

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2020

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

Mr. Wilmot Paye, suspended National Chairman of the Unity)
Party, the National Executive Committee (NEC) of the Unity)
Party, Montserrado County, Liberia Informant)

Versus)

BILL OF
INFORMATION

The Leadership of the Unity Party of Liberia, by and thru Mr. Isaac)
F. Manneh, Sr., National Vice Chairman for Governmental)
Relations of the Unity Party, and the entire leadership of the Unity)
Party and also to include the Eleven elected Officers of the Unity)
Party the eleven appointed officers, fifteen counties of Liberia)
Chairpersons, the seven Senators of the Unity Party serving in the)
House of Senate of the National Legislature of Liberia, and the)
fifteen members of the House of Representatives from the Unity)
Party, and all those operating under said authority..... Respondents)

GROWING OUT OF THE CASE:)

Mr. Wilmot Paye, suspended National Chairman of the Unity)
Party, the National Executive Committee (NEC) of the Unity)
Party, Montserrado County, Liberia Petitioner)

Versus)

PETITION FOR
DECLARATORY
JUDGMENT

The Leadership of the Unity Party of Liberia, by and thru Mr. Isaac)
F. Manneh, Sr., National Vice Chairman for Governmental)
Relations of the Unity Party, and the entire leadership of the Unity)
Party and also to include the eleven elected officers of the Unity)
Party the eleven appointed officers, fifteen counties of Liberia)
Chairpersons, the seven Senators of the Unity Party serving in the)
House of Senate of the National Legislature of Liberia, and the)
fifteen members of the House of Representatives from the Unity)
Party, and all those operating under said authority..... Respondents)

Heard: July 2, 2020

Decided: September 4, 2020

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

These proceedings grow out of a petition for declaratory judgment which was summarily transferred to the Supreme Court *en banc* to make a determination on the purported constitutional questions raised in the petition for declaratory judgment.

The records show that on February 5, 2020, Mr. Wilmot J. M. Paye, the informant herein, filed a 17 count petition for declaratory judgment before the Civil Law Court, Sixth Judicial Circuit, Montserrado County, sitting in its December Term

A.D. 2019, against the leadership of the Unity Party, and all elected senators, representatives, and executive officers of the Unity Party, the respondents.

The informant alleged, *inter alia*, that in contravention of the Unity Party's Constitution, he was "illegally suspended and/or removed" from his position as National Chairman of the said political party and without a hearing consistent with his due process constitutional right. The informant also alleged that he is unable to get redress for the injury suffered regarding his removal because Section 4, Article X of the Constitution of the Unity Party makes the decision of the Executive Committee of the Unity Party non-reviewable by any appellate body thus, binding and final. The informant then prayed the trial court as follows:

1. "...place a stay order on all proceedings carried out by the respondents in the name of the National Executive Committee of the Unity Party and/or investigation that will have the tendency to remove him from his position as National Chairman and order the parties returned to *status quo ante* pending the outcome of the petition for declaratory judgment; and,
2. to declare informant's removal as unconstitutional and reverse the decision of the respondents and to restore him to his previous position as the National Chairman of the Unity Party, and as the legitimate legal head of the Unity Party..."

On the same date of the filing of the petition for declaratory judgment, that is, on February 5, 2020, the trial court presided over by His Honor Peter W. Gbeneweleh by a Judge's Order, mandated the clerk to issue a writ of summons for service upon the respondents, for the latter to file their returns on or before February 15, 2020. Included in the Judge's Order, we observed a paragraph typed in bold capital letters, wherein the respondents were ordered to "stay all further proceedings pending the outcome of the case." We have mentioned this aspect of the Judge's Order because during the pendency of the hearing of the case by this Court, the informant filed a bill of information to the effect that the respondents had failed to comply with the stay orders contained in the said Judge's Orders. But moreover, we comment on the said issue for the purpose of instruction to our lawyers regarding the purpose of the Judge's Orders. The practice and procedure within our jurisdiction regarding said orders is that the document is only addressed to the clerk of the trial court, who in turn includes the instructions contained therein in the writ of summons, the latter which is then served on the party being sued. The party being sued is never served with the Judge's Orders only with the writ of summons. The purpose of the writ of summons is for notice to the party being sued to defend or attend upon the cause, to obey the instructions therein and for the trial court to assume jurisdiction over the party. We reviewed the writ of summons issued by the clerk of the trial court in this case and which was served on the respondents, and note that same did not carry nor included the stay order contained in the Judge's Order. As such, we hold that the respondents being without knowledge of the stay order, they cannot be held in contempt for violating same. Accordingly, the bill of information is denied.

The records show that on February 17, 2020, upon being served with the trial court's precepts, the respondents filed returns thereto wherein they alleged that the petition for declaratory judgment is inapplicable to the informant; that the informant is currently being investigated which necessitated his suspension during the course of the investigation; that his suspension is not equivalent to removal; that the investigation and subsequent suspension of the informant from his position as National Chairman is in consonance with the Constitution of the Unity Party; that the informant's constitutional right to due process was not violated; and that the trial court should dismiss the petition for declaratory judgment.

On February 18, 2020, the trial court presided over by his Honor Peter W. Gbeneweleh assigned the case for the disposition of law issues. In disposing of the law issues, Judge Gbeneweleh ruled that the suspension of the informant from his position as National Chairman raised constitutional issues which required an interpretation of Chapter 1, Article 2, and Chapter 3, Article 20 of the 1986 Constitution. Judge Gbeneweleh also ruled that the trial court is not qualified to address what he perceived as the constitutional issues raised by the parties in their respective pleadings and thereupon ordered the clerk of the trial court to transfer the entire case on the petition for declaratory judgment to the Supreme Court *en banc* for a determination.

The said ruling of Judge Gbeneweleh being germane to the matter before us, we have decided to quote same *verbatim* in order to fully grasp the underlining reason for his decision to forward the entire case on the petition for declaratory judgment to this Court *en banc*, to wit:

“...The first issue before this court is whether or not the Unity Party of Liberia's by-laws and constitution which specifically provides that the action of the executive committee of the party to suspend, to expel an official or partisan is final and binding and therefore whether it violates Chapter 1 Article 2, Chapter 3, Article 20 of the Liberian Constitution of 1986 in the absence of due process.

The second issue is whether or not this court has jurisdiction to declare the right/rights of the petitioner to file a petition for declaratory judgment?

Whether or not the denial of appellate review by the Unity Party By-Laws and Constitution for an expelled and suspended official in this case, the national chairman of the Unity party is in violation of the 1986 Constitution of the Republic of Liberia, specifically Chapter 1, Article 82.

For the first issue the action of the respondent/respondents to suspend the petitioner without due process surely contradicts the 1986 Constitution at Chapter 1, Article 2 and Chapter 3, Article 20. As to the answer to issue number 2, the respondents' action to suspend the petitioner violates the due process requirement as provided for in Chapter 3 Article 20 of the Liberian Constitution. As to issue number

3, the issue of jurisdiction, this Court has authority in keeping with Chapter 43 of the Civil Procedure Law. And the final issue number 4 the review requirement which is denied, violates Chapter 3, Article 21 of the Liberian Constitution.

In support of the respondents' argument of their returns against the petition, the respondents relied on the laws contained in the returns and amended same to include Sections 16.5 and 9.83 of the Civil Procedure Law. Section 2.9(w) of the Elections Law, the Election Commission has the authority to issue citation for the appearance before it of any political party or its leaders in connection with any complaint. Sections 43.1 and 43.5 all of the Civil Procedure Law of the Republic of Liberia.

THE COURT: We have listened to the arguments of both parties and also perused the pleadings filed before this Honorable Court. We observed that constitutional issues have been raised and that this court, which is subordinate to the Honorable Supreme Court of Liberia, cannot determine the constitutional issues in the pleadings. This court says that this matter is cognizable before the Honorable Supreme Court of Liberia which is the Constitutional Court in this Republic to decide the unconstitutionality regarding the suspension of the petitioner by the respondents.

Wherefore, and in view of the foregoing, the Clerk of this Court is hereby ordered to forward this matter to the Honorable Supreme Court of Liberia through the office of the Clerk of the Honorable Supreme Court of Liberia for further hearing and determination. And it is hereby ordered..."

Pursuant to above quoted ruling, the records were certified and then transferred to this Court.

We have carefully examined the transcribed records, especially the content of the petition for declaratory judgment, the returns thereto, and the trial judge's ruling on the law issues, and we are of the opinion that Judge Peter W. Gbeneweleh committed reversible error in transferring this case to the Supreme Court *en banc* for the following reasons, to wit:

- (i) That the allegations raised in both the petition for declaratory judgment and the returns thereto are all factual issues which require the taking of evidence, a requirement which the Supreme Court is prohibited by law from embarking upon;
- (ii) That we fail to comprehend how the alleged removal of the informant from his position in a political party, albeit allegedly without due process can be cognizable before the Supreme Court at first instance, when this also

requires the taking of evidence which this Court is precluded by law from embarking upon;

- (iii) That we are also perturbed as to how Judge Gbeneweleh expects this Court to assume original jurisdiction over a petition for declaratory judgment which also entails the taking of evidence for which the Supreme Court is prohibited by law.
- (iv) More importantly, it is only when the constitutionality of an Act of the Legislature is challenged that the trial court is required by law to forward the case to the Supreme Court to pass on the constitutionality of the Act.

We observed that Judge Gbeneweleh, in disposing of the law issues, answered all the constitutional issues he crafted that he deemed germane to the disposition of those purported constitutional issues, but then failed to rule the case to trial for the taking of evidence to establish the veracity of the factual allegations in the pleadings. Thereafter, any party being dissatisfied with his final judgment, could pursue a regular appeal, if they so desire, at which time, with all of the evidence on the factual issues being submitted, this Court would then be legally situated to review and make a final determination on the entire case, including any constitutional questions.

The Supreme Court has opined that prior to forwarding a matter containing constitutional issues for this Court's attention, the circuit court must first take evidence and satisfy itself as to the truthfulness of the factual allegations set out in the pleadings, and then pass on the constitutional issues before referring same to the Supreme Court for final determination. *In Re: Petition of Benjamin J. Cox* 36 LLR, 837, 850 (1990); Article 66 of the Constitution.

The facts in the *Benjamin J. Cox case* reveal that Benjamin J. Cox graduated from the Louis Arthur Grimes School of Law but the Dean of the Law School refused to submit his name for admission into the Bar on grounds that he is an American citizen, and that section 17.1 of the Judiciary Law allows only Liberian citizens to be admitted into the practice of law. Cox filed a petition for declaratory judgment wherein he alleged he is a graduate of the Law School, that he had attained the age of 21, that he was in good and moral standing, ready and prepared to sit the bar exams, and that section 17.1 of the Judiciary Law which prohibited him from sitting the bar exams violates Article 11 (c) of the Constitution which guarantees that "all persons are equal before the law and are therefore entitled to the equal protection of the law." In view of the aforesaid the trial court summarily transferred the case to the Supreme Court for a constitutional interpretation of section 17.1 of the Judiciary Law, in light of Article 11 (c) of the Constitution.

The Supreme Court dismissed the petition and among other things, in addressing the purported constitutional question, expressed concern over the fact that the trial court failed to take evidence to establish the factual allegations by Cox that he is a graduate of the Louis Arthur Grimes School of Law; that he had attained the age of twenty-one years; or that that he was of good moral standing before transferring the case to the Supreme Court which by law is precluded from taking evidence.

The Supreme Court in acknowledging its constitutional responsibility under Article 66 of the Constitution as the final arbiter of constitutional issues held as follow:

“Whilst the Constitution of Liberia makes this Honourable Court the final arbiter of constitutional issues, it does not prohibit courts of records clothed with relevant authority from passing upon constitutional issues raised before them. Indeed, the use of the word "final" clearly infers that the matter must first have been heard by a lower court. Otherwise, the word "only" would have been used. For the latter word would mean that this Honourable Court is the exclusive forum to determine constitutional issues. The use of the former word means that this Honorable Court is the ultimate determinant of constitutional issues and that once those issues are so decided by this Court, the matter is laid to rest. It is therefore the prerogative of the trial court judges to pass upon the constitutional issue raised before them.” *In Re: Petition of Benjamin J. Cox* 36LLR, 837, 850 (1990).

Also in the *Benjamin J. Cox case* the Supreme Court was called on to pass on a constitutional challenge to section 17.1 of the Judiciary and provide a constitutional interpretation to section 17.1 of the Judiciary Law in light of Article 11 (c) of the Constitution. Now, unlike the facts in the *Benjamin J. Cox case* we are unable to perceive how the alleged challenge to the Unity Party’s Constitution will require the Supreme Court to provide an interpretation thereto, or how the suspension of the informant in the present case raises constitutional questions to the extent that the full Bench of the Supreme Court is being called upon to overturn established principles of law that prohibits it from receiving oral and documentary evidence and interpreting provisions of the Constitution as a means of reaching a determination on the suspension of the informant. We hold that because the petition for declaratory judgment contains factual issues, this Court is unable to exercise original jurisdiction over same, plus the fact that a challenge to the Unity Party’s Constitution is not a constitutional issue as contemplated by law.

Now before concluding this Opinion, we deem it very important to pass on the scholarship of Judge Peter W. Gbeneweleh ruling referring this case to the Full Bench of the Supreme Court. We observed that Judge Peter W. Gbeneweleh’s ruling rendered on February 18, 2020, is legally bland in that it lacks recitation of the facts or the evidence; there are no legal citations supporting the judge’s conclusion; and there are no analysis showing the synthesis of the law to the facts. To say the least, this is unscholarly and unacceptable for a circuit judge. The Supreme Court in cautioning judges to desist from such poor performances and exert their very best has held as follow:

“...Judges are masters of their courts and hence, they should avoid the suspicion of arbitrary conclusion, promote confidence in their intellectual integrity and contribute useful precedent to the growth of the law by stating the reasons for their actions. Their judgments should be complete and certain in themselves, indicating with reasonable clarity the decision which the court has rendered. Therefore, every final ruling/judgment rendered by a judge in the disposition of a cause of action must be by a detailed ruling containing clear and concise summaries of the facts and the evidence of the

case, the relevant law citations relied upon, and the rationale upon which the ruling is made. Judges must exert their best efforts in contributing towards the growth of the law by researching and clearly articulating their rulings and not renege on their duties that are clearly within their scope of authority by transferring the responsibility thereof to the Supreme Court...” *The Management of the United States Trading Company v. Morris et al.*, 42 LLR 191, 200 (2002). Judicial Canon No. 34; Judicial Order No. 4, November 2012.

We therefore hold that the Supreme Court cannot assume original jurisdiction over a petition for declaratory judgment.

WHEREFORE AND IN VIEW OF THE FOREGOING, the bill of information is denied and the petition for declaratory judgment remanded to the Civil Law Court, Sixth Judicial Circuit, Montserrado County for determination on its merits. The Clerk of this Court is ordered to send a mandate to the court below, ordering the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs to abide final determination. AND IT IS HEREBY SO ORDERED.

Case Remanded

When this case was called for hearing, Counsellors Arthur T. Johnson and Alhaji Swaliho A. Sesay appeared for the informant. Counsellor J. Johnny Momoh appeared for the respondents.