BEFORE THE HONORABLE SUPREME COURT OF REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2021

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

The Board of Commissioners, by and through its Chairperson Madam Davidetta Brown Lansannah, and all its authorized Persons, all of the National Elections Commission, Republic Of Liberia.....1st Appellant

And

Brownie J. Samukai, Jr. of the City of Monrovia, Republic of Liberia..... 2nd Appellant — APPEAL

Versus

Movement for Progressive Change Inc. by and through its Chairperson O'Neil Passewe .....1st Appellee

And

The Ministry of Justice by and through the Attorney General of the Republic of Liberia.....2nd Appellee

GROWING OUT OF THE CASE:

Movement for Progressive Change Inc. by and through its Chairperson O'Neil Passewe .....Petitioner

Versus

The Board of Commissioners, by and through its Chairperson Madam Davidetta Brown Lansannah, and all its authorized Persons, all of the National Elections Commission, Republic Of Liberia.....1st Respondent — Petition for the Writ of Prohibition

And

Brownie J. Samukai, Jr. of the City of Monrovia, Republic of Liberia .....2nd Respondent

GROWING OUT OF THE CASE:

The Ministry of Justice by and through the Attorney General of the Republic of Liberia.....Petitioner

Versus

The Board of Commissioners, by and through its Chairperson Madam Davidetta Brown Lansannah, and all its authorized Persons, all of the National Elections Commission, Republic Of Liberia.....1st Respondent — Petition for the Writ of Prohibition

And The Case:

Brownie J. Samukai, Jr. of the City of Monrovia, Republic of Liberia .....2nd Respondent

Heard: May 25, 2021. Decided: August 20, 2021.

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

This case involves two separate petitions of prohibition filed before our distinguished Colleague, Mr. Justice Joseph N. Nagbe. The first petition was filed by the Movement for Progressive Change Inc., by and through its Chairperson, O'Neil Passewe (1st appellee) and the second petition was filed by the Government of Liberia, by and through the Ministry of Justice (2nd appellee). The two petitions for the writ of prohibition which are similar in content, were filed against the National Elections Commissions (NEC), (1st appellant) and Brownie J. Samukai, Jr., (2nd appellant) seeking to prevent the certification of the 2nd appellant who was elected as Senator for Lofa County on the ticket of the Collaborating Political Parties (CPP) during the Special Senatorial Election conducted by the National Elections Commission in Liberia on December 8, 2020. To fully understand the circumstances leading to the filing of these petitions for prohibition, we deem it nenessary to give a synposis of the background:

The 2nd appellant, Brownie J. Samukai, Jr., served as Minister of National Defense during the administration of President Ellen Johnson Sirleaf from October 2006 - January 22, 2018. In 2020, he, along with two others, Joseph P. Johnson and James Nyumah Dorkor, were charged for theft of property, criminal conspiracy, misuse of public fund and money laundering. They were indicted, tried and convicted by the First Judicial Circuit, Criminal Assizes "C" for theft of property, criminal conspiracy and misuse of public fund. The trial court sentenced them as follows:

> "This court, therefore, says that considering that the defendants have no previous criminal records within or without the Republic, the court hereby imposes sentences on the defendants as follows:
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> 1. That Co-defendants, Brownie J. Samukai and Joseph P. Johnson are hereby sentenced to common prison for a period of two (2) years each, and that the said two (2) years sentence is suspended provided they elect to restitute the whole or substantial amount of the judgment sum within six (6) months and the balance stipulated to be restituted within twelve (12) months, as of this ruling; failure of which they shall serve the full two (2) years sentence.
> 2. That though Co-defendant James Nyumah Dorkor elected to reserve the right to the privacy of his health status, this Court considering his physical condition and his minor role in the commission of the crime, is hereby sentenced to six (6) months imprisonment; which six (6) months sentence is also hereby suspended, provided he restitutes his share of the judgment sum in whole or substantial part in six (6) months and files a stipulation to pay the balance in twelve (12) months; failure of which he shall serve the full six (6) months in common prison and make restitution."

The 2nd appellant and others noted exception to the final ruling of the trial court and announced an appeal to the Supreme Court sitting in its October Term, A.D. 2020. The

Government also noted exception to the trial court's final ruling; that is, the portion of the ruling regarding the periods to which the 2nd appellant and others were sentenced.

While the appeal was pending before the Supreme Court, a group of citizens from Lofa County, Republic of Liberia, led by Korvah M. Jorgbor filed a petition for the writ of prohibition seeking to prevent the 2nd appellant from participating in the Special Senatorial Election in Lofa County. The group contended that the 2nd appellant had been convicted by the trial court and therefore as a convict, he was precluded by law from holding public office. When the case reached this Court on appeal, we held that until the 2nd appellant's appeal could be determined by the Supreme Court, he was still presumed innocent and was therefore at liberty to take part in the Special Senatorial Election. The 2nd appellant took part in the election and won. An objection was filed before the NEC by some registered voters in Lofa County contending that the 2nd appellant did not fairly win the election. The NEC dismissed the objection and on appeal before this Court, we upheld the decision of the NEC. This Court sent a mandate to the NEC to resume jurisdiction over the case and give effect to its (Supreme Court's) Judgment.

On February 8, 2021, the Supreme Court entered a Judgment affirming the final ruling of the First Judicial Circuit for Montserrado County, Criminal Assisizes "C" with modification in the case of theft of property, criminal conspiracy and misuse of public fund against the 2nd appellant and others. Here is an excerpt from the Supreme Court's Opinion:

> "WHEREFORE and in view of the foregoing, the final judgment of the trial court is affirmed with modification. The appellants are all hereby sentenced to serve a term of two years each in a common jail. However, the sentences shall be suspended provided the said appellants shall restitute the full amount of US$1,147,656.35 (One Million One Hundred Forty-Seven Thousand Six Fifty-Six 35/100 United States Dollars) or fifty percent thereof within the period of six months and thereafter enter appropriate arrangements to pay the remaining portion in one calender year. Shall the appellants fail or refuse to restitute as stated above, then and in case, they shall be incarcerated in the common jail and remain therein until the full amount is paid or liquidated at the rate of US$25.00 per month as provided by law. AND IT IS HEREBY SO ORDERED.

Before the NEC could certificate the 2nd appellant as the winner of the Special Senatorial Election in Lofa County, the Movement for Progressive Change Inc., by and through its Chairperson, O'Neil Passewe (1st appellee) on March 1, 2021, filed a petition for the writ of prohibition with the Justice-in-Chambers praying that the 2nd appellant should not be certificated because he was convicted by the First Judicial Circuit for Montserrado County, Criminal Assizes "C" for theft of property, criminal conspiracy and misuse of public fund; that the 2nd appellant appealed to the Supreme Court; that after hearing the appeal the Supreme Court affirmed the final ruling of the trial court with modification; that by the Judgment of the

Supreme Court affirming the trial court's final ruling, the 2nd appellant became a convicted felon who, by law, cannot occupy a public office until he serves his sentence and fully complies with the penalty imposed on him.

The 1st appellant, the NEC, filed returns to the petition for the writ of prohibition basically contending that the NEC does not take side, not with the 2nd appellant and not with the appellees; and that the NEC is an implementer ready to carry out decisions and instructions of the Supreme Court or the voters as expressed through their votes during elections.

The 2nd appellant, Brownie J. Samukai, by and through his counsel, filed returns to the petition for the writ of prohibition contending essentially that the writ of prohibition cannot lie against him because he is not a tribunal, court or administrative agency acting in a judicial capacity; that by the filing of the writ of prohibition, the 1st appellee was in principle requesting the Justice-in-Chambers not to certificate the 2nd appellant after the Supreme Court had heard and dismissed the appeal of some registered voters of Lofa County who objected to the 2nd appellant's election and instructed the NEC to give effect to the Supreme Court's Judgment; that a single Justice of the Supreme Court cannot issue a writ to restrain the execution of the Mandate of the full bench of the Supreme Court; and that when the Supreme Court affirmed the final ruling of the trial court in the theft of property, criminal conspiracy and misuse of public fund case against the 2nd appellant and others, the Court did not include an order for disqualification and forfeiture of public office to form part of the sentencing.

The Justice-in-Chambers heard arguments *pro et con* and on May 4, 2021, entered a ruling granting the writ of prohibition, to which ruling the 2nd appellant noted exception and announced an appeal to this Court for appellate review.

The 2nd appellant's appeal was heard, but before the Opinion could be delivered by this Court, the Government of the Republic of Liberia, by and through the Ministry of Justice, on March 29, 2021, filed the second petition for the writ of prohibition against the 2nd appellant over the same issues before the same Justice -in- Chambers. The Government requested the Justice -in- Chambers to stop the NEC from certificating the 2nd appellant on grounds that the 2nd appellant, being a convicted felon, is not competent to occupy any public office in keeping with S*ections 3.1and 3.23 of the New Elections Law* and *Section 50.12 of the New Penal Law of Liberia.* The Government also contended that the 2nd appellant has not served his sentence nor satisfied the penalty imposed as required by Article 21(h) of the Constitution of Liberia, therefore he is precluded from exercising his fundamental rights and civil liberties, including the right to public office.

The 1st appellant, the NEC, filed returns to the second petition for the writ of prohibition filed by the Government, basically restating what it said in the first petition for prohibition filed by the 1st appellee, the Movement for Progressive Change Inc., that the NEC does not take side in election matters; and that the NEC is an implementer ready to carry out decisions and instructions of the Supreme Court or the voters as expressed through their votes during elections.

The 2nd appellant, Brownie J. Samukai, Jr., through his counsel, filed returns setting forth similar defenses as were raised in the petition for the writ of prohibition filed by the 1st appellee, the Movement for Progressive Change Inc. He contended in the second petition for the writ of prohibition that the writ cannot lie against him because he is not a tribunal, court or an administrative agency, but a senatorial candidate who contested and was declared the winner in the December 8, 2020, Special Senatorial Election in Lofa County; that a single Justice of the Supreme Court cannot issue a writ of prohibition restraining the excecution of the Mandate sent by the full bench of the Supreme Court to an inferior court for enforcement, relying on the case: S*mith v. Stubblefield,* 15 LLR 582 (1984); that the Supreme Court's affirmation of the final ruling of the First Judicial Circuit for Montserrado County, Criminal Assizes "C" on theft of property, criminal conspiracy and misuse of public fund against the 2nd appellant and others did not include an order for disqualificaton and forfeiture of public office; that under the law, disqualification and forfeiture of public office must be a decision duly made by a court to form part of the sentencing. The 2nd appellant further contended that the 2nd appellee has presented itself as an agent and prosecuting arm of the Executive Branch of Government, and therefore lacks the capacity or legal standing to file this action; that the action of the 2nd appellee through its attorney is contemptuous for attempting to prohibit the execution of the Supreme Court's Mandate; that *Sections 3.1 and 3.23* of the *New Elections Law* relied on by the 2nd appellee are all pre-election challenges which cannot be applied in the instant case; and that *Section 50.12 of the New Penal Law* is also not applicable since the Supreme Court did not, in its Judgment, prohibit or restrain the appellant from holding public office.

At the hearing of the second petition for writ of prohibition, this Court informed the parties through their counsels that the Court will consolidate the two petitions and deliver one opinion, given that the petitions present similar issues of fact and points of law. Consolidation is permissible under the law in such a case. Chapter 6*, Section 6.3, 1LCL Civil Procedure* Law provides that "when actions involving a common question of law or fact are pending before a court of records, the court, upon motion of any party or *sua sponte*, may order a joint trial of any or all the matters in issue or the consolidation of the actions;

and it may make such other orders concerning proceedings therein as may tend to avoid unnecessary cost or delay. The court in which the actions are consolidated or issues or claims tried together may make such orders concerning the proceedings therein as may tend to avoid unnecessary cost or delay." So, to avoid the time and cost associated with the two separate opinions in the two petitions, we decided to deliver one opinion because the petitions for the writ of prohibition contain common questions of law and fact.

After carefully perusing the petitions for the writ of prohibition filed by the 1st and 2nd appellees, the returns thereto filed by the 1st and 2nd appellants, and having read the briefs submitted by the counsels representing the parties and listened to their oral arguments presented before us, we have determined that there are three (3) principle issues for the determination of this case. They are:

1. Whether or not the appellees have standings to file these petitions for writ of prohibition against the appellants?

2. Whether or not one who has been convicted of felony can occupy public office in Liberia? In other words, whether a conviction of a person in Liberia for felony automatically imposes a legal disability on that person and forbids him/her from occupying a public office until the disability is removed in keeping with law?

3. Whether or not the writ of prohibition will lie?

We shall address the core issues raised above in the order presented, but first, there are two other related but secondary issues which claim our attention and which we must address.

The 2nd appellant, through his counsel, has consistently argued that by ordering the issuance of the peremptory writs in the two petitions for prohibition and directing the NEC not to certificate the 2nd appellant "until the disability imposed on him by his conviction is removed according to law," the Justice -in- Chambers has reversed the Mandate of the full bench of the Supreme Court. We do not agree. As indicated above, an objection was filed before the NEC by some registered voters in Lofa County contending that the 2nd appellant did not fairly win the election. The NEC dismissed the objection and on appeal before this Court, we upheld the decision of the NEC and directed the Clerk of this Court to send a Mandate to the NEC to resume jurisdiction over the case and "give effect" to this Court's Judgment. The 2nd appellant takes the position that by that Mandate of this Court, the NEC was instructed to certificate the 2nd apellant. This cannot be true, as nowhere in our Mandate was the NEC instructed to certificate the 2nd appellant. Lest we forget, the case out of which this Court's Mandate grew was an objection to the election of the 2nd appellant. In other words, the prime issue this Court decided was whether the 2nd appellant was duly

elected, and the records before the Court showed that the 2nd appellant was duly elected. So, if an instruction is sent to the NEC to "give effect" to this Court's Mandate, it simply means to affirm and declare, as the Supreme Court had done, that the 2nd appellant was indeed the winner of the Senatorial Election conducted in Lofa County on December 8, 2020 and no more. The matter of certification is a process which the NEC initiates and carries out on it own; it was not an issue raised before the Supreme Court, therefore, the Court did not pass thereon; as such, it was not mentioned in the Mandate sent to the NEC. So, when the issue of certification was squarely raised before the Justice -in- Chambers in the two petitions for the writ of prohibition and he passed thereon, this cannot and should not be construed as a reversal of the Mandate of the full bench of the Supreme Court.

The other secondary issue we address concerns the participation of Counsellor M. Wilkins Wright in this case. At the call of the second petition for the writ of probition for hearing before us, the Government, represented by the Ministry of Justice, filed an application on the Minutes of Court objecting to the appearance of Counsellor M. Wilkins Wright as one of counsels on the side of the appellants, representing the NEC. The Government contended that Cllr. Wright had acted all along as the lead counsel for the 2nd appellant in the criminal case, so it was improper for him to represent the NEC in this prohibition case involving the appellant; that as counsel for the NEC he could advise the NEC to certificate the appellent, his other client, contrary to the position of the Government, whose agent (the NEC) Counsellor Wright was now respresenting.

Counsellor M. Wilkins Wright resisted the application for him to be relieved from the case and reuqested this Court to disregard the objection raised by the Government on grounds that a) the criminal case in which he represented the appellant is different from these petitions for the writ of prohibition; b) that he does not comprehend why the NEC was designated by the 2nd appellee as an appellant in this case, since the NEC is just an implementer ready to carry out decisions and instructions of the Supreme Court and c) that as a disinterested actor in matters relating to elections, the NEC will not take side; it will only implement the decision of the Supreme Court or the voters.

On this issue, we say that in the circumstance as presented, the normal course of action for a lawyer to take is for him/her to refrain from participating in the case. Here, on the one hand, Cllr. Wright was the lead counsel for the 2nd appellant in the criminal case on opposite side with the counsels representing the Government, while in these prohibition proceedings he is a counsel representing the NEC, an agency of the very Government he was opposing in the criminal case. The main contention in these petitions for the writ of prohibition

involves the certification of Counsellor Wright's client, the 2nd appellant, Brownie J. Samukai, Jr. So, on forethought, he should not be in the case. However, this Court took a position allowing Counsellor Wright to remain in the case. This is because to have decided otherwise would have subjected this high profile case bordering on election to further delay, and most importantly, our decision was based on the fact that the returns filed by Counsellor Wright for and on behalf of the NEC raised no substantive issue of contest to the two petitions for the writ of prohibition.

Reverting to the core issues for the determination of this case we begin with the first issue- whether or not the appellees have standings to file these petitions against the appellants?

The 1st appellee maintains that it has legal standing to file this petition for the writ of prohibition to "ratify an attempted breach of a provision of the Constitution as provided for under Article 21 (j) of the 1986 Constitution of the Republic of Liberia as reinforced by Articles 26 and 77…"; that in the instant case the 1st appellee is "an embodiment of a group of citizens of the Republic of Liberia whose organic law stands to be violated" by the certification of the 2nd appellant, who is a convict; that as a political party it has the authority to seek the welfare and wellbeing of citizens of the Republic of Liberia to uphold and defend the laws of the Republic at all times; and that "it is within its scope of authority to advocate the political opinions of the people.

The 2nd appellant, on the other hand, contends that the 1st appellee lacks standing to file this petition for the writ of prohibition because the 1st appellee has no interest to protect since it did not participate in the senatorial election in Lofa County; that as a political party the 1st appellee did not field a candidate in Lofa County, as such, it has no interest in the outcome or result of the election conducted in Lofa County; and that the 1st appellant is not a member of the Liberian Senate, therefore it has no standing to file this petition for the writ of prohibition.

Standing involves jurisdictional questions which concerns the power of courts to hear and decide cases. 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 an action, the action is dismissed without deciding the substantive issues in the pleadings. This Court has consistently held that the purpose of the law on standing is to protect an improper plaintiff and ensure the benefit of a real party of interest; and that it is only a real party of interest to a suit that a court of law can grant relief to, or assess damages against. In this jurisdiction, the law is that a person who is not a party to a suit cannot be legally bound by a judgment flowing from that suit. This Court has also held that a mere interest in a

problem, no matter how qualified the party is in evaluating the problem, is not sufficient by itself to render that party adversely affected or aggrieved for the purpose of giving it standing to obtain judicial review. The party seeking judicial review must have suffered a particularized injury. Reliance: The *Concerned Sector Youth v. LISGIS et* al., decided by this Court on August 30, 2010.

In our opinion, the 1st appellee's arguments that it has standing to bring the petition for prohibition because it is an embodiment of a group of citizens of the Republic of Liberia whose organic law would be violated by the certification of the 2nd appellant, who is a convict; that as a political party it has the authority to seek the welfare and wellbeing of citizens of the Republic of Liberia; and that it is within its scope of authority to advocate the political opinions of the people of Liberia, are all too remote and farfetched and do not constitute particularized injuries suffered by the 1st appellee to confer standing on it to file this action. We are in full agreement with the 2nd appellant that the 1st appellee lacks standing to file this petition for the writ of prohibition because as a political party, the 1st appellee did not field a candidate in Lofa County; therefore, it has no particular interest in the outcome or result of the election conducted in Lofa County. To grant the request of the 1st appellee and allow it to bring this suit is tantamount to opening a floodgate through which any and all registered political parties could pass to raise objections in matters to which they are not real parties of interest. We are not prepared to allow this. Therefore, the petition for the writ of prohibition filed by the 1st appellee, the Movement for Progressive Change, Inc., is denied and dismissed.

As regards the 2nd appellee's standing to file a petition for the writ of prohibition in this case, we say that the Government of the Republic of Liberia, by and through the Ministry of Justice, has standing to file this petition for the writ of prohibition. Where it is said, as in this case, that the law of the land would be violated by an institution of Government by the performance of an act, the Ministry of Justice has the full power and authority to take legal action to prevent the performance of that act. And it is trite law that the Ministry of Justice is that agency of Government with the responsibility to represent the Government of the Republic of Liberia and all of it agencies. The Ministry of Justice is also authorized to give opinion and to advise on all legal matters in which the sovereign Republic of Liberia, its organs, agencies and officers are involved and to appear, prosecute or defend the interest of the sovereign Republic of Liberia, its organs, agencies and officers, whenever there is a matter before any court of the Republic of Liberia.

Section 22.2(a) & (b) of the Executive Law provides:

"It shall be the duty of the Minister of Justice to:

a) Procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the court in which the Republic of Liberia or any officer thereof, as to such officer, is a party or may be interested.
b) Institute all legal proceedings necessary for law enforcement;
Furnish opinion as to legal matters and render services requiring legal skill to the President and other agencies of the executive branch of the Government…"

So, we will not belabor the point as indeed, the Government of the Republic of Liberia, by and through the Ministry of Justice has standing to file the petition for the writ of prohibition in the instant case.

We address the next issue – whether or not one who has been convicted of felony can occupy public office in Liberia? In other words, whether a conviction of a person in Liberia for felony automatically imposes a legal disability on that person and forbids him/her from occupying a public office until the disability is removed in keeping with law? We answer this question in the affirmative.

Section *50.12 of the Penal Code of Liberia* provides:

"A person convicted of any of the crimes listed below or of any attempt or conspiracy to commit such crime or of facilitation or solicitation of such crime, shall forfeit any public office he then holds and may be disqualified from any or a specified public office or category thereof for such period as the court may determine, but no longer than five years following completion of the sentence imposed for such crime."[Emphasis supplied].

Section 50.12 (a), (b) and (c) of the Penal Code lists the crimes referenced in section 50.12 above, the commission of which a person shall forfeit a public office and may be disqualified as follows:

a. "Treason (section 11.1) and the crimes affecting national security defined in section 11.2 through 11.9;
b. Any felony committed in connection with his employment as a public servant;
c. A crime expressly made subject of this section by statute". [Emphasis supplied.]

Section *50. 12 of the Penal Code of Liberia* which prohibits a person convicted of felony from holding public office draws support from Article 21(j) of the Constitution of Liberia (1986) which provides:

"Any person, who, upon conviction of a criminal offense, was deprived of the enjoyment of his civil rights and liberties, shall have the same automatically restored upon serving the sentence and satisfying any other penalty imposed, or upon an executive pardon."

So, *section 50.12 of the Penal Code* addresses the issue at hand with clarity and leaves no room for doubt. There are two parts to *section 50.12 of the Penal Code.* The first part states that a person convicted of "Any felony committed in connection with his employment as a public servant shall forfeit any public office he then holds." This section is a mandate of the law over which the court has no discretion. Once a person is convicted of a felony in connection with his employment as a public servant, that person will automatically forfeit his/her office by operation of law. The question is, is the crime for which the 2nd appellant and others were convicted a felony committed in connection with their employment as public servants? And the answer is yes. We are however aware that the 2nd appellant and others are not now holding any public offices. Had it been so, they would have forthwith forfeited such offices by the dictate of the law.

The second part of *section 50.12 of the Penal Code* provides that a person who has been convicted of felony may be disqualified from any or a specified public office or category thereof for such period as the court may determine, but no longer than five years following completion of the sentence imposed. This section gives discretion to the court to disqualify a person who has been convicted of felony and has forfeited his/her office from holding other public offices. However, this disqualification, according to Section *50.12 of the Penal Code of Liberia*, shall not be for a period more than five years. And the disqualification is done, again according to Section *50.12 of the Penal Code,* following completion of the sentence imposed.

We take due note of the provision of Article 21(j) of the Constitution which states that "Any person, who, upon conviction of a criminal offense, was deprived of the enjoyment of his civil rights and liberties, shall have the same automatically restored upon serving the sentence and satisfying any other penalty imposed, or upon an executive pardon." Both Article 21 (j) of our Constitution and section 50.12 of the Penal Code mandate that upon serving the sentence imposed on a person convicted of felony, that person's civil rights and liberties shall be restored. But serving the sentencing is not the only condition the law sets for restoring the right of a person who is convicted of felony. Article 21(j) sets two other conditions on which the civil rights and liberties a person convicted of felony shall be restored. The additional conditions are that the person convicted of felony a) satisfies "any other penalty imposed," or b) be granted an executive pardon. So, in essence, the decision of how long a person convicted of felony will be disqualified from holding a public office is made by the lower court upon the completion of the sentence and satisfying any other penalty imposed.

Guided by the Constitution and the Penal Code, the Legislature made provision under the New Elections Law to ensure that a person who has been convicted for felony and is thus disenfranchised, does not take part in elections in Liberia until the disability imposed is removed.

Section 3.1 of the New Elections Law provides:

> " Every citizen of Liberia who has attained the age of eighteen (18) years or older, may register as a voter except one who has been judicially declared to be incompetent or of unsound mind or who has been disenfranchised as a result of conviction of an infamous crime and has not been restored to citizenship.
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> Section 3.22 of the same New Elections Law provides:
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> > "The Clerk of the Monthly and Probate Court in any county or district shall furnish or send to the appropriate Magistrate of Elections, upon adjudication, the names and addresses of all persons who have been judicially declared incompetent or of unsound mind together with the incompetent voter's card previously obtained before such declaration or decree by the court.

The 2nd appellant, through his counsel, has argued strenuously that the sentence of two years imposed on the 2nd appellant Brownie J. Samukai, Jr. and others was suspended; therefore, their rights and civil liberties, which include the right to hold public office cannot be curtailed; that the Supreme Court's affirmation of the final ruling of the First Judicial Circuit for Montserrado County, Criminal Assizes "C" on theft of property, criminal conspiracy and misuse of public fund with modification against the 2nd appellant did not include an order for disqualificaton and forfeiture of public office; and that under the law, disqualification and forfeiture of public office must be a decision duly made by a court to form part of the sentencing. We do not agree.

Firstly, we hold that the deprivation of the enjoyment of civil rights and liberties of a person, including the holding of public office, is based on the conviction of a person for felony and not on the sentence imposed on him/her. In other words, upon conviction of felony committed in connection with his/her employment as a public servant under Liberian law, a person automatically forfeits the public office he/she holds by operation of law without any discretion by the court and this has nothing to do with sentencing. But as we have indicated, the 2nd appellant is not now holding a public office so automatic forfeiture of office is not applicable to him.

Secondly, and as we have also indicated, while the court may, upon conviction for felony, exercise discretion in the disqualification of a person from holding any other specified public office or category of office for such period as the court may determine, but no longer than

five years, as provided under *section 50.12 of the Penal Code*, it should be noted that the exercise is not the function of the Supreme Court; This function is ascribed to the lower court.

Thirdly, it should also be noted that the exercise of discretion in the disqualification of a person from holding any other specified public office or category of office for such period as the lower court may determine, but no longer than five years is done not only after the person convicted of felony has served his/her sentence but also upon satisfying any other penalty imposed. This is the additional condition set by Article 21(j) of the Constitution. A suspended sentence, such as the sentence imposed on the 2nd appellant and others, is a sentence susceptible to revocation on none-compliance with the conditions set. This means that though suspended, the sentence still hovers over the heads of the 2nd appellant and others. So, were we to even agree with the argument of the 2nd appellant (and we do not agree) that the sentence imposed on him and others for two years is suspended, therefore, their rights and civil liberties, which include the right to hold public office cannot be curtailed, the fact remains that he and the others convicted have not fully complied with the preconditions of their sentences. Thus, they could still be incarcerated upon failure to comply with the conditions set for their suspended sentences, or in the case of a default, where compliance had commenced. Moreover, the decision of whether the lower court will prevent them from holding other public offices and if so for how long is yet to be made upon serving their sentences and satisfying any other penalty imposed. Therefore, as the disability for felonious conviction is not removed, it would be utterly wrong and illegal for the NEC to certificate the 2nd appellant to take his seat as Senator for Lofa County under the circumstance.

The consequences of conviction on felony are far-reaching. In this jurisdiction, Liberian law provides for forfeiture of office until the disability is removed. In other jurisdictions around the world, convicts of felony are deprived of their civil rights such as the right to vote in public elections or to be voted into public office or sit on the jury; rejection to some learning institutions; loss of driving license; denial of right to employment at some financial institutions and to qualify for financial aid; and even loss of right to practice of law. This is how serious and staid the effect of conviction of felonious crime is. The rationale is to implant felony as a high grade criminal offense, provide harsh punishment and create deterrence for its commission. It is therefore unacceptable, obnoxious and offensive for a person to be convicted of a felonious crime for his action or inaction in public service and at the same time allow that person to take over another high public office without the full

satisfaction of the Judgment of the Court or without the removal of the disability for conviction of felony imposed by law.

We address last, the issue, whether or not the writ of prohibition will lie against the 1st appellant, NEC, to prevent it from certificating the 2nd appellant, Brownie J. Samukai, Jr. as the winner of the December 8, 2020 Special Senatorial Election in Lofa County? We hold yes, the writ will lie.

The writ is directed to a court, tribunal or administrative agency acting in a judicial or quasi-judicial capacity to restrain and prevent it from proceeding in a matter over which it has no jurisdiction, and where it has jurisdiction, it is proceeding by the wrong rule. The writ is also issued in cases of extreme necessity where the grievance cannot be addressed by ordinary proceedings at law, or in equity, or by appeal. *Chariff Pharmacy v Pharmacy Board of Liberia et al [1993] LRSC 5; 37 LLR 135 (1993) (26 February 1993).*

This Court has also said that, prohibition is a preventive rather than a corrective remedy and is designed to forestall the commission of a further act. *Liberia Fisheries Incorporated v Badio et al [1989] LRSC 18; 36 LLR 277 (1989) (14 July 1989).* In the case before us, although the 1st appellant, NEC, has jurisdiction to certificate the 2nd appellant, Brownie J. Samukai, Jr., the NEC would be proceeding by the wrong rule to certificate the 2nd appellant in the face of the disability imposed on him by his conviction for felony, which disability has not been removed. Therefore, the writ of prohibition will lie to prevent the NEC from certificating the 2nd appellant as the winner of the Special Senatorial Election held in Lofa County on December 8, 2020.

At this juncture, we should note that our distinguished Colleague, Madam Justice Jamesetta H. Wolokolie, has withheld her signature from the Judgment growing out of this Opinion, the same as she did in the case: *Republic of Liberia v. Brownie J. Samukai, Jr. et' al, Supreme Court Opinion, October Term A.D. 2020* (delivered February 8, 2021). Under the rule and practice, a Justice of this Court who sits and hears a case is required to sign, along with the other Justices, the Judgment entered in the case. A Justice may, however, disagree with the position taken by the other Justices and withhold his/her signature. In such a case, the Justice withholding signature is required to file a dissenting opinion outlining and setting forth fundamental reasons grounded in law applicable to the facts in the case. Justice Wolokolie did not file a dissenting Opinion in the *Republic of Liberia v. Brownie J. Samukai, Jr. et' al,* case referenced above. She simply said that she did not agree with the decision of the majority in the case and withheld her signature.

In withholding her signature again today, she has filed with the Clerk of the Supreme Court an instrument which we quote:

"MADAM JUSTICE WOLOKOLIE DECLINES TO SIGN THE JUDGMENT OF THE MAJORITY OPINION FOR REASONS STATED BELOW

"On February 8, 2021, the Supreme Court handed down Opinion in the case, J. Brownie Samukai, Jr. et al. V. the Republic of Liberia. In the said Opinion of the October Term A. D. 2020, my esteemed majority colleagues affirmed the guilty judgment brought down against Co-appellant J. Brownie Samukai, Jr., Joseph P. Johnson, and James Nyumah Dorkore by the First Judicial Circuit, Criminal Assizes "C". I was of the view that the Court should have afforded itself reasonable time to properly ponder the crucial issues of first impression presented in that case, especially as it relates to attributing criminal liability to officials of the Executive Branch of Government on account of their performance of acts authorized by the President, Head of the Government, at whose will and pleasure these officials hold their respective offices. I believed then and still subscribe to the belief that the Majority of the Court should have carefully considered the complex nature of the issues raised, considering that the very Government subsequently became the Complainant and Prosecutor, and in this case, the petitioner seeking to prevent Mr. J. Brownie Samukai, Jr., from taking his seat in the Senate.

Though I withheld my signature from the February 8, 2021 Opinion, I recognize that the decision made by my majority colleagues is the decision of the Court, which shall remain the legal authority on the issues passed on in that Opinion until it is subsequently recalled.

The Opinion today being a direct offshoot of the Very Opinion which affirmed the guilty judgment brought against the 2nd appellant J. Brownie Samukai, Jr. and others, and to which I declined to append my signature, my sense of justice does not permit me to append my signature to the Opinion being delivered today.

I therefore respectfully decline to join my esteemed colleagues of the majority in signing this Opinion.

The Clerk will file this in the archives of the Supreme Court.

Signed:_____
Jamesetta Howard Wolokolie
ASSOCIATE JUSTICE, SUPREME COURT OF LIBERIA
Dated this 20th Day of August, A. D. 2021"

As can be seen, Justice Wolokolie is of the view that the criminal case we decided on February 8, 2021, should not have been decided at the time. According to her, "the Court needed reasonable time to ponder the critical issue presented in the case relating to attributing personal liability of officials of the Executive Branch of Government on account of their judgment as authorized by the President, Head of Government, at whose will and pleasure they hold their respective offices."

We do not share the view and sentiments of our Colleague. The criminal case involving Brownie J. Samukai, Jr. and others was brought before the Supreme Court in June 2020, and this Court delivered Opinion and entered Judgment in the case in February, 2021. It took over seven (7) months for this Court to hear, decide and hand down Opinion in the case. To suggest that the period in considering the decision in the case was short and thus, this Court needed more time, beats our imagination. The public looks up to us to timely deliver Opinions in cases, especially high profile cases bordering on election. We, therefore, disagree with the reason stated by our Colleague for withholding her signature from two Judgments of this Court is tenable in law.

WHEREFORE, and in view of the foregoing, we hold as follows: 1) that the petition for the writ of prohibition filed by the 1st appellee, the Movement for Progressive Change, Inc., is denied and dismissed, the alternative writ of prohibition issued is quashed and the peremptory writ is denied; 2) the petition for the writ of prohibition filed by the 2nd appellee, the Government of the Republic of Liberia by and through the Ministry of Justice is granted, the alternative writ issued is sustained and the peremptory writ prayed for is granted. The 1st appellant, the NEC, is ordered not to certificate the 2nd appellant, Brownie J. Samukai, Jr. who was elected Senator for Lofa County during the Special Senatorial Election conducted on December 8, 2020, until the disability imposed on him as a result of his conviction for felony is removed. The Clerk of this Court is ordered to send a mandate to the 1st appellant, the NEC, informing it of the decision of this Court. AND IT IS HEREBY SO ORDERED.

Counsellors M. Wilkins Wright and Peter Y. Kerkulah appeared for the 1st appellant, the National Elections Commission.

Counsellors Augustine C. Fayiah and G. Wiefueh Alfred Sayeh appeared for the 2nd appellant, Brownie J. Samukai, Jr.

Counsellor Kporto Kpadeh Gissi appeared for the 1st appellee, the Movement for Progressive Change, Inc.

Counselors Semah Syrenius Cephus, Solicitor General, Republic of Liberia and Bobby Livingstone appeared for the 2nd appellee, the Government of the Republic of Liberia.

Petition denied as to the 1st appellee and granted as to 2nd appellee.