IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2019

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

Her Excellency Madam Jewel Howard-Taylor, Vice President of the Republic of Liberia and the Office of the Vice President of Liberia and the Vice President of Liberia and the Vice Presidency of the Republic of Liberia and all those acting under said Authority..... Appellant	)	
Versus	)	APPEAL
Madam Alice Yeebahn, suspended President of the Liberia Marketing Association (LMA), Abraham Barchue, National Vice President for the Liberia Marketing Association (LMA), Larwuo L. Hiama, National Assistant Secretary General of the Liberia Marketing (LMA), all of the City of Monrovia, Liberia ..... Appellees	)	

GROWING OUT OF THE CASE:

Madam Alice Yeebahn, suspended President of the Liberia Marketing Association (LMA), Abraham Barchue, National Vice President for the Liberia Marketing Association (LMA), Larwuo L. Hiama, National Assistant Secretary General of the Liberia Marketing (LMA), all of the City of Monrovia, Liberia .....Petitioners	)	
VERSUS	)	PETITION FOR JUDICIAL REVIEW
Her Excellency Madam Jewel Howard-Taylor, Vice President of the Republic of Liberia and the Office of the Vice President of Liberia and the Vice President of Liberia and the Vice Presidency of the Republic of Liberia and all those acting under said Authority..... Respondents	)	

ARGUED: July 17, 2019 DECIDED: August 22, 2019

MR. JUSTICE YUSSIF D. KABA DELIVERED THE OPINION OF THE COURT.

In the year 2010, the Legislature, pursuant to its power of enactment, passed into law An Act to Amend the Act Creating the Liberia Marketing Association, and All the Acts Amendatory Thereto, and in Lieu Substituting Thereof this Act which was duly published by authority of the Ministry of Foreign Affairs, thus creating the Liberia Marketing Association, Inc. Section VIII of the said Act provides as follows:

> "The Elected Officers of the Association shall hold their offices for a period of four (4) years during good behavior and shall be eligible for re-election only once. Elections shall be held on the first Tuesday in December and installation of the elected officers and non-elected officers of the Association shall be held on the first Tuesday in January of the year following an election. Executive officers may be removed from office by impeachment due to financial malpractices or due to incapacity as defined in the By-laws and Constitution. Should a vacancy be created due to any reason whatsoever, such vacancy shall be filled by a majority vote of the members of the Executive Committee pending the annual sitting of the National Assembly. The Assembly shall conduct an election during its annual sitting to fill the vacancy and the newly elected officer shall complete the unexpired term of his/her predecessor."

On October 12, 2018, the appellees, Madam Alice Yeebahn, Messrs. Abraham Barchue and Larwuo Hiama, all elected members of the Liberia Marketing Association (LMA), filed a fourteen count petition for judicial review before the Sixth Judicial Circuit, Civil Law Court for Montserrado County and alleged inter alia that in violation of the act creating the LMA supra, the Appellant, Her Excellency Madam Jewel Howard-Taylor, Vice President of the Republic of Liberia, caused to be served on the appellees letters of suspension from their respective positions as elected officers of the LMA; and that the appellees were forcibly removed from their respective offices by heavily armed men without due process and proper procedure. The appellees therefore prayed the lower court to judicially review the executive action and decision executed by the appellant, declare the action/conduct of appellant illegal, void, usurping and contrary to the laws of this Republic, the Act creating the LMA and the By-laws and Constitution of LMA, and order the said action reversed and the appellees restored to their respective offices.

The appellant, in a forty-three count resistance, substantially averred that the LMA is a public corporate entity created by an act of the legislature, and that since its inception, it has operated under the supervision of the Executive Branch of the Government with budgetary appropriation placed under the office of the appellant; that the LMA, being such a public entity, the suspension of the appellees by the appellant who has oversight authority over the LMA was a political decision by the Executive Branch of Government and therefore the court lacks the competence to review such decision; that the decision to suspend the appellees is aimed at ensuring peace, transparency, and accountability within the Liberia Marketing Association, Inc. and also to prevent events inimical to national peace and security; that the appellees' petition for judicial review is a proper subject for dismissal because the said petition was filed fifteen (15) days over and above the thirty (30) days period prescribed by law for the filing of the same after an adverse administrative decision; that the appellees' petition contained inconsistencies in relation to the actual cause of action filed and the exact remedy sought; that the suspension of the appellees by the Government of Liberia is supported, endorsed and welcomed by majority of the LMA county superintendents; that Mr. Patrick Sarti, the Revenue Manager of the LMA, complained to the Board and Management team about financial malpractices in the Co-appellee, Madam Yeebahn, led leadership, and therefore during a National Convention of LMA held in February 2018, the LMA county superintendents from the fifteen (15) counties, as well as other members of the LMA, resolved that because of the allegations that the appellees were engaged in corruption, financial mismanagement, misuse of office, and violation of the laws of LMA, the said appellees be suspended, an audit of the LMA be conducted to ascertain the veracity of the accusation, and if found culpable, the appellee, be impeached and an interim leadership be established to steer the association to the election of new officers; that this resolution was submitted to the Office of the appellant and to the President, His Excellency George Manneh Weah. The appellant further alleged that the President mandated the appellant, as the official exercising oversight responsibility over the LMA, to have the matter investigated so as to bring harmony to the association; that there are precedents for the removal of the leadership of the LMA by executive decision, eg. during the Charles Taylor administration Mr. Robert Kollie was removed and replaced with Madam Martha Saye and later Madam Martha Saye was removed and replaced with Madam Geneva Korvah; Madam Korvah was removed and replaced with Mr. Jonathan Tugbeh by the Ellen Sirleaf led government; that Mr.

Jonathan Tugbeh was removed and replaced with Confort Bedell Marshall all under similar circumstances as currently existing in the LMA; that because the Government has the power to do what it has done, its decision cannot be subjected to administrative proceedings; that the suspension of the appellees was the outcome of a forum/conference hosted by the appellant between appellees and their accusers, with each side given the opportunity to explain their sides, but also to confront each other; and that the action of the Government to suspend the appellees has caused no personal injury to the appellees. The appellant therefore prayed the trial court to deny and dismiss appellees' petition. The appellant also filed a seven count motion to dismiss the appellees' petition essentially relying on the averments in her returns.

The appellees filed a twenty-two count reply to the appellant's returns, along with a resistance to the motion to dismiss. The appellees averred in the reply that the action of the appellant was a violation of the due process right of the appellees as guaranteed by Article 20(a) of the Liberian Constitution (1986).The appellees also prayed for, and the trial court granted, a temporary restraining order against the appellant which the trial court later vacated pursuant to an application by the appellant. The motion to dismiss was regularly heard and denied. The trial court thereafter heard the petition and granted the prayer contained therein. From this ruling of the trial court the appellant has assigned for appellate review a twelve count bill of exceptions.

A review of the approved bill of exceptions filed by the appellant for appellate review presents five contentions for which the appellant ascribed errors to the trial judge's several rulings rendered during the hearing of this matter:-

(1) That appellees filed their petition for judicial review outside the thirty (30) day statutory period provided for such filing;

(2) That the lower court on its own initiative raised the issue of conflict between the caption of the action and the averments of the petition;

(3) That the appellees did not have legal capacity to sue;

(4) That the appellees filed a wrong form of action. The appellees ought to have filed a petition for a writ of quo warranto or prohibition, instead, appellees filed a petition for judicial review; and

(5) That the decision to suspend appellees was political in nature and therefore said decision is not subject to review by the trial court.

On the other hand, the single contention of the appellees is that their suspension and forceful removal from their respective offices were done in violation of the due process requirements as enshrined in the Liberian Constitution, the act creating LMA and the By-laws and Constitution of the LMA.

From an analysis of the contentions raised by the parties in their pleadings, and giving due consideration of the ruling of the trial judge, the following issues are determinative of this appeal before us:

1. Whether the trial judge committed a reversible error when he sua sponte raised the issue of the conflict between the caption and averment in the petition and resolved the issue in favor of the averments over the caption of the case?
2. Whether the trial judge committed a reversible error when he denied the appellant motion to dismiss the petition?
3. Whether the trial judge committed a reversible error when he granted the appellees' petition on the ground that the due process right of the appellees was denied?

The appellant, in her brief and bill of exceptions, strenuously argued the inconsistencies of the averments of the appellees' petition for judicial review as to whether the appellees sought to have judicial review growing out of an administrative hearing, injunctive relief or declaratory relief. In fact, this contention is, to a great extent, pleaded in the appellant's returns and legal memorandum filed with the trial court. This contention was also the crux of the motion to dismiss filed by the appellant. We are left to wonder how the appellant can argue that the trial judge sua sponte raised the issue of a conflict between the caption and averments in the petition. It is the law extant in this jurisdiction that "every court of the Republic of Liberia shall without request take judicial notice of the Constitution and of the public statutes and common law of the Republic." Civil Procedure Law, Rev. Code 1:25.1.

> "...the Court has every right to take judicial notice of any records certified to it and to decide its own jurisdiction. 4 C.J.S., Appeal and Error, § 2373, at 562." Willie-Jorcie et al v Azzam et al, 31 LLR 606 (1983)

Additionally, this Court has consistently held in numerous opinions that where there appeared to be a conflict between the caption of an action and the averments of a complaint, in this case, a petition, the averments take precedence over the caption of an action. That said, and from a careful review of the certified records in this case, it is conclusive that this issue was the gravamen of the appellant's contentions. We quote pertinent ruling of the trial judge as follows:

> "We agree that a petition for judicial review normally grows out of the ruling, action, or order of an administrative agency. The Supreme Court of Liberia has defined an administrative agency to be any ministry, board, commission or officers of the Central Government of Liberia who is authorized by law to determine the legal rights, duties or privileges of a person. The Management of LOIC vs. Williams, 42 LLR 461 (2005). We note that respondent, or for that matter the office of the Vice President, is not an administrative agency within the definition detailed above.
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> We note, however, that although Petitioners' action is captioned "A Petition for Judicial Review", the averments of the petition are essentially praying for a declaratory relief. The Honorable Supreme Court of Liberia held in the case Blamo vs. Zulu, 30 LLR 586 (1983), that where there is conflict between the title of the action and the averments of the complaint, the averments will be given precedence and thus shall prevail over the captioned title. Thus, this court may grant the relief prayed for even though the action is wrongly captioned. We, therefore, hold that the averments of the Petitioners' petition prayed for relief in the form of a declaratory judgment. It is well settled that courts of record within their respective jurisdiction shall have the power to declare rights, status, and other legal relation whether or not further relief is or could be claimed; and that no action or proceeding shall be opened to objection on the ground that a declaratory judgment is prayed for.1 LCLR, Civil Procedure Law, Section 43.1; The Intestate Estate of the late Chief Bah Bai and the People of MatadiGbove Town vs. The Heirs of the late C.D.B. King and D.G.W. King, 37 LLR 496(1994). Hence, this Court, despite the wrong caption, can still hear the action and grant the relief pray for."

Blamo v. Zulu, 30 LLR 586 (1983) relied upon by the trial court to reach this conclusion has been confirmed in recent opinions of this Court, to name a few: Intestate Estate of Dinsea v Ital Timber Corp. (ITC), Opinion of Supreme Court March Term, A.D 2006, Harouni v Griegre, Opinion of the Supreme Court, March Term, A.D. 2011, Donzo v R.L, Opinion of the Supreme Court October Term, A. D. 2014, and Mathies et al v Alpha Int'l Investment, 40 LLR 561 (2001)

This affirmation by the trial court's final ruling, that the appellees came to court to seek declaratory relief, renders moot the contention of the appellant that appellees filed their petition for judicial review outside the thirty days statutory allowance.

> "...Where a question presented has become moot, a judgment or order may be affirmed without consideration of the merits of the case. 5 AM JUR 2d., *Appeal* and Error, §932..." Ducan et al. v Cornomia, 42 LLR 309 (2004).

It follows that the appellant's other contention that appellees filed a wrong form of action, a petition for judicial review instead of a petition for a writ of quo warranto or prohibition, also becomes moot. This Court now considers whether the trial judge committed reversible error when he denied the appellant's motion to dismiss.

It is the contention of the appellant that the appellees lack legal capacity to bring this action before the trial court. This contention is baffling in that the appellant, in both her brief and bill of exceptions filed before this court, conceded the fact that appellees have legal standing to bring this action because they were affected by the action of the appellant, but under the same breadth argued that appellees do not have legal capacity to have brought the same. For the benefit of this opinion, this Court culled from the appellant's bill of exceptions as follows:

"As you may know, "legal standing" and "legal capacity" are not one and the same. In fact, the Supreme Court has clearly shown the distinction between the two terms. For example, in Morgan v Barclay et al, 42 LLR 259 (2004), Syl. 4,5 & 6, the Supreme Court says: "Standing to sue means the party has the sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. Standing is a concept utilized to determine if a party is sufficiently affected so as to insure that a justifiable controversy is presented to the court. The requirement of standing is satisfied if it can be said that the Plaintiff has a legally protectable and tangible interest at stake in the litigation." Then in re Petition for Cox (Constitutionality of S. 17.1); 36 LLR 837 (1990), Syl 1, The court says "For a Plaintiff to have a standing to sue, he must show that he personally has suffered some actual or threatened injury as a result of the putative illegal conduct of the defendant."

On legal capacity, the same Morgan v. Barclay et al, 42 LLR 259 (2004) Sybi 1 & 3 say: "Legal capacity to sue is the right to come into court....Capacity is the legal qualification, such as legal age, competence, power or fitness; It is the legal ability of a particular individual or entity to use, or to be brought into, courts of a forum. So, Your Honor, legal standing is not the same as legal capacity, as the two terms refer to two different situations/scenarios, so the suspension of petitioners may give them legal standing but not automatic legal capacity, especially where they failed to file the petition within the statutorily required period of thirty (30) days; hence, that failure divests them of the legal capacity to come before the court."

This argument of and legal citation by the appellant is insightful. As gleaned from the certified records, the appellees are duly elected officers of the LMA who were undeniably suspended by the directive of the appellant and removed from their respective offices by armed security men. The appellees argued that the action of the appellant is in violation of the sacred requirements of due process of law, the Act creating the LMA and its By-laws and Constitution. The assertion by the appellant, in the face of the above, that the appellees are not competent, legally fit or lack the qualification, power or the legal ability to come to court to seek redress under the circumstances of this case remains a mystery on the mind of this Court. It can be said without a scintilla of doubt that the appellees are legally situated and competent to bring the action in the instant case. The appellees are real parties of interest whose rights have been affected by the decision of the appellant to suspend and forcibly remove the appellees from their respective offices. We therefore hold that the trial court was not in error to have denied the appellant's motion to dismiss.

Before we turn to address whether the appellees were accorded due process of law when the appellant ordered their suspension and removal from their respective offices, it is essential that we pass on the contention of the appellant that it was a political decision of the Executive Branch to suspend the appellees, hence, the decision is not subject to review by court of this Republic. A political question and its applications have long been addressed by this Court. Howbeit, the question continues to linger on from a variety of circumstances or situations in the last twelve years or so of our constitutional democracy after fourteen years of disruption. As intractable as the question appears to be, this Court always endeavors to avoid delving into questions that squarely lie within the province of the other two branches of the government. In addressing itself to this issue in 1933, this Court overruled the statements alleged to have been made by the then county attorney for Montserrado County and remanded that case for a new trial, infra.

> "Matters which are by their nature solely political should be confined within the realm of politics. There is a vital difference between justiciable matters and matters political. Courts of law are instituted for the purpose of deciding only such questions as are susceptible of determination by the application of well recognized rules of law or equity. Political questions cannot, however, be determined by courts of law because there are no principles of either law or equity by which they can be decided. The only rule applicable to the adjustment of such questions is the rule of conciliation or compromise; and

> when a court of law embarks on such turbulent seas, it immediately loses its office as a judicial tribunal and abdicates its forum where pettifogging politicians resort to ventilate their little minds. Any verdict based upon non-justiciable matters is therefore illegal, and the appellate court shall remand the cause to be tried de novo."Massaquoi v RL, 3 LLR 411 (1933)

Eighty-one years later, precisely in 2014, the Court was confronted with yet the question of justiciable matters vis-à-vis political question in the case JUPICA et al. v NEC et al., Opinion of the Supreme Court, October Term, A. D. 2014. Mr. Chief Justice Korkpor, Sr. speaking for the Court expanded on Massaquoi supra as follows:

> "According to the political question doctrine, a subject matter is inappropriate for judicial resolution where it is exclusively assigned to the political branches of our government or where the political branches are better-suited than the judicial branch to determine the matter. Hence, the political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations only committed for resolution by the Legislative or Executive Branch of our Government."

Taking cue from Massaquoi supra, it is a well-recognized rule of law that "no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law." Lib Const. Art. 20 (1986) It is a constitutional guarantee that has been consistently upheld by this Court; to name a few cases, Wolo v. Wolo, 5LLR 423 (1937), Snowe v. Some Members of the House of Representatives, Special Session of the Supreme Court, October Term, A.D. 2006, Morlu II v. House of the Senate, Opinion of the Supreme Court, October Term, A.D. 2008; Broh v. Honorable House of Representatives, Opinion of the Supreme Court, October Term, A.D. 2014, etc. etc. This brings us to the last issue determinative in this case.

Relying on Ghoussalny v. Nelson et al, 20 LLR 591 (1972), appellant wants us to believe that she acted as an agent of the Chief Executive exercising his political or constitutional functions, therefore the act of appellant to suspend and forcibly remove appellees from their respective offices is not reviewable. The appellant also wants us to believe that the decision to suspend and oust the appellees from their respective offices was compelled by the instance of national security where superintendents and marketers were involved with persistent protests at different

occasions. Assuming that is appellant's argument is true, we note that it is matter for the Ministry of Justice to quell such national security concern.

Recourse to the appellant's assertions as found in the records on review indicates that the President mandated the appellant to "find solution to the continuous noise, allegation of corruption and financial mismanagement, etc". Perhaps, the President was mindful of the fact that there is a recognized rule in the resolution of dispute of this nature by reverting to the act creating the LMA, its By-laws and Constitution as well as the fundamental requirement of due process so as to impose the appropriate legally prescribed sanctions if the appellees were found wanting in the management of LMA.

Referencing Massaquoi supra, this Court says that the suspension and subsequent forceful removal from office of the appellees by the appellant is a justiciable question susceptible of determination before a competent court of jurisdiction. It therefore begs for review and determination by this court.

Interestingly, the appellant would have this Court to believe that the due process right of the appellees was accorded when the appellant allegedly conducted series of meetings between and among the aggrieved parties in the absence of evidence on the records certified for appellate review. This Court says that a mere allegation of a fact not substantiated by showing of evidence is not sustainable. This Court has held:

> "We cannot act on the mere allegation of the petitioners, without the appropriate proof. Otherwise, we would be setting a new lower standard that persons making allegations do not have to present proof to substantiate the allegations. We are not prepared to adopt such a course." MPC et al v National Election Commission et al, Opinion of the Supreme Court, Special Session, A. D. 2011

In the case, Snowe v. Some Members of the House of Representative supra, this Court held that in the absence of minutes of proceedings tending to show that Petitioner Edwin M. Snowe was accorded the due of process prior to his removal by the majority group of that Branch of Government, the removal was unconstitutional. This Court maintains and holds sacrosanct the principle of due process of law. The Legislature, been cognizant of this sacred principle of our Organic Law, provided for it preservation under Section VIII of the Act creating

the LMA that "Executive officers may be removed from office by impeachment due to financial malpractices or due to incapacity as defined in the By-laws and Constitution." It is worth noting that the use of the word "may" in the act does not preclude the due process requirements of our constitution. In common law, the word "may" has been held to be synonymous with the word "shall" or "must" usually in an effort to effectuate legislative intent. Page 1068, 9th Ed, Black's Law Dictionary. It is therefore the considered opinion of this Court that the governing instruments to have effectuated sanctions against appellees considering all that the appellant has asserted in her forty-three count returns to the petition for judicial review would have been the Liberian Constitution (1986), the Act of 2010 supra creating the LMA and the By-laws and Constitution of the LMA. Further and in view of what has been said, only the Board of LMA would suspend the appellees for any alleged financial mismanagement and other violations of the LMA Act and By-laws Constitution consistent with due process.

This brings us to the appellant's next argument that because her office has oversight responsibility over the LMA coupled with several petitions from cross sections of the LMA complaining the appellees of financial mismanagement and administrative malpractices; she was within the pale of the law to have ordered the appellees suspension pending the outcome of an audit by the GAC. The appellant endeavored further to persuade this Court that because the LMA is placed under the Office of the Vice President's budget, she was justified in her decision to suspend and order audit of the appellees stewardships of the LMA. We disagree. These assertions by the appellant in no way negate the constitutional guarantee for due process as opined in numerous opinions of this Court including this one.

Nowhere in these governing instruments is there a provision for the appellant being a part of the structure of the LMA. It suffices to say that a budget law is an appropriation. An appropriation of subsidy for the LMA under the office of the appellant in no way confers authority on appellant to impose sanctions and take judicial decision as she did in the instant case. It goes without saying that protests by aggrieved LMA members in the several places did not warrant the appellant to flout the Act and By-laws and Constitution governing the management or administration of the LMA as well as the sacred laws of the land. It must be noted that the removal of leaderships of the LMA by Presidents of Liberia in the past does not justified the usurpation of the governing instruments of the LMA. It is the

opinion of this Court that the proper course of action available to the aggrieved members of the LMA would have been to utilize the governing instruments including relevant laws extant in this jurisdiction. Hence, the trial court did not err when it ruled and ordered the reinstatement of the appellees with immediate effect.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the trial court is affirmed. The Clerk of this Court is ordered to send a mandate to the court below to proceed in accordance with this opinion. Costs disallowed. AND IT IS HEREBY SO ORDERED.