

**IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING  
IN ITS MARCH TERM, A.D. 2021**

**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. Othello Doe Nagbe, MOVEE’s candidate for the )  
2020 By-Election, District # 2, Sinoe County, )  
Republic of Liberia..... Appellant )

VERSUS ) APPEAL

The National Elections Commission (NEC) )  
.....1<sup>st</sup> Appellee )

AND )

Mr. Samson Q. Waih, CDC’s candidate for the 2020 )  
By-Election, District # 2, Sinoe County, Republic )  
of Liberia.....2<sup>nd</sup> Appellee )

Growing Out of the Case: )

Mr. Othello Doe Nagbe , MOVEE’s candidate for the )  
2020 By-Election, District # 2, Sinoe County, )  
Republic of Liberia..... Appellant )

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of Liberia.....2<sup>nd</sup> Appellee )

Growing Out of the Case: )

Mr. Othello Doe Nagbe , MOVEE’s candidate for the )  
2020 By-Election, District # 2, Sinoe County, )  
Republic of Liberia..... Appellant )

VERSUS ) ELECTION IRREGULARITIES

The National Elections Commission (NEC) )  
.....1<sup>st</sup> Appellee )

AND )

Mr. Samson Q. Waih, CDC’s candidate for the 2020 )  
By-Election, District # 2, Sinoe County, Republic )  
of Liberia.....2<sup>nd</sup> Appellee )

Heard: March 24, 2021

Decided: April 1, 2021

## MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

On December 8, 2020, the National Elections Commission (NEC) conducted Special Elections to fill vacancies in the House of Senate, created by the expiration of the terms of 15 senators, and two (2) By-Elections to fill vacancies in the House of Representatives created by the deaths of Hon. Munah Pelham Youngblood of District #9, Montserrado County, and Hon T. Nabge Sloh of District # 2, Sinoe County, respectively. The present appeal emanates from a challenge to the Sinoe County by-election via a complaint filed by the appellant, Othello Doe Nagbe, against the 1<sup>st</sup> appellee, the National Elections Commission (NEC), and the 2<sup>nd</sup> appellee, Samson Q. Wiah, the presumptive winner.

In his complaint dated December 9, 2020, the appellant alleged that there were several election irregularities during the conduct of the by-election, in District # 2, Sinoe County, in voting precincts of Nanakru, Settrakru, Tuzonburg, Gmakekkpo, and Kunwiah that he claimed as being his Party's 'stronghold'. The appellant therefore requested a re-run of the by-election in the entire District. We quote verbatim hereunder the appellant's complaint, to wit:

"December 9, 2020

The Elections Magistrate  
National Elections Commission (NEC)  
Greenville, Sinoe County  
Republic of Liberia

Ref: Election Irregularities in Electoral District #02, Sinoe County

Dear Election Magistrate:

Kindly consider this communication as a formal complaint to the National Elections Commission on irregularities observed during the conduct of the December 8, 2020 Representative By-Election in Electoral District Two (2), Sinoe County.

Here below are the specific issues leading to our complaint:

1. Late arrival of ballot boxes in some voting precincts, including Nana Kru, Settra Kru, Tuzon, Gmakenkpo and Kunwiah;
2. Late opening of polls in the above mentioned areas;
3. The denial of voters in some precincts, like Settra Kru and Nana Kru;
4. Placing the ballot boxes in isolation of our party agents/observers specifically in Kwituo Juaryen
5. The denial of the right to complaint form by NEC staff in Kwituo Juaryen, Settra Kru and Gmakenkpo

Mr. Magistrate, to further explain, it was reported by our party agents/observers and some voters that polling started very late in areas considered as our strongholds: Gmakenkpo (39071), Nana Kru (39034), Settra Kru (39049), Tuzon (39006) and Kunwiah (39002). In Nana Kru, polling started after 2:00 p.m.; voting started at 2:24 p.m. in Tuzon; in Settra Kru the polling was also delayed until 11:25 a.m., while in Gmakenkpo and Kunwiah the polling started at 11 a.m. Also, in Kwituo Juaryen our agents/observers were denied access to the ballot boxes for more than four (4) hours from the beginning of the

polling/voting, as they were placed in separate areas far from the [view] of our agents/observers.

Therefore, we write, requesting a RERUN of the election in the aforementioned areas before any result is announced in electoral district two, in order to maintain the integrity of the National Elections Commission on the following grounds:

1. Whereas the late arrival of ballot boxes and late starting of voting/polling is a gross violation of section 4.8(2) of the New Elections Law of Liberia, which states that “the poll shall be opened eight O’clock in the morning until Six O’clock in the evening.
2. Whereas, the refusal of NEC staff at the Kwituo Juaryen (39042) Precinct, to place the ballot box in open view is a violation of Section 4.11 of the New Elections Law of Liberia: At the opening of the polls, the ballot box shall be opened and shown to all voters, representatives of political parties or independent candidates and election observers who are present in the polling station. After it has been confirmed that the ballot box is completely empty, it shall be closed, sealed and placed in open view of the voters.
3. Whereas, the denial of our party agents/representatives the right to complaint form at the polls by NEC officers at Kwituo Juaryen, Settra Kru and Gmankenkpo is a gross and intentional act, intended to deny us our due victory, and it is in breach of the New Elections Law of Liberia, especially Section 5.9.
4. Whereas, the action of the National Elections Commission through its Polling Staff assigned in the aforementioned Polling Centers is in violation of Article 77(b), of the Liberian 1986 Constitution, which guarantees the right of an individual person to register and vote in Public Elections and Referenda.

Mr. Magistrate, this situation, which is in gross violation of Sections 4.8(2), 11.4 and 5.9 of the New Elections Law of Liberia, has denied most of the voters in our strongholds the right to exercise their political franchise to vote during the conduct of the December 8, 2020 representative By-Election in District #2, Sinoe County.

In view of the facts and circumstances surrounding the conduct of the December 8, 2020 Representative By-Election in District #2, especially being marked by series of grave irregularities, in breach of the electoral laws and Constitution of the Republic of Liberia; We now, wherefore reaffirm our request for RERUN of the District #2 By-Election; and pray your indulgence to grant us same; in the spirit of peace, transparency and the protection of our democracy as well as the laws of the Republic of Liberia..

Kindly submitted:

Signed: \_\_\_\_\_  
Gabriel Bokey Threason, Sr.  
Chairman

Movement for Economic Empowerment (MOVEE)  
Sinoe Chapter

Attested: \_\_\_\_\_  
Othello Doe Nagbe  
Representative Candidate  
District Two (2) By-Election

CC: Office of the National Chairman, Rainbow Alliance (RA)”

The records show that on January 2, 2021, when the complaint was called for hearing, the appellant's counsel entered a submission on the records, requesting that the NEC's Elections Magistrate, Stanislaus Wesseh assigned in Greenville, Sinoe County, recuses himself from presiding over the appellant's complaint as he had previously represented the NEC at a pretrial conference conducted on December 14, 2020, involving the same subject matter raised in said complaint, and had expressed an opinion thereat, hence his presiding over said complaint constitutes conflict of interest.

The Elections Magistrate, Stanislaus Wesseh ruled denying the appellant's submission for his recusal stating that he never served as legal counsel for the NEC during the pre-trial conference, and that the averments in the appellant's complaint did not raise any issue of conflict of interest. The appellant only noted exceptions to this ruling and pursued no further steps for an appellate review of this interlocutory ruling by the Elections Magistrate; hence we will not belabour this point.

On the same date, that is, January 2, 2021, the Elections Magistrate proceeded with the investigation into the appellant's complaint. The appellant produced eight (8) witnesses, inclusive of himself, while the 1<sup>st</sup> and 2<sup>nd</sup> appellees presented six (6) and three (3) witnesses, respectively.

Following arguments *pro et con*, the Elections Magistrate dismissed the appellant's complaint on grounds that while it is true that the polls opened late, voters who were in the queue by 6pm were allowed to vote; that the late opening of the polls on the day of election did not affect the right of registered voters; that the polls were not closed at 6:00 p.m.; that the queue controller, in consonance with the New Elections Law, proceeded to stand at the end of the queue behind the last person in the queue, thus allowing all voters in the queue to vote; and that the appellant lacked the legal authority to represent the interest of voters who were allegedly denied their rights to vote.

The appellant noted exceptions to the final ruling of the Elections Magistrate and announced an appeal to the Board of Commissioners of the NEC, who heard the appeal on February 26, 2021, and entered final ruling on March 11, 2021, affirming the ruling of the Elections Magistrate which dismissed the appellant's complaint and declared the 2<sup>nd</sup> appellee, Samson Q. Wiah the winner of the December 8, 2020, Representative By-Election for District #2, Sinoe County.

On March 17, 2021, the appellant filed an eight (8) count bill of exceptions which we have reviewed and which in our view, raises only one issue germane for the disposition of this appeal. It is trite law that the Supreme Court will not pass on all of the issues raised in the bill of exceptions and that only issues that are germane to the disposition of the appeal will warrant the Court's attention. *Universal Printing Press v. Blue Cross Insurance Company*, Supreme Court Opinion, March Term, 2014; *Halaby et al. v. Cooper*, Supreme Court Opinion. The issue, vehemently complained of by the appellant, is the allegation regarding the late opening and early closing of the polls in certain precincts within District # 2, Sinoe County. The appellant claims that said violation denied voters their right to vote and named the precincts of Nanakru, Sattakru, Tuzonburg, Gmamkenkpo, and Kunwiah as the affected areas.

Incidentally, all the parties to the present appeal concede in their respective briefs that the polls were opened late in certain precincts within District # 2, Sinoe County.

However, they disagree as to the time of the closing of the polls on elections day, December 8, 2020, in said District # 2.

The appellant and his witnesses testified that the polls were opened after 8:00 a.m. and were all closed at 6:00 p.m., a violation of section 4.8(2) of the New Elections Law, thus denying voters their right to vote; that due to the late opening, some voters in areas of their 'stronghold' did not vote; and that some voters left the queue to return to their farms and to attend to other activities due to the late opening of the polls.

The 2<sup>nd</sup> appellee, Samson Q. Wiah and his witnesses testified that although the polls opened late, they remained opened up to 9:30 p.m. allowing voters who were already in the queue the opportunity to vote.

The NEC confirmed the late opening of the polls in certain areas and the late closing of the polls to afford all voters who were already in the queue their right to vote.

All of the above attest to the late opening of the polls on the day of election; however, the appellant claim that the polls were closed at 6:00 p.m., thus some voters of his 'stronghold' and others were not allowed to vote due to the late opening and the closing of the polls at 6:00 p.m. and to substantiate this allegation he paraded nine (9) witnesses. The appellant himself and his 1<sup>st</sup> witness, Solomon K. Davis, testified that they were told by some voters and heard on the radio, respectively, that voters were allegedly deprived from voting as the polls were opened after 8:00 a.m. but closed at 6:00 p.m. This Court notes that besides these testimonies being hearsay evidence, they amount to mere allegations because the alleged disenfranchised voters never appeared to testify in substantiating or corroborating these allegations.

Similarly, the appellant's third, fourth, and fifth witnesses, in persons of Moses K. Wleh, Abraham Tarpeh, and Archibald Bartee respectively, merely testified that the polls opened late and closed at 6:00 p.m, again without any corroboration considering that they were each assigned to a different precinct.

Additionally, the appellant's seventh witness, Rufus Shongbe, testified that he had earlier left the polling center after he was informed that his name was not on the Final Registration Roll (FRR), but he later returned at 6:00 p.m. at which time his name was found on the FRR, and thereafter, he was allowed to vote. This testimony also does not substantiate the appellant's allegation that the polls were closed at 6:00 p.m. but rather corroborates the 1<sup>st</sup> and 2<sup>nd</sup> appellees' claim that the polls remained opened later than 6:00 p.m. Given this witness's testimony that he returned to the polling precinct at 6:00 p.m. and did vote, the appellant's allegation to the polls being closed at 6:00 p.m. must crumble.

The appellant's eighth and ninth witnesses, T. Sorie Sackor and Samuel Chea respectively, testified that voting started after 12:00 noon at their respective centers and closed at 6:00 p.m.; that many persons became impatient while awaiting the arrival of the NEC's staff and the election materials, and left their various voting centers to go about their daily activities; that the polls were closed at 6:00 p.m. in Nanakru, and people who were standing in the queue after 6:00 p.m. were not allowed to vote. While these testimonies indicate that the polls were closed at 6:00 p.m., they allude to voters, other than the witnesses themselves, who were allegedly denied the right to vote. The alleged disenfranchised voters were never present at the hearing of the complaint to

offer their testimonies in that regard. But more to that, the testimonies by these last two witnesses are at variance with the appellant's seventh witness who testified that although he returned to his designated polling precincts at 6:00 p.m., he was allowed to vote.

Unlike the appellant and his witnesses, the 1<sup>st</sup> appellee's witnesses and the 2<sup>nd</sup> appellee and his witnesses testified that the polls remained opened beyond 6:00 p.m., and that the records to that effect were recorded in the Presiding Officers' journals. To substantiate these testimonies, the presiding officers' journals which indicated that the polls remained opened beyond 6:00 p.m. were subpoenaed by the 2<sup>nd</sup> appellee and the 1<sup>st</sup> appellee, the custodian of said records produced same which were testified to, and entered into evidence. This evidence was never rebutted by the appellant.

This Court reiterates the settled principle of law that mere allegations do not constitute proof, and unless said allegations are supported by evidence, they shall remain mere allegations because it is evidence alone which enables the court, tribunal, or administrative forum to pronounce with certainty the matter in dispute. *Universal Printing Press v. Blue Cross Insurance Company*, Supreme Court Opinion, March Term, 2015; *Kamara et al. v. The Heirs of Essel*, Supreme Court Opinion, March Term, 2012; *Kpoto v. Williams*, Supreme Court Opinion, March Term, 2008.

This Court however takes judicial notice that it is the law that section 4.8(2) of the New Elections Law mandates that "polls be opened from eight o'clock in the morning to six o'clock in the evening." *New Elections Law*, Rev. Code 11:4.8(2). This is the law, and the NEC must apply every effort to comply therewith. Nonetheless, it is a known fact that the electoral process in Liberia is fraught with problems of inadequate resources and logistics that pose serious challenges to the NEC, the electorates and candidates as seen in the present case.

Further, it was not the intention of the framers of the above cited provision of the New Elections Law to disenfranchise voters. This provision of the law does not mean that exactly at six o'clock in the evening the ballot boxes should be closed and voters turned away. If this was the case, the appellant's seventh witness, Rufus Shongbe would not have been allowed to vote, as his testimony indicates that he returned to his precinct at 6:00 p.m. The NEC by authority promulgated enabling regulations governing the opening and closing of polls on elections day *viz* at six o'clock in the evening, the queue controller positions himself or herself behind the last person already in the queue, and voting continues until the last person in the queue casts his or her vote and then the poll is closed. *Regulations on Polling and Counting*, Article 6.3 (2016).

Having said this, we ask the question, were the results of the election in District #2, Sinoe County impacted by the late opening of the polls? We say no.

This Court has said that the overriding objective of what the Elections Law seeks to accomplish in all electoral competitions is a secured, transparent, and accurate determination of the results. This means that the voters' votes which are expressions of their choice must be respected. In order to achieve this objective, voters must be allowed to exercise their right to vote and not be disenfranchised. The records are void of any testimonies from voters who were disenfranchised and neither is there any

evidence showing that the appellant was authorized to represent these alleged disenfranchised voters. Hence, we hold that the polls remaining opened beyond six o'clock affording voters the opportunity to cast their votes due to the late opening of the polls do not amount to election irregularities to warrant a re-run of the by-election of District #2, Sinoe County.

We reiterate as in previous Opinions, that the concept of a candidate claiming 'stronghold' over a particular election geographical locale, finds no factual or legal basis in judicial proceedings as it is completely doubtful, uncertain and speculative in that only the electorates *via* their valid votes cast can determine whether or not a candidate is widely influential within a particular locale. Hence, this allegation being speculative and uncertain is untenable as voting in elections within our jurisdiction is done by secret ballot. *Liberia Reconstruction Party v. NEC*, Supreme Court Opinion, October Term, A.D. 2011; *Koah v. Domah and NEC*, Supreme Court Opinion, October Term, A.D. 2017; *Collaborating Political Parties v. NEC*, Supreme Court Opinion, October Term A.D. 2020.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the Board of Commissioners of the NEC, which confirmed the ruling of the Elections Magistrate regarding the By-Election conducted in District # 2, Sinoe County dismissing the appellant's complaint, is hereby affirmed. The Clerk of this Court is ordered to send a mandate to the National Elections Commission to resume jurisdiction over this case and give effect to the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

*Appeal Denied.*

*When this case was called for hearing, Counsellor Yafar V. Baikpeh appeared for the appellant. Counsellor Micah Wilkins Wright appeared for the 1<sup>st</sup> appellee. Counsellor Moiffie Kanneh appeared for the 2<sup>nd</sup> appellee.*