IN THE HONOURABLE SUPREME COURT OF THE REPUBLICOF LIBERIA SITTING IN ITS OCTOBER TERM, A.D. 2017.

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.…..... CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M JA'NEH..... ASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A.Z. BANKS, III ..... ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE

Clarence K. Massaquoi of UP)
……Movant)
)
Versus) Motion to Dismiss
)
Korva M. Jorgbor of UPP and James)
Copper, Independent Candidate….....Respondents)
)
Growing out of the Case:)
)
Korva M. Jorgbor (UPP) and James Cooper)
(Independent Candidate) of Kolahun)
District, Lofa County ……Appellants)
)
Versus)
) Appeal
)
The National Elections Commission (NEC),)
by and thru it Chairman, Jerome, G. Korkoya,)
of the City of Monrovia, Liberia and Hon.)
Clarence K. Massaquoi of Kolahun District)
Lofa County……..……Appellees)
)
GROWING OUT OF THE CASE:)
)
Korva M. Jorgbor (UPP) and James Cooper)
(Independent Candidate) of Kolahun)
District, Lofa County)
……..……Complaints)
)
Versus)
) Election Irregularities
The National Elections Commission (NEC),)

by and thru its Chairman, Jerome, G. Korkoya,)
of the City of Monrovia, Liberia and Hon. Clarence)
K. Massaquoi of Kolahun District)
Lofa County……..…….Defendants **)**

HEARD: January 9, 2018 DECIDED: January 16, 2018

Principle: **Tolling of a Court's Final Ruling for Appeal**

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This appeal grows from a final ruling of the Board of Commissioners of the National Elections Commissions (NEC), denying and dismissing the respondents/appellants' appeal for failure to file their appeal from a final ruling of the Chief Dispute Hearing Officer within the 48-hours period as prescribed by Article 12.1 of the Elections Regulations on Hearing Procedures promulgated by the National Elections Commissions under authority of Section 2.9(h) of the New Elections Law. For the purpose of this opinion, we shall restate the facts contained in the records certified to this Court.

The appellants, Korva M. Jorgbor of the United Peoples' Party (UPP) and James Cooper an Independent Candidate filed separate complaints on October 11, 2017, addressed to one Robert N. Sele, Jr., Magistrate of Elections in District No. 3, Lower Lofa County, alleging elections irregularities in Lawalazu, Zeayorzu, Lukasu, Kolahun, Fassavolu, Tawalahum and Kamatahum. On October 21, 2017, the Magistrate of Elections, Mr. Sele, Jr., rendered ruling, dismissing the respondents/appellants' complaint on the sole ground that he lacked territorial jurisdiction over the respondents/appellants' complaint in that his district did not include all of the areas alleged in the complaint; he ruled that his jurisdiction only included Lukasu, Kolahun, Fassavolu, Tawalahum and Kamatahum. We have observed that although the respondents/appellants' complaints were dismissed for lackof jurisdiction, they did not announce an appeal from this adverse ruling as a legal requirement to have the said ruling reviewed by the Board of the NEC. Rather, the respondents/appellants proceeded to Monrovia and jointly filed a new complaint on October 21, 2017, alleging the same elections irregularities stated in their first individual complaints of October 11, 2017. We quote below the respondents/appellants' complaint filed in Monrovia:

> "October 21, 2017
>
> Hon. Jerome Korkoyah
> Chairman and Members of the National Elections Commission (NEC)9th
> Street, Sinkor
> Monrovia, Liberia
> Subject: Complaint of Representative and Presidential Elections 2017District
> #3, Lofa County, Republic of Liberia
>
> The below listed petitioners, representative candidates of District #3, hereto forward the following complaint arising from the just ended October 10, 2017 elections as follows:

1. On October 10, 2017 at the about 7:30pm in Lukasu Town, Lukanbeh District, voters were denied by the presiding officer (PO), Mr. Ndebeh Kanneh from voting on grounds that he was tired and it was late and doingthe NEC training, [they] were told not to work after 6:00pm. These voters were already in the line before 6:00pm.

2. Voter Tempering

On October 10, 2017, in the Town of Lukasu, Lukambeh District about 10/10/2017, Momo Kanneh was seen by witnesses including K.B.K Sando, reported and arrested by the Liberia National Police (LNP) for voter tampering by Sackie B. Woyea, patrol officer, Kolahun, Lofa County

3. Printed Ballot Papers of Hon. Clarence Massaquoi intercepted at Ngokorhum Public School, polling center No. 21135. (See attachment) Influencing voters and elections workers with cash to sway election result in Hon. Clarence Massaquoi's favor.

4. On October 10, 2017 in Kolahum Town Hall, voters were turned away anddenied by the presiding officer from voting on grounds that he was tired andit was late. These voters were already in the line before 6:00pm. Preferential treatment was given to Hon. Massaquoi supporters by the presiding officer who created a special line for those who claimed they were in favour of Hon. Massaquoi.

Lawalazu Town, Lower Walker Clan

1. Inducement

On October 10, 2017 at about 8:30 a.m. in the Town of Lawalazu, Hon. Clarence Kortu Massaquoi distributed monies to individuals to persuadethem to vote for him; below are some of the voters name:

A. Ballah Kollie
B. Stephen Jallah
C. Kesselly Jallah

2. On October 10, 2017 in Zewordamai, Zeayorzu, and Johnny Town, Hon. Clarence Kortu Massaquoi was seen in these towns on elections day over the motorbike campaigning and distributing money to voters to persuade their mind which thereof is a violation of the election laws of the Republic of Liberia.

These are the below listed petitioners:

1. Mr. Momo Siafa Kpoto
   Cell No: 0777414113

2. Mr. Albert K. Ballah Cell

No.: 0777980864

3. Mr. James A. Cooper
   Cell No: 0880664766

4. Mr. Korva M. Jorgbor
   Cell No: 0770551896

On November 17, 2017, the Chief Dispute Hearing Officer Daniel D. Dolokelen heardthe complaint and rendered ruling on November 18, 2017, wherein he dismissed the complaint on the principle of *res judicata,* stating *inter alia* that the respondents/appellants were the same parties who had initially filed complaints in Lofa County against the same movant/appellee and that the said complaint was heard and final ruling made thereon by Elections Magistrate, Robert N. Sele, Jr., in Lofa County.

On November 23, 2017, the respondents/appellants filed a five (5) count bill of exceptions before the Board of Commissioners of the NEC alleging errors committed by the hearing officer and requesting a reversal of said ruling. We quote verbatim the respondents/appellants' bill of exceptions:

"PETITIONER'S/APPELLANT'S BILL OF EXCEPTIONS

Korva M. Jorgbor (UPP), Abert BaIlah (CLP), Siafa M. Kpoto (LP), and James Cooper (Independent Candidate); Petitioners in the above cause of action being dissatisfied with your Honor's final judgement on November 23, 2017 hereby submit this bill of exceptions for your approval and review of your Honor final Judgement and therefore shows the following to writ:

1. That your Honor committed reversible error when you ignored the contention of the petitioners and ruled that the petitioners filed beyond thestatutory period which is not true. That the NEC gave its National tally report for the Presidential and Representative elections of October 10, 2017 on October 19, 2017; and that contrary to your ruling, petitioners filed their complaint within the statutory period, same being the 21st of October 2017.

2. That your Honor committed reversible error when you dismissed the complainants' complaint on ground that this matter was heard in Lofa by the Hearing Officer which is false and misleading, in that there was never a case between the identical parties, thing(s) sued for as well as identity ofcause of action of person and parties to the action and of the quality in persons for or against whom the claim is made; that is, the case in Lofa County between Ambulleh Kanneh and Clarence Massaquol is not the same as that currently before you between Korvah Jorgbor of UPP, Albert Ballah of CLP , James Cooper/Independent, and Momo Siafa Kpoto of LP (who was not represented at this time). Besides, you noted petitioners counsel's

submission, but later told him to wait when he attempted to clarify the issue of parties' representation.

3. Further to count two (2) above, Section 11.2(1) and 11.2 (1)a-e of 1LCLR, Civil Procedure law were grossly violated or ignored by your honor's interpretation of the statute for which you committed reversible error. Also, section 11.2(2) of the same law says that the exception for deferring motion,"...unless the court [Hearing] for good cause (may) orderthat the hearing and determination thereof be deferred until trial which was ignored by your honor, this was a reversible error to set aside your ruling.

4. Section 11.2(2, 3, 4, 5&6) of said law are clearly applicable, but were usurped by your Honor and these are reversible errors that warrant the setting aside of your legally inefficacious ruling orchestrated and designed to thwart justice.

5. Res judicata: A matter adjudged; thing judicially acted upon or decided; athing or a matter settled by judgement rendered. Rule that a final judgement rendered by a court of competent jurisdiction on the merits is conclusive to the rights of the parties and their privies constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action and to be applicable, requires identity in thing(s) sued for as well as identity of cause of action of persons and parties to action and of quality in persons for or against whom claim is made ... Black's Law Dictionary by Henry Campbell Black, M.A. P.1305 (1990). Collateral estoppel compared to res judicata is re-litigation of the same cause of action between the same parties where there is a prior judgment, whereas "collateral estoppel" is re-litigation of a particular issue or determinative fact.

6. Estoppel and res judicata are distinguishable. In Roman Law, thingswhich are in litigation, property or right which constitute the subjectmatter of pending action.

Respectfully Submitted, by the
Petitioners by and thru Their Legal
Counsel: Legal Minds Inc., Carey &
Johnson Streets, Monrovia, Liberia

On December 1, 2017, Co-complainant, Siafa Kpoto via a submission on the minutes of the Board of Commissioners withdrew his appeal and requested to be dropped, which was granted. On the same date, December 1, 2017, the Board of Commissioners heard the respondents/appellants' appeal, and rendered final ruling dismissing same on ground that the respondents/appellants failed to announce an appeal from the final ruling of the Magistrate of Elections in Lofa County and to perfect their appeal before the Board of Commissioners. The respondents/appellants noted their exceptions and announced an appeal to the Honorable Supreme Court. Therecords show that thereafter, the Co-Complainant Albert Ballah filed an affidavit on December 7, 2017, indicating his withdrawal from the appeal.

Subsequently, the respondents/appellants filed their bill of exceptions with the Clerkof the Supreme Court on December 15, 2017. Based on the recording date the respondents/appellants' bill of exceptions was filed, the movant/appellee, filed a motion to dismiss the appeal contending that the appeal was filed outside the statutoryperiod prescribed by the New Elections Law, section 6.4 thereof, which states that "the contestant shall file with the Clerk of the Supreme Court the bill of exceptions within seven (7) days after rendition of the decision of the Commission and shall pay the cost of filing the bill of exceptions and of procuring a certified copy thereof…" Pursuant to this provision of the law, the movant/appellee requested this Court to dismiss the respondents/appellants' appeal. We quote the movant/appellee's motion todismiss hereunder:

"MOVANT'S MOTION

The movant/appellee in the above-entitled cause of action moves this Honorable Court to dismiss the appeal for the following reasons to wit:

1. Because this Court has opined that the failure to fulfill or conform to the appeal requirements of the law renders the appeal dismissible, and this Court has so acted. *Hussenni v. Brumskine (2013) LRSC 43 (August 2013).*

2. Because Chapter 6, section 6.3 of the New Elections Law providesthat *"Any contestant affected by the decision of the Commission shall havethe right to appeal to the Supreme Court not later than seven (7) days after the decision is rendered".*

3. Also because chapter 6, section 6.4 of the New Elections Law provides that *"The contestant shall file with the Clerk of the Supreme Court the bill of exceptions within seven (7) days after the rendition of decision of the Commission and shall pay the cost of filling the Bill of Exceptions and of procuring a certified copy thereof of the same as those paid by the Plaintiff and/or appellant in a civil action."*

4. Also because on November 30, 2017, a citation was issued out of the National Elections Commission for hearing of the appellants' appeal by the Board of Commissioners on Friday, December 1, 2017 at 2:45pm. Appellee says that at the Hearing, appellants and their counsel admitted to filingseparate complaints in Lofa County before joining to file the complaint of October 21, 2017, which is the subject of this appeal.

5. Also because on the selfsame Friday, December 1, 2017, the Board of Commissioners of the National Elections Commission ruled on the minutesof the Hearing dismissing respondents/appellants' appeal for filing beyond statutory time. Movant submits that respondents/appellants' right to appeal said decision of the Board of Commissioners vested on that faithful Friday, December 1, 2017.

6. And also because movant/appellee says and submits that instead of filing their bill of exceptions on December 8, 2017, same was filed onDecember 11, 2017, three days after the due date, and served on the Honorable Supreme Court of Liberia on December 15, 2017, four days after same was signed by the Board of Commissioners of the National Elections Commission. Accordingly, movant/appellee obtained a Clerk's Certificate to substantiate this averment which is hereto attached as movant's Exhibit "M/1" to form cogent part of this motion.

7. Movant/appellee says that the failure of the appellants to have perfected its appeal renders said appeal dismissible and that this Honorable Supreme Court has not acquired jurisdiction over the said matter.

WHEREFORE AND IN VIEW OF THE FOREGOING, the movant/appelleeprays this Honorable Court to deny and dismiss the appeal, and grant unto the movant/appellee such other rights and further reliefs as are provided in law and equity, with costs against the appellant.

Respectfully submitted: Movant/Appellee
Clarence K. MassaquoiBy and thru his Legal Counsel"

In a seven (7) count resistance, the respondents/appellants denied that their appeal wasfiled outside the statutory period of seven (7) days; they also maintained that althoughthe Board of Commissioners of the

NEC entered its final ruling on December 1, 2017,they received a copy of said ruling on December 9, 2017, at which time the statute began to toll. We also quote below the respondents'/appellant's resistance:

"RESPONDENTS' RESISTANCE

AND NOW COMES respondents in the above entitled cause of action praying your Honors and this Honorable Court to deny and dismiss movant's motion for the following legal and factual reasons as showeth to wit:

1. That as to count 1 of the movant's motion, respondents say and aver that this count should be dismissed, in that the respondents did file the appealwithin the statutory period as allowed by law, in that there was no hard copy of the verbal ruling made by the Election Commission dismissing this cause of action. The said matter was dismissed verbally on the minutes of the hearing on December 1, 2017, and that no hard copy of the said minutes was served on the Respondents until December 9, 2017. There was no rulingmade by the Elections Commission and that the respondents did not receive the hard copy of the ruling up to present. Respondents pray Your Honors to take judicial notice of the records in the case file.

2. That as to count two (2) of movant's motion, respondents say and averthat this count is an admission under section 25.8 of 1LCLR, page 200 that indeed any contestant affected by the decision of the Commission shall have the right to appeal to the Honorable Supreme Court not later than seven (7) days, but the said ruling must be printed in hard copy and served on the parties involved which ruling will serve as the basis of the appeal, but in the present case at bar, the National Elections Commission did not give the respondents a hard copy of the ruling but only served the copy of the minutesof court on the respondents on December 9, 2017, which minutes cannot be considered as a ruling; and that the respondents filed the bill of exceptions at the Honorable Supreme Court of Liberia on the 15th day of December, A. D. 2017, for reason that the National Elections Commission failed to give a hardcopy of the ruling to the respondents. Assuming without admitting that the minutes received on December 9, 2017, can be considered as a ruling, and that the respondents filed their bill of exceptions on December 15, 2017, is a clear indication that the respondents filed within the seven (7) days period as allowed by the Elections Law in filing an appeal. Attached hereto is a copy ofthe minutes of December 1, 2017, of the Board of Commissioners of the National Elections Commission received on December 9, 2017, marked as EXHIBIT "R/1" in bulk to form a cogent and integral part of this resistance.

3. That as to count three (3) of movant's Motion, respondents say and aver that they were within the time frame allowed by the Elections Law, to beprecise section 6.4, given that they received the minutes of the National Elections Commission on December 9, 2017, and filed the bill of exceptions on December 15, 2017, one day before the expiration of the seven (7) days period allowed by law. Your Honors are requested to take judicial notice of the bill of exceptions and minutes of December 1, 2017, that were received on December 9, 2017, by the respondents.

4. That as to count four (4) of movant's motion, respondents say and aver that this count is indeed a fallacy and should be dismissed by this Honorable Supreme Court in that while it is true that the respondents filed separate complaints in Lofa County, respondents also had the right to file a joint complaint on October 21, 2017, and the joint complaint was never heard by the Elections Commission; that the Board of Commissioners only upheld the ruling of the hearing officer without going into the respondents' complaint or appeal which is a clear indication that respondents' right to due process was denied by the Board of Commissioners of the National Elections Commission for which the respondents filed this appeal before the HonorableSupreme Court.

5. That as to count five(5) of movant's Motion, respondents say and averthat this count is an admission that indeed respondents were denied due process of law, as the Board of Commissioners made a verbal ruling on the minutes of the hearing that were taken on December 1, 2017, dismissing the appeal without due process; the law that hears before it denies, stating thatthe respondents filed their complaint beyond the statutory period which is false and misleading, as the minutes of December 1, 2017, was received by the respondents on December 9, 2017, and as such, the respondents filed theirbill of exceptions within the statutory period.

6. That as to count six (6) of movant's motion, respondents say and aver that this count is a fallacy, in that the respondents received the minutes of the verbal ruling on December 9, 2017, and did file their bill of exceptions on December 15, 2017, which is a clear indication that the respondents filed same within statutory time as allowed by law. Hence this count should not begiven credence by this Honorable Court.

7. That as to count seven (7) of movant's motion, respondents say and aver that this count should be dismissed in that the respondents filed within the statutory period under section 6.4 of the New Elections Law, and as such,this appeal should be heard by the Honorable Supreme Court as the respondents are in line with the law and that the Honorable Supreme Court has acquired jurisdiction in line with the law, as the respondents did perfect the appeal process. Your Honors are requested to take judicial notice in the case file.

WHEREFORE AND IN VIEW OF THE FOREGOING facts and circumstances, respondents pray Your honors and this Honorable Court to deny the movant's motion as the respondents did file the bill of exceptions within the statutory period, as the minutes of the Elections Commission was received by the respondents on December 9, 2017, and that the respondents filed the bill of exceptions on December 15, 2017, and order this matter proceeded with on its merits and render unto respondents any and all further relief that Your Honors and this Honorable Court will

deem legal and equitable in the premises.

Respectfully Submitted

Respondents by and thru their legal CounselThe Torch Professional Consultancy Haikay Building, Broad & Johnson Streets Monrovia, Liberia"

When the appeal was called for hearing on December 22, 2017, this Court proceeded to consolidate both the motion to dismiss and the main appeal in consonance with the Supreme Court's opinions that elections matters being time-bound should be heardand disposed of expeditiously. *Patrick Bowah v. The NEC et al, Opinions of the Supreme Court, October Term, A. D. 2017; Michael P. Slawon v. G. Dahn Sherman and the NEC, Supreme Court Opinions, October Term, A. D. 2017.* At the commencement of arguments, the Court observed that certain pertinent documents were absent from the records, which included the receipt or evidence showing the datethe movant/appellee received the Board's final ruling and the minutes of the hearing conducted in Lofa County on the respondents/appellants' first complaints of October 11, 2017. This prompted the Court to suspend the hearing to a subsequent date pending the NEC's transmission of the entire records to the Supreme Court, alongwith an order that the lawyers superintend the transcribing of the records in collaboration with the NEC. Thereafter, the case was again called for hearing on January 9, 2018.

During argument, the movant/appellee's counsel maintained that he received his copy of the Board of Commissioners' final ruling on December 2, 2017, evidenced by a receipt proffered in the records from the NEC indicating receipt of the Board of Commissioners' final ruling by one Attorney T. Emmanuel Tomah on behalf of the movant/appellee. The movant/appellee further argued that although the Board's final ruling was ready and available for pick-up from the NEC's Head Office the day following rendition of the ruling, that is, on December 2, 2017, the respondents/appellants neglected and failed to obtained their copy in order to timely superintend the appeal within statutory time.

On the other hand, the counsel for the respondents/appellants argued that he did not receive notice that the Board's final ruling was ready and available on December 2, 2017, and that despite several visits by one of the respondents/appellants, Korva Jorgbor to the offices of the NEC, he was consistently informed that said ruling was not yet ready until December 9, 2017, at which time he was given a copy thereof; the respondents/appellants' counsel urged us to accept that it was at this time that the statute began to toll; that a count of 7 days after December 9, 2017, would be December 18, 2017, prior to which time the bill of exceptions had been filed with the Clerk of the Supreme Court, viz, December 15, 2017.

As to the main appeal, the counsel for the respondents/appellants argued that the Board of Commissioners committed a reversible error when it confirmed the ruling of Hearing Officer Daniel D. Dolokelen dismissing their complaint on the principle of *res judicata,* as their complaints filed in Lofa County were never heard but that they only received a copy of the ruling, a conduct constituting denial of their rights to due process.

The contentions raised by the parties in their arguments and pleadings present two issues which we have determined are dispositive of this appeal. The issues are:

1. Whether the respondents/appellants filed their bill of exceptions within the prescribed statutory period of seven days thus vesting jurisdiction in this Court to hear the appeal.
2. Whether or not the Board of Commissioners of the NEC committed a reversibleerror in its final ruling which dismissed the respondents/appellants' appeal.

We shall proceed to dispose of the first issue. It is depending on the outcome and disposition of the first issue that will determine whether there is a need to pass on or address the second issue which delves into

the merits of the case. The Supreme Courthas consistently held as follows:

> "…whenever the issue of a court's jurisdiction is raised, every other thing in the case becomes subordinated until the court has determined its jurisdiction to hear and dispose of the particular matter. This is true because if a court lacks jurisdiction to entertain a matter, whatever decision or judgment is rendered by it is a legal nullity. Therefore, it is necessary that the court should determine its jurisdiction over the question which its judgment assumes to answer or give relief." *MIM Liberia Corporation v. Toweh*, 30LLR 611(1983); *Kamara v. Chea & Satto,* 31LLR 511(1983); *Scanship (LIB) Inc., v. Flomo*, 41LLR 181, 186(2002); *The Intestate Estate of the late Chief Murphey-Vey John et. al. v. The Intestate Estate of the late Bendu Kaidii et. al.*, 41LLR 277, 282 (2002); *The Management of Paynesville City Corporation v. The Aggrieved Workers of Paynesville City Corporation,* Supreme Court Opinion, March Term A.D. 2013; *Loiuse Clarke-Tarr v. Daniel K. Wright,* Supreme Court Opinion, March Term A.D. 2015; The National Elections Commission (NEC) v. Siebo, Jr., Supreme Court Opinion,March Term A.D. 2017.

The principle of law on jurisdiction, contained in the above quoted cases, mandates usto determine whether the respondents/appellants did file their bill of exceptions within the seven (7) days-time prescribed by Article 83(c) of the Constitution, Chapter 6 Section 6.4 of the New Elections Law and Article 12 Section 12.4 of the Elections Regulation on Hearing Procedures, as would confer jurisdiction on the Supreme Courtto hear the case on its merits and make a final determination thereon.

The respondents/appellants have premised their argument on the non-availability of the Board's final ruling as the sole reason why the statutory period did not toll against them in the filing of their bill of exceptions, thus vesting jurisdiction in the Supreme Court to hear the appeal. This Court says that this argument would have been weighty and more persuasive had the respondents/appellants produced supporting evidence in the form of a clerk's certificate showing that the ruling was indeed unavailable before December 9, 2017. And, this is more convincing given the fact that lawyers for the movant/appellee have shown that a copy of the ruling was made available on the December 2, 2017. The production of such supporting evidence, would have placed the respondents/appellants' argument in consonance with the case *Kaba v. World Bank*, Supreme Court Opinion, March Term, A.D. 2014, wherein it is stated that "untilthe final judgment is delivered to the party appellant, the statutory time prescribed by law within which the appellant is required to file a bill of exceptions cannot begin to run".

Also in the *Kaba case,* the Supreme Court held that:

"…To our mind these definitions of a bill of exceptions imply that the appealing party should have, at his disposal, the full text of the final judgment, decision, or ruling of the trial court in order to catalogue the points on which the appellant objects or disagrees with the trial judge. Under the law the trial judge is required to reduce his ruling into writing.

> Without the benefit of the full written text of the final judgment, decisionor ruling of the trial court it would be difficult for the appellant to compile a comprehensive bill of exceptions as some important points on which the trial judge may have passed in his final judgment and to which the appellant could object may be inadvertently left out and not included in the bill of exceptions. This could work a serious disadvantage to the appellant,

since only issues which the appellant raises in the bill ofexceptions are considered on appeal."

We therefore hold that while the statute provides that the bill of exceptions should be filed within the (10) days as of the date of rendition of judgment, the framers of the statute expected that a copy of the trial court's final judgment is delivered to the parties to the proceedings on thesame day the ruling is made. We further hold that until the final judgmentis delivered to the party appellant, the ten days prescribed by law within which the appellant is required to file a bill of exceptions cannot begin to run."

In the present appeal the issue of the non-availability of the Board's final ruling was not substantiated by the respondents/appellants which would have placed them within the legal ambit of the case cited above. To the contrary, having failed to prove the non-availability of the Board's final ruling, the respondents/appellants' counsel presented a blanket allegation to the effect that the NEC Board's final ruling was not available until December 9, 2017, and that prior to December 9, 2017, the respondents/appellants went at diver times to the offices of the NEC to receive the ruling but said ruling was not made available to the respondents/appellants. This position of the respondents/appellants is similar to the petitioner in the case *Williams*
v. Kpoto decided by the Supreme Court sitting in its October Term, A.D. 2012.

A review of the *Williams v. Kpoto* case show that on June 27, 2008, during the March Term A.D. 2008, the Supreme Court entered judgment against the petitioner. On July 4, 2008, the petitioner believing that the Supreme Court inadvertently overlooked pertinent laws and facts filed a petition for re-argument. The respondent, upon receipt of the petition immediately challenged the petition for re-argument on grounds that the said petition should have been filed on June 30, 2008, instead of July 4, 2008, and that the petition for re-argument was filed in violation of the three (3) days period required by the Revised Rules of the Supreme Court, Article IX Part 1.

At the call of the case before the Supreme Court, the petitioner argued in his brief thatalthough the Court's Opinion was rendered on June 27, 2008, the said Opinion wasnot filed and made available until July 2, 2008; that he contacted the Clerk's Office onseveral occasions to obtain a copy of the Opinion but the Clerk of the Supreme Court, in the presence of Counsellor James E. Pierre, informed him that the Opinion was stillbeing edited.

The Supreme Court rejected the argument of the petitioner, holding that the petitioner did not prove these assertions by a sworn affidavit from Counsellor Pierre or the Clerkto show that the Opinion was unavailable. Below is what the Court said:

"…We believe that petitioner's counsel should have been so fully alert that he should have attached thereto an affidavit from Counsellor James
E. Pierre in support of the information. In the absence of such, this Court would be threading within the realm of speculation in accepting the arguments made in the petitioner's brief as to what may or may not have transpired, an adventure which this Court is forbidden from indulging in. The petitioner and his counsel were under the further obligation to securefrom the Clerk of the Supreme Court a certificate to the effect that the

> Opinion, although read on June 27, 2008, was not ready and that it only became available and was distributed on July 2, 2008. Such certificate should then have been attached to the petition in verification of allegations made or information provided to the effect in the petition. This would clearly have placed the onus on the Supreme Court and would have provided the petitioner with the acceptable legal excuse for filing the petition beyond the three day period from the date of the handing down of the Opinion of the Supreme Court. The Clerk's Certificate would have authenticated the time the Opinion was available to and received by the petitioner and therefore provide the appropriate legal excuse, as is within the contemplation of Article IX of the Revised Rules.
>
> We view the act of counsel for the petitioner in not pursuing the course we have stated above as gross negligence. This Court has said in a great number of cases that the Court will not do for a party that which the partyis legally obligated to do for itself. It is the duty of litigants, for their owninterest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage and thereby pave the way forsecuring of the great benefits which they seek to obtain under the law. Ifa party fails in any cause to do that which the law requires him to do for himself, the Supreme Court will not assume to grant him those rights which, by his negligence, he has failed to secure for himself…It istherefore the considered opinion of this Court that the petitioner has failed to establish that the opinion in question was not available to him on the date on which it was delivered or handed down."

We affirm and confirm the holding of the Supreme Court enounced in the *Williams v. Kpoto* case, that in the absence of proof showing the non-availability of a court's finalruling the statutory period will commence tolling as of the date the judgment is rendered. Where the evidence shows that the ruling was not available to the parties at the time it was said to have been made, this Court has said that the ruling will be deemed to have been entered, for the purpose of appealing therefrom, on the date on which it is available for the parties to receive copies thereof. This is important, since the losing party is granted the statutory right to file a bill of exceptions against the ruling and other acts of the lower court or tribunal as a condition for completion of theappeal. If the ruling is not available, the party's right of appeal could be infringed upon and the appeal placed in jeopardy either because the statutory time would have run or the party could not capture all of the points made in the ruling which could be deemed important for consideration of the appellate court.

It is the foregoing position of the Court that the respondents/appellants seek to take advantage of in the instant case. The respondents/appellants assert that although the Board of Commissioners of the NEC entered its ruling on December 1, 2017, denyingand dismissing their appeal, they did not receive said ruling until December 9, 2017. The respondents/appellants argument is that it was only at that time and on that date that the statute begun to toll. Hence, the filing of their bill of exceptions with the Clerk of the Supreme Court placed them within the seven day statutorily prescribed period.

We believe that the respondents/appellants have misinterpreted the Opinions of the Supreme Court on the issue of availability of a decision or ruling of a lower tribunal or for that matter any tribunal, including

the Supreme Court; for the issue is not when the ruling or decision was received by the respondents/appellants. Rather, the issue is when the ruling was available for the respondents/appellants to receive copy thereof. In the instant case, the evidence is clear that the ruling was available for the respondents/appellants to receive on December 2, 2017. This was only a day following the rendition of the ruling by the Board of Commissioners of the NEC. The records show that it was on that date that the movant/appellee received and signed for the said ruling. The ruling could not have been signed for by the movant/appellee on that date if it was not ready and available to the parties. It was negligence on the part of counsel for the respondents/appellants not to so meticulously pursue the client's interest and thus ensure that the filing of the bill of exceptions would be within the statutory time. Indeed, under this Court's decision in the *Kpoto case*, the Court very clearly stated that where the ruling is not received on the day that it was supposed to have been handed down, counsel has the obligation to communicate with the forum handing down the ruling that the ruling was not available or that the alternative affidavits be secured and executed to the effect. None of these occurred in the instant case. To the contrary, the facts of the case reveal that counsel for the movant/appellee signed for and received copy of the ruling on December 2, 2017, leading to the conclusion that the ruling was available on December 2, 2017. It was therefore on thatdate, December 2, 2017, that the statute begun to toll.

The statute is clear that a party not satisfied with the ruling of the Board of Commissioners of the NEC had seven days within which to appeal the ruling and filea bill of exceptions, duly approved by the Board of Commissioners of the NEC, with the Supreme Court. The ruling of the Board having been rendered on December 1, 2017, the respondents/appellants, through their counsel, should have positioned themselves to file their bill of exceptions by December 8, 2017, or given an intervening Sunday, not later than December 9, 2017. It was the responsibility of counsel to insist upon the ruling being made available prior to the expiration of the statutory period, and that any failing by the NEC to make the ruling available so asnot to jeopardize the appeal of the respondents/appellants be fully documented and recorded so that the respondents/appellants would be excused for filing beyond the statutory period, calculated from the date of the rendition of the ruling. The records donot reveal that any such steps were taken by counsel to secure the interest of the client. Any action short of that expectation must be deemed as a display of negligenceby counsel in the handling of the appeal of the respondents/appellants. This Court cannot accept, by oral representation when a formal communication was required, thatcounsel had made several enquiries as to the availability of the ruling but was informed by the NEC personnel that the said ruling was not available.

Accordingly, the records having shown that the ruling was available on December 2, 2017, and the respondents/appellants having failed to file his bill of exceptions by

December 9, 2017, or given any intervening Sunday, by December 10, 2017, the filing of the bill of exceptions with the Supreme Court on December 15, 2017, was beyond the allowable legal time prescribed by Article 83(c) of the Constitution, Chapter 6, section 6.4 of the New Elections Law and Article 12, Section 12.4 of the Elections Regulations on Hearing Procedures. The lateness of the filing divested the Supreme Court of the authority to exercise jurisdiction to hear the merits of the appeal.

This Court says that in as much as we are eager to attend to the merits of an appeal and make a determination thereon, we are precluded from going any further because of want of jurisdiction. The taking of an appeal is a journey to the Supreme Court wherein the appellant is required to complete the process step by step and that when one of the mandatory steps is missing or defective, the journey cannot be completed. The Supreme Court, in numerous Opinions, has opined as follows:

> *"in as much as the Court has repeatedly expressed its strong preference for deciding cases on its merit and, consequently, is hesitant to dismiss a case by reason of a mere technicality it is very important that an appellant, in pursuing an appeal takes the outmost care to ensure thatthe statute is strictly complied with; that the Counsel for the appellant must continuously and meticulously examine the appeal statute and makesure that it is complied with to the letter and to the full intent of the Legislature as the Court is not prepared to sacrifice the appeal statute orturn a blind eye to accommodate the errors of the appellant in perfecting his appeal. To the converse, the position of the Supreme Court has been strict compliance; and any omission in fulfilling the requirements enounced in the appeal statute is deemed fatal and a warranty for the dismissal of the appeal as the Supreme Court has been un-wavering and uncompromising in its position that non-compliance with the mandatory statutory requirements for appeal cannot be deemed as mere technicality and that a case will in fact be dismissed where there are violations of the substantive statutory requirements by the appellant." Manakeh v. Toweh,32LLR 207 (1984); Ezzedine v. Saif 33LLR 21 (1985); Blamo et al., v. The Management of Catholic Relief Services,* Supreme Court Opinion, March Term 2006; *Hussenni v. Brumskine*, Supreme Court Opinion, March Term, A.D. 2013; *National Elections Commission (NEC) v. Siebo,Jr.,* Supreme Court Opinion, March Term A.D. 2017

With regards to election cases such as the present appeal, this Court has made no exception in the application of the principle of law quoted *supra.* In fact the Court has articulated and espoused that: *"it is incumbent on a candidate in an election to ensure that he has in place a qualified legal team so that in the event he believes that an election violation has occurred, he would be in the position to adequately take advantage of the law, especially with the timeframe prescribed by the law for asserting a challenge and timely appealing from any decision related to the challenge since electoral challenges are special proceeding which must be heard expeditiously." Jonathon Boye Charles Sogbie v. NEC,* Suprme Court Opinion, October Term A.D. 2016; *Kamara v. NEC,* Supreme Court Opinion March Term, A.D. 2017; *National Elections Commission (NEC) v. Siebo, Jr.,* Supreme CourtOpinion, March Term A.D. 2017.

In view of the facts narrated herein and the principle of laws applicable thereto, we hold that the Supreme Court lacks jurisdiction to hear and make a determination on the merits of this case. As such, the second issue regarding the accuracy of the Board's final ruling has become moot, given the fact that this Court is without jurisdiction to entertain the appeal on its merits.

WHEREFORE, and in view of the foregoing, the motion to dismiss the appeal is hereby granted, and the appeal ordered dismissed as a matter of law.

The Clerk of this Court is ordered to send a mandate to the National Elections Commission (NEC) to resume jurisdiction over this case and enforce this Judgment. Costs ruled against the respondents/appellants. And it is so ordered.

Appeal Dismissed