The **National Elections Commission**, its Chairman James Fromoyan, Co-Chairman Elizabeth Nelson, and the other Commissioners, Jonathan Weedor, Ansumana Kromah, David Menyongar Jeanette Ebba-Davidson, and Sarah Findley Zekede **APPELLANTS** *vs* **Liberty Party** et al ……**APPELLEE**

LRSC 2 (2011)

PETITION FOR A DECLARATORY JUDGMENT

Heard: September 19, 2011 Decided: October 10, 2011

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This case involves three separate petitions for declaratory judgment filed before the Civil Law Court, Sixth Judicial Circuit, Montserrado County all against the National Elections Commission (NEC.) The first petition was filed by the Liberty Party on February 8, 2011 against NEC; the Movement for Progressive Change (MPC) filed two similar petitions, one on March 4, 2011 followed by another on July 12, 2011.

The principal contention in all of the petitions for declaratory judgment is that the present seven member composition of the NEC is illegal and contrary to the New Elections Law of 1986.

In its petition, the Liberty Party maintained that the present composition of seven commissioners of the NEC, comprising the Chairman, James M. Fromayan; Co-Chairman, Counsellor Elizabeth J. Nelson; members, Jonathan K. Weedor, David S. Menyongar, Ansumana Kromah, Counsellor Jeanette A. Ebba Davidson and Counsellor Sara Findley Toe, instead of five, is illegally constituted. Liberty Party relies on and cites sections 2.1, 2.4, and 2.10 (c) of the New Elections Law of 1986 which reads:

"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, (emphasis ours) one of whom shall be appointed as Chairman and Co-Chairman, respectively; each of the other three members shall be called Commissioners. (Section 2.1)".

The Petitioner, Liberty Party, also cited Section 2.4 of the Elections Law, which reads: "Any three (3) members of the Commission shall constitute a quorum for the transaction of business of the Commission, and a majority of the members of the Commission shall decide any question before it, and that decision shall be binding on the Commission (Section 2.4)."

In addition, Liberty Party referred the Court to section 2.10 of the Elections Law, which reads: "For the purpose of expediting the hearings and determination of all election offenses and other business of the Commission, the Commission shall apportion the Republic into five (5) administrative areas and assign o commissioner to on area who shall, in consultation with the Commission en banc, direct and supervise oil election activities in his area of assignment including the hearing and determination of election offenses arising therefrom which determination having been previously approved by the Commission shall be final (Section 2.10(c))."

Further, in its petition for declaratory action, the Liberty Party complained of numerous actions and inactions of the NEC which it said tended to make the NEC bias and which implied double standards against the opposition parties, and the Liberty Party in particular, in favor of the ruling Unity Party. Some of the incidences narrated by the Liberty Party are:

1. During the annual message of 2010, President Ellen Johnson Sirleaf announced her candidacy for re-election in the Chambers of the Joint Assembly of the Legislature in the presence of the Chief Justice and the Associate Justices of the Supreme Court of Liberia;

2. During the July 26, 2010 Independence Day's celebration, President Ellen Johnson Sirleaf entertained and received petition from the people of Nimba County to run for a second term and to succeed herself as President of Liberia;

3. The Unity Party held its National Convention at the Samuel Kayon Doe Stadium, during which Ellen Johnson Sirleaf and Joseph N. Boakai were nominated as President and Vice President respectively; and, the Unity Party issued campaign messages regularly in the media such as: "100 reasons for Ellen's re-election". In the face of all these activities by the Unity Party, the Liberty Party alleged, NEC made no pronouncements of condemning them as premature campaigning by the Unity Party.

However, and to the contrary, the Liberty Party alleged, when it held its National Convention on January 29, 2011, in Gbarnga, Bong County, during which Counsellor Charles Walker Brumskine and Franklin Obed Siakor were petitioned by the people of Bong County to run for the offices of President and Vice President, respectively, of Liberia, following the petitioning ceremony, NEC adopted a different set of standards - public outcry and other pronouncements by NEC began. The Chairman of NEC, James M. Fromoyan, it said, suddenly found voice and authority to warn and threaten political candidates and parties of premature campaigning. Chairman Fromoyan, it stated, held a press conference, appearing on radio and TV, declaring that the Liberty Party and its Standard Bearer had violated the Elections Law of Liberia and threatening to ban it from participating in the ensuing elections. The Deputy Executive Director for External Relations of the Commission, it also indicated, was directed to write the Chairman of the Liberty Party, citing the leadership of the Party to an inquiry on account of alleged "premature election campaign".

The records show that the Chairman of Liberty Party responded to the letter by requesting NEC to indicate who the complainant against Liberty Party was and what were the actions of the Liberty Party and its partisans that were said to have constituted "premature election campaign". The Liberty Party said its request was predicated upon a story in the New Democrat Newspaper where reference was made to the Unity Party

having received funding from foreign entities and individuals for the senatorial by-elections in Gbarpolu County. The petitioner alleged further that when questioned about this violation of NEC's rules, the Co-chairman of NEC, Counsellor Elizabeth Nelson stated that no formal complaint had been filed with NEC and that the Commission could not act on rumor. It was in this light that the Liberty Party wrote to NEC to ascertain who had complained of it to the Commission. According to the Liberty Party, instead of receiving appropriate response to its letter, it instead received another letter from the Commission declaring that the Standard Bearer and Vice Standard Bearer of Liberty Party had violated the guidelines relating to premature campaigning.

The Liberty Party argued that Section 2.9 of the Elections Law provides that NEC has the power and duty to formulate and enforce guidelines controlling the conduct of all elections for elective public offices, which guidelines shall not be inconsistent with the provisions of the Constitution and the Elections Law, and that any law, regulation, and/or guideline that infringes upon the Liberty Party's right to freedom of expression/freedom of speech or the right to assemble in an orderly and peaceable manner, is in violation of Articles 15 and 17 of the Constitution and must be declared unconstitutional. The Liberty Party further argued that the different standards that NEC applied when it came to Unity Party and Liberty Party had the effect of favoring the ruling Unity Party and the incumbent, President Ellen Johnson Sirleaf, while disfavoring, intimidating and threatening the Liberty Party and its Standard Bearer, Counsellor Charles Walker Brumskine, and Vice Standard Bearer, Franklin Obed Siakor, which could have the consequence of creating a one-party state. Such actions on the part of the Chairman, Co-Chairman, and Commissioners of the National Elections Commission, according to the Liberty Party, are unconstitutional, and must be declared a violation of Article 77(a) of the Constitution which provides that, "Laws, regulations, decrees or measures which might have the effect of creating a one-party state shall be declared unconstitutional."

The Liberty Party therefore prayed the lower court to declare as follows:

a. That Section 2.1of the Elections Law means that the Commission shall consist of five (5) Commissioners, including the Chairman and Co-Chairman, and not seven (7) Commissioners, and that the Commission being unlawfully constituted should be reconstituted.

b. That the provision of Article 77 (a) of the Liberian Constitution, which provides: "Laws, regulations, decrees or measures which might have the effect of creating a one-party state shall be declared unconstitutional"... was violated when pronouncements and other measures of the Commission discriminated against opposition political parties, in particular the Petitioner, and favored the Unity Party, the ruling/governing party; and that the pronouncements and measures, as complained of herein above, are therefore unconstitutional.

c. That any law, regulation, or guideline of the Commission that infringes upon the Petitioner's right to freedom of expression/freedom of speech or the right to assemble and consult upon the common good, in an orderly and peaceable manner, is in violation of Articles 15 and 17 of the Constitution and are unconstitutional.

d. That the pronouncements and measures and other actions evidencing the Commission's partiality, partisanship, discriminating treatment against the Liberty Party and its Presidential and Vice Presidential candidates, as compared to treatment meted out to Unity Party and its Presidential and Vice Presidential candidates, are unconstitutional, tending to create a one-party state, and that such pronouncements, measures, and other actions of the Commission constitute misconduct, for the purpose of Section 2.2 of the Elections Law.

In its returns to the Liberty Party's Petition, the respondent NEC prayed the lower court to deny and dismiss the Liberty Party's entire petition.

Regarding the contention of the Liberty Party that the current composition of seven

members of NEC was illegal, the respondent maintained that the contention had no legal basis and was made out of ignorance of the law controlling. It requested the court to take judicial notice of the amendment to the New Elections Law of 1986 entitled, "An Act to Amend Section 2.1and 2.4 of Chapter two (2) of the New Elections Law of Liberia (1986), approved December 27, 2002, and published by the Authority of the Ministry of Foreign Affairs of the Republic of Liberia on January 29, 2003. This amendment, according to the National Elections Commission, increased the number of commissioners of NEC from five to seven. Further, NEC said, assuming without admitting, that petitioner's allegation is true, Liberty Party/petitioner is by that contention logically holding that its certification a few years ago by NEC comprising the very same seven-member Commission was illegal and void ab initio. NEC also contended that "[b]y the logic of its own argument that the [Commission], as presently constituted, is unlawful, Liberty Party, then, is without the legal capacity to sue because it is not a political party under the law controlling."

NEC also denied Liberty Party's claim that its actions or inactions in relation to Liberty Party and the Unity Party have the effect of favoring the ruling Unity Party and the incumbent, President Ellen Johnson Sirleaf, while disfavoring-intimidating and threatening- the Liberty Party and its Standard Bearer, Counsellor Charles Walker Brumskine, and Vice Standard Bearer, Franklin Siakor, with the consequence of attempting to create a one-party state. NEC denied that it had made pronouncements, taken actions or measures that had the effect of creating a one-party state, as claimed by Liberty Party, the petitioner. The Commission maintained that it had at all times treated all political parties equally and made pronouncements advising them to conduct their activities in keeping with the Elections Law and Guidelines governing the conduct of political parties and electoral activities in Liberia. NEC attached as exhibits, copies of press releases and citations it claimed to have issued to various political parties regarding issues of violation of the relevant laws, regulations and guidelines.

Regarding information received by it on activities which it deemed to have been in violation of the Elections Law, regulations and guidelines governing the various stages

of political activities of political parties, NEC said that it had advised, warned and cited several political parties over the years, including the Unity Party. Specifically regarding the alleged violations of the Elections Law and the Commission's own rules and regulations by the Unity Party, which were catalogued by the Liberty Party based on media reports, NEC argued that if the Liberty Party/petitioner felt strongly about them, it should have filed a complaint with the Commission against the Unity Party; the Liberty Party not having complained about the alleged past actions of the Unity Party, it could not now use same as a basis for seeking a declaratory judgment. NEC therefore requested the lower court to deny and overrule the allegations of its biases towards the Liberty Party since, according to the Commission, "the Party's narration violated the statute on pleadings by not being simple and concise and numbered to adequately inform NEC about the contention and the relief sought." NEC contended that count 3 of the Liberty Party's petition for declaratory judgment contained thirteen unnumbered paragraphs, citing the Constitution, and stated certain facts and circumstances as well as opinions of the Party, all of which were in violation of the law on pleading.

NEC further asked the lower court to dismiss the Liberty Party's petition for declaratory judgment as it was not the duty of any court in this Republic to remove any commissioned official; that the matter regarding the fitness of a commissioner or all of the commissioners of NEC was not cognizable before the circuit court.

Additionally, NEC contended that a determination of the issues raised by the Liberty Party in its petition for declaratory judgment could not terminate the controversy that formed the basis of the petition, as NEC will always cite political parties, including the Liberty Party, where it has reason to believe that a violation has taken place. NEC relied on and cited the provision of the Civil Procedure Law which states: "The court may refuse to render or enter a declaratory judgment where such judgment, if rendered, would not terminate the uncertainty or controversy giving rise to the proceeding". Civil Procedure Law, Rev. Code 1: 43.5.

On March 10, 2011, the lower court heard arguments pro et con, and entered a final ruling on March 21, 2011, on two issues: (1) Whether the Liberty Party's petition for declaratory judgment should be dismissed as prayed by NEC because it violates the principle of pleadings; and (2) whether NEC can cite a political party or its leadership for a hearing without a complaint and a complainant?

Concerning the first issue, whether the Liberty Party's petition for declaratory judgment should be dismissed because it violated the principle of pleadings, the trial court, presided over by His Honor Peter W. Gbeneweleh, while agreeing with NEC that in our jurisdiction pleadings ought to be precise and certain, however noted that NEC understood the content of the averments contained in the Liberty Party's petition for declaratory judgment and ably traversed all of them. Thus, he said, the rights of NEC were not affected by the paragraphs in the petition for declaratory judgment not being appropriately numbered as required by law.

On the second issue, whether or not NEC could cite a political party or its leadership for a hearing without a complaint or a complainant, the trial court ruled that "we have adversary system [of] jurisprudence in our jurisdiction and election violation is a serious offense in our jurisdiction. Such hearing is commenced with the filing of a complaint by an aggrieved party or person before [NEC] and a citation is issued by the [Commission] to acquire jurisdiction over the parties for a hearing." The court said it was not questioning the authority of NEC to cite a political party or its leadership for a hearing, but held that the authority to cite must be based upon a complaint. The trial court therefore ruled that NEC proceeded irregularly when it cited the Liberty Party without a formal complaint being filed by a third party.

The trial court however agreed with the contention of NEC that the Liberty Party was under an obligation to have filed a complaint against the Unity Party if it felt that the conduct of the Unity Party violated the Elections Law or the Elections guidelines.

Regarding the specific issue raised concerning the composition of NEC, the trial court

held that "[t]he validity, invalidity, constitutionality and the unconstitutionality of the composition of NEC is a constitutional issue which is cognizable only before the Honorable Supreme Court of Liberia as [the trial court] is impotent or clothed with no authority to pass on the issue." The capacity to sue, the judge also ruled, is a constitutional issue "... because it arises out of the contention of the composition of NEC which could not be determined by the lower court."

The records show that NEC excepted to the trial court's ruling and announced an appeal to this Court in the following words:

"To which ruling of Your Honor, counsel for the respondent excepts and gives notice that it will take advantage of the applicable law and controlling laws and announces an appeal to the honorable Supreme Court of Liberia on the issues that have been decided by this honorable court to the March Term of Court. And respectfully submit."

The Court: Exception noted and appeal is hereby granted as herein stated as a matter of right. Matter suspended."

No exception was noted and no appeal was announced by the Liberty Party.

The respondent/appellant NEC's two-count bill of exceptions is quote below:

"1. Respondent is dissatisfied with Your Honor's ruling on the disposition of law issues, particularly the portion of Your Honor's ruling finally deciding the issue of whether respondent acted legally by citing petitioner without a complaint and says that Your Honor committed a reversible error when you ruled that respondent/appellant acted irregularly by citing petitioner/appellee without a complaint. Respondent/appellant maintains that it acted properly by sua sponte citing petitioner/appellee when it took note of public information regarding acts of premature campaigning by petitioner. Respondent/appellant maintains that citation by a competent authority is not irregular, improper or unlawful and certainly does not violate the right of the addressee of the

citation, because citation is a very important element of due process of law.

2. That Your Honor committed a reversible error when you ruled that the issue of the legality of the current composition of respondent/appellant was a constitutional issue reserved for the Supreme Court of Liberia to pass on. Respondent/appellant maintains that the issue of the legality of the composition respondent/appellant is a statutory issue; hence, Your Honor has the legal authority to pass on same. The Supreme Court can only pass on such an issue in its capacity as an appellate court when same is first passed on by a lower court. Your Honor's failure to decide the issue of the legality of respondent's current composition of seven (7) commissioners amounts to a refusal to perform your statutory duty which refusal is prejudicial to the appellant's interest and therefore a reversible error."

The petition for declaratory judgment filed by the Movement for Democratic Change (MPC) against NEC states that pursuant to Article 84 of the Liberian Constitution (1986), the National Legislature enacted into law the New Elections Law of 1986, providing the scope and authority of the "Elections Commission" (ECOM). MPC challenged the nomenclature of the present Elections Commission, named and styled, the "National Elections Commission." According to the MPC, this nomenclature was coined from the 2004 Elections Reform Law. MPC said that the 2004 Elections Reform Law was solely intended to govern the special presidential and general elections of 2005 and could not be used during these 2011presidential and general elections which are being conducted under the full scale operation of the Constitution and after the Elections Law of 1986 has been restored. MPC therefore requested the lower court to declare the 2004 Elections Reforms Law as illegal and of no effect on the ensuing presidential and general elections; and to further declare that it is illegal to name and style the present "Elections Commission" as "National Elections Commission."

In addition to the issue of the nomenclature of the NEC, and like the Liberty Party, MPC also challenged the present seven-member composition of the National Elections Commission.

The MPC filed yet another petition for declaratory judgment on July 12, 2011, this time not only against NEC, but also naming the Ministry of Justice as another party respondent. In the second petition for declaratory judgment, it requested the trial court to declare the Referendum of August 23, 2011, unconstitutional because it violated and did not satisfy the requirements stipulated in Articles 91and 92 of the Constitution. The MPC further averred in its second petition for declaratory judgment as follows:

a. "The referendum is being held when the action of the Legislature remains incomplete. The Constitution requires the referendum to be conducted " ...not sooner than one year after the action of the Legislature".

b. "To be complete the propositions approved by the Legislature must be published in the official gazette and disseminated in the media throughout the Republic and this has not been done even at the filing of this Petition. This means, were the referendum ta be held this August 2011, the Official Gazette announcing the four (4) propositions of the referendum must have been published and disseminated in the mass media throughout the Republic not later than August 2010. THERE IS NO SUCH PUBLICATION OF THE NATIONAL GAZETTE. WE CHALLENGE THE RESPONDENTS TO PROVE OTHERWISE."

c. "The one year allowance is intended for the people or the mass citizenry to be educated and debate the proposed changes but the referendum is being held pursuant to a process that unfortunately hasn't afforded the people of Liberia that opportunity to make inputs, be heard, be educated and publicly debate the proposed amendments to make informed choices when and if they vote at all. This is a violation of the constitutional right of the people to know and be informed about the constitutional amendment process as stipulated by the Constitution."

d. "The Referendum therefore serves no useful purpose to the Liberian people and therefore amounts to misuse of public resources and abuse of office..."

The trial court consolidated, without objection, the two petitions for declaratory judgment filed by MPC and concluded that because constitutional issues were raised in the petitions, it could not rule on them. The petitions were therefore forwarded to us for our hearing and determination.

At this juncture, we should say that normally these petitions for declaratory judgments, which were filed before the lower court, would have come up for our hearing and determination at the earliest, during the October Term of this Court which commences today. This is because in keeping with law, matters from the subordinate courts properly laid before this Court are heard in the succeeding term of this Court; particularly regarding the Liberty Party, having filed its petition for declaratory judgment before the lower court and an appeal from the ruling of the trial court thereon taken to the Supreme Court sitting in its October Term, 2011, that appeal would have been heard and determined during or at the end of this term. On the other hand, while the law requires that election matters be expeditiously heard and determined by this Court, the requirement is that such matters are first disposed of by the Elections Commission and then an appeal therefrom will lie directly to this Court. The petitioners in these declaratory proceedings did not follow that procedure. However, and as we have noted, the central contention in the petitions for declaratory judgment being that NEC, which is presiding over the presidential and general elections to take place in less than 24 hours, is illegally constituted, this Court, in its wisdom, decided to pass on the issue of the legality or illegality of NEC prior to the ensuing elections; for where a challenge is made to the referee, it is not wise to wait until the game is over before deciding the issue

When the matter was called for hearing, the Clerk of this Court brought to our attention a letter written by Counsellor Charles Walker Brumskine, which we quote below:

"Madam Clerk:

This is to request the Honorable Supreme Court for a postponement of the assignment of the above-entitled cause of action.

As a Presidential Candidate in our nation's ensuing Presidential and General Elections, I have taken leave of absence from the practice of law, devoting full time to campaigning. I have asked the client, Liberty Party, to secure the services of another lawyer. As soon as that is done, the necessary papers will be filed with the Court for change of counsel.

Thanks for your judicious understanding. Best regards.
Very truly yours,
Charles Walker Brumskine"

The foregoing letter from Counsellor Brumskine notwithstanding, this Court decided to proceed with the matter because of the nature of the case, and further because all the parties to the case had filed their briefs and necessary papers. The rules of this Court permit us to dispense with argument of all or either party, once briefs and other relevant papers have been duly filed. Because of similarity of issues and in order to save time, we decided to consolidate the petitions for declaratory judgment filed by the Liberty Party and the MPC. Thus, it was only the counsel representing MPC who appeared on the scheduled date of the hearing of the petitions for declaratory judgment. He readily conceded the point that issues relating to the Referendum of August 23, 2011 had become moot, and hence, that the MPC had only one petition for declaratory judgment before this Court, the one filed on March 4, 2011, which raised two issues regarding NEC"s nomenclature and its composition, to be decided.

From the facts and circumstances, and the arguments contained in the briefs filed by the parties, we will consider three issues relevant to the determination of this case:

1. Whether the Court should have passed on the question of the number constituting the membership of the National Elections Commission (NEC)?

2. Where elections guidelines and rules are said to be violated, whether the NEC can only act upon said violation based on a formal complaint filed?

3. Whether the word "National", coined before the name "Elections Commission" is in violation of our Elections Law of 1986 and should be so declared?

Dealing with the first issue, the Petitioner, Liberty Party, has argued the following propositions as to why, in its opinion, the 2003 Amendment could not have been enacted pursuant to Article 35 of the Constitution of Liberia:

1. "Assuming, for the sole purpose of discussion, that the alleged amendment was passed by the Legislature and approved by the President, as is contended by NEC, the alleged amendment would be unconstitutional. The alleged amendment would have been enacted by the Legislature at a time when members of that body were away from the Capitol, on their "Agriculture Break," since NEC contends that the alleged amendment was approved by former President Charles Taylor on December 27, 2002; thus, raising the issue of the constitutionality of the alleged amendment. One proposition for the appellants' contention would be that the Legislature passed the alleged amendment sometime between January 2002 and August 2002, as the Legislature adjourned at the end of August 2002 for their "Agriculture Break," as per the Rules of the Senate. Following adjournment in August 2002, the Legislature did not return to the Capital until the second working Monday in January 2003, as is constitutionally provided. So if the alleged amendment was enacted by the Legislature between January 2002 and August 2002, President Taylor would be deemed to have kept the bill on his desk for more than five months, without taking any action, only to approve it on December 27, during the Christmas/New Year Holidays."

2. "If the alleged amendment was laid before the President any time prior to December 6, 2002 (i.e. January 14, 2002 to December 5, 2002), the President would have been obliged, by force of the Constitution, to approve the alleged amendment within twenty

days after the bill was laid before him, which approval would have been done certainly prior to December 27, 2002, or the purported amendment would have automatically become law. Alternatively, the President would have vetoed the alleged amendment and returned it to the Legislature, in which case the alleged amendment would have been dead, unless the veto of the President was overridden by the Legislature. However, in either case, the alleged amendment would have become law because of the lapse of the twenty days period or because the President's veto was overridden by the Legislature; there would have been no need for a December 27, 2002 approval by the President. Your Honors are respectfully requested to take judicial notice of Article 35 of the Constitution."

3. "A second proposition would be that the alleged amendment was laid before the President sometime between December 6 and December 27, 2002. But that would presuppose that the Legislature neither closed for its annual break nor even took leave for Christmas. Alternatively, the Legislature would have been recalled because of the state of emergency that existed in the Country. But that would certainly not lend support to the enactment of the alleged amendment. In any case, Christmas being on a Wednesday, President Taylor is supposed to have returned to the Mansion on December 27, 2002, a Friday, just to sign the alleged amendment into law, increasing the number of Commissioners of the Co-Appellant Elections Commission, at a time when the country was engulfed in war, and without any reasonable justification for two additional commissioners."

Generally where laws are enacted, impeachment of such laws may not be by parole evidence or oral evidence, or in the case of one interested in nullifying legislative action by mere assumption without any facts to back those assumptions. In considering the validity of a statute, courts will not inquire into whether the legislature complied with its own rules in enacting the statute as long as no constitutional provision is violated. (73 AM. JUR 2D, Statutes, § 40). In determining the validity of the amendment in issue before us, the question, then is whether said amendment was passed by both houses and approved by the President as required by law, not whether certain speculative

conditions did not exist for passage, approval and publication of the said law.

This Court says the proposition proposed by the Petitioner, liberty Party, are only assumptions attaining no legal status upon which any court can act. At the most, they are mere speculation as to what may or could have happened. The law does not recognize such speculation as a basis upon which this Court or any other courts in this jurisdiction can act. What was required of the petitioner was the presentation of substantive evidence to confirm that the amendment was never passed. These should have been made part of the proceedings in the lower court to enable that court to pass thereon. This required certification from the legislature, the Ministry of Foreign Affairs, etc. that no such act was passed or published into hand bill. In our Jurisdiction, laws printed by the Foreign Ministry are prima facie evidence of the passage of laws and that the passage has met the constitutional requirement of bills passed by both Houses of the legislature and approved by the President. For this Court to declare any printed law invalid, the petitioner must show proof beyond mere allegations or speculations that the President could not have returned to the Mansion on December 27, 2002, a Friday, just to sign the alleged amendment into law, especially when we see no reason why the President could not have signed the bill into law on the 27th of December and when no law forbids the signing into law of the Act on that date. Could the President not have signed the Act into law wherever he was? Is it the law in this jurisdiction that all Acts must be signed by the President only at the Executive Mansion? We hold that there is no such law and no such requirement.

We also reject the petitioner's contention that the burden of proof was on the National Elections Commission (NEC) to show that the law was legally passed in the face of the approval and publication in manner consistent with the Constitution and other laws of the republic. The petitioner had alleged that no amendment was passed by the legislature. The NEC had exhibited what on its face seemed clear and prima facie evidence of the passage of the amendment. The petitioner had challenged the authenticity and legitimacy of the document, alleging what, from the content of the accusation, was tantamount to fraud in the passage, approval and publication of the

amendment. It was therefore upon the petitioner to show proof, substantive proof, not mere speculation of the alleged fraud. Francis vs. Mesurado Fishing Company, Ltd, 20LLR 542, 552 (1971). This, the petitioner failed to do.

This Court, without recourse to NEC's bill of exceptions, notes with concern that the Judge below reneged on his responsibility when he failed to pass on this issue relating to the present composition of the membership of NEC as being in violation of the statute. The Judge's ruling assigning the issue raised as being constitutional and cognizable only before the Supreme Court was clearly erroneous, since the question of whether the Act was legally passed into law and whether or not the Constitution was followed in the passage of the bill required the taking of evidence. The petitioner needed to show proof, which the court would have then passed on, showing that the amendment of 2003 amending 2.1and 2.4 of the Elections law of 1986 was in violation of the Constitution the legislative law, and should therefore be declared unconstitutional. It is a well settled principle of law that this Court cannot take evidence, except in so far as they relate to the law or some historical facts, events, occurrences or public documents, of which the court may be requested to take judicial notice of. Indeed, as far as we have seen in the instant case, the question did not rise to a constitutional level and therefore did not require the direct intervention of the Supreme Court. The petitioners recognized this when they chose to commence these proceedings in the Circuit Court for the Sixth Judicial Circuit, Montserrado County. The lower court was therefore under a legal obligation to deal with the fraud issue raised by the petitioner which would have required a trial by jury. To have forwarded this matter to the Supreme Court for disposition under these circumstances was clearly erroneous. In the matter, IN RE: THE PETITION OF BENJAMIN J. COX, 36llR 837, 849 (1990), this Court frowned on the trial court when it failed to pass on the issue before forwarding the matter to the Supreme Court. This Court said: "We fully acknowledge that the Supreme Court is the final arbiter of constitutional issues. LIB. CONST., Art. 66 (1986). Nevertheless, except as to matters involving ambassadors, ministers and cases in which a county of the Republic is involved, this Court is not clothed with the authority to take evidence in any other matter. Thus, when a case

brought before a lower court involves factual allegations, the lower court must take evidence and satisfy itself as to the truthfulness of the factual allegations set out in the pleadings before it can refer the matter to the Supreme Court, if indeed a referral is appropriate." There being no concrete evidence before us to substantiate the allegation, we cannot declare the amendment of 2003 unconstitutional.

The second issue which this Court is called upon to address is whether the National Elections Commission, acting pursuant to its regulatory and investigative powers, is without the authority to cite, on its own volition, a political party or independent candidate for violation of the Elections Law or the Guidelines of the Commission, but must first await the filing of a complaint with the Commission by a third party? The trial judge, in disposing of the issue ruled thus:

"This Court says we have [an] adversary system of jurisprudence in this jurisdiction, and that a hearing of election violation is a serious offense in this jurisdiction. Such hearing is commenced with the filing of a complaint by an aggrieved party or person before the Elections Commission and a citation is issued by the NEC to acquire jurisdiction over the parties for a hearing. This court says the authority at the Elections Commission is not questionable to cite a political party or its leadership for a hearing. See section 2.9 of the New Elections law of 1986. The contention of the petitioner in the petition is that [the] Election Commission is the complaining party and the judge in the instant case. A careful perusal of the records before the court clearly shows that there is no formal complaint filed before the Elections commission and so there is even no complainant before the Elections Commission... The petitioner for declaratory judgment before us alleges that NEC is the complainant and the judge, as evidence by its letter of February 3rd, 2011. As stated earlier, this court says that [the] Elections Commission has the authority to cite any political party or its leadership or members but that the citation must be predicated upon a formal complaint filed before [the] Elections Commission and a determination be made and that either party can take [an] appeal to the Supreme Court of Liberia. In this case, there is no complaint, no complainant before [the] Elections Commission when the citation was issued for a

hearing. This court says the Elections Commission is clothed with the authority to supervise all activities of political parties in the country, but the supervision, monitoring and the authority to cite must be based upon a complaint for a hearing. This court says that [the] Elections Commission proceeded irregularly when it cited the Liberty Party without a formal complaint...."

The co-appellant National Elections Commission, believing that the judge was in error in making the above determination, included in its bill of exceptions a count wherein it argued that "it acted properly by sua sponte citing petitioner/appellee when it took note of public information regarding acts of premature campaigning by petitioner." It maintained that a "citation by a competent authority is not irregular, improper or unlawful and certainly does not violate the right of the addressee of the citation, because citation is a very important element of due process of law." The Commission argued therefore that as it has the authority to cite, on its own volition, political parties and independent candidates for acts of violation of the Elections Law or the Guidelines of the commission, it did not act illegally, improperly or irregularly in citing co-appellee Liberty Party for an investigation into its violations of the Elections Law and the Guidelines of the Commission, which acts were stated in its communication to the co-appellee party.

The Constitution and the Elections Law provide processes and grant powers to the National Elections Commission that do not follow the ordinary processes and grant of powers generally accorded other administrative agencies of the Government, and these should have been taken into account by the lower court in determining whether the Commission is clothed with the authority to sua sponte cite a political party or independent candidate without the necessity of a complaint being filed by a third party.

Co-appellee Liberty Party has quoted from C.J.S., a highly respected and accepted source for interpretation of legal principles where our jurisdiction lacks such principles or where an interpretation has been lacking. See Section 40, General Construction Law, Title 15, Lib. Code (1956). We note that in the quoted passage cited by the co-appellee,

there is clear use of the word "sometimes". We interpret that to mean that the filing of a complaint is not the sole manner or mode by which an independent administrative body such as the National Elections Commission can investigate or commence an investigation into violation of Guidelines promulgated by such Body. Indeed, the clear meaning is that both options are available to the administrative agency and is dependent on the right sought to be protected by a party and/or the violations sought to be addressed by the Commission. Thus, where a political party or individual is affected by the action of another party's violation, the aggrieved party or person may seek the intervention of the Commission. But also, where the Guidelines of the Commission are transgressed or the Elections Law, which the Commission is charged with enforcing, is violated, the Commission may sua sponte cite the transgressing party and order corrective action to halt the violation. This is particularly important if the transgression or violation could result into serious harm to the electoral process. The contention by the co- appellee Liberty Party defies both the law and the logic of the law. To await, under those circumstances, the filing of a complaint by a third party, would have been tantamount to a dereliction of duty by the NEC.

We note further that both the Constitution and the Elections Law are replete with provisions that vest in the National Elections Commission the authority, on its own motion [meaning on its own initiative] to address violations without awaiting or seeking a complaint from a third party. The Constitution at Article 82(b), for example, states that: "No political party or organization may hold or possess any funds or other assets outside of Liberia; nor may they or any independent candidates retain any funds or assets remitted or sent to them from outside Liberia unless remitted or sent by Liberian citizens residing abroad. Any funds or other assets received in contravention of this restriction shall be paid over or transferred to the Elections Commission within twenty-one days of receipt. Information on all funds received from abroad shall be filed promptly with the Elections Commission." In order to ensure compliance with the provision, Article 82(c) states, with regards to enforcement by the Elections Commission: "The Elections Commission shall have the power to examine into and order certified audits of the financial transactions of political parties and independent

candidates and their organizations." LIB. CONST., ART. 82(c) (1986).

In addition, Section 10.18 of the Elections Law states, with respect to stirring up unrest or rebellion: "Any candidate or any political party found violating any of the provisions of this section shall be guilty of an election offense and is punishable by a fine and imprisonment of the candidate or the leaders of the political party or parties involved for not more than ten (10) years. Notwithstanding the pendency of any criminal proceeding against such candidate or political party in the courts of justice or the payment of such fine for the commission of such election offense, the Commission, upon the petition of the Minister of Justice, or on its own motion, may revoke the certificate of such political party or parties involved upon proof of the violation." Elections Law, Rev. Code 11:10.18 (1986), as amended 2004.Section 10.25 states: "Notwithstanding that criminal proceeding may be pending in court in respect of any violation of section 10.18 by a political party, upon receipt of clear evidence of the violation, the Commission, upon petition of the Minister of Justice or on its own motion, may outlaw such political party or parties and revoke their certificate.

The question is whether the National Elections Commission may commence or has the authority to commence an investigation into violations or perceived violations of the Elections Law or Rules, Regulations of Guidelines regulating campaigning for elective public offices without a third party filing a formal complaint accusing the alleged violator of the act which the Commission seeks to investigate.

Nowhere, either in the quoted constitutional provision or in the quoted provision of the Elections Law, is there stated a requirement that in order for the National Elections Commission to commence or initiate investigations into violations of the Elections Law or the Elections Guidelines, there must first be a complaint filed by a third party, as ruled by the trial judge and maintained by co-appellee Liberty Party. Contrarily, given the peculiar functions of the National Elections Commission, as a regulatory and adjudicatory agency, to oversee and enforce the Elections Law and to ensure compliance with the Law and the Guidelines promulgated by it in furtherance of the

law, the Commission has the authority to and may commence proceedings on its own initiative where it believes that either the Elections Law or its Rules, Regulations or Guidelines have been violated by a political party or an independent candidate. Section 2.9 of the Elections Law not only vests in the National Elections Commission the authority to enforce all laws relative to the conduct of elections throughout the Republic of Liberia, but it also gives authority to the Commission to administer the Elections Law. Elections Law, Rev. Code 11:2.9. There is no dispute that the administration of that law carries with it the inherent power to investigate any deviations or violations by any political party or independent candidate.

Neither the trial judge nor co-appellee Liberty Party challenged the assertion by the National Elections Commission that it is an independent regulatory and adjudicatory agency. Indeed, not only does the co-appellee Liberty Party not deny that fact or that it is subject to the regulatory and investigative jurisdiction of the National Elections Commission, but it contends only that in order for it to come under the specific jurisdiction of the NEC in respect of a particular matter, there must first be a complaint filed by a third party---a political party, an independent candidate or otherwise. Yet, co-appellee Liberty Party, by the contentions set forth in its petition and brief, would have this Court declare that the Elections Commission is without the authority to cite a political party or independent candidate in order to "examine into and order audits of the financial transactions of political parties and independent candidates", unless it has first received a complaint from a third party; that no matter what the violations are or the impact which they are having on the electoral process or the Commission's ability to administer the Elections Law or the Guidelines promulgated by it, the Commission must await the filing of a complaint by a third party. We disagree with and reject that contention.

We also do not believe that drafters of the Elections Law or the Guidelines of the Commission intended that the Commission should be powerless to address violations of the law or the Guidelines unless or until it receives a complaint from a third party source. To subscribe to the contention raised by co-respondent Liberty Party will mean

that the Elections Commission must await the filing of a complaint by a third party, no matter what violations it sees occurring. That would be a recipe for disaster and we do not believe that the framers of the Elections Law or the Regulations intended that such should be the case. We therefore reject the said contention and uphold the position asserted by the respondents. To hold otherwise so would defeat the entire regulatory process and the regulatory powers granted the Commission, both by the Constitution and the Elections Law.

We hold therefore that co-appellee Liberty Party is legally incorrect in asserting that the NEC, in carrying out that its regulatory duties, responsibilities and programs put into place and in ensuring that they are adhered to, or to conduct investigations into any violations or suspected violations, must first receive a complaint from a third party before it can act to correct violations of the Regulations or Guidelines promulgated by it. We hold also that the trial judge erred in sustaining the contention of co-appellee Liberty Party. We therefore reverse the said ruling insofar as it relates to the authority of the National Elections Commission to on its own initiative cite a party for violations of its Guidelines or provisions of the Elections Law except where such Law or Guidelines set out specifically that another procedure should be followed in respect of the specific subject matter for which the Commission desires that an investigation is to be carried out.

Our holding should not be interpreted, however, to mean that the Elections Commission should, in pursuit of violations of its Regulations and Guidelines be selective in addressing the violations, or that in the one case it can assert that it can only act if there is a complaint filed and in another instance, under very similar circumstances, assert that it cannot act without the filing of a complaint by a third party. Clearly, this appears to be the case here and presents a contradiction for the Commission. Petition Liberty Party attached to its petition a number of exhibits. These included a clipping of the New Democrat Wednesday, February 6, 2008 edition. The paper quoted an official of the Respondent NEC as saying that "there will be no probe of the Unity Party's campaign contributions for the Gbarporlu Senatorial bi-election

without a formal complaint from an aggrieved party as their rules dictates" [Our Emphasis]. According to the Newspaper, the NEC official was responding to report of alleged illegal campaign funding involving the ruling Unity Party. The information, which the New Democrat Newspaper claimed was contained in "documents relating to party meetings", was to the effect that the party had received "tens of thousands of dollars from foreign entities, individuals and heads of state enterprises". The story also indicated that the official further said "we, ourselves, have been reading them (reports), but until it is brought before us, it is just a rumor."

In our opinion, the information reveals serious allegations which, if investigated and proven, would constitute serious violations of section 6(2) of the Campaign Finance Regulations. We note also that when asked to comment on these allegations, Respondent NEC responded that "[it] cannot touch that if [such allegations] are not brought officially to [NEC's] attention... [that one must file a complaint squarely, if you are interested." We have noted also that although the petitioner Liberty Party attached to its petition these newspaper clippings, yet, the respondent NEC did not deny ever making the statement as published. There being no denial by NEC, the statement ascribed to it, that it will not investigate any election violation unless a formal complaint is lodged before it, must be deemed as accurate and that it indeed made such statement.

This statement, in the view of this Court, did not represent the true state of the law, to say the least. Such utterance has the propensity to bring into question NEC's fairness in its treatment of all parties, something which the NEC is under a duty not to indulge in. It also contradicts the NEC's contention that it has the authority to investigate, on its own motion and initiative, a violation of the Elections Law and the Guidelines without having to await the filing of a complaint by a third party. The NEC must demonstrate in all its treatments that it is a disinterested and independent umpire, and to interact equally and with the same standard with all parties that are similarly situated. It is our Opinion that the NEC was under an obligation to investigate those reported occurrences, consistent with its constitutional duties. That duty is only properly exercised when the NEC proceeds to investigate these allegations forthwith once it

comes to its knowledge or attention, by whatever means.

The Movement for Progressive Change (MPC) has questioned the legality of the adjectival word "National" and its current use as a preface to "Elections Commission", an appellation set forth in the current Liberian Constitution. In its petition, petitioner MPC has also maintained that three "Autonomous Public Commissions" were established and specifically christened by the constitutional authority of Article 89 as "(a) Civil Service Commission; (B) Elections Commission; and (C). General Auditing Commission".

Pursuant to said Article 89, the petitioner submitted that the Legislature, in 1986, also enacted a new Elections Law, Chapter B, Section 2, sub-section 6, which maintained the abbreviation "ECOM" to conform with the name as provided under and consistent with the constitutional appellation.

Petitioner has also indicated that it is not unaware that the constitutional designated name "ECOM" was amended under Section 5, sub-section B, of the Electoral Reform Law of
2004, contrary to the name provided under the Liberian Constitution (1986). Petitioner has taken the position and vehemently contended that the Electoral Reform Law (2004) was a transitional law enacted by a Transitional Authority and properly applicable only to a transitional period; that the name "National Elections Commission" being a transitory name designated by the "Electoral Reform Law" and assigned the respondent (NEC) is, petitioner says, "a distant law". It is petitioner's contention that the said name, for all intents and purposes, is "inapplicable and void in these constitutional scheme of things". Petitioner has therefore sought to have this Court declare the 2004 amendment to the 1986 New Elections Law, insofar as to the preface "National" is concerned, illegal and illegitimate, hence null and void.
The petitioner's contention raised the question whether the prefacing of the word "National" to the name "Elections Commission", as designated under Article 89, is offensive to the laws controlling.

Law making is amongst the primary functions of the National Legislature as one of the three co-equal and coordinate branches of the Liberian Government. From the pleadings put before us, we notice that petitioner MPC not only duly recognizes this authority of the Legislature but conceded that pursuant thereto, the said Legislature enacted the 1986 New Elections Law.

We note here that it is further provided under Article 89 that 'The Legislature shall enact laws far the governance of these Commissions and create other agencies as may be necessary for the effective operation of Government. Emphasis supplied. "Further hereto, and as if to be more to the point, the 1986 Constitution authorizes the Legislature to "...enact the elections laws". LIB. CONST. Article 34 (i).

Further review of the Liberian Constitution shows that Chapter VIII thereof could be properly titled "Elections Chapter". Articles 77 thru 84 under said chapter encompasses matters of elections and the functions of the authorized agency as to the conduct of elections and matters related thereto. These provisions conclude with Article 84 clearly stating that "The Legislature shall by law provide penalties for any violations of the relevant provisions of this Chapter, and shall enact laws and regulations in furtherance thereof not later than 1986; provided that such penalties, laws or regulations shall not be inconsistent with any provisions of this Constitution.

This Court reads this broad authority to include making all laws, especially those in respect to all matters of elections for public offices in Liberia. To our mind, such powers are not, and cannot be, exclusive of assigning simple appellations to agencies created by the Constitution to carry out clearly defined constitutional functions so long the enacted Elections Laws are not "inconsistent" with the clear intent of the framers of the Liberian Constitution.

It is a sheer display of unfamiliarity with the law for a lawyer to insist that every word or name written in the Constitution must be construed literally and that every word

means and is intended as stated. Similarly, it would be illogical to hold that only a "he" may constitutionally qualify to run as a candidate for president and vice president in Liberia, since the Constitution requires that a candidate must have been resident in Liberia ten years prior to "his" election. A strict constructionist could advance such an argument. In all such cases, courts are persuaded by the intents of the framers and the object the writers sought to achieve, not mere words, whether in name, or by adjective of preface or suffix.

According to common law authorities also,

"...The title of an [A]ct cannot enlarge or confer powers, cannot limit the plain meaning of the statutory text, cannot defeat the language of the law, and the title cannot alter the explicit scope, meaning, or intent of a statute." See: 73 AM JUR 20, Statutes,§ 108.

Clearly, the intent of the framers was to ensure that the Commissions such as were named, were updated by the Legislature, not the specific nomenclature of the Commissions.

We hold that there is nothing in the appellation "National" that appears to us to be inconsistent with the intent and object of the writers of the Liberian Constitution. As the respondent NEC has not been accused of contravening its constitutional and/or statutory functions, but that the name is inappropriate, we must hold substance over form and dismiss the petitioner MPC's argument as totally untenable. This argument is therefore dismissed.

WHEREFORE and in view of all that we have detailed in this Opinion, the petitions filed by petitioners Liberty Party as well as the Movement for Progressive Change (MPC), having presented no factual or legal arguments to compel this Court to make such declarations as prayed for, said petitions are hereby denied.

The appellee/first petitioner, Liberty Party, was represented by Counselor Charles

Walker Brumskine and the second petitioner, Movement for Progressive Change was represented by Counsellor Sayma Syrenius Cephus

Respondents National Elections Commission and the Ministry of Justice were represented by Counsellors Joseph Blidi, C. Alexander B. Zoe,Sr. and Tiawan S. Gongloe, and M. Wilkins Wright, Solicitor General of the Republic of Liberia.