IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A. D. 2017

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEH..... ASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A. Z. BANKS, III.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE

Harrison S. Karnwea & Liberty Party……APPELLANTS	**) Appeal from the**
	) Decision of the
VERSUS	**) National Elections**
The National Elections Commission (NEC), represented	**) Commission,**
by and thru its Chairman, Cllr. Jerome G. Korkorya, and	**) Barring Harrison S.**
all Officers of NEC, all of the City of Monrovia, County	**) Karnwea From**
of Montserrado, Republic of Liberia……APPELLEE	**) Contesting for the**
	) Ensuing Elections

Heard: July 13, 2017. **Decided: July 20, 2017.**

Counsellors Powo C. Hilton, D. Onesimus Barwon and James G. Innis, Jr. of Brumskine and Associates Law Firm appeared for the appellants. Counsellor Joseph N. Blidi, In-House Counsel for the National Elections Commission, and Counsellors Frank Musa Dean and C. Alexander B. Zoe, appeared for the appellee.

MR. JUSTICE BANKS delivered the Opinion of the Court.

This case is the second in a series of cases filed before the Supreme Court for review of decisions of the National Elections Commission denying the applications of aspirants seeking certification, as required by law, to contest elective public offices in the October 2017 Presidential and General Elections. Those elections, by the command and mandate of the Constitution (1986), are scheduled to be held on the second Tuesday in October, same being October 10, 2017. By the command of the Constitution also, the National Elections Commission is vested with the power and the responsibility to determine whether a person seeking elective public office has met the constitutional and statutory requirements to be eligible to contest for a particular elective public office in order that his or her name is placed on the ballot to be voted on by the people of Liberia or of the particular constituency the aspirant seeks to represent in the Legislature or other body subject to election by the people. In the previous case, *Abu Bana*

***Kamara v. The National Election Commission*, decided three days ago on July 17, 2017, this Court addressed a number of issues surrounding flaws in the manner in which the National Elections Commission had pursued the exercise of the responsibilities delegated to it by law in certifying candidates to contest the ensuing October 2017 national elections. In spite of the identification of the flaws, however, this Court denied the petition for the writ of prohibition since, in the mind of the Court, the petition for the writ of prohibition was the inappropriate course designated by law to address the final decision of the National Elections Commission barring and disqualifying the petitioner from contesting a particular elective public office in the ensuing October 2017 elections.**

In the instant case, a similar set of facts are presented in respect to the National Elections Commission barring and disqualifying of Co-appellant Harrison S. Karnwea, Sr. from seeking a specific elective public office, that is the vice-presidency of the Republic under the ticket of the Liberty Party, the other co-appellant in these proceedings. As in the *Kamara* case, in the instant case the National Elections Commission had pursued the identical course of action in barring and disqualifying Co-appellant Harrison S. Karnwea, Sr. from participating in the pending October 2017 Elections and had predicated its decision, which embodied much of the same flaws identified in the Kamara case, on what it termed as "candidate is barred by the Code of Conduct for Public Officials." The difference between the rationale set forth by the National Elections Commission as revealed in the *Kamara* case and the rationale set forth by the Commission as disclosed from the facts in the instant case is only that in the *Kamara* case the petitioner was an Assistant Minister who, even at the filing of the application for certification by the National Elections Commission continued to hold onto the appointed public office while in the instant case Co-appellant Harrison S. Karnwea, Sr., although having resigned several months prior to filing of his application for certification to contest the particular elective office stated in the application still did not meet the two years requirement stated in the Code of Conduct and applicable to a person holding the position which he held in the public corporation.

We note further that the decision by the Commission rejecting the

Application of petitioner in the *Kamara* case was, like the decision to reject Harrison S. Karnwea, Sr. in the instant case, and the rationale therefor, was conveyed in a one page document captioned "Notice of Rejection of Nomination Application" and was signed solely and exclusively by the Chairman of the National Elections Commission, with no evidence that there had been any participation by any of the other members of the Board of Commissioners of the Commission. In the instant case, however, Co-appellant Harrison S. Karnwea, Sr. chose the course of an appeal to the Supreme Court rather than seeking a review by remedial process, as was done by Mr. Kamara when he was served with the Notice of Rejection.

Having looked at some of the similarities that exist between the Kamara case and the instant case, let us now focus our attention on the specifics of the instant case that is before the Court, and which necessitated the appeal to this Court. As noted above, the decision of the National Elections Commission was conveyed to the appellants in a one page document signed by the Chairman of the National Elections Commission (NEC), captioned "Notice of Rejection of Nomination Application", and bearing the date July 7, 2017. In the document, Co-appellant Harrison S. Karnwea, Sr. was informed by the NEC that his Application for Nomination as a candidate vying in the October 2017 Elections for the position of vice-president on the ticket of the Liberty Party had been rejected by the Commission. The single reason stated in the Rejection Notice was that Co-appellant Harrison S. Karnwea, Sr. was barred by the Code of Conduct For Public Officials since he, having served as the head of a public corporation, had failed to resign his position in line with the Code. We repoduce herewith the one page Notice of Rejection instrument from Appellee National Elections Commission to Co-appellant Harrison S. Karnwea, Sr., as follows, to wit:

Republic of Liberia
NATIONAL ELECTIONS COMMISSION
TUBMAN BOUL VARD, 9TH AND 10TH STREETS, SINKOR - P.O. BOX 2044
MONROVIA, LIBERIA
Email: info@ncclibcria.org CN14-GE/2017

NOTICE OF REJECTION OF
NOMINATION APPLICATION

Issued To: Candidate of Liberty Party (LP)
Name: KARNWEA, SR.. HARR**ISON S.**

Office Sought: Vice President County:

Deficiencies in Nomination Application

- ❑ Aspirant did not submit all required documents and forms
- ❑ All documents were not received before the close of the nomination period
- ❑ Candidate is not a registered vote
- ❑ Aspirant's guidelines/objectives is not in conformity with the Liberian Law
- ❑ Candidate does not meet the constitutional age requirement Evidence of Payment of tax is no sufficient
- ❑ No evidence of office establishment by the candidate or his/her political party/alliance/coalition in the area contesting
- ❑ Evidence of ownership of unencumbered real property valued at not less than US$25,000 or its equivalence in Liberian Dollars is not sufficient
- Candidate is barred from contesting by the Code of Conduct for Public Officials
- ❑ No proof of aspirant's residency requirement
- ❑ No proof of aspirant's citizenship requirement
- ❑ Evidence of payment of registration fee is not valid
- ❑ Petition List is not valid
- ❑ Aspirant has not met the Domicile Requirement

Comments

Candidate is barred by the Code of conduct for public officials. He served as head of a Public Corporation and did not resign in line with the Code.

(Attach additional information if necessary)

Applicant is hereby notified of the rejection of his/her Application for Nomination as a Candidate in the October, 2017 Elections.

_____ 07-07-17

Hon. Jerome G. Korkoya, Chairman NEC Date

It is important that at this point that the Court highlights a few points, as regards the Notice of Rejection and other attending instruments that culminated in the said Notice of Rejection. This is important so that the premise is set for the other factual occurrences that unfolded following the rejection or disqualification of co-appellant Harrison S. Karnwea. Firstly, the records reflect that on July 6, 2017, the Chairman and Secretary General of the Liberty Party filled out and executed on the National Elections Commission Candidate Endorsement Form, wherein the Party submitted the name of Harrison S. Karnwea as its vice-presidential nominee for the October 2017 Presidential and General Elections; that on the same date, July 6, 2017, a Letter of Intent, constituting the Application of Co-appellant Harrison S. Karnwea, Sr., and accompanying documents, were also filed with the National Elections Commission, duly receipted for by a personnel of the Commission; that also on the same date, July 6, 2017, a Report was prepared by a panel or personnel of the Nomination Scrutiny Review body on the letterhead of the National Elections Commission stating that the Nomination Scrutiny Review Body had received from the Document Control for review

certain documents which had been submitted by Appellants Harrison S. Karnwea and Liberty Party, seeking certification by the national Elections Commission of Co-appellant Harrison S. Karnwea, Sr. as a candidate for the position of vice-president in the ensuing October 2017 presidential and General Elections on the ticket of the Liberty Party, and that upon review of the documents by the designated personnel of the Nomination Scrutiny Review Body, it had determined that although all of the requirements for qualification of candidate Karnwea by the National Elections Commission had been met, he was not in compliance with section 5.1 and 5.2 of the Code of Conduct which required that he should have resigned his position as Managing Director of the Forestry Development Authority two years prior to the ensuing October 2017 Elections, and that based thereupon it was recommending that the Application of Co-appellants Karnwea and Liberty Party be rejected; that predicated upon the said recommendation of the Nomination Scrutiny Review personnel, the Chairman of the National Elections Commission, on July 7, 2017, one day after the recommendation, issued out a Notice of Rejection against the nomination of Harrison S. Karnwea, Sr. as a vice-presidential candidate in the ensuing 2017 Elections on the ticket of Liberty Party.

The Notice of Rejection, signed exclusively by the Chairman of the National Elections Commission, specifically informed the appellants that Harrison S. Karnwea was barred by the Code of Conduct for Public Officials from contesting the October 2017 Elections since he had served as head of a public corporation and had not resigned the position in line with the Code. Neither the Report of the Nomination Scrutiny Review personnel nor the Notice of Rejection gave any indications that the recommendation and decision were the result of any hearing conducted by or held before those bodies or persons. The case file is completely devoid of any minutes or other records indicating that any citations were issued out either by the Nomination Scrutiny Body or the Chairman of the National Elections Commission and served on the appellants, or that any hearings were conducted at which the appellants were present or were given the opportunity to defend against any alleged or perceived deficiency(ies) in the Application and other accompanying documents placed before those bodies

or persons.

Additionally, there are no records in the case file evidencing that the Board of Commissioners, as a Body, held any meeting(s) or hearing(s) whereat the issue of the deficiency(ies) or perceived deficiency(ies) identified by the personnel of the Nomination Scrutiny Review body was reviewed or addressed, or that the appellants were informed of the recommendation of the Nomination Scrutiny Review personnel or invited by the reviewing personnel of the said Body so that they would be given the opportunity to defend against the recommendation and to appeal same to the Board of Commissioners. Indeed, the records do no indicate that the recommendation was ever referred to the Board of Commissioners, as a Body, or that the Board ever assumed jurisdiction of the case, or that any citations were issued by the Board and served on the appellants informing them of the recommendation of the personnel of the Nomination Scrutiny Review Body and inviting them to defend against the said recommendation.

We have also not found in the case file any records that any member(s) of the Board of Commissioners, other than the Chairman, were aware of the recommendation of the Nomination Scrutiny Review personnel or of the decision made upon the said recommendation which was conveyed in the "Notice of rejection of Nomination Application", signed solely and exclusively by the Chairman of the National Elections Commission and with no other accompanying documents evidencing that the decision was of the Board, rejecting the appellants' application and barring Co-appellant Harrison S. Karnwea, Sr. from participating in or contesting for the position of vice president in the ensuing October 2017 elections.

What we do find in the records is that the appellants, believing that the Notice of Rejection quoted above, done in response to the Application filed by Co-appellants Harrison S. Karnwea, Sr. and Liberty Party, and which although signed only by the Chairman of the National Elections Commission, constituted a final decision of the Commission and thereby necessitated resorting to an appeal to the Supreme Court as provided for by the Constitution of Liberia, the Elections Law and the Elections Guidelines, filed with the Clerk of the Supreme Court, on July 10, 2017, a bill of exceptions wherein it challenged, on a single ground, the decision purporting to be of the

National Elections Commission. In order that the single ground stated in the bill of exceptions is placed and captured in its full context, we quote herewith verbatim the said bill of exceptions, as follows:

"APPELLANTS' BILL OF EXCEPTIONS

And now comes the appellants in accordance with Section 6.3 and 6.4 of the Election Law, and most respectfully submit appellants' bill of exceptions for filing by the Clerk of the Honorable Supreme Court of the Republic of Liberia, a requirement of the process to appeal to the Honorable Supreme Court from the decision of the National Elections Commission, and for the consideration of Your Honors, as follows to wit:

1. On Thursday, July 6, 2017, Co-appellant Karnwea submitted his documents to the appellee to have him registered as the vice-presidential candidate of the Co-appellant Liberty Party for the ensuing October 10, 2017 presidential and general elections. Among the forms submitted by Co-appellant Karnwea was "Aspirant Questionnaire to Establish Residency, Domicile, and Compliance with Code of Conduct for Public Officials," which requested him to state whether he had resigned from any public position that he held within the last three years. Co-appellant Karnwea responded that he resigned from the position of Managing Director of the Forestry Development Authority on March 9, 2017.

2. On Friday, July 7, 2017, Co-appellant Karnwea received a call from the appellee, informing him that the appellee had written a letter to him, of which he was instructed to take delivery. In fact, it was a "Notice of Rejection of Nomination Application" form (the "Notice"). Of the fourteen reasons, listed on the Notice, for which a vice-presidential candidate could be rejected, the appellee marked the box next to, "candidate is barred from contesting by the Code of Conduct for Public Offici1Is."

3. Because the only questions on the "Aspirant Questionnaire To Establish Residency, Domicile, and Compliance with Code of Conduct for Public Officials" that relate to the Code have to do with the timing of Co-appellant Karnwea resigning from his presidential appointment, it is presumed that the appellee determination that the "Candidate is barred from contesting by the Code of Conduct for Public Officials" has to do with Co-appellant Karnwea resigning from his presidential appointment on March 9, 2017.

4. The appellee erroneously construed Section 5.2 of the Code, as prohibiting Co-appellant Karnwea from running for the position of Vice President of the Republic of Liberia an elective public office. Part V, Section 5.2 of the Code states that,

"Wherein, any person in the category stated in Section 5.1 herein above, desires (Emphasis supplied) to canvass or contest for an elective public position, the following shall apply: a) Any Minister, Deputy Minister, Director-General, Managing Director and Superintendent appointed by the President pursuant to article 56(a) of the Constitution and a managing director appointed by a board of directors, who desires to contest for public elective office shall resign said post at least two (2) years prior to the date of such public elections." And for which reason, appellants tender this bill of exceptions for filing and Your Honors consideration.

5. The erroneous decision of the appellee is evident by the fact that Co-appellant Karnwea did not desire, and could not have desired, two years ago to be the running mate of Charles W. Brumskine, the Presidential Candidate of the Co-appellant Liberty Party, and therefore, could not have resigned, nor could have been expected to resign. The case of Co-appellant Karnwea serving as the running mate of Cllr. Brumskine is without the intent and spirit of the Code. No one desires to be the running mate of another; it is the Standard Bearer that selects his/her running mate. Co-appellant Karnwea could not have desired to have been the running mate of Cllr. Brumskine even before Cllr. Brumskine announced his candidacy; and

for which reason, appellants tender this bill of exceptions for filing and Your Honors consideration.

6. Appellants submit that this Bill of Exceptions is tendered for filing and Your Honors consideration due to all and sundry the numerous and reversible errors committed by the Appellee, National Elections Commission.

WHEREFORE AND IN VIEW OF THE FOREGOING, Appellants pray that Your Honors will reverse and overturn the determination of the Appellee, which states that Co-Appellant Karnwea is barred from contesting the 2017 Presidential and General Elections by the Code of Conduct for Public Officials; and, that Your Honors will rule that Co-Appellant Karnwea is qualified and eligible to, and may indeed contest the elections as the Vice Presidential candidate of the Co-Appellant Liberty Party; and, that Your Honors will grant unto the Appellants any other relief as may be deemed just, legal and equitable."

RESPECTFULLY SUBMITTED
The Appellants:

_____
Harrison S. Karnwea, Sr.

_____
Liberty Party
by and thru their Legal Counsel,
BRUMSKINE & ASSOCIATES
Oldest Congo Town, Tubman Boulevard
Cllr. Powo C. Hilton

_____
_____
COUNSELLORS-AT-LAW

APPROVED:_____
Jerome G. Korkoya
NATIONAL ELECTIONS COM SSION

Dated this 10th day of July, A. D. 2017."

We should comment here that we are taken aback that given the importance and critical nature of the electoral process and the sequence of factual events narrated hereinbefore that counsel for the appellants believed that only a single issue was of importance and warranted consideration by this Court. We wonder, for example, if the cardinal principle of due process, couched both in the Liberia Constitution and an enormous number of the statutory laws of Liberia, including the Elections Law and the Code of Conduct, and especially the provisions of the Code of Conduct, upon which the Chairman of the National Elections Commission purported to predicate the decision of that Body to disqualify Co-appellant Harrison S. Karnwea from contesting the vice-presidency in the upcoming and ensuing October 2017 Presidential and General Elections, and which the records clearly showed was denied the appellants, was not of sufficient significance to be addressed by this Court.

Indeed, we wonder also if the fact that the Commission did not even

allow itself the opportunity to listen to the appellants or to have them explain or justify their conduct as would have enable it (the Commission) to not only give adequate and appropriate interpretation to the law in the face of the Supreme Court's decision in the case of Selena Mappy-Polson v. Republic of Liberia, decided March 3, 2017, but also to determine what penalty, if any, amongst the range of penalties stated in the Code of Conduct, it could impose on Co-appellant Harrison S. Karnwea, Sr. for his alleged violation of the Code was not of significance to warrant inclusion in the bill of exceptions and seeking the Supreme Court's disposition of such issue.

We wonder further if the decision of the Commission to bar Co-appellant Harrison S. Karnwea, Sr. from any participation in the ensuing 2017 Presidential and General Elections, which the records indicate was made, expressed and signed solely and exclusively by the Chairman of the Commission with no indications of any involvement or participation of other members of the Commission or that the Board of Commissioners of the Commission acted as a Body in that regard, which would be evidenced by records of Board proceedings, and which clearly constituted a meaningful and substantial violation of the Elections Law, was not deemed by the appellants to be sufficiently significant to warrant the intervention of this Court and thus being captured in the bill of exceptions and raised as an issue deserving of the attention of this Court.

No explanation was provided, either by the records or in the oral argument before this Court by counsels for Respondent National Elections Commission as to why there was such rigid deviation or departure by the Commission from the normal course stipulated by the statute and the Guidelines of the Commission and prior to scrupulously adhered to by the Commission, to justify that the Chairman could alone, and without reference to or any participation of the other members of the Board of Commissioners, as a Board, make a decision of such magnitude as was made in the instant case.

Yet, as cardinal as those issues are, the appellants did not believe that they warranted being addressed by this Court. Instead, they proferred in the bill of exceptions and the brief filed before this Court the singular issue of "whether section 5.2 of the code of Conduct was intended to apply to an

individual, like a vice presidential candidate who cannot legally desire to seek public elective office on his/her own, but must be selected by another, like a presidential candidate." And to further exacerbate the errors already made, including the appellants filing of a bill of exceptions as if the decision was of the Board of Commissioners, the bill of exceptions was signed or approved only by the Chairman of the Commission rather than by a majority of the membership of the Board of Commissioners as has been done in numerous appeals taken from the decision of the Board of Commissioners. This action was a further indication that the decision was not of the Board but solely of the Chairman of the Elections Commission in his capacity as Chairman of the Commission. We shall revert to these core concerns later in this Opinion, following disposition of the issue raised by the appellants.

Regarding the lone issue raised by the appellants in their bill of exceptions and in their brief, this is how they have structured same: "Whether Section 5.2 of the Code was intended to apply to an individual, like a vice presidential candidate who cannot legally desire to seek public elective office on his/her own, but must be selected by another, like a presidential candidate?" In attempting to provide an answer to the issue favourable to them the appellants took resort to this Court's decision in the *Selena Mappy-Polson v. Republic of Liberia* case, decided by this Court on March 3, 2017, wherein this Court upheld the constitutionality of sections 5.1 and 5.2 of the Code of Conduct, which had been challenged by the petitioner. They proclaim that in the Polson case, this Court laid down four salient points: (i) That "the purpose and objective of Section 5.2 of the Code is to ensure that presidential appointees are not allowed an advantage over others in the process of competing for elected positions by using their offices and Government resources in support of partisan activities; (ii) It is a rule of construction that statutes must be interpreted to best carry out their statutory purposes; (iii) It is also a rule, that courts must follow a presumption that the legislature intends reasonable results; and (iv) The courts are to follow the plain meaning of the statutory text, except when the text suggests an absurd result."

Using those points as the standard for the interpretation of sections 5.1 and 5.2, as applied to Co-appellant Harrison S. Karnwea, Sr., the appellants

say the intent of the Legislature, placed in its proper context, which is that presidential appointees are not allowed to take advantage over other in the process of competing for elected positions using their offices and the government resources, if best carried out with reasonableness, and viewed without the realm of absurdity, would clearly not be applicable to Mr. Karnwea, and that therefore, the Chairman of the National Elections Commission erred in construing the sections as he did, thereby making them applicable to Co-appellant Karnwea and barring him, on the basis of that misconstruction, from vying for or contesting for the office of vice president of Liberia to the presidential bid of Charles Walker Brumskine on the ticket of the Liberty Party in the ensuing 2017 Presidential and General Elections. In that connection, the appellants stressed that "the intent of the Code is not to punish everyone who ever worked for government, but to ensure that those presidential appointees who have the *desire* to run for elective public office do not do so at the expense of the taxpayers and to the disadvantage of other contestants in the political race." To avoid sections 5.1 and 5.2 being relegated into the realm of absurdity, they maintain, focus must be placed on the word *desire*, which they define as "to wish or long for; crave; want; to express a wish to obtain; ask for; request", which they emphasize is key to the interpretation of the sections relied on by the appellee. The intent of the section prohibiting a person situated as Co-appellant Harrison S. Karnwea, Sr. from contesting an elective public office is that he must have manifested a desire to engage in the political activity.

Placing the term in the context of section 5.2, the appellants make the argument that "Co-appellant Karnwea did not desire, and could not have desired, two years ago to be the running mate of Charles W. Brumskine, the presidential candidate of the Co-appellant Liberty Party, and therefore, could not have resigned; nor could [he] have reasonably been expected to resign two years ago." They argued further that had the appellee taken cognizance of the four points articulated by the Court in the *Polson* case, which formed the yardstick for the disqualification of a political candidate, it would not have concluded that Co-appellant Karnwea fell within the prohibited conduct since he not only did not harbor any political ambition when he held the position of Managing Director of the Forestry Development Authority and

that he could not have anticipated two years earlier, in 2015, that two years later, in 2017, Counsellor Charles W. Brumskine would have selected him to be his vice presidential running mate. Unlike other political positions such as a senator or member of the House of Representatives, they declare, the vice-presidential position is not one that a person desires since the choice of who becomes a vice-presidential candidate is not dependent on the person himself but on the decision of the person seeking to be president.

Summarily, the appellants contend that the post of vice presidential aspirant is politically complementary to the Presidential Candidate, that no one can independently demand the position of vice presidential candidate without being a complement to a presidential aspirant and as such no one desires of being a running mate to another prior to the selection by the latter of the former. Therefore, co-appellant Karnwea did not desire or could not have desired two years ago to be a running mate to Cllr. Charles Walker Brumskine, the Standard Bearer of co-appellant Liberty Party. Here is how they articulated the argument:

> **"It is common knowledge that to become a vice presidential candidate one does not ask a presidential candidate to make him/her his running mate. Instead, it is the other way around. An individual desires to run for the presidency; his/her desire is manifested when s/he announces his/her intention to run; s/he then goes through a process of caucuses, primaries, or other procedures, as may be determined by the rules of his/her political party. After becoming the nominee of his party, he then identifies and asks someone to be his running mate. Stated differently, no one desires to be the running mate of another; it is the presidential candidate that selects his/her running mate. In the case at bar, Co-appellant Karnwea could not have desired to have been the running mate of Cllr. Brumskine. Even if he did, he could not have done so until or before Cllr. Brumskine announced his candidacy….. Cllr. Brumskine did not ask Co-appellant Karnwea to be his running mate until early March 2017, and until then Co-appellant Karnwea was neither running for a political office, nor did he desire to run for one."**

For its part, the Respondent National Elections Commission argued that the Supreme Court, in its decision in the *Polson* case, clearly answered the question of the intent of the Legislature in passing sections 5.1 and 5.2 when the Court opined: "The exhaustive sanction theory subscribed to and advanced by Petitioner Polson-Mappy on this question is hugely flaw. We note the primary object of the Code of Conduct was disqualification from running for elected public offices of all public officials appointed by the President pursuant to Article 56(a) of the Liberian Constitution. It was the

wisdom of the Legislature that these officials tend to acquire obvious undue advantage over other candidates which most likely than not, is employed for personal electoral leads. To accept the exhaustive sanction theory proposed by Petitioner Polson-Mappy is to render the Code of Conduct Act meaningless and ineffectual." The clear intent, the appellee therefore concludes "is that officials of government appointed by the President shall not engage in political activities."

With specific reference to the status of Co-appellant Harrison S. Karnwea, Sr., the appellee states: "Co-appellant Karnwea engaged in political activities while serving as Managing Director of the FDA. The inference is that Co-appellant Karnwea used Government facilities, equipment and/or resources in support of partisan or political activities, prior to his resignation publicly from the Unity Party and joining the Liberty Party. This has given him an "obvious undue advantage over other candidates" which he intends to employ for personal electoral lead. Co-Appellant Karnwea should not be rewarded for this egregious violation of the Code of Conduct by allowing him to contest."

We are not persuaded by the arguments made by either side on the issue of the intent of the statute, especially in regard to the meaning to be given the word "desire", as used in the Code. We note that although the appellants seek to place on it a definition which impresses upon the Court that the desire of Co-appellant Karnwea could only have been manifested by an open declaration which they say occurred when Co-appellant Karnwea was asked by Counsellor Charles Walker Brumskine to be his vice presidential running mate, we believe that the definition ascribed to the term and the application made of the definition to the events as they unfolded fail to take into consideration that the term is subjective rather than objective. It fails to take into account that a person may have the desire to seek a particular public office but may not outwardly show the desire; that he may harbor such desire and work towards it but do so in secret. The fact that the person desiring a particular office refrains from openly expressing the desire and chooses instead to work in secret to achieve the goal does not mean that the person does not harbor a desire for a particular office. In this particular case, the Court cannot speculate that Co-appellant Karnwea did not secretly

impress upon Counsellor Brumskine that he, the Co-appellant, be considered for the position and that he may have made such overtures for any number of reasons, including securing the vote of a large population base, injecting substantial financial contributions to the campaign efforts, etc. But all of those would lead the Court into the realm of speculation, which the law forbids the court to indulge in. This point out only that in defining desire, it should not be perceived in the narrow context which the appellants have placed it.

Further, while a facial examination of the appellants' argument seems to be appealing substantially to a reasonable inference of a logical conclusion, we are not persuaded by same, for although the law always begs of logical conclusions, in most instances, the converse of this does not yield similar results, as logic frequently may fall short of any legal support. To accept the appellants' line of argument that no one desires of being a vice presidential aspirant until he or she is selected by a presidential aspirant would similarly mean that no one desires of being a presidential aspirant until such person selects his or her running mate in consonance with the appellants' own political complementarity theory.

This is true because in as much as the appellants are correct that no one applies to run for the office of Vice President without an indication of a complementing presidential aspirant, no one similarly applies to contest as presidential candidate without a showing of his or her vice presidential candidate. The two offices are seismic twin, hence to predicate one's desire of running for the office of vice president on the absence of he or she being nominated by a presidential aspirant would provoke the argument that one cannot be said to have the desire of contesting for the office of the president without a showing of his or vice presidential candidate.

The framers of our organic law being mindful that these two offices cannot be politically severed, construed similar and single set of qualifications for persons desiring of occupying said offices by stating thus:

> **"No person shall be eligible to hold the office of President or Vice President, unless that person is:**
>
> **a) a natural born Liberian citizen of not less than 35 years of age;**
>
> **b) the owner of unencumbered real property valued at not less**

than twenty five thousand dollars; and

c) resident in the Republic ten years prior to his election, provided that the President and the Vice President shall not come from the same County." *Lib. Const. Art. 52 (1986)*.

By the same token, the fact that a person is selected to seek a certain office at a particular time cannot be interpreted to mean, as the appellee impresses upon this Court, that the person has all along been desirous of seeking the public office to which he or she has been selected to contest. It is true that in some instances, the person may out rightly express the desire to contest for the office or the desire may be inferred from the fact that the person failed to rebut or reject political advocacies being made in his or her name by "friends" for a particular elective office. But the mere fact that a person is nominated at a particular time to seek an elective public office cannot be a basis for the National Elections Commission interpretation that the person may have harbored or desired the intention to seek such office two or three years prior to the event.

We do not believe that the Legislature intended to subscribe either of such intentions or desire to the law. We do not herein concern ourselves with the wisdom of the Act. Indeed, as we clearly stated in the *Polson-Mappy* case we are not clothed with the authority to determine whether the Legislature acted wisely or not in passing the Act. What we determined was that the Act is constitutional and that it barred certain members of the Executive Branch named in the Constitution and holding presidential appointments from engaging in political activities and contesting elective public offices while still retaining those positions. We do not believe that the use of the word desire detracted from that legislative intent. As the Polson Opinion stated, the wording of the sections, given the intent of the Act, suffered from a language deficit. But that defect in the language of the sections does not, in and of itself, alter the intent of the framers of the law who passed the Act and whose intent was manifest both within the Chambers of the Legislature and over and within the public media, even if the intent is considered, as stated by the appellants, to be absurd. Thus, as much as views may differ as to the wisdom of the specific sections, and their implications for the nation, we believe that the intention of the section was as concluded by the Chairman of

the National Elections Commission; that is, that the Legislature intended that persons holding presidential appointments in the Executive Branch of the Government should resign their appointed positions within the times stated by the Act or be exposed to any one of a number of penalties, including, under the opinion of the Supreme Court in the *Polson* case, disbarment from contesting an elective public position. We hold therefore that Co-appellant Karnwea was covered by the Act, as are all other appointed public officials captured in the *Polson-Mappy* Opinion. We therefore hold that a lack of any formal expression of desire by Appellant Karnwea until his selection by Counsellor Charles Walker Brumskine as his vice presidential running mate on March 18, 2017, did not preclude him from the ambit of the Code of Conduct Act.

Having determined the co-appellant Harrison S. Karnwea, Sr., is covered by the Code, the next issue is whether co-appellant Harrison Karnwea was in violation of section 5.1 of the Code of Conduct for which he could be amendable to sanctions as provided by the Code. We hold he did. We take key interest in the appellee's argument that while still serving as Managing Director of the Forestry Development Authority (FDA), Co-appellant Harrison S. Karnwea convened a press conference at which time he resigned from the governing Unity Party and pledged and committed himself to Co-appellant Liberty Party as a full member and that he indicated at the said conference that the Liberty Party was the best option for the Liberian People in the forthcoming general and presidential elections.

This assertion of the appellee is captured in count 1.1 of the appellee's brief as follows:

> **"The Co-appellant, Harrison Karnwea, until March 9, 2017, served as Managing Director of the Forestry Development Authority ("FDA"). On February 14, 2017, while still serving as Managing Director of FDA, at an elaborate Press Conference, Co-Appellant Karnwea announced his resignation from the ruling Unity Party and joined the Liberty Party. At the said Press Conference, Co-Appellant Karnwea is reported to have said that the Liberty Party represents the best option for Liberia. This constituted Co-appellant Karnwea's first open violation of Part V,**

> **Section 5.1 of the Code of Conduct, which states: All Officials appointed by the President of the Republic of Liberia shall not (a) engage in political activities, canvass or contest for electoral offices; (b) use Government facilities, equipment or resources in support of partisan or political activities; (c) serve on a campaign team of any political party, or the campaign of any independent candidate."**

The above assertion was never refuted by the appellants Harrison Karnwea and the Liberty Party. In fact, it is matter of public knowledge that at such occasions wherein individuals are transferring their membership from one political institution to another, political speeches are made which usually echoed the position that the new institution serves the best interest of the public. In the mind of this Court, said action was an act of engaging in political activities contrary to the plain meaning of section 5.1 of the Code of Conduct which prohibits all officials appointed by the President of the Republic of Liberia from (a) engaging in political activities, canvass or contest for electoral offices; (b) using Government facilities, equipment or resources in support of partisan or political activities; (c) serving on a campaign team of any political party, or the campaign of any independent candidate."

This act of canvassing for a political party while serving as Managing Director was therefore contrary to the Code. Co-appellant Harrison S. Karnwea, having been affected by the Code of Conduct was in violation of the Code when he convened the press conference on the 14th day of February and declared that the Liberty Party was the best option for the Liberian people while he still served as Managing Director of the Forestry Development Authority. While it is true that at the time of the press conference, the Code of Conduct was under a constitutional challenge and that had the Supreme Court adjudged that the Code was unconstitutional, he would have been excused or exonerated from compliance with the affected provisions of the Code, the declaration by the Supreme Court that the Code was constitutional meant that by the press conference Co-appellant Harrison Karnwea was in violation of the Code.

This brings us to the next issue which we believe, although not highlighted by the appellants, requires the attention of the Court. That issue

is whether the Chairman of the National Elections Commission was justified in imposing the penalty of disbarment of Co-appellant Harris S. Karnwea, Sr. from contesting the position of vice presidential candidate to Counsellor Charles Walker Brumskine on the theory that the decision was dictated by the Code of Conduct Act.

Co-appellant Karnwea having violated the Code by engaging in political activities while serving as Managing Director of the FDA, the first penalty at the time of his service was to remove him from office and thereafter prohibit him from receiving compensation from funds appropriated by law for such office. The legislature, noting that individuals would remain in their respective public offices and come in conflict with the Code by engaging in political activities at the detriment of public trust, specifically stated in section 5.9, a subsection of the presently contested provision Part V, Political participation, that:

> **"Any public official, after due process, who is found guilty of violating any provision of this section shall be immediately removed from the position or office held by him/her, and thereafter no part of the funds appropriated by any law for such position or office shall be used to pay compensation to such person."**

However, the appellant having resigned his post as soon as the Supreme Court declared the Code to be constitutional, evidencing respect for the Code after this Court declaration of constitutionality and respect for the decision of this Court, any continued violation of the Code ceased as at that point. Unfortunately, he could not have been dismissed, as per the directive of the Code, as he had already resigned his position. This, however, did not relieve him of other appropriate and reasonable penalty stipulated by the Code, or even the penalty stated in the Opinion of the Supreme Court in the *Polson* and *Kamara* cases if by any further conduct, he could be adjudged of egregious affront to the Code and to the Opinion of the Supreme Court, as would have rendered his Application to contest the office of vice presidency in the ensuing October 2017 Elections rejectable and thereby caused his disbarment from contesting the position for which he had filed the Application.

In the chronology of events, we are informed by the facts that this Court handed down its Opinion in the *Polson* case on March 3, 2017. In that

Opinion, this Court not only declared sections 5.1 and 5.2, and indeed the entire Code as constitutional, but clearly stated that the Code provided that a violation of any of the provision of the Code of Conduct Act would attract the imposition of a range of penalties from dismissal to interdiction or suspension from duty with half pay, and inclusive of all of the following:

(a) Dismissal;

(b) Removal from office in public interest;

(c) Reprimand

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

(e) Demotion (reduction in ranking);

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

(g) Interdiction/suspension from duty with half pay

The Court made it clear, however, that the penalties listed above, stipulated in section 15.1 of the Code of Conduct was not exhaustive as counsel for the Petitioner Polson sought to be impressed upon the Court. The Court explained that given the nature of the ill which the statute sought to cure, coupled with the reference prohibition provisions of 5.1 and 5.2, it believed that the penalties also included disqualification from contesting an elective public office where the aspirant or applicant's conduct was egregious. The National Elections Commission was given the task of making the determination of the precise penalty to be imposed, on an individual case basis, on a violator of sections 5.1 and 5.2. That task or authority, previously vested in the Ombudsman Commission, was transferred to the National Elections Commission by the Legislature by an amendment to the Code which became effective on June 23, 2017. It was in pursuit of this new task or authority conferred on the National Elections Commission that the Chairman of the National Elections Commission purportedly acted when he issued out the Notice of Rejection of the Nomination Application of Co-appellant Harris S. Karnwea, Sr. as the vice presidential candidate to Charles Walker Brumskine on the ticket of Co-appellant Liberty Party and informed him that he was barred by his non-compliance with the resignation provisions of the Code of Conduct. The further question for this Court's resolution then is whether the failure of Co-appellant Karnwea to resign his position two years

prior to the scheduled October 10, 2017 Elections or, stated in the alternative, by resigning from the position of Managing Director of the Forestry Development Authority on March 9, 2017, barely six (6) days after the Code was declared by the Supreme Court as law of the land, constituted an egregious violation of the Code as to warrant the imposition of the penalty of disqualification from seeking elective public office in the ensuing October 10, 2017 Elections.

We hold that under the criteria elaborated upon by this Court in the *Polson* case, the violation was not of an egregious nature and hence did not warrant disbarment from contesting the position of the vice presidency in the ensuing 2017 Elections, and that a lesser penalty stipulated in the Code should have been imposed by the Respondent National Elections Commission. Our conclusion is predicated upon a number of factors, including the sequence of events shown in the records certified to this Court, and which we state herein below.

The records show that on July 6, 2017, Co-appellant Harrison S. Karnwea, Sr. along with Co-appellant Liberty Party, filed with the National Elections Commission an Application seeking approval and certification by the Commission to allow Co-appellant Karnwea to contest the 2017 Elections as a vice presidential candidate to Charles Walker Brumskine on the ticket of the Liberty Party. The Application was accompanied by a Letter of Intent, a Candidate Nomination Printout, Candidate Endorsement Form, a Nomination Application Checklist wherein answers were provided to a number of questions contained therein, a Declaration of Aspirant to Abide by the Political Parties Code of Conduct document signed by the Aspirant, and An Aspirant Questionnaire to Establish Residency, Domicile and Compliance with Code of Conduct for Public Officials, amongst others. On the latter Form, Co-appellant Karnwea was asked if he had held any appointed government position, to which he answered in the affirmative. He was also asked on the form for the position he had held and the period of his service at the institution. To this question he answered that he served as Managing Director of the Forestry Development Authority for the period September 7, 2012 to March 9, 2017. He gave as the reason for his resignation from the said position that he was returning to the private sector to manage his rubber farm.

The records further indicate that the National Elections Commission, upon receipt of the documents from the appellant, on the same day, July 6, 2017, had same forwarded to a Nomination Scrutiny review Body, said to have been a component within the Commission, for its review and a report of its findings. The Report of the Nomination Scrutiny Review Body specified that the Co-appellant had met with all of the requirements for participation in the ensuing October 2017 elections, except as to the Code of Conduct resignation requirement, which it said the co-appellant had failed to present any proof of said compliance. On the basis of the lone finding in the report of non-compliance with the Code of Conduct resignation requirement, the report, signed by a single personnel of the Nomination Scrutiny Review Body, recommended that the Co-appellant's Nomination Application be rejected. There is no indication as to whether the Report was forwarded to the Board of Commissioners, over which the Chairman of the NEC also served as Chairman. What the records do show is that one day after the preparation of the Report, that is July 7, 2017, a Notice of Rejection, over the signature of the Chairman of NEC, informed Co-appellant Karnwea that he was barred by the Code of Conduct for Public Officials from contesting in the October 2017 Elections on account of he having served as Managing Director of a public corporation and failing to resign in line with the Code.

As noted before, there are no indications that any hearing was had, either before the Nomination Scrutiny Review Body or the Chairman of the National Elections Commission or the Board of Commissioners of the National Elections Commission before the Notice of rejection was delivered to Co-appellant Karnwea. The records also do not show that any citations were ever issued by the Nomination Scrutiny review Body to Co-appellant Karnwea or the Liberty Party informing them of a deficiency in the Nomination Application and inviting them to appear to defend prior to the recommend-dation being made or of any intention of that Body to make the said recommendation to reject Co-appellant Karnwea's Nomination Application. Similarly, the records are devoid of any citation, either by the Chairman of the Commission or by the Board of Commissioners of the Commission informing the appellants of the recommendation of the Nomination Scrutiny Review Body and inviting them to appear and defend against the said

recommendation. All that we find in the records is that on July 7, 2017, the Chairman of the Commission, in his capacity as Chairman of the Commission, informed the appellants that the Nomination Application regarding Co-appellant Harrison S. Karnwea, Sr. had been rejected and that the co-appellant was therefore barred from contesting in the October 2017 Elections.

Upon enquiry by this Court, counsel for the Respondent National Elections Commission conceded that under the existing procedure within the Commission, no formal hearing was conducted before the decision was made barring Co-appellant Karnwea, or for that matter any aspirant applying for certification, from contesting any elective public office in the ensuing October 2017 Elections. They admitted that the appellee did not believe that under the circumstances where, in the application the aspirant acknowledged that he or she did not resign prior to the period prohibited by the Code of Conduct there was a need for any hearing to be conducted to determine how or why the aspirant had failed to comply with the Code, and that once that non-compliance was shown on the face of the Application documents, the appellee deemed it sufficient to decide that the Applicant was barred by the Code.

We disagree with how the appellee pursued the process in determining that Co-appellant Karnwea, and for that matter any other Applicant, be barred from participating in the ensuing October 2017 Elections. We hold that regardless of what appeared on the face of the Application, the co-appellant and every other aspirant for an elective public office must be given the opportunity to be heard as to the reason for his or her non-compliance, even if for no other reason than to determine the level of penalty to be imposed upon him or her; and this can be done only after the conduct of a hearing, especially given the National Elections Commission's new responsibility to adjudicate under the amendment made to the Code of Conduct Act. This Court has said consistently, and per the mandate of the Constitution and statutory laws of this nation, that "No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law." LIB. CONST.

ART 20(a) (1986); *Abu Bana Kamara v. National Elections Commission*, Supreme Court Opinion, March Term 2017, delivered March 3, 2017.

We wonder how the appellee, National Elections Commission, made a determination of the penalty to impose on a particular candidate in the face of an alleged violation of the Code without conducting a full investigation in order to ascertain the severity of the violation. Even the provision of the Code of Conduct, which the appellee profess to be enforcing, when any violation is found, the accompanied penalty is not a strict liability imposition; but vary from one circumstance to another. See Sections 5.9 and 15.1 of the Code of Conduct.

That is why this Court has occasionally held that although "election's hearing conducted by NEC is an administrative hearing which is not hinged on the strict rules of Court, the basic requirement is a formal notice of the complaint or violation in the instant case, a date, time and place for hearing of the matter to be investigated. *Tokpa v. National Elections Commission, et al., Supreme Court Opinion, March Term 2015; Chambers v. NEC, Supreme Court Opinion,* March Term, 2015.

Madam Justice Yuoh speaking for this Court in the *Tokpa case* espoused thus:

> **"This is why we continue to admonish the NEC and other administrative bodies exercising quasi-judicial functions and lawyers appearing before these bodies that hearings within these respective institutions are investigative in nature and that the technical procedures obtaining in courts cannot be strictly applied *except those mandatory requirements pertaining to due process and other fundamental rights*." [Our Emphasis]**

We say emphatically that the Elections Law provides that all decisions of the Commission must be taken by majority of those commissioners constituting a quorum for the transaction of business. Section 2.4 of the law provides: *"Any three (3) members at 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."*

Similarly, section 2.10(c) provides:

> **"For the purpose of expediting the hearings and determination of all election offenses; and other business of the Commission shall apportion the Republic into five (5) administrative areas and assign a commissioner to an area who shall, in consultation with the Commission *en bane,* direct and supervise all 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."**

There being no record that the National Elections Commission conducted any hearing prior to its rejection of the appellant, followed by the concession of the lawyers appearing for the NEC, we hold that the NEC committed serious error when it rejected the appellant without conducting a hearing and that the rejection documents signed singularly by Chairman Korkoya does not constitute the decision of the Board of Commissioners as anticipated by law.

Indeed, only three days ago, on July 17, 2017, this Court, in the case *Abu Bana Kamara v. National Elections Commission,* faced with a similar challenge to the rejection by the National Elections Commission of an aspirant in an identical manner, held that the National Election Commission committed a serious error in not according the aspirant due process of law before rejecting his application and proceeding to declare him barred from contesting an elective public position in the ensuing October 2017 Elections. This Court said that no such determination can or should be made without the aspirant and his or her political party being accorded a hearing and an opportunity to enjoy the due process right accorded by the Constitution. Here is how this Court framed its response to the admitted denial of the due process of law right by the National Elections Commission in barring aspirants vying for elective public offices in the October 2017 Elections:

> **"The right to due process is a fundamental constitutional protection; no person can be deprived of that right by any agency of the Government, whether of the Legislature, the Executive, the Judiciary or any other forum. The right was couched in the Constitution of Liberia from the very inception of the nation's independence in 1847 and it remains enshrined in our present Constitution (1986). Even when Liberia experienced the trauma of a military coup and a civil armed conflict, the right was maintained and adhered to by this Court. Due process is therefore at the very core of our jurisprudence. Thus, we are not prepared to tolerate any departure from this long standing**

> **valuable principle which we have upheld in a long line of cases. [IBM v Tulay, 33LLR 105, 112 (1985); Wilson v Firestone Plantations Company Plantations Company and the Board of General Appeals, 34 LLR 14 (1986); The Middle East Trading Company V Chase Manhattan Bank, 34 LLR 419, 429-430 (1986); Expressing Printing House, Inc. v Reeves, 5 LLR 455, 464 (1988); Mensah v Wilson, 37 LLR 656, 662 (1994); Salala Rubber Corporation v. Garlawolu, 39 LLR 609, 616-617 (1999); Republic v the leadership of the Liberian National Bar Association, 40LLR 635 (2001); Snowe v Some Members of the House of representatives, led by Honourable Kettehkumehn Murray, Supreme Court Opinion, October Term, 2006, decided January 29, 2007); Liberia Telecommunications Authority v West Africa Telecommunications, Inc., Supreme Court Opinion, March Term 2009, decided July 23, 2009]". See also *Abu Bana Kamara v. The National Elections Commission,* Supreme Court Opinion, March Term, A. D. 2017, delivered July 17, 2017.**

As noted before the principle articulated by this Court in the Kamara case is not new to our jurisprudence; it dates back as far as the inception of the Republic. In this Court's still most monumental Opinion, handed down in the case *Wolo v. Wolo*, 5 LLR 435 (1937), this is how the Supreme Court addressed the issue of due process:

> **"The essential elements of due process of law are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case. In fact one of the most famous and perhaps the most often quoted definition of due process of law is that of Daniel Webster in his argument in the Dartmouth College case, in which he declared that by due process of law was meant 'a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial.' Somewhat similar is the statement that it is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression and can never be upheld where justice is fairly administered. 6 R.C.L. Constitutional Law, 8:442." *Wolo v. Wolo*, 5 LLR 423 (1937).**

Since that Opinion, given while the 1847 Constitution was in effect, our forebears have held it sacred to the Republic, such that in the new Constitution, adopted by the people of Liberia in 1985 and which became effective in January 1986, the people of Liberia not only upheld and reinforced the principle; they elaborated even more on the principle and its value, believing that much of the survival of the nation depended on the rigid adherence by all of the nation's institutions and functionaries to the principle. The National Elections Commission is no exception. Accordingly, we hold herein, the same as we did in the Kamara case, recently decided, that the National Elections Commission must mandatorily adhere to this principle in every case in which it makes a determination as to whether an aspirant will

be certificated or not to participate in or contest any elective public position, whether in a general election, by election or any other public elections. This Court will accept nothing short of adherence to this sacred constitutional principle. Predicated thereupon, we hold further that the Respondent national Elections Commission was in grave breach, both of the Constitution and the statutory laws of Liberia, including the Elections Law, in not according to Co-appellant Harrison S. Karnwea, Sr. and the Liberty Party the right of a hearing before deciding that Co-appellant Karnwea, the vice presidential aspirant on the Co-appellant Liberty Party ticket, was rejected and disqualified from contesting the mentioned position.

The Regulations promulgated by the Commission itself mandates that the Commission will adhere to the due process of law. NEC's Candidate Nomination Regulation, issued May 6, 2016, Article 11, under the caption "Scrutiny of the Candidate Nomination Application, at paragraph 11.1 states unambiguously that: "During the candidate Nomination period, the NEC may take all lawful steps that it deems necessary, including the holding of hearings, to verify that information and documentation submitted by potential candidates are accurate and that the candidate is qualified under the Constitution, the New Elections Law, and other laws of Liberia and NEC Regulations." That Regulation clearly sets out the NEC's recognition of the need for a due process hearing before it makes a decision in respect of deciding whether a candidate should be barred or is disqualified from contesting an elective public office. And while the Regulation uses the word "may", the NEC does not have the discretion or the option of deciding whether to grant the due process to an aspirant or not, given that the right is a mandatory one under both the Constitution and the statutory laws of the land.

The adherence to the due process of law principle is made even more manifest by the fact that this Court, in its Opinion in the case Selena Mappy-Polson v. Republic of Liberia, decided on March 3, 2017, at its October Term, A. D., 2016, very clearly stated that the Code of Conduct did not stipulate as a penalty for any noncompliance with or violation of the Code of Conduct the sole or lone penalty of disbarment from participation in any public elections. To the contrary, the Court, disagreeing with the petitioner's contention that

the Legislature intended that only the penalties expressly stipulated in the Code, being the following: (a) Dismissal; (b) Removal from office in public interest; (c) Reprimand; (d) Fine or making good of the loss or damage of public property/assets; (e) Demotion (reduction in ranking); (f) Seizure and forfeiture to the State of any property acquired from abuse of office; and (g) Interdiction/suspension from duty with half pay, were applicable to violations of the Code, stated that the Legislature must also have intended that disbarment or disqualification should be one of the penalties to address the evil which the Code intended to cure.

Thus, it was this Court, in its interpretation of the Code of Conduct and its declaration of constitutionality of the Code in the *Polson* case, that held that the intent of the Legislature was not to limit the sanctions or penalties to the range stated in the Code but to also include as part of that range the disqualification from contesting for an elective public office. By the Opinion of this Court, therefore, disbarment, which was reasoned by this Court to be a part of the range of penalties contemplated by the Legislature, was only one of the penalties to be applied by the National Elections Commission, not the only penalty available in the case of a violation of the Code by an aspirant. Indeed, the Opinion of this Court in the *Polson* case was very clear that the application of this most severe penalty should only be resorted to by the enforcement agency where it was demonstrated before the NEC [at the time of the Opinion and prior to the amendment made by the Legislature to the Code the Ombudsman Commission], after a due process hearing, that the violation was of an egregious nature. The determination of what penalty should be imposed could only have been made where there was a due process hearing so that the aspirant is given the opportunity to explain his or her conduct.

In the instant case, there is no evidence in the records that due process was accorded to the appellants by the Nomination Scrutiny Review Body of the National Elections Commission or that the recommendation of the Nomination Scrutiny Review Body was taken to the Board of Commissioners of the National Elections Commission for a due process hearing and final determination by the Board, as required by law.

We reiterate that this is the standard which the Respondent National

Elections Commission must adhere to in all matters placed before it to determine not only whether an aspirant is in violation of the Code but also as to the appropriate penalty to be imposed. We should state further that since the Opinion of this Court in the *Polson* case, setting the standard that the National Elections Commission should apply in making its determination as to whether an aspirant is barred or not from contesting an elective public position in the October 2017 Elections, no amendments have been made by the Legislature to the Code setting a different standard than that set by this Court in the *Polson* case. As such, the standard articulated by this Court in the *Polson* case remains the governing standard for determining whether an aspirant is barred or disqualified from contesting an elective public position in the October 2017 Elections.

Applying that standard to the instant case, we do not believe that the penalty of disbarment imposed on Co-appellant Harrison S. Karnwea by the National Elections Commission conformed to the standard stated in the *Polson* case and reaffirmed in the *Kamara* case, as we do not believe that the facts, as culled from the records, indicate that the failure by Co-appellant Karnwea to comply with the Code was of an egregious nature, he having substantially complied with the Code of Conduct Act. In the *Kamara* case, this Court deemed the violation of the Code by Mr. Kamara to be egregious because even as he sought to challenge his disbarment by the National Elections Commission from contesting an elective public office in the ensuing October 2017 Elections, he continued to hold onto the office of Assistant Minister of Post and Telecommunication, including even up to the date of his filing of his application with the Commission, the filing of his petition for the writ of prohibition before this Court, and the handing down of the Opinion and Judgment of this Court. Co-appellant Harrison S. Karnwea, Sr., on the other hand, is placed in a completely different category. The records show that although prior to the decision in the *Polson* case Mr. Harrison S. Karnwea, Sr. held onto his position as Managing Director of the Forestry Development Authority, as in fact the Code was under a constitutional challenge, once the decision of this Court was handed down in the *Polson* case wherein this Court declared that the Code was constitutional, Mr. Karnwea, unlike Mr. Kamara, almost immediately following this Court's

decision, resigned his position as Managing Director of the Forestry Development Authority. This Court's Opinion in the *Polson* case was handed down on March 3, 2017. It was less than a week thereafter, on March 9, 2017, that Mr. Harrison S. Karnwea, in compliance with and adherence to the declaration of constitutionality of the Code, tendered in his resignation, thereby manifesting and demonstrating every intention and thereby being in substantial and appreciable compliance with the dictate of the Code, as per the Opinion of this Court.

Thus, while we hold that the conduct of Co-appellant Harrison S. Karnwea in not resigning two years prior to the date of the ensuing October 2017 Presidential and General Elections was in violation of the Code of Conduct, we do not believe, from our review of the records certified to this Court, that his action was of an egregious nature that warranted disbarment from contesting the position for which he had applied for certification from the National Elections Commission. We therefore, consistent with what we have said herein, reverse the decision of the Respondent National Elections Commission barring Mr. Harrison S. Karnwea, Sr. from contesting the position of vice president in the ensuing October 2017 Elections.

However, as this Court cannot take evidence to determine the penalty which should be imposed on Mr. Karnwea for his violation of the Code, short of disbarment, and within the range stated by the Code, we remand the case with instruction that the National Elections Commission conducts a hearing, consistent with due process of law, and then impose the appropriate penalty, within the range stipulated by the Code and consistent with this Court's Opinion. We hold further that any Notice of Rejection of a political aspirant seeking certification to contest an elective public office be signed by all members of the Board of Commissioners who are in agreement with the decision, and that all members of the Board of Commissioners who signed unto the decision must also sign the bill of exceptions.

Accordingly, because we have decided, from our review of the records, that the violation of the Code committed by Co-appellant Harrison S. Karnwea, Sr. was not of an egregious magnitude as to warrant rejection of his application or being barred or disqualified from contesting the position stated in the application, we direct that the case be remanded to the National

Elections Commission for the imposition of the appropriate penalty, short of disqualification of Co-appellant Karnwea, and that the penalty be within the range stipulated by the Code. We also direct that given the urgency of the electoral process which is currently underway before the National Elections Commission, that the Commission should conclude the hearing and make its determination of the penalty not later than forty-eight hours following the receipt of the mandate of this Court. We hold and direct further that the standard laid herein, being that where an applicant has resigned his position prior to filing any application before the National Elections Commission, thereby showing substantial compliance with the Code, as of the date of the decision of this Court in the *Polson* case, the violation is not be considered of an egregious nature and hence the National Elections Commission shall apply only the applicable penalty laid in the Code short of disbarment or disqualification.

Wherefore and in view of the foregoing, the decision of the Respondent National Elections Commission is hereby reversed and the case is remanded to the Commission for its determination of the penalty to be imposed on Co-appellant Karnwea for violation of the Code, ensuring that the due process of law principle is fully adhered to and that the penalty is within the range set by the Code, commensurate with the gravity of the violation, but excluding disbarment or disqualification since, as we have stated, the co-appellant's violation was not of an egregious nature.

The Clerk of this Court is ordered to communicate with the parties on the decision of this Court and send a Mandate to the Respondent National Elections Commission directing it to act pursuant to the judgment of this Court. AND IT IS HEREBY SO ORDERED.