

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,
SITTING IN 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. KABAASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR..... ASSOCIATE JUSTICE

Hussein Seimavula of Grand Cape Mount)
County, Republic of Liberia..... Appellant)

Versus)

Appeal)

Madam Bintu Mansaray, Aspirant, Grand)
Cape Mount County Electoral District #1,)
by and thru her Chairman, Hon. Mulbah K.)
Morlu of CDC, the Republic of Liberia)
.....Appellee)

GROWING OUT OF THE CASE:)

Madam Bintu Mansaray, Aspirant, Grand)
Cape Mount County Electoral District #1,)
by and thru her Chairman, Hon. Mulbah K.)
Morlu of CDC, the Republic of Liberia)
.....Appellant)

Appeal)
Board of)
Commissioners NEC)

Versus)

Hussein Seimavula of Grand Cape Mount)
County, Liberia..... Appellee)

GROWING OUT OF THE CASE:)

Hussein Seimavula of Grand Cape Mount)
County, Republic of Liberia.....Appellee)

VERSUS)

Objection to)
Nomination)

Madam Bintu Mansaray, Aspirant, Grand)
Cape Mount County Electoral District #1,)
By and thru her Chairman, Hon. Mulbah K.)
Morlu of CDC, the Republic of Liberia)
.....Objector)

Heard: August 29, 2023.

Decided: September 6, 2023.

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT.

As part of the democratic sphere of Liberia, the Liberian Constitution, adopted by the citizens of Liberia at a Referendum in 1984 and which became effective on January 6, 1986, with the inauguration of the new civilian constitutional government, provides at Chapter VIII, Article 83(a) that the Liberian nation-state will conduct every six (6) years, throughout the Republic, elections for the “President, Vice-President, members of the Senate and members of the House of Representatives”, same to be carried out “on the second Tuesday in October of each election year.” In effectuation of this mandate, the Constitution further provides, at Chapter X, Article 89(b) that there shall be an Elections Commission which shall be charged with the responsibility of conducting the said elections, and it vest in the Legislature the prerogative to enact the Elections Laws to govern the electoral process and the conduct of the said elections.

In consonance with Article 83 electoral provisions, aforementioned, the Constitution also provides, at Article 30, the criteria for eligibility of a candidate to seek or contest a legislative position in the House of Senate and in the House of Representatives. The Article states: “Citizens of Liberia who meet the following qualifications are eligible to become members of the Legislature:

- (a) for the Senate, have attained the age of 30 years and for the House of Representatives, have attained the age of 25 years;
- (b) be domiciled in the county or constituency to be represented not less than one year prior to the time of the election and be a taxpayer.”

Also, in furtherance of the constitutional mandate regarding the conduct of elections for public offices, the Liberian Legislature enacted the Elections Law, Title 11, Liberian Code of Laws Revised. At Chapter 2, Section 2.9, Sub-sections (g) and (h) of the Elections Law, the National Elections Commission is empowered not only to “conduct all elections for elective public office, including the chieftancy election and all referenda, and declare the results thereof”, but also as part of the process to conduct the said elections, to “formulate and enforce guidelines controlling the conduct of all elections for elective public offices, which guidelines shall not be inconsistent

with the provisions of the constitution and the Elections Law. Elections Law, Rev. Code 11:2.9(g) and (h).

As part of the authority granted it by the statute, referenced herein and quoted above, the National Elections Commission (NEC), in 2022 and 2023, promulgated series of Regulations for the conduct of the Presidential and Legislative Elections, which by the constitutional mandate, is schedule to be held on October 10, 2023. Amongst the Regulations issued by the NEC was the Regulation entitled “2023 General Elections: Nomination and Registration Procedures”. Under the said Regulation is a sub-title captioned “Challenge to Name on the Provisional List”, which sets out the rights accorded for challenging a candidate whose name appears on the Provisional List published by the National Elections Commission and the grounds upon which such challenge may be mounted. The Sub-title states:

“A candidate, participating political party, coalition or alliance may challenge, where applicable, the eligibility of a candidate on the Provisional List. Such a challenge must be in writing (with all relevant documents/evidence attached) and filed with the NEC no later than two (2) days after the publication of the said Provisional List of Candidates. The following are grounds for challenge:

That the candidate:

1. Has not attained the constitutional age;
2. Has not been domiciled in the Electoral District one year prior to October 10, 2023 (for the House of Representatives); or has not been domiciled in the County one year prior to October 10, 2023 (for the Senate);
3. Has not been resident in the Republic for ten years immediately prior to October 10, 2023 (for the Presidency & Vice Presidency); or
4. Has dual citizenship.”

It was in respect of the foregoing that, following the publication, on July 19, 2023, by the National Elections Commission of the Provisional List of candidates certified by the National Elections Commission to contest the legislative seats in the ensuing October 10, 2023 Presidential and Legislative Elections, the appellant herein, Hussein M. Seimavula, a registered voter in District No. 1, Grand Cape Mount County, filed with the National Elections Commission a letter of complaint against the 1st Appellee, Bintu Mansaray,

whose name had appeared on the NEC Provisional List of Candidates, challenging her eligibility to contest for the Representative seat of District No. 1, Grand Cape Mount County. The letter of complaint advanced three grounds for challenging the eligibility of Appellee Massalay to contest for the Representative seat of District No. 1, Grand Cape Mount County: (a) that the 1st Appellee was not of the age stipulated in the Constitution to be eligible to seek a seat in the House of Representatives; (b) that the 1st Appellee had two different names, one on her Voter Registration Card and another different name on her Candidate Nomination Form; and (c) that 1st Appellee had only recently voted in the national elections held in the neighboring country of Sierra Leone. The complainant, appellant herein, therefore prayed the Commission to disqualify the 1st Appellee from participating in the October 10, 2023 Elections. In order that the allegations contain in the complaint are fully grasped, we quote the said letter of complaint, as follows:

“Kpesséh Town
Porkpa District
Grand Cape Mount County
Republic of Liberia

July 20, 2023

Hon. Davidetta Brown Lansana Chairperson
National Elections Commission
9th Street, Sinkor
Monrovia, Liberia

Ref: Letter of Complaint

Dear Hon. Lansana;

Please accept my heartfelt compliments and herewith accept this letter as an official complaint against **the candidature** of Bintu Massalay, of Electoral District #1, Grand Cape Mount County.

Reasons for my complaint are as follows:

1. Bintu Massalay changed her last name illegally from "Mansaray" to Massalay. Madam Bintu Massalay for the records has two different last names on her Candidate Nomination Form and VR card. One carries Mansaray, while the other carries Massalay.
2. Bintu Massalay also lied about her age. According to records obtained from Cuttington University (CU) it is clear that she has not reached the age required to run for representative.
2. Bintu Massalay is a registered voter in the just ended elections that was held in Sierra Leone.

Based on these and many more points, I write to officially complain to your office in order to have Bintu Massalay disqualified because she is not qualified to contest in the upcoming elections.

I am Hussein M. Seimavula, a registered voter of electoral district Ia, Grand Cape Mount County.

Attached, please find a copy of my VR card and documents to substantiate my claim.

Kind Regards,
Sincerely
Hussein Seimavula
Complainant, Cell No. 0886 227 443 / 0777 289 115”.

Further, in order to substantiate the allegations, which he had set forth in his letter of complaint, appellant attached thereto a copy of records from the College which the 1st Appellee, Bintu Massaray, had attended in Sierra Leone. The records, exhibited by the appellant, carried thereon the birth of Bintu Massalay as 2/24/2000. Also attached to the letter of complaint was a voter registration card issued by the Elections Commission in Sierra Leone whereon is shown a date indicated by Bintu Massalay as her date of birth. In addition, the complainant made reference to Bintu Massalay's academic records at Cuttington University where she had attended. All of these documents, the appellant said, proved that the 1st appellee was not of the age she claimed to be and that as such she was not eligible to contest the upcoming October 10, 2023 Presidential and Legislative Elections.

At the commencement of the hearing, the 1st Respondent filed a motion challenging the standing of the Appellee to bring the complaint against the 1st respondent as the complainant/appellee was not granted such standing under the 2023 Regulation of the National Elections Commission. The 1st Respondent stated that under the stated Regulations, a part of which we have quoted above, only a candidate, a participating political party, or a coalition or alliance can challenge or has standing to challenge the eligibility of a candidate who has been preliminarily cleared by the NEC to participate in an election. The movant asserted that as the complainant did not fall into any of the categories stated under the 2023 Regulation, he was without standing, and that therefore the complaint brought by him against the 1st Respondent should be dismissed.

The Hearing Officers, after entertaining arguments on the motion, denied the same on grounds that the Regulation was in conflict with Section 5.9 of the Elections Law, and the said Section does grant to a registered voter the right to challenge the eligibility of a candidate. Upon the denial the hearing was proceeded with and evidence produced by the parties in support of their respective positions.

Following the hearings, duly had before the Hearing Officers of the National Elections Commission, a Ruling was handed down on August 10, 2023, signed by both of the Hearing Officers, Attorney Annie W. Broderick and Counsellor Muana S. Ville. In their Ruling, the Hearing Officers noted that the 1st Appellee had presented contradicting statements regarding her age and that they were not convinced that she had met the constitutional required age of twenty-five (25) to be eligible to run for the Representative seat for District No. 1, Grand Cape Mount County. Accordingly, they granted the Objection. Because the Hearing Officers' Ruling is cogent to the position articulated herein, we quote herewith in its entirety the Ruling of the Hearing Officers:

"HEARING OFFICERS' RULING"

On July 20, 2023, after the posting of the preliminary list of candidates for the 2023 Presidential and Legislative Elections, Hussein Seimavula, a registered voter of Electoral District # 1, Grand Cape Mount County, filed an objection to aspirant Bintu Massalay also of Electoral District # 1 Grand Cape Mount County. The Objector alleges that he has known Respondent all along been called Bintu Mansaray up to and including the Voter Registration period. That when the preliminary candidates list was posted, Objector observed that the Respondent's name appeared on the list as Bintu Massalay. That the Respondent is a registered voter in the Republic of Sierra Leone while the same a registered voter here in Liberia. That Respondent has not obtained the Constitutional required age to be elected to the House of Representative.

The Objector was represented at the hearing by the Henries Law Firm and appearing were Cllr. Morris Massaquoi and Cllr. Edward Z. Fahnbulleh, while Respondent was represented by the Taylor and Associates Law Firm and appearing was Cllr. Milton D. Taylor. Respondent Counsel submitted that the objection be dismissed because the objection has no merit and is intended to delay the nomination process. The motion was resisted and subsequently denied by the Hearing Officers. The actual investigation began when the Objection Counsel presented three

witnesses to be qualified to take the witness stand. The Objector's witnesses include, Hussein M. Seimavula, Sumalah Sannoh, Boirna Condo. For reasons best known to Objector and their Counsels, Witness Sumalah Sannoh did not testify. Both of Objector's witnesses testified that they have known Respondent as Bintu Mansaray up to and including the exhibition of the voter list.

At the posting of the preliminary list of voters, the Respondent is now referred to as Bintu Massalay. Objector's witnesses testified that the Respondents is a registered voter in the Republic of Sierra Leone and at the same time a registered voter in these elections. The witnesses provided that the Respondent has not met the Constitutional required age to be a member of the Legislature. The witnesses testified to a copy of an admission letter from Cuttington University College indicating that the Respondent was born February 24, 2000. The witnesses testified to a copy of a voter registration detail from the Republic of Sierra Leone bearing the name and photo of Bintu Mansaray. Objector's Counsel requested a subpoena and same was directed to the authorities of Cuttington University College to produce and testify to the admission document of Respondent. Witness Tom Kean, an authority at the department of admission appeared and testified to the effect that he knows nothing about the document produced by the Objector. That the instrument did not derive from his institution, neither does he know the source. Respondent's Counsel presented two witnesses to be qualified and sequestered and the first of Respondent witness was Respondent herself who provided as below: That she is a Liberian citizen but attended school in Sierra Leone, and while there she was referred to as Bintu Marsaray; that she is not aware of document produced by the Objector from Cuttington University though she is a student of that institution; that she voted in the 2017 Elections in Electoral District #1 Grand Cape Mount County at the age of 20 years. That she has changed her name from Bintu Marsaray to Bintu Massalay.

Respondent's second witness was Varney Kromah a Sierra Leonean' voter who testified to his own voter card obtained from the Sierra Leone Election Commission. He provided that the instrument submitted into evidence by the Objector alleging to be voter information of the aspirant from Sierra Leone EMB is not true.

Objector Counsels requested two rebuttal witnesses to disprove Respondent's answer to a question that she voted in 2017 at the age of 20 years. Objector's rebuttal witness Derick Wilson an authority of the Lone Star Communication Service appeared, produced and testified to, the registration information of Respondent with his entity. Objector dispensed with their second rebuttal witness and requested that the Hearing takes administrative notice of the 2017 Final Registration Roll.

ISSUE:

Has the Objector established proof of his objection against the Respondent by a preponderance of the evidence?

The Objector is a registered voter of electoral district #1 Grand Cape Mount County, as provided for under Section 5.9 of the New Elections Law of 1986; as amended, has legal capacity to file this objection.

Objector alleges that Respondent is a registered voter in the Republic of Sierra Leone at the same time appearing here on Liberia's Final Registration Roll as a voter and then aspiring to be elected as a member of the House of Representative.

In proving this allegation, Objector and their counsels presented into evidence a document purporting to be Sierra Leone detail of Respondent. Respondent, while testifying on her own behalf denied having any knowledge of the instrument though admitted that the telephone number on the instrument is her number but claim that the instrument was manufactured by the Objector. Respondent's witness Varney Koroma testified he is a registered voter in the Republic of Sierra Leone and provided that the instrument presented by Objector is not voter information for the Sierra Leonean Elections Management Body.

The witness testified as to a voter's card that he used to vote in the 2023 Sierra Leone elections. [As] Objector and his counsels made no further authentication of the instrument submitted by them, the Hearing Officers believed Objector has not proved his case with regards to this allegation.

Objector says that he has known the Respondent all along being called Bintu Mansaray but after the posting of the preliminary list of candidates for the 2023 Presidential and Legislative Elections, Respondent is being referred to as Bintu Massalay. Witness Tom Kean Jr. Objector's subpoena witness from the Cuttington University testified that Respondent is a student of his institution and that Respondent has changed her name from Bintu Mansaray to Bintu Massalay on January 23, 2023. Witness Kean presented an affidavit from a Notary Public indicating the change of name. Change of name is a special proceeding held by the Circuit Court with procedures and process including publication for public notice, why then did Respondent chose to do same through a-Notary Public? **Chapter 67, Section 67.1 of Civil Procedure Law**, provides, a petition by an individual for leave to assume another name may be made to the Circuit Court of the County in which he resides. Also, **Section 67.5** states the procedure provided by this section is the exclusive method by which an individual may officially change his name. By this provision of the law, we hold the Respondent has not officially changed her name.

The Respondent, in response to a question posed by the Objector's Counsel regarding her age, testified that she voted in 2017 at electoral district #1 Grand Cape Mount County at the age

of 20 years. Based on this testimony the Objector's Counsel requested a rebuttal witness and brought in witness Derick Wilson from the Lone Star Communication Company since Respondent has earlier testified to owning a telephone number from that company. Witness Wilson appeared, presented and testified to Respondent's Sim Card registration information she willingly provided to the company: As a requirement for Sim Card registration, one must present an Identification Card, Respondent give to the company her voter card that she used during the 2017 elections on that card Respondent is 18 years old. The Sim Card registration form filled out by Respondent she indicated on that form that she was born February 24, 2000. The "objector's Counsel requested the Hearing to take administrative notice of the Final Registration Roll for Electoral District #1 Grand Cape Mount County. We have reviewed the FRR and observed that Respondent voted in 2017 at the age 18 and not 20 years as she told the Hearing Officers. Respondent submitted into evidence a Certificate of Birth indicating that Respondent was born February 21, 1997. Objector presented an instrument which he claimed is admission information of Respondent from Cuttington University Collage; though the-subpoena testified that the instrument was not from his institution but it corroborated the information provide by Respondent on her Sim Card registration form that she was born on February 24, 2000. Now when was Respondent born February 24, 2000 as she wrote while filling out the Lone Star Sim Card registration form or February 24, 1997 as indicated in her Certificate of Birth? Did Respondent vote during the 2017 elections at age 20 as she stated while on the witness stand, while her voter card and the Final Registration Roll for Electoral District # 1, where she voted in 2017, states she was 18 years old?

With the several contradictions and inconsistencies, the Hearing Officers believe that Respondent has not provided true and correct information regarding her age and we are also convinced that Respondent has not met the Constitutional required age to be elected as a member of the House of Representative. **Article 30a** of the 1986 Constitution provides that to be elected as a member of the House of Representatives, one must have attained the age of 25 years.

WHEREFORE AND IN VIEW OF WHAT WE HAVE NARRATED ABOVE, it is our Holding that the Respondent in these proceedings has not met the constitutional required age to be elected as a Member of the House of Representatives. Objector Objection is hereby granted.”

The 1st Respondent, aggrieved by the Ruling of the Hearing Officers, appealed the case to the Board of Commissioners of the National Elections Commission, filing in respect thereto an eighteen (18) count bill of exceptions. The bill of exceptions set forth three basic contentions: (1) That

the Hearings Officers have erred in denying the motion to dismiss which challenged the legal standing or capacity of the complainant to contest the eligibility of the 1st Respondent as the 2023 Regulations on Nomination and Registration Procedures, issued by the NEC, extended standing to challenge the Provisional List of Candidates to only a candidate, participating political party, coalition and alliance” and not to a registered voter, even one in the district or constituency in which the candidate is seeking a seat in the Legislature to represent the district or constituency; (2) that the Hearing Officer were in error in relying on Section 5.9 of the Elections Law as a basis for their conclusion that the complainant, who was only a registered voter and did not fall into any of the categories listed in the NEC 2023 Regulation mentioned herein as the said Section 5.9 of the Elections Law pertained to voting and not to electoral activities occurring prior to voting, an issue that had already been determined by the Supreme Court in a number of cases; and (3) that Hearing Officer Muana S. Ville should have recused himself from the proceedings since he was an uncle to the complainant.

The Board of Commissioners, having heard arguments of the parties, pro et con, on August 15, 2023, proceeded on August 21, 2023 to hand down its Ruling in the case. The Board of Commissioners Ruling reversed the Ruling of the Hearing Officers, the basis for which rested on two major points: (1) That the complainant, Hussein Seimavula, was without standing to challenge the eligibility of 1st Respondent Bintu Massalay, since he, as a registered voter, was not included in the list of persons, natural and legal, who were vested with the right and standing to challenge the eligibility of a candidate who had been cleared by the NEC and whose name appeared in the NEC Provisional List of Candidates. The Board noted that under the 2023 Regulation issued by the NEC, under the title “2023 General Elections, Nomination and Registration Procedures” with the sub-title “Challenge to Names on Provisional List”, only a candidate, participating political party, coalition or alliance, being direct participants in the nomination process, were vested with the right to challenge the eligibility of a candidate. (2) That the birth certificate which the 1st Respondent exhibited, being the best evidence which a case admits, could not be superseded by any other document or admission made by the 1st Respondent, and hence, that as the birth certificate of the 1st Respondent showed that she was born on February 24,

1997, rendering her 26 years old, one year above the age requirement stated in Article 30(a) of the Constitution, she qualified under the Liberian Constitution to contest for a seat in the House of Representatives for District No. 1, Grand Cape Mount County. The Board did not address the issue of the relationship of one of the Hearing Officers to the complainant.

It is from the Ruling of the Board of Commissioners mentioned above that the appellant herein took exceptions and filed a bill of exceptions, in accordance with the Elections Law, containing seven counts, and thereby, by that action, conferring upon this Court the requisite jurisdiction to entertain the appeal in this matter. Given the relevancy of the several counts of the Bill of Exceptions, filed by the appellant with the NEC on August 22, 2023, we quote herewith in its entirety, verbatim, the said Bill of Exceptions:

“BILL OF EXCEPTIONS

AND NOW COMES Hussein Seimavula, Objector in the above-entitled proceeding and Appellant herein, and says that considering that the August 21, 2023 Decision of the Board of Commissioners of the National Elections Commission, 2nd Respondent, is erroneous both as a matter of law and based on the evidence adduced at the hearing, and being dissatisfied with the aforesaid August 21, 2023 Decision, the aforesaid Appellant files with the Board of Commissioners this Bill of Exceptions, as follows:

1. That 2nd Respondent Board of Commissioners concedes in its Decision that said Decision is based on its Regulations, the **2023 General Elections, Nomination and Registration Procedures, with the subtitle: "Challenge to Names on Provisional List"**, which grants legal standing to only a candidate, participating political party, coalition or alliance to challenge the candidacy of a person nominated for elective public office at an election; which Regulation, Appellant says is in violation of a portion of **Article 1** of the **Constitution** that "*All power is inherent in the people*"; and which Regulation is also a violation of a portion of **Article 3** of the **Constitution** that "*The form of government is Republican*". And for this reason, Appellant excepts.
2. That Appellant, as a registered voter for Electoral District #1, Grand Cape Mount County, has a legal right and interest in the person who intends to represent him in the Legislature and that legal right and interest gives Appellant standing to challenge any person who is not constitutionally qualified to represent Appellant and the people of Electoral District #1, Grand Cape Mount County, as "standing" is defined by law as a person's right to make a legal claim or seek enforcement of a duty or right. It is Appellant, not a candidate, participating political party, coalition or alliance, who/which Appellee seeks to represent in the Legislature, and so, 2nd Respondent Board of Commissioners' Decision, which decided that Appellant has no standing to challenge Appellee's candidacy, based on a clearly erroneous Regulation, is a reversible error. And therefore, Appellant excepts.

3. That in a republican government (representative democracy), which **Article 3** of the **Constitution** proclaims the government of Liberia to be, persons elected to public offices represent the people, not their political parties, coalition or alliance. And therefore, when a person is not constitutionally eligible to represent the people, the people (any voter, especially a voter from the constituency which the candidate seeks to represent) may challenge the constitutional eligibility of said candidate. The Decision of the 2nd Respondent Board of Commissioners that only another candidate, participating political party, coalition or alliance has the standing to prefer such challenge is not based on the fundamental principle of government by the people and for the people; and therefore, that Decision is a reversible error. And for which appellant excepts.

4. That **Section 3.15** of the **New Elections Law** recognizes the right of a registered voter to object to a name on the Registration Roll; **Section 5.6** of the **New Elections Law** allows a registered voter to challenge another voter at the poll; and **Section 5.9** of the **New Elections Law** also reserves the right and power of a registered voter to file a complaint that an offense against the **Constitution** or the **Elections Law** or a violation of a regulation issued by the Commission has occurred in connection with the administration of an election and such complaint may be filed during any stage of the election. (EMPHASIS OURS). Appellee's ineligibility to serve as a member of the House of Representatives is an offense against the Constitution (EMPHASIS OURS); the complaint against which may be filed at any stage of the election. The Decision of 2nd Respondent Board of Commissioners that Appellant, even though being a registered voter for the constituency which Appellee seeks to represent, has no standing to challenge Appellee's constitutional eligibility to be a candidate for this elective public office has no basis in law, the evidence or reasoning. And for these, Appellant excepts.

5. That the Decision of 2nd Respondent Board of Commissioners is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record in that the Board of Commissioners relied on a recently obtained birth certificate, not a birth certificate obtained at the time of Appellee's birth) to determine Appellee's birth year to be 1997, relying on the theory that the aforesaid recently obtained birth certificate was not challenged by Appellant. 2nd Respondent Board of Commissioners ignored its own Final Registration Roll, Appellee's previous voter records with 2nd Respondent Board of Commissioners, and other evidence submitted by Appellant (e.g. information given by the Appellee to Lone Star Corporation when she registered her SIM card with that company, which reveals that Appellee's birth year is 2000). And for this reason, Appellant excepts.

6. Appellant says that the Legislature performs three (3) cardinal functions in the governance of Liberia. It makes law, represents the people, and exercises oversight responsibility for the other two branches of government (the Executive and the Judiciary). This is such a serious and grave duty and responsibility that the drafters of the **Constitution** determined that a person shall have certain maturity to be qualified to be a member of the Legislature; and for the House of Representative, that maturity is a minimum age of 25. Therefore,

where there is any evidence, which shows that a candidate does not possess this minimum age requirement, as is shown from the records of this proceeding, the Board of Commissioners erred to rely on only a recently issued birth certificate and to ignore the other evidence of underage, which was presented at the hearing. And for this error, Appellant excepts.

7. Appellant says that Appellee claims to be 26 years old in her final year of college at Cuttington University, without showing any proof as to why her education was delayed, especially as she has a father who is a businessman and she has had the opportunity to attend schools in both Sierra Leone and Liberia. A person who attends school uninterruptedly usually graduates from college at age 20, 21 and latest 22; and so, for Appellee to still be in college at 26 years old without any explanation for the delay in her education clearly spoke loudly to the Hearing Officers and should speak loudly to any reasonable and fair person about Appellee's constitutional eligibility to be a member of the House of Representative. The failure of and Respondent Board of Commissioners to acknowledge this fact is a clear reversible error by committed by 2nd Respondent Board of Commissioners by deciding that Appellee is 26 years old and therefore eligible to contest as a candidate for the House of Representatives. And for this reason, appellant excepts.

WHEREFORE and in view of the foregoing, Appellant submits this Bill of Exceptions for approval by 2nd Respondent Board of Commissioners as the first step for perfection of his appeal to the Honorable Supreme Court for review of the August 21, 2023 Decision of 2nd Respondent Board of Commissioners.”

We have culled from the bill of exceptions two major contentions advanced by the appellant against the Ruling of the Board of Commissioners of the National Elections Commission. (1) That the Board of Commissioner erred in ruling that the appellant was without the legal capacity or standing to challenge the eligibility of the 1st Respondent, relying on its 2023 Regulation, which the appellant asserts, was clearly in violation of Articles 1 and 3 of the Constitution and Sections 3.15, 5.6 and 5.9 of the Elections Law. (2) That the Board of Commissioners erred in relying on a birth certificate issued only recently rather than one issued at the time of the birth of the 1st appellant, and excluding other evidence which contradicted the recently issued birth certificate. For this Court, the important issue which this Court deems necessary to address is the issue of whether the appellant has standing to challenge the eligibility of the 1st Respondent. Hence, although the Court may allude to other circumstances in the case, the cardinal issue decisive of the case is that of whether the appellant has standing to initiate the instant challenge against the eligibility of the 1st Respondent.

The issue of standing is critical to the determination of this case because this Court has said in manifold Opinions that unless a person has standing to bring an action, the action cannot be entertained by the Court and must therefore be dismissed. See *Citizen Solidarity Council v. The Government of Liberia*, Supreme Court Opinion, October Term, 2014; *Center or Law and Human Rights Education et al. v. Monrovia City Corporation*, 39 LLR 32 (1998).

The consistency of this Court's position on standing was demonstrated in an earlier case, *Morgan v. Barclay*, decided at the March Term, 2004, of the Court, found in 42 LLR at page 259. In that case, the Court, in defining legal capacity as the "right to come into court", held that: "The standing to sue doctrine means that a party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." The Court noted there, as we do now, that standing is a concept utilized to determine if a party is sufficiently affected so as to ensure that a justiciable controversy is presented to the court. The requirement of standing is satisfied only "if it can be said that the plaintiff has a legally protectable and tangible interest at stake in the litigation."

Indeed, as recently as August 31, 2023, the Supreme Court said in the case *Sheah et al. v. McGill* that: "The Supreme Court has held that where it is alleged that a party lacks standing to institute an action, the court must first decide the issue of standing, and if it is established that the party indeed lacks standing to bring the action, the action is dismissed without deciding the substantive issues in the pleadings." The Court cited, in support of its holding, the case of *The Board of Commissioners of NEC and Brownie J. Samukai v. Movement for Progressive Change and Ministry of Justice*, Supreme Court opinion, March Term, 2021.

In the instant case, the appellant, a registered voter in District No. 1, Grand Cape Mount County, had challenged the eligibility of the 1st Appellee to contest for the seat in the House of Representatives for District No. 1, Grand Cape Mount County. The 1st Appellee had responded, amongst other things, with the averment that the appellant lacks the legal standing or capacity to challenge the eligibility of the 1st Respondent, noting that under the 2023 General Elections Regulation, especially the portion that pertained to

challenges to names appearing on the Provisional List of candidate issued by the National Elections Commission, the appellant is not amongst the categories of persons or entities that have standing to make such challenge. The Regulation in question clearly states that only a candidate, participating political party, or coalition or alliance have the right to challenge the eligibility of a candidate listed on the Provisional List. The Hearing Officers rule that the appellant has the right to challenge the eligibility of the 1st Appellee, but the ruling was reversed by the Board of Commissioners of the National Elections Commission on the ground that the referenced Regulation specifically excluded persons in the category as the appellant from challenging the eligibility of persons whose names appeared on the Provisional List issued by the Elections Commission. We are in agreement with the Board of Commissioners that persons in the category of the appellant, being only a registered voter, lack the capacity to challenge a candidate cleared by the NEC and whose name therefore appeared on the Provisional List.

The appellant counters the standing challenge by asserting that the Regulation violates Articles 1 and 3 of the Constitution, which state that “all power is inherent in the people” and that “the form of government is republican”. The Court says the quoted provisions have no relevance to the issue of whether a party has standing to bring an action in a particular set of circumstances, and that the fact that “all right is inherent in the people” and that “the form of government is republican” do not in and of themselves give standing to a party who otherwise under the law has no standing. Nor is it appropriate to challenge the constitutionality of the Regulation in a collateral suit; the challenge to the constitutionality of the regulation must be direct. As far back as 1915, this Court in the case *“Re Notice From the President of the Removal of Associate Justice McCants-Stewart*, said:

We would here remark that although the Court would like to hand down an opinion on the constitutional question involved in this matter---a question which is to a certain extent novel and at the same time of national importance, affecting as it does the prerogatives and rights of the judicial officers of the country, upon whose wisdom, stability and integrity, personal security and private property rests, we find ourselves unable to do so under the circumstances; as the courts will

not draw into consideration constitutional questions collaterally, unless the consideration is necessary to the determination of the point in controversy.” 2 LLR 175, 182 (1915).

Thus, while it is true that Article 2 of the Constitution clearly states that it is only the Supreme Court that has the authority to declare any Act of the Legislature or Regulation of an Executive Agency unconstitutional, the issue of the constitutionality of the Regulation must and can only be brought directly to the Supreme Court, not collaterally, and the issue can only be passed upon by the Supreme Court. No subordinate court or administrative agency has the authority to pass upon the constitutionality of an Act of the Legislature or a Regulation of an agency. They would be acting *ultra vires* and illegally in any attempt to make such declaration, which would not only be a clear usurpation of the constitutional power vested solely in the Supreme Court, but *void ab initio*. It was therefore not within the purview of the National Elections Commission, nor any hearing officer of the said Commission to address the issue of the constitutionality or unconstitutionality of the 2023 Regulations.

It is worth noting that an examination of the original draft of the Constitution which is now in effect shows that the National Constitution Commission, in stating the power and authority of the court to declare an Act of the Legislature or a Regulation of an administrative agency unconstitutional, vested such power in the “Judiciary”, not in the Supreme Court. But the Constitutional Advisory Assembly, in its wisdom, rejected the use of the word “Judiciary” and instead replaced same with the words “Supreme Court”. In the document setting forth the rationale for the change, the Constitutional Advisory Assembly noted the danger in having any court, including a justice of the peace court, declaring an Act of the Legislature or an administrative agency, such as the National Elections Commission, unconstitutional. This Court fully concurs with that rationale, and reechoes that it is only the Supreme Court that is vested with such authority, and that any party seeking to challenge the Regulation in question must do so directly in an “In re” proceeding venued before the Supreme Court, not in a collateral proceeding before an administrative agency such as the National Elections Commission.

Additionally, with respect to Chapter 5, Section 5.9 thru 5.12 of the New Elections Law, as amended, this Court has held that the provisions relate exclusively to challenges interposed during voting and not during the nomination and registration process of candidates. In the case *NEC v. Amos Sieh Siebo, Jr., Supreme Court Opinion, March Term, A.D. 2017*, this Court said the following in regard to the referenced provision:

“We cannot accept Section 5.12(6) which the movant seeks to use as authority for asserting that the appellant had violated the appeal time frame requirement within which to file his bill of exceptions as the Chapter under which the provision falls, being Chapter 5 of the Elections Law, does not deal with candidates or aspirants’ registration or the registration process, but rather deals exclusively with voting. Accordingly, we hold that the procedures for the filing of complaints articulated in Chapter 5, and especially at subsection 5.9 through 5.12(6), apply squarely to the time of ‘voting’ and not “nomination of candidates”. Hence, the section relied upon by the movant/appellee is not applicable to the instant case which involves candidates’ nomination or the nomination process, but rather that the section applies instead to challenges emanating from complaints on irregularities noticed during voting or connected to the voting process...” *NEC v. Amos Sieh Siebo, Jr., Supreme Court Opinion, March Term, A. D. 2017.*”

We note further that the appellant also contends that he derives his standing from Section 3.15 of the New Elections Law which provides as follows:

“Any voter may object to the *continuance of a name on the Registration Roll* by reason of ineligibility or death of the voter. Such objection shall be submitted on the prescribed form to the Registrar of Elections who shall transmit it to the Magistrate of Elections for review. The Magistrate of Elections shall within thirty (30) days determine the validity of the objection and shall give public notice within the locality of his findings. A copy of all finding shall be immediately forwarded to the Commission who shall, after its review, cause the roll to be amended accordingly.”
[Emphasis supplied]

A cursory review of the above quoted law shows that the objection authorized therein is concerned with “the continuance of a name on the registration roll by reason of ineligibility or death of the voter.” Succinctly stated, the public elections have stages which begin with the registration of eligible voters, exhibition of registration rolls for verification and objection to an ineligibility of a voter, and end with the announcement and/or certification of presumptive winners. Our review of Chapter 3 of the New Elections Law leaves the distinct impression and conclusion that the chapter is solely devoted to the processes involving registration of voters, exhibitions of voter registration rolls and objections to the registration rolls. Chapter 4 of the said law has to do with conduct of elections, including the nomination processes. We must note that chapter 4 of the said law is silent on the procedures for objection to candidates on the provisional list after nomination. It can therefore be surmised that it is on the basis of the conspicuous silence of the statute on this vital part of the conduct of elections that the National Elections Commission promulgated a procedure pursuant to section 2.9 (g) of the New Elections Law cited hereinabove. On that note, it must be said that **standing** to object to a voter on a VRR (voter registration roll) is not as the same as objecting to a candidate for nomination. We are of the further view that the promulgation of the 2023 General Elections Nomination Procedures is not inconsistent with the New Elections Law.

It is therefore the holding of this Court that as the 2023 Regulation issued by the National Elections Commission does not vest in a registered voter the right to challenge the eligibility of a candidate whose name appears on a Provisional List released by the NEC, such registered voter is without the requisite legal standing to challenge the eligibility of a candidate whose name appears on that List; and until the constitutionality of that Regulation is challenged directly before the Supreme Court and the Court has declared the Regulation as unconstitutional and a violation of the Constitution, the assumption remains that the Regulation is constitutional and therefore legally binding.

We must emphasize, however, that this Court, by the statements made herein above makes no pronouncement as to the constitutionality of the 2023 Regulation. The Court points only to the procedure that one must follow in

seeking to challenge the constitutionality of the 2023 Regulation, or any provision(s) thereof. Accordingly, the constitutional challenge asserted by the appellant, not being within the procedural mechanism prescribed by law, no credence is given thereto.

While ordinarily it would be sufficient, having declared that the appellant lacks the standing to bring the instant proceedings before the National Elections Commission, to refrain from making any further comments, this Court believes it is important that we address another matter noticed in the proceedings. The Board of Commissioners, after having stated that the appellant was without standing to challenge the eligibility of the 1st appellee as such standing have been withheld by the 2023 Regulation, proceeded to make the further comment that the Birth Certificate relied on by the 1st appellee to substantiate or authenticate that she was 26 years old and therefore qualified to contest the 2023 election for the House of Representatives, simply relied on the best evidence rule, stating that the birth certificate was the best evidence and that no other evidence could supersede such evidence. This Court views the action of the NEC as in complete derogation of the functions and duties entrusted to it both by the Constitution and by the Elections law of Liberia. The Court says that both under the Constitution and the Elections Law, the National Elections Commission has the authority and indeed the obligation to ensure that a candidate tells the truth in seeking elective public offices.

The National Elections Commission 2023 Nomination and Regulation Procedures provides under the caption: Scrutiny of an Aspirant's Registration Package as follows:

Receipt of the completed forms and documents does not constitute acceptance of the aspirant's registration as additional processes, scrutiny, and display must be completed. The NEC may take all lawful steps, including the holding of an investigation/hearing to verify the accuracy of the information and documentation submitted by an aspirant, political party, coalition, or alliance so as to ascertain whether the aspirant is qualified under the Liberian Constitution, the Elections Law, National Code of Conduct, and/or the Regulations.

Thus, where, as in the instant case, there are conflicts as to the exact age of the 1st appellant, including representations made by her in several instances, and even including representations made to the NEC as to her age when she had earlier registered to vote, the NEC was under a legal duty to conduct a full investigation into the claim as to the exact age of the 1st appellee, so that it is clear and without any doubt that she met the constitutional requirement as to the eligible age for one contesting to be a member of the House of Representatives.

The NEC must always be cognizant that the essence of our constitutional democracy is obedience to the Constitution and the laws of the country. The expectation is that persons who seek public office must do so without any doubts that they have met the constitutional and statutory requirements, and the NEC had the constitutional and statutory duty of ensuring that the requirements are met, not by the mere representations made by the parties but through its own aggressive investigations to ascertain if the representations made by the parties are true or meet the constitutional threshold. These functions cannot be left to the parties, as they are functions specifically delegated to the National Elections Commission. If a person attains an office on account of a mistruth or misrepresentation or fraud, an entire constituency, county or nation suffers, and the democratic sphere could be in peril. Accordingly, no person who does not qualify under the Constitution to participate in the elections should be allowed to do so on account of the failure of the NEC to perform the duties and responsibilities entrusted to it under the Constitution and the laws of the Country, including exerting its authority in investigating all claims made by an aspirant that he/she meets the constitutional requirements. It is the duty of the National Elections Commission to ensure that representations made by any party or person are accurate and correct, where questions are raised as to such representations, the NEC should investigate the claims to the fullest. How else would the NEC be in a position to take punitive measure against violators consistent with the law.

Finally, and although the parties have not alluded to it, we would like to caution the parties to irregularity appearing in the records. We call attention

to the caption of the case on appeal. The caption clearly shows that there are only two parties to the appeal case, the appellant and the appellee. Yet, in the body of the bill of exceptions, the appellant sought to join the National Elections Commission as a party to the suit, denominating that institution as the 2nd appellee. We would like to point out firstly that this is not how a party is joined to become a party to the proceeding; and in any event, such joinder would not be appropriate, as it would open a flood gate for a judge to be joined as a party to an appeal proceeding merely on account of the fact that a final judgment was handed down by him/her against the appealing party. This is contrary to our procedure law. Hence, we do not believe that the National Elections Commission was a party to the appeal and as such should not have filed a brief. The Court acknowledges that there are situations in which a complaint or an appeal is taken directly against the National Elections Commissions for acts committed directly by it against a party. But this is not the situation in the instant case. Rather, in the instant case, the dispute was strictly between the appellant and the appellee. The NEC only conducted hearings into the dispute and rendered a decision. At no time was it a party to the proceedings. It is only from the decision of the Board of Commissioners that an appeal was taken to this Court, as provided for by the Constitution. It was therefore error for the appellant who, although not having formally joined the NEC as a party to the proceedings and not having even listed the NEC as a party in the caption of the case, to then in the body of the bill of exceptions refer to the NEC as a 2nd respondent. It was also error for the NEC, not being a party to the proceedings, to file a brief and to thereby make itself a party to the case, defending its decision, rather than remaining as an umpire in the case and letting the parties defend their respective positions. We caution the parties to take due note so they act duly in future proceedings.

WHEREFORE AND IN VIEW OF THE FOREGOING, the decision of the Board of Commissioners relative to the lack of standing of the appellant to commence these proceedings, he having chosen not to pursue the proper course recognized by law, is affirmed. The Clerk of this Court is ordered to send a mandate to the National Elections Commission directing it to resume jurisdiction over the case and proceed in accordance with the judgment of

this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

WHEN THE CASE WAS CALLED FOR HEARING, COUNSELLORS MORRIS Y. MASSAQUOI, EDWARD Z. FAHNBULLEH AND ALBERT S. SIMS APPEARED FOR THE APPELLANT. COUNSELLORS ARTHUR T. JOHNSON AND MILTON D. TAYLOR APPEARED FOR THE APPELLEE.