

IN THE HONORABLE 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. KABA .....ASSOCIATE JUSTICE  
BEFORE HIS HONOR YAMIE QUIQUI GBESAY .....ASSOCIATE JUSTICE

Thomas Nimene Tweh, Representative, District #11 )  
Montserrado County ..... Applicant )

Versus )

APPLICATION BY SPECIAL  
LEAVE

Siah Jarmie Tandapolie, New Liberia Party, James )  
Marwieh, Emmanuel K. B, Togbah, ALP et al. of the )  
City of Monrovia, Liberia .....Respondent )

GROWING OUT OF THE CASE: )

Siah Jarmie Tandapolie, New Liberia Party, James )  
Marwieh, Emmanuel K. B, Togbah, ALP et al. of the )  
City of Monrovia, Liberia ..... Appellants )

Versus )

APPEAL

Thomas Nimene Tweh, Representative, District #11 )  
Montserrado County ..... Appellee )

GROWING OUT OF THE CASE: )

Siah Jarmie Tandapolie, New Liberia Party, James )  
Marwieh, Emmanuel K. B, Togbah, ALP et al. of the )  
City of Monrovia, Liberia, .....Appellants )

Versus )

APPEAL FROM BOC

Thomas Nimene Tweh, Representative, District #11 )  
Montserrado County..... Appellee )

GROWING OUT OF THE CASE: )

Siah Jarmie Tandapolie, New Liberia Party, James )  
Marwieh, Emmanuel K. B, Togbah, ALP et al. of the )  
City of Monrovia, Liberia .....COMPLAINANT )

AND )

James Marwieh, Eminent Citizen, District N0.11 )  
Montserrado County, Republic of Liberia )  
.....COMPLAINANT )

AND )

All Liberian Party (ALP), represented by its )  
National Chairman, Theodore Momo, Montserrado )  
County .....COMPLAINANT )

OBJECTION TO

VERSUS ) NOMINATION  
)  
)  
Thomas Nimene Tweh, Representative Aspirant )  
District #11, Montserrado County .....DEFENDANT )

Heard: SEPTEMBER 28, 2023.

Decided: OCTOBER 5, 2023

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This Application by Special Leave, filed on September 22, 2023, and amended on September 25, 2023, by Thomas Nimene Tweh, before the bench en banc of this Honourable Court, seeks to have this Court grant unto the Applicant special permission to file a petition for re-argument in a case decided by this Court on August 31, 2023, wherein this Court, in its Opinion and Final Judgment, reversed the Ruling of the Board of Commissioners (BOC) of the National Elections Commission (NEC) allowing the Applicant to contest the Representative Seat for District # 11, Montserrado County. Under Article IX of the Amended Rules of the Supreme Court, a party against whom the Supreme Court had ruled and entered a judgment against may, within three days of receipt of the Court’s Opinion and Judgment, file a petition for re-argument of the case.

The Supreme Court Rule also requires that in order for the Supreme Court to give consideration to the Petition for re-argument, a Justice who formed part of the Majority Opinion or who concurred with the Majority Ruling of the Court must append his or her approval and signature to the Petition. The records of this Court are devoid of any showing that approval was given to any petition for re-argument by any of the Justices constituting the Majority and hence there is no record in the Court evidencing any filing of a petition for re-argument by the Applicant herein up to the filing of the Application for Leave of Court to file a petition for re-argument. Rather, the records show that 22 days after the rendition of the Opinion and Judgment by this Court in the case in which this Court had ruled against the Applicant, the said Applicant, asserting that he is taking advantage of the provision of IX of the Revised Rules of the Supreme Court, seeks by this Application to have the Supreme Court allow him to file a petition for re-argument *nunc pro tunc*. We recap for the purpose of this Opinion the Judgment of this Court, predicated upon which the Applicant has filed the Application now before the Court.

Following a hearing before the Honourable Supreme Court, on August 31, 2023, handed down an Opinion wherein the Court stated that it is the National Elections Commission Nomination and Registration Procedures that only candidates, participating political parties, coalition, and alliances are competent to challenge nominees on the provisional list of the 2023 General and Presidential Elections; that the National Elections Commission (NEC) being authorized by law to investigate candidates and scrutinize documents proffered by candidates/aspirants seeking to contest in an election, such an investigation into whether an aspirant/candidate has renounced his or her foreign nationality cannot be equated to proceedings usurping the functions of the Attorney General /Minister of Justice under Section 21.50 of the Aliens and Nationality Law; and it having been established by the Geo-Information Services (GIS) of the NEC that the Appellee Dr. Thomas Nimene Tweh is not domiciled in Electoral District # 11, he is not eligible to contest in the said District. The Court therefore ruled that the Hearing Officers were in error in ruling that the respondents/appellants had failed to prove their claim by the preponderance of the evidence, which ruling was affirmed by the BOC. Predicated thereupon, the Ruling of the BOC was reversed by the Honorable Supreme Court and the Clerk was ordered to send down a mandate to the National Elections Commission to give effect to its judgment.

Four days after the Judgment was rendered by the Court, that is, on September 5, 2023, the Clerk of this Court forwarded the mandate to the NEC. On the 12<sup>th</sup> day of September, A. D. 2023, the National Elections Commission read the mandate to the parties and served a copy thereof on each of the parties.

Surprisingly, on the 22<sup>nd</sup> of September, 2023 or 22 days after the Supreme Court's Opinion was handed down, the Applicant filed with this Honorable Supreme Court an Application by Special Leave to file *nunc pro tunc* a petition for re-argument of the appeal case in which the Supreme Court had handed down its Opinion on August 31, 2023, and a mandate sent to the NEC to give effect to its judgment. The Application was withdrawn with reservations on September 25<sup>th</sup>, 2023, followed almost simultaneously by the filing of an Amended Application by Special Leave basically requesting this Honorable Court to grant the Applicant's amended application in order for him to file his petition for re-argument so that this Court can address a number of salient issues which he claimed this Court inadvertently overlooked during the review process of the main case. The legal and factual

grounds given by the Applicant for the filing of the Application by Special Leave are as follows:

1. That the Application by **Special Leave (ASL)** is not a petition for re-argument; it's a separate and distinct independent application that is filed before this Honorable Supreme Court pursuant to **paragraph 2 part 2 of the Revised Rules of the Supreme Court (1999) as an exception**;
2. That the Application by Special Leave craves the kind indulgence of the court to hear a specific question(s) of law that was inadvertently overlooked during the review process;
3. That the application by Special leave is neither a **re-argument petition** nor a **re-litigation action** of the original appeal process which has already been determined by this Honorable Court;
4. That the application by Special Leave (ASL) presents a specific question of law that deals with substantial rights of the applicant seeking to be heard, as provided for under **Article 20(a) of the 1986 Constitution**;

The Respondents were duly served copy of the Application and filed their Returns wherein they contended that:

1. As a matter of law and because Rule IX of the Revised Rules governing the Honorable Supreme Court makes it a mandatory requirement for a party to file a petition of re-argument within three (3) days after the handling down of the opinion and that Rule IX-Re-argument of Part 1 of the Revised Rules of the Honorable Supreme Court provides that a petition of re-hearing shall be presented within three (3) days after the filing of the opinion. The Applicant in flagrant disregard of the mandatory three (3) days requirement, and without any leave of court, deliberately failed to comply with the mandatory requirement contemplated by the rules of court.
2. The Revised Rule of the Supreme Court is for the Applicant to demonstrate that a good cause is shown where a palpable substantial mistake is made by the Appellate Court or Supreme Court, but it is not for the Supreme Court to abrogate and decimate its rules to satisfy the Supreme interest of the residents of District #11 for Montserrado County.
3. The office of an Application for Special Leave is not to Substitute for a Petition for Re-argument, rather, it is an Application that seeks to grant a right to a party who as a result of manifest necessity, could not have enjoyed said right as provided for by law. Further, Respondents say that the Applicant is requesting this Court to extend the time required by law to submit a Petition for Re-argument without giving any legal grounds on why said Application should be granted for its Petition for Re-argument should filed *Nunc Pro Tunc*.
4. Applicant has failed to demonstrate any reason in law why should said Application be granted to allow his Petition for Re-argument to be filed *nunc pro tunc*. For and action to be filed *nunc pro tunc* you must be able to demonstrate that you have met certain requirement by law, and because of manifest necessity or excusable neglect, you could not have completed the

requirement, for which you would request the Court to grant you that opportunity to enjoy said right *nunc pro tunc*. This is not the case with the Applicant, for which the Application should not be granted.

5. Applicant is attempting to bring this Court to Public ridicule by suggesting to this Honorable Court to recall its mandate sent to the National Elections Commission after the Applicant had failed and neglected to make use of Rule IX of the Revised Rules of this Honorable Court which mandates that a party seeking re-argument in a matter shall do so within 3 days after the handling down of the opinion.

Having reviewed the facts set forth in the Applicant's Application and the Returns thereto filed by the Respondents, this Court has identified one issue that is dispositive of the Application by Special Leave for re-argument, and that issue is whether the Applicant's Amended Application by Special Leave as filed set forth any grounds that would justify this Court in granting him Special leave to file a motion or petition for re-argument as stipulated in Article IX Part 1 of the Revised Rules of the Supreme Court?

This Court is of the opinion that the Applicant's Application by Special Leave did not set forth any grounds for failure to comply with the requirements stated in Article IX for re-argument. Article IX, Parts 1-2 of the Revised Rules of the Supreme Court read thus: *"For a good cause shown to the Court by a petition, a re-argument of a cause maybe allowed only once when some palpable substantial mistake is made by inadvertently overlooking some fact or point of law. A petition for re-hearing shall be presented within three (3) days after the filing of the opinion unless in cases of Special Leave granted by the Court en banc upon application"*.

This Court says that Article IX of the Revised Rules of Court clearly recognizes that there may be instances or situations in which the Court may have overlooked a point of fact or law that could have made a difference in its determination of a case. It was in light of this recognition that the Court, as a further move to ensure that substantial justice is accorded to all parties, couched in Article IX of the Revised Rules of the Supreme Court a provision wherein it granted to a party the opportunity, after review of the Court's Opinion and Judgment, to alert the Court that it may have inadvertently overlooked an important point of fact or law. However, in seeking to have the Court probe into the allegation of inadvertence, a party is required to file a motion or petition within three days of the handing down of the Opinion or Judgment or receipt of the Opinion or judgment. Further, to ensure that the

opportunity is not abused, the petition must demonstrate that there exists real and cogent inadvertence of an important fact or law.

But this Court, in several of its opinions regarding the interpretation of Article IX, Part 1, of the Revised Rules of Court has also clearly stated that by the use of the word “shall” in the said Article, it denotes that the three (3) days period stated therein is mandatory and not discretionary and that a party’s decision to utilize the opportunity afforded therein to be re-heard must strictly abide by this mandatory requirement of the time period of three (3) days. If the party seeking re-argument does not meet the time requirement for filing of the motion or petition for re-argument, and he or she desires that the Court entertain his/her petition notwithstanding the failure to take advantage of the time required for the filing of such motion or petition, he/she must set out good legal or factual reasons acceptable to the Court for the failure to adhere to the mandatory requirement of the law.

This Court observes from the records that instead of the Applicant filing a petition for re-argument within three (3) days after the rendition of the Court’s opinion, consistent with the requirement of Article IX, Part 2 of the Revised Rules of the Supreme Court, he elected to file an Application by Special Leave on the 22<sup>nd</sup> day of September, 2023 and later an Amended Application by Special Leave on the 25<sup>th</sup> of September, 2023, almost 25 days after the rendition of this Court’s final judgment. This Court says further that the Applicant has not identified in his Application or in the arguments made before this Court any situations, circumstances or reasons for the failure to file a motion or petition for re-argument. It is disheartening to observe that counsel for the Applicant would expect this Court to entertain a motion or petition for re-argument not filed within the time permitted by law without giving any reasons for the failure to comply with the mandatory requirement. Indeed, even in recognizing that his Application is a complete legal novelty in this jurisdiction, the Applicant still failed to articulate any reasons for the failure to adhere to the law.

The Applicant must have been fully aware that Article IX of the Revised Rules of Court of the Supreme Court requires the filing of a petition for re-argument within three (3) days and that the reason for Article IX of the Revised Rule of the Supreme Court is for the Applicant to demonstrate that a good cause is shown where a palpable substantial mistake is made by the Court. This Court says also that Article IX, in granting a party the opportunity to file a petition for re-argument, clearly

provides that “*The petition shall contain a brief and distinct statement of the grounds upon which it is based, and shall not be heard unless a Justice concurring in the judgment shall order it. The moving party shall serve a copy thereof upon the adverse party as provided by the rules relating to motions. Where a concurring Justice has ordered the re-hearing, the cause shall be re-docketed for examination and determination of the fact or points of law allegedly overlooked in the original judgment by the Court en banc.*”

This Court has held that “*A petition for re-argument is the proper remedy where in the Court’s judgment it appears that palpable mistake as to point of law or fact was made inadvertently by the Court. The Supreme Court has also held that the petition must comply with the mandatory requirement of the law that it is filed within three days (3) of the judgment, failing which there must be proper and legally supported and acceptable excuse given in a timely manner setting forth the reason(s) for filing beyond the prescribed period*”. See *Harris et al. v. Layweah et al.*, 39 LLR 571 (1999) and *Williams v. Kpoto*, Supreme Court Opinion, October Term, A. D. 2011, handed down on February 19, 2013). This Court reiterates that the Applicant not only did not file any Petition for re-argument as required by law, but instead, he proceeded to file an Application by Special Leave 25 days after the judgment of this Court, which must have known was in clear violation of Article IX of the Revised Rules of the Supreme Court.

This Court notes that the granting of Special Leave is not a right but a privilege and is granted under the discretionary power vested in the Supreme Court pursuant to Article IX of the Revised Rules of the Supreme Court. The Court may, in exercise of its discretion, refuse to grant such Special Leave where the Applicant fails to provide evidence of events or circumstances that prevented the Applicant from filing his petition for re-argument within three (3) days after the rendition and receipt of the Court’s Opinion. In the instant case, the Applicant failed to show in his Application by Special Leave any compelling reason such as *force majeure*, sickness of the Applicant or some situations that made it impossible for the Applicant to have filed his petition for re-argument within three days provided for by the Rules of Court. This failure precludes the Court doing a re-examination or probing into its original Opinion handed down in the main case to determine if it committed any palpable substantial mistake in its decision and its reversal of the ruling of the Board of Commissioners.

WHEREFORE AND IN VIEW OF THE FOREGOING, the Application for Special Leave is hereby denied and dismissed. The Clerk of this Court is ordered to send a mandate to the National Elections Commission (NEC) to resume jurisdiction and give effect to the Judgment of this Court rendered on August 1, 2023. Costs are ruled against the applicant. AND IT IS HEREBY SO ORDERED.

WHEN THE CASE WAS CALLED FOR HEARING, COUNSELLOR SAYMA SYRENIUS CEPHUS. Esq. APPEARED FOR THE APPLICANT AND COUNSELLORS LAFAYETTE B. GOULD, SR. AND HENRY W. BARKOUN APPEARED FOR THE RESPONDENT.