

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2022

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

Honorable James P. Biney et al., of the NPP)
.....Appellants)
)
Versus) APPEAL
)
Thomas Pluto et al., of the NPP)
.....Appellees)
)
GROWING OUT OF THE CASE:)
)
Thomas Pluto et al., of the NPP)
.....Complainants)
)
Versus) ACTION:
) BREACH OF NPP CONSTITUTION
)
Honorable James P. Biney et al., of the NPP)
..... Respondents)

Heard: March 23, 2022

Decided: August 4, 2022

MADAME JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This appeal emanates from the ruling of the Board of Commissioners of the National Elections Commission (NEC), which affirmed a ruling by its Hearing Officer, regarding a controversy and intra-wrangling among partisans of the National Patriotic Party (NPP) as to the leadership of the NPP and the holding of the NPP’s Biennial Convention.

It is the law that all courts, including the Supreme Court take judicial notice of their own records pursuant to Section 25.2 of the Civil Procedure Law. Therefore, we deem it necessary to commence our review of this appeal from what we have determined to be the genesis of the present appeal, found in the case: *Jewel Howard Taylor et al, v. the NPP by and thru Mr. James P. Biney et al*, in order to appreciate the entire facts and circumstances of this case, and for this Court to bring the matter to finality.

The records in the case: *Jewel Howard Taylor et al, v. the NPP by and thru Mr. James P. Biney et al* show that on August 12, 2020, the NPP by and through its National Chairman, Mr. James P. Biney; Vice Chairman, Mr. George Mulbah;

Secretary General, Mr. Andrews Peters; Chairlady Ms. Mary Johnson; Youth Chairperson, Cyrus Kamara; and members of the National Executive Committee filed a petition for declaratory judgment in the Sixth Judicial Circuit, Civil Law Court, Montserrat County, sitting in its June Term A.D. 2020 against Mrs. Jewel Howard Taylor, Standard Bearer of the NPP and all those acting under her authority and control. The petition requested *inter alia* that the trial court declare that the petitioners, Mr. Biney et al, are the legitimate leaders of the NPP; that the respondents, Mrs. Jewel Howard Taylor et al, have no authority to convene meetings, establish sub-committees, issue communications in the name of the party, or revise the NPP constitution; that the 2004 NPP constitution and its amendments adopted in 2016 in Tubmanburg City, Bomi County are the only valid constitutional instruments of the NPP; and that the NPP be allowed to hold its Biennial Convention on the 2nd Saturday of December 2022.

Upon receipt of the trial court's precepts, Mrs. Jewel Howard Taylor, et al filed returns wherein they alleged *inter alia* that Mrs. Howard Taylor is the Standard Bearer of the NPP, by virtue of which she is responsible to execute all policies and decisions of the National Executive Committee of the NPP; that the National Executive Committee of the NPP under her leadership was within the pale of the law to review the NPP Constitution; that all the tenure positions of the petitioners had expired; and that declaratory judgment is inapplicable to the petitioners.

On September 18, 2020, the Resident Judge presiding over the Sixth Judicial Circuit, Civil Law Court, His Honor J. Kennedy Peabody upon listening to oral arguments, entered final ruling in favor of Mr. James Biney and his corps of officers stating that they are the proper and lawful authorities within the NPP to convene meetings of the party and issue out communications in the name of the party; to convene the Biennial Convention of the NPP; and that the decision of the NPP National Executive Committee to review the NPP's Constitution under the authority of Mrs. Jewel Howard Taylor as Standard Bearer is illegal.

Mrs. Jewel Howard Taylor et al noted exceptions to that final ruling of the Civil Law Court, announced and perfected their appeal to the Supreme Court. However, on March 21, 2021, Mrs. Jewel Howard Taylor et al subsequently filed a notice of voluntary discontinuance, requesting the Supreme Court's approval of the withdrawal of the appeal. Due to the fact that the filing of a notice of withdrawal of an appeal is not automatic but rather by leave of the Supreme Court pursuant to Rule 2 of the Revised Rules of the Supreme Court, on March 23, 2022, the counsel

representing Mrs. Taylor et al, by leave of Court made a submission on the records requesting the Court's approval of the said withdrawal of the appeal.

The appellees in that appeal, Mr. James P. Biney et al., having interposed no objections to the notice of voluntary discontinuance or the submission, the Court informed the parties that it will enter a Judgment Without Opinion ordering the matter withdrawn from the docket of the Supreme Court. The final ruling from the Sixth Judicial Circuit, Civil Law Court remained pending on appeal before the Supreme Court for final review and determination, and is referenced by the parties in the present appeal from the NEC.

As to the present appeal, the records show that eight (8) months after Mrs. Jewel Howard Taylor et al filed their notice of voluntary withdrawal and discontinuance of their appeal, that is, on November 30, 2021, the present appellees, Mr. Thomas Pluto et al., filed a complaint with the National Elections Commission (NEC) wherein they alleged among other things, that the leadership of Co-Appellant James Biney and Co-appellant Andrew Peter had expired; that Co-appellant Andrew Peter, Secretary General of the NPP is selecting delegates from the counties for the Biennial Convention contrary to the NPP's constitution; and that the NEC should intervene and resolve the crisis in the NPP.

On December 3, 2021, the Director for Political Affairs of the NEC, Ignatius Wesseh upon receiving the appellee's complaint, convened a conference between the parties and it was agreed by all the parties that the appellees, Thomas Pluto et al submit their dispute to the NPP Grievance & Ethics Committee as required by Section 3.3(a) of the NEC Regulations and Guidelines relating to Political Parties and Independent Candidates. The applicable provision of the said regulations and guidelines provides thus:

“every political party shall ensure the creation of a Grievance and Ethics Committee in its structure. The Grievance and Ethics Committee shall ensure that every partisan is given due process in time of disputes.

All intra-party disputes must first be heard and disposed of by the Grievance and Ethics Committee. Partisans who are dissatisfied with a decision of the Grievance & Ethics Committee may appeal to the Executive Committee of the Party.”

The records show that in compliance with the above regulations and guidelines, on December 4, 2021, the appellees filed a complaint before the Chairman of the NPP, Co-appellant James P. Biney requesting that he forward their grievances to the NPP's Grievance and Ethics Committee as instructed by the NEC. However, we see that before the NPP's Grievance and Ethics Committee could act on the appellees' complaint and within two days after the filing of the complaint before co-appellant Biney, the appellees on December 6, 2021 again returned to the NEC and filed a second complaint wherein they alleged that the appellants have ignored their grievances filed before the NPP's Grievance & Ethics Committee; that Co-appellant James Biney and Co-appellant Andrew Peters are changing the date and venue of the NPP's Biennial Convention without the consent of the National Executive Committee and that the NEC should intervene to ensure the NPP's National Executive Committee decide the date and venue of the NPP's Biennial Convention.

On the date of the commencement of this second complaint on December 17, 2021, presided over by the Hearing Officer, Cllr. Muana S. Ville, the appellants made submission, requesting the Hearing Officer to dismiss the case on grounds that the appellees failed to exhaust the NPP's Grievance & Ethics Committee as mandated by Section 3.3(a) of the NEC Regulations and Guidelines relating to Political Parties and Independent Candidates, already quoted *supra*. In their resistance to the submission, the appellees asserted that the appellants had changed the date and venue of the NPP's Biennial Convention.

The Hearing Officer denied the appellants' submission and issued a preliminary injunction, enjoining the holding of the NPP's Biennial Convention. The appellants appealed this decision of the Hearing Officer to the NEC Board of Commissioners, but the latter on January 14, 2022, denied the appellants' appeal principally on the basis that the Hearing Officer having already commenced with the investigation into the complaint, same should be proceeded with and the appellants should reserve the right to raise this issue in their bill of exceptions when the entire case is being reviewed on appeal by the Board of Commissioners. The Board then instructed the Hearing Officer to resume jurisdiction and continue the investigation.

On January 28, 2022, the Hearing Officer of the NEC, Cllr. Muana S. Ville, resumed jurisdiction into the investigation at which time the appellants again made a submission, requesting the Hearing Officer to dismiss the case on grounds that the appellees failed to exhaust the NPP's internal dispute mechanism as was directed by the NEC. The appellees resisted the submission, asserting that the appellants lacked

legitimacy since their tenure had expired; that the appellants had changed the date and venue of the NPP's Biennial Convention rather than address the issues raised in their complaint before the NPP's Grievance & Ethics Committee; and that the appellants' submission being unmeritorious, same should be denied.

The Hearing Officer, upon entertaining oral arguments, denied the appellants' submission on the basis that the Board of Commissioners of the NEC having mandated that he resume jurisdiction and proceed with the investigation into the appellees' complaint, he could not grant the appellants' motion to dismiss the said complaint. Immediately thereafter, the appellees qualified two of their witnesses in person of Thomas Pluto and Puwoo Wesseh who basically narrated the allegations stated the appellees' two complaints filed before the NEC on November 30, 2021, and December 6, 2021, respectively.

The appellants for their part produced three witnesses in person of Co-appellant Peter Andrew, Ballah Harbert, and Lawrence George. These witnesses basically testified that pursuant to the final ruling of the Sixth Judicial Circuit, Civil Law Court, Montserrado County, the appellants are the legitimate leaders of the NPP; that the NPP National Executive Committee has approved the holding of the Biennial Convention; that the appellants are willing to hold the NPP's Biennial Convention and usher in a new team of leadership but the appellees are always stalling the convening of the Convention.

After the parties rested with the production of evidence, the Hearing Officer on March 24, 2022, ruled granting the appellees' complaint and ordered the establishment of a Convention Coordinating Committee to conduct the NPP Biennial Convention. Excerpt of the Hearing Officer's ruling is quoted herein below, to wit:

“The Hearing Officer has determined that the controversy presented is the holding of a credible and acceptable Biennial Convention by the NPP. We therefore hold that [since] Respondent Biney's leadership has lost legitimacy by virtue of the expiration of tenure, [he should] step aside to make way for the holding of the 7th Biennial Convention to be conducted by a Convention Coordinating Committee comprising of credible and experienced partisans of the NPP. We hold further that Partisan Nyundweh Monokormana of the NPP cause the hosting of steward meeting of the NPP for the purpose of constituting a Convention Coordinating Committee that will lead the NPP to its 7th Biennial Convention. Partisan Monokormana's

selection is based on a careful review of the records available at the Commission, his independence and public record. The steward meeting mentioned herein must be opened to all interested partisans of the NPP including the parties involved in this action. Partisan Monokormana is hereby further mandated to submit the names of members of the Convention Coordinating Committee to the Political Affairs Section of the NEC within twenty one working days as of the rendition of this ruling.”

The appellants appealed the Hearing Officer’s ruling to the Board of Commissioners, which affirmed the ruling of the Hearing Officer. The appellants noted exceptions thereto, announced an appeal to the Supreme Court and on May 12, 2022, filed a 12 count bill of exceptions basically alleging that the Board of Commissioners of the NEC erred by confirming the hearing officer’s ruling which dissolved the entire leadership structure of the NPP; that the establishment of the Convention Coordinating Committee has no legal support in the NPP’s constitution or the Act creating the National Elections Commission; that the Board of Commissioners erred by ignoring Article 5 subsection 5.1 of the NPP’s Constitution which authorizes the Chairman of the NPP to preside over the NPP National Executive Committee, serve as Ex-officio on every sub-committee and conduct the NPP Biennial Convention; and that the Board of Commissioners ignored the fact that the tenure of other members within the NPP leadership were still current and as such they had the right to steer the affairs of the NPP in the absence of the Chairman rather than dissolve the entire NPP leadership and order the establishment of an Convention Convention Coordinating Committee. We quote herein below counts 1, 2, 5, 6, 11, and 12 of the appellants’ bill of exceptions, to wit:

1. “That Your Honors of the Board of Commissioners committed reversible error when it outrageously ignored and overlooked the manner of the controversy and ruled contrary what it termed, amongst other things “that with the tenure of Honorable James P. Biney and other partisans elected at the NPP’s February 2016 Convention (either to serve for four or six years as per the NPP’s Constitution) having expired, the said partisans are without authority to steer the affairs of the NPP”
2. That, your Honors committed reversible error, when they in their ruling ruled “that an Interim Convention Coordinating Committee, comprising seven persons be established to take the NPP to its Seventh Biennial Convention. At the said Convention, the Convention Coordinating Committee shall give the Leadership of Honorable James P. Biney the opportunity to make a report of its stewardship”. This decision of the

Board of Commission grossly runs contrary and violates *Article 5, subsection 5.1 of the NPP's Constitution which states inter alia, the duty of the National Chairperson. "The National Chairperson shall be the general supervisor of the management and administration of the Party. He/She shall administer the affairs of the party within the framework of the bylaw and constitution of the party as well as by established policies approved by the NEC, and shall preside over all meetings of the party, including the National Executive Committee, the Biennial Convention and the National Convention. The National Chairperson shall convene all meetings of the Biennial Convention, National Convention and the National Executive Committee. He shall be the official spokesman of the party. He/She shall be an ex-officio of all committees"*. Appellants say that the Board of Commissioners of the National Elections Commission, having ignored the principles and laws controlling and ruled contrary, its decision is reversible, hence this Bill of Exceptions.

5. That Your Honor erred in its ruling when it inadvertently failed and neglected to outline the legal basis on which its decision regarding the above captioned cause was based, *in that the entire ruling is without any applicable law or precedent whether from Constitution of the NPP, the elections laws of Liberia, the Constitution of the Republic of Liberia, the statutes in this jurisdiction to satisfy condition on the basis of which the ruling was made.*
6. That, Your Honors committed reversible error when it mentioned in its ruling that, "In the event that Appellants and Appellees herein cannot agree on a person to serve as Chairman of the said Interim Convention Coordinating Committee, the Political Affairs of NEC will submit a list of three eminent Liberians from Appellants and Appellees on one person to serve as Chairman. If after the said submission by the NEC, Appellants and Appellees cannot agree on the said person, the NEC shall designate a neutral person, association or group to take the NPP to Convention." Appellants say that, this provisions of Your Honors' ruling manifests the Board's decision to declare the NPP's Constitution and functionalities void and ineffectual because the NPP is a lawful and constitutional Political Party within the Political sphere and jurisdiction of this Republic and that any attempt to bring a neutral body to oversee elections within the NPP's structure amount to interference which cannot and should not be tolerated by either side of the Political divide of the NPP.
11. Appellants say that Your Honors committed reversible error when in wanton disregard of the Constitution of the NPP, specifically section 5.6 (g) which says that "the Secretary General shall act as chairperson of the party in the absence of the chairperson and the vice chairperson." In the instant case at bar, the Secretary General could be the more suited person, and situated to lead the party and not to appoint an Interim Convention Coordinating Committee, as contained in Your Honors' ruling.

Appellants further say that assuming without admitting that Chairman Biney of the NPP tenure of service has expired, the suited person in line of duty of the NPP is the Secretary General whose tenure is yet to be expired

because the delayed Seventh (7th) Biennial Convention which should have been held on second (2nd) Saturday in December 2020, which was also rescheduled for Second Saturday in December 2021 was only intended for the officers elected for the four (4) years consistent with Article 9, Section 9.1 and not an Interim body as mentioned in Your Honors' ruling.

12. Appellants say that Your Honor erred when you ignored the Constitutionality of the structure of the leadership of the NPP and ruled to the effect that the Biney's leadership to include the Standard Bearer, Secretary General, all assistant secretaries, county chairpersons and heads of party auxiliaries all of whom enjoy six (6) year tenure were expired, without due regard to the Constitution of the Party, Appellants say that, Article 3, Section 3.2 (c), captioned National Executive Committee, Section 5.1, captioned the Functions of the National Chairperson and 9.1 captioned Tenure of the NPP Constitution are all relevant embodiment and cogent provisions of the NPP's Constitution that can be used to resolve the impasse within the National Patriotic Party and not by inclusion and appointment of neutral persons and organization outside of the NPP as contained in the ruling of the Board of Commissioners. The failure and neglect of the Board to give legal consideration to the laws and issues at bar and ruled contrary, the Decision of the Board being unsupported by law, the same is erroneous and reversible."

Having meticulously presented the facts and circumstances surrounding the controversy within the National Patriotic Party (NPP) and the contentions raised by the parties, this Court says that the questions it needs to address in bringing finality to this appeal are:

- 1) Whether the NEC erred when it denied the appellants' submission to dismiss the complaints by the appellees for their failure to comply with Section 3.3(a) of the NEC Regulations and Guidelines relating to Political Parties and Independent Candidates. and
- 2) Whether or not the NEC had the authority to order the establishment of a Convention Coordinating Committee to hold the NPP Biennial Convention and ousting the current leadership?

We shall address these two issues in the order of presentment. As to the first issue raised as to the NEC's denial of the appellants' motion to dismiss the appellee's complaint pursuant to Section 3.3(a) of the NEC Regulation and Guidelines relating to Political Parties and Independent Candidates, this Court holds in the affirmative.

It is a principle of Administrative Law, that rules and regulations of administrative agencies have the full force and effect of law and an administrative agency, such as the NEC has an obligation to follow its own rules, regulations, and precedents. Am Jur 2d *Administrative Law*, § 237 - 238.

In the instant case, the NEC should have compelled the appellees' compliance with its directive to first exhaust the NPP's internal dispute mechanism pursuant to Section 3.3(a) of the NEC Regulations and Guidelines Relating to Political Parties and Independent Candidates which we have already quoted herein above.

The records show that on December 4, 2021, the appellees attempted to comply with the said regulations and guidelines when they filed their complaint before the Chairman of the NPP but immediately thereafter abandoned same by filing a second complaint before the NEC on December 6, 2021, without allowing the NPP Grievance & Ethics Committee to hear and decide their complaint.

It was based upon this failure of the appellees to pursue and exhaust their complaint before the NPP Grievance & Ethics Committee which impelled the appellants to request the dismissal of the appellees' complaint as they were in violation of said Section 3.3(a) of the NEC Regulations and Guidelines, but their request was denied. The records show that although the NEC's Board of Commissioners initially acknowledged the legality of the above quoted regulations in its interlocutory ruling of January 14, 2022, when it ruled the matter for hearing on its merits, the Board however subsequently decided to ignore this provision in its final ruling on May 6, 2022 on ground that the appellants' leadership lacks legitimacy over the NPP, a fact that does not justify a departure or violation of Section 3.3(a) of the NEC Regulation and Guidelines Relating to Political Parties and Independent Candidates.

This Court says that even if we were to accept the NEC's reasoning stated in its May 6, 2022, ruling that the appellants lack legitimacy, the NEC by operation of law will still be in error because "lack of legitimacy" as the NEC claims, is not an exception for departure of established administrative rules. Am Jur 2d *Administrative Law*, § 237

This Court says that because there are no exceptions or justification, both in law and fact, for the NEC's disregard and departure from its own rules, we hold that the NEC and all registered political parties and independent candidates are bound

to up hold the said regulations and guidelines and that the NEC erred when it denied the appellants' submission to dismiss the appellees' complaints.

We shall now address the second issue which is whether or not the NEC had the authority to order the establishment of a Convention Coordinating Committee to hold the NPP Biennial Convention. In disposing this issue, a recap of salient facts and applicable laws are relevant.

As earlier stated herein, on September 18, 2020, Judge J. Kennedy Peabody, Resident Circuit Judge, Sixth Judicial Circuit, Civil Law Court, Montserrado County, ruled declaring that the National Chairman of the NPP, James P. Biney and his corps of officers are the proper and lawful authorities to convene meetings of the party, issue out communications in the name of the party, and to convene the NPP's Biennial Convention. Also as stated earlier, on March 21, 2021 Mrs. Jewel Howard Taylor et al subsequently filed a notice of voluntary discontinuance, requesting the withdrawal of their appeal from the Supreme Court.

This Court says that while the appeal in the case: *Jewel Howard Taylor et al, v. NPP*, and the notice of withdrawal filed by the appellants in the said case remained undetermined before the Supreme Court, the matter was *sub judice*. Hence, the NEC was without authority to render any decision ordering the establishment of a Convention Coordinating Committee to conduct the National Patriotic Party (NPP) Biennial Convention, ousting the present NPP's leadership, when the Civil Law Court had already declared Mr. Biney and the corps of officers as the legitimate leaders of the NPP responsible to conduct the Biennial Convention and had also declared the holding of the Biennial Convention. And as aforestated, the appellants in the *Jewel Howard Taylor et al, v. NPP* case having appealed that ruling to the Supreme Court, the latter became seized of the entire ruling of the Civil Law Court and the NEC could not assume jurisdiction over the same subject matter contained in the appeal regarding the issue of tenures of the leadership of the NPP and the convening of the NPP's biennial convention. The appeal to the Supreme Court stayed all actions and/or intrusion into the subject matter contained in the appeal. Hence, we hold that the NEC erred when it proceeded to establish the said Convention Coordinating Committee when the matter was still pending undetermined before the Supreme Court.

Further, the certified records show that at the time of commencement of the various petitions and complaints, the tenures of the leadership of the NPP were

current. Had it not been for the intra wrangling within the NPP that led to the filing of a petition for declaratory judgment on August 12, 2020, by the NPP National Chairman, Mr. James P. Biney, et al., in the Civil Law Court, and the subsequent appeal and complaints that ensued, the NPP National Chairman and his corps of officers, pursuant to Article 5 subsection 5.1 of the NPP Constitution would have convened and conducted the Biennial Convention. Therefore, it was no fault of the leadership for the expiration of their tenures during the pendency of all of these suits and counter suits.

Now, the Supreme Court having granted the request to withdraw the appeal in the *Jewel Howard Taylor et al, v. NPP* case and has entered its Judgment Without Opinion, mandating the trial court to resume jurisdiction over the *Jewel Howard Taylor et al, v. NPP* case emanating from the petition for declaratory judgment and enforce its final ruling of September 18, 2020, the said ruling is conclusive and binding on all the members of the NPP.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the NEC is reversed. The Convention Coordinating Committee set up by the NEC is hereby set aside, especially in light of the granting of the request for the withdrawal of the appeal in the case: *Jewel Howard Taylor et al, v. NPP* which made the September 18, 2020, final ruling of the Sixth Judicial Circuit, Civil Law Court, Montserrado County, conclusive. The Clerk of this Court is hereby ordered to send a mandate to the NEC to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are ruled against the appellees. AND IT IS HEREBY SO ORDERED.

Appeal granted

When this case was called for hearing, Counsellor Stanley S. Kparkillen appeared for the appellant. Counsellor Counsellor M. Wilkins Wright appeared for the appellees.