

**IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2015.**

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEHASSOCIATE 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

Dr. Henrique Flomo TokpaAPPELLANT Versus National Elections Commission (NEC) Lower Bong County, Magistrate & National Patriotic Party (NPP) Candidate Madam Jewel Howard Taylor APPELLEE	}	APPEAL
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GROWING OUT OF THE CASE:

Dr. Henrique Flomo TokpaCOMPLAINANT Versus National Elections Commission (NEC) Lower Bong County, Magistrate & National Patriotic Party (NPP) Candidate Madam Jewel Howard TaylorRESPONDENT	}	ELECTIONS IRREGULARITIES
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HEARD: July 1, 2015

Decided: August 7, 2015

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

On December 20, 2014, Co-appellee National Elections Commission (NEC), conducted Special Senatorial Elections within the fifteen (15) political subdivisions of the Republic of Liberia in which the appellant, Dr. Henrique Flomo Tokpa, an independent candidate, and Co-appellee Madam Jewel Howard Taylor of the National Patriotic Party (NPP) contested for the senatorial seat of Bong County.

Thereafter, on December 27, 2014, the co-appellee, National Elections Commission announced and declared the final results, in which co-appellee Madam Jewel Howard Taylor was pronounced the winner of the senatorial seat for Bong County. According to the records and the brief of the co-appellee, NEC, Madam Taylor obtained a total of 13, 672 votes as against the appellant, Dr. Tokpa who obtained the total votes of 11,737.

We note that prior to the co-appellee, National Elections Commission announcing the final results on December 27, 2014, the appellant, Dr. Tokpa had already filed a complaint before the elections magistrate of Totota, Lower Bong County on December 24, 2014, requesting a recount of the ballots in Electoral District # 7 for what he termed in his complaint as the occurrence of ‘gross electoral irregularities.’ The appellant’s complaint of December 24, 2014 being pertinent to this appeal, the Court has decided to quote same verbatim herein as follow:

“December 24, 2014

The Office of the Election Magistrate, Totota
Lower Bong County, Republic of Liberia

Dear Sir,

I write to file this document to your office so as to protest and further challenge the just ended special senatorial elections result in Electoral District #7 of Bong County. I received copy of the final result of votes counted in Lower Bong County, and such result was also presented to the public by and thru the campaign manager for the NPP's candidate thus preceding NEC's pronouncement. Please consider the below counts as my key points to justify my position in this process as follow:

- That the various numbers registered/recorded on tally from District #7 are over stated for and on behalf of the NPP's candidate in the election.
- That I challenge the agreements between and among the various numbers on the tally sheets and the ballot papers in the various boxes from District #7 do not correspond with the photos checked in the Final Registration Roll (FRR).
- That I challenge all checks done in the photos booklet (Final Registration Roll-FRR) are photos of people who fully took part in this election to match the numbers registered on the tally sheets.

In view of the above, I therefore request a recount of the ballot paper in the entire electoral District # 7 so as to protect the credibility of the NEC and its officials in Bong County.

Thank you very much as I remain hopeful in the process.

Yours,

Dr. Henrique Flomo Tokpa
Independent Senatorial Candidate

On January 2, 2015, upon receipt of the appellant's complaint, and in consonance with the requisite provision of the Elections Guidelines which require that election magistrates hear cases under their jurisdiction, investigation into the complaint commenced in Totota, Lower Bong County.

Subsequently, at the behest of the parties, the venue of the hearing was changed to the Headquarters of the co-appellee, National Elections Commission in Monrovia. The reason advanced for the change of venue as gleaned from the records was that the minutes of the investigation were being hand-written which the parties agreed was stalling the investigation, as compared to Monrovia where computers and other electronic gadgets were available to expeditiously record the minutes of the hearing.

Also, in argument before this Court the lawyers representing the parties informed the Court that they had further agreed that a lawyer sit concomitantly with the

elections magistrate for the hearing because they believed that the magistrate not being a lawyer lacked the requisite competence to hear and dispose of issues of law that could be raised during the investigation. This Court views the act of the lawyers as strange, but what is more perplexing is the fact that the elections magistrate sanctioned this preposterous agreement which is outside the pale of the elections law. The elections regulations provides that

“the Chairman of NEC shall designate hearing officers who shall be **independent in their duties** as hearing officers under this regulation. Magistrates may hear cases under their jurisdiction or assist the hearing officer with the investigation of a complaint.” The Compiled Guidelines and Regulations on the 2011 Electoral Process, Regulations on Challenges and Complaints Arising before and during Elections, Article 6. [Our Emphasis]

Nowhere in the regulation quoted *supra* is it stated that hearing officers or the magistrate should sit concomitantly with lawyers to hear matters. To the contrary the law is clear that hearing officers and magistrate are to be independent in their duties. This is why we continue to admonish the NEC and other administrative bodies exercising quasi-judicial functions and lawyers appearing before these bodies that hearings within these respective institutions are investigative in nature and that the technical procedures obtaining in courts cannot be strictly applied except those mandatory requirements pertaining to due process and other fundamental rights.

Reverting to the investigation commenced at NEC’s Headquarter in Monrovia, the appellant produced eight witnesses, Alfredson Taikerweyan, Harrison Nati, Jessie Gbayakollie, Arthur Kollie, Dorwo Varfleh, S. Emmanuel Komosee, Emmanuel Keaye and the appellant himself.

The appellant’s first witness, Alfredson Taikerweyan, an observer at Kankalan Town Polling place # 2, voting precinct 6067, testified that forty-eight (48) ballots were used during the elections but at the end of the counting process the presiding officer tallied fifty-two (52) votes. The witness also testified that the NPP’s candidate was erroneously given forty-one (41) votes in the said polling place.

This testimony of witness Taikerweyan raises the question as to what were the actual votes of the NPP’s candidate *vis-a-vis* the votes of the appellant. Are we to subtract the 41 votes from the 48 ballots that were cast to determine the votes of the appellant? This Court says that there being no clear and direct indication in witness Taikerweyan’s testimony by which it can ascertain the number of votes cast for the respective candidates we find it difficult to comprehend what the witness was actually attempting to establish or prove. We shall say more on this issue later in this opinion.

Thereafter, the appellant took the stand in his own behalf and testified that during the announcement of the preliminary results he was in the lead. However upon completion of the counting in District #7, the NPP’s candidate was declared the winner of the elections in Bong County. A pertinent excerpt of the appellant’s testimony on this issue reads thus:

“..the results revealed that I was leading. However, within a couple of hours when the final results were announced, I heard that the NPP’s

candidate had won and it became of concern to me...I called my campaign staff to discuss what may have happened because at that point only one district, district # 7 had not been counted when the provisional results were announced and I became curious as to what may have happened; and then information coming to me suggested that there were some inappropriate measures taken during the elections that may have tainted the results..."

This testimony of the appellant also raises several questions as to what were the statistical results showing that he was in the lead as compared to the NPP's candidate; the number of votes he had obtained from other electoral districts within Bong County placing him in the lead. We also find it difficult to understand what the appellant was attempting to establish by these assertions.

The appellant's third witness, Harrison Nati testified that he served as an observer in Sanoyea market # 5 and that while observing the electoral process he noticed the NEC staff permitting unidentified persons to vote. Below is an excerpt of the witness testimony:

"...I observed the poll workers allowing people to vote without proper identification. When I confronted them, they walked out, came back and stated that they had settled the matter."

The appellant's fourth witness, Jessie Gbayakollie testified that he served as an observer at Beletanda Polling Center where he observed the reopening of the poll after it was officially declared closed at 6:00pm. The witness also testified that after the counting of the ballots, the NEC officers left the ballot-boxes unsealed until the following day. For the benefit of this opinion we herein quote a pertinent excerpt of the witness' testimony which reads thus:

"...When we went at the center earlier, the polling officer told us that the center will be closed at 6:00pm. We stayed there until 5:00pm at which time no one was coming [to vote]. At 6:00pm I reminded him that it is now 6:00pm and other centers are closed so he should please close this one. He became reluctant and started to delay; notwithstanding, he declared that the center was closed. Thereafter, he went outside, returned and re-opened the center. He told us that he had been advised that people were still coming therefore the center should be open for another 45 minutes...Subsequently, he invited us to go down the road to have drinks with him but I refused, notwithstanding he insisted so I reluctantly followed. However, I noticed people standing around the building so I changed my mind and returned. Upon entering the building I observed four ballot papers were cut and placed on the table. After the additional 45 minutes NEC staff voted and we commenced the counting of the ballots. At 10:00pm we were informed to leave and returned [the next] morning to seal the ballot boxes."

The appellant's fifth witness, Arthur Kollie testified that he was an observer at the Yarbayan Polling Center where he noticed three women whom he could not identify, canvassing and campaigning for co-appellee, Madam Jewel Howard Taylor on the day of elections by distributing food to NEC staff and the voters. The witness testified that he lodged a complaint against these women to the Polling Officer, Boika Jallah but no action was taken.

The appellant sixth witness, Dorwo Varflah, an observer of the Liberty Party (LP), buttressed the testimony of Harrison Nati, (appellant's third witness) that the NEC staff permitted unidentified persons to vote in Sanoyea market, polling place # 5. A relevant excerpt of this witness' testimony reads thus:

“I observed that when you present your card and your picture and your number were not in the booklet; NEC staff will register these people from the information on the cards and permitted them to vote.”

The appellant's seventh witness, S. Emmanuel Keaye, an observer from the Congress for Democratic Change (CDC) buttressed the testimony of Jessie Gbayakollie, (the appellant's fourth) that the polling officer at Beletanda Polling Center kept the polling station open after 6:00pm for an additional 45 minutes. The witness also testified that the polling officer offered them drinks and that after the counting process, the NEC staff left the ballot boxes unsealed until the next day.

Finally, the appellant's eighth and last witness, Emmanuel Kaye, a supervisor from the Liberia National Union (LINU) Party testified to similar account as Arthur Kollie (appellant's fifth witness), that the NPP's coordinator was seen distributing food at Yarbayan polling center on the day of the elections.

When the appellant rested with the production of evidence, the appellees introduced and sequestered six (6) witnesses in persons of Ben Kerkulah, Eddie A. Qweyateh, Joseph P. Jallah, Harrison Fayah, Boakai Jallah and Tony S. Cooper.

The appellees' first witness, Ben Kerkulah, NEC's presiding officer at Sanoyea market, polling place # 5, admitted that he permitted persons to vote whose names and photograph were not on the Final Registration Roll (FRR). For the benefit of this Opinion we have decided to quote herein below a pertinent portion of the witness' testimony:

“I did not register anybody on any flying sheet, this is false and misleading. But I was here at polling place #5 as presiding office and I had difficulty with a lady who came within my polling place to vote. She had the voter's card, and she informed me that she's expected to vote in this polling place. I checked the Final Registration Roll (FRR) but her photo was not there. From my experience and training we have a referral sheet in the FRR therefore, since she is expected to vote within my polling place I mandated my Voter Identification Officer (VIO) to register her name and number in the FRR referral sheet and allowed her to vote.”

During cross examination the witness testified that unidentified voters with similar problems holding voting cards had their names and numbers recorded on a referral sheet in the FRR and allowed to vote. He also testified that he allowed twenty-five (25) persons with this problem to vote.

The appellees' second witness, Eddie A. Qweyateh, Presiding Officer in Kankalan Town denied inflating the votes to 41 in favor of co-appellee Madam Jewel Howard Taylor. However during cross examination the witness acknowledged that the record of the count marked as Exhibit R/1 were erroneous with respect to the date and the total number of votes cast. According to the witness the date on the

record should have been December 20, 2014 instead of December 22, 2014; and that the figure 48 assigned as the total number of votes cast was an oversight. The witness testified that the correct figure is 53 instead of 48 since the total number of ballots taken from the box was 53.

The appellees' third witness, Joseph P. Jallah, Presiding Officer of Beletanda Polling Center denied the allegation of the polls being reopened after 6:00pm and the issue of the ballot box being left unsealed. The witness testified that the polls were closed at exactly 6:00pm and thereafter counting commenced. We quote herein below relevant portion of the witness' testimony:

“On December 20, 2014, we opened the center at 8:00am in the morning. While going through the voting process around closing time my queue controller informed me that people had arrived from their farm and wanted to vote. I told her that being a team we should consult on whether to add an additional 45 minutes. After consultation with other team-mates, to include the poll watchers and observers, it was agreed that the polls be closed. Immediately, we closed the polls and commenced counting of the ballots.”

During cross examination the witness testified that the counting of the ballots was concluded the same day; that the ballot-box was sealed and that the tally sheet was signed by the observers.

The appellees' fourth witness, Harrison Fayah, Presiding Officer of Zamkpe Yama, Lower Bong County (District #7) denied invalidating two ballots in favor of the appellant. The witness testified that the ballots were invalidated because of improper markings that is, the ballots were signed on rather than marked with an 'X', a checked mark or finger print. For the benefit of this Opinion, we quote a relevant excerpt of the witness' testimony as follow:

“When we started the polling, we were told by our electoral supervisor (ES) that after the polling by 6:00pm we should carry on reconciliation. But the problem started during the counting. As per the ballot paper in question, we were told by the ES what had to be done. You don't use your signature; in voting we were looking for three (3) check marks, the 'X', the checking mark, and the finger print. But on the two ballots in question was a signature and the other included the name of the voter.”

The appellees' fifth witness, Boakai Jallah, Presiding Officer at Yarbayeh Public School Precinct denied the allegation of the NPP campaigning on the day the elections were being conducted. The witness testified that he never saw anyone campaigning and that the appellant's observer, Arthur Kollie did not see anyone campaigning.

Finally, the appellees sixth and last witness, Tony S. Cooper, the Supervisor of Kankalan Town testified to the correction of the record of the count from 48 votes to 53 votes. A pertinent excerpt of the witness testimony reads thus:

“This document [the record of count] was presented by the presiding officer, Eddie Queyateh. When the document was presented to me on December 21, 2014, I did not peruse this document to be very frank

[truthful], I was retrieving and paying. Later, I was called that some ratification had to be made and the presiding officer had already received his pay and had left from Totota. When I called him, and could not reach him the tally officer asked me to go into the tally room to do the ratification. If you look at this document, the mathematics [was corrected] with the consent of all the political parties representatives; we did the mathematics and it sum up to 53. But if you check here you will find 48 on roll 'C' and 'D'. If you checked the original tally sheet, the mathematic was done and it came up to 53.”

During cross examination the witness testified that it was the tally officer that changed the results with the consent of the parties. The witness testified that during the correction of the results he only served as the direct representative of the presiding officer who was absent and that he was consulted because the error was committed within his area of supervision.

On February 3, 2015, when all the parties had rested with the production of evidence, the election magistrate rendered his ruling in which he denied the appellant's request for a recount of the entire district # 7. The magistrate stated that the erroneous calculation on the record of the count did not influence the candidates' results and should be considered a harmless error; that the recording of the voters names and number to the Final Registration Roll (FRR) was not a violation of the NEC's procedures since all citizens who have attained the age of 18 years and above with a valid voter registration card may vote at any elections in the voting precinct or electoral district to which he is registered; that the issue of a recount is not granted by the request of an aggrieved party rather, same is granted by operation of law; and that there being no substantial evidence to prove the appellant's suspicion of irregularities, the request for recount was denied.

The appellant excepted to the ruling of the magistrate and appealed to the Board of Commissioners of the National Elections Commission. On February 6, 2015, the appellant filed his bill of exceptions in which he challenged the magistrate's ruling stating therein that the magistrate inadvertently overlooked the evidence and the testimonies of his witnesses that the results were tampered with; that the polls were left opened after 6:00pm; that the NPP did campaign on the day of the elections; and that two of the appellant's valid votes were erroneously declared invalid.

On May 21, 2015, the date assigned for the hearing on the appellant's appeal from the magistrate's ruling, the Board of Commissioners entertained arguments from the lawyers representing the parties. We note that although that the appellant letter of complaint dated December 24, 2014, requested a recount, however at the conclusion of his argument before the Board the appellant prayed instead for a re-run of the elections for the entire District # 7, Lower Bong County.

Subsequently, on May 26, 2015, the Board rendered its ruling affirming the decision of the elections magistrate which denied the appellant's request for a recount of the votes for the entire District # 7, stating that the appellant did not present evidence of elections irregularities to warrant a re-count in said district. We note that the Board did not pass on the appellant's prayer for a re-run but denied the request for a re-count.

The appellant excepted to the Board's ruling, announced an appeal to the Supreme Court and on June 10, 2015, filed a nine (9) count bill of exceptions basically contending that the Board committed reversible error by affirming the ruling of the elections magistrate. The appellant's nine (9) count bill of exceptions being germane, we quote same *verbatim* below, to wit:

“APPELLANT’S BILL OF EXCEPTION

AND NOW COMES appellant and most respectfully pray Your Honour and this Honourable Board of Commissioners to approve this bill of exceptions so that the Honourable Supreme Court can review and correct the many reversible errors made by you in your ruling of the 26th day of May 2015.

1. That, the Honourable Board of Commissioners erred and made a reversible error when the Honourable Board of Commissioners ruled that appellant failed to produce sufficient evidence to warrant a re-run.
2. That the Honourable Board of Commissioners erred and made a reversible error when the Board failed to reverse the ruling of the Magisterial Hearing Officer when they ruled that appellant failed to show sufficient proof his allegations when in-fact all that was alleged in the complaint was testified to by witnesses and corroborated by other witnesses who were not associated with the appellant or his campaign team, but for other candidates and political parties, including some of appellee's own witnesses.
3. That the Honourable Board of Commissioners erred and made a reversible error when the Board failed to reverse the ruling of the Magisterial Hearing Officer when they ruled that appellant did not show that the erroneous tabulation affected the votes of any of the candidates at polling place #2, in Kankalanta and that the erroneous arithmetic derivation of the total valid and invalid votes did not intent to influence or defeat any candidate's result and can only be attributed to human error; when in fact there was alteration of the December 20, 2014 results at polling place #2 Electoral District 7 proved by the complainant during the hearing.
4. That the Honourable Board of Commissioners erred and made a reversible error when the Board failed to consider that the appellant proved the case by the preponderance of evidence when the appellant established both by oral and documentary evidence that the results were tempered with and as such there was a need for a re-run when the presiding officer at polling place 2, admitted that the change in the total ballots retrieved from the ballot box on December 20, 2014 which accounted for 48 ballots instead of 53 was an oversight, even though signed by him and all the candidates representatives present.
5. That the Honourable Board of Commissioners erred and made a reversible error when the Board did not take into account the

admission by the appellee's 2nd witness in person of Eddie A. Queyateh when he admitted that he allowed 25 persons to vote when their names and images were not seen in the FRR, (Final Registration Roll).

6. That the Honourable Board of Commissioners erred and made a reversible error when the Board did not consider the testimony of appellant's fourth witness Jessic Gbaya Kollie that after the polls closed 6:00 P.M., the Presiding Officer re-opened the polls, for which the PO admitted in part; saying that he asked the observers whether he could allow others to vote around 6:00 p.m., meaning that, the allegation of the re-opening of the polls was substantiated; in that, he need not to have asked anybody permission if the polls were still legally opened, which proved that said allegation was true. This was also corroborated by the appellant's seventh witness, Emmanuel Komosee.
7. That the Honourable Board of Commissioners erred and made a reversible error when the Board did not consider the testimony of the appellant's fifth witness, Arthur Kollie, that at Yarbaya there was campaigning on the polling day and that the NPP District Coordinator was giving out food to people at the polling place encouraging them to vote for the appellee, which testimony was corroborated by the appellant's eighth witness Emmanuel Keaye, in violation of the Election Law.
8. That the Honourable Board of Commissioners erred and made a reversible error when the Board did not consider the appellant's protest when at Zargbayama invalid votes were declared for Dr. Tokpa illegally and he was denied a complaint form to which the appellee's witness G. Arrison Fayah admitted to said complaint but denied that he refused to give the appellant's agent a complaint form yet failed to show any proof that Mr. Sibly refused the complaint form.
9. That the Honourable Board of Commissioners erred and made a reversible error when the Board considered all of the appellee's witnesses testimonies as genuine when in fact there was no corroboration of their testimonies other than their lone testimonies contrary to law in this jurisdiction.

WHEREFORE AND IN VIEW OF THE FOREGOING, the appellant most respectfully pray the Honourable Board of Commissioners to approved the appellant's bill of exception so that the Honourable Supreme Court can review and reverse the many reversible errors made in Your Honour's aforementioned ruling in these proceedings and to also grant unto the appellant all further relief that Your Honour will deem just, legal and equitable."

Having exhausted the records encompassing the, appellant's complaint and the bill of exceptions, as well as the ruling of the Board we have identified four (4) pertinent contentions by the parties before us that have direct bearing on the disposition of this appeal. They are:

- 1) Unidentified voters being registered in a referral sheet attached to the Final Registration Roll (FRR) and permitted to vote in Sanoyea Market, voting precinct 6098, polling place # 5.
- 2) Votes being over stated in favor of Madam Jewel Howard Taylor at Kankalan Town voting precinct 6067, polling place # 2.
- 3) The allegation of NPP campaigning on the day of the elections in Yarbayeh Public School voting precinct 6126
- 4) The allegation of the polls being left opened after 6:00pm and the ballot box left unsealed overnight in Beletanda Palava Hut voting precinct 6005

With regards to the contention by the appellant of unidentified persons being registered on a referral sheet attached to the Final Registration Roll (FRR) and permitted to vote, the Board ruled that the magistrate did not err because Article 80 (c) of the 1986 Constitution guaranteed the right of every Liberian citizen to vote and that this right cannot be abrogated merely because the voter's image did not appear on the Final Registration Roll (FRR). We quote *verbatim* the Board's discussion and holding on the said issue below:

“Each polling place has a Final Registration Roll (FRR) of persons that are registered to vote in said polling place. It contains the information about a voter such as name, age, image, precinct code, and identification number.

In count 4 of his bill of exceptions, appellant sets his allegation about the Final Registration Roll (FRR) as follow:

That Your Honor erred and made a reversible error when your Honor did not take into account the admissions by the defendant's witnesses in person of Eddie A. Queyateh when he admitted that he allowed 25 persons to vote when their names and images were not seen in the Final Registration Roll (FRR).

In response to the appellants allegation, the record show that Eddie A Queyateh, testifying on cross-examination, stated verbatim as follows:

Q: “Mr. Witness: You talked about a lady that you could not identify her image on the FRR but yet and still you allowed her to vote. On which sheet did you see or did you identify her name for which you allowed her to vote? A: I did not say I could not identify her image but rather her image was not there. It is our responsibility because they are all Liberian citizens. They got their card...to vote in that polling place. And without that polling place, they cannot vote anywhere. So they got referral sheet within the FRR that give her the credit to take their cards and register their names and number. At the head of their names you put their number and give them the voting right to go and vote for their country. That was what we did.”

Q: Mr. witness: So are you saying that where you do not find the image of a voter that is on the FRR you still have the right to allow them to vote, am I correct? A: It is not correct. We are you saying the FRR carry the image of all voters. Q: Who are responsible to vote within your polling place? A: When a voter comes and you look in the FRR and the image of that voter is not there, they cannot vote within the polling place; you need to refer them to the FRR to give them voting right which you cannot deny them. Q: So Mr. Witness, are you telling this investigation that it is possible that in the FRR we have images of register voters omitted? A: Yes, let me clear your doubt Sir. The problem is that my polling place was extended to 5 polling areas because of the ebola. Q: So Mr. Witness, was it this single lady that you allowed to vote based on referral sheet? A: There were other people who had similar problem that were supposed to vote in that polling place, we give them that right. Q: Can you remember or can you recall the number of persons that you allowed to vote? A: Yes, the number is 25 persons that voted in that place.

The Board notes that contrary to the appellant's above assertion, the foregoing testimony shows that witness Eddie Queyateh did not say "he allowed 25 persons to vote when their names were not seen in the FRR (Final Registration Roll). Rather, witness Queyateh testified about the image of a lady who had a voter's registration card showing she was registered to vote at polling place # 5 that was not in the FRR. The testimony further shows that witness Queyateh said that there "were other people who had similar problem who were supposed to vote in that polling place, we give them that right." And when asked, can you remember or can you recall the number of persons that you allowed to vote? He answered: "the number is 25 persons that voted in that place."

NEC polling and counting manual, concerning a voter's image not appearing in the FRR, provides as follows:

"If the voter cannot be identified through the photo on the VR Card, but the information on the VR card (especially the Identification number corresponds with that in the FRR, the voter will be allowed to vote. (See NEC's Polling and Counting Manuel, Special Senatorial Election, page 17)."

For the benefit of this opinion we herein provide an overview of the steps a voter goes through when he or she arrives at a particular polling place.

Before entering a polling center, a person intending to vote must first present his or voter's registration card to the assigned precinct queue controller (PQC). Once the PQC establishes that the person has a valid voter's registration card, he or she directs the person to the correct polling place in the voting precinct.

Once inside that assigned place, the person is asked to present his or her voter's registration card to the voter identification officer (VIO). The VIO, in the presence of the parties' representatives,

representatives of independent candidates, observers, the media, and civil society organizations, checks the voter's registration card to ascertain whether the person's information and photo from the registration card appear on the FRR for that polling place. If same are verified, the person is directed to the ballot paper issuer. If the person has a valid voter's registration card for that polling place but certain information from the card does not appear on the FRR, the person would still be directed to the ballot paper issuer if one of the following conditions is met:

- *The person bears a valid voter's registration card for the polling place in question but his or her information does not appear in the FRR of the polling place. Before the VIO records the person's particulars in the addition to the FRR, the VIO must ask for two witnesses to certify that they know the person. Upon certification, the VIO will then record the voter's registration card details in the Addition to the "FRR" form, which will appear at the end of the FRR;*
- *The information on the voter registration card and information in the FRR does not match, i.e name or last name is misspelled, but the rest of the person's information such as precinct code, identification number and photo on the voter's registration and FRR matches and the voter belongs to the polling place;*
- *The name and/or particulars on the voter's registration card are unreadable, but the photograph, the voter can be recognized or identified and he or she appears on the FRR;*
- *The person is not found in the FRR but he or she bears a receipt of an Inclusion Form from the Exhibition process, along with his or her voter's card (in this case the VIO will record the voter's VR card details in the "Additions to the FRR" form which will appear at the end of the FRR) or*
- *The person's particular on his or her voter's registration card and on the FRR does not match but he or she bears a receipt of a Correction Form from the Exhibition process, along with his or her voter's registration card.*

Article 80(c) of the Liberian Constitution provides that "every Liberian citizen shall have the right to be registered in a constituency, and to vote in public elections only in the constituency where registered, either in person or by absentee ballot."

Because the right to vote is guaranteed by our Constitution, the Commission cannot deny a voter who has a valid voter registration card showing that he or she is registered to vote from the exercising his or her constitutional right to vote simply because the voter's image does not appear in the FRR. Accordingly we hold that the magistrate did not err."

A review of the 2014 Special Senatorial Polling and Counting Manual define the Final Registration Roll (FRR) as an alphabetical list of names of registered voters

in the polling place which is placed in a plastic envelop. The requisite provision thereof reads thus:

“...if the voter cannot be identified through the photo on the voter registration card, but the information on the voter registration card corresponds with that in the Final Registration Roll (FRR), the voter will be allowed to vote. But if the photo on the voter registration card is missing and the information on the voter registration card especially the ID number does not correspond with that in the FRR, the voter will not be allowed to vote.

The Manual also provides that:

“if the voter holds a voter card but the picture of the voter does not appear in the Final Registration Roll (FRR) of the polling center, witnesses holding voters registration cards that are registered to vote at the same precinct should be brought in to certify the identity of the voter before said voter be allowed to vote.” [Our Emphasis]

The Court says that the NEC presiding officer did not comply with the provisions of the Manual quoted *supra* neither did he establish that the information on the voter registration cards of the unidentified persons corresponded with that of the Final Registration Roll (in terms of the voter identification number, name etc.) which would have made them eligible to vote. Rather, the presiding officer testified that he recorded the names and numbers of the unidentified persons on a ‘referral sheet’ which the Court deems a contravention of the Manual requiring that registered, eligible witnesses certify the identity of the unidentified persons before recording their names and numbers to an ‘additional sheet.’ The term additional sheet as stated in the Manuel implies a listing of certified unidentified voters in which detail information from the voter registration card is recorded and it compliment the Final Registration Roll (FRR). We must remember that the Final Registration Roll (FRR) is contained in a plastic envelop which we can certainly conclude was intended to safeguard the Final Registration Roll (FRR) from being altered, thus the requirement for the ‘additional sheet’ but with the caveat that eligible registered voters certified the unidentified persons.

Moreover, from the trend of the questions posed to the presiding officer with respect to the number of unidentified persons he permitted to vote, he should have known that it was in reference to the number of persons that had similar problem as the lady to their images being unidentifiable on their registration cards and not the number of voters that voted at that polling place. We therefore out rightly reject the Board’s conclusion stating that 25 five persons were allowed to vote and not 25 unidentified persons being allowed to vote. The witness’ assertions that he allowed 25 persons to vote who were not properly identified or certified by qualified registered voters of Sanoyea Market, voting precinct 6098, polling place # 5 is an erosion of the credibility of the elections and a discredit of the results therefrom.

At common law, it is stated that

“where electoral irregularities are so substantial to affect the outcome of the elections or put the results in doubt, the elections will be set aside.” *Elections* § 345 26 AM JUR 2d

Hence, in view of the aforesaid, it is the holding of this Court that the appellant did prove electoral irregularity at the Sanayea Market, voting precinct 6098, polling

place # 5 and that the said irregularity substantially influenced and discredited the electoral results thereat.

We shall now address the second contention regarding the alleged overstating of votes in favor of Madam Jewel Howard Taylor at Kankalan Town, voting precinct 06067, polling place # 2. The Board ruled that the assertions by the appellant was erroneous and inaccurate since the records of the count at said polling place was only corrected to reflect the true and actual number of the total votes cast. For the benefit of this Opinion the Court quotes that portion from the Board’s ruling on this issue as follow:

“With respect to appellant’s allegation that the total number of ballots was overstated at the Kankalan Polling Place #2 in District #7, appellant produced witness Alfred W. Taikerweya who stated that instead of the total number of votes being 48 it was recorded as 52 votes.

In response, Co-appellee Taylor presented witness Eddie Quateh, Presiding Officer of polling place #2 in Kankalan, District #7, who testified that none of the votes obtained by the candidates were changed rather it was an arithmetical error. To corroborate witness Quateh’s testimony, Co-appellee Taylor produced witness Tony Cooper, Electoral Supervisor of District #7. Witness Cooper testified that he was informed about the discrepancies on the Record of the Count of polling place #2, District #7 and that after the record of the count was presented to all party agents, including agent of the appellant and observers, it was discovered that it was an arithmetical error which did not affect the total votes of any of the candidates and same was corrected. (See January 22nd and 27th 2015 minutes).

We herein provide a copy of the record of the count, dated December 20, 2014, as well as the tally sheet dated December 22, 2014, both concerning the votes cast at Kankalan polling place #2:

Republic of Liberia
National Elections Commission (NEC)
Senate Record of the Count Form

No.	Candidate’s Name	Votes Obtained
1.	DUMBAR, Numehn Owen (ND)	1
2	FLOMO, Augustine Jonathan (CDC)	2
3	GBARBEA JR., James Yarkpawolo (ANC)	2
4	GBARYAN, Jefferson (LTP)	0
5	HARWARD-TAYLOR, Jewel C. (NPP)	41
6.	JACKSON, Ranney Banama (UP)	5
7.	JUAH, Edwin Tokpa (NDC)	0

8.	KERKULA SR., Martin Fahnlon (GDPL)	0	
9.	KPANGBAI, Mator M.F. (MPC)	0	
10.	SAGBEH, Benedict Kpakama (VCP)	0	
11.	SAYBAY, Jamrs Karpee (LINU)	0	
12.	SIAKOR, Franklin Obed (LP)	0	
13.	TOKPA, Henrique Flomo (IND)	1	
1. Total Valid Votes		47	52
2. Total Invalid Votes		1	
3. Total Valid and Invalid Votes (1 + 2)		48	53

From a review of the foregoing and consistent with the testimonies of witnesses Eddie Quateh and Tony Cooper, it is clear that the appellant's allegation of votes being overstated is inaccurate. The December 20, 2014 tabulation of the total valid votes which were initially recorded as 47 was crossed out and correctly recorded as 52. The tabulation of the total valid and invalid votes which were initially recorded as 48 was crossed out and correctly recorded as 53.

Moreover, the December 22, 2014 tallying of votes, as recorded on the record of the count form, correctly reflects the total number of votes each candidate received at polling place #2 in Kankalan:

Republic of Liberia
National Elections Commission (NEC)
Senate Record of the Count Form

No.	Candidate's Name	Votes Obtained
1.	DUMBAR, Numehn Owen (ND)	1
2	FLOMO, Augustine Jonathan (CDC)	2
3	GBARBEA JR., James Yarkpawolo (ANC)	2
4	GBARYAN, Jefferson (LTP)	0
5	HARWARD-TAYLOR, Jewel C. (NPP)	41
6.	JACKSON, Ranney Banama (UP)	5
7.	JUAH, Edwin Tokpa (NDC)	0
8.	KERKULA SR., Martin Fahnlon (GDPL)	0
9.	KPANGBAI, Mator M.F. (MPC)	0
10.	SAGBEH, Benedict Kpakama (VCP)	0

11.	SAYBAY, Jamrs Karpee (LINU)	0
12.	SIAKOR, Franklin Obed (LP)	0
13.	TOKPA, Henrique Flomo (IND)	1
1.	Total Valid Votes	52
2.	Total Invalid Votes	1
3.	Total Valid and Invalid Votes (1 + 2)	53

Accordingly, we hold that the Magistrate did not err.”

This Court observes from the records that a mathematical error did occur in the summation of the numbers indicated on the record of the count. The calculation of all the valid votes cast for the candidates on the records of the count sum up to fifty-two (52) and not forty-seven (47). An addition of the one (1) invalid vote to the sum of the valid votes (52) yields a sum of fifty-three (53) total votes cast. Also, the Court notes that this figure of fifty-three (53) votes corresponds with the tally sheet which shows the total number of valid and invalid votes to be fifty-three (53) votes.

The Court also observes that even on the appellant’s copy of the record of the count attached to the complaint the erroneous figure of 48 is clearly stipulated. For the benefit of the Opinion we have inserted the appellant’s copy of the record of the count attached to his complaint of December 24, 2014 which we have reproduced herein below:

Republic of Liberia
National Elections Commission (NEC)
Senate Record of the Count Form

No.	Candidate’s Name	Votes Obtained
1.	DUMBAR, Numehn Owen (ND)	1
2	FLOMO, Augustine Jonathan (CDC)	2
3	GBARBEA JR., James Yarkpawolo (ANC)	2
4	GBARYAN, Jefferson (LTP)	0
5	HARWARD-TAYLOR, Jewel C. (NPP)	41
6.	JACKSON, Ranney Banama (UP)	5
7.	JUAH, Edwin Tokpa (NDC)	0
8.	KERKULA SR., Martin Fahnlon (GDPL)	0
9.	KPANGBAI, Mator M.F. (MPC)	0

10.	SAGBEH, Benedict Kpakama (VCP)	0
11.	SAYBAY, Jamrs Karpee (LINU)	0
12.	SIAKOR, Franklin Obed (LP)	0
13.	TOKPA, Henrique Flomo (IND)	1
1. Total Valid Votes		47
2. Total Invalid Votes		1
3. Total Valid and Invalid Votes (1 + 2)		48

A summation of the total votes on this record of the count stated supra will yield a total vote of 53 and not 48 as erroneously stated. More besides, the appellant has not challenged the number of votes stipulated on the tally sheet but rather has challenged the final summation of the numbers that were tabulated. Had the appellant taken the time to review the sheet, he would have seen that indeed the math was inaccurate and not a fabrication of the final figure. It is the law that harmless error will not vitiate an election results, neither will an election result be declared void on account of an error committed by an officer which has no bearing on the elections. The New Elections Law, Chapter 6.2 (3), *Johnson v. NEC*, Supreme Court Opinion, December Term A.D 2005.

In view of the aforesaid, the Court holds that the mathematical error being harmless cannot be deemed as an election irregularity and therefore the results from Kankalan Town, polling place #2, are declared valid and shall not be disturbed.

We shall now address the third contention of the appellant regarding the alleged campaigning by an NPP supporter in favor of Madam Jewel Howard Taylor on the day of the elections at the Yarbayeh Public School voting precinct 6126. The Board dismissed said allegation stating that the appellant's evidence was too speculative and remote since the appellant's witnesses did not identify the said NPP supporter. Again we herein quote the Board's discussion and ruling on this issue which reads as follow:

“The record shows that the appellant produced witnesses Arthur Kollie and Darwo Varflah who testified that women partisans of NPP were distributing food to voters and since NPP's candidate was the only woman candidate in the race, the women were campaigning for co-appellee Taylor. In response to this testimony, co-appellee Taylor produced witness Harrison Fayiah, presiding officer who testified that there were no women distributing food to voters on Election Day.

The record also shows that when witness Arthur Kollie was asked on cross examination whether those women who were allegedly distributing food were identified or had NPP tags on them, he did not answer this question directly but rather said that because those who were distributing food were women and co-appellee Taylor was the only woman candidate in the race, he concluded that the women were campaigning on her behalf. (Minutes of January 8, 2015, page 6.)

The Board says such reasoning is too speculative, faulty, and has no legal basis. We hold that the Magistrate did not err.”

The Compiled Guidelines and Regulations provides that:

“...the official campaign period shall end 24 hours before Elections Day.” Compiled Guidelines and Regulations § 24.4. pg. 42

The Court believes that the essence of this regulation quoted *supra* is to prohibit political contestants, their supporters and well-wishers from any attempt to interrupt, impede or influence the elections process on the day of the elections through campaigning. As a matter of fact, the Elections Law provides that:

“anyone who influences or attempts to influence the results of any elections is guilty of an elections offense and is punishable by a fine or imprisonment for not more than six months or both.” The New Elections Law Chapter 10.1 (a).

For an election to be declared void on account of an elections offense, (eg: campaigning) the electoral offense must be committed by the candidate or by a third party who has the consent and knowledge of the candidate to commit such an offense. Speaking on the issue of setting aside an election on account of an election offense the New Elections Law stipulates that:

“no decision that an election is void shall be made on ground of an election offense committed by a **person other than the candidate and without his knowledge or consent.**” The New Elections Law Chapter 6.2 (5). [Emphasis Ours]

The records reveal that the appellant’s two witnesses, one an observer of the Liberia National Union (LINU) Party and the other, an agent of the appellant, testified to the alleged campaign activities by the NPP at the Yarbayeh Public School voting precinct, could not specifically identify the campaigner; neither did they establish that the campaigners were canvassing and soliciting votes at the behest or knowledge of co-appellee, Madam Jewel Howard Taylor at the said voting precinct. The records show that witness Arthur Kollie testified that he could not identify the emblem of the campaigners, a statement that further confirms that the alleged campaigners were not properly identified as to who they were, or by whose authority they were canvassing.

In view of the aforesaid, the Court agrees with the Board that the mere fact of the identified persons being women their action cannot be attributed to co-appellee Madam Jewel Taylor she being the only female candidate contesting the senatorial seat for Bong County; that absent any proof that these women were campaigning with the knowledge and consent of Madam Taylor said allegations cannot be accepted as true.

It should be quickly noted here that having established that the witnesses failed to prove that the alleged canvassing activities were being conducted by co-appellee Madam Jewel Howard Taylor or with her consent and knowledge however, the witnesses did establish that canvassing activities in the nature of food distribution were being conducted at the Yarbayeh Public School voting precinct by unidentified persons on the day of elections. We are inclined to believe the credibility of the testimonies given the fact that same was confirmed by a disinterested observer, from LINU who is unconnected to the appellant. Besides

the provision of the elections guidelines which prohibits campaigning 24 hours before the election day, the guidelines also stipulate the following:

“no person is allowed to enter or remain in a voting precinct or polling place except the following categories of people:

- a) a member of the voting precinct or polling place staff,
- b) a Commissioner or an official of the commission authorized by the Commission authorized by the Commission,
- c) a person eligible to vote who has not completed voting.
- d) a political party’s agent, independent candidates’ agent, observer or media representative, wearing a badge showing accreditation by the Commissioner,
- e) a person authorized to help an illiterate or disabled voter in accordance with the elections law and this regulation.”

The guidelines mandate that all the aforementioned categories of people **must wear a badge issued by the NEC at all times.** [Our Emphasis]. Therefore the mere presence of unidentified persons on the premises of precinct on the day of the elections and engaged in the activities as described herein s a clear indication of campaigning, a serious breach and a transgression of the elections laws and tends to erode the transparency of the elections process.

We therefore hold that the Board erred by narrowing its conclusion on the premise that no electoral irregularity occurred merely because the witnesses failed to identify the person(s) canvassing or that they could not be linked to the co-appellee Madam Jewel Howard Taylor. To the converse, we hold that an election irregularity was committed when unidentified person(s) not included in the category of person(s) authorized to be at a polling place or precinct and permitted to engage in the distribution of food which eventually brought them into direct contact with the voters, thus compromising the integrity of the elections process.

The Court shall now address the fourth contention of the appellant regarding the allegations of the polls being left opened after 6:00pm and the ballot box left unsealed overnight at the Beletanda Palava Hut voting precinct 6005. The Board in rendering its ruling on this issue dismissed same on grounds that the appellant did not produce sufficient evidence to support his allegation. The relevant excerpt of the Board’s discussion and ruling reads thus:

“the record show that the appellant produced witness Jessie Gbayokollie who testified that polling at Beletanda Palava Hut was extended forty-five minutes after the polls were declared closed at 6pm and that the observers were taken out for a drink. Co-appellee Taylor produced witness Joseph Jallah who testified on the cross as follow:

“Q: Mr. Witness, When did you declare the poll closed? A: 6:00pm

Q: Mr. Witness, Was that a declaration of mandate set by NEC or was it on your discretion? A: It was set by NEC

Q: Mr. Witness, After you close the poll, am I correct to say that it was after said closure that you inquired from observers and poll watchers to have the poll re-opened: A: No. Q: Mr. Witness, if you say no and the poll was still open what was the reason for you asking

the poll watchers and the observers to open the polls? A: I said it was closing time when the queue controller came to me and say that they had people that came from the farm and they wanted to vote. So I asked my co-workers and the observers and they told me no. When they said no, right there we closed [the poll] and everyone went their way.”

Before concluding this opinion, the Board takes recourse to the principle enounced by the Honorable Supreme Court in the case Johnson v. National Elections Commission et al, Supreme Court Opinion, October Term, A.D. 2005, herein above cited. In that case, the Supreme Court emphasized that there must be a strong presumption in favor of upholding the validity of election result and one who challenge the results of an elections must produce sufficient evidence to overcome this presumption. In several opinions of the Supreme Court including the case Pantee v. Tulay also herein above cited, the Supreme Court said that mere allegation is not proof and that one who alleges must provide evidence to prove his/her case. Appellant failed to overcome the presumption referred to herein above and to produce sufficient evidence to warrant a recount.”

Section 4.8 (2) of The New Elections Law provides that “the poll shall be opened from eight o’clock in the morning until six o’clock in the evening”. The 2014 Special Senatorial Polling and Counting Manual provide that:

“at exactly 6:00 pm, the presiding officer in charge of the voting precinct shall instruct the voting precinct queue controller to ensure that all voters in the voting precinct have joined the voting precinct queue.

If the voting precinct does not have a door; or if the queue is too large to fit inside the voting precinct, the queue controller shall stand at the end of the line and ensure that no late voter attempts to join the queue after 6:00 pm.”

A review of the Board’s ruling quoted *supra* on this issue revealed that the Board cursorily relied on the testimony of its presiding officer, Joseph Jallah without referring to the damning testimonies of the appellant’s agent, Jessie Gbayakollie and the observer from the CDC, S. Emmanuel Kollie. The Court says that in passing on the testimony of the presiding officer, the Board should have been very cautious and meticulous, given the fact that the allegations of electoral irregularities at Beletanda were against this same presiding officer and as such reason dictates that the presiding officer would not be expected to give incriminating testimony against himself.

A careful scrutiny of the entire testimony of the presiding officer raises a strong presumption of doubt as to the accuracy of his account of the events that occurred at closing time at the said voting precinct. For example, during direct examination the presiding officer testified thus:

“While going through the voting process **around closing time** my queue controller informed me that people have arrived from the farm and wanted to vote. I told her that being a team we should consult on whether to add an additional 45 minutes. After consultation with other team-mates, to include the poll watchers and observers, it was agreed that the polls be closed.” [Emphasis Ours]

From the above quoted excerpt the Court is bewildered as to what the presiding officer meant by the phrase ‘around closing time.’ Were the polls closed before 6:00pm and not exactly 6:00pm thus disfranchising voters? Were they already in the queue just before 6:00pm?

We do not find it cumbersome to again restate the requisite provision of the stated the 2014 Special Senatorial Polling and Counting Manual provide thus:

“at exactly 6:00 pm, the presiding officer in charge of the voting precinct shall instruct the voting precinct queue controller to ensure that all voters in the voting precinct have joined the voting precinct queue.

If the voting precinct does not have a door, or if the queue is too large to fit inside the voting precinct, the queue controller shall stand at the end of the line and ensure that no late voter attempts to join the queue after 6:00 pm.”

What was the reason(s) for the presiding officer consulting with his staff and observers for an additional 45 minutes when the law mandates that polling places be closed exactly 6:00pm?

Why did the queue controller abandon the queue to inform the presiding officer that people were coming to vote when by law he, the queue controller, is mandated to position himself at the end of the line at exactly 6:00 p.m. to ensure that no late voter(s) attempt to join the queue after 6:00pm?

These unanswered questions beclouds the testimony and the integrity of Presiding Officer Joseph Jallah, especially so when there was no independent testimony to verify his lone testimony. The Court notes that unlike the appellees, the appellant produced an independent and disinterested witness, S. Emmanuel Kollie of the Congress for Democratic Change (CDC) who attested to the testimony of the appellant’s observer that besides the polls remaining opened after 6:00pm and an additional 45 minutes added, the ballot box was also left unsealed. The allegation of the unsealed ballot box was also not refuted by the appellees through the preponderance of evidence. It is the law that where damning testimony has been placed on the records, unless rebutted such will constitute a prima facie evidence of the fact. *Davies v. Republic*, Supreme Court Opinion, October Term A.D 2008. *Massaquoi v. Republic*, Supreme Court Opinion, October Term, A.D. 2013. The evidence required of the appellees in this case should have been those team-mates, poll-watchers and observers that the presiding officer claimed were consulted when he testified on the issue of the polls remaining opened after 6:00pm, but which they failed to do.

Preponderance of evidence according to the Supreme Court, is that great ‘weight of evidence’ or evidence which is more credible and convincing to the mind that is superior and weighty. *American Life insurance Company v. Sandy* 32LLR 338, 350 (1984).

Hence, given the questionable testimony of the appellees’ lone witness against the verified testimonies of the appellant’s two witnesses, this Court holds that the evidence do establish that the Beletanda Palava Hut voting precinct 6005 remained opened after the closing time of 6:00pm for an additional 45 minutes, contrary to the expressed mandatory requirement of the law and that the ballot-boxes were left unsealed until the next day, thus invalidating the votes cast at that precinct.

Before proceeding further with this Opinion, we must make an observation here with respect to the fact that the parties before us, the appellant, the NEC and co-appellee, Madam Jewel Howard Taylor did not give any indication as to the exact polling places in Yarbayeh Public School voting precinct 6126 and Beletanda Palava Hut voting precinct 6005 that were compromised by electoral irregularities. Unlike the polling places that were clearly named and described in Kankalan Town, and Sanoyea Market, it is unclear as to which particular polling place (s) in Yarbayeh Public School and Beletanda Palava Hut were actually affected by the electoral irregularity. Given the fact that each voting precinct has one (1) to eight (8) polling places depending upon the total number of registrants in the particular precinct and that a voting precinct is a location (eg: a building or structure) where voters vote in an election; **The Special Senatorial Polling and Counting Manual, pg. 3.** This Court therefore takes judicial notice of the information contained on the official website of the NEC listing the 27 voting precincts of electoral District # 7, Bong County and the number of polling places within each precinct, which show that Yarbayeh Public School and Beletanda Palava Hut comprised of three (3) and two (2) polling places, respectively. We herein below incorporate the listing from the NEC official website.

**REPUBLIC OF LIBERIA
NATIONAL ELECTIONS COMMISSION
2014 VOTING PRECINCTS LIST**

Voting Precinct code	COUNTY: BONG	ELECTORIAL DISTRICT : 1		GENERAL POLLING PLACES
	Locality	Address	Voters	
6005	Beletanda Palava Hut	Beletanda		2
6009	Boryormah Palava Hut	Boryormah One		3
6010	St. Paul Catholic School	Cephas Town		3
6011	Borlarmu Public School	Degei		2
6012	Boudala Public School	Boduala		2
6029	Gbamokollieta Palava Hut	Gbamokollieta		2
6030	Wumai Palava Hut	Wumai Town		2
6047	Gbo Gbo Ta Public School	Gbo Gbo Ta		2
6061	Haindii Clinic	Haindii		4
6066	Stephen-Ta Palava Hut	Stephen-Ta		1
6067	Kankalan Public School	Kankalan Town		2
6070	Kelebei Public School	Kelebei		3
6076	Winnie-Ta Public School	Winnie-Ta		3
6080	Gbonokalai Palava Hut	Gbonokalai Town		2
6087	Nuamue Public School	Nuamue I		2
6089	Nyeablia Public School	Nyeablia Town		4
6090	Nancy B. Doe Elem. School	Nyean Town		3
6094	Piata Palava Hut	Piata		2
6095	Popota Public School	Popota		3
6097	Sanoyea Lutheran School	Sanoyea		3
6098	Sanoyea Market	Sanoyea		5
6222	Samah Town Palava Hut	Samah		1
6119	Lawana Public School	Varnery town		3
6120	Volomeni Palava Hut	Volomeni Town		2
6126	Yarbayeh Public School	Yarbayeh Town		3
6131	Zamkpe Yama Palava Hut	Zamkpe Yama		1
6134	Gbalala Clinic	Gbalala Town		2

Accordingly, we hold that as the NEC being the authorized institution for the establishment of voting precincts and polling places not having been meticulous to ascertained or mentioned in which polling places within the two precincts the irregularities had occurred, and since the minutes of the Board of Commissioners'

of the NEC repeatedly referred to both precincts as ‘Yarbayeh Public School and Beletanda Palava Hut polling centers’, the Court conclude that the irregularities occurred in the entire voting precincts of Yarbayeh Public School and Beletanda Palava Hut.

The Court having painstakingly addressed and passed upon the Board’s ruling and the contentions of the appellant as raised in his bill of exceptions, is left with one salient issue for the final disposition of this appeal and that is, whether or not the electoral irregularities identified in the three polling places warrant a recount or a re-run of the elections in the entire District # 7, Lower Bong County. In other words, do the irregularities in Sanoyea Market # 5, Yarbayen, and Belatenda precincts warrant a re-count or re-run in the entire Electoral District # 7.

The Court shall take recourse to the records, the applicable laws and a perspective of the said District # 7 in addressing this issue. The appellant’s original complaint of December 24, 2014 contained general challenges or protests to the numbers on the tally sheets being overstated in favor of the NPP candidate, the ballots being altered and unidentified persons allowed to register and vote. And, based on these challenges, he requested a recount of the ballots in the entire District # 7 without specific reference to any particular precinct within said district. However during the investigation, the appellant and his witnesses specifically referred to irregularities in four (4) voting precincts, but the Court has already held in this Opinion that the irregularity in Kankalan Town precinct, polling place # 2 was a harmless numerical error. The Court subsequently determined that there were irregularities in three precincts which already were passed upon. The three precincts are:

- i) Sanoyea Market # 5, precinct code 6098
- ii) Yarbayen Polling Center, precinct code 6126
- iii) Beletanda Polling Center, precinct code 6005

Given the fact that courts shall of their own volition take judicial notice of public historical facts that are so well known as not to be the subject of reasonable dispute, this Court takes judicial notice of the well-known fact that the Electoral District # 7 of Lower Bong County comprises of twenty-seven (27) voting precincts located in two (2) administrative districts namely, Fuamah and Sanoyea. Also noted is the fact that a voting precinct is a location (eg: a building or structure) where voters vote in an election; that the number of voting places within a voting precinct range from one (1) to eight (8); that the number of registered voters determines the number of polling place to be established in a voting precinct, and that the maximum number of registered voters assigned to vote in a voting place is five-hundred (500). **The Special Senatorial Polling and Counting Manual, pg. 3.**

That being said, the Court deem it necessary and expedient for a better appreciation of its analysis and conclusion to give a full listing of the twenty-seven (27) voting precincts in the two (2) administrative districts. In the administrative district of Fuamah there are fourteen (14) voting precincts namely:

- i) Samah Town Palava Hut, precinct code 6112
- ii) Barlarmu Public School, precinct code 6011
- iii) Gbalala Clinic, precinct code 6134
- iv) Kankalan Public School, precinct code 6067
- v) Yarbayeh Public School, precinct code 6126
- vi) Boudala Public School, precinct code 6012

- vii) Popota Public School, precinct code 6095
- viii) Haindii Clinic, precinct code 6061
- ix) Nyeablia Public School 6089
- x) St. Paul Catholic School, precinct code 6010
- xi) Lawana Public School, precinct code 6119
- xii) Nancy B. Doe Elementary School, precinct code 6090
- xiii) Zamkpe Yama Palava Hut, precinct code 6131
- xiv) Nuamue Public School, precinct code 6087

In the administrative district of Sanoyea there are thirteen (13) voting precincts which are:

- i) Gbonokalai Palava Hut, precinct code 6080
- ii) Kelebei Public School, precinct code 6070
- iii) Volomeni Palava Hut, precinct code 6120
- iv) Stephen-Ta Palava Hut, precinct code 6066
- v) Gbamokollieta Palava Hut, precinct code 6029
- vi) Wumah Palava Hut, precinct code 6030
- vii) Sanoyea Luthren School, precinct code 6097
- viii) Sanoyea Market, precinct code 6098
- ix) Winnie-Ta Public School, precinct code 6076
- x) Piata Palava Hut, precinct code 6094
- xi) Beletanda Palava Hut, precinct code 6005
- xii) Gbo Gbo Ta Public School, precinct code 6047
- xiii) Boryormah Palava Hut, precinct code 6009

Of these twenty-seven (27) voting precincts in the electoral districts of Fuamah and Sanoyea the Court has held that irregularities did occur in three (3) of these voting precincts: Sanoyea Market, precinct code 6098, polling place # 5, Yarbayeh Public School voting precinct code 6126 and Beletanda Palava Hut voting precinct code 6005, which we determined were squarely against the elections law and guidelines. The appellant made no mention of irregularities in the remaining twenty-four (24) precincts within District # 7. As this Court has opined that it will not pass on issues not raised in pleadings, we can correctly conclude that there being no complaint of irregularities in the said twenty-four (24) precincts, the results of the votes therefrom shall not be disturbed.

But should this Court order a re-count or a re-run in the three (3) voting precincts?

As earlier stated the appellant in his original complaint of December 24, 2014, initially requested a recount of the entire District # 7, Lower Bong County. On appeal before the Board of Commissioners, the appellant prayed for a re-run of the entire district instead of a re-count. The Board denied a re-count but did not pass on the issue of a re-run of the elections.

A recount is the counting of ballots already cast and counted, resorting to the ballot boxes retained by the elections commission, whereas a re-run is new elections or a repeat of the elections in a polling place or a whole constituency. *The New Elections Law § 6.2; Compiled Guidelines and Regulations (2011), Regulations on Challenges and Complaints Arising before and during Elections Article 7 (5).*

The New Elections Law provides that

“if at the trial of a contest, it is found that a candidate has committed or has attempted to commit bribery or undue influence, his elections shall be declared void.” The New Elections Law §6.2 (4).

The Supreme Court has held that

“it will not declare an elections result void on account of an error committed by an officer which has no bearing on the elections.”
Johnson v. NEC, Supreme Court Opinion, October Term, A.D. 2005.

This Court says that the converse to this proposition of our holding quoted *supra* is that an election can be annulled where misconduct, fraud or corruption is committed on the part of any election official, governing body or other person. 26 AM JUR 2d *Elections* § 348. It is also stated that:

“the power to throw out an entire election results of a district for irregularities must be exercised very sparingly and with the idea in mind that neither an individual voter nor a group of voters is to be disfranchised at an elections except for compelling reasons.”. *Id.* *Elections* § 345

Further,

“the mere casting of fraudulent votes is not sufficient to throw out a return if it is possible that the fraudulent votes can be purged and the remaining votes retained.” *Id.* *Elections* § 348.

The Court having held that indeed election irregularities were committed in three (3) areas within District # 7, Bong County namely, Sanoyea Market Precinct, polling place # 5, Yarbayeh Public School and Beletanda Palava Hut polling precincts; and in accordance with the principles of law stated *supra*, and more importantly , in the absence of any complaint or evidence of irregularities in the remaining twenty-four voting precincts of District # 7 we hold that the ballots cast in those three areas having been compromised, a recount of ballots already cast and counted will not suffice to cure the irregularities; rather, a re-run or a repeat of the elections by voters registered in those precincts herein specified will restore the credibility of the election process thereat, and it so ordered.

WHEREFORE and in view of the facts and circumstances, the laws and principles stated herein above and in consonance with the law that this Court is authorized to enter the requisite judgment that a lower tribunal should have rendered in this case, the NEC, this Court hereby declares null and void the ballots cast in Sanoyea Market precinct, polling place # 5, voting precinct code 6098, Yarbayeh Public School voting precinct code 6126 and Beletanda Palava Hut voting precinct code 6005, respectively and a re-run or new elections ordered in the said polling place and precincts, respectively, with the participation by registered voters within a period of sixty (60) days.

The Clerk of this Court is ordered to send a mandate to the National Elections Commission to resume jurisdiction this case and give effect to this judgment. Costs are disallowed.

Appeal Granted

When this case was called for hearing Counsellor Cooper W. Kruah of the Henries Law Firm appeared for the appellant. Counsellor Joseph N. Blidi appeared for Co-appellee National Elections Commission. Counsellor Theophilus C. Gould of Kemp & Associates appeared for Co-appellee, Madam Jewel Howard Taylor.