

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

Edith Gongloe-Weh, Senatorial Candidate of the)
Collaborating Political Parties, Nimba County)
.....Appellant)
)
Versus) APPEAL
)

National Elections Commission (NEC) and Hon.)
Jeremiah Koung, Senatorial Candidate, Presump-)
tive Winner, Nimba County.....Appellees)
)

GROWING OUT OF THE CASE:)
)

Edith Gongloe-Weh, Senatorial Candidate of the)
Collaborating Political Parties, Nimba County)
.....Complainant)
)
Versus) ACTION:
) Election Fraud and
National Elections Commission (NEC) and Hon.) Irregularities
Jeremiah Koung, Senatorial Candidate and Presu-)
mptive Winner, Nimba County.....Defendants)

Heard: March 30, 2021

Decided: April 8, 2021

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

In a democratic republic such as Liberia, free and fair elections are *sine quo non* to the expressed will of the people in pursuit of the government for their safety and happiness. To ensure that the will of the people is reflected in election results, the mechanism for election processes and procedures are set forth by laws, regulations and guidelines to safeguard the integrity of elections. The guiding spirit of any election, therefore, is that the voters elect public officials who represent their wishes, and through the chosen officials the peace and security of the Republic is guaranteed.

Cognizant of this guiding spirit as set forth under Article 1 of the Liberian Constitution, the Supreme Court of Liberia, in addressing allegations of election fraud and irregularities, has consistently accentuated that allegations will not be given countenance if “... it did not, standing alone, overwhelmingly show that it impacted the final results in such manner that if not committed the results would have been different or that the positions of the parties would have changed, as for example, from first position to second position or from second position to third position...” *Charles Walker Brumskine et al v. National Elections Commission, Supreme Court Opinion, October Term, A.D. 2017.*

In other words, the principle espoused in the Brumskine case is that for a result of an election to be set aside and a re-run ordered by this Court, the evidence of irregularities and fraud must be so overwhelming as to affect the net outcome of the election. Stated differently, this Court is of the view that every election result must reflect the expressed will of the people.

This appeal presents the decisive question as to whether the appellant herein, Edith Gongloe-Weh, established by evidence the allegations of fraud and irregularities and if so, whether the evidence as presented is sufficient to cause a re-run in Electoral District #1 and #2, and a recount in Districts #4, #5 and #7 of Nimba County respectively in the Special Senatorial Elections held on December 8, 2020? To answer this question, we shall first proceed to consider the facts and the evidence presented by the parties.

On December 8, 2020, the National Elections Commission (NEC), 1st appellee herein, pursuant to its constitutional and statutory duties, conducted the Special Senatorial Elections, By-elections and Referendum across the Country. Madam Edith Gongloe-Weh, appellant herein, contested in the elections for the vacant senatorial seat in Nimba County along with Mr. Jeremiah Koug, 2nd appellee herein and five other candidates.

On December 12, 2020, exactly four days after the elections and during the counting of ballots for Upper Nimba County in Sanniquellie, the appellant filed a complaint alleging electoral fraud and irregularities before the election magistrate. At the call of the case for hearing on December 14, 2020, the appellant moved the Hearing Officer for a change of venue citing security concerns and bias against her. After arguments *pro et con*, the Hearing Officer granted the application for a

change of venue. Consequently, the case was transferred to the NEC's headquarters in Monrovia.

At the call of the case on December 18, 2020 in Monrovia, the appellant withdrew her complaint and filed an amended complaint. The amended complaint alleged the following:

“Edith Gongloe-Weh
CPP/Nimba County Senatorial Candidate
Mid-Term Election

December 18, 2020

Honorable Bledor Flomo
Election Magistrate
Upper Nimba County
National Elections Commission
Republic of Liberia

Ref: Formal complaint of irregularities and suspected fraud

We have been notified by our assigned agents, in the tally room, about some unprecedented and grave discoveries in the conduct [of] the ongoing tally and data entry. The following are our concerns:

- Exchange of our vote count of 162 with Candidate Garrison Yealu's vote count of 7 in the airfield Zone 2, polling place 2, Sanniquellie City, Electoral District number 2 by the data entry personnel (see exhibit 1)
- Entering 70 vote count for candidate Koung from Martha Tubman Campus, polling place...., Sanniquellie, Electoral District 2, instead of his 37 votes obtained at that polling place (see exhibit 2)
- 11 ballot boxes found with broken seal of the tally tees and inappropriately placed with the boxes with only copies of those Tees found (see exhibit 1). The precincts are:

33010

33080

33250

33069 (at this precinct, 2 polling places Tees are missing)

33077

33079 (at this precinct, 2 Tees are missing)

33071 (2 Tees missing)

33179

- The refusal of the data entry clerk to allow our agent to obtain copy of the data entered or simply display a copy for verification following the discoveries indicated above shows hidden attempt to defraud us of the votes of our people.
- That the Liberian National Police refused to take delivery of sensitive electoral materials including ballot boxes, thereby leaving polling staffs with no alternatives but to deposit them at the J. W. Pearson High School where there were no securities. On the day of polling, some of those materials were missing, resulting into the use of foreign, questionable and sub-standard materials specifically at precinct 33076 and 33074 which generally question the credibility of the polling in District one, Nimba County.
- Further to the above, many electorates refused to cast their ballot in cardboard boxes at precinct number 33076 and 33074 that were provided by the poll workers as substitute for the ballot boxes that went missing.
- That, many female electorates who earlier registered and voted at all of the above-mentioned precincts could not find their names and particulars in the final registration roll (FRR) thereby disenfranchising significant number of voters.
- That, the Tee3 of Ganta Public School, polling place 5 (33069) was also missing.
- That, the National Election Commission and its agents continue with the tally process even when our representatives raised credible issues of irregularities and requested a stop until the said matter can be resolved. Consequently, the remaining counting of results in the tally room was done without our representatives.
- That, tally results from Lower Nimba Election Magistrate are grossly over accounted for by the official result of the National Election Commission as provided by the commissioner and thereby giving one candidate a substantial advantage. Attached hereto is a copy of the document labelled from Et-05(B) marked as exhibit 3 to form a cogent [part] of this complaint.

In view of the above, we request the following:

1. A complete re-count of the lower Nimba tally results.
2. A re-run at all polling places mentioned herein.

As we await your speedy action in keeping with best practice, we remain.

Sincerely yours,
Edith Gongloe-Weh
CANDIDATE”

On December 21, 2020, the appellees filed their answer through the counsel of the 2nd appellee along with a motion to dismiss. The answer substantially averred that the appellant’s complaint is grossly false and misleading; that the allegation of exchange of 137 votes obtained by the appellant with 7 votes for Candidate Garrison Yealue did not take place; that votes tallied were in line with votes accumulated at each polling center for each candidate evidence by the records of counts signed by the representatives of the candidates and party agents; that there were no broken seals as alleged by the appellant; that the TEEs were accounted for; and that the tally room was not operated in secrecy, rather, the process of counting the votes was opened to representatives of candidates and civil society organizations.

The 2nd appellee’s motion to dismiss the appellant’s complaint primarily contended that the complaint lacked particularities as to the occurrence of the irregularities and fraud.

The appellant resisted the appellees’ motion to dismiss on December 22, 2020. In addition to their resistance to the appellees’ motion to dismiss, the appellant also filed a motion to strike the appellees’ answer contending that the lawyers who represented the 2nd appellee were not licensed to practice law in 2020.

After arguments *pro et con*, the Hearing Officer denied and dismissed the motions on December 23, 2020. Thereafter, the appellant began her production of evidence. It is important to note that while the investigation was ongoing, the appellant filed a bill of information on December 28, 2020 alleging that the 1st appellee’s election magistrates and staffers were caught tampering with ballot boxes on December 24, 2020 in the NEC’s warehouse located in Sanniquellie, Nimba County. The information was also argued, denied and dismissed on December 29, 2020.

The appellant having rested with the production of evidence, the appellees commenced the presentation of their evidence on January 14, 2021 and rested six days later, that is on January 20, 2021.

The records show that the appellant, in addition to herself, produced ten witnesses as follows: Augustine Fredericks, Armstrong Goba Selekpoh, Winston Saye Kain (a subpoenaed witness), Prince Baleiah, Raily Guanbeh (a journalist), Cyrus D. Danquan, Jackson K. Gengbeh, William Say Miazoe, Jr. and Princeton Loffen. Documentary evidence was also produced and admitted as “P/1” up to and including “P/8”.

The witnesses for the appellant said in their testimonies that electoral materials were kept at the J. W. Pearson High School campus without security protection after the Liberia National Police refused to take custody of the materials in Ganta; that in the same Ganta at Precinct No. 33076, polling place 4 and 5, votes were cast in cardboard cartons contrary to the electoral procedures and guidelines; that as a result of the poor organization on the morning of December 8, 2020, many voters who had turned out to vote returned home without voting; that unprotected ballot boxes were brought to the tally centers (without security or electoral staff); that ballot boxes were brought to the tally center in Upper Nimba without the Tamper Evidence Envelopes (TEEs) for eighteen polling places contrary to law; that ballot boxes were opened to search for the missing TEEs on the instruction of a lone commissioner (Mr. Floyd Sayon) of the 1st appellee contrary to procedures and guidelines; that in Electoral District No. 1 in Sanniquellie, Martha Tubman Polling Place No. 2 and Airfield Zone 2, Polling Place No. 2, vote counts were swapped amongst the candidates; that the preliminary results announced in Lower Nimba gave the appellant 18,627 votes and the 2nd appellee 10,081 votes, but the 1st appellee’s website announced 13,500 votes for the 2nd appellee; that the appellant’s poll watchers were intimidated and chased away (leaving one person wounded in the head with machete) in Electoral District Nos. 4 and 5 by armed supporters of the 2nd appellee; that the fragmented counting of votes cast in District No. 7 between Lower Nimba and Upper Nimba created a doubt about the integrity of the process; that without notice to the appellant, the 1st appellee’s magistrates travelled to Sanniquellie on the morning (about 2:00 a.m.) of December 24, 2020 and opened ballot boxes amid the ongoing hearing into complaint of electoral fraud and irregularities; and that the 1st appellee’s magistrate admitted, in live radio interview, to traveling to Sanniquellie with the purpose of cheating the appellant.

For the appellees’ side, five witnesses testified in support of their case, namely: Michael Deddeh, Edwin G. Kordan, Charles T. Wonkebvor, Milton Paye and

Bledor Flomo. It is important to note that Witnesses Milton Paye and Bledor Flomo were the two elections magistrates assigned in Lower Nimba and Upper Nimba, respectively, to tabulate the votes in their respective magisterial areas for preliminary results in Nimba County.

The witnesses for appellees denied the appellant's allegations of fraud and irregularities as follows: that on December 8, 2020, elections day, the political parties and candidates were represented throughout the 741 polling places across Nimba County; that at the end of voting on December 8, 2020, representatives of political parties and candidates were present during the counting of votes; that the representatives certified the elections results across the 741 polling centers without objection or complaint on December 8, 2020; that at the end of counting the votes in each polling place, the carbonated five copies of records of counts were distributed in keeping with prescribed rules, that is, the original copy was placed in the TEEs and sealed, one copy placed in the ballot box and sealed, one copy was posted on the wall of each polling center, one copy each to the two highest winners in a polling center; that during the tally of votes in Sanniquellie, the data entry clerk inadvertently mismatched votes obtained by the candidates, for example, the clerk entered 18 votes for the appellant instead of 62, 13 votes for the 2nd appellee instead of 33, thus causing the magistrate to quarantine the affected polling places; that after contacting the 1st appellee's headquarters in Monrovia, Commissioner Floyd Sayon gave the magistrate the code to effect the necessary corrections in the system; that in the presence of the representatives of political parties and candidates and international observers, the corrections were made; that during counting of votes in Sanniquellie, the magistrate noticed that eleven TEEs could not be located; that after consulting with Monrovia and the representatives of political parties and candidates, the magistrate broke the seals to the ballot boxes in search of the TEEs which were retrieved from the boxes and resealed; that counting continued over the objection of the appellant's representative who filed a complaint on December 12, 2020; that at the time of breaking the seals to the ballot boxes, the following persons were present: Jackson Dehmein of NPC, Armstrong Gogba Selektor of the CPP/the appellant, Heroine Wou of the MDR and Michael Degbeh and two representatives from the Carter Center; that during tally in Lower Nimba, the appellant's representative raised concern about the presence of ballot boxes for District No. 7; that the magistrate explained to the appellant's representative that the magisterial areas are based on statutory districts rather than

electoral districts such that Lower Nimba comprises Yahwinmasnoh, Tappita and Saclapea Mah; that out of the nine electoral districts in Nimba, District Nos. 6, 7, 8 and 9 are located in Lower Nimba, however, a portion of District No. 7, specifically Zoe–Gbao geographically falls within Upper Nimba where the votes are tallied; that the magistrates did travel to Sanniquellie on December 24, 2020 based on an internal memo directing the magistrates to count thirty-three (33) ballot boxes for the referendum; and that Magistrate Melton Paye in a live interview on radio, retorted a question posed by Raily Guanbeh, (the appellant’s witness) whether he (the witness assigned in Lower Nimba) was in Sanniquellie, Upper Nimba, to cheat, that the journalist should “ believe anything and that his accusers are at liberty to take him to court because he does not have the time to satisfy people who have fixed minds against him”.

At the close of the production of evidence and after final arguments, the Hearing Officer ruled denying the appellant’s complaint for lack of sufficient evidence to support her allegations of fraud and irregularities. The appellant announced an appeal to the Board of Commissioners of the 1st appellee who heard the appeal and confirmed the findings of the Hearing Officer.

The appellant, not being satisfied with the final ruling of the 1st appellee, announced an appeal to the Supreme Court and assigned a fifteen count bill of exceptions for our review.

The contentions in the bill of exceptions are summarized as follows:

- (1) That the 1st appellee erred when it ignored the appellant’s assertion that the approval of the bill of exceptions by the Hearing Officer without reservation constitutes an admission of all of the points raised therein.
- (2) That the 1st appellee erred when it ignored the evidence showing that, contrary to the Election Law, ballots were cast in cardboard boxes in District No. 1 as testified to by the 1st appellee’s elections supervisor, Winston Saye Kain.
- (3) That the 1st appellee erred when it ignored the evidence that Commissioner Floyd Sayon of the 1st appellee ordered the seals to ballot boxes broken in contravention of the election law.
- (4) That the 1st appellee erred when it ignored the evidence of mismatching of votes for the three leading candidates in District No.

2 which created doubt over the veracity of the polls on December 8, 2020.

(5) That the 1st appellee erred when it ignored evidence of intimidation and violence orchestrated at the behest of the 2nd appellee's political leader, Senator Prince Y. Johnson in Districts Nos. 4 and 5.

(6) That the 1st appellee erred when it ruled that the appellant failed to prove irregularities and fraud, while holding on pages 10 and 11 of the its ruling that boxes arrived at the tally center without accompanied TEEs.

(7) that the 1st appellee erred when it failed to give credence to the appellant's assertion that the counting of votes from District No. 7 in both Lower Nimba and Upper Nimba was irregular and creating doubt over the result.

(8) that the 1st appellee erred when it affirmed the Hearing Officer's ruling without given consideration to the evidence that the 1st appellee sent election magistrates to Sanniquellie who opened ballot boxes during the pendency of the appellant's complaint in violation of Section 4.16 of the New Elections Law of Liberia.

(9) that the 1st appellee erred when it ignored the evidence showing that the magistrates placed the ballots of the Special Senatorial Elections and the Referendum in separate boxes, contrary to Chapter 7 of the Manual that governed the 2020 elections and referendum.

Before delving into the substantial issues raised by the appellant in the bill of exceptions, we must first examine a collateral issue raised by the appellant in count one of her bill of exceptions. The appellant submitted that the approval of her bill of exceptions by the Hearing Officer without noting reservation thereon constitutes an admission of the correctness of the appellant's exceptions which the 1st appellee ought to have recognized and by that ruled in the appellant's favor.

This Court says that unlike in an action at law where legal and factual technicalities are entertained by courts, the role of an administrative agency in the investigative process is primarily fact-finding, not legal technicalities. *Charles Walker Brumskine et al v. National Elections Commission, Supreme Court Opinion, October Term, A.D. 2017, supra.* The error complained of by the

appellant does not go to the merit of the matter pending before the 1st appellee, nor is it attributable to the 2nd appellee who is the party that stands to suffer material and direct consequences if the alleged error is to be countenanced by this court. Should this Court, based on the mere technical ground that the Hearing Officer failed to note reservation on the bill of exceptions, proceed to grant the appeal of the appellant, not only will the Court be denying the 2nd appellee due process, but also we will be stifling the investigation to determine the true expression and will of the voters. Election disputes are principally concerned with determining whether the outcome of an election is a true reflection of the people's choice rather than an endorsement of technicalities. So important is the role of the administrative investigative process in determining the will of the people that this Court in the case *Wellington Geevon Smith v. NEC et al, Supreme Court Opinion, October Term, A.D. 2020* articulated that the role of the 1st appellee are, *inter alia*, to certify elections results, acting in the spirit of the Constitution, and can sua sponte institute an investigation and act upon the findings of such investigation if it has reason to believe that the conduct was irregular, or to ensure that the ballots cast constitute the will of the people. Therefore, mere technicality cannot be permitted or allowed by this Court to defeat the people's expression of their democratic franchise. In further support of the position taken by the Court, the statute squarely dictates as follows:

“No election shall be declared void on account of any delay of nominations; the polling or return of the writ, or on account of the absence or error of any officer which shall not be proved to have affected the result of the election.” *New Elections Law (2014):6.2(3) (2014)*

Lastly, the Hearing Officer is not a judge in the truest sense. All the cases relied on by the appellant are cases in which a judge did not approve bill of exceptions with reservation. Hence, count one of the appellant's bill of exceptions is not tenable.

We shall now proceed to consider the issue determinative of this appeal, that is, whether the appellant established by evidence that fraud and irregularities took place and if so, whether the evidence is sufficient to support an order for a re-run in District #1 and District #2, and a recount in District #3, #4 and #7 in Nimba County Senatorial Elections?

We shall first consider the issue of the storage of election materials at the J. W. Pearson High School Campus in Ganta after the police declined to take custody of the materials, and the appellant's allegation that the materials were tampered with, or could not be accounted for. The undisputed evidence clearly show that indeed the police declined to take custody of the materials when they arrived in Ganta as envisioned by the Election Law, and that the said materials were stored in the above named school without police protection. This certainly constitutes a dereliction of duty on the part of the police in contravention of the clear language of the statute. However, for this statutory violation to constitute an election irregularity or fraud, it must not only be shown that the materials were tampered with, but also that as the consequence of such tampering, the votes of the electorate were adversely impacted.

A search of the records shows that the only evidence bearing on this subject was that of the appellant's subpoenaed witness, Winston Saye Kain, an election supervisor. His testimony tends to establish that of all the election materials stored at the J. W. Pearson High School, he received all except for two of the eighty five ballot boxes; that he made frantic efforts to reach his supervisor to have those two boxes supplied, but to no avail; that because the voters had queued in line to vote in the absence of the official ballot boxes, he, with the acquiescence of the political parties representatives, decided to use cardboard boxes in place of the official ballot boxes in the two polling places. He also testified that voting started at those two polling places at 10:00 a.m. in the presence of the representatives of all the candidates. His testimony further tends to establish that when the official ballot boxes arrived later during the voting, the cast ballots were transferred to the official boxes in the presence of all the representatives and observers. Considering this testimony of the appellant's witness, we agree with the 1st appellee's holding that there is no evidence that the materials stored at the J. W. Pearson High School were tampered with.

This Court says that, as irregular as the casting of ballots in cartons is, there is no evidence culled from the records tending to show how the final results of the elections in District No. 1 were negatively affected. Responding to a query from the Bench, the 1st appellee's counsel made it categorically clear that the essential

requirement of secrecy was maintained during the polls, and that the results were certified by all representatives present including the appellant's. In the absence of clear and particularized evidence of impact on the expressed will of the people, this Court will not disturb the results in District No. 1 simply because the process in safekeeping the elections materials was irregular or that voting was had in an unofficial box due to the unavailability of the official box. Such irregular actions highlight the challenges the 1st appellee faced in organizing elections under circumstances of lack of adequate resources and infrastructure. The requisite authorities need to address these deficiencies if the potential of insecured election materials and the use of unofficial materials are to be avoided.

The appellant also argued that the use of the cardboard as ballot boxes in the two polling areas resulted in most of her supporters not voting in the precinct in which those two polling areas were located due to lack of confidence in the process. This averment brings the following two questions to bear on the mind of this Court. How did the appellant know that the voters who allegedly did not vote due to lack of confidence would have voted for her, and what is the standing of the appellant to raise the issue on behalf of those voters. Similar contentions confronted this Court recently and in resolving the same, this Court opined as follows:

“Firstly, there is no evidence that all those who allegedly complained to CPP Candidate were going to cast votes for the CPP. Elections in Liberia are conducted by secret ballots; voters decide who to vote for and that decision remains on their chests until they are behind the screens in enclosed areas. So, no one political party or candidate can say with certainty that all of the votes that should have been cast, if the voters who did not vote to the incidence of the ‘exhibition’ process had voted, would have been for the political party or candidate. We believe that all the political parties were one way or the other affected.

Secondly, there was no listing or showing of the voters who, the complainant/appellant claimed were prepared to vote for the CPP but were not allowed to vote. In our opinion, to make a compelling case of standing to file a complaint on behalf of such persons who did not vote, it was incumbent on the complainant/appellant, to have meticulously listed the names, and attached membership cards of any constituent party of the CPP and an affidavit stating that such persons were partisans of the CPP who were set to vote for the CPP. But this was not done. Under the circumstance, we hold that the complainant/appellant did not establish that it had standing to file this complaint on behalf of those who did not vote in the By-election in District#9, Monsterrado County...” *The Collaborating Political Parties v. NEC et al, Supreme Court Opinion, October A. D. 2020*

A further scrutiny of the evidence in light of the appellant's contention that the use of the cardboard boxes for voting in two polling places resulted in most of her supporters not voting in these places due to their lack of confidence, shows that the appellant received 587 votes and her main contender, the 2nd appellee, received 465 votes from these polling places.

The Court notes the general apathy of voters during the 2020 Special Senatorial Election. The election's report of the 1st appellee, NEC, shows that of the 2,476,356 registered voters nationwide, only 926,773 (37.42%) turned out on election's day. The total number of votes cast in the precinct where the cardboard boxes were used shows a voting result of 1,232 votes constituting 41.06% of votes cast, out of the 3000 voters registered in that precinct; and that this number of turn out exceeds the overall turnout in Nimba County in particular and nationwide in general, as the NEC reports shows that of the total of 302,843 registered voters in Nimba County for the December 8, Special Senatorial Election, only a total of 113,156 or 36.32% turned out to vote. Certainly, these statistics run contrary to the appellant's assertion that the use of cardboard boxes drove away voters from the precincts.

The appellant also contended that during the tallying in Sanniquellie, votes were mismatched or swapped from the results tallied for the Airfield and Martha Tubman polling places by the data entry clerk. However, the records show that the errors were noticed and that counting for the two polling places was suspended and ballot boxes quarantined until directive was provided by the 1st appellee in Monrovia to correct the errors. The evidence shows that after the magistrate received the code from Commissioner Floyd Sayon (who exercises oversight over Nimba County), the magistrate then informed representatives and international observers about the instruction received from Monrovia to effect the corrections in the affected two polling places. In the presence of these representatives including the appellant's, the corrections were made and certified.

We must note here that although the 1st appellee's data entry clerk committed error when he swapped or mismatched votes while entering data from the various voting precincts, there is however no evidence that these errors impacted the results in those two polling places. In fact, it is not rebutted by the appellant that corrections

were made in the presence of parties' representatives and international observers. Moreover, the error committed by the data clerk was not only noticeable, but it could be resolved because the certified senate records of counts were in the possession of political parties and candidates that obtained the two highest votes in each polling place. Additionally, the votes tallied in the two polling places were matters of public record because results were posted on the walls of the two polling places in keeping with the prescribed procedures and guidelines.

The appellant also contends that the 1st appellee erred when it ignored the evidence produced by the appellant to the effect that Commissioner Sayon unilaterally ordered the breaking of the seals placed on the ballot boxes in the absence of investigation to determine the whereabouts of the TEEs that were missing from the said ballot boxes. The certified records show that when the magistrate in the presence of the representatives of the parties and observers commenced the tallying of the votes from the various precincts in Nimba County, it was realized that several copies of the TEEs that were pasted on the ballot boxes were missing and could not be accounted for. The magistrate communicated this information to Commissioner Floyd Sayon who had oversight responsibility of Nimba County. In order to facilitate the tallying of the votes, Commissioner Sayon instructed the magistrate to break the seals of the boxes in the presence of the representatives of the parties and observers, and retrieved the copies of the TEEs that were stored therein. The representative of the appellant testified that he objected to the instruction from Commissioner Sayon on the ground that seals placed on the ballot could not be broken except by order of a court. When two of the ballot boxes were unsealed and the TEEs retrieved, the evidence shows that the representative of the appellant requested a complaint form and after receiving same, left the tallying hall.

The question here is whether the breaking of the seals in the manner and form as described hereinabove constitutes a violation that rises to the level of impacting the outcome of the elections? The appellant, during argument before the Court, relied upon Section 4.16 of the New Elections Law and what his representative was allegedly told by the magistrate previously that a court order was needed in order to have a ballot box unsealed. Section 4.16 provides as follows:

The Commission shall preserve all writs issued for election, and all ballots casts and register of votes made in an election until the validity

of such election and its result can no longer be disputed. The ballot papers may then be destroyed.

This provision of the law relied upon by the appellant concerns itself with the preservation of writs issued, ballot casts, and register of votes rather than with the issue of the seals placed on the boxes after the conclusion of voting. It is therefore not applicable to the circumstances under review. Additionally, the allegation that the elections magistrate informed the appellant's representative that a court order was needed to unseal the ballot boxes finds no support in the law.

Reasons dictate that the rationale for sealing the ballot boxes is to ensure that whatever that is placed in those ballot boxes in the presence of the parties' representatives and observers remain undisturbed. The seal is in the form of a stamp of confidence that ensures that the boxes are as they were when all of the parties saw them been sealed. This is why the seal should not be broken in the absence of the representatives of the parties. In the instant case, there was a need to have the TEEs in order to know the votes that were counted in each of the voting precincts in Nimba County. The copy of the TEEs pasted on the ballot boxes that were to be used to obtain the figures of votes in the area whose ballots were kept in the sealed ballot boxes were missing. The only copy of the TEEs other than the copies made available to the parties' representatives was in the ballot boxes. Is retrieving that copy from the ballot boxes by breaking the seals in the presence of the parties' representatives and international observers so as to obtain the correct figures of votes in the elections not one of the justifications for sealing the boxes? This Court does not see how the votes of the electorates were adversely impacted by the breaking of the seals in the presence of the representatives of the parties.

We note that during argument before the Court, the appellant submitted as error, the order of the 1st appellee's Commissioner, Floyd Sayon, to the magistrate in Nimba County authorizing the said magistrate to break the seals on the ballot boxes to retrieve the TEEs for the purpose of tallying the votes. This submission was not one of the exceptions flagged in the bill of exceptions to the 1st appellee from the ruling of the Hearing Officer, or to this Court from the ruling of the 1st appellant. It is the law in this jurisdiction that alleged errors not raised in the lower tribunal cannot, for the first time, be made a subject of review before the Supreme Court. *Nagbe v. Nabe*, 40 LLR 337 (2001), *Intestate Estate of Anderson v. Neal*, 41

LLR 314 (2002), Dennis v. Shiance et al, Supreme Court Opinion, October Term, A.D. 2012 We are therefore not inclined to consider this point.

Now, perhaps, one of the most serious contentions raised by the appellant in her bill of exceptions is that the 1st appellee, on December 11, 2020, reported the tally of results for Lower Nimba which shows that the appellant had 18,627 votes while the 2nd appellee had 10,081 votes. According to the appellant, surprisingly on the following day, that is, December 12, 2020, when she checked the 1st appellee's website, she saw that the 2nd appellee's votes had been increased by over 3,000 votes thereby giving him a vote of 13,500. While our search of the records shows that the appellant proffered an instrument which indicates that on the December 11, 2020, the total votes of the appellant in Lower Nimba was 18,627 and that of the 2nd appellee was 10,031, however, the records are devoid of any evidence that on December 12, 2020, the 1st appellee's website displayed a figure of 13,500 votes for the 2nd appellee. In the face of the denial of this averment of the appellant by the 1st appellee, and because a search of the 1st appellee's website failed to show that any such figure was displayed therein, the law dictates that this allegation be considered as not true. It is the law that mere allegations or averments set forth in the complaint do not constitute proof, but evidence is essential as to the truth of the facts constituting the claim in order to render a judgment with certainty concerning the matter in dispute. *Chae Dea Byoung et al v. The Government of Liberia, Supreme Court Opinion, March Term, A.D. 2019*. Records of the votes tallied on elections day, endorsed by the parties' representatives correspond with the final results announced by the 1st appellee.

We also note in the bill of exceptions that the appellant averred that the partitioning of the counting of votes in District No. 7 between Lower Nimba and Upper Nimba was irregular, and therefore this act created doubt with respect to the result. During the hearing, it was established that, for the purpose of election, Nimba County is regularly divided into two magisterial districts; that is Upper Nimba and lower Nimba, with a magistrate appointed to supervise the election in each. District No. 7 cut across the magisterial district of lower Nimba and upper Nimba. As a result, the tallying of votes in Nimba is initially done separately in Upper Nimba and Lower Nimba. In the initial tabulation of results from District No. 7, it is obvious that portions of the votes will be tabulated in each of the magisterial areas. However, in the final analysis the tallies from both magisterial

areas for District No.7 are brought together to constitute a single figure for the purpose of announcing the result. In this connection, this Court does not see how a process that has been regularly followed can be labelled as irregular. Again we must note that at each of the polling places in the district, votes were counted in the presence of the parties and results were made available to the parties either through service of the copy of senate records of counts or the opportunity to have copy of such records from the copy posted at the polling places. Armed with this information, the Court does not see the doubt referred to by the appellant. Therefore, the appellant's contention on this issue is without merit.

The appellant contends that the event of December 24, 2020 wherein the 1st appellee dispatched two magistrates assigned in Nimba County to complete the counting of thirty-three boxes of the referendum in the absence of the appellant's representative amid ongoing investigation of election irregularities and fraud is suggestive of fraud against the appellant. A recourse to the records shows that the 1st appellee confirmed that it ordered the magistrates to proceed to Sanniquellie to tally the returns of the referendum. Clearly, there is no denial of the event which occurred on December 24 to 25th, 2020, except that the 1st appellee vehemently denied that the warehouse was opened as early as 2:00 a.m.

The appellant's witness, Princeton Loffen, during the hearing testified that he arrived at the 1st appellee's compound in Sanniquellie at about 7:00 a. m. and saw the door to the warehouse opened. Another appellant's witness, Raily Guanbeah, testified that Magistrate Paye admitted in a live radio interview to going to Sanniquellie to cheat the appellant. The evidence culled from the records shows that the 1st appellee denied the assertions of the appellant's witnesses.

The 1st appellee's witness, Milton Paye, denying that he went to Sanniquellie to cheat, testified as follows:

“QUES: What did you mean by that when you told him that let him take to you to court and if they feel that you cheated them let them take you to court?”

ANS: I actually said that on ground that after elections we usually distribute copy of the [declaration] and if they said I cheated them, the [declaration] I gave to them is in their possession, yet they claimed I cheated them, I noticed that I could not be the one answering to them [accusers], so therefore the [declaration] giving them that I signed, to [go] to court or the hearing officer”

QUES: Did you cheat them?

ANS: No, not at all.”

In the face of the evidence and considering the standard set by law as articulated in numerous opinions of this Court regarding election results to ensure that ballots cast constitute the will of the people, how does the event on the morning of December 24, 2020 in view of the denial, and the interview by the 1st appellee’s agent affect the results of the elections which had been tabulated, certified and posted as a matter of public record in each of the 741 polling places? We are left to wonder. The evidence not having convinced this Court that the guiding spirit which must reflect in all election results was set aside by the 1st appellee by sending magistrates to conduct count of the referendum results, we are not inclined to uphold the appellant’s contention on this point.

Finally, the appellant contends that her poll watchers were intimidated and chased away in Districts Nos. 4 and 5 by armed supporters of the 2nd appellee; that Senator Prince Y. Johnson, backed by 150 armed men, threatened to unleash havoc on supporters of the appellant; that one person was wounded on the head with machete by supporters of the 2nd appellee.

During argument before this Court, the counsel for appellant was quizzed whether the alleged instigation of violence and the violence during the elections were reported to the relevant authorities? The appellant’s counsel responded that it was not too late to file a complaint of criminality, inferring thereby that no such complaint was made to the authority.

During the hearing, the appellant showed Senator Johnson dressed in a military camouflage with the CDC beret along with the 2nd appellee says nothing about the violence. Additionally, the photo of a wounded victim was produced by the appellant, the appellant incurably failed to produce the photographer to testify to the photos. During the hearing before this Bench, the 2nd appellee’s counsel, referring to the records, informed this Court that the witness who testified to the photos admitted to downloading it from the Facebook. How can such evidence be considered as credible in the absence of any showing that the incident was officially reported to either the 1st appellee or the relevant authorities soon after it occurred? How are we assured that such photos are genuine and authentic and not doctored?

Assuming that the violence took place, the evidence gathered from the records show that elections in District Nos. 4 and 5 did go on, results counted and certified by the representatives of the parties and observers. So, the question that always begs for an answer is how did the alleged violence impact the results of the elections?

This Court has held that “Section 2.9 of the New Elections Law empowers the NEC to administer and enforce all laws relative to the conduct of elections throughout the Republic of Liberia. Also, Chapter 6 of the New Elections Law confers on the NEC the authority to investigate and determine complaints filed by political parties or candidates with regards to issues affecting the conduct of elections. The outcome of NEC’s investigation may require it to validate or overturn an election and does not bar the prosecution for any election offense, [Section 6.2.5 (c)]. In other words, where the NEC from its investigation finds that the election offense requires prosecution, it may have same forwarded to the Ministry of Justice for prosecution in accordance with law.” *Madam Botoe Kanneh v. Coalition for Democratic Change (CDC) et al* decided on March 24, 2021, *Supreme Court Opinion, March Term, A.D. 2021*

Giving all we have said hereinabove, we find no reason to disturb the final ruling of the Board of Commissioners of the NEC.

WHEREFORE and in view of the foregoing, the final ruling of the Board of Commissioners of the National Elections Commission is affirmed. The Clerk of this Court is ordered to send a mandate to the National Elections Commission to resume jurisdiction over this case and enforce its final ruling dated March 11, 2021. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors Gloria Musu Scott, Frances Johnson Allison, Tiawan S. Gongloe, J. Augustine Fayiah, Kuku Y. Dorbor and Philip Y. Gongloe appeared for the appellant. Counsellor M. Winkins Wright appeared for the 1st appellee. Counsellors Cooper W. Kruah and Arthur T. Johnson appeared for the 2nd appellee.

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

Edith Gongloe-Weh, Senatorial Candidate of the)
Collaborating Political Parties, Nimba County)
.....Appellant)
)
Versus) APPEAL
)

National Elections Commission (NEC) and Hon.)
Jeremiah Koung, Senatorial Candidate, presump-)
tive winner, Nimba County.....Appellees)
)

GROWING OUT OF THE CASE:)
)

Edith Gongloe-Weh, Senatorial Candidate of the)
Collaborating Political Parties, Nimba County)
.....Complainant)
)

Versus) ACTION:
) Election Fraud and
) Irregularities

National Elections Commission (NEC) and Hon.)
Jeremiah Koung, Senatorial Candidate and presu-)
mptive winner, Nimba County.....Defendants)

JUDGMENT

When this case was called for hearing, Counsellors Gloria Musu Scott, Frances Johnson Allison, Tiawan S. Gongloe, J. Augustine Fayiah, Kuku Y. Dorbor and Philip Y. Gongloe appeared for the appellant. Counsellor M. Wilkins Wright appeared for the 1st appellee. Counsellors Cooper W. Kruah and Arthur T. Johnson appeared for the 2nd appellee.

Having heard the arguments, reviewed the facts and circumstances revealed by the records, and examined the laws controlling, it is hereby

ADJUDGED:

That the law extant in this jurisdiction is that “no election shall be declared void on account of any delay of nominations; the polling or return of the writ, or on account of the absence or error of any officer which shall not be proved to have affected the result of the election”;

That it is also the law extant in this jurisdiction that the National Elections Commission (NEC) shall certify elections results, acting in the spirit of the Constitution and ensure that the ballots cast constitute the true will of the people; and

That the certified records in this case reveal that the results from the 741 polling places in Nimba County were certified by representatives of political parties, including the representatives of the appellant and made public by postings; therefore, the incidents of storage of election materials at the J. W. Pearson High School campus, swapping of votes during entry of election returns which was corrected, casting of ballots in cartons, breaking of seals in search of the Tamper Evidence Envelopes during tally for preliminary results, and the partitioning of District No. 7 votes between Lower Nimba and Upper Nimba during preliminary counting of votes, in our view, did not impact the results of the election announced by the NEC;

WHEREFORE and in view of the foregoing, the final ruling of the Board of Commissioners of the National Elections Commission is 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 this Judgment. AND IT IS HEREBY SO ORDERED.

GIVEN UNDER OUR HANDS AND SEAL OF THE
HONORABLE SUPREME COURT OF THE REPUBLIC OF
LIBERIA THIS 8TH DAY OF APRIL, A.D. 2021.

Francis S. Korkpor, Sr.
CHIEF JUSTICE, SUPREME COURT OF LIBERIA

Jamesetta H. Wolokolie
ASSOCIATE JUSTICE, SUPREME COURT OF LIBERIA

Sie-A-Nyene G. Yuoh
ASSOCIATE JUSTICE, SUPREME COURT OF LIBERIA

Joseph N. Nagbe
ASSOCIATE JUSTICE, SUPREME COURT OF LIBERIA

Yussif D. Kaba
ASSOCIATE JUSTICE, SUPREME COURT OF LIBERIA