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## **Introduction**

The sterling heights of the Office of Chief Justice of the Republic of Liberia is an acclaimed position coveted by many of Liberia's finest and not-so-fine jurists. For the finest of the bunch, they are ostensibly drawn to the leverage the high office has in giving positive direction and meaning to the law. These include reforming court administration, recalling obsolete opinions in favor of public policy, ensuring equity, and intelligently negotiating likely executive and legislative intrusions onto the canvas of the judiciary. Finely tailored pursuits indeed but as the few fortunate would soonest discover, these grandiose visions can be quite idealistic. The Court as we know it, faces its own political economy. Ones etched in deeply rooted foundational factors, skewed rules of the game, and opaque practices with little or no positive deviant cases to learn from.

So, Chief Justice Korkpor uncovered!

In this retrospective, the author microscopes Chief Justice Korkpor's 9-year tenure (2013-2022) in respect of how he navigated his "pages." These "pages" consist of how His Honor administered the courts, how he navigated alleged influence of other branches of government on judicial decisions and how he handled relationships with national and international partners. The author lends support to His Honor's successes on the Bench, his not-so-successful initiatives, and areas where Chief Justice Korkpor could have, and should have done more. It is hoped that there are lessons in the former Chief Justice's tenure that the new Chief Justice can consider as she navigates her own path as head of the Liberian court.

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## Justice Korkpor's Page 1: His Tenure in Numbers

### A. Years Leading the Bench Compared to Others<sup>1</sup>

Chief Justice Korkpor's tenure runs at 9 years. Chief Justice Parsons spent the longest years leading the Bench (25) while 4 other Chief Justices spent under one year in office. It must be noted that the periods of political upheavals (1980-2005) had an attendant negative impact on tenure of justices.



Source: Author

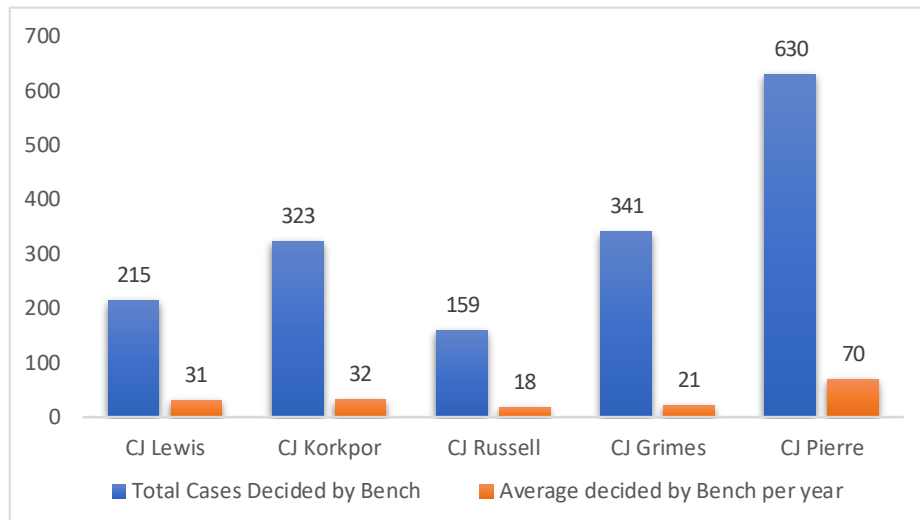
### B. Number of Opinions Rendered by Korkpor's Bench Compared with Select Others<sup>2</sup>

Chief Justice Korkpor's Bench decided 323 cases with average case decided at 32.3 cases per year. Justices on his Bench averaged 6.46 written opinions per year. As low as that figure might seem, when compared to three others (Lewis, Russell and Grimes), Korkpor's Bench comes on top. Chief Justice Pierre tops the lot with a whopping 630 opinions delivered in 9 years averaging 70 cases per year. Noteworthy is that Justice Pierre's Bench delivered these huge numbers despite the

<sup>1</sup> Note: Chief Justice Korkpor served as "Chief Justice *ad interim*" of the Supreme Court for the October 2012 and March 2013 terms of Court. Justice Lewis had become increasingly ill and unable to administer the affairs of the judiciary.

<sup>2</sup> Data up to June 2022

political chaos of the 1970s. The current Bench could do well to open Pierre’s files for an understanding of how he achieved such successes.



Source: Author

Can the new Chief Justice outdo Chief Justice Korkpor, at least on average? Only time will tell.

### Justice Korkpor’s Page 2: His Notable Opinions in Brief

How a Justice’s Bench handles major cases before it, often determines the legacy of the Chief Justice. Justice Lewis’ Bench will be forever remembered for his defense of the letter of the Constitution against legislative Acts in *CDC et al v Executive Branch* [2008] LRSC 5 (11 January 2008) as to the question of appointments of city mayors and his unflinching brusqueness in *In re Contempt Proceedings against Sieb (Front Page)* [2011] LRSC 10 (21 January 2011) on the question of factors of permissibility regarding freedom of the press and the public’ right to know viz the *sub judice* province of the court.

What opinions then define Chief Justice Korkpor’s tenure? This author has selected three cases that in the opinion of the author, best define the outgoing Bench.

#### A. Subah Belleh versus Oniyama

The case *Suah-Belleh v Oniyama* [2015] LRSC 4 (8 January 2015) stands out for its potentially astounding impact on property rights, specifically land rights. In that opinion, Justice Banks writing for the Court emphatically laid down the law, “where a party fails to probate and register a transfer deed within the four months period stipulated by law, the deed ‘shall be void as against any party holding a subsequent instrument affecting or relating to such property, which is duly probated and registered.’” In essence, if a buyer of land probated and registered outside of the four months prescribed by law and another purchaser buys the same property ten years afterwards but registered

and probated it within the statutory four months, the second purchaser has “good title.” Does not really matter that the second purchaser has an obligation to search the title and would have clearly seen that the first buyer had claim to the property. How the Court overlooked the age-old *caveat emptor* principle sent shivers down the spine of lawyers. Narrowly followed, your findings in a search of title deeds may just not be the full picture. A law school classroom on equity principles and statutory interpretation on the mischief rule would benefit from reading this opinion.

### **B. Justice Ja’neh versus House of Representatives**

The case *His Honor Kabina M. Ja’neh v. The House of Representatives* [2018, *uncodified*] represents a defining moment in Chief Justice Korkpor’s time on the Bench. This opinion was written by the Chief Justice. It is the author’s view that penning the opinion himself shows a Chief Justice refusing to eschew responsibility no matter how heavy a load. The opinion polarized the public largely between political lines: some criticized him for what they term succumbing to executive pressure and others defended him as a man holding the Constitution, even if its sharp blades were pointed towards a colleague.

His Honor, speaking for the Court and using the doctrine of constitutional avoidance, declared Justice Ja’neh’s petition not ripe. He stated that the House of Representatives decision “...to submit the petition to an ad hoc committee was an internal, administrative act which cannot be sanctioned by the Judiciary, especially so since no member of the House Committee on Judiciary has raised issue.” The Court notably argued that until a decision had been taken by the plenary of the House to impeach Justice Ja’neh, a writ of prohibition against an act which had not occurred would not lie.

Nonetheless, subsequent finding of the ECOWAS Court of Justice dealt a strong blow to the Chief Justice. Chief Justice Korkpor had presided over the impeachment trial that led to the impeachment of Ja’neh for granting a writ of prohibition on collection of levy/taxes of US\$0.30 (Road Fund) imposed on the pump price of petroleum products. This ground itself is purely unconstitutional as judges have immunities regarding decisions made in their judicial capacity. In 2020, the ECOWAS Court found that Justice Ja’neh’s right to a fair hearing and right to work was violated by his impeachment.<sup>3</sup> Why the Chief Justice presided over a process that led to such outcome remains anyone’s ponder.

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<sup>3</sup> GD Yeakula, AD Miamen and RM Makor ‘State of Corruption Report (SCORE) 2021’ (2021) <<https://cental.org.lr/index.php/documents/reports/state-of-corruption-report>> retrieved 25 May 2022.

## **In re Jewel Howard Taylor et al. (2022, unpublished)**

This case is selected as part of this list because of its monumental departure from precedence and its relegation of legal scholarship in favor of the Vice President of the Republic. Customarily, persons topping the Supreme Court's bar admission test benefit from the caption of the petition; not so in this case. Cllr. Charlene Brumskine, although acknowledged in the opinion, must have felt let down especially when reflecting on the case *Liberia Fisheries Incorporated v Badio et al.* 36 LLR 277 (1989) where the Court said, "this Honourable Court, being a Court of precedence, is bound to base its rulings and activities on the decisions and precedents set by our predecessors."

As a side note, the author is fully aware that changing precedence is rightfully within the province of the Supreme Court, but those departures are mostly when acts complained about were illegally and blatantly done. *Yonkon et al. v. Tulay et al.* 33 LLR 227.

## **Justice Korkpor's Page 3: His Administration of the Judiciary**

### **A. Money & Modernization**

Money and modernization this author acknowledge, are not mutually exclusive. Therefore, they have been linked under this subtopic.

#### **i. Modernizing the Case Management Systems**

Liberian courts as we know them leave much to be desired in terms of modern practices. There is still the old system of filing pleadings and chasing assignments. Almost everything involves some time-consuming and certainly avoidable drudgery if we could only modernize our case management systems (CMS). Explaining the benefits of a modern case management system, Richard Slowes, a former Commissioner of Minnesota Supreme Court puts it this way: "A well-designed CMS will deliver core functionality that provides meaningful ancillary benefits to the courts, such as more efficient data entry, more effective data retrieval, better tools, and enhanced bar and public access."<sup>4</sup>

A search of the records reveals that Chief Justice Korkpor did explore the possibility of modernizing the case management system. There were pilot programs undertaken with support from international partners one example being the United Nations Development Program

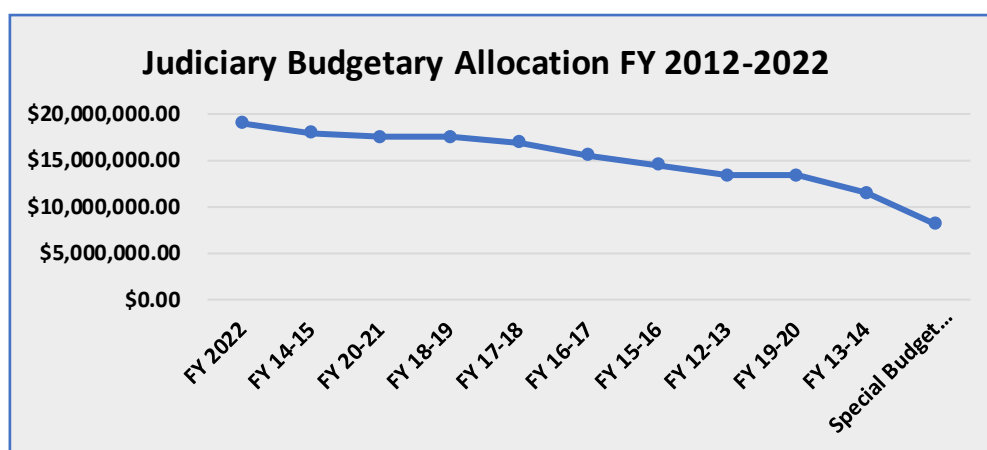
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<sup>4</sup> Slowes R. (2016) *Benefits of a Modern Court Case Management System*, Thomson Reuters [L-379393.indd \(thomsonreuters.com\)](#) retrieved 02/10/2022

(UNDP).<sup>5</sup> But that is where it ended-at the pilot level. The system did not move into further action. Justice Kporkor might have made a good pitch to international organizations on the benefits of modernizing the case manage system in the courts which enabled him to gain their trust to at least undertake those pilots. What is lacking in the records, at least to the public and other keen watchers of the judiciary is a costed plan for court modernization. This doesn't mean it wasn't developed, it only means, his plans, if there were, were not publicized. Could scarce internal resources have been deployed more efficiently to address this challenge? The jury is out on that!

Can Chief Justice Yuoh move the needle on this? Only time will tell.

ii. Money



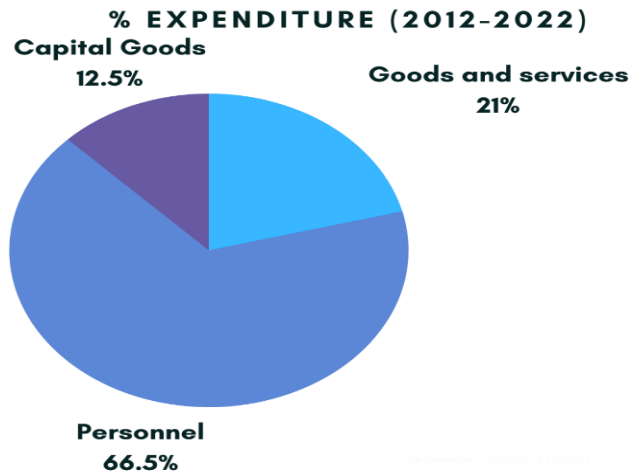
Source: Author<sup>6</sup>

Budget analysis of public appropriations to the judiciary coffers show that Chief Justice Korkpor's administration received the sum of US \$165,280,016.00. These are mostly fiscal outturn figures except for the Special Budget of 2021 and the current year's figure which are based on only appropriated numbers. The Ministry of Finance and Development Planning is still to release actual expenditures.

The largest percentage of expenditure in the judiciary was spent on personnel and use of goods and services with average expenditure on capital goods just over one million dollars per fiscal year.

<sup>5</sup> United Nations Development Program (2022) *Judicial Personnel Trained on Use of CMIS Digital Tools* UNDP [Judicial Personnel trained on use of CMIS digital tool | United Nations Development Programme \(undp.org\)](https://www.undp.org/judicial-personnel-trained-on-use-of-cmis-digital-tool) retrieved 02/10/2022

<sup>6</sup> Data gathered from: [Budget \(mfdp.gov.lr\)](https://mfdp.gov.lr) retrieved 02/10/22



Source: Author

As we see above, the Chief Justice had little latitude in terms of public money to address the myriad challenges he faced. Still, he managed to achieve the construction of judicial complexes in Gbarnga, Barclayville, Zwedru, Sanniquellie, and Tubmanburg.<sup>7</sup> But one of those that left a scar on the Chief Justice Korkpor's tenure was the Archie Ponpon tragedy.<sup>8</sup> Continued support staff agitation for improvement in working conditions especially pay raise led to Ponpon's self-immolation. Right or wrong, this should not have been allowed to happen. Ponpon's act will be inked in historic accounts of Korkpor's pages.

Lest we forget, it's not only support staff agitation the Chief Justice faced. In what would have been unprecedented and slightly ironic, judges threatened court action to rightfully challenge "harmonization" of their salaries.<sup>9</sup> Which judge would have sat on the first instance hearing is anyone's guess. Thankfully, it did not come to this - the Chief Justice brought reason to bear. For this he should be appreciated.

### iii. Publication of Supreme Court Opinion or the Lack thereof

<sup>7</sup> FrontPage Africa Online (2022) *Justice Korkpor Formally Retires as Chief Justice of Liberia*. FrontPage Africa [www.frontpageafricaonline.com](http://www.frontpageafricaonline.com) *Liberia: Justice Korkpor Formally Retires as Chief Justice of Liberia – FrontPageAfrica (frontpageafricaonline.com)* retrieved 02/10/2022

<sup>8</sup> Smart News Liberia (2020) *Rights Activist Archie Ponpon Set Himself Ablaze* Smart News Liberia [www.smartnews.com](http://www.smartnews.com) *Liberia: Rights Activist Archie Ponpon Set Himself Ablaze | SMART NEWS LIBERIA*

<sup>9</sup> Liberian Observer (2021) *Judges Threaten Lawsuit against Weah Administration* Liberian Observer Corporation [www.liberianobserver.com](http://www.liberianobserver.com) *Judges Threaten Lawsuit against Weah Administration (liberianobserver.com)*

Since the end of the civil crisis, the Judiciary has struggled to update its opinion in volumes known as the Liberian Law Reports (LLRs). The last sets of Opinions published were courtesy of the United States Agency for International Development which project was headed by former Justice Banks.<sup>10</sup> Since then, zilch. Understandably, financial challenges contributed to this absence of new volumes of LLRs, but could the Chief Justice's bench have done more? For example, publication of LLRs do not feature prominently in any of his past budgets (FY 2012-2022).

Along with the lack of publication of LLRs went Liberlii.<sup>11</sup> Liberlii had served an important purpose of updating Supreme Court Opinions online, but many were sad to see it stop updating the website in 2017. Could Korkpor's Bench have done more to salvage Liberlii?

Not to be seeing as pesky, the author acknowledges the rise of the judiciary's own website ([www.judiciary.gov.lr](http://www.judiciary.gov.lr)). The website takes off from where Liberlii ends. Much work still needs to be done on this front including regularly updating the website with much needed opinions and information (for example, the opening addresses of the Chief Justice 2012-2014) are not found on the website.

Is it time to privatize publication of Supreme Court Opinions? Is there a clash of jurisdiction here amongst the Supreme Court, the Law Reform Commission and the Ministry of Justice? The author understands a memorandum exists amongst the bodies enabling former Justice Banks to lead the process through the Liberian Law Research, Codification and Publication Center. It can only be the best interest of legal scholarship that they succeed. We wish them well.

## **B. Changing Public Opinion**

Chief Justice Korkpor stated goal on ascending to the pinnacle of the judiciary was "to change public perception of the judiciary."<sup>12</sup> Perhaps he needed to change lawyers' perception of the judiciary as well. Now Tax Court Judge and adjunct professor at the Louis Arthur Grimes School of Law, Ujay Bright, writing in the Oregon Review of International Law, found "73 out of 100 lawyers reported dissatisfaction with the performance of the judiciary."<sup>13</sup> Did Justice Korkpor

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<sup>10</sup> Judiciary of Liberia (2016) *Justice-Philip-A-Z-Banks-III* [Justice Philip A. Z. Banks, III, – \(judiciary.gov.lr\)](http://www.judiciary.gov.lr) retrieved 30/09/22

<sup>11</sup> Liberia Legal Information Institute (© 2011) [www.liberlii.org](http://www.liberlii.org)

<sup>12</sup> Opening address of His Honor Francis S. Korkpor, Sr. Chief Justice, Supreme Court of Liberia October Term of The Supreme Court October 11, 2021. Pg. 10 para 1.

<sup>12</sup> Opening addresses of His Honor Francis S. Korkpor, Sr. Chief Justice, Supreme Court of Liberia October Term of The Supreme Court 2012 & March 2013

<sup>13</sup> Bright, U. (2020) Increasing confidence in the Liberian judiciary: A shift in the dispensation of justice; Oregon Review of International Law, Vol. 21, pg. 155



succeed at changing public opinion? What better reminder do we have other than His Honor's own words as the curtains drew on his tenure. Addressing the opening of the October 2021 Term of Court he said, "Many of our citizens take delight in casting aspersions on the reputation and characters of Justices, Judges and Magistrates without proof and compunction."<sup>14</sup> On his own person, he addressed the Opening of the March 2022 Term of Court decrying what he called, "systematic and orchestrated pattern of vicious lies and verbal attacks"<sup>15</sup>

Chief Justice Korkpor's comments were not mere use of words. They were firmly and pointedly tailored to addressing several reports alleging corruption, abuse of discretion, bribery, denial of justice in the Liberian court system. These reports come from the local media, the US Human Rights Reports, the Center for Transparency and Accountability in Liberia (CENTAL), Afrobarometer, etc. The truth may be somewhere in between.

### **C. Judicial Ethics**

The Court under Chief Justice Korkpor exercised its strong arm against both lawyers and judges deemed to have breached judicial ethics. He should be applauded on this account. There are two developments on ethics during his tenure that this author thinks need scholarly review. We will be very brief.

#### **i. US Magnitsky Sanctions Against Lawyers (Implicating Judges)**

The Court under Chief Justice Korkpor stated it would not act against Cllr. Varney Sherman when the US Government alleged Cllr. Sherman "offered bribes to multiple judges associated with his trial for a 2010 bribery scheme and had an undisclosed conflict of interest with the judge who ultimately returned a not guilty verdict in his favor in 2019." The Court reasoned in a press release, "the information contained in the statement issued by the US Treasury Department, without more, is insufficient to serve as a basis for sanction against the referenced judicial actors." The Court supports this reasoning with "in all cases, before appropriate sanctions are applied, a formal complaint is filed, the accused judicial actor is furnished with a copy, investigation is conducted by the body responsible, and hearings are conducted by the Supreme Court concerning recommendations from the JIC and GEC." By this account, same logic can be applied to the recently sanctioned Solicitor General, Cllr. Cyrenius Cephus.

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<sup>14</sup> Opening address of His Honor Francis S. Korkpor, Sr. Chief Justice, Supreme Court of Liberia October Term of The Supreme Court October 11, 2021 . Pg. 10 para 1.

<sup>15</sup> Opening address of His Honor Francis S. Korkpor, Sr. Chief Justice, Supreme Court of Liberia October Term of The Supreme Court March 2021. Pg. 10 para 2.

Good reasoning it would appear, until you lift the case, *In re Judicial Inquiry on Logan Broderick* 40 LLR 263 (2000) where based on news carry on the radio, the Court *sua sponte* ordered a JIC investigation against a sitting judge and a lawyer. The Court reasoning then was, “it is also an inherent constitutional duty vested in the Court to perform when the behavior of judicial officials and other employees tend to bring the judiciary into disrepute, impair its image and integrity, or erode public trust and confidence in that Branch.”<sup>16</sup>

Again, it’s the Courts province to change precedence. This author respects that province.

## ii. In Re Judge Eva Mappy-Morgan

In one of Chief Justice Korkpor’s last act, the recent Supreme Court Opinion (unpublished) exonerated Her Honor Judge Mappy-Morgan from breaching judicial ethics (Chief Justice Korkpor dissented). The issue of importance to this write-up is the length of time, Judge Mappy-Morgan was kept in peril from determination of the JIC to opinion of the Supreme Court. Have we wondered what might it have been for lawyers appearing before her and in their mind, they are questioning her integrity? Have we wondered how she might have felt? This author thinks the Supreme Court should learn a lesson from the Mappy-Morgan case, and Chief Justice Yuoh’s Bench must now act swiftly in judicial determination as to likely ethical breach by judges.

## D. Building Partnerships

With the many challenges besetting the Judiciary and the limited resources at its disposal, partnerships are important if the judiciary must be strengthened. Chief Justice Korkpor forged some strategic partnerships. For instance, with support from the Government of Sweden through the United Nations Development Programme (UNDP), forty (40) Billboards detailing court costs, fees, and fines were posted at courts in every county, including all sixteen (16) Circuit courts and magisterial courts in densely populated areas.<sup>17</sup> The exercise is intended to address exploitation of persons seeking court services. Also, the American Bar Association (ABA) supported the Judiciary in erecting signs against bribery and facilitation payments at various courts. Through the Professional Magistrates Training Program funded by USAID’s Legal Professional Development and Anti-Corruption (LPAC) Activity, a total of 173 magistrates were trained to dispense justice in courts around the country.<sup>18</sup> Currently, there are movements around operationalizing the

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<sup>16</sup> *In re Judicial Inquiry on Logan Broderick* 40 LLR 263 (2000) *sly.* 14.

<sup>17</sup> GD Yeakula, AD Miamen and RM Makor ‘State of Corruption Report (SCORE) 2021’ (2021) <<https://cental.org.lr/index.php/documents/reports/state-of-corruption-report>> retrieved 25 May 2022.

<sup>18</sup> President Weah Appoints Associate Magistrates [Pres. Weah Appoints Associate Magistrates \(emansion.gov.lr\)](https://emansion.gov.lr)

Division of Case Management to track cases through the judiciary, beginning with when they are filed to when they are finally disposed of. The system is said to be powered by UNDP.

With LPAC ending in 2020 and ABA scaling down its activities, the new Chief Justice will have a huge task to court much needed external support.

In addition, the Yuoh Bench now has an opportunity to work with the Liberian National Bar Association (LNBA) on determining what is the role of the LNBA in reprimanding lawyers. As is, the Court allows the LNBA to license lawyers, but they essentially have no authority to revoke that license.<sup>19</sup> This author is of the view that with the numerous challenges confronting the judiciary, this is one function the Court can opt to apply judicial deference and delegate to the LNBA.

### **Conclusion**

Chief Justice Korkpor had his highs and lows. However, he will be mostly remembered for his stoic personality and courage. For a man whose service at the high Court spanned nearly two decades, gratitude is in order. Still, his legacy remains stained by indecisive leadership in the Ponpon and Ja'neh episodes during his later years. His failure to tackle corruption in the judiciary also stands out. And for most observers, his successor must receive the baton bearing in mind that justice is not only justice because the courts decree it. Judicial integrity, public confidence in the judiciary, and their adherence to established precedence are equally important, if not indispensable, to the status of the courts and the justice they deliver.

Signals to Chief Justice Yuoh!!

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<sup>19</sup> In Re: Judicial Inquiry Commission Report in the case: Liberian National Bar Association (LNBA) by and through its National President, Cllr. Tiawon S. Gongloe vs. Counsellor A. Ndubuisi Nwabudike. (2021, Unpublished)