Mappy-Polson v. R.L [2017] LRSC 8 (3 March 2017)

SELENA MAPPY-POLSON, SUPERINTENDENT OF BONG COUNTY (PETITIONER) V.S **THE GOVERNMENT OF THE REPUBLIC OF LIBERIA (RESPONDENTS). [JUSTICE WOLOKOLIE DISSENT]**

IN THE HONOURABLE SUPREME COURT OF REPUBLIC OF LIB ERIA SITTING IN ITS OCTOBER TERM, A. D. 2016

PETITION FOR DECLARATORY JUDGMENT

Heard: July 18, 2016. Decided March 3, 2017

MADAM JUSTICE JAMESETTA HOWARD WOLOKOLIE DISSENT.

The Liberian Constitution, Chapter 11, Article 90 (c), devolves upon the National Legislature the duty to prescribe a code of conduct for all public officials and employees, legislating acts which constitute conflict of interest or acts against public policy, and to derive penalties for the violation thereof. In consonance therewith, the 53rd Legislature, on June 20, A.D. 2014, passed into law an Act entitled, "An Act of the Legislature prescribing a Code of Conduct for All Public Officials and Employees of the Government of the Republic of Liberia." We shall hereinafter in this dissenting opinion refer to the Act as the "Code".

Issues have arisen about the constitutionality of the Code with particular reference to Part V. sub-paragraphs 5.1 and 5.2 of the Code. In a previous case, the petitioner, Citizen Solidarity Council, filed a petition for declaratory judgment before the Sixth Judicial Circuit Court for Montserrado County, challenging the unconstitutionality of the Code, specifically as it relates to sections 5.1 and 5.2, which provisions, the petitioner said were grossly discriminatory and in violation of the Constitution. Our Revised Code, Civil Procedure Law 1:43.2 provides that any person affected by a statute may have determined any question of construction or validity arising under the statute and obtained a declaration of rights, status or other legal relations thereunder.

In the Citizen Solidarity Council case, the lower court based on a motion filed by the Government of the Republic of Liberia to dismiss the petition for lack of jurisdiction to declare the constitutionality of these provisions of the Code, referred the matter to the Supreme Court, which it said was the proper court clothe with the jurisdiction to declare a statute unconstitutional. On consideration by the Supreme Court of the

petition, the Court, in a Majority Opinion, delivered on June 27, 2016, held that the Court would decline to delve into the issue of the unconstitutionality of the Code since the petitioner, Citizen Solidary Council, did not have the legal capacity and standing to bring the petition; that courts of justice are only required to decide issues squarely raised by proper parties before them, and that a party without standing or capacity to sue cannot enjoy the benefit of a court's decision. The Court therefore did not proceed to go into the substantive issues raised in the petition.

On the heels of the Supreme Court's Opinion, on July 16, 2016, Madam Selena Mappy-Polson, the Superintendent of Bong County, again filed a petition for declaratory judgment in the Ninth Judicial Circuit Court of Bong County, challenging certain provisions of the Code as unconstitutional. This petition, as was the previous petition of Citizen Solidary Council, was filed in the court below, this time the Ninth Judicial Circuit Court. The court again dismissed the petition referring the matter to the Supreme Court on similar grounds as stated by the Sixth Judicial Circuit Court that the lower court did not have the jurisdiction to declare a statute or provision(s) therein unconstitutional. The matter therefore was placed before this Court for consideration of the Court to declare certain provisions of the Code violative of the Liberian Constitution (1986) and therefore unconstitutional.

In her petition, petitioner narrated that recently she has received numerous encouragements, petitions, and suggestions from the citizens of Bong County requesting her to run for one of the Legislative Offices for Bong County during the upcoming 2017 General Elections; that being humbled by the unsolicited petition and support she is receiving, and beginning to consider to canvass or contest for an elected post in Bong County and to undertake a final decision as to whether she contests or does not contest an elective post during the ensuing 2017 General Elections in Liberia. However, same is not likely to be made by her until late 2016 or early 2017. Petitioner says that as a citizen of Liberia, she has the right to desire or decide to canvass or contest for any elective office for which she is qualified, and to take as much time as is necessary to make a decision before the deadline published or to be published by the National Elections Commission for declaration of her candidacy. Further, the petitioner says that her constitutional rights to "desire" and/or "contest" any elective post for which she is otherwise qualified and also "to canvass for the votes for any political party or candidate at any election" are challenged, undermined and violated by Sections 5.2, 14.1 and 15.1 of the Code of Conduct of 2014, which arbitrarily and discriminatorily requires, contrary to the guarantee, letter, and spirit of the Constitution, that the petitioner, a presidential

appointee, resigns her Office and employment "at least two (2) years prior to the date of" 2017 general elections and any subsequent elections once the petitioner "desires to canvass or contest for an elective public position" during said public elections; and (ii) for the president to impose specific sanctions including dismissal for infringement of the said requirement to resign. The Petitioner asked the Court to declare sub-paragraphs 5.2, 14.1 and 15.1 of the Code unconstitutional.

Section 5.2 of the Code, unlike Section 5.1 of the Code, petitioner says is patently unconstitutional because of many reasons including the following:

a. It is discriminatory and therefore violative of the equal protection clause of the Constitution;

b. It is arbitrary and void of any compelling reason for interfering or restricting the fundamental right to canvass or contest for elective public office;

c. It is anti-competitive contrary to the provisions of Article 77 of the Constitution, declaring "the essence of democracy is free competition of ideas expressed…by individuals" as well as political parties and groups;

d. The Legislature is without authority to modify the eligibility requirements for elective offices as established by the Constitution for any elective office, bearing in mind that the legislative power to enact the Elections Law is limited by Article 84 of the Constitution, which states that the Elections Laws to be enacted by the Legislature "shall not be inconsistent with any provision of this Constitution";

e. It is inconsistent with the provision of the Constitution requiring the Legislature to "enact laws promoting national unification and the encouragement of all citizens to participate in government" as provided in Article 5(a) of the Constitution.

The petitioner says, under our law, the Honorable Supreme Court have jurisdiction to declare rights, status and other legal relations affected by a statute such as in the instance case where section 5.2 of the Code of Conduct Act of 2014 is affecting her rights. She therefore prays this Court to declare the following:

A. Declare that petitioner has and is guaranteed the constitutional right to canvass and contest for any elective public office, subject to only restriction as contained in the Constitution or by a statute not inconsistent with the Constitution;

B. Declare that a statute which discriminates among people of the same class – such as "officials appointed by the President" – is in violation of the Equal Protection Clause and therefore patently unconstitutional;

C. Declare that Section 5.2 of the Code of Conduct of 2014 is unconstitutional because it violates many provisions of the Constitution, including the provision of the Constitution dealing with equal protection, fair competition to promote democracy, the right of every mature citizen to vote and be voted for, etc.;

D. Declare that the sanctions for breach of the Code of Conduct of 2014, including Section 5.2 thereof, are detailed in Section 15.1 of the Code of Conduct, and that said sanctions are the exhaustive and exclusive remedies expressly enumerated by the Code of Conduct for breaches/infringements; and

E. Declare such further rights and remedies that the petitioner is entitled to as a matter of law and equity.

The majority in dealing with the contentions of the petitioner found the following constitutional queries necessary to the final disposition of the case.

1. Whether Section 5.2 of the Code which requires prior resignation of presidential appointees desiring to canvas for elective public offices is an unconstitutional expansion and imposition of eligibility requirement on presidential appointed public officials?

2. Whether Section 5.2 of the Code which [names] a selected category of presidential appointees, but does not [name] another category of presidential appointees, to resign prior to contesting elections for public office is discriminatory and thus violates the Equal Protection Clause of the Liberian Constitution?

3. Whether the right to vote or be voted for is a fundamental right that requires compelling reason to justify its impairment; or does the Code constitute a broad restraint on political competition that restricts the options of candidates available to the electorates?

4. Do Sections 14.1 and 15.1 of the Code provide the exclusive and exhaustive range of sanctions for violation of the Code, including its prior resignation eligibility requirement?

The Majority in considering the contention of the petitioner that the Code requiring a prior resignation of presidential appointees desirous of canvassing for elective public offices as an unconstitutional expansion of the eligibility requirement for presidential appointees stated under Article 52 and Article 30 of the Liberian Constitution (1986), and that said amendment to the Constitution can only occur in compliance with Article 91 of the Constitution, says this contention of the petitioner is preposterous,

since Article 34 of the Constitution vests in the Legislature twelve (12) enumerated powers. Amongst these is the power to enact elections law (Article 34.i), and the authority of the Legislature to make laws which affect elections and their conduct is a constitutional derivative. Referring to powers granted by the Liberian Constitution (1986) to the Legislature to enact laws, the Majority refers to Chapter VII, Article 77 (b) of the Constitution which grants extraordinary powers to the Legislature to legislate as to the form and nature political participation and involvement may be permitted for various categories of Liberian citizenry despite the constitutional provision that grants every citizen of this Republic, "not less than 18 years of age" …"the right to be registered as a voter and to vote in public elections"; and the Constitution has also granted the rights to the Legislature under Chapter XI, Article 90 the right to prescribe a Code of Conduct for all public officials and employees stipulating the acts which constitute conflict of interest or are against public policy and the penalties for violation thereof.

The passage of the Code by the Legislature, the Majority says does not violate the Constitution as long as the statute neither enlarges nor subtracts specifically constitutionally protected and designated rights. The conduct of the Legislature, to prescribe additional right or to set new eligibility requirements to those desirous of canvassing, so as to enhance compelling state interest and to prevent waste of public resources, is a proper exercise of legislative authority.

Addressing the petitioner's further contention that the Code being a general application for all public servants, the resignation requirement under Section 5.2 is discriminatory and unconstitutional as it is made applicable to only certain presidential appointees, and therefore violative of the equal protection rights as enshrined in Article 11 of the Constitution, the Majority agrees that the constitutional right of the President of Liberia to appoint public officials under Article 56 leaves the Court with no ambiguity as to those officials to be appointed and that the language of Section 5.2 of the Code of Conduct Act, when read juxtaposed with the sovereign language of Article 56 (a) of the Liberian Constitution, excludes, without a shred of uncertainty, certain public officials who are appointed pursuant to Article 56 (a) of the Liberian Constitution. The Majority says, however, though the language of Section 5.2 of the Code "suffers grave language and legal deficit", and concur that the language of Section 5.2 of "the Code is troubling", however, according to the Majority, this does not justify it being declared unconstitutional as the petitioner has urged the court to do. On the other hand, the Majority agrees with the respondent Liberian Government that the whole Act Rule must apply, and a section of the Code cannot be interpreted

in isolation of other provisions, particularly when the challenged section referenced and is premised upon another section 5.1 of the Code which the petitioner concedes is constitutional.

Section 5.1 of the Code reads:

"All Officials appointed by the President of the Republic of Liberia shall not:

a) engage in political activities, canvass or contest for elected offices;

b) use Government facilities, equipment or resources in support of partisan or political activities;

c) serve on a campaign team of any political party, or the campaign of any independent candidate."

Section 5.2 also reads:

"Wherein, any person **in the category stated in section 5.1 herein above,** [emphasis ours] desires to canvass or contest for an elective public position, the following shall apply:

a) Any Minister, Deputy Minister, Director-general, Managing Director and Superintendent appointed by the President pursuant to Article 56(a) of the Constitution and a Managing Director by a Board of Directors, who desires to contest for public elective office shall resign said post at least two (2) years prior to the date of such public elections;

b) Any other official appointed by the President who holds a tenured position and desires to contest for public elective office shall resign said post three (3) years prior to the date of such public elections;

c) However, in the case of impeachment, death, resignation or disability of an elected official, any official listed above, desirous of canvassing or contesting to fill such position must resign said post within thirty (30) days following the declaration by the National Elections Commission of the vacancy."

The Majority further refers to the case Citizen Solidarity Council, earlier cited above, and in which the Supreme Court held:

"Courts have inherent authority to determine whether statutes enacted by the Legislature transcend the limits imposed by the Constitution, and to determine whether such laws are not constitutional, courts in exercising this authority should

give the most careful considerations to questions involving the interpretation and supplication of the Constitution, and approach constitutional questions with great deliberation, exercising their power in this respect with the greatest possible caution and even reluctance, and they should never declare a statute void unless its invalidity is, in their judgment, beyond a reasonable doubt; and it has been held that to justify a court in pronouncing a legislative act unconstitutional the case must be so clear as to be free from doubt, and the conflict of the statute with the Constitution must be irreconcilable, because it is a decent respect to the wisdom, the integrity, and the patriotism of the legislative body by which all law is passed to presume in favor of its validity until the contrary is shown beyond reasonable doubt. Therefore in no doubtful case will the judiciary pronounce a legislative act to be contrary to the Constitution. "To doubt the constitutionality of a law is to resolve the doubt in favor of its validity."

The Majority therefore holds that the exclusion of presidential appointees in Section 5.2 of the Code requiring prior resignation of certain named presidential appointees as an eligibility requirement to contest in public elections is not irreconcilable with the Constitution, and unless the Court is convinced beyond any shred of uncertainty that the Code is patently in conflict with the Constitution, it will refrain from making such declaration.

In count 7 of her petition, the petitioner writes:

"Section 5.1 of the Code, which is referenced by and in Section 5.2 of the Code, is constitutional and therefore valid because it is in keeping with Article 90 of the Constitution prohibiting officials from acts against public policy or constituting conflict of interest and does not discriminate among presidential appointees in violation of the equal Protection Clause of the Constitution because it clearly applies to "all officials appointed by the President." Your Honor is respectfully requested to take judicial notice of Section 5.1 of the Code of 2014, stating that "all officials appointed by the President of the Republic of Liberia shall not (a) engage in political activities, canvass or contest for elected offices; (b) use government facilities, equipment or resources in support of partisan or political activities; (c) serve on a campaign team of any political party, or the campaign of any independent candidate."

The purpose of Section 5.1, as stated earlier is very clear and lawful, and its language is tailored to address the problem of abuse of office and related vices, which is consistent with a clear authorizing or enabling constitutional provision for such restriction on rights. Further, the said Section 5.1 of the Code is not discriminatory in

the sense of being applicable to only certain presidential appointees, which would have run afoul of the fundamental right of equal protection established and guaranteed by Article 11 of the Constitution."

We then ask, if all officials appointed by the President of the Republic of Liberia shall not engage in political activities, canvass or contest for elected offices, use Government facilities, equipment or resources in support of partisan or political activities, and serve on a campaign team of any political party, or the campaign of any independent candidate, it is obvious then that section 5.2 references all presidential appointees and to interpret it otherwise would be grossly discriminatory. We therefore find no fault in the declaration made by the Majority especially where the challenged section 5.2 is referenced and is premised upon 5.1 of the Code which the petitioner concedes is constitutional.

I must admit though that I have my personal conviction regarding the constitutionality of section 5.1 (a) and (c) of the Code which Justice Philip A.Z. Bank, who is also a dissenter to the Majority Opinion, has adequately proceeded to deal with and to which I concur. I have however limited my dissent particularly to the petitioner's contention and argument in regard to the time frame set in section 5.2, for the resignation of an appointed official desirous to canvass or contest for an elective public position.

If the petitioner finds section 5.1 of the Code constitutional, it is obvious then that the petitioner cannot remain in her position as an appointed official if she desires to run and canvass for votes, or engage in political activities. To do this, she must resign, and any argument to the contrary would be inconsistent with her acceptance of section 5.1 as being lawful and constitutional.

The petitioner however argues that the time frame set for said appointed officials is discriminatory, arbitrary, and anti-competitive and is inconsistent with provisions of the Constitution requiring the enactment of laws promoting national unification and the encouragement of all citizens to participate in Government.

My dissent therefore goes particularly to this contention raised by the petitioner in regard to what would be considered a constitutional time frame set by the Code that would not bridge Article 77(a) of the Liberian Constitution (1986) which provides that "the essence of democracy is free competition of ideas expressed by political parties and political groups as well as by individuals…" Section 5.2 which requires appointed officials to resign two years prior to the date of public elections and those appointed

and holding a tenured position to resign three years prior to the date of such public elections, the petitioner says, violates Article 5(a) of the Constitution which requires the Legislature to enact laws promoting the encouragement of all citizens to participate in government.

My majority colleagues say section 5.2 of the Code seeks to achieve a compelling public interest of the government to protect the state's resources from abuse from officials desirous to contest for public elections and to create a level playing political field and it is that the government has a compelling interest to prevent Liberia's competitive politics from unfair advantages – in which public officials in charge of public finances could be preferred by voters because of the leverages they enjoy as well as the public official's ability to dish out public money; that the right to political participation is separate and distinct from the privilege of employment in public service. One may choose to forego public employment in order to enjoy the right to political participation as a candidate, or wait a minimum of two or three years after their employment to fulfill the eligibility requirement and thereafter enjoy political participation.

I strongly disagree with this position of my Majority Colleagues and I am disheartened by their holding. This issue of the time set by the provision of section 5.2 of the Code, setting two to three years as a time frame for appointed officials to resign their executive positions if they so desire to participate in elections and canvass for votes, I hold, contrary to the Majority Opinion, is unconstitutional as it places an unreasonable restriction on political competition, restricting the options of capable candidates being available to the electorates, and this has engendered my dissent.

I agree with the petitioner that the time frame set in section 5.2 was not objective and in the interest of our state; rather, it seems subjective, mainly passed by the Legislature to restrict individuals who they consider as strong political contenders. Section 5.2 is also discriminatory as the desire for one to contest for public elective office cannot be set in such an unreasonable time frame since one may desire and make a decision to participate in elections far ahead of the time set for the elections and others may desire to run for an elective position on the spur of the moment geared on by certain intervening circumstances, as in this case where the petitioner says that she has recently been approached by citizens of her county, requesting her to run for one of the legislative positions for Bong County during the upcoming Elections in 2017.

If the Majority says that it accepts that Article 5(a) of the Constitution mandates the Legislature to pass enabling laws with the object of encouraging all citizens to

participate in government; recognizes that Article 8 of the Constitution further provides that the Republic shall direct its policy towards ensuring for all its citizens without discrimination, opportunities for employment and livelihood under just and humane conditions; and agrees that there can be no argument that barring some Liberian citizens from employment and/or participation in government merely on the basis of an intent (not a decision) to run for public office is discriminatory and a deprivation of constitutionally protected opportunities for employment and livelihood, as well as substantial impairment of the right to participate in government; is it then not inconsistent that the Majority would state that appointed officials have no right to public employment but rather it is a privilege granted by the state?

Obviously, the time frame of two (2) to three (3) years set by the Legislature for government officials to resign if they desire to participate in elective positions will deprive certain citizens of economic benefits and the Executive Branch of Government of competent appointees from participation in national development, since on one hand, many competent citizens serving as Presidential appointees may quash their desire to run for elective positions taking into account the length of time set for their resignation from employment and the attending economic deprivation associated with said resignation, and by their decision to forego running for elective positions, this may deprive the country of persons in elective positions with the competence and the capacity to demonstrate true democracy by exchange and demonstration of constructive ideas which would result into substantive nation building and development; this might also deprive the executive of needed expertise for a protracted period leading up to elections.

The petitioner argues that nature of a constitutional right is a right guaranteed to the citizen by a constitution and so guaranteed as to prevent legislative interference with that right." 16A Am Jur 2d, Constitutional Law, Section 385 (1998), and practical necessity has led to the recognition that a fundamental right guaranteed by the Constitution is not total "immune from reasonable governmental regulation if constitutional safeguards are satisfied and statute in derogation of fundamental rights can only be sustained under constitutional challenge only if it has a compelling purpose.

In this case, the Majority says that the Code was promulgated to ensure scrupulousness in the working of government. Its provisions focus on how to ensure that one holding public office does not abuse, misuse government's facilities,

equipment or resources entrusted to him/her while in office or use it to influence his/her elections to public office.

However, we believe the promulgation of the Code, said to limit and prevent unscrupulousness of appointed officials who intent to run for elective position is discriminative, since the power under Article 90 of the Liberian Constitution (1986) is directed not only at Presidential appointees but to all persons elected or appointed to any public office.

We must ask, is the legislature by this provision (section 5.2) of the Code insinuating that only Presidential appointees have access to state's property and resources and are the only ones in government prune not to create a level playing field during elections? Since the Legislature are responsible for passage of our state's budget, can passage of the budget during an upcoming general elections, particularly legislature's salaries, not be set to engender access to government resources for re-elections during an elections' year? How does a statute with a provision setting an arbitrary time frame for appointed officials who want to take part in elections, requiring them to resign two to three years prior to General elections create a level playing field for all citizens to participate in elections? Is the Code insinuating that only Presidential appointees are without integrity? Is the Code intended to warrant the re-election of those in the legislature, limiting others with potentials from participating and contesting with incumbent legislators as is alleged in this case?

The petitioner, in her brief argued before us, writes:

"Section 5.2 has the direct, if not intentional, effect of restricting competition against re-election bids of the lawmakers who enacted the Code because (i) the Code does not require them to resign, although the Code should apply to all public officials (including lawmakers); (ii) the early resignation requirement deprives some of the presidential appointees of gainful employment for many years before election while the lawmakers continue to receive their much publicized huge compensations; and (iii) linking resignation to eligibility to run for public offices is like requiring Liberian citizens to make a vow of poverty in preparation for contesting a public office."

This brings us to the next issue of when and how can intent or desire to run under section 5.2 be determined so as to prevent the acts the Code says it intends to prevent? Can the mere entertainment of an idea to run for public office be a ground to resign? How can this intent be manifested so as to warrant an appointed official resignation from office? Can an appointed official's desire to run for elective office

not be prompted by certain circumstances that occurred later than two to three years to elections?

I agree that an appointed official who is actively serving in government and has made a decision to run for an elective position must resign, not necessary to prevent financial impropriety, but to avoid conflict of duty, and in order for him or her to effectively and efficiently perform his/her executive duty. We take note that the Standing Orders for the Civil Service, section 7.2.9 which the Legislature incorporates into the Code, provide the following:

7.2.9 Political Campaign Leave

a) A Civil Servant who is certified by the National Elections Commission and is a bona fide candidate will be required to take a leave of absence without pay during his/her campaign period which officially begins with the publication of the official Rooster of certified candidates by the National Elections Commission. This period of campaigning will end when the elections results are published.

b) A candidate, if unsuccessful, and if he/she so chooses, may return to his/her original position held as a civil servant prior to the Elections campaign, consistent with Section 3.4.8, or another position of equal grade and remuneration as applied in Section 3.4.9b.

c) If the employee does not return to work within 14 days after the publication of the Elections results the regulation states in Section 3.4.16 (Unauthorized Absence) shall apply. I.E. the absence would be considered by the Ministry/Agency Head as a resignation.

A reading of this section of the Civil Service Standing Orders clearly provides safeguards for political participation as guaranteed under the Liberian Constitution (1986). However, I believe no such guarantee is provided under 5.2 of the Code as it is extreme, arbitrary, and violates certain basic and fundamental provisions of the Liberian Constitution such as the barring of some Liberian citizens from employment and/or participation in government merely on the basis of an intent (not a decision) to run for public office as discriminatory and a depravation of a constitutionally protected opportunity for employment for a livelihood, as well as substantial impairment of the right to participate in government. I therefore agree with the petitioner that the two (2) and three (3) year time frame set for appointed official who

desire to run for elective positions to resign is unconstitutional, as it does not afford these Liberian citizens the constitutional right of equal protection, fair competition to promote democracy, the right of every mature citizen to vote and be voted on.

The petitioner being specific in her quest to this Court to declare section 5.2 of the Code unconstitutional, I believe this Court should have so declared based on our holdings herein and I am disheartened that my Majority Colleagues did not see the need to do so.

It is a fundamental principle that a statute may be constitutional in one part and unconstitutional in another and that if the invalid part is severable from the rest, the portion which is constitutional may stand while that which is unconstitutional is "stricken out" and rejected. Also, if after eliminating the invalid portions, the remaining provisions are operative and sufficient to accomplish their proper purpose, it does not necessarily follow that the whole act is void, and effect may be given to the remaining portions. 16A Am Jur 2d, Constitutional Law, sections 207-208 (1998).

My stance, therefore, is that section 5.2 of the Code is unconstitutional and should have so been declared by the Majority. That the Code, particularly **PART V** relating to "Political Participation" may be amended to conform to the fundamental rights of all citizens as enshrined in the constitution, and give an effect to the constitutional intent of Article 90 of the Liberian Constitution (1986) requiring that the law be passed to give effect to all public officials and employees.

The Petitioner submits and I agree that the objectives of the constitutional provision (90.c) can be objectively achieved without an infringement on the constitutional rights of a particular group of citizens and that many examples abound in other countries in the world, including the United States of America and other Western developed democracies where codes of conduct and similar measures have been implemented to promote probity in government. Petitioner has referred to the Hatch Act of the United States of America, the State which country laws the Majority has constantly refer to in its Opinion. In the Hatch Act and Acts of other countries, laws have been passed to prevent pernicious political activities in society and what the Code set out to prevent. We however find no such arbitrary provision with a resignation requirement such as requiring public officials to resign when desire to run or upon being petitioned to run, or for any other reason, not to mention the period of two (2) or three (3) years prior to the elections. The legislature must therefore see the need to amend this provision of the Code.

The petitioner in her prayer has asked the Court to declare that the sanctions for the breach of the Code, including Section 5.2 thereof, are detailed in Sections 14.1 and 15.1 of the Code, and that said sanctions are the exhaustive and exclusive remedies expressly enumerated by the Code of Conduct for breaches/infringements. These sections read:

"14.1 Infringement of the Code, states:

A breach of this Code of Conduct shall evoke, relevant to the particular officer, the disciplinary processes as contained in the Standing Orders of the Civil Service, this Code of Conduct and other relevant rules, regulations and laws in force."

"15.1 Sanctions for Infringement states:

Sanctions for any breach of this Code of Conduct shall be those prescribed by the Standing Orders of the Civil Service or any other laws governing the public service. Notwithstanding, depending on the gravity of the offence or misconduct, one or more of the following penalties may apply:

a) Dismissal;

b) Removal from office in public interest;

c) Reprimand;

d) Fine or making good of the loss or damage of public property/assets;

e) Demotion (reduction in ranking);

f) Seizure and forfeiture to the state of any property acquired from abuse of office; and

g) Interdiction/suspension from duty with half pay."

Obviously, the petitioner having conceded that 5.1 of the Code is lawful and constitutional, that an appointed official cannot hold office and engage in political activities, violation of any lawful provisions of the Code like other such statutes must attach a penalty or else what would be the impetus for upholding said statue or any lawful provisions therein?

The Majority having declared the Code and the provision of section 5.2 constitutional, now holds that section 15.1 which the petitioner refers to as the "exhaustive sanction theory" is hugely flawed. The language of Section 15.1 of the Code, the Majority says demonstrates the intent of the Legislature to direct the imposition of not one but a

range of penalties to persons in breach of the Code; to accept "the exhaustive sanction theory" being proposed by petitioner renders the Code grossly meaningless and fundamentally ineffectual. The Majority asks, if the sanction of disqualification of a violator from public electoral contest is the ultimate sanction, and same is not expressly listed amongst the range of sanctions of Section 15.1 as stipulated, what would be the public policy utility for demonstrated egregious violation of the Code; would imposition of fines, or mere reprimand be considered adequately comparable? That would lead to absurdity, they said, as that would be offenders would have already massively benefitted from access to enormous public resources and attained innumerable leverages literally over all other contenders; and wouldn't the primary purpose of undermining the tendency of using public offices to access state's resources and employing same to gain electoral leads and advantages be pugnaciously abused, undermined and defeated? This could have never been the legislative contemplation, the Majority opined.

I find this declaration of section 15.1 by the Majority preposterous and one which could be interpreted as the Majority making law. This Court has held in numerous cases that the Supreme Court has no authority to extrapolate the intent of the Legislature beyond the specific wording of a statute; that the limitation is all the more mandatory where the statute in question specifies the only manner in which an act is to be performed; that the function of the court is to interpret the law, and the Court is not concerned with whether or not a legislation is wise or unwise; and the Supreme Court has no authority to add to or take away from what the Legislature has commanded. *Cooper and Gleonder v. His Honour Harper et al, 31LLR 366,370-371(1983); Mensah et al v. Wilson, 34LLR 100, 110-111(1986); Doe et al. v. Randolph et al, 35LLR 724,735(1988); International Trust Company of Liberia v. Doumouyah et al, 36LLR 358,364(1989)*

The Legislature that promulgated the Code must have contemplated sanctions for infringements thereof and if they felt that violators of the Code should not be allowed to contest elections they would have included it in the list of actions to take under 15.1. It is obvious that the listing of sanctions such as dismissal, removal from office in public interest, or seizure and forfeiture to the state of any property acquired from abuse of office was considered by the Legislature as penalty harsh enough for those whom the Majority feels might have massively benefitted from access to enormous public resources and attained innumerable leverages literally over all other contenders. Besides, the Code has other provision which should prevent what the Majority fear as benefit from access to enormous public resources. Also, the State has in place

mechanisms for managing or auditing those appointed officials who have access to the State's resources, and with these mechanisms being effectively operational, massive violation of state resources should be curbed if not made impossible.

The Liberian Constitution (1986) has abrogated to each branch of government its roles and functions, and to make law is certainly not one that is assigned to the Judiciary.

Having agreed with the petitioner that 5.2 of the Code of Conduct for Public Officials and Employees (2014) should be declared unconstitutional because it violates certain provisions of the Liberian Constitution (1986), which I have concurred with herein in my dissent, I decline to append my signature to the Majority Opinion of this Court.