

CORRECTED AND ADOPTED

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
MARCH TERM, A.D. 2018

PRESENT: HIS HONOR FRANCIS S. KORKPOR, SR.,.....CHIEF JUSTICE
“ HIS HONOR KABINEH M. JA’NEH,.....ASSOCIATE JUSTICE
“ HER HONOR JAMESETTA H. WOLOKOLIE,.....ASSOCIATE JUSTICE
“ HIS HONOR PHILIP A. Z. BANKS, III.,.....ASSOCIATE JUSTICE
“ HER HONOR SIE-A-NYENE G. YUOH,.....ASSOCIATE JUSTICE

Tuesday, March 27, 2018
2ND DAY’S SESSION

The Honorable Supreme Court of the Republic of Liberia, sitting in its March Term, 2018, met this morning at the hour of 10:00 a.m., for the transaction of business with His Honor Francis S. Korkpor, Sr., Chief Justice, presiding.

OFFICERS OF COURT PRESENT.

COUNSELLORS PRESENT: Joseph Nagbe Blidi, Peter W. Howard, Kuku Y. Dorbor, Joseph P. Gibson, Dallamah J. Sulonteh, Anthony Mason, G. Weifueh Alfred Sayeh, Jallah A. Barbu, Luther Yorfee, Golda A. Bonah Elliott, George D. W. Segbe, Samuel G. Wureh, Roland F. Dahn, Denise Sokan, J. Emmanuel R. Berry, Amara M. Sheriff, Gartor Tate, and Dexter Tiah, Sr.

His Honor Francis S. Korkpor, Sr., ordered and the Marshal cried the opening of the day’s session. Thereafter, the Court was led in devotion by Rev. J. Joel Gould, Chaplain, Supreme Court of Liberia.

The correction and adoption of the minutes of Monday, March 12, 1st day’s session (Opening Ceremony), was suspended.

THE CASE: GARRISON YEALUE, JR, REPRESENTATIVE CANDIDATE, DISTRICT # 4, NIMBA COUNTY, INFORMANT/ APPELLANT, VERSUS THE NATIONAL ELECTIONS COMMISSION, RESPONDENT/APPELLEE, AND GONPUE L. KARGON, CO-RESPONDENT/CO-APPELLEE. ACTION: BILL OF INFORMATION AND APPEAL, IS CALLED FOR HEARING.

REPRESENTATIONS: “*The Informant/appellant is represented by the Barbu and Howard Inc., and present in Court are Counsellors Peter W. Howard and Jallah A. Barbu. And respectfully submit.*” “*The co-respondent/co-appellee, National Elections Commission (NEC) is represented by Counsellor Joseph N. Blidi. And respectfully submits.*” “*The Co/respondent/co-appellee, Gonpue L. Kargon, is represented by the Henries Law Firm and present in Court are Counsellors Kuku Y. Dorbor and Anthony Manson. And respectfully submit.*”

EACH SIDE WAS GIVEN 20 MINUTES TO ARGUE

SUBMISSION: *“At this stage, one of counsels for the informant/appellant most respectfully prays Your Honors and this Honorable Court to have both the bill of information and the appeal consolidated and heard, since the both matters present similar issues of fact and law. And respectfully submits.”*

RESISTANCE: *“Counsel for 1st respondent/appellee, National Elections Commission, interposes no objection, since in truth and in fact this matter has been pending for a protracted period of time. And respectfully submits.”*

RESISTANCE: *“Counsel for 2nd respondent/ co-appellee, Gonpue Kargon, objects to the consolidation of both the motion and the appeal, same being that our law does not support the taking of an appeal from the implementation of a Supreme Court Mandate. Counsel cites the case: John H. Mathis, et-al of the Debt Court, Informants/appellees, versus the Liberia Agriculture Company (LAC), represented by its Comptroller, 34LLR, Syl. 1, states that ‘ordinarily, an appeal is available to a party aggrieved by a final judgment of a court, except the Supreme Court. For an appeal taken from a final judgment executing a mandate of the Supreme Court has the tendency to frustrate the execution of the Court’s mandate and therefore cannot be given consideration as would obtain in an ordinary appeal’ .*

Similarly in the case: The United States Trading Company Redundancy Workers Versus the United States Trading Company, 34LLR, 142, Syl. 1, States that: While the right of appeal is guaranteed to every person, against whom a final judgment is rendered, it is also true that a decision of the Supreme Court of Liberia is absolute and final and that no appeal can be taken therefrom.

Counsel says therefore that there can be no appeal taken from the execution of a Supreme Court mandate. The only remedy available is by way of a Bill of Information. To have filed both a bill of Information and an appeal is contrary to law. And respectfully submits.”

The following questions were posed to counsel for co-respondent/co-appellee by the Bench:

Ques: Has the mandate of the Supreme Court been enforced?

Ans: Yes, Your Honors.

Ques: What does the law say about consolidation?

Ans: When similar issues are raised in two pleadings, to save time, the court can grant consolidation.

Ques: Are you asking for the appeal to be dismissed?

Ans: Yes, Your Honors.

Ques: Did you file a motion to dismiss?

Ans: No, Your Honors.

Ques: Are you saying that we should decline the hearing of the appeal from a final judgment of the National Elections Commission?

Ans: The appeal is from the execution of a mandate of the Supreme Court and should not be entertained.

At this stage, one of counsels for the 2nd respondent/co-appellee concedes the application for consolidation and withdraws the objection made before this Honorable Court. And respectfully submits.

THE COURT: *“At the call of the case, the counsel for the appellant requested that the appeal and the Bill of Information filed be consolidated. The 1st respondent, National Elections Commission (NEC) interposed no objection to the request for consolidation. The 2nd respondent, Gonpue Kargon, though initially objected to the application for consolidation, subsequently conceded that in fact the two matters can and should be consolidated. Under the law when there are two pleadings or matters involving similar issues, the law permits consolidation in order to save time and resources. We see that the bill of information filed by the appellant as well as the appeal brought to us from the conduct of the re-examination ordered by this Court present similar issues of law and facts. Therefore, by application of law, the two matters can be consolidated. The request made by counsel for appellant for consolidation of the two matters is hereby granted. The parties are ordered to proceed with the argument of both the motion to dismiss and the bill of information. And it is hereby so ordered.”*

One of counsels for the informant/appellant argued as per his brief, and presented the following issues for determination by the Bench:

- “1. *Whether the action of the Board of Commissioners of the National Elections Commission restricting the re-examination of the raw data to only the record of count, same being the subject of the original controversy that prompted the re-examination was a misinterpretation of the mandate of the Honorable Supreme Court and as such warrants a reversal?*
2. *Whether the re-examination team and the National Elections Commission committed reversible error when they wrongly interpreted the Opinion of the Honorable Supreme Court that the word ‘raw data’ as used by the Supreme Court is confined to a single data sheet (Record of Count) and not to include any other instrument used in generating the disputed results from Kpanglay Public School Polling Place #1?*

3. *Whether the National Elections Commission's failure to adhere to the straight forward and unequivocal mandate of the Honorable Supreme Court renders the entire re-examination process conducted illegal and reversible?*
4. *Whether the Board of Commissioners of the National Elections Commission committed reversible error when it affirmed the report of her team sent to conduct the re-examination even though said team overlooked the Supreme Court's instructions/mandate by limiting the entire process to a single Record of Court?*
5. *Whether the National Elections Commission's failure to adhere to the clear and simple mandate of the Honorable Supreme Court renders the NEC latest decision declaring co-appellee Gonpue Kargon winner of the Representative seat of District #4, Nimba County illegal and reversible?*
6. *Whether the decision of the Board of Commissioners of NEC to have denied Complainant/appellant's complaint emanating from the wrong procedure adopted by the National Elections Commission team designated to conduct the re-examination of the raw data of March 3, 2018 without firstly citing the complainant/appellant for a formal hearing of said complaint was a violation of complaint's/ appellant's right to due process of law?*
7. *Whether the refusal of the Board of the National Elections Commission to grant the legal counsel of the complainant/appellant's request for continuance knowing that the Board had earlier issued out a notice of assignment for the purpose of only reading the re-examination report and not for the hearing of complainant's complaint was a violation of the complainant's counsel right to notice before hearing as enshrined in our statutes in this jurisdiction?*
8. *Whether the request to spread a submission on the minute of a hearing by counsel is a matter of right under our legal jurisprudence and that same cannot be denied by either a judicial or quasi-judicial body?"*

The following questions were posed to one of counsels for the informant/appellant by the Bench:

Ques: What is the mandate of the Supreme Court that you alleged was not properly executed?

Ans: The mandate of the Supreme Court to the National Elections Commission was to conduct a re-examination of the raw data in District #4, Polling place #1, Bong County, which raw data consist of all documents associated with the ballots cast.

Ques: What are all the documents that you are making reference to as raw data?

Ans: The raw data should include the queue control sheet, final registration roll, polling place journal, presiding officer worksheet, cast ballot papers, and records of count.

Ques: What were the two documents that you alleged the National Elections Commission considered as the raw data?

Ans: The National Elections Commission only examined the records of counts that were derived from the votes cast, and the data sheet that they alleged was wrongly transposed.

Ques: What was the issue that the Supreme Court ruled on in the first appeal?

Ans: The issue was that the magistrate did not give us due process when he proceeded to change the result of the election, and the Supreme Court mandated that the raw data be authenticated by the National Elections Commission.

Counsel for the 1st respondent/co-appellee, National Elections Commission, argued as per his brief, and presented the following issues for determination by the Bench:

“1. Whether the NEC properly executed this Honorable Court’s mandate?”

The following questions were posed to counsel for 1st respondent/co-appellee, NEC, by the Bench:

Ques: Did the National Elections Commission conclude the exercise as mandated by the Supreme Court of Liberia when the case was remanded?

Ans: Yes, Your Honors.

Ques: Did you certificate the co-appellee, Mr. Gonpue Kargon?

Ans: No, Your Honors.

One of counsels for the 2nd respondent/co-appellee, Gonpue Kargon, argued as per her brief, and presented the following issues for determination by the Bench:

- “1. *Whether the National Elections Commission, in conducting the re-examination exercise, was in adherence to the Mandate of the Supreme Court?*
2. *Whether the NEC was in error when it restricted the re-examination exercise only to the raw data sheet, which is the record of count?*
3. *Whether the NEC’s Board of Commissioners was in error when it endorsed and affirmed the re-examination report?*
4. *Whether the appellant was in error when he filed another complaint against the conduct of the re-examination while the re-examination was in progress?*

The following questions were posed to one of counsels for 2nd respondent/co-appellee by the Bench:

Ques: Is Mr. Gonpue Kargon your client?

Ans: Yes, Your Honors

Ques: Has your client taken seat at the National Legislature?

Ans: No, Your Honors.

Ques: From where do you think the appellant obtained the document that declared him as winner of the polls?

Ans: The appellant got the computer print-out of the data wrongly transposed by the NEC workers from the tally center.

Ques: Who do you think gave that document to the appellant?

Ans: The NEC staffs at the tally center might have given it to the appellant, but there was error in the posting of the data.

Ques: Your adversary contends that the Board of Commissioners ordered specific persons to conduct the re-examination process, but some other folks showed up to carry out the exercise. What is your response to this assertion?

Ans: The folks that showed up to conduct the re-examination exercise were employees of the National Elections Commission. The Board of Commissioners ordered the Training Director and the Director of Operation to conduct the re-examination, but because they were not available, their deputies acted.

Counsel for 2nd respondent/co-appellee rested on the opening argument.

The following questions were posed to one of counsels for the informant/appellant by the Bench:

Ques: How do you achieve the genuineness of the Tempered Evidence Envelop (TEE) that you alleged was tempered with?

Ans: To achieve the genuineness of the TEE, the NEC should have gone one step back to examine the ballot papers and other documents to determine whether the TEE contains the actual information.

Ques: Did you raise the issue of fraud before the NEC's Board of Commissioners?

Ans: Yes, Your Honors.

Ques: Did you come to the Court for clarification of the Court's mandate?

Ans: The bill of information is the process we used to seek the clarification from the Court. That is why we filed this bill of information, Your Honors.

Ques: Are you calling for a rerun of the election?

Ans: No, Your Honors, we are asking for the re-examination process to go a step backward beyond the TEE.

Ques: Are you saying that the instrument (TEE) signed by your representative is not genuine?

Ans: Yes, Your Honors. That instrument should be reviewed thoroughly. Our representative did not sign any such instrument.

Counsel for the informant/appellant in closing, prayed the Honorable Supreme Court to grant informant/appellant's bill of information and appeal, set aside the decision of the Board of Commissioners of the National Elections Commission, and grant all other and further relief deemed just, legal and equitable. And respectfully submitted.

Counsel for 1st respondent/co-appellee, National Elections Commission, in closing, prayed the Honorable Supreme Court to deny informant/appellant's bill of information and appeal and confirm the decision of the Board of Commissioners. And respectfully submitted.

Counsel for 2nd respondent/co-appellee, Gonpue Kargon, in closing, prayed the Honorable Supreme Court to deny informant/appellant's bill of information and appeal and to confirm the decision of the Board of Commissioners. And respectfully submitted.

THE COURT: "RULING RESERVED. MATTER SUSPENDED."

THE CASE: SUSANNAH LORPU MATOR, REPRESENTATIVE CANDIDATE, DISTRICT #4, BONG COUNTY, APPELLANT, VERSUS NATIONAL ELECTIONS COMMISSION & ROBERT F. WOMBA, UNITY PARTY REPRESENTATIVE CANDIDATE, APPELLEES. ACTION: APPEAL IS CALLED FOR HEARING.

REPRESENTATIONS: *“Appellant is represented as per records and present in Court are Counsellors Dallamah J. Sulonteh and George D. W. Segbeh, Sr. And respectfully submit.” “The co-appellee, National Elections Commission, is represented as per records and present in Court is Counsellor Joseph Nagbe Blidi. And respectfully submits.” “The co-appellee, Robert F. Womba, is represented by Counsellor Albert S. Sims in association with Counsellor Golda A. Bonah Elliott of the Sherman & Sherman, Inc., and present in Court is Counsellor Golda A. Bonah Elliott. And respectfully submits.”*

EACH SIDE WAS GIVEN 30 MINUTES TO ARGUE

One of counsels for the appellant, argued as per his brief, and presented the following issues for determination by the Bench:

- “1. *Whether the rebutted, uncontroverted and unimpeachable evidence of breaking of seals on ballot boxes, admitted to by the NEC in its final ruling, prior to the recount exercise and in the absence of the appellant is illegal and unlawful and undermines and compromises the integrity, sanity and credibility of the outcome of the entire recount exercise?*
2. *Whether the Board of Commissioners (BOC) of the NEC erred in its ruling by stating that the appellant did not object to its mandate ordering a recount of votes in nine (9) polling places instead of thirteen (13) polling places as requested by the appellant?*
3. *Whether the BOC erred when it deliberately failed to address the defiant and deliberate refusal of the Recount Team to reconcile the total voting materials including the unused, spoiled and discarded ballot papers at the nine (9) polling places as mandated by its?*
4. *Whether the BOC erred when it failed to address the issues of the record of counts which should have been placed in the ballot box at Shankpala Polling Place Number 3 but was found in the Magistrate of Elections Office and that Co-appellee Robert Womba reportedly received 246 votes at Shankpala Polling Place Number 1, while the record of counts show that the total votes cast was 177?”*

The following questions were posed to one of counsels for the appellant by the Bench:

Ques: What is the role of the office of bill of information?

Ans: The office of the bill of information is to inform the Court of the violation or improper execution of the Court's mandate.

Ques: What aspects of the Court's mandate that was not properly executed?

Ans: The Board of Commissioners instructed that the ballots be recounted, as per the mandate of the Supreme Court. Prior to the recount exercise, we noticed that some of the seals on the ballot boxes had been broken.

Ques: Were all of the seals broken from the ballot boxes?

Ans: Most of the seals were broken, Your Honors.

Ques: The National Elections Commission (NEC) admitted that only one of the five (5) seals on only a ballot box was broken. Can one gain access to the content of the ballot box if one of the five seals is broken?

Ans: Yes, Your Honors. Once one of the seals is broken, the content of the ballot box is compromised.

Ques: What did you discover after you noticed that the seal had been broken?

Ans: Your Honors, we had earlier complained of ballot stuffing, so when we noticed the seals broken, our suspicion was substantiated. We requested the NEC to reconcile the documents, but they refused.

Ques: Are you saying that during the recount process, the reconciliation of the election papers/documents was not done.

Ans: No, Your Honors. We raised the issue but NEC denied us that process. Reconciliation is the first step in the recount process.

Ques: Are you requesting for a re-run of the election in District #4, Bong County?

Ans: Yes, Your Honor, along with the upcoming senatorial elections.

Ques: Should the re-run involve the other candidates?

Ans: Yes, Your Honors. If the other candidates want to be part of the process, they can participate, but most of them are exhausted.

Counsel for the co-appellee, National Elections Commission waived argument and respectfully submitted.

One of counsels for the co-appellee, Robert Womba, argued as per her brief, and presented the following issue for determination by the Bench:

“1. Whether the appellant’s bill of information and the allegations therein are sustainable?”

The following questions were posed to one of counsels for the co-appellee, Robert Womba by the Bench:

Ques: What constitutes a recount?

Ans: The recounting of the ballot papers, Your Honors.

Ques: Don’t the records need to be reconciled?

Ans: Most of the processes are done during the counting process. The recount process does not involve all the processes that were initially carried out during the counting of the ballots.

Ques: What is the content of the ballot box after the entire process?

Ans: The ballot box contains the cast ballot papers, record of count, and other documents.

Ques: Don’t you look at all the records/documents in the ballot box during the recount process?

Ans: The summary of the information of the ballot cast is already available to the parties, so only the counting of the ballots is done during the recounting process.

Ques: Can the seal of a ballot box be accidentally broken?

Ans: Yes, Your Honor.

Ques: Does it really matter if the seal is broken, since the information is already available to the parties.

Ans: It does not really matter, Your Honors.

Counsel for the co-appellee rested on the opening argument, and in closing, prayed the Honorable Supreme Court to deny appellant's appeal. And respectfully submits.

One of counsels for the appellant in closing, prayed the Honorable Supreme Court to grant appellant's appeal, order a rerun of the elections, and grant unto appellant any and all further relief. And respectfully submits.

THE COURT: "RULING RESERVED. MATTER SUSPENDED."

There being no other matter to claim the attention of the Court, His Honor Francis S. Korkpor, Sr., Chief Justice, ordered Rev. J. Joel Gould, Chaplain, Supreme Court of Liberia, to give the benediction. The Marshal was ordered to adjourn the Court to meet on Wednesday, March 28, 2018, at the hour of 10:00 a.m. And said order was carried out.

Respectfully Submitted:

Atty. Sam Mamulu
ACTING CLERK, SUPREME COURT, R.L.