

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,
SITTING IN ITS OCTOBER 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

Ahmed Kromah and James K. Mallay, registered voters of District # 4, Upper Lofa County, Republic of Liberia.....1st Appellants)

AND)

Mr. Kesseley Gayflor and Peter Flomo, registered voters of District # 5, Upper Lofa County, Republic of Liberia.....2nd Appellants)

VERSUS)

APPEAL)

The National Elections Commission (NEC), and Mr. Brownie Samukai, CPP Candidate of the 2020 Special Senatorial Elections..... Appellees)

GROWING OUT OF THE CASE:)

Ahmed Kromah and James K. Mallay, registered voters of District # 4, Upper Lofa County, Republic of Liberia.....1st Appellants)

AND)

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ELECTIONS
IRREGULARITIES)

The National Elections Commission (NEC), and)

Mr. Brownie Samukai, CPP Candidate of the 2020)
Special Senatorial Elections..... Appellees)

Heard: February 18, 2021

Decided: February 24, 2021

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

Election is essential to the tenets of democracy, and in the case of Liberia, it is a constitutionally protected right, the exercise of which is controlled by rules and procedures. One of such rules and procedures is provided for under Article 83 (c) of the Liberian Constitution, and it states thus:

“...Any party or candidate who complains about the manner in which the elections were conducted or who challenges the results thereof shall have the right to file a complaint with the Elections Commission. Such complaint must be filed not later than seven days after the announcement of the results of the elections...”

On December 12, 2020, four (4) days after the 2020 Special Senatorial Election, Ahmed Kromah and James K. Mallay, the 1st appellants herein, under the nomenclature of “registered voters”, filed a complaint before the Hearing Officer of the NEC in Voinjama City, Lofa County, alleging that the NEC officials included unstamped ‘Senate Record of the Count’ documents in the tallied results; that the representative of District # 1, Lofa County and a member of the Coalition of Political Parties (CPP) were seen in conversation with Elections Magistrate Robert N. Salay at the tally center in Voinjama City, Lofa County; and that based on these allegations, the complainants requested that nineteen (19) tally sheets from District # 4 and five (5) tally sheets from District # 5 be excluded from the total tally of votes from said districts.

The records show that on December 18, 2020, the 1st appellants filed a subsequent complaint with the Board of Commissioners of the NEC, alleging that the hearing officer assigned to District # 4, Voinjama City, Lofa County, Prince C. Sondah, failed to hear their complaint that was filed on December 12, 2020, and requested that the said hearing officer be mandated to investigate their complaint and rule thereon.

Also on December 18, 2020, two other individuals, Kesselly Gayflor, and Peter Flomo, the 2nd appellants herein, again under the nomenclature “registered voters”, filed a complaint before the Hearing Officer of the NEC in District # 5, Upper Lofa County, making the same allegations as the 1st appellants to the effect that unstamped ‘Senate Record of the Count’ documents were included in the tallied results, and that the Representative of District # 1, Lofa County, Hon. Francis Nyumaline, was seen at the tally center in Voinjama City during the counting process of the election results.

On December 30, 2020, the complaint of the 2nd appellants was called for hearing at which time co-appellee Brownie Samukai’s lawyer made application on the records requesting the dismissal of the complaint contending that the 2nd appellants lacked standing to file the complaint, and that the complaint was filed without the

statutory period of seven (7) days as provided for under section 6.1 of the New Elections Law.

Following arguments *pro et con* on the application for the dismissal of the 2nd appellants' complaint, the Hearing Officer ruled dismissing the complaint on grounds that the 2nd appellants' failure to attach any supporting evidence to their complaint rendered same as mere allegations and dismissible as a matter of law, but more importantly that the 2nd appellants lacked standing to file the complaint.

On January 6, 2021, a hearing was conducted on the complaint of the 1st appellants, at which time, co-appellee Brownie Samukai's lawyer again made application on the records of the NEC, praying the dismissal of the complaint, alleging that the 1st appellants lacked standing to file the complaint.

In resistance to the motion to dismiss, the lawyer for the 1st appellants argued that pursuant to section 5.9 of the New Elections Law, the said appellants being registered voters, they had standing to file a complaint regarding elections irregularities with the NEC. Section 5.9 of the New Elections Law relied on by the 1st appellants states thus:

“Rights to Make a Complaint

A voter, candidate or a registered political party may file a complaint with the Commission alleging that an offence against the Constitution or the Elections law or a violation of a regulation issued by the Commission has occurred in connection with the administration of an election, during any stage of the election...”

The Hearing Officer after listening to oral arguments reserved his ruling on the submission for the dismissal of the complaint, and subsequently delivered same on January 16, 2021, wherein he ruled dismissing the 1st appellants' complaint on ground that they failed to establish and prove their standing to file the complaint, especially so, given that they averred in their complaint that they were representatives of an ‘organization’, which they also failed to name or show proof of its existence.

The Hearing Officer noted that section 5.9 of the New Elections Law was inapplicable to the 1st appellants, reasoning that the 1st appellants failed to prove that they were agents of a purported organization they claimed to represent; that the appellants failed to establish how the unstamped tally sheets affected their rights or the results, especially so since the agents of all the political parties or contestants signed the said tally sheets without any contest thereto.

The 1st appellants noted exceptions to the final ruling of the hearing officer and announced an appeal to the Board of Commissioners of the NEC.

On January 26, 2021, the Board of Commissioners of the NEC consolidated and heard the two appeals, that is, the appeal of the 1st appellants, Ahmed Kromah and James K. Mallay, and the 2nd appellants Kesseley Gayflor and Peter Flomo.

We agree with the Board of Commissioners of the NEC consolidating the two appeals this being in conformity with the laws in vogue, “that actions involving a common question of law or fact may be consolidated to avoid unnecessary costs or delays”. Moreover, complaints arising from election cases being time bound, that is, the NEC must conduct investigation and render a determination thereon within

thirty (30) days as of the date of receipt of the complaint, the Board of Commissioners acted within the pale of the law when it consolidated the appeals of the 1st and 2nd appellants.

Following the hearing of the consolidated appeal, the Board of Commissioners of the NEC rendered its final ruling on February 5, 2021, confirming the ruling of the hearing officers which dismissed the two complaints principally on the basis of lack of standing by the appellants to institute their respective actions against the appellees.

Let us hasten to briefly comment on the decision of the Board of Commissioners of the NEC that the Hearing Officers' ruling fell short of the requirement of the taking of an appeal. The Board of Commissioners' final ruling pertaining to the 2nd appellants' appeal states thus:

“...Having reviewed the record, specifically the hearing minutes of December 30, 2020, we observed that counsel for the appellants Gayflor and Flomo excepted to the hearing officer's final ruling, and stated that that they would 'take advantage of the statute'. The Board notes that when a party is dissatisfied with a final ruling and wishes to appeal to a higher tribunal, the party, after stating its exceptions, announces an appeal orally. The party does not say that it will take advantage of the statute/law controlling...Because the record is clear that appellants Gayflor and Flomo did not announce an appeal from the hearing officer's final ruling, this Board lacks jurisdiction to hear same on the merits. Accordingly, the referenced appeal is hereby dismissed...”

Our appeal statute states:

“An appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or if such attorney is not present, by a deputy appointed by the court for this purpose.”

This Court, in numerous Opinions, has attached importance to the right of appeal, and hereby cautions all lawyers to comply with and adhere to the above quoted provision of the appeal statute by properly announcing an appeal from final rulings or judgments in order to protect their clients' right of appeal. We therefore agree with the decision by the NEC's Board of Commissioners to dismiss the 2nd appellants appeal. However, the allegations raised in the complaints of both the 1st appellants and the 2nd appellants being analogous, our determination of the 1st appellants appeal will address the 2nd appellants' complaints.

Having stated the above, we observe from the records that the 1st appellants noted exceptions to the final ruling of the Board of Commissioners of the NEC and announced an appeal therefrom to the Supreme Court, by the filing of a ten (10) count bill of exceptions for our review.

We note that the basis of all the rulings appealed from is the appellants' lack of legal standing; hence, we shall determine whether or not the appellants herein satisfied the requirement for filing any action for judicial or administrative

determination. Stated another way, did the appellants establish their legal standing to justify the filing of their respective complaints?

It is the law that one must be aggrieved by the conduct of another to be able to bring an action; for where there is no injury, there cannot be a relief. This is the law on which the legal doctrine of standing is grounded, and which this Court has consistently upheld.

In the case *Citizens Solidarity Council v RL*, Supreme Court Opinion, March Term, A.D 2016, this Court speaking through Mr. Chief Justice Korkpor Sr., opined that

“...a party's ability to bring a lawsuit in court is or must be based upon the party's stake in the outcome of the case. A party seeking to demonstrate standing must show the court sufficient connection to and harm from the law, action or inaction challenged; otherwise, the party lacks standing to bring the lawsuit. In order to establish standing to sue, a party must show that: (1) the party has suffered an injury in fact-that is, the party has suffered or will suffer a concrete and particularized, actual or imminent invasion of a legally protected interest or right if the party does not bring the suit; (2) the injury is a result of the defendant's conduct. In other words, there must be a causal connection between the injury allegedly suffered and the conduct complained of; and (3) a finding in the party's favor is likely to redress or remedy the injury. According to the doctrine of standing, also, a party seeking to demonstrate standing must assert his or her own rights and cannot raise the claims of a third party or third parties who are not before the court; nor can such a party make claims of generalized injury common to the body politic-the claimed injury must be individualized and unique or personal to the plaintiff... this Court has applied the doctrine of standing to prevent parties having no interest in a subject matter from utilizing the courts of this Republic to file claims wherein there are no real parties of interest.”

Given the above, this Court says that only candidates or their political parties who are canvassing for votes are able to prove actual injury after the announcement of elections results thus, satisfying the doctrine of standing in post elections challenges. We believe it was based upon this that the framers of the Constitution specifically crafted Article 83(c) of the Constitution which explicitly states that only a political party or candidate may institute legal proceedings to challenge the result of an election. In addition thereto, the Legislature passed an enabling statute, Chapter 6, sub-section 6.1 of the New Elections, Law which also speaks to person (s) qualified to challenge the elections after the announcement of the results. The said law provide thus:

“Any political party or candidate who has justifiable reasons to believe that the elections were not impartially conducted and not in keeping with the Elections Law, which resulted in his defeat or the defeat of a candidate shall have the right to file a complaint with the Commission; such complaint must be filed not later than seven (7) days after the announcement of the results of the elections.”

These provisions of the Constitution and Statute deal with post elections complaints and not pending or pre-elections complaints. Therefore, we hold that

the ruling by the Board of Commissioners of the NEC was within the pale of the law when they relied on section 83(c) of the Constitution as quoted *supra* in this Opinion, to dismiss the appellants' appeal for lack of standing.

This Court says that while we recognized a registered voter's rights under Section 5.9 of the New Elections Law to file a complaint during voting activities, we are however disinclined to accept and apply this same provision of the New Elections Law in this present case which deals with a post elections challenge. Our reasons is premised on previous Opinions of the Supreme Court that have recognized 83(c) of the Constitution This Court has opined in previous elections matters that Chapter 5 of the New Elections Law deals exclusively with voting, and sub-section 5.9 applies only to the time of voting and not to post-election complaint, as in the present case. The Court in speaking to the applicability of Section 5.9 held that:

“...Chapter 5 of the Elections Law, deals exclusively with voting and grants the right to filing complaints to “voters, political parties and candidates” and applies to challenges emanating from complaints on irregularities noticed during voting or connected to the voting process... each chapter of the Elections Law deals with separate and distinct topics or aspects of the elections...”

Only a political party or a candidate can file post elections complaint pursuant to Article 83 (c) of the Constitution and not registered voters in their individual capacities. We see that the appellants, although alluding to a purported organization which they were members of, filed their complaint in their capacities as “District #4 Registered Voters, Voinjama City, Lofa County”. Not only did they not name the purported organization, they failed to present any iota of proof as to the existence of the purported organization, its authorization to them to file the action on behalf of the purported organization, and more importantly, the injury suffered by the purported organization or its members. As we opined in the *Citizens Solidarity case* the doctrine of standing will be applied to prevent parties having no interest in a subject matter from utilizing the courts of this Republic to file claims where there are no real parties. We herein hold that the 1st appellants failure to show that they represent a party, or that they themselves were candidates in the 2020 Special Senatorial Elections they lack the standing to challenge the elections results from Lofa County.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the Board of Commissioners of the NEC, which confirmed the ruling of the Hearing Officers, is affirmed. The Clerk of this Court is ordered to send a mandate to the National Elections Commission (NEC) to give effect to the Judgment of this Opinion. Costs are ruled against the appellants. AND IT IS HEREBY SO ORDERED.

Ruling Affirmed

When this case was called for hearing, Counsellor Samuel T. K. Kortimai of the Tulay and Associates Law Firm appeared for the 1st and 2nd appellants. Counsellor J. Augustine Toe appeared for the appellee, National Elections Commission. Counsellors Augustine C. Fayiah and G. Wiefueh Alfred Sayeh appeared for appellee Brownie Samukai.