

BEFORE 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

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The Unity Party (UP) and All Liberian Party (ALP),  
Republic of Liberia .....Appellants  
Versus  
The Collaborating Political Parties (CPP),  
Republic of Liberia.....1<sup>st</sup> Appellee  
And  
National Elections Commission (NEC), Republic  
of Liberia.....2<sup>nd</sup> Appellee } APPEAL

GROWING OUT OF THE CASE:

The Unity Party (UP) and All Liberian Party (ALP),  
Republic of Liberia .....Appellants  
Versus  
The Collaborating Political Parties (CPP), by and thru  
The Alternative National Congress (ANC) and Liberty  
Party (LP), Republic of Liberia.....Appellee } APPEAL

GROWING OUT OF THE CASE:

The Collaborating Political Parties (CPP), by and thru  
The Alternative National Congress (ANC) and Liberty  
Party (LP), Republic of Liberia.....Complainant  
Versus  
The Unity Party (UP) and All Liberian Party (ALP),  
Republic of Liberia .....Defendants } Violation of Frame Work  
Document

Heard: May 5, 2022

Decided: June 3, 2022

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

This case emanates from a dispute arising amongst four duly registered political parties who formed a coalition in pursuit of common political interests. Under *Chapter 8, Section 8.5 of the New Elections Laws of Liberia*, duly registered political parties may form an alliance or coalition. *Chapter 8, Section 8.5 of the New Elections Laws of Liberia* provides:

“Registered political parties may be allowed to form alliances and coalitions as provided by this Section.

(1) Procedure

Registered political parties wishing to form an alliance or coalition shall each pass a resolution consenting to the alliance or coalition signed by an absolute majority (50% of the votes plus one vote) of the members of the executive committee.

- (2) Plan of alliance or coalition. The Executive Committee of each registered political party proposed to participate in the alliance or coalition shall approve a plan of alliance or coalition setting forth:
  - a. The name of each constituent registered political party.
  - b. Terms and conditions of the proposed alliance or coalition, including the intended duration of the alliance or coalition.
- (3) Filing of plan of alliance or coalition. The plan of alliance or coalition shall be filed with the National Elections Commission (NEC) in accordance with regulations and guidelines laid down by the NEC. The plan shall be accompanied by certified copies of the resolution, pursuant to clause 1 above, of each constituent party consenting to the alliance or coalition, and the votes taken by each constituent party authorizing the alliance or coalition.
- (4) When alliance or coalition effective. Upon the filing of the plan of alliance or coalition with the National Elections Commission, the NEC shall approve the plan if it is satisfied that each constituent party consenting to the alliance or coalition has fully complied with the provisions of this section and with chapter 7 of the New Elections Law of 1986. The NEC shall issue a certificate of accreditation in the name of the alliance or coalition.
- (5) When alliances or coalitions may be formed. Alliances or coalitions may be formed not later than eight (8) weeks prior to the first ballot."

It is pursuant to the above quoted provisions of the New Elections Law of Liberia that on July 14, 2020, the All Liberian Party (ALP), the Alternative National Congress (ANC), the Liberty Party (LP) and the Unity Party (UP), four registered political parties, filed, by and through the Political Leader of the ANC, registration documents, including a Framework Document signed by the relevant authorities of all of the political parties with the National Elections Commission (NEC), and requested the NEC to issue a certificate authorizing them to operate as a coalition under the name, Collaborating Political Parties (CPP).

On August 14, 2020, the NEC granted the request of the parties and certificated the CPP as a coalition. The four parties subsequently participated and fielded candidates in the name of the CPP in the 2020 Special Senatorial Election, as well as the Representative By-election held on November 16, 2021.

However, on January 28, 2022, the ALP, a constituent member of the CPP, filed with the NEC, a letter along with a resolution signed by two-thirds (2/3) of its Executive Members withdrawing from the CPP. On February 17, 2022, the UP, another constituent member of the CPP in like manner as the ALP, also withdrew from the CPP.

On March 24, 2022, the CPP, by and through the ANC, represented by Daniel F. Naathen and Aloysius Toe, and the LP, represented by Musa Hassan Bility and Martin Saye Kollah, (appellee), by a letter dated March 21, 2022, filed a complaint with the NEC against the UP and the ALP, (appellants) seeking to know the status of the UP and the ALP as political institutions in Liberia and their relationship with the CPP. The appellee made reference to the CPP Framework Document signed by the UP, ALP, ANC and LP wherein the parties agreed to collaborate in pursuing certain political interests. The appellee maintained that the CPP Framework Document contains provision for withdrawal, which provision, according to the appellee, the appellants did not comply with. The appellee specially invoked *Section 8.5(2)* of the CPP Framework Document, which it contended, bars and prohibits any party withdrawing from the CPP from fielding candidate in the pending Senatorial By-election in Lofa County, as well as the Presidential and Legislative Elections scheduled to take place in the country in October, 2023. The appellee informed the NEC that it has seen in the media and several online interviews conducted by officers and officials of the appellants indicating that they (UP and ALP) have withdrawn from the CPP and that both parties have informed the NEC of their respective withdrawals from the CPP. The appellee contended that there has been no official communication from the appellants to either the CPP National Advisory Council or National Executive Committee regarding the said withdrawals as in keeping with the Framework Document. For the benefit of this Opinion, we quote verbatim the appellee's letter of complaint to the NEC which forms the basis of this case:

"Chair and Board of  
Commissioners  
National Elections  
commission  
9<sup>th</sup> Street, Sinkor  
Monrovia, Liberia

March 21, 2022

Dear Chair and Commissioners:

Greetings and we hope this communication finds each of you well.

We invite the Commission to inform the CPP about the status of the All Liberian Party (ALP) and the Unity (UP) in lieu of the following:

1. While we have learned through the media and several online interviews of officers of both ALP and UP, that both parties have withdrawn from the CPP and that both Parties have informed the National Elections Commission (Commission) of same, there has been no official communication from the ALP or UP to either the CPP National Advisory Council or National Executive Committee regarding the said withdrawal. We have also learned that both Parties have requested the Commission to bar the use of their name and logo from the CPP logo.

As such, we are:

- a) requesting that the Commission provides us with official status of the ALP and UP as it relates to the CPP; and
  - b) Requesting that the Commission requires both ALP and UP to provide official communication to the CPP of their withdrawal and waiving any further rights within the CPP.
2. We call the Commissioner's attention to Section 8.5(2) of the CPP Framework Document which prescribed the process by which a CPP constituent party may withdraw its membership from the CPP as follows: "Constituent Party desiring to withdraw from the CPP shall FIRST exhaust the dispute resolution mechanism stipulated in this framework document. If the Constituent Party which has satisfied the dispute resolution mechanism is not satisfied with the outcome, it shall file a resolution to withdraw from the CPP signed and duly executed by Two Thirds (2/3) of the membership of its National Executive Committee, it being understood, however, that a Party withdrawing from the Alliance prior to the next Presidential, legislative and local elections not field candidates in its name" (emphasis and italics supplied). As such, we hereby inform the Commission that we are invoking Section 8.5(2) CPP of the Framework Document and requesting that the Commission rejects and deny any application from the ALP and UP to field candidates in their names in any election until the expiry of the 2023 election, including up to six (6) months thereafter, same being the agreed contractual life of the CPP.
  3. Lastly, the UP's "withdrawal" has had the disruptive effect on the CPP including the group's rotational chairmanship, rotational headquarters, rotational leadership of its various organs including the secretariat, and meetings to determine and evolve positions on national questions. This is because at the time of the so-called withdrawal, the CPP rational chair happened to have been the Unity Party.

As such, we further inform the Commission that the CPP is seeking legal advice on how to proceed with moving the CPP forward and will revert to the Commission with details regarding same in the shortest time possible.

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Musa Hassan Bility  
National Chairman  
Liberty Party  
Constituent CPP Political Party

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Daniel F. Naathen  
Chairman  
Alternative National Congress  
Constituent CPP Political Party

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Martin Saye Kollah  
Secretary General  
Liberty Party

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Aloysius Toe  
Secretary General  
Alternative National Congress"

On receiving the complaint, the NEC forwarded it to its Hearing Officer to investigate and make determination thereon. When the case was called before the Hearing Officer, the lawyers representing the appellants made an application on the minutes of the hearing requesting the Hearing Officer to refuse jurisdiction to hear the case. They argued *inter alia*, that under the law, all courts and administrative tribunals do not give advisory opinion as requested by the appellee; that an administrative forum such as the

NEC does not declare status and rights etc., as such authority is only conferred on the courts; that there is a dispute within the Liberty Party as to who the Chairman is and who the Secretary General is, and the issue is a subject of litigation in court in consequence of which the National Elections Commission has declined to recognize Musa Hassan Bility and Martin Saye Kollah as Chairman and Secretary General respectively of the Liberty Party; therefore, Musa Hassan Bility and Martin Saye Kollah lack the legal capacity and standing to represent and file a complaint for and on behalf of the Liberty Party; that there is pending before the Monrovia City Magisterial Court, criminal proceedings instituted by the Republic of Liberia by and through the All Liberian Party, against the Alternative National Congress in respect of the alleged alteration of the Framework Document of the CPP, and that the NEC therefore lacks subject matter jurisdiction to declare the status, rights, obligations and relief in respect of a dispute arising out of the purported Framework Document of the CPP.

In response to the application filed by the lawyers for the appellants, the lawyers representing the appellee contended that the appellants should be ruled to bare denial for not filing an answer to the appellee's complaint in violation of trial procedure; that the CPP Framework Document, even though is being challenged in court, there has not been a judgment out of that proceeding declaring the said instrument either authentic or illegal; that until there is a judicial decision in the case, the said instrument filed with the NEC cannot be set aside; that the NEC has already recognized Musa Hassan Bility and Martin Saye Kollah as Chairman and Secretary General respectively of the Liberty Party, therefore, the pendency of the case in the Monrovia City Court between the All Liberia Party and the Alternative National Congress cannot prevent the NEC from hearing the complaint of the appellee.

On March 29, 2022, the Hearing Officer, after entertaining arguments from both sides, ruled denying the appellants' application to dismiss the case. The appellants appealed the Hearing Officer's ruling to the Board of Commissioners of the NEC who sustained the ruling of the Hearing Officer and ordered that the matter be fully investigate on its merits.

On April 6, 2022, the appellants filed returns to the appellee's complaint essentially contending that - under Section 2.9 of the New Elections Law, the Elections Commission of Liberia does not have subject matter jurisdiction over the averments contained in the appellee's March 24, 2022 complaint; that a tribunal must first have jurisdiction over the subject matter and the parties before it proceeds to entertain the proceedings; that where a tribunal acts without jurisdiction, any judgment entered pursuant thereto is void and of no legal effect; that subject matter jurisdiction can be raised at any time during a

proceeding, even for the first time before the Supreme Court of Liberia. The appellants also contended that under the law, only courts of record sitting in their respective jurisdictions have the power to declare rights, status and other legal relations whether or not further relief is, or could be claimed; that the NEC therefore is without authority and jurisdiction over the claim of the appellee contained in the appellee's letter of March 24, 2022; that consistent with the Elections Law of Liberia that allows the appellants to form a collaboration with the appellee, the appellants also exercised said provision of the law and withdrew their membership from the CPP, that is to say, that the appellants complied with all constitutional and statutory laws to withdraw from the CPP with notice to the appellee; that subsequent to their withdrawal of membership from the CPP, they complied with all Elections Law for the restoration of their existence as a political party without membership within the CPP; that they did not sign any Framework Document of the CPP which contains *Section 8.5(2)* and challenged the appellee to produce the original copy of the Framework Document purportedly signed by the appellants with *Section 8.5 (2)* included therein. The appellants further contended that *Article 17 of the 1986 Constitution of Liberia* grants unto all persons the right to associate fully with others or refuse to associate in political parties, trade unions and other organizations; that *Article 79 (a) of the 1986 Constitution of Liberia* provides for the registration requirements for association, independent candidate and organization and that the registration by the NEC of any association or independent candidate and his/her organization vests in said entity, candidate and his/her organization so registered legal personality; that *Article 79 (a) of the Constitution* also provides that the NEC cannot deny an applicant registration and the failure of the NEC to register an applicant can be challenged by the applicant before the Supreme Court of Liberia. The appellants maintained that assuming without admitting that the NEC has subject matter jurisdiction over the claim of the appellee and that the purported *Section 8.5(2)* was contained in the Framework Document of the CPP, which appellants deny, said *Section 8.5(2)* being in violation of *Article 17 and Article 79 of the Constitution of Liberia* and consistent with *Article 2 of the 1986 Constitution of Liberia* is void and of no legal effect; that assuming further without admitting that the purported Framework Document of the CPP had in it a provision that "a party withdrawing from the coalition prior to the next Presidential, Legislative and Local Elections shall not field candidates in its name, which appellants deny of the existence of any such clause, the stated provision would not be applicable to the scheduled Senatorial **By**-election in Lofa County, as the said election is not the "next Presidential, Legislative and Local Election"; that the next Presidential, Legislative and Local Election will be held on the second Tuesday of October, 2023; and that it is the constitutional right of the appellants to associate or not to associate with the CPP,

especially so when the appellee has made it impossible for the CPP to operate in keeping with the aims and objectives for which the parties decided to collaborate.

To substantiate its claims, the appellee took the stand and produced two witnesses, namely: Madam Wede Powell and Madam Victoria Torlu Quaqua. Wede Powell identified herself as the Executive Member of the Liberty Party and a Member of the Executive Committee of the CPP. Victoria Torlu Quaqua, for her part, said she was Deputy Vice Chair for Political and International Affairs and an Executive Member of the Alternative National Congress and also a Member of the National Advisory Council of the CPP.

The summary of the testimonies of the two witnesses for the appellee is that four registered political parties – the ALP, ANC, LP and UP formed a Coalition known as CPP and signed a Framework Document which they filed with the NEC; that there is a provision under Section 12.1.1 of the Framework Document for any party wishing to withdraw from the CPP to follow, which the appellants did not follow; that under *Section 8.5(2)* of the Framework Document, a constituent party desiring to withdraw from the CPP shall first exhaust the dispute resolution mechanism stipulated in the Framework Document and if the constituent party which has satisfied the dispute resolution mechanism is not satisfied with the outcome, it shall file a resolution to withdraw from the CPP signed and duly executed by two-thirds (2/3) of the membership of the party's National Executive Committee; that a party withdrawing from the CPP prior to the next Presidential, Legislative and Local Elections should not field candidates in its name.

When the appellee rested with the production of witnesses, the appellants, on April 13, 2022, filed a motion for judgment during trial. The motion was resisted by the appellee and denied by the Hearing Officer. Thereafter, the appellants took the witness stand and produced three witnesses: Mohammed Ali, J.B.S. Theodore Momo and Augustine Fredericks.

The summary of the testimonies of the appellants' witnesses is that – four Political Parties, ANC, LP, ALP and UP formed a Coalition known as the Collaborating Political Parties (CPP), for the purpose of promoting common political agenda; that the Coalition was certificated by the NEC; that the parties signed a Framework Document which was filed with the NEC by and through the Political Leader of the ANC who was then the Chairman of the CPP; that on August 18, 2021, Mr. Benoni Urey, the Political Leader of the ALP, filed a complaint with the then Chairperson of the CPP, Senator Nyonblee Kanga Lawrence, that certain portions and clauses in the Framework Document were altered; that a committee was set up which investigated the complaint and submitted a report with findings which indicated that alterations were indeed made

to the CPP Framework Document; that the legal team of the CPP was requested to give advice on the report and findings of the investigative committee; that the legal team declined to give advice on the grounds that the contentions and counter contentions over the Framework Document have become the subject of intense internal and external discussions and have rendered the process overwhelmingly political, thereby marginalizing the efficacy and effect of the Framework Document. The witnesses for the appellants maintained that the findings of the investigative committee on the Framework Document created irreconcilable differences between the LP, ALP and UP on the one hand, and the ANC on the other hand, in consequence of which the ANC refused to participate in all matters of the CPP, including meetings; that as a result of this the ALP and the UP withdrew from the CPP; and the withdrawal of the two parties were carried out in accordance with procedure laid down in the Framework Document. At the close of the investigation, the Hearing Officer entered a ruling, excerpt of which we quote as follow:

“...this Investigation’s reading of Article 8.5(2) of the CPP’s Framework Agreement is that a Constituent Party that exhausts the CPP’s dispute resolution mechanism and withdraws from the CPP cannot thereafter field candidate(s) in the withdrawn Party’s name prior to the next presidential, legislative and local elections.


This Hearing notes that in keeping with the practice and procedure here at the NEC, when a party submits a notarized instrument , such as a governing document to the NEC, the presumption here is that the same is valid and remains as such until successfully challenged in keeping with due process of law or via amendment by the parties. This position was recently reaffirmed by the Honorable Board of Commissioners in January, 2022. Hence, unless the CPP’s Framework Agreement filed with the NEC on July 14, 2020 is amended by the parties or judicially declared invalid, the NEC will have no option but to hold the parties to the "terms and conditions" contained in said agreement.

Having said this, this Investigation pauses here to state that while this matter has generated substantial public interest, it is worth noting that the constitutions or governing documents of political parties are not written at the bar of the administrative forum. Hence, questions as to whether a political governing document is wise or unwise are best directed at the political parties. Moreover , questions as to whether such agreement is constitutional or unconstitutional are best reserved for the Honorable Supreme Court, which has held that when constitutional questions are properly raised before a forum of first impression, the forum must take evidence on the factual issues before it may certify the constitutional questions to the Supreme Court. Accordingly, this Investigation does not herein make any determination on the constitutional issues raised by complainants and defendants, respectively.

WHEREFORE AND IN VIEW OF THE FOREGOING, and so as to allow the opportunity for the Honorable Supreme Court to possibly consider the constitutional questions raised in this matter, the National Elections Commission (NEC) is hereby prohibited from taking any further action on any endorsement form or other documents put forth by Defendant(s)



herein regarding the fielding of a candidate until otherwise determined.

 21/04/22  
\_\_\_\_\_  
Atty. Fomba A.M Swaray  
Hearing Officer"

From this ruling of the Hearing Officer, the appellants noted exception and announced an appeal to the Board of Commissioners of NEC. On April 25, 2022, the Board of Commissioners of the NEC confirmed the ruling of the Hearing Officer in the following words:

“We note that Article 79 of the Liberian Constitution requires each registered political party to file its constitution and rules with the NEC, and requires that the submitted constitution and rules must confirm to the provision of the constitution. Moreover, section 8.5 of the Elections Law requires political parties seeking to form an alliance/coalition to submit the “terms and conditions” of their governing document to the NEC. Accordingly, we agree with the Hearing Officer that the framers of the Liberian Constitution and Elections Law did not require political parties to submit their governing documents to the NEC simply as a mere formality. The Liberian Constitution as well as the Elections Law, each grants the NEC the exclusive authority to conduct public elections. As the political regulatory body, the NEC is the forum of first instance when a challenge is made to the ability or qualification of a political party to field a candidate in public election.

With respect to the appellants’ argument that this matter should have been dismissed so that the allegation of fraud could be tried in the Civil Law Court, we note that the Republic of Liberia by and through ALP has a criminal case of forgery and conspiracy pending before it undetermined. We further note that unlike proceedings in the Civil Law Court, where it may take up to twenty plus days from the filing of the complaint or pleadings to rest, and up to sixty days to perfect an appeal, election matters (especially regarding a by-election) are time-bound and must be completed in a specified time-frame. Here, appellant did not cite any authority, and we have not found any, that designates another forum of first impression to hear a challenge to a political party’s ability or qualification to field a candidate in a pending public election. Accordingly, we hold that the Hearing Officer did not err. For further reliance, see: Article 65 of the Liberian Constitution which states that “nothing in this Article shall prohibit administrative consideration of the justiciable matter prior to review by a court of competent jurisdiction”.

The Hearing Officer citing the practice and procedures here at the NEC held that a notarized, political governing document is presumed valid and remains as such until successfully challenged in keeping with due process. We submit that mere allegation of fraud or impropriety is not sufficient for the NEC to act on an individual or party’s claim of fraud. Absent a judgment from a court of competent jurisdiction regarding the issue of alteration/fraud, the NEC cannot on its own declare such instrument invalid or unconstitutional. Hence, we hold that the Hearing Officer did not err.

As to the issue of the Hearing Officer taking both oral and documentary evidence on the factual issues, we note that the Honorable Supreme Court has held that “when a case is brought before [the] lower court [it] must take evidence and satisfy itself as to the truthfulness of the factual allegations set out in the pleadings before it refers the matter to the Supreme Court, if indeed referral is appropriate. For reliance see In re: Petition of Cox (Constitutionality of 17.1), 36 LLR 837 (January 1990); see also Mappy-Polson vs. RL, Supreme Court Opinion (March 2, 2017).

As to the restriction the Hearing Officer placed in this matter, we do not understand such restriction as applying to the Board of Commissioners of the NEC.

After reviewing the records, we further say that there is no merit to any of the remaining issues raised in the appellants' bill of exceptions. Accordingly, we affirm the Hearing Officer's disposition of those issues without further discussion.

Wherefore and in view of the foregoing, appellants' appeal is hereby denied and dismissed. The Hearing Officer's ruling is affirmed.

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Hon. Davidetta Brown Lansanah  
Chairman

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Hon. /Cllr. P. Taplah Reeves  
Co-Chair

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Hon. /Cllr. Ernestine Morgan-Awar, Esq.  
Commissioner

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Hon. Floyd Oxley Sayor  
Commissioner

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Hon. Barsee Leo Kpangbai  
Commissioner

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Hon. Josephine Kou Gaye  
Commissioner.

Note: Commissioner Dukuly, not being in agreement with this decision, withheld his signature.”

The appellants noted exception to the above quoted final ruling of the Board of Commissioners of the NEC and announced an appeal to the Supreme Court for appellate review on a bill of exceptions containing 21 counts.

During argument before us, the appellants, through their counsel, contended basically that the Framework Document they signed did not contain Section 8.5(2); that the NEC was required to ensure that the provisions of the Framework Document were not in violation of any provision of the Constitution, statute or any other law; that the purported *Section 8.5 (2)* of the Framework Document filed with the NEC is in violation of Articles 17 and Article 79 of the Constitution of Liberia; that Article 2 of the 1986 Constitution of Liberia provides that the Constitution is the supreme and fundamental law of Liberia and its provisions have binding force and effect on all authorities and persons throughout the Republic and any laws, treaties, statutes, decrees and regulations found to be inconsistent with it, to the extent of the inconsistency, is void and of no legal effect. So, according to the appellants, assuming without admitting that the Framework Document filed with the NEC was actually executed by the constituent political parties

thereto, the purported *Section 8.5(2)* would be null and void without any legal effect; that the Constitution of Liberia provides that no person should be deprived of life, security of the person, privilege or any other right except as an outcome of a hearing judgment consistent with the provisions laid down in the Constitution and in accordance with due process of law; and that it is only after a a court of competent jurisdiction, through due process of law, has ruled that the appellants' candidates may be deprived of their constitutional rights to associate and participate in any election, including the ensuing Senatorial By-Election for Lofa County.

The appellee, on the other hand, contended that the Framework Document signed by the four (4) collaborating political parties was the same document that was filed with the NEC and that *Section 8.5(2)* was placed in the Document by the consent of the parties. The appellee also contended that the parties to the Framework Document are bound by the terms and conditions therein until amended by the parties themselves or invalidated by court; that the Framework Document signed by the parties is protected by Article 25 of the Constitution under the doctrine of sanctity of contract which precludes third parties, including the Government and its institutions, from interfering in the performance of obligations under valid agreements; that no party to an agreement can disavow the terms of the agreement; and that assuming arguendo, but not admitting that a provision of the Framework Document is illegal and violates the law, the appellants are estopped from questioning the validity of the said provision by operation of law, because they willingly signed unto the agreement.

The National Elections Commission (NEC), which was named by the appellants as co-appellee in this case at the level of the Supreme Court, filed a brief basically defending the final ruling of the Board of Commissioners of the NEC (quoted hereinabove) in favor of the appellee.

Having carefully perused the facts and circumstances narrated in this case, the final ruling of the Hearing Officer which was confirmed by the Board of Commissioners of the NEC, the bill of exceptions filed by the appellants, the briefs filed by the counsels representing the parties, the arguments presented and the laws relied upon, we see that the contention of the parties herein primarily revolves around a withdrawal clause said to be in the Framework Document signed by the parties. The appellee asserts that the appellants did not comply with *Section 12.1.1.* of the Framework Document relative to the withdrawal of a constituent Political Party from the CPP, as the appellants did not exhaust the dispute resolution mechanism in the Framework Document. The appellee further asserts that even if the appellants had complied with the withdrawal clause, the appellants are still precluded from fielding candidates in their names, since the Framework Document provides under *Section 8.5(2)* that a party withdrawing from the

CPP prior to the next Presidential, Legislative and Local Elections shall not field candidates in its name. The appellee maintains that under the doctrine of sanctity of contract enshrined in *Article 25* of the Constitution of Liberia, what was agreed to by the parties is protected under the Constitution of Liberia. But the appellants deny the existence of *Section 8.5(2)* in the Framework Document they signed and contend that any purported copy of a Framework Document said to be signed by them which contains *Section 8.5(2)* is a product of fraud.

The point of contention of the parties, therefore, is - whether *Section 8.5(2)* on withdrawal of a constituent political party from the CPP was in the original Framework Document signed by all the parties and filed with the NEC as the appellees contend, or the said Section was fraudulently inserted after the Framework Document was executed as the appellants contend. But this Court will not now consider the alleged claim or counterclaim of fraud or forgery made by the parties firstly, because to do so would require the taking of evidence, something which this Court cannot do in such circumstance. Secondly, we cannot now consider the allegation of fraud or forgery because this is a subject of criminal trial currently being conducted at the Monrovia City Court. Until that trial is concluded and a dissatisfied party takes an appeal to this Court for appellate review, we cannot pass on the issue of fraud or forgery.

However, the appellants have strenuously contended that the NEC, as an administrative body, does not have the power to declare status and rights as requested by the appellee in its letter of March 21, 2022; so, we must first pass on this contention which raises a question of jurisdiction. The appellants have also argued that the purported *Section 8.5(2)* of the Framework Document violates provisions of the Constitution of Liberia; it is incumbent on us to speak to this pivotal legal question. We shall also touch on the role of the NEC when a political party, entity or independent candidate files with it an instrument in fulfillment, or compliance of an electoral pursuit; and whether the appellants exhausted the dispute resolution mechanism under the Framework Document in order to withdraw from the CPP. Thus, the four cardinal issues we shall consider for the determination of this case are:

1. Whether the content of the appellee's letter of complaint dated March 21, 2022, addressed to the NEC amounts to a request to declare rights, and if so, whether the NEC can declare rights?
2. Whether the contentious *Section 8.5(2)* of the CPP Framework Document, on its face, presents an illegal and unenforceable contract as a matter of law, or whether the said Section is legal, enforceable and protected under the doctrine of sanctity of contract within the meaning and context of Article 25 of our Constitution?
3. Whether the appellants exhausted the dispute resolution mechanism provided by the Framework Document and properly withdrew from the CPP?

4. What is the role of the NEC when a political party, entity or independent candidate files with it an instrument in fulfillment, or compliance with an electoral pursuit?

We shall address the issues in the order as presented, starting with - whether the content of the appellee's letter of complaint dated March 21, 2022, addressed to the NEC amounts to a request to declare rights, and if so, whether the NEC can declare rights?

The appellees' letter dated March 21, 2022, addressed to the NEC requested "the Commission to inform the CPP about the status of the All Liberian Party (ALP) and the Unity (UP)..." The key operative word in the letter is "status". Status is defined by the authoritative *Black's Law Dictionary, Fifth Edition*, as "the legal relation of the individual to the rest of the community. The rights, duties, capabilities and incapacities which determine a person to a given class..." [Emphasis supplied]. From the foregoing definition, it is clear that by its letter of March 21, 2022, the appellee sought the NEC to declare the status or rights of the appellants, vis-à-vis the appellee's own rights in respect of the CPP.

Sections 43.1 & 43.2., 1LCL Revised, Civil Procedure Law provide:

Section 43.1. *Power of courts to render declaratory judgments.*

"Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment. The power granted to the court under this section is discretionary.

Section 43.2 *Construction of writings and statutes.*

"Any person interested under a deed, will, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder. § 43.2. Construction of writings and statutes.

From the reading of the foregoing provisions of the Civil Procedure Law, there is no doubt that the authority to hear and make declaration on status and rights is a function ascribed to the courts and not to an administrative body such as the NEC. So, the NEC was without authority to have entertained the request of the appellee to probe this matter in the first place. On perusing the complaint and the response thereto, the NEC should have refused jurisdiction so that the appellee would seek redress elsewhere, preferably at a judicial forum. But the NEC took over the case, conducted full hearing, wasted precious time in

this matter bordering election only to recognize, in the end, that it could not hear and determine the case because...“questions as to whether [an] agreement is constitutional or unconstitutional are best reserved for the Supreme Court...” Howbeit, we are in agreement with this portion of the Hearing Officer’s ruling which ruling was confirmed by the Board of Commissioners of the NEC. The matter having travelled to this Court, and considering that the core issue involves a clause in an agreement which is said to be in conflict with provisions of the Constitution, we must speak to this.

This brings us to the second issue - whether the contentious *Section 8.5(2)* of the Framework Document, on its face, presents an illegal and unenforceable contract as a matter of law for reason that said Section violates Articles 17 & 79 of the Constitution of Liberia, or whether the said Section is legal, enforceable and protected under the doctrine of sanctity of contract as provided for in Article 25 of our Constitution? In addressing this issue, we should note that it is a fundamental and accepted principle of constitutional construction that the Constitution must be construed reasonably to carry out the intention of the framers to promote equity and justice and peaceful coexistence; it should not be construed to defeat the intent of the drafters; that every provision in the Constitution must be interpreted in the light of the entire document rather than a sequestered pronouncement. It is also a fundamental principal of constitutional construction that all constitutional provisions are of equal importance and none of the provisions must be enforced so as to nullify or substantially impair the others; if there is an apparent discrepancy between different provisions of the Constitution, the court is required to harmonize them. *The Estate of Frank E. Tolbert v. Gibson-Sonpon*, [19193] LRSC 2: 37 LLR 113 (1993).

In the case before us, we are called upon to say whether a provision in a document (agreement) which prohibits a registered political party from fielding candidates violates *Articles 17 & 79* of the Constitution or is protected by *Article 25* of the Constitution.

Article 17 of the Constitution provides:

“All persons, at all times, in an orderly and peaceable manner, shall have the right to assemble and consult upon the common good, to instruct their representatives, to petition the Government or other functionaries for the redress of grievances and to associate fully with others or refuse to associate in political parties, trade unions and other organizations”. [Emphasis provided].

Article 79 of the Constitution provides:

“No association, by whatever name called, shall function as a political party, nor shall any citizen be an independent candidate for election to public office, unless:

a) The association or independent candidate and his organization meet the minimum registration requirements laid down by the Elections Commission and are registered with it. Registration requirements shall include filing with the Elections Commission a copy of the constitution of the association and guide lines of the independent candidate and his organization, a detailed statement of the names and addresses of the association and its officers or of the independent candidate and the officers of his organization, and fulfillment of the provisions of sub-sections (b), (c), (d) and (e) hereof. Registration by the Elections Commission of any association or independent candidate and his organization shall vest in the entity or candidate and his organization so registered legal personality, with the capacity to own property, real, personal or mixed, to sue and be sued and to hold accounts. A denial of registration or failure by the Elections Commission to register any applicant may be challenged by the applicant in the Supreme Court...”

Article 25 of the Constitution provides:

“Obligation of contract shall be guaranteed by the Republic and no laws shall be passed which might impair this right.”

The purported Section 8.5(2) of the CPP Framework Document in contention provides:

“A constituent party desiring to withdraw from the CPP shall first exhaust the dispute resolution mechanism stipulated in this framework document. If the constituent party which has satisfied the dispute resolution mechanisms is not satisfied with the outcome, it shall file a resolution to withdraw from the CPP signed and duly executed by two thirds (2/3) of the membership of its executive committee, it being understood, however, that a party drawing from the alliance prior to the next presidential, legislative and local elections shall not field candidates in its name.” [Emphasis supplied]

From our careful perusal of the above quoted provisions of the Constitution juxtaposed with the purported *Section 8.5(2)* of the CPP Framework Document, we find that the purported *Section 8.5(2)* of the CPP Framework Document which prohibits a registered political party from fielding candidates is in gross violation of *Articles 17 & 79* of the Constitution. The right to associate, disassociate, refuse to associate and to contest and participate in elections are fundamentally protected rights in a democratic society which cannot be curtailed or deprived by an agreement between parties. A political party, once duly registered in accordance with *Article 79* of the Constitution can only be denied participation in an election for cause in accordance with law and not by the consent of parties to an agreement.

Election gives the people the opportunity to evaluate their leaders and choose those they want as their representatives. Any agreement that prevents a political party from fielding a candidate, by extension, also prevents the supporters of that political party (the citizenry) from freely choosing their representatives. This act, in our view, disenfranchises the people and strangulates democracy. This was never the intent of

the framers of our Constitution and this Court will not condone and lend support to such an act which clearly violates public policy.

The Constitution of Liberia is the supreme and fundamental law of the nation and its provisions have binding force and effect on all authorities and persons throughout the Republic; and any law, treaties, statutes, decrees and regulations found to be inconsistent with it, to the extent of the inconsistency, must be void and of no legal effect. (See *Article 2 of the Constitution*). Therefore, *Section 8.5(2)* of the CPP Framework Document which violates the principle of association and disassociation protected by Article 17 of the Constitution, is null and void and without any legal effect.

The appellee has argued that *Section 8.5(2)* is protected under Article 25 of the Constitution of Liberia. We take full cognizance of *Article 25* of the *Constitution*, which provides that obligations of contract shall be guaranteed by the Republic and that no laws shall be passed which might impair this right. This provision of the Constitution is commonly referred to as the “*sanctity of contract clause*”. Our position taken today does not and is not in any way intended to diminish the effectiveness of *Article 25* of the *Constitution* or to nullify the long line of Opinions of this Honorable Court which have upheld the principle of the sanctity of contract. This Opinion simply states that where a contract violates the Constitution or any statute, such contract has no sanctity to be upheld, protected or enforced by a court of law and must be declared as such. It is when a contract is in compliance with the law that it has sanctity that can be upheld and enforced. So any contract determined by this Court to be unlawful is not protected by Article 25 of the Liberian Constitution. *Norwegian Refugee Council v. Bana et al [2008] LRSC 24 (18 December 2008)*.

This Court has held that “the rule with respect to agreements in violation of statute is that if any part of an agreement is valid, it will avail *pro tanto*, though another part of it may be prohibited by statute, provided the statute does not, either expressly or by necessary implication, render the whole void, and provided the sound part can be separated from unsound part and enforced without injustice to the defendant”. *17A Am Jur. 2d Contracts, Section 329; Harris v. Mercy Corps (Liberia) [2006] LRSC (21 December 2006)*.

The third issue we address is - whether the appellants exhausted the dispute resolution mechanism provided for under the Framework Document and properly withdrew from the CPP?

The dispute in respect of the CPP Framework Document pertains only to *Section 8.5(2)*, which we have declared to be illegal and unenforceable. In such a case, ordinarily, the illegal portion of the Document (contract) would be set aside and the legal portions



would remain to operate. But the appellants contended that it complied with the procedure laid down in Section 12.1.1 of the Framework Document for a constituent political party wishing to withdraw from the CPP. The requirements are: a) a constituent Political Party aggrieved by the conduct of the CPP, who is in good standing shall submit a written complaint addressed to the current Chairman of the CPP stating the grievance(s) and the remedy(ies) it seeks; b) the Chairman of the CPP, in 72 hours of receiving the complaint, shall cause the complaint to be laid before the leadership of the National Advisory Council (NAC) and the setting up of an Ad-Hoc Grievance Complaint Council (AGC) which shall be directed to immediately investigate the complaint and submit its findings, and recommendations to the National Advisory Council within 7 days; and c) the National Advisory Council shall make a decision which shall be final and binding on the parties.

The appellants maintained that on August 18, 2021, Mr. Benoni Urey, Political Leader of the ALP, filed a complaint with the then Chairperson of the CPP, Senator Nyonblee Kanga Lawrence, that certain portions and clauses in the Framework Document were altered; that a committee was set up which investigated the complaint and submitted a report with findings which indicated that indeed alterations were made in the CPP Framework Document; that the legal team of the CPP was requested to give advice on the report and findings of the investigative committee; that the legal team declined to give advice on the grounds that the contentions and counter contentions over the Framework Document have become the subject of intense internal and external discussions and have rendered the process overwhelmingly political thereby marginalizing the efficacy and effect of the Framework Document. The witnesses for the appellants maintained that the findings of the investigative committee on the Framework Document created irreconcilable differences between the LP, ALP and UP on the one hand, and the ANC on the other hand in consequence of which the ANC refused to participate in all matters of the CPP, including meetings; that as a result of this the ALP and the UP withdrew from the CPP; that two-thirds (2/3) of the respective membership of the National Executive Committee of the ALP and the UP signed a resolution for their respective parties to withdraw from the CPP.

We must note that the appellee does not in fact deny that the appellants withdrew from the CPP in accordance with the procedure laid down in Section 12.1.1 of the CPP Framework Document. The only contention the appellee has is that having withdrawn, the appellants cannot field candidates in their names before the next Presidential, Legislative and Local Elections until six months thereafter, a contention we have held is untenable. Under the circumstance, where two political parties to a coalition agreement have duly withdrawn, we hold that the withdrawing parties, the ALP &

UP, are free and they at liberty to pursue political activities and actions in their individual names.

A coalition or alliance is not a merger. In an alliance or coalition, the political parties to the alliance or coalition as in the instant case, remain in, and maintain their original political identities, policies and structures. The constituent political parties to the alliance or coalition operate their individual parties, but work collaboratively for the attainment of the plans or purposes of the alliance or coalition. The most common intent of coalition or alliance is to ensure maximum effectiveness of campaigns and avoid the negative effects of the dispersal of votes. In coalition or alliance, a party to the alliance or coalition does not have the authority to interfere with the decision(s), administrative workings or internal politics of another party to that alliance or coalition. Alliance or coalition can therefore be described as a loose association of registered parties with the aim of fulfilling a common agenda for the good of the parties.

A merger, consolidation or amalgamation, on the other hand, is the combination of two or more political parties or entities into a single entity. Whenever political parties or entities merge, consolidate or amalgamate, their individual structures and identities are affected; all the parties are absorbed or assimilated into a new institution. Having lost their individual identities in the process of merger, consolidation or amalgamation, it is impossible for any individual party to withdraw. But unlike merger, consolidation or amalgamation which culminates into a new entity of combined or new characteristics, alliance or coalition is an association of parties that maintain their individual characteristics, structures and identities. So, whenever a party to an alliance or coalition decides to withdraw and does so in compliance with procedure laid down, there should be absolutely nothing that should prevent the withdrawing party or parties from pursuing their individual political interests, including the fielding of a candidate in its name.

We address last, the issue - what is the role of the NEC when a political party, entity or independent candidate files with it an instrument in fulfillment, or compliance with an electoral pursuit?

The NEC is that regulatory body charged with the responsibility of conducting elections in Liberia. Amongst the sundry activities the NEC must undertake in pursuit of its electoral functions is to receive instruments/documents filed by political parties, entities or independent candidates in fulfillment or compliance of their electoral pursuits. We hold that it is within the authority of the NEC to carefully peruse and scrutinize every instrument filed with it and to determine whether such instruments are in compliance with the Constitution and statutory laws of Liberia. And if the NEC finds that the whole or provision(s) of an instrument filed by a political

actor or entity is not in compliance with the Constitution or any statute, the NEC can and ought to refuse the filing of such instrument.

For example, the Constitution provides that:

A) "The name, objective, emblem or motto of the association or of the independent candidate and his organization is free from any religious connotations or divisive ethnic implications and that the activities of the association or independent candidate are not limited to a special group or, in the case of an association, limited to a particular geographic area of Liberia." [Article 79(d)].

B) "The constitution and rules of the political party shall conform to the provision of the Constitution, provide for the democratic elections of officers and/or governing body at least once every six years, and ensure the election of officers from as many of the regions and ethnic groupings in the country as possible. All amendments to the constitution or rules of a political party shall be registered with the Elections Commission no later than ten days from the effective dates of such amendments." [Article 79(e)].

C) "Parties or organizations which, by reason of their aims or the behavior of their adherents, seek to impair or abolish the free democratic society of Liberia or to endanger the existence of the Republic shall be denied registration." [Article 80(a)].

D) "Parties or organizations which retain, organize, train or equip any person or group of persons for the use or display of physical force or coercion in promoting any political objective or interest, or arouse reasonable apprehension that they are so organized, trained or equipped, shall be denied registration, or if registered, shall have their registration revoked." [Article 80(b)].

So the role of the NEC, on receiving an instrument filed by a political party, entity or independent candidate in fulfillment or compliance of an electoral pursuit is not a mere routine or perfunctory act. In the case before us, had the NEC carefully perused the CPP Framework Document, it would have discovered that *Section 8.5(2)*, if such provision was indeed included, is manifestly against the letter, intent and spirit of the Constitution of Liberia and would have denied the filing of the CPP Framework Document until that Section is amended or removed. We therefore disagree with, and reject the portion of the ruling of the Hearing Officer of the NEC, which ruling was confirmed by the Board of Commissioners of the NEC suggesting in effect that every notarized instrument submitted by a party to the NEC is presumed valid and legal.

WHEREFORE and in view of the foregoing, the ruling of the Hearing Officer which was confirmed by the Board of Commissioners of the NEC is hereby reversed. The purported *Section 8.5(2)* of the CPP Framework Document, being manifestly against the Constitution, statutory laws and public policy, is hereby declared null and *void ab initio*. The appellants, ALP and UP having duly withdrawn from the CPP are free and at liberty to pursue any political interest in their names, including the fielding of candidates in the ensuing Lofa County Senatorial By-election, if they so wish. The Clerk of this Court is

ordered to send a Mandate to the NEC informing that Body of the decision of this Court.  
IT IS HEREBY SO ORDERED.

Counsellors J. Johnny Momoh and Gloria M. Musa – Scott appeared for the appellants.

Counsellors Powo C. Hilton and Aloysius Toe appeared for the appellee.

Counsellor M. Wilkins Wright appeared for the NEC.

Ruling reversed.