordingly, in the instance where party challenging the results; (1) carries the burden of proof by presenting such evidence as should be sufficient to overturn the overall numbers assigned in favor of a declared winner; and (2) where there is cogent demonstration that public elections have been conducted without conforming with the laws in vogue, the results ought to be set aside.

This is notwithstanding the traditional legal principle of general embracement: that where the difference of votes between a declared winner and the next contestant is astronomical, such that even if the tribunal of justice were to reassign votes in dispute, say twenty thousand (20,000) votes to the disputant contestant, that reassignment of figures would not disturb the comfortable lead of the declared winner, a court would be reluctant to act. This principle of law seems to be the tradition adhered to in the settlement of electoral disputes in many common law jurisdictions, Liberia being no notable exceptions. See: *Dr. Henrique Flomo Tokpa v. National Elections Commission et al.*, Supreme Court Opinion, March Term, 2015.

But the case at hand is distinguishable from such circumstances, both in terms of its nature and character. In dealing with the case at bar, the majority Opinion first set out to summarize the appellants' complaint lodged before and investigated by the Appellee National Elections Commission. It said:

*"...we take recourse to the allegations levied by the first and second appellants in their respective complaints and the oral and documentary evidence produced by them in support of the allegations, on the one hand, and the NEC's responses and/or rebuttal testimonies to these allegations on the other hand....."*

*The 1<sup>st</sup> appellants' basic allegations of gross irregularities were as follow:*

- (1) *many polling centers opened late after 8:00 AM contrary to the NEC's regulation which requires that all polling places opened at 8:00 AM; that some polling places even opened at 1:30 PM, 2:30 PM and 3:00 PM; that notwithstanding these late opening times, those polling places closed at the regular closing time of 6:00PM, thereby denying many of their members right to vote, in violation of Articles 77(b) and 80(c) of the Constitution. The 1<sup>st</sup> appellants gave specific polling places where polls opened late to include: a) Joel High School, Tusa Field, District 13, Precinct # 30237, Montserrado County opened at 1:30 PM, b) Saygbeken, District 2, Sinoe County, opened after 2:30 PM. The appellants alleged that at those polling places, the voters were not given additional hours to vote to cover for their lost time; and*
- (2) *that the NEC changed polling places without notifying the voters of said change. They named polling precinct #6171, District #7, Fuama, Bong County was changed without required notice from Korniekawoejai to Camp America about six hours walk from the original polling precinct. They contend (a) that these changes were void of any emergency situation;*
- (3) *that NEC failed to maintain an accurate voter registration roll which caused many persons names not to be found on the day of voting. They named a candidate of the Liberty Party, Stanley Carter, Sinoe County, District #1 who was only allowed to vote simply because he was a contestant. They contend that many persons similarly situated were denied their right to vote.*
- (4) *that following the denial of many persons' right to vote, the NEC announced that any person carrying a valid voters' registration card must be allowed to vote; that this prompted the NEC's staffs to use an extra sheet (copy book) to record names on those who were not on the FRR;*
- (5) *that the SMS system of verification was not utilized by NEC contrary to section 3.2 of the enabling regulation on polling and counting; that whether those who were allowed to vote were legitimate voters cannot be known due to NEC's failure to utilize the SMS verification system;*
- (6) *that the NEC failed to use the presiding officers' worksheet which document would have indicated the starting and ending serial number of ballot making it difficult for ballot boxes to be replaced while in transit from polling places to magistrate area; that in the absence of the serial number there was no way to determine whether ballots in the boxes were those cast at a polling place, assigned and delivered to the pooling place or ballots that were surreptitiously stuffed in ballot boxes after polling had closed; that the number of ballot papers that should be in the ballot box and the number of ballot paper taken therefrom should have been copied from the Presiding Officer Worksheet and since the work sheet was not utilize the entire process is cloud with doubt.*

- (7) *that the ballots used during the October 10, 2017 polls do not carry a serial number; that a design of ballot papers without a serial number was a calculated means to perpetuate massive fraud; and that at almost all of the polling places there was no queue controllers; that voters stood in the queue for hours just to realize that they were on the wrong line, a situation which frustrated them and thereby denying them their right to vote.*
- (8) *that in Margibi County Polling Precinct #24180, Polling Place #1, polling had closed at about 6:30 PM with the ballot boxes sealed with seal number Pre-056965 and Pre-056961 but later the presiding officer broke the seal and allowed additional persons to vote; that in Bongagplay Nimba County, there were only three polling places while there should have been four; that in Lofa County precinct #21128, a Liberty Party Poll watcher was beaten and tie simply because he raised concerns over the counting irregularities; that two young men, who do not appear to be NEC workers, unaccompanied by police officers were seen wadding in body of water with ballot boxes on their head; that individuals were carrying ballot boxes in canon without being accompanied by police officers; that in District #4, Klein Town, Polling Center #09085, Polling place #1 in Grand Bassa County, ballots were cast in a bathing tub, instead of sealed ballot boxes, that the presiding officer, Mary Yarkpawolo admitted that sealed ballot boxes were not used but claimed to use an unsealed polling kit; that in District # 4, Kennedy Town, Polling Precinct 09039, Polling Place #2 in Grand Bassa County, ballots were cast in a carton box, instead of sealed ballot box, that the presiding officer Patrick K. Ninwillay admitted to same but had similar defense like Mary Yarkpawolo; that in District 13, Montserrado County votes were cast in an opened box and that although the NEC had quarantined 14 ballot boxes it had proceeded to announce the final results."*

My Esteemed Brethren of the Majority also took time to address the pivotal issue. They raised the issue whether the party appellants, Liberty Party and Unity Party, proved the commission of irregularities and fraud by the appellee NEC during the conduct of the October 10, 2017 elections. In answer to this key question, my Distinguished Brethren of the Majority held:

*"To all of these allegations, which were also testified to during the investigation, we see no concrete response from the appellee and in cases where the appellees primary witness attempt to respond, said response is lacking."*

Here I will like to survey some of the evidence presented by the party appellants to demonstrate to a court of justice and equity that massive irregularities and fraud were committed during the conduct of the October 10, 2017 Presidential and Representatives polls.

The party appellants, in order to be entitled to relief were required to prove their case by a preponderance of the evidence. *The Management of the Forestry Authority (FDA) versus Walters and The Board Of General Appeals, Ministry of Labour*, 34 LLR 777, 783 (1988); *Twegbey and Teah versus Republic*, 11 LLR 295, 298 (1952).

The Supreme Court has consistently held that:

*“mere allegation is not proof; and the burden of proof falls on the shoulder of the party making an allegation. The burden of proof makes it incumbent upon the plaintiff to prove by a preponderance of evidence the allegations of fact complained of in the complaint”*. *Mano Insurance Corporation versus Picasso Cafeteria*, 38 LLR 37, 48 (1995); *Knowlden versus Reeves*, 12 LLR 103, 108 (1954).

To shoulder the burden of proof in these proceedings, the appellants deposed a number of witnesses during the conduct of the investigation had before the NEC Hearing Officer. The testimonies presented by appellants' witnesses sought to demonstrate that fraud was indeed perpetrated by the Appellee Commission during the conduct of the October 10, 2017 Presidential and Representatives Elections.

Witness Jeff Bleebo was the second of Appellant Unity Party's eleven (11) witnesses. The Majority Opinion has made substantial references to the testimonies deposed by those eleven (11) witnesses. I desire here only to single out the testimonies of Witness Bleebo and another. It is well to state that the testimonies of appellants' witnesses were never rebutted by the appellee; hence, stood high in appellants' exposure of appellee's fraudulent conduct. It is the law of general application where damning statements are made against a party, unless refuted, said statements would be deemed admitted. *Paye versus Republic*, 10 LLR 55, 56 (1948);

Taking the stand, Witness Bleebo introduced himself as holder of a Bachelors of Science Degree in Computer and Electronic Engineering from the University of Alabama, Hindsville, USA. Witness Bleebo also informed the hearing that he holds a Master of Business Administration Degree from Boston College, Chester Hill, Massachusetts, USA and has reportedly worked as an Electronic Engineer in computers and the management of computer data. According to him, he has also worked over the years as an Electrical Engineer designing power systems. During the investigation, Witness Bleebo was asked the following question:

*Question: ".....In September 2017, the Elections Commission gave to seven (7) Political Parties, a flash drive, on which they claimed was the certified Final Registration Roll, recently under Subpoena. The Elections Commission produced what they say is the certified Registration Roll on a flash drive, which they say was what was given to Political Parties back in September [2017]. These two flash drives were given to you as an expert for analysis and comparison. Could you please inform the Hearing Officer, what is the result of the analysis and comparison you may have done?"*

This was Witness Bleebo's answer to the question:

*Answer: "...I received two flash drives yesterday for the purposes of analyzing the data. I have used my computers to do so, and I have used notes to guide me in that process. I do have my computer here; I do have my notes here. And with your permission Your Honor, I will like to use those to demonstrate the evidence that I uncovered. From the two flash drives that I received, the purpose was to analyze and determine whether those two flash drives have the same information. I am here to confirm that they were different. The flash drive given to the Unity Party, on 10 September had far less data than the flash drive that was given to them I believe [on] yesterday. I have summarized the differences between these two flash drives. On the one hand, [the flash drive] before [has] less data, and on the other hand, the current drive [contains] more data. There were missing polling places, totaling 79 across 10 precincts, not recorded on the flash drive of previous and 31 precincts, with one or more polling places missing from the data that was given prior. These missing polling places amounted to 35,267 registered voters, with 10 duplicated ID numbers assigned to voters. I have catalogued the various IDs duplicates and have listed files missing from the flash drive previously given [to Unity Party]."*

Further testifying, the witness deposed:

*"...as an expert in data analysis, it is very strange to have a system in which you don't have unique data for each voter. It is similar to a banking system, where you should have unique banking numbers for each bank account holder. I find it very disturbing that one ID number could be used by multiple voters, by 2 or more voters, sometimes, even 4 or 5. And so I ran a listing of the files contained in these flash drives, and with the limited time that I had from yesterday, I was able to run over 2000 names of duplicate IDs."*

Witness Bleebo testified to certain instruments which were identified and marked with identification names: *"files not found on the original Final Registration Roll (FRR), shared previously but found on the current version."* We must remark here that these instruments testified to by Witness Bleebo included fifty-eight (58) pages of Voters Registration numbers making up a total of roughly 2,000 (two thousand) of duplicated names.

Further in his testimony, Witness Bleebo revealed as quoted:

*"This is a digital copy of the hard copy that I submitted to you. On line item 50 is ID 721259887. That ID is assigned to "Minor, John E." "Minor" is registered in Montserrado, at precinct 30435; but the same John Minor is also registered in precinct 30072, polling station 2. That same ID number is assigned to Mulbah Peter, who is also registered in Montserrado in precinct 30072 as well as registered in precinct 30435. The same ID number is registered to Dolo, Anthony F. He, [that is], Dolo, Anthony F., is also registered in Montserrado, in precinct 30435, polling Center 2, and he is also registered in precinct 30072, Polling Center 2. That same ID number is also assigned to Reeves, Esther, who is registered in Montserrado, in precinct 30072, Polling Station 2 as well as registered in Montserrado, precinct 30435, Polling Center 2."*

Witness Bleebo, further testifying, said:

*"If I take that ID number and put it into the database to check the voter ID, it comes back with Minor, John E., the person registered in Electoral District #1, and have one of the Polling Centers confirmed, 30027; the same ID number also tells me that Mulbah Peter is registered in precinct 30435, Polling Center #2. This should not happen in a database for election. That it is happening in this database is quite disturbing."*

Witness Bleebo was hereafter asked the following questions:

Ques: *Mr. Witness, could you please explain the process adopted [by*

*you] in arriving at the results of your analysis. How did you do this?*

*Ans: "I took the data that was contained on both flash drives and analysed them in terms of the number of files they contained. When those files were modified, I took each of those files to compare them, file to file. Now, the method adopted by the NEC for naming files is to assign each unique file by their polling number and precinct number. So each file is coded as a precinct and the polling number is an extension to that file. So for every polling Center has a file associated with it. And that is what I did to compare those files.*

*Quest: "what program was the FRR in on the pen drive to have arrived at the process that you just explained?*

*Answer: "What one will do is to take the PDF Files and convert it to HMTL file and use that file to run the analysis.*

*Quest: How long did it take [to do this] Mr. Witness?*

*Answer: It [took] 2 hours.*

*Quest: Mr. Witness, just on yesterday, the pen drive was given to you for two hours, outside of the supervision of the hearing, and you conducted your analysis. Mr. Witness, how do you convince us that there were no manipulations done in your work?*

*Ans: The two flash drives, as I stated earlier, were given to me yesterday afternoon for the purposes of analysis, and I have done the analysis Sir, and this is what I report."*

I must indicate here that the testimony and evidence deposed by Witness Bleebo, was terrifying and indeed damning. It pointed to perpetration of apparent massive fraud and irregularities as well as violations of the Elections Law. This testimony was never refuted. The Majority Opinion concededly alluded to this undeniable truth.

*"To all of these allegations, which were also testified to during the investigation, we see no concrete response from the appellee and in cases where the appellees primary witness attempt to respond, said response is lacking."*

Clearly, the fraudulent acts perpetrated by the NEC included assignment of one ID number to multitude of voters in the same Electoral District but in different Precincts. I must further observe that the records before us show that Witness Bleebo was accorded just a few hours of access to NEC data. In those few hours of inspection and analysis, he was able to uncover **"missing polling places amount[ing] to 35,267 (thirty five thousand two hundred sixty seven) registered voters..."**

Witness Bleebo also demonstrated, again without any rebuttal by the NEC, that the Final Registration Roll was altered, a conduct clearly constituting a grave violation of the Elections Law of Liberia. Notwithstanding this alarming revelation, my Distinguished Colleagues of the majority have elected to conveniently ignore this evidence of fraud and election irregularities. By their conduct, my Esteemed Colleagues have opted to thread a new path of reengineering the law on fraud. Simply put, the new principle is: to warrant a relief from of a court of justice, the evidence of fraud in public elections must have, in the words of my Esteemed Brethren of the Bench, *“permeated the entire election spectrum”*. I find this novel legal engineering intriguing, yet totally unfounded.

Further carrying the burden of proof, 2<sup>nd</sup> Appellant Unity Party’s subpoena witness was Madam Frances Johnson Morris-Allison. She was subpoenaed to testify as an expert on the electoral system in this country. The witness carries credentials such as former Chief Justice of the Republic of Liberia, former Minister of Justice of the Republic of Liberia, and former Chair-person of the Appellee National Elections Commission. The witness is also credited for organizing and conducting the Presidential and Legislative elections of 2005. This is her testimony in chief:

*“...I have heard about irregularities and the frauds that attended the polls. I have been alarmed by the kinds of things I have heard. Firstly, we went into an election on October 10, 2017, without any Final Voter Registration Roll. That was strange to me, because that is the single most important instrument that you use to conduct an election. How else do you know, who are the eligible voters, those who have registered, the number of registered voters? So it was very strange to me that an election took place and to date no Final Registration Roll has been published. So then I am hearing about other people burying uncovered ballot paper, I think it’s in Grand Gedeh, or somewhere in the Southeast, and all kinds of disturbing things. And I am saying to myself how could this had happened? When you have an election with all of these irregularities people are complaining of, that some people did not vote, that voter precincts opened 10-11' 0 Clock in the night, these are things that I have been picking up, as the process has unfolded.*”

*I respect the process that is on-going here now that we can seek to uncover the truth of what happened, and hold those who may be responsible accountable for the kinds of things that we have heard. It doesn't augur well for our democracy. So, that is what I know."*

The following questions were posed to the witness:

*Ques: Madam Witness, let me also ask you, when you were here as Chairman, compare to 2017, did you publish the FRR on a pen drive and give it to Political Parties, if not, what did you do?*

*Ans: "The FRR is a public document once it is generated. To the best of my knowledge and recollection, we published the listing of eligible voters, because how else would people be able to verify or to validate the voter roll to know whether their names are there or not. You can't just take it and give it to some political parties and say here it is, carry it. We did not give any political party a pen drive with the FRR. The FRR to the best of my recollection was published.*

*Q: Published where?*

*A: Published by placing them either at the precinct, so that when people went to look for their names, it was right there at each precinct. It was there in hard copies/papers.*

*Q: Or where?*

*A: Also in the papers.*

*Q: In the News Papers?*

*Answer: Yes."*

Asked about addendum to the FRR, this is what she said:

*"I am not aware of any such thing you asked me about. When somebody loses his Voter Registration Card, during the period of replacement of the cards, the person goes and gets a new card. According to you, whether that is tantamount to an addendum, I disagree with that. An addendum is something entirely new. The person who has lost his card already has detail data in the database. So there cannot be an addendum. It is a replacement."*

She also said:

*"Our poll workers were registered, duly registered, and they were supposed to be the first people to vote. Wherever, you were assigned, there where you were allowed to vote. This new process that I see people come, and they write their names on papers, is a recipe for chaos, that is a recipe for complete chaos, I never heard that people wrote their names down to vote."*

Further testifying on perpetration of fraud and irregularities, witnesses for both appellants, Liberty Party and Unity Party, reported the absence of worksheet for use at polling centers/places across the country. Here I must emphasize that the legal utility of "*Worksheet*" in public elections is hugely significant. The worksheet guides poll workers, political party representatives and observers, both national and international, in book-keeping and verifying the number of ballot papers delivered by the NEC workers at each polling place.

The worksheet is customarily used to record the commencing serial number of the supplied ballot papers, the commencing as well as the ending serial numbers of the ballot papers. The information thus captured, is used for purposes of control and accurate accounting for the used, unused, spoiled and replaced ballot papers. Without providing this book-keeping instrument called "*worksheet*", a rational human being ought to wonder how the total number of ballot papers supplied to the over 5,000 (five thousand) polling centers could ever be known. If it was not calculated orchestration of fraud, it is reasonable to ask how is it possible that a Presidential Candidate in the October 10, 2017 Elections could obtain over 1000 (one thousand) votes when no polling place, as a matter of law, should be supplied more than 550 (five hundred fifty) ballot papers. Although appellee took the stand in the face of this alarming evidence, it put forth nothing in evidence to refute it. It is the law in our jurisdiction that where damaging statements or evidence to a party has been presented by witnesses on the stand, such statements need to be rebutted; if the party fails to produce rebutting witnesses or other evidence, the evidence presented will be deemed to be true. *Cole v. Cole*, Supreme Court Opinion, March Term, 2013.

In essence, the terrifying revelations presented by appellants' witnesses poignantly point to one conclusion; that to date, no one knows or can say with any degree of certainty, what the exact number of voters on the Final Registration Roll, (FRR) is. Equally, there exists no independently verifiable data as to the number of duplicated voters' registration cards. In light hereof, I am sanguine in my belief that the corrective measures, or mandate, issued

by my Colleagues on today, December 7, A.D. 2017, is a mere formal gesture, void of any significant utility. It can best be described as window dressing. My Esteemed Colleagues have just shrouded the scheme of fraud with the judicial acquiescence it desperately needed for purposes of legitimacy.

I am even further troubled, perhaps perturbed, as to what is clearly Appellee NEC's unfaltering resistance to appellants' application for subpoena *duces tecum* of the Final Registration Roll (FRR) and the worksheet. This leads a rational mind to ask: is the NEC seeking to hide something?

Having examined the facts and circumstances revealed by the records, one question is determinative of this appeal. That is, whether the electoral body, the NEC, conducted the Presidential Polls of October 10, 2017 in strict obedience to the Liberian Constitution, Elections Law of the Republic of Liberia and the Regulations promulgated pursuant thereto. This question is in addition to the finding made and alluded to by my Brethren of the Majority on the issue of fraud.

The Elections Law, amended (December 15, 2014) and published (2016) speaks to the important issue of voters' registration. Chapter 3 thereof deals with *"Voters Registration and Voters Update"*. When read carefully, one cannot help but conclude that the FRR is indeed the foundation for the conduct of transparent free and fair public elections. The law provides specific procedures to be followed in the registration of voters, preparation and final posting of the FRR. Verification of the voters roll is a critical requirement precedent to the finalization of the FRR. Sub-Chapter C: Verification, Additions and Objections to the Registration Roll, at Section 3.11 (2) states:

*"The Commission shall determine a period of not less than at least two (2) days before which (a) The registration roll shall be available for inspection at each Registration Center and compared with the Commission's Master Registration Roll to make sure the roll is in order and that the names of the deceased registered voters are removed from the roll in accordance with the provisions of this Chapter and (b) Claims for Registration and objections may be made. The dates determined by the Commission shall be published in the same*

*manner as is requires by Section 3.2 for Notification of Registration Centers.” Section 3.2 of the New Elections Law, as referenced, imposes a duty on the National Elections Commission to “publicly advertise by printed notices in newspapers where feasible, by posters, placards and by radio and television broadcast and by any means, the lists of the location of places for registration centers in the local communities involved” “[n]ot later than two (2) weeks before the first day of registration”. Emphasis Supplied.*

This mandatory requirement was largely not complied with by the Appellee NEC. In the face of irrefutable evidence that thousands of duplications are contained in the FRR, and without an expert opinion relative to the size of this anomaly, I wonder what purpose a mandate to the NEC to conduct a *“full clean-up”* serves.

In closing, it is interesting to also state that my Majority Brethren of the Bench seek to address the upsetting situation prevailing at the NEC by adopting a rather bizarre approach. They have affirmed the ruling of the National Elections Commission to go ahead with the conduct of a run-off election, but with modifications. I believe the modifications are in apparent recognition of the desperate state of affairs at the NEC and the dire need for a judicial order to remedy same.

Hence, my Revered Colleagues have issued the following directives:

- *The NEC is mandated and ordered to fully comply with the standards of publications of the FRR discussed herein.*
- *That the NEC is mandated to conduct a full clean-up of the FRR to ensure that multiple names of identification number are removed.*
- *That the FRR be made available in published hard-copies to all its Magistrates and polling places across the country in the country in accordance with law prior to any run-off election being held.*
- *Given the fact that the FRR is the only electoral document that speaks to the eligibility of voters, the NEC is estopped from permitting anyone whose name is not found on the FRR to vote;*
- *That any addendum to the FRR be limited to only those listed in the NEC’s polling and counting manual.*

These directives, in my judgment, leave the Nation with more questions than answers. Firstly, by issuing these directives, the Majority of the Court concedes

and fully recognizes the dire need to conduct a thorough cleansing of the FRR and the data system currently available at the National Elections Commission. But the majority seem to have conveniently ignored the possible size of the “*dirt*” but merely order same removed, cleansed and sanitized; secondly, the Distinguished Majority appear to callously downplay and disregard the impact the “*dirt*” ordered removed has had on the “*valid votes cast*” during the first rounds of elections on October 10, 2017; the existing dirt referenced herein impacted the “*valid votes cast*”, contemplated by the writers of our Constitution. Thirdly, the Majority position is ill conceived because without having any idea as to scale of the problems in relation to the FRR, the Majority Court has proceeded to lift the stay order placed on the run-off elections, thereby returning the parties a full constitutional circle for run-off presidential elections. This may give the impression that these mandates could not have been meant to be fully and strictly enforced and implemented.

Therefore, after maturely considering the facts in this appeal, I believe that the NEC has not complied with, is in outright violations of the Liberian Constitution and has committed fraud in the conduct of the October 10, 2017 Presidential Elections.

I therefore regret my disagreement with the Majority of the Bench in the closure of our judicial eyes to the fraud and irregularities revealed by the records certified to this Court. I also cannot be an accomplice in striking a single but deadly blow to overturn the well settled principles of law on fraud which have been handed down by our learned brethren on this Bench from the very commencement of the Republic. Accurate determination of the will of the electorate must always be the overriding and decisive determinant in these matters of public elections. The records in the case before us suggest the contrary.

The Clerk of this Court shall file this dissenting Opinion in the archives of this Court for posterity to read. AND IT IS SO ORDERED.