

The Liberty Party, Appellant VERSUS **The National Elections Commission**, by
and thru Deddeh Mulbah-Buway, Appellee.

VIOLATION OF CERTAIN ELECTION LAWS & ARTICLE 80 (a) & (b) OF
THE CONSTITUTION. JUDGMENT REVERSED.

Argued. November 10, 2008. Decided. July 23, 2009.

MR. CHIEF JUSTICE LEWIS delivered the opinion Of the Court.

On September 29, 1986, "An Act repealing Decree no. 85 of the People's Redemption Council, adopting a new title 11 in lieu thereof to be known as the New Elections Law" was approved and published by the Ministry of Foreign Affairs on October 4, 1986.

Chapter 2 of the New Elections Law provides for the Office of the Elections Commission.

"The Elections Commission of the Republic of Liberia, as an autonomous public commission established by the Constitution of Liberia, shall be composed of five (5) members, one of whom shall be appointed as Chairman, and co-Chairman, respectively, each of the other three (3) members shall be called Commissioner."

Section 2.9 of the New Elections Law, on Powers and Duties of the Elections Commission, provides, *inter alia*:

"The Elections Commission, is an autonomous agency of Government, independent of any branch of the Government, shall have the following powers and duties.

"(a) to administer and enforce all laws relative to the conduct of elections throughout the Republic of Liberia.

"(d) To give accreditation to, and register all political parties and independent candidates who meet the minimum registration requirements laid down by the Commission, by which authority they may exercise political franchise under relevant provisions of the Constitution.

"(e) Upon objections made by any person or group of persons, the Elections Commission may reject, and if already registered, revoke the certificate of

accreditation of said party or independent candidate, *subject to an appeal to the Supreme Court of Liberia*. The revocation of the application of any proposed political party for accreditation as a full-fledged political party shall be predicated upon the following factors:

"(i) Where a proposed political party or an independent candidate retains, organizes, trains or equips any person or group of persons for the use or display of physical force or coercion in promoting any objectives or interest, or arouse reasonable apprehension that they are so organized, trained, or equipped, or by reason of their aim, or conduct, or the behavior of their adherents, seek to impair or abolish the free democratic society of Liberia, or to endanger the existence of the Republic, or whose tendency and behavior are inconsistent with the free democratic process of the Republic.

"(f) To revoke the registration and accreditation of an already legal party only upon the judicial determination of a court of competent jurisdiction in accordance with due process."

Included in the New Elections Law, under Powers and Duties of the Elections Commission, are sub-sections (w) and (x). We quote the two sub-sections.

"(w) To issue citation for the appearance before it of any political party or its leaders, or other natural persons in connection with any complaint cognizable before it; to issue subpoenas for the purpose of obtaining witnesses in any hearing, including *subpoenas ad testificandum* and *subpoenas duces tecum* to punish for contempt for any obstruction or disobedience of its orders in an amount not less than the Liberia dollar equivalent of two thousand five hundred United States dollars (US\$2,500.00), nor more than the Liberian dollar equivalent of fifty thousand United States dollars (US\$50,000.00) in the case of a political party, alliance or coalition, or in an amount of no more than the Liberian dollar equivalent of five hundred United States dollars (US\$500.00) in the case of a natural person.

"(x) To revoke the certificate of accreditation of any political party, alliance or coalition, or to impose a fine of not less than the Liberia dollar equivalent of two thousand five hundred United States dollars (US\$2,500.00), nor more than the Liberian dollar equivalent of fifty thousand United States dollars (US\$50,000.00), or both, with respect to election offences committed by a political party, alliance or coalition, or to impose a fine of no more than twenty five thousand Liberian dollars (LD\$25,000.00) with respect to election offences committed by a natural person,

according to the gravity of the offences committed" (emphasis supplied).

The editor of the Liberian Codes Revised has provided the following explanation regarding sub-sections (w) and (x).

"The wording of the current sub-sections (w) and (x) reflect amendments made to the previous sub-sections contained in the Elections Law of 1986 which were deleted and replaced by the current word of section 22 of the Elections Act of 2004, passed by the Transitional Legislative Assembly, approved December 17, 2004, and published December 23, 2004."

The Liberty Party, appellant, was granted accreditation by the National Elections Commission, appellee, prior to the presidential and general elections of 2005.

On February 12, 2007, the National Elections Commission conducted a byelection in District #4, Margibi County, to fill the vacancy in the House of Representatives for that county occasioned by the death of Honorable Fletcher Chedeyou.

On February 13, 2008, Deddeh Mulbah-Buway, Elections Magistrate, Margibi County, by inter-office memorandum, submitted the following "formal complaint" to Honorable James M. Fromayan, Chairman of the National Elections Commission, against the Liberty Party, the appellant.

"I wish to bring to your attention an official complaint against the Liberty Party for mis-conduct during the February 12, 2008 by-election District #4, Margibi County, which led to loss of time, and in some cases serious disturbances. It took the intervention of UNMIL and some officers of the Liberia National Police to bring some of the situations under control and also that of our staff restraints. This complaint is meant for your review and appropriate action to avoid future occurrence. Please find below some of the incidents.

1. Red Cross Building (Polling Place #03)

Liberty Party agent by the name of Jeremiah Blake on more than one occasion disrupted the pool on grounds that poll workers were not conducting the electoral process fairly. At about 3:55 p.m. the same agent physically seized a voter's registration card and refused to surrender it until an officer of the Liberia National Police assigned at the polling place and UNMIL intervened.

2. Dolo's Town Community School (Polling Place #05)

Pool opened around 9:00 a.m., one hour later than the official time because the Liberty Party representative there, by the name of Benjamin M. Gbotoe, demanded that tally sheets be produced for the thirteen candidates' representatives before the process could start. This happened in the presence of local and international observers (NAYMOTE and IFES-Liberia).

3. Scheflien Commissioner's Office (Polling Place #01)

Senator Clarice A. Jah of the Liberty Party strongly resisted the presiding officers instruction to the ballot paper issuer to give out a ballot to a voter who had mis-marked a ballot and requested for another.

4. At the local office in Unification Town, the Liberty Party National Chairman, Israel Issakanya, became very, very confrontational with the co-Chairman of the National Elections Commission, threatening to be a thorn in her flesh simply because the co-Chairman admonished him to put into writing any complaint that the Liberty Party had relative to the conduct of the by-election. Mr. Issakanya refused to do so, saying that the Liberty Party has no confidence in the National Elections Commission and even in the Supreme Court of Liberia, referring to the Supreme Court disdainfully as "that court" and vowing never to go to the [Supreme] Court again."

On February 15, 2008, the National Elections Commission, thru its Senior Legal Counsel, Counselor Joseph N. Bliidi, addressed the following citation to the Chairman of the Liberty Party. This must have been the National Elections Commission's reaction to the "formal complaint" of Magistrate Mulbah-Buway. We quote the citation.

"The Board of Commissioners would have me cite you to a hearing . . . relating to the disruption of elections by partisans and representatives of the Liberty Party during the Margibi County District #4 by-election held on February 12, 2008, as well as those apparently committed during the by-elections held in District #3, Grand Bassa County, and District #6 in Nimba County. Your partisans' behavior, statements and utterances appear to be violation of the Election Laws.

"Moreover, your party through a press release issued on July 13, 2007, and signed by Mr. Israel Akinsanya II, National Chairman, gave its public approval of said violation

of the law committed during the Grand Bassa District #3 by-election. Even yesterday, February 14, 2008, your Party demanded for the resignation of the Chairman of the National Elections Commission in a press conference and accused the Chairman of 'consistent and persistent ill-will towards LP and its official.'

"The purpose of the hearing is to give your Party an opportunity to substantiate [the] allegations and to determine whether or not your Party has violated provisions of the Elections Laws.

"The said hearing will be held in the Conference Room of the Elections Commission located at 16th Street, Sinkor, Monrovia, Liberia.

"Please come along with all evidence and lawyer or lawyers that you may have in defense of your Party."

On February 18, 2008, the appellant addressed the following letter to Counselor Joseph N. Bliidi, in response to the senior legal counsel's citation of February 15, 2008.

"Our client requires a "better writ" from the NEC in order to prepare for an investigation, as your letter is so vague that a response thereto cannot be framed with complete understating. That is (i) what constitutes the "disruption of elections" alluded to in your letter, and which partisan and representative committed the disruption? (ii) whether or not our client is charged with violating the elections law, and if so what section of the law has our client violated? (iii) Although your letter mentions "disruption of elections," it is so ambiguous that the NEC seems uncertain as to whether any election offense was indeed committed.

"With regard to Liberty Party's call for the resignation of James Fromoyan, our client's position remains unchanged. Mr. Fromoyan's remarks and utterances are unbecoming of a Chairman of a National Election Commission; he should therefore honorably resign the position, which would allow him to engage in partisan politics and attack Liberty Party as much as he wants. If Mr. Fromoyan feels offended by the remarks of our client he should seek redress before a court of Law. The NEC is not his alter ego."

Following receipt of Liberty Party's response to the National Elections Commission's citation of February 15, 2008, the National Elections Commission addressed the following letter, dated February 25, 2008, to Counselor Powo Hilton, of Verdier and

Associates, Sinkor, Monrovia.

"We hereby acknowledge receipt of your letter which was in response to our citation dated February 15, 2008, and addressed to the Chairman of the Liberty Party relating to the party and its members' misbehavior during the District #4, Margibi County by-election.

"In your said letter, you indicated, among other things, that we did not specify what the partisans did and said, and the laws they violated to enable you to respond intelligently to the complaint.

"In order to make progress in this matter, we hereby attach a copy of the complaint filed with the Chairman and members of the Board of Commissioners by Mrs. Deddeh Mulbah-Buway, Elections Magistrate of Margibi County, against the Liberty Party, which is clear, unambiguous and self-explanatory.

"In addition to the complaint hereto attached, some officers and employees of the Commission have complained that they were attacked by members of the Liberty Party during the by-election held on February 12, 2008. You will also recall that we made mention of your partisans' similar behavior during the Grand Bassa County, District #3, and Nimba County, District #6 byelections in our citation of February 15, 2008, which forms part of this citation.

"The misconduct and utterances referred to here above and contained in the attached complaint are in violation of the following laws, among others:

"1. Article 80 (a) and (b) of the 1986 Liberian Constitution.

"2. Chapter 4, section 9, subsection 2 of the New Elections Law of 1986.

"3. Chapter 10, section 15, subsection 1 of the New Elections Law of 1986.

"4. Chapter 10, section 15, subsection 2 of the New Elections Law of 1986.

"We regret that we inadvertently did not attach copy of the aforesaid complaint to our citation of February 15, 2008."

For the purpose of this opinion, we quote the four provisions of the New Elections Law constituting the alleged misconduct and utterances.

"Article 80 (a) and (b) of the Liberian Constitution (1986).

"(a) Parties or organizations which, by reason of their aims or the behavior of their adherents, seek to impair or abolish the free democratic society of Liberia or to endanger the existence of the Republic shall be denied registration.

"(b) Parties or organization which retain, organize, train or equip any person or group of persons for the use to display of physical force or coercion in promoting any political objective or interest, or arouse reasonable apprehension that they are so organized, trained or equipped, shall be denied registration, or if registered, shall have their registration revoked."

Treason is defined in Article 80 (a) and (b) of the Liberian Constitution (1986).

"Treason against the Republic shall consists, *inter alia*, of:

(d) attempting by overt act to overthrow the Government, rebellion against the Republic, insurrection and mutiny; and,

(e) abrogating or attempting to abrogate, subverting or attempting to or conspiring to subvert the Constitution by use of force, show of force or by any other means which attempts to undermine the Constitution of Liberia."

Chapter 4, section 9, subsection 2 of the New Elections Law of 1986

"Any party representative or representative of an independent candidate attending any polling place shall not speak to any voters; shall not attempt to see how a voter cast his vote; and shall obey all lawful instructions from the sheriff of the polling place."

Chapter 10, section 15, subsection 1 of the New Elections Law of 1986.

"Any party representative or the representative of an independent candidate accredited to the polling place or any person impersonating a representative who violates the provisions of section 4.9 (2), is guilty of an election offense and is punishable by a fine of three hundred (\$300.00) dollars *or by imprisonment for three months*" (emphasis by the appellant).

Chapter 10, section 15, subsection 2 of the New Elections Law of 1986.

"Any person who fails to obey the lawful direction of the Sheriff or any poll worker in a polling place on election day, or misconducts himself by committing a breach of peace or threat, is guilty of an election offense and is punishable by a fine of not more than two hundred dollars (\$200.00), or by imprisonment for not more than thirty (30) days or by both, and shall be removed from the polling place by the Sheriff or any person authorized by him" (emphasis supplied).

This election offense is a misdemeanor of the second degree.

On February 28, 2008, Counselor Powo C. Hilton addressed the following letter to Counselor Joseph N. Bliidi.

"We herewith acknowledge receipt of your response of February 25, 2008 on February 26, 2008 at about 4:00 p.m. to ours of February 18, 2008, relative to a complaint filed against the Liberty Party, its Chairman, and some members for alleged election violations in the recent by-election in Margibi County, as well as the past by-elections in Nimba and Grand Bassa counties.

"Now that you have spelt out the names of those Liberty Party members, the nature of the alleged violations, and the provisions of the Elections Law they have breached, your investigation must allow us time to confront those named in your response, obtain from them their side of the case before submitting to the hearing.

"Senator Clarice A. Jah is busy with legislative business, and that she would need time off to peruse the allegations against her before appearing to provide her defense. Other party members named have also been briefed on the nature of the complaint against them, and that they too would require time to study the said allegations and prepare for hearing.

"In view of the above, and realizing that one (1) day's notice is inadequate to have all of the personalities involved to prepare for hearing, we request that today's sitting be re-scheduled to another date. Due process is cardinal to our justice system, and that the accused must be given time enough to get them ready for hearing.

"We anticipate your understanding as all of us strive to make democracy work."

On February 29, 2008, Counselor Joseph N. Bliidi addressed the following letter to

Counselor Powo C. Hilton:

"Your letter of February 28, 2008 relating to the complaint against Liberty Party is hereby acknowledged, and we are pleased to grant your request to reschedule the hearing for another date.

"In view of the above, we hereby reschedule the hearing to be held on Thursday, March 6, 2008 at the hour of 2:00 p.m. in the Conference Room located at the Headquarters of the National Elections Commission (NEC) on 16th Street, Sinkor, Monrovia.

"Please be present with your client and any evidence you may have on time."

As if there was a change of heart, Counselor Powo C. Hilton addressed yet another letter to Counselor Joseph N. Bliidi, dated March 4, 2008, in response to the National Elections Commission's citation dated February 25, 2008.

"We refer once again to your citation letter of February 25, 2008, charging our client, Liberty Party, and some of its officials of violating Article 80 (a) and (b) of the Liberian Constitution (1986), as well as violation of the following provisions of the New Elections Law:

"Chapter 4, section 9, subsection 2 of the New Elections Law of 1986; "Chapter 10, section 15, subsection 1 of the New Elections Law of 1986; "Chapter 10, section 15, subsection 2 of the New Elections Law of 1986.

"As you are aware, Article 80 (a) and (b) of the Constitution deals with subversive activities, criminal offenses beyond the scope of the Elections Commission. Our client, therefore, respectfully requests that you, by way of information, transfer the allegation of subversive activities committed by her to the Ministry of Justice for prosecution, hoping that she will be afforded due process of law as guaranteed under our Constitution. After our client has been convicted of the offenses, as charged, then you may proceed to revoke our client's registration.

"Our client will, therefore, not participate in any hearing before the Elections Commission until the issue of the subversive activities, as alleged by you, has been tried before a court of competent jurisdiction."

On March 6, 2008, Counselor Joseph N. Bliidi, in response to Counselor Powo C.

Hilton's letter of March 4, 2008, addressed the following letter to Counselor Powo C. Hilton.

"We hereby acknowledge with astonishment your letter dated March 4, 2008 in response to our citation of February 25, 2008 relating to the matter of your client, Liberty Party, in which among other things, you indicated that your said client will not participate in any hearing before the national Elections Commission until the issue 'of the subversive activities, as alleged by you, has been tried before a court of competent jurisdiction.'

"Despite your present position on the matter, the fact that Article 80 (a) and (b) of the Liberian Constitution (1986) are not the only laws the Liberty Party has violated and also because according to the practice and procedure in this jurisdiction, where a party is accused of violating certain laws, and that party is of the view that the court or tribunal lacks jurisdiction because of one of the laws he or she is accused of violating, the said party should appear before that court or tribunal to raise the issue of lack of jurisdiction and defend himself or herself against the other allegations relating to the other laws. In our citation to you in the instant case, we cited a number of statutory provisions that your client violated in addition to the constitutional provisions. It would have been proper for your client to appear today, March 6, 2008, at the hearing and raise the issue of the Commission's alleged lack of jurisdiction and defend your client against the violation of the statutory provisions cited in our citation to you.

"In view of the above, your client is hereby cited to the hearing which has been rescheduled to be held on Monday, March 10, 2008 at the hour of 11:00 a.m. in the Conference Room of the National Elections Commission located on 16th Street, Sinkor, Monrovia, Liberia.

"Please note that failure on the part of your client to appear at this hearing will lead to a judgment by default against it."

The hearing was not held on March 10, 2008; rather, because March 10, 2008 was the Formal Opening of the March Term, 2008 of the Supreme Court of Liberia, the matter was rescheduled for March 13, 2008, at 12:00 noon. At the call of the case for hearing on March 13, 2008, neither the appellant nor his counsel appeared. Upon application for a default judgment, the same was granted by the hearing officer. The appellant produced seven (7) witnesses, whom, according to the appellee, "in one way or another, confirmed and affirmed all the allegations against the appellant, except

that relating to violation of Article 80 (a) and (b) of the Liberian Constitution (1986)."

At the conclusion of the hearing, Counselor Augustine C. Fayiah, Hearing Officer, rendered a final ruling on March 13, 2008. We quote the conclusion of the final judgment.

"Having held herein above that the Liberty Party violated chapter 10, section 18 of the New Elections Law of 1986; chapter 4, section 9, subsection 2 of the New Elections Law, as well as section 4, subsections (d) and (f) of the Code of Conduct for Representatives of political parties, accredited coalitions and alliances, and independent candidates, we hereby impose a fine on the Liberty Party of the Liberian dollar equivalent of two thousand five hundred United States dollars (US\$2,500.00). This fine shall be paid by the Liberty Party within 72 hours as of the rendition of this final judgment into the Revenue of the Republic of Liberia, evidenced by presentation to the National Elections Commission's Finance Office of a genuine and original Government of Liberia flag receipt. Failure on the part of Liberty Party to pay this amount within 72 hours, its operation as a political party shall be suspended.

The appellant noted exceptions to the final ruling of Counselor Fayiah, and consistent with sections 6.6 and 6.7 of the New Elections Law, announced an appeal to the Supreme Court of Liberia on a bill of exceptions containing fifteen counts.

We quote the bill of exceptions.

"Liberty Party, appellant in the above proceedings, says that on March 13, 2008, the National Elections Commission, the appellee, through its Hearing Officer, Augustine C. Fayiah, rendered final judgment/ruling against appellant, finding the appellant guilty of violating certain election laws, from which final judgment/ruling of the Hearing Officer appellant has excepted and announced an appeal to the Honorable Supreme Court of the Republic of Liberia, sitting in its October Term, 2008, and therefore hereby submits this bill of exceptions for Your Honor's approval.

"1.The National Elections Commission/Hearing Officer, appellee, committed a reversible error when it assuming jurisdiction over the hearing of a matter, an element of which was the violation of Article 80 (a) and (b) of the Liberian Constitution (1986), as matters involving subversive/criminal activities are without the scope/jurisdiction of the National Elections Commission.

"2.The Hearing Officer committed a reversible error by not ruling on the jurisdictional issue prior to conducting a hearing into the merit of the complaint, and for which this bill of exceptions is tendered for approval.

"3.The National Elections Commission, appellee, erred as it charged the appellant by violating Article 80 (a) and (b) of the Liberian Constitution (1986); chapter 4, section 9, subsection 2 of the New Elections Law of 1986; and chapter 10, section 15, subsection 12 of the New Elections Law of 1986; and chapter 10, section 15, subsection 2 of the New Elections Law of 1986, and then adjudged the appellant guilty of violating also chapter 10, section 18 of the New Elections Law of 1986, and section 4, subsections (d) and (f) of the Code of Conduct for representatives of political parties, accredited coalitions and alliances, and independent candidates, when notice of said violations was never included in the charge/citation against the appellee.

"4. Appellee erred when it found the appellant guilty under chapter 10, section 18 of the New Elections Law of 1986, because the offense under said provision of the New Elections Law is a felony, and having an administrative agency adjudicating a felony deprives the defendant (appellant) of its constitutional right of a trial by jury, and for which this bill of exceptions is tendered for approval.

"5. Appellee, being the complainant, jury, and judge, erred when it failed to secure the testimony of an independent third party, including individuals whose rights were allegedly violated by the appellant, or another party/candidate representative to corroborate the testimonies of the appellee and its employees.

"6. Appellee erred when it charged the appellant of violating section 4.9.2 of the New Elections Law of 1986, as the appellee failed to establish by the preponderance of the evidence (testimony) that any of the party representatives of the appellant spoke to any voter, attempted to see how a voter cast his vote, or disobeyed any 'lawful instructions from the sheriff of the polling place.'

"7. Appellee erred because the testimony of its witness Gussin is at variance with the finding of the appellee's final judgment/ruling that the appellant's party representative was 'requested by the presiding officer to leave the polling place and he refused.'

"8. Appellee erred when its endorsed/confirmed witness Gussin issued an order that

'Record of Counts' would be issued to only two out of thirteen candidates in the presence of the appellant's party representative Gbotoe.

"9. Appellee erred by classifying Senator Clarice A. Jah as a party representative of the appellant, giving appellee's established rule and procedure for certifying party representatives to an election or by-election.

"10. Appellee erred when it found the appellant guilty of election offenses because its party representative Blake questioned the unfair and undemocratic procedure of the electoral process.

"11. Appellee erred when it considered the remarks of the Chairman of the appellant that the Liberty Party will be a 'thorn in the flesh of the National Elections Commission ensuring that there would be no cheating,' which is constitutionally protected free speech as a violation of the reference sections of the New Elections Law of 1986.

"12. Appellee erred when it belatedly charged the appellant with 'disruption of by-elections' allegedly 'committed during the by-elections held in District #3, Grand Bassa County, and District #6, Nimba County,' when those elections have long since been concluded, and the files closed.

"13. Appellee erred when it fined the appellant two thousand five hundred United States dollars (US\$2,500.00) although its charged the appellant with violating chapter 4, section 9, subsection 2 of the New Elections Law of 1986, and chapter 10, section 15, subsection 1 of the New Elections Law of 1986, and chapter 10, section 15, subsection 2 of the New Elections Law of 1986. Both sections of the law carry an aggregate maximum fine of five hundred Liberia dollars (L\$500.00).

"14. Appellee erred when it ruled that the appellant failed to make its appearance following a citation. The appellant's letter to the appellee, addressed to his Senior Legal Counsel, Joseph N. Bliidi, dated March 4, 2008, objecting to its jurisdiction over the matter, with specific reference to Article 80 (a) and (b) of the Liberian Constitution (1986) was a formal appearance.

"15. Appellee erred because of the indefiniteness/uncertainty of its alternative sanction: 'Failure on the part of the Liberty Party to pay this amount (US\$2,500.00) within 72 hours, its operations as a political party shall be suspended.' Appellee did not say how long the suspension would be."

The issue which is not before this Court, and which is not determinative of this appeal, is not whether the National Elections, as an autonomous agency of Government, independent of any branch of Government, is clothed with authority to "administer and enforce all laws relative to the conduct of elections throughout the Republic of Liberia." The issue determinative of this appeal, however, is whether the National Elections Commission exercised judicial function in imposing the fine on Liberty Party, and if so, whether the act was constitutional. We hold that the National Elections Commission exercised judicial function in imposing the fine on Liberty Party, and that the act was unconstitutional.

This issue, under similar facts and circumstances, was raised and decided by this Court in *Ayad v. Dennis*, 23 LLR 165 (1974).

On July 25, 1973, President William R. Tolbert, Jr. issued Executive Order No. 1 (1973) on Price Control, Supervision and the Prevention of Hoarding. The President ordered, *inter alia*:

"1. In furtherance of his broad powers respecting the regulation of commodity and trade standards and the establishment and enforcement of standards of business practice, the Ministry of Commerce, Industry and Transportation is hereby empowered to fix and to regulate the prices at which all imported as well as locally produced goods and commodities shall be sold.

"3. No wholesaler or retailer may receive or demand a price for a commodity higher than that fixed by the Ministry of Commerce, Industry and Transportation.

"4. The Ministry of Commerce, Industry and Transportation shall promulgate rules and regulations for the effective implementation of the provisions herein contained.

"5. Any wholesaler or retailer violating any of the provisions of this Executive Order shall be subject to a penalty in the form of a fine of not less than \$1,000.00 nor more than \$10,000.00 or be imprisoned for a period of not less than one month nor more than one year or both. . . ."

The Ministry of Commerce, Industry and Transportation, through its representatives, based on this Executive Order of the President, conducted an investigation with the Mr. Ali Ayad, a General Merchant at Mano River, Grand Cape Mount County. In an undated letter, Mr. Ayad was informed that he "was found selling rice to the public at

\$25.80, which is in excess of the price established for the area."

The letter continued:

"This is not in consonance with the prices set by government, As such, you are hereby fined \$2,000.00 for profiteering, to be paid into the local revenues of the Republic and receipts presented to our representative, Inspector James Benson, for forwarding to this Ministry at 2:00 p.m. on Monday, June 17, 1974.

"Failure on your part to do so will leave us no alternative but to close down your business until the fine is paid."

This order was signed by Edwin M. Bonar, Director of Domestic Trade, and approved by William E. Dennis, Jr., Minister [of Commerce, Industry and Transportation].

The Ministry also wrote to the County Attorney for Grand Cape Mount County on June 15, 1974 to file a petition on the Ministry's behalf for enforcement of the Ministry's order, ten days after the due date of June 17, 1974.

Ali Ayad filed a petition for the writ of prohibition, which primarily alleged that the Ministry was exercising judicial functions and, hence, in violation of the Constitution. He stressed the supreme importance of constitutional issues, which should necessitate the issuance of the temporary writ by the Justice in Chambers and reference by him of the case to the Full Bench thereafter.

In answer to the petition, the respondents contended that the Constitution invests the President with the power to recommend to the Legislature any measure which he believes expedient, and that Executive Order No. 1, dated July 25, 1973, was in the nature of such measures.

The petition and returns were venued before His Honor Mr. Justice Robert G. W. Azango, Justice presiding in Chambers, and because of the constitutional issues raised in the application, he forwarded it to the Court *en banc*. *Keyor v. Borbor*, 17 LLR 465 (1966).

The Supreme Court, in an opinion by Mr. Justice Henries, prefaced that Executive Order No. 1 issued by the President of Liberia, was not in issue. Of the four issues which the Court decided were determinative of the appeal, we shall refer to the first:

"Did the respondents, who are under the Executive Branch of Government, exercise judicial functions in the handling of this matter, and, if so, were their acts constitutional."

The parties agreed, and the Supreme Court concurred, that the offense for which Ali Ayad was charged was criminal in nature, a misdemeanor. The Supreme Court, referred to 27.5 of the Penal Law of 1956:

"According to the Penal Law `(1) A crime is an act or omission forbidden by law, and is either a felony or misdemeanor. (2) A felony is a crime punishable either by death or by imprisonment without the option of a fine. All other crimes are misdemeanors'." Id. at 172.

The Supreme Court referred, also, to section 30 of the Penal Law of 1956.

"The punishments proscribed by this title or by some other statute can be imposed only upon a legal conviction in a court having jurisdiction." Id. at 173.

We quote from the opinion of Mr. Justice Henries.

"Since the Executive Order herein forbids the selling of rice above the price fixed by the Government, we hold that, according to the law just cited, the offense is a crime, conviction for which must be done by a tribunal of competent jurisdiction. Therefore, it goes without saying that the Ministry of Commerce was incompetent to impose a penalty for the alleged violation, and should not have done so in an administrative proceeding because the Act was not designed or intended to handle criminal matters. The Ministry's action in this respect is unconstitutional. In *Harge v. Republic*, 14 LLR 217, 222 (1960), Mr. Justice Pierre, now Chief Justice Pierre, in the opinion of this Court, said:

"Any sentence pronounced against an accused, which can be shown to have grown out of a trial not in harmony with procedure in our criminal courts, and which infringes the legal and/or constitutional rights of a defendant, could not be taken as being the result of a fair and impartial trial. The rights of a defendant to be tried in all criminal cases in the circuit court upon the charge of the grand jury and by a jury of the vicinity are constitutional rights and should not be denied a defendant." Id. at 173.

Mr. Justice Henries continued.

"This Court has also held that to imprison and impose fines are judicial functions which cannot be exercised by an official of the Executive department without contravening the Constitution. *Jedah v. Horace*, 2 LLR 265 (1916); *Karmo v. Morris*, 2 LLR 317 (1919). We find support for this principle in 1 Am Jur 2d, *Administrative Law*, § 173, which states that generally the power to compel obedience to orders by a judgment of fine or imprisonment is a purely judicial one which cannot be conferred upon administrative agencies, except by the Constitution itself. *Flowers v. Republic*, 1 LLR 334 (1899); *Hill v. Republic*, 3 LLR 130 (1929). . . ." Id. at 173-4.

Mr. Justice Henries then suggested what the Ministry of Commerce, Industry and Transportation should have done.

"Since the offense is of a criminal nature, it would have been proper if the Ministry had held a fact-finding investigation, if it desired to do so, gathered the necessary evidence and transmitted it to the Ministry of Justice which, in turn, would have followed the procedure provided for the handling of criminal matters." Id. at 175.

We make a similar suggestion to the National Elections Commission, as all of election offenses are crimes.

Chapter 10 of the New Elections Law (1986), on election offenses, contains twenty-seven sections. Each offense carries a fine or imprisonment, or both. The fines range from a low of not more than fifty dollars (\$50.00) to a high of the Liberian dollar equivalent of fifty thousand United States dollars (US\$50,000.00). The term of imprisonment range from a low of sixty (60) days to a high of not more than ten (10) years. In addition, each section provides that one guilty of an election offense is punishable by a fine, imprisonment, or both.

We do not pass on whether a criminal court, following a proper trial, could impose punishment of both fine and imprisonment. See section 50.10(3) of the New Penal Law (1973).

Section 50.1 of the New Penal Law (1973) provides the following definition of grades of offenses.

As used in this title:

"(a) 'Offense' means conduct for which a sentence of death or a term or

imprisonment or a fine is authorized.

"(d)'Felony' means an offense for which a sentence of death or a term of imprisonment of more than a year is authorized.

"(e)'Misdemeanor' means an offense for which a term of imprisonment of one year or less is authorized'."

The issue of "due process of law" has been raised by the appellant. Article 20(a) of the Liberian Constitution (1986) provides:

"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*" (emphasis supplied).

We hold, as this Court held in *Ayad v. Dennis*, that the appellant was not afforded the due process of law to which he was entitled. Id. at 176. In accord: *Wolo v. Wolo*, 5 LLR 423 (1937); *Howard v. Republic*, 8 LLR 135, 138 (1943); *Mulba v. Dennis*, 22 LLR 46, 49-50; *IBM v. Tulay*, 33 LLR 105, 112 (1985); *Wilson v. Firestone*, 34 LLR 134, 143-4 (1986); *The Middle East Trading Company v. Chase Manhattan Bank*, 34 LLR 419, 429-430 (1986); *Express Printing House, Inc. v. Reeves*, 35 LLR 455, 464 (1988); *Heirs of the Intestate Estate of S. B. Nagbe, Jr. v. The Intestate Estate of S. B. Nagbe, Sr.*, opinion of the Supreme Court, March Term, 2001; *Dweb v. The National Transitional Legislative Assembly*, opinion of the Supreme Court, decided August 2, 2005; *Snowe v. Some Members of the House of Representatives*, opinion of the Supreme Court, decided January 29, 2007.

We should like to address an issue raised by the National Elections Commission, and argued before this Court, that "as an autonomous agency of government, independent of any branch of Government," its actions are not subject to judicial review. We disagree.

Article 66 of the Liberian Constitution (1986) provides.

"The Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies autonomous agencies *or any other authority*, both as to law and fact except cases involving ambassadors, ministers, or cases in which a county is a party. In all such cases, the Supreme Court shall exercise

original jurisdiction. *The Legislature shall make no law nor create any exceptions as would deprive the Supreme Court of any of the powers granted herein*" (emphasis supplied).

We hold that "any other authority" includes any agency of the Government, including the National Elections Commission notwithstanding "an autonomous agency of government, independent of any branch of Government," as to hold otherwise would render meaningless the last sentence of Article 66 of the Liberian Constitution (1986): "The Legislature shall make no law nor create any exceptions as would deprive the Supreme Court of any of the powers granted herein."

"It is reasonable . . . to presume that the Legislature . . . when it . . . grants powers in a statute . . . intends them to be exercised properly and not in such a manner as to flout due process." *Ayad v. Dennis*, Id. at 180.

In view of the foregoing, the judgment of the final ruling of Augustine C. Fayiah, Counselor-at-Law/Hearing Officer, National Elections Commission, is hereby reversed. The Clerk of this Court is ordered to send a mandate to the National Elections Commission commanding the National Elections Commission to give effect to this decision. It is so ordered.

Judgment reversed.

Charles Walker Brumskine for the appellant. Joseph N. Bliidi and Snonsio E. Nigba for the appellee.