

**IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS SPECIAL SESSION, A.D. 2023**

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

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| Concerned Registered Voters of Sinoe County, Republic of Liberia.....Appellants |) | |
| |) | |
| VERSUS |) | APPEAL |
| |) | |
| J. Milton Teahjay, Senatorial Aspirant of the City of Monrovia, Republic of Liberia.....Appellee |) | |
| |) | |
| <u>GROWING OUT OF THE CASE:</u> |) | |
| |) | |
| Concerned Registered Voters of Sinoe County, Republic of Liberia.....Appellants |) | |
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| VERSUS |) | APPEAL BEFORE THE BOC/NEC |
| |) | |
| J. Milton Teahjay, Senatorial Aspirant of the City of Monrovia, Republic of Liberia.....Appellee |) | |
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| <u>GROWING OUT OF THE CASE:</u> |) | |
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| J. Milton Teahjay, Senatorial Aspirant of the City of Monrovia, Republic of Liberia.....Movant |) | |
| |) | |
| VERSUS |) | MOTION TO DISMISS |
| |) | |
| Concerned Registered Voters of Sinoe County, Republic of Liberia.....Respondents |) | |
| |) | |
| <u>GROWING OUT OF THE CASE:</u> |) | |
| |) | |
| Concerned Registered Voters of Sinoe County, Republic of Liberia.....Objectors |) | |
| |) | |
| VERSUS |) | OBJECTION TO NOMINATION |
| |) | |
| J. Milton Teahjay, Senatorial Aspirant of the City of Monrovia, Republic of Liberia.....Respondent |) | |

HEARD: AUGUST 22, 2023

DECIDED: AUGUST 31, 2023

MR. JUSTICE GBEISAY, SR. DELIVERED THE OPINION OF THE COURT

This appeal emanates from the final ruling of the Board of Commissioners of the National Elections Commission (NEC), entered on August 11, 2023, in favor of the appellee, J. Milton Teahjay, having entertained arguments on the appeal taken by appellants, Concerned Registered Voters of Sinoe County, from the ruling of the Hearing Officer of the National Elections Commission (NEC), in which the Hearing Officer granted the motion to dismiss the objection filed by the Concerned Registered Voters of Sinoe County, objecting to the candidacy of the appellee, J. Milton Teahjay, for the Senatorial Seat of Sinoe County.

The facts from the certified records in this appeal show that on August 19, 2023, the appellants, Concerned Registered Voters of Sinoe County, filed with the National Elections Commission an objection against the participation of Senator J. Milton Teahjay to contest for the senatorial seat in Sinoe County in the ensuing October 10, 2023, General and Presidential Elections. We reproduce said communication herein below:

“Concerned Registered Voters of Sinoe County

July 18, 2023
Hon. Dividetta Brown Lansanah
Chairperson
National Elections Commission
9th Street, Sinkor
Monrovia, Liberia

Dear Hon. Lansanah:

Subject: Objection of Senator J. Milton Teahjay’s Participation to Contest the October 10, 2023, Presidential and Legislative Elections

We present our compliments and are pleased to inform the National Elections Commission that Senator J. Milton Teahjay, current Senator of Sinoe County, who is seeking reelection is not qualified to contest because the 14th Judicial Circuit of Rivercess County, on the 20th day of February, A.D. 2018, found him Senator Teahjay guilty of the crimes of economic sabotage, criminal mischief, criminal conspiracy, misapplication of entrusted property and violation of the PPCC Procedures and Processes.

By law, Senator Teahjay is not qualified to hold public/elected office and therefore we object to his participation in the ensuing October 10, 2023, Presidential and Legislative Elections. Hence, our objection to his participation.

Signed:
32 Registered Voters
Messrs. Hilton Wleh Jaydoe and Columbus Brown Komba Nenneh, as
contact persons”.

On July 25, 2023, Senator Teahjay, through his legal counsel, filed along with his thirteen-count resistance to the objection, a nine-count motion to dismiss the objection filed by the Concerned Registered Voters of Sinoe County. Because the returns and the motion to dismiss the objection recite more or less the identical counts, we have synchronized the two and set out the following as contained in both prayers: that the objectors failed to state a claim as a matter of law, that a party filing a complaint or claim before a court or a judicial body must state with particularity and specificity the crux of a matter to be adjudicated; that the objection should be denied and dismissed as a matter of law, because to state a claim, the party is required to have legal capacity to sue and, as in the instant case, capacity to object, consistent with the Civil Procedure Law, Rev. Code 1:11.2(1)(e), and the objectors not having the legal standing to object, the objection should be disregarded and denied; that assuming without admitting the movant, Senator Teahjay, committed the act complained of, the statute will toll to prevent the objectors because it has been five (5) years since the act that prompted the objectors’ objection occurred and concluded, that is, 2017 and 2018, for this, the movant attached copies of the indictment and court’s final ruling to substantiate his claim, relying on the Civil Procedure Law, Rev. Code 1:2.1 to 2.20; that the movant was never convicted of any felonious crime as claimed by the objectors, rather, the trial court found the movant liable for violation of the PPCC procedures and fined him Fifty Thousand United States (US\$50,000.00) Dollars, and by the clearance issued by the trial court relieving the movant from answering to all and any accusations contained in said indictment, his right and privileges were restored, consistent with Article 21(j) of the 1986 Constitution of Liberia, therefore, the movant/respondent could not be subjected to sanction under this circumstance as same would result to double jeopardy; that Section 5.10 of the Elections Law provides that an act or violation observed must be reported within seven (7) days as of the alleged violation, but in the instant case, the alleged act was occurred five (5) years ago, and prohibits the objectors from bringing any objection against the movant; that assuming without admitting that the movant was accused and found culpable, though, not the case, he has satisfied his sanction

under Section 50.12 of the Penal Law which provides that: “a person convicted of any of the crimes listed below or of any attempt or conspiracy to commit such crime or of facilitation or solicitation of such offense shall forfeit any public office he then holds and may be disqualified from any or a specified public office or category thereof for such period as the court may determine, but no longer than five years following completion of the sentence imposed for such crime”. (Treason, {section 11.1} and the crimes affecting national security, {sections 11.2 through 11.9}, Any felony committed in connection with his employment as a public servant, and A crime expressly made subject to this section by statute); and that because the objectors have failed to disclose their identities and addresses supported by an affidavit, only a listing with alleged signatures is not sufficient, hence, the objection must be dismissed.

The records show that on July 27, 2023, a communication, under the signature of Hilton Wleh Jaydoe, presenting himself as a complainant under the banner of the Concerned Registered Voters of Sinoe County, was addressed to Madam Davidetta Brown Lansanah, Chairperson of the National Elections Commission. The letter sought to withdraw the objection filed against the appellee, Senator J. Milton Teahjay, on ground that the latter had on February 20, 2018, paid into government’s revenue an amount of Fifty Thousand United States (US\$50,000.00) Dollars, same representing the fine imposed by the 14th Judicial Circuit in Rivercess County, and that a further law suit growing out of said case amounts to jeopardy. Hence, they have no interest to pursue the objection any further.

Notwithstanding the letter, on July 27, 2023, the respondents/appellants, the Concerned Registered Voters of Sinoe County, filed a twenty-one-count resistance to the motion to dismiss their objection. The resistance set forth that the motion to dismiss the objection did not state any of the grounds provided in the Civil Procedure Law, Rev. Code 1:11.2 for the dismissal of an action, and that under Section 50.12 of the penal law, the movant is disqualified from holding any public office because of his conviction by the 14th Judicial Circuit in Rivercess County on February 20, 2018; that they have the capacity to object to the nomination of the movant because they are not only citizens of Liberia but also registered voters of Sinoe County and that there are several Opinions of the Supreme Court that support their action as citizens and registered voters; that they need not show how their interest would be affected when the movant is allowed to participate in the

elections, but to show that the movant is a convicted felon which makes him incompetent to occupy a public office consistent with Sections 3.1 and 3.23 of the New Elections Law and Section 50.12 of the Penal Code; that the Statute of Limitation as contained in the Civil Procedure Law is not applicable to the Criminal Procedure Law in that, the indictment was drawn against the movant in 2017 while the movant was serving as Senator, though the crimes were committed between 2009 and 2012 while the movant was serving as Superintendent of Sinoe County, and upon conviction, was to forfeit the office of Senator but did not as required by law, and also did not take an appeal from the conviction, and that because the movant is seeking reelection having not forfeited his public office at the time of his conviction, the objection is filed consistent with the Penal Law; that the movant was held criminally liable by the trial judge for violating the PPCC procedures and processes, and fined Fifty Thousand United States (US\$50,000.00) Dollars in line with Section 138 of the PPCC Act which provides that “a person who contravenes any provisions of this Act commits an offense and upon conviction by a court is liable to imprisonment for a period not exceeding five (5) years, and or a fine not exceeding One Hundred Thousand United States (US\$100,000.00) Dollars”.

The respondents/objectors further resisted that double jeopardy will not lie in the situation because the objectors are not requesting the movant to make another payment of the US\$50,000.00; neither are they requesting the movant to forfeit a public office for the second time when in fact he has never forfeited any public office in connection with his conviction; that ever since the final judgment of the trial court found the movant guilty of the crimes charged, he is yet to forfeit his public office as a Senator for Sinoe County and therefore, cannot be allowed to contest, seeking reelection for a public office in the pending October 10, 2023, elections; that insofar the trial court found that the State established a prima facie case against the movant further held that he was criminally liable for violating the PPCC procedures and process, by operation of the law, the movant was found culpable of all counts in the indictment; and that the names, registration cards numbers and signatures of the objectors contained in the objection were sufficient to establish their identities, therefore, the motion to dismiss their objection must be denied.

The Hearing Officers having heard arguments on the motion to dismiss the objection and the resistant thereto, pleadings being exchanged by the parties and rested, ruled on August 3, 2023, and held that the motion being sound in facts and law, was granted and the resistant thereto, denied. We quote excerpts of the Hearing Officers' ruling to form a cogent part of this Opinion:

“We have observed from the records submitted by the parties that an indictment was drawn by the Grand Jury of the 14th Judicial Circuit, Rivercess County, charging movant/respondent of economic sabotage, misapplication of entrusted property, criminal conspiracy, criminal facilitation and violating the PPCC procedures and processes. Also contained in the records is the judgment of the 14th Judicial Circuit of Rivercess County, under the signature of the late Judge S. Geevon Smith, holding movant/respondent liable for violating the PPCC procedures and processes and fined Fifty Thousand United States (US\$50,000.00) Dollars. We have again reviewed the payment receipts of the Fifty Thousand United States Dollars a court's clearance under the signature of the clerk of the 14th Judicial Circuit, Rivercess County.

We have also carefully listened to respondents/objectors' counsel's argument that there is a clause in the Judge's ruling that holds the movant/respondent of criminal offenses mentioned in the indictment. To this, the Hearing Officers say that they shall make no attempt to interpret the Judge's ruling but to make a determination as to whether movant/respondent's rights have not been restored. The Judge's ruling is clear that movant/respondent was held liable for violation of the PPCC Act for which a fine of Fifty Thousand United States Dollars was imposed and paid. Receipts for the payments of the fine were added as exhibits to movant/respondent's motion to dismiss and nowhere in the respondents/objectors' submission and arguments they deny these claims.

As per our practice in this jurisdiction, when a person is guilty of a charge or liable for a conduct, after the satisfaction of the judgment, the court gives a clearance. The court's clearance attached to this motion issued by the clerk of the 14th Judicial Circuit which indicted, tried and held movant/respondent liable clearly says that the movant/respondent is free to go about his normal business, free from intimidation from anyone and that movant/respondent's rights have been restored. The Hearing Officers are convinced that the movant/respondent's rights have since been restored, he cannot be barred from participating in these elections as a senatorial candidate for Sinoe County.

Wherefore, and in view of what we have said above, movant/respondent's motion to dismiss, same being sound in facts and law, is hereby granted and the resistance thereto is dismissed. It is hereby so ordered”.

Not satisfied with the final decision of the Hearing Officers of the NEC, the objectors announced an appeal, and filed with the Board of Commissioners of the NEC, a two-count approved bill of exceptions on August 4, 2023. The bill of

exceptions set out the following as errors committed by the Hearing Officers: (a) that despite the statutory grounds provided in the Civil Procedure Law Rev. Code 1:11.2, upon which the movant filed his motion to dismiss their objection, the Hearing Officers dismissed their objection without stating any of the grounds as basis for their decision, as required by law; and (b) that despite the Hearing Officers' holding not to attempt to interpret the ruling of the trial judge, they however determined that the Judge's ruling was clear that the movant/respondent was liable for a violation of the PPCC Act and a fine of Fifty Thousand United States (US\$50,000.00) Dollars imposed and paid; that based on the account of a clearance issued by the clerk of the trial court indicating that the movant was free to go about his normal business, free from intimidation and that his rights were restored.

On review, the Board of Commissioners, on August 11, 2023, ruled and affirmed the ruling of the Hearing Officers after it had entertained arguments from the parties. Making the determination, the Board held: having heard from the parties, the Board says as follows:

1. "In keeping with the 2023 General Elections Nomination and Registration Procedures (issued March 7, 2023), only a candidate, participating political party, coalition or alliance may challenge a person whose name appears on the 2023 provisional list of candidates. We observe, however, that the Hearing Officers failed to mention said procedures in their ruling. We further observe that although appellee cited Section 11.2(1)(e) of the Civil Procedure Law as a basis for the motion to dismiss, the Hearing Officers did not address the issue of the appellant's capacity;
2. While a voter, as per the 2023 General Elections Nomination and Registration Procedures, lacks the standing to challenge the nomination and registration of an aspirant/candidate, on the grounds stated in said procedures, the NEC does not set deadline as to when a court's ruling/judgment may be transmitted to the NEC; and
3. While the NEC, pursuant to Section 2.9(n) of the Elections Law is charged with the responsibility to screen all candidates for elective offices and accredit or reject their candidacy, the NEC lacks subject matter jurisdiction over the key contentions in this matter, all of which may rest on interpretation of the February 20, 2018, ruling/judgment of the 14th Judicial Circuit and/or the Honorable Supreme Court's Opinion in *Samukai et al v. R.L.* – as cited by the parties herein.

Wherefore, and in view of the foregoing, we affirm the Hearing Officers' dismissal of appellants' objection, but we do so on grounds that the NEC lacks subject matter jurisdiction to interpret the court's ruling/judgment in this matter".

Again, not satisfied with the final ruling of the Board of Commissioners of the National Elections Commission, the appellants/objectors noted exception, announced an appeal, and have fled to this Court of last resort on a single-count bill of exceptions reciting the following as the errors allegedly committed by the Board of Commissioners: that despite the statutory grounds provided in the Civil Procedure Law, Rev. Code 1:11.2, for the dismissal of a complaint/petition as in the instant case, the Hearing Officers erroneously dismissed the appellants/respondents/objectors' objection on non-statutory grounds, and on appeal, the Board of Communication of NEC erroneously affirmed the Hearing Officers' ruling dismissing the appellants/respondents/objectors' objection on grounds that the NEC lacks subject matter jurisdiction to interpret the court's ruling/judgment in this matter.

We shall consider each of the contentions raised by the appellants, commencing with the contention that the Hearing Officers dismissed their objection on non-statutory ground. The law, Civil Procedure Law, Rev. Code 1:11.2 provides grounds upon which a motion to dismiss a suit must be premised, and it states: "at the time of service of his responsive pleading, a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint of counterclaim on any of the following grounds":

- a) "that the court has not jurisdiction of the subject matter of the action;
- b) that the court has not jurisdiction of the person;
- c) that the court has not jurisdiction of a thing involved in the action;
- d) that there is another action pending between the same parties for the same cause in a court in the Republic of Liberia;
- e) that the party asserting the claim has not legal capacity to sue".

A review of the records shows that the Hearing Officers, in their ruling held that, the argument advanced by the counsel for the objector relative to a clause in the trial judge's ruling holding the appellee/movant of criminal offenses, they would not attempt to interpret the ruling of the trial judge; presumably, because they are without jurisdiction, which is in consonance with one of the grounds cited above. Expanding further, the Supreme Court held that "it is the law that a court, if a

court, or [administrative agency] lacks jurisdiction to entertain a matter, whatever decision is a legal nullity”. *Scanship (Lib.) Inc. v. Flomo*, 41 LLR 181 (2002). Holding this principle of law, we disagree with the appellant that the Hearing Officers ruled on non-statutory ground.

As to the contention that the Board of Commissioners affirmed the hearing officers ruling but indicated that it lacks the subject matter jurisdiction to interpret the trial court’s ruling, we think so, also. The contention of the objectors that Senator J. Milton Teahjay is a convict, hence, should not be permitted to participate in the ensuing October 10, 2023, elections is not a decision to be made by the Board of Commissioners in the absence of a communication from the Minister of Justice directing NEC to so do in line with Section 3, Subsection 3.23 of the New Elections Law of Liberia.

Additionally, this Court notes that the Board of Commissioners, in its ruling, observed that the Hearing Officers failed to address the issue of capacity; the basis for the movant’s motion to dismiss the objection. We observed also that the Board did not address the issue. However, it is the law in that the Supreme Court can make a decision that the lower court [administrative agency] should have made (citation needed). Indicative whereof, we shall look at the issue of capacity as raised in the motion to dismiss.

The records show that the movant challenged the capacity of the objectors and to demonstrate how the nomination of the movant, J. Milton Teahjay, would affect their interest; that a participant in this jurisdiction must have legal capacity to file a law suit. A search of the objection filed by the appellants, they only assert that the appellee/movant is a convict or was convicted by the 14th Judicial Court in 2018, hence, should not be allowed to contest for the Senatorial Seat for Sinoe County. Assuming without admitting, how does his conviction affect or injure the objectors? Pursuant to the General Election Nomination and Registration Procedures of 2023, of the National Elections Commission, the following are those qualified to challenge the participation of a person whose name appears on the provisional listing: candidate, participating political party, coalition or alliance. The objectors having not found themselves in any of the stated categories, are estopped from asserting a claim, and have no capacity.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the Board of Commissioners confirming the ruling of the Hearing Officers of the NEC, dismissing the Appellant's objection is hereby affirmed. The clerk of this court is ordered to send a mandate to the NEC to resume jurisdiction over this case and give effect to this judgment. Costs are ruled against the appellants. And it is hereby so ordered.

When this case was called for hearing, Counsellor G. Wiefueh Alfred Sayeh appeared for the Appellants. Counsellor Arthur T. Johnson appeared for the appellee. Counsellor M. Wilkins Wright and Counsellor Peter Y. Kerkula appeared for the National election commission.