

Dukuly v NEC [2005] LRSC 45 (21 September 2005)

IN RE: **Morris M. Dukuly** of the city of Monrovia, Liberia, APPELLANT Versus **The National Elections Commission**, by and thru its Chairman Cllr. Frances Johnson-Morris, also of the City of Monrovia, Liberia, APPELLE

APPEAL

HEARD: AUGUST 29, 2005 DECIDED: SEPTEMBER 21, 2005

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT.

This case is before us on appeal from the decision of the National Elections Commission rejecting two Liberians, Morris M. Dukuly and Johnson N. Gwaikolo from contesting the ensuing October 11, 2005 elections. Mr. Dukuly's name was contained on the list of candidates endorsed and submitted to the National Elections Commission by the Unity Party while Mr. Gwaikolo's name was submitted by the Liberia Action Party/Coalition for the Transformation of Liberia.

We note that the Bill of Exceptions filed is in favour of the two men, but the Appellant's Brief made reference to only Morris M. Dukuly. When questioned about this during argument before us, one of Counsel for Appellant informed this Court that Mr. Johnson Gwaikolo decided to withdraw his appeal based on the advice of his political party, the Liberia Action Party/Coalition for the Transformation of Liberia (COTOL). Even though the withdrawal of Co-Appellant Gwaikolo's appeal was not done in keeping with our Statute and the Rules of this Court, we accepted the said withdrawal considering the urgency and special nature of this matter. This opinion will therefore deal only with the claim of Mr. Morris M. Dukuly.

The National Elections Commission rejected the name of Appellant, Morris M. Dukuly on the ground that he failed to meet the guideline promulgated by the Commission to regulate the conduct of the ensuing October 11, 2005 Elections. That guideline states in effect that Liberian citizens who did not register during the registration period for the 2005 elections would not vote or contest for public office. The decision of the Commission was communicated to the affected parties on August 5, 2005, to which decision the Appellant excepted and filed an eight-count Bill of Exceptions.

The Appellant essentially contended in his Bill of Exceptions as follows:

1. That he is a Liberian citizen who was forced to live abroad due to the Liberian civil war but returned home as the result of calls made by chiefs, elders, and citizens of his electoral district within Bomi County to place his name in nomination and contest the ensuing October 11, 2005 elections to represent them in the National Legislature;
2. That he is a candidate for the position of a member of the House of Representatives on

the ticket of the Unity Party and his name was contained on the Party's endorsement listing submitted to the National Elections Commission but that his that his name was rejected on the ground that he did not register;

3. That the National Elections Commission committed reversible error when it included in the manual of forms on a page captioned: CRITERIA FOR CANDIDATES ELIBILITY which include the requirement that every candidate must be a registered voter in order to be voted for;

4. That the said CRITERIA FOR CANDIDATES ELIGIBILITY is contrary to the 1986 Constitution OF Liberia, the New Elections Law of 2004 and the Accra Comprehensive Peace Agreement.

5. That the National Elections Commission also committed reversible error when it informed Appellant both orally and by documents that Appellant will not be permitted to contest for office because Appellant is not a registered voter; and

6. That the requirement promulgated by the Commission is extraneous to the qualifications and requirements as set forth and contained in the Constitution, the New Electoral Laws of 2004 and the Accra Comprehensive Peace Agreement.

The Appellee filed Returns in which it contended principally as follows:

1. That Section 23.2 of the Guidelines Relating to the Registration of Political Parties and Independent Candidates and the decision taken to disallow Petitioner from being a senatorial candidate in the 2005 elections are not unconstitutional;

2. That Article 79 (a) of the 1986 Liberian Constitution provides in part that no one shall be a candidate for elective public office unless he or she meets the minimum registration requirements laid down by the Elections Commission and is registered with it;

3. That Chapter 2, Section 9, Subsection (n) empowers the Elections Commission to screen all candidates for elective public offices and accredit their candidacy and/or reject the candidacy of any person who is not qualified under the 1986 Election Law and the guidelines laid down by the Commission;

4. That Chapter 2, Section 9, Subsection (h) of the of the 1986 Election Law as amended empowers the Elections Commission to formulate and enforce guidelines controlling the conduct of elections for all elective public offices;

5. That the promulgation of Section 23.2 of the Guidelines Relating to the Registration of Political Parties and Independent Candidates was done by the Respondent in the exercise fits statutory powers;

6. That Article 18, Section 1 of the Comprehensive Peace Agreement of August 18, 2003, empowers the National Elections Commission to ensure that the electoral system in Liberia is reformed

7. That the Comprehensive Peace Agreement even goes further by stating in Article 35 (1a) the need for an extra-constitutional arrangement that would facilitate the functioning of the entire transitional arrangement;

8. That the provisions CPA point to the wide latitude the National Elections Commission has under the law in conducting the 2005 elections; and

9 That there is no reason why some aspirants were subjected to scrutiny by the public during the exhibition period following the registration and the Petitioner would not be subject to the same scrutiny by the public.

The Appellant filed a brief with the Supreme Court raising one issue which is: "Whether or not the right to vote is synonymous with and analogous to the right to be voted for, or to contest for election office?" Counsel for Appellant contended, in both their pleadings and arguments before this Court, that the provisions of the guideline or regulation, relied upon by the Elections Commission to deny Appellant the right to contest the forthcoming Legislative and Presidential Elections is unconstitutional and therefore unenforceable. They conceded that the Appellant was not in the Country at the time of the Voter Registration and did not register; therefore he has waived his right to vote. But they maintained, however, that the Appellant was not before this Court to challenge the right to vote, but has come to challenge the constitutionality of the regulation denying him of the right to, be voted for.

Appellee, for its part, requested this Court during argument, to deny and dismiss the Appellant's Petition on the ground that Chapter 2, Section 9, Subsection (h) of the 1986 Elections Law as amended empowers the Elections commission to formulate and enforce guidelines controlling the conduct of elections for all elective public offices. Appellee further contended that the provision of the guideline which requires a person to be registered before being qualified to be voted for does not in any way come in conflict with any constitutional or statutory provisions, and as such the decision based on such rule does not contravene any provision of the constitution.

Appellee also further contended that the power to promulgate regulations and scrutinize candidates is supported by constitutional and statutory provisions. Appellee cited Article 79 (a) of the 1986 Constitution of Liberia and Chapter 2, Section 9, Subsection (h) of the 1986 Elections Law as amended.

This Court takes note of the averment contained in Count 4 of the Appellant's Bill of Exceptions which state that he is "a candidate for the position of House of Representatives on the ticket of the Unity Party" and that his name was contained on the party's endorsement listing submitted to the National Elections Commission. This Court also takes note that the Unity Party which endorsed and submitted Appellant's name to the Commission has not raised any issue with the regulation promulgated by the Appellee, either has the Party challenged the Commission's rejection of the Appellant. But instead, the said Party has replaced Appellant's name with another nominee whose name has since been submitted, accepted and accredited by the Elections Commission. Given this fact, this Court says that the matter before us represents two issues rather than one issue as stated by the Appellant. As we see it, the first issue to pass on is, whether or not the Appellant herein as an individual, has the legal standing to challenge the decision of the National Elections Commission rejecting the nomination made by a political party, when the Political Party itself has raised no qualm with the rejection?

Standing to sue, by definition, is the party's right to make a legal claim or seek judicial enforcement of a duty or right. Black's Law Dictionary, Standing to sue, 7th edition (2001). The purpose of the law

of standing is to protect against improper plaintiff. The doctrine standing ensures that the court will have the benefit of real adverse parties in cases. The question whether a party has standing to participate in a judicial proceeding is not simply a procedural technicality but, rather involves the remedial rights affecting the whole of the proceeding. 59 Am 2d, Section 30, page 416. And it has been held that one must not only have an interest, he generally must be the real party in interest.

The law is also that "public wrongs or neglect or breach of public duty generally cannot be redressed at a suit in the name of an individual or individuals whose interests in the right asserted does not differ from that of the public generally, or who suffers injury only in common with the public generally, and not peculiar to the Petitioner." Ibid, Section 33 page 421.

We see that the Appellant is an aspirant for a political office whose name was endorsed and submitted by a political party. A political party under Articles 78 & 79 of the 1986 Constitution is an association. An Association, in keeping with our Statute can sue and be sued in its own name. This means that the Political Party can sue and be sued in its own name Section 5.16 of 1 LCL Revised, Civil Procedure Law, page 65 provides that an unincorporated association may sue and be sued in its association name.

Our Associations Law is direct to this point at Section 2.5 which states that:

"A corporation is a legal entity considered in law as a fictional person distinct from its shareholders or members, and with separate rights and liabilities. The corporation is a proper plaintiff in a suit to assert a legal right of the corporation and a proper defendant in a suit to assert a legal right against the Corporation, and the naming of a shareholder, member, director, officer or employee of the corporation as a party to a suit in Liberia to represent the corporation is subject to a motion to dismiss if such party is the sole party to sue or defend, or subject to a motion for misjoinder if such party is joined with another party who is a proper party and has been joined only to represent the corporation."

The provisions of the Statute governing the nomination of candidates requires that "any political party which has been registered by the Commission shall send to the Commission a list of the candidates who will stand for election to the several elective offices in the several constituencies." The Electoral Reform Law of 2004 and 1986 New Elections Law Section 4.5 (1), Nomination of Candidates. (2004). In such a case, all that is required by a candidate is a statement of his/her intention to stand as a candidate and his willingness to accept office if elected. The Appellant herein did not apply to the National Elections Commission as an independent candidate in keeping with Section 4.5 (5) of the above cited Statute. Rather, and as stated earlier, it is a Political Party, the Unity Party that nominated the Appellant as a candidate on its ticket for a public office. Thus in our view, if the Commission rejected said nomination, it is the political party's interest, which is directly affected by this action and therefore it is that Party which has the authority, endowed 'with the standing to challenge any alleged wrong act of the Appellee.

Since the Appellant is not an independent candidate, there is no privity of direct relationship by and between the said Appellant and Appellee. In other words, having chosen to act under the umbrella of a Political Party, it is only that Political Party that has privity of relationship with the Appellee. It follows therefore that it is only that Political Party that should have challenged the alleged wrong act of

the Appellee. But the nominating political party, rather than challenging the act of the Appellee, elected to withdraw its initial nomination of Appellant, which was rejected by the Appellee and replace same with another nominee whose name has been accepted by the Commission. To our mind, the action of replacing the Appellant renders the entire matter before us moot, and therefore cannot be considered and determined by this Court, since to do so would have no practical significance. Even were we to decide that the provisions of the regulation relied upon, by the Appellee, to reject Appellant is unconstitutional, can this Court confer upon an aspirant who did not apply to the National Elections Commission as an independent candidate a standing to sue for the Commission's refusal to accredit such nominee who is on a political party ticket'? Or can this Court proceed further to nullify the subsequent act of nomination and accreditation of the replacing nominee? We think not. We are of the opinion that the re-nomination made by Unity Party to replace Appellant puts an end to the entire matter. Therefore there is no need for judicial review of this matter. We hold that if the Appellant suffered any injury, his remedy should and ought to be against his Political Party which did not only fail to protest his rejection, but proceeded to replace him. Courts are not in the business of answering moot, political or hypothetical question 16 Am Jur 2d, Constitutional Law, Sections 162, and 164, at pages 546 and 550. We therefore hold that Appellant Morris M. Dukuly has not standing, and is nor the real party in interest to bring this suit.

The other issue in this case is whether or not the right to vote is synonymous with and analogous to the right to be voted for, or to contest for elective office. As stated before, even were we to decide that the regulation made by the Appellee is contrary to law, it would not change the outcome of this case. Therefore, having decided that the act of the Appellee appears to have been accepted by the political party who endorsed and submitted Appellant's name to the National Elections Commissions, we do not see the necessity of delving into this issue which borders on constitutional question. This Court has held that it will not pass upon a constitutional question although properly presented, if there is also present, some other ground upon which the case may be disposed of. In other words, "if a case can be decided on either of two grounds one involving a constitutional question, the other question of statutory or general rule, the Court will decide on the latter". *Liberian Bank for Development and Investment vs. Lancelot Holder*, 29 LLR page 310 (1981) text at page 314. This principle of law has just been upheld in the case. We confirm and affirm that the same principle of law is applicable this case.

Wherefore and in view of the foregoing facts and circumstances, it is the opinion of this Court that the appeal be and the same is hereby dismissed. The Clerk of this Court is hereby ordered to inform the parties accordingly. Costs against Appellant. AND IT IS HEREBY SO ORDERED.

APPEAL DENIED AND DISMISSED

COUNSELLORS GLORIA M. MUSU-SCOTT AND M. WILKINS WRIGHT APPEARED FOR THE APPELLANT.

COUNSELLORS JOSEPH N. BLJDI, YAMIE Q. GBEISAY AND NORWU COOPER OF NATIONAL ELECTIONS COMMISSION APPEARED FOR THE APPELLEE.