

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2019

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR..... CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE ASSOCIATE JUSTICE
BEFORE HER HONOR: SIF-A-NYENE G. YUOH ASSOCIATE JUSTICE

Alvin Teage JallohPetitioner)
versus

Olubanke King-Akerele. in her official) Petition In Re: the Constitutionality of
capacity as Minister of Foreign Affairs;) Sections 22.1 & 22.2 of the Alien and
Christiana Tah, in her official capacity as) Nationality **Law**
Attorney-General and Minister of Justice;)
and
Milton Nathaniel Barnes.in his official)
capacity as Liberia's Ambassador to the)
United States of **America..** Respondents)

HEARD: MAY 10, 2017

DECIDED: DECEMBER 23, 2019

MR CHIEF JUSTICE KORKPOR delivered the Opinion of the Court.

We are called upon to determine two pivotal issues in this case, they are:

1. Whether or not the petitioner in this case has the legal standing to challenge the constitutionality of *Sections 22.1 and 22.2 of the Aliens and Nationality Law* of Liberia.
2. Whether or not *Section 22.2 of the Aliens and Nationality Law* violate any provision of the 1986 Constitution and, as such, was repealed by Article 95(a) of the 1986 Constitution.

Here are the facts culled from the certified records: On July 12, 2010, Alvin Teage Jalloh (petitioner) filed with the Supreme Court of Liberia this in re petition challenging the constitutionality of *Sections 22.1 and 22.2 of the Aliens and Nationality Law, Title 4 of the Liberian Code of Laws Revised*. The petition was filed against Counsellor Christiana H. Tah, Attorney General and Minister of Justice; Hon. Olubanke King-Akerele, Minister of Foreign Affairs; and Hon. Milton Nathaniel Barnes, Liberian Ambassador to the United States of America as respondents in their official capacities.

The petitioner withdrew and amended his petition. The amended petition alleged that the petitioner, who currently resides in the United States of America, is a natural-born Liberian citizen born unto the union of two Liberian parents on March 23, 1975, in Bopolu, Gbapolu

County; that in June 2010, he wanted to travel from the United States of America to Liberia but was informed through the website of the Liberian Embassy in Washington D.C. and later by a staff at the said Embassy that pursuant to the Alien and Nationality Law, and because he had obtained naturalization in the United States of America and acquired American citizenship, he needed to obtain a non-immigrant *visa* from the Liberian Embassy in Washington D.C., USA, before he could travel to Liberia. The petitioner contended that the decision by the Liberian Embassy staff in Washington D.C., USA, as well as the Government's enforcement of *Sections 22.1 and 22.2 of the Alien and Nationality Law* violate diverse provisions of the Liberian Constitution, particularly the due process clause under *Article 20(a) of the Liberian Constitution*. The petitioner further contended that *Sections 22.1 and 22.2 of the Alien and Nationality Law* which were enacted long before the adoption of the 1986 Constitution of Liberia were automatically repealed by *Article 95(a)* of the 1986 Constitution as being inconsistent with the due process clause of *Article 20(a)*.

The respondents, the Government of the Republic of Liberia by and through the Ministry of Justice, on October 29, 2010, filed an amended returns in which it essentially argued that the petitioner, being a naturalized citizen of the United States of America, lacks the legal standing to challenge the constitutionality of *Sections 22.1 and 22.2 of the Alien and Nationality Law*; that *Sections 22.1 and 22.2 of the Alien and Nationality Law* do not violate the due process clause of the Constitution; that the Liberian Constitution authorizes the Legislature to enact laws by which a citizen of Liberia shall lose his/her citizenship; and that *Sections 22-1 and 22.2 of the Alien and Nationality Law* are consistent with the Liberian Constitution, as such, they were not repealed by the coming into force of the 1986 Constitution.

Having carefully perused the petition and the returns thereto and having listened to *the* oral arguments presented before us by the Counsels representing the parties, **we** shall now discuss and decide the issues stated *supra* as determinative of this case in the order as raised.

Concerning *the* first issue bordering on the standing of the petitioner to file this in *re* petition, the petitioner argues that as the person who the Government claims has lost citizenship right pursuant to Sections 22.1 and 22.2 of the Alien and Nationality Law, his interest and rights *are* affected, therefore, he has standing to challenge the constitutionality of the referenced Sections.

The Government disagrees, contending that only Liberian citizens can challenge those provisions of our laws; that the petitioner being a naturalized citizen of the United States of

America, lacks standing to challenge the constitutionality of Sections 22.1 and 22.2 of the Alien and Nationality Law.

Standing in legal parlance refers to the capacity and the right of a party to bring a lawsuit. Only a proper party of Interest can file a lawsuit. This Court, in the case: *Center for Law & Human Rights Education et al v. MCC et al*, 39 LLR 32 (1998), held that “one who may be prejudiced or threatened by the enforcement of an act of the Legislature may question its constitutionality.” Also, in *Citizens Solidarity Council v. RL*, Supreme Court Opinion (June 27, 2016), this Court held that in order to establish standing to sue, the party bringing the suit must establish the following: (1) that he/she/it 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 enforcement of the challenged law; and (3) a finding in the party's favor is likely to redress or remedy the injury.

Section 22.1 of the Alien and Nationality Law, in relevant part provides as follows:

"From and after the effective date of this title, a person who is a citizen of Liberia whether by birth or naturalization shall lose his citizenship by:

- (a) Obtaining naturalization in a foreign state upon his own application, upon the application of a duly authorized agent, or through the naturalization of a parent having legal custody of such person; provided that citizenship shall not be lost by any person under this section as the result of the naturalization of a parent or parents while such person [is] under the age of 21 years, unless such person shall fail to enter Liberia to establish a permanent residence prior to his twenty-third birthday; or
- (b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof; or
- (c) Exercising a free choice to enter or serve in the armed forces of a foreign state, unless, prior to such entry or service, such entry or service is specifically authorized by the President; or
- (d) Voting in a political election in a foreign state or voting in an election or plebiscite to determine the sovereignty of a foreign state over foreign territory; or
- (e) Making a formal renunciation of Liberian nationality before a diplomatic or consular officer of Liberia in a foreign state in such form as may be prescribed by the Secretary of State."

Section 22.2 of the Alien and Nationality Law provides:

"The loss of citizenship under Section 22.1 of this title shall result solely from the performance by a citizen of the acts or fulfillment of the conditions specified in such section, and without the institution by the Government of any proceedings to nullify or cancel such citizenship. [Emphasis supplied.]

By its plain and concise language, Section 22.1 applies to Liberian citizens by birth who obtain naturalization in a foreign country. Petitioner Jalloh's petition avers that he **was born** in Liberia unto the union of two Liberian citizens, as such, he acquired Liberian citizenship at birth. In support of this averment, the petitioner attached his birth certificate to his petition. The birth certificate, issued by the Ministry of Health and Social Welfare through the Bureau of Vital Statistics, shows the petitioner's nationality as a Liberian by birth. The certificate further shows the petitioner's mother's nationality as Liberian, and his father's nationality as Liberian. Additionally, the petitioner avers that he wanted to travel from the United States of America to Liberia as a Liberian but was informed through the website of the Liberian Embassy in Washington D.C. and later by a staff at the Embassy, that he needed to obtain a non-immigrant visa before he could be permitted to enter Liberia.

The Government does not deny that the petitioner acquired Liberian citizenship at birth. The Government's only argument is that having naturalized as a citizen of the United States, the petitioner gave up his Liberian citizenship and therefore lacks the standing to challenge *Sections 22.1 and 22.2 of the Alien and Nationality Law*.

To our mind the position of the Government is untenable. Were we to accept the position of the Government, it means no person affected by the action or threatened action of the Government under *Sections 22.1 and 22.2 of the Alien and Nationality Law* would ever have standing to pose a challenge. As we see it, having acquired Liberian citizenship *at* birth and thereafter obtained naturalization in the United States, the petitioner is directly affected by the application of and falls within the category of persons whose Liberian citizenship rights have suffered or are in danger of suffering from the Government's enforcement of *Sections 22.1 and 22.2 of the Alien and Nationality Law*. Hence, the petitioner, as a party of interest, has standing to bring an action against the Government. We therefore hold that the petitioner must be heard so that he may present any mitigating matters (if any) in his cause.

The second issue for our determination is whether or not *Sections 22.1 and 22.2 of the Alien and Nationality Law* violate any provision of the 1986 Constitution of Liberia and therefore were repealed by implication under *Article 95 (a)* when the Constitution came into force and effect on January 6, 1986.

It is the contention of the petitioner that *Sections 22.1 and 22.2 of the Alien and Nationality Law* which were enacted long before the adoption of the 1986 Constitution were repealed by *Article 95(a)* of the 1986 Constitution as being inconsistent with the due process clause

of *Article 20(a)*. The Government counter argued that *Sections 22.1 and 22.2* are consistent with *Article 28* of the 1986 Constitution and therefore they were not repealed by the 1986 Constitution.

Article 95(a) of the Constitution of Liberia (1986) provides:

"The Constitution of the Republic of Liberia which came into force on the 26th day of July 1847, and which was suspended on the 12th day of April 1980, is hereby abrogated. Notwithstanding this abrogation, however, any enactment or rule of law in existence immediately before the coming into force of this Constitution, whether derived from the abrogated Constitution or from any other source shall, in so far as it is not inconsistent with any provision of this Constitution, continue in force as if enacted, issued or made under the authority of this Constitution."

This Court has held that "when a case arises for judicial determination and the decision depends on the alleged inconsistency of a legislative decision with the Constitution, our fundamental law, it is the duty of this court to compare the law with the Constitution, and if they are irreconcilable to give effect to the Constitution rather than the statute." *Harmon v. Republic of Liberia*, 2 LLR 480, 482-83 (1924); *Kuyete v. Wardsworth and Sirleaf*, 28 LLR 163, 169 (1979); and *Management of BAO v. Mu/bah and Sikeley*. 35 LLR 35 584, 594 (1988). Also, in the case: *In re the Application of Harper S. Bailey*, 36 LLR 803, 815 (1990) this Court held that "a constitutional provision has supremacy over legislative enactment in conflict with such provision."

We take note that *Sections 22.1 and 22.2 of the Aliens and Nationality Law, Title 4 of the Liberian Code of Laws Revised* were approved on May 15, 1973, and published. Upon publication by the Ministry of Foreign Affairs, they became enforceable. Reliance: *Executive Law*, 2 L.C.L., tit. 20, § 15 (1956). However, we must say here in no uncertain terms that while the two challenged provisions of the *Alien and Nationality Law* were undoubtedly enacted prior to the passage of the 1986 Constitution, it is only *Section 22.2* of the Law that we find to be in clear violation of *Article 20(a)* of the Constitution. *Section 22.1*, on the other hand, is a mere recital of how a Liberian citizen may lose his/her citizenship which, in our opinion, does not contravene any provision of the Constitution.

Article 20(a) of the 1986 Constitution which *Section 22.2 of the Aliens and Nationality Law* specifically contravenes provides in relevant part as follows:

"No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law."

The general rule is that a statute existing at the adoption of a new state constitution cannot be upheld if that statute is in conflict with the plain language of the constitution. In other

words, if there is a conflict between a statute and a new constitutional provision, the former must give way, since all statutes which are inconsistent with a new constitution are repealed by implication. We therefore hold that *Section 22.2 of the Alien and Nationality Law*, enacted prior to the adoption of the 1986 Liberian Constitution, is in direct conflict with the plain language of Article 20(a) of the 1986 Liberian Constitution and, as such, was repealed by implication at the Constitution's adoption and effective date of January 6, 1986.

We reiterate that *Article 20(a)* of the Constitution mandates that there must be a hearing before deprivation of any right or privilege may occur. *Section 22.2 of the Alien and Nationality Law*, on the other hand, provides that loss of citizenship under *Section 22.1* shall result solely from the performance by a citizen of the acts or fulfillment of the conditions specified in that Section. This, in our view, connotes automatic loss of citizenship without resort to any judicial proceedings to nullify or cancel citizenship. Clearly, *Section 22.2 of the Alien and Nationality Law* is in conflict with *Article 20(a)* of the Constitution which guarantees to all the right to due process, and we cannot imagine how this conflict can be reconciled.

Due process is at the core of every judicial proceeding in our jurisdiction. Owing to its abiding commitment to due process, this Court has consistently upheld the tenets and requirements of this cardinal principle of law laid down more than eighty years ago in the landmark case: *Wolo v. Wolo*, 5 LLR 423 (1937). In a nutshell, due process, as articulated in the *Wolo* case refers to the right of a person to a fair hearing or trial before he suffers any penalty. The Liberian Constitution mandates that this right be accorded everyone, whether before the court or administrative agency. Therefore, any law which deprives a person of his/her life, property or other rights, including the right to citizenship without according due process violates our Constitution and will be declared as such by this Court in keeping with its **power** of judicial review granted under *Article 2 of the Constitution* to declare any inconsistent laws unconstitutional.

In the case: *Bah v. Philips*, 27 LLR 210 (1978) this Court held that where a statute grants an agency of the Executive Branch of Government the power to forfeit a constitutionally protected right, no such act of forfeiture can be properly undertaken without according due process to the person through resort to judicial proceedings.

In a recent case: *Abu B. Kamara v. NEC*, decided July 17, 2017, this Court spoke of due process as follows: "The right to due process is a fundamental constitutional protection; no person can be deprived of that right by any agency of the Government. whether of the

Legislature, the Executive, the Judiciary or any other forum. The right was couched in the Constitution of Liberia from the very inception of the nation's independence in 1847 and it remained enshrined in our present Constitution (1986). Even when our country experienced the trauma of a military coup and a civil armed conflict, the right was maintained and adhered to by this Court. Due process is therefore at the very core of our jurisprudence. Thus, **we** are not prepared to tolerate any departure from this long standing valuable principle which **we** have upheld in a long line of cases.”

Citizenship is provided for under *Article 27(a)* of the 1986 Constitution. Once acquired, citizenship is the pillar that secures all of the other rights and privileges Liberians enjoy, including the right to life and the right to own real property, etc. This constitutionally protected right should only be taken away as a result of hearing judgment consistent with due process which is a judicial function. The Liberian Embassy in Washington D.C., USA and/or the Ministry of Foreign Affairs in Monrovia, Liberia are functionaries of the Executive Branch of the Government with no constitutional or statutory powers to hear and make final decisions regarding the constitutional right of a Liberian citizen, especially the right affecting the loss of citizenship.

On this crucial issue of citizenship, **we** are guided by what has transpired in another jurisdiction with which **we** have similar laws, the United States of America. We take note that Sections 22.1 and 22.2 of the *Alien and Nationality Law* which the petitioner has challenged, is modeled after the then Sections 401 and 408 of the *Immigration and Nationality Act (INA)* of the United States. Section 401 of the INA, like Section 22.1 of the *Alien & Nationality Law of Liberia*, provided in pertinent parts as follows:

- A person, who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
 - (a) Obtaining naturalization in a foreign state...; **OR**
 - (b) Taking an oath or making an affirmation **OR** other formal declaration of allegiance to a foreign state: or
 - (c) Entering, or serving in the armed forces of a foreign state...; **OR**
 - (d) Accepting, or performing the duties of, any office, post, employment under the government of a foreign state **OR** political subdivision thereof **for which** only nationals of such state are eligible. **OR**
 - (e) Voting in political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or
 - (f) Making a formal renunciation of nationality before a diplomatic **OR** consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State...;

Section 408 of INA. provided:

"The loss of nationality under this Act shall result solely from the performance by a National of the acts or fulfillment of the conditions specified in this Act."

As can be seen, except for minor variations in *Sections 22.1 and 22.2 of the Alien & Nationality Law* of Liberia, they are essentially a replica of the then *Sections 401 and 408 of the Immigration & Nationality Act* of the United States. *Section 408* of the United States Immigration & Nationality Act, like the current *Sections 22.2* of the Alien & Nationality Law of Liberia, contained a language that called for the automatic loss of United States citizenship **by a** person for performing *any* of the acts enumerated in *Section 401* of the **INA**.

In 1967, Afroyim, a United States citizen, challenged the constitutionality of *Sections 401 & 408* of the United States Immigration & Nationality Act upon which the U.S. Government relied to cancel his United States citizenship. Afroyim had travelled to Israel and while there, he participated in the Israeli election. When he subsequently tried to renew his United States passport, the U.S. State Department refused, arguing that he had automatically lost his citizenship by voting in a foreign election. The United States Supreme Court held that the U.S. Government could not take away Mr. Afroyim's citizenship without his assent, and that *Section 408* of the Immigration & nationality Act, providing for automatic loss of citizenship for voting in a foreign election, was unconstitutional and unenforceable. See for reliance: *Afroyim v. Rusk*, 387 U.S. 253 (1967).

In another case: *Vance v. Terrazas*, 444 U.S. 252 (1980), the United States State Department concluded that Terrazas, a United States citizen *by birth*, had lost his U.S. citizenship after executing an application in which he swore allegiance to Mexico. The US Government took the position that Terrazas' performance of an act that Congress had designated as expatriating acts conclusively and irrefutably proved Terrazas' intent to voluntarily relinquish his U.S. citizenship. But the US Supreme Court rejected the Government's contention and instead held that: (a) in establishing loss of citizenship, the government must prove an intent to surrender U.S. citizenship, not just by showing a voluntary commission of an expatriating act, such as swearing allegiance to a foreign nation; (b) that the expatriating acts specified by Congress could not be treated as conclusive evidence of the indispensable voluntary assent of the citizen; (c) that the trier of fact must in the end conclude that the citizen not only voluntarily committed an expatriating act prescribed by Congress, but intended to relinquish his or her citizenship; and (d), that while the statute might have provided that, *any* of the expatriating acts, if proved, raises the presumption that it **was** committed voluntarily, it does not also direct a presumption that such act has been performed with the intent to relinquish United States citizenship, which remains the burden of the party claiming expatriation to prove by the preponderance of the evidence.

The foregoing illustrates that about four decades ago, the Judiciary of the nation after which the referenced *Section 22.2 of our Alien and Nationality Law* is patterned saw the need to declare similar provision in their law which *did* not allow for a citizen to *have* his/her day in court consistent with due process, unconstitutional. *Our* holding *today* does nothing more than to re-echo and accentuate the *will* expressed *by* the framers of the 1986 Constitution and the citizens who voted and adopted it into law. The people, voting in a national referendum, approved the 1986 Constitution as the highest law of Liberia. *Article 20(a)* of the Constitution provides that *there* must be a hearing consistent with due process of law before deprivation of rights may occur. Further, *Article 95(a)* of the 1986 Constitution provides that any pre-1986 statute or rule of law that is found in *conflict* with any provision of the 1986 Constitution was abrogated along with the 1847 Constitution. *Accordingly*, because citizenship is a right protected *by* our *Constitution*, and because the challenged *Section 22.2 of the Alien and Nationality Law* does not provide for a due process of law hearing as mandated by the 1986 Constitution, **we** are under duty to find that that Section was repealed by implication on January 6, 1986.

WHEREFORE and in **view** of what we have said, the petition is hereby granted. *Section 22.2 of the Alien and Nationality Law*, to the extent that it provides for loss of citizenship solely on account of the performance *by* a citizen of the acts or fulfillment of the conditions specified in *Section 22.1* without the institution *by* the Government of *any* proceedings to nullify or cancel citizenship in *violation* of the due process clause under *Article 20(a)* of the 1986 Constitution, is hereby declared null and void without any force and effect of law.

IT IS HEREBY SO ORDERED.

Counsellors Seward Montgomery Cooper *and* Frank Musah Dean, Jr., appeared for the petitioner.

Counsellors Frederick Doe Cherue, Minister of Justice & Attorney *General*, Betty Lamin Blamo, Solicitor General, and J. Daku Mulbah, County Attorney for Montserrado appeared *for* the respondents.

Petition granted.