

Alliance for Peace and Democracy (ADP), Petitioner/Appellant VERSUS the **National Elections Commission (NEC)**, All Poll Workers, Liberty Party candidate of the Special Senatorial Elections of 2014, **Hon. Stephen J.H. Zargo**, and **Hon. Eugene F. Kpakar** of the Republic of Liberia Respondents/ Appellees

LRSC 25

APPEAL

Heard: April 15, 2015

Decided: June 1, 2015

MR. JUSTICE BANKS delivered the Opinion of the court.

The instant proceeding is one in a series of challenges advanced by the losing candidates and parties against the manner in which the Special Senatorial Elections held on December 20, 2014 were conducted. They alleged in the complaint filed that a number of irregularities were committed by personnel of the National Elections Commission (NEC) in the course of the elections, challenged the results announced and the declarations made by the NEC, and ultimately as a consequence thereof, the certification and seating of the declared winning candidate. We note, as a matter of public historical records, of which the Supreme Court and all subordinates courts in Liberia are mandated by statute to take judicial notice of, that while constitutionally the Special Senatorial Elections were to have taken place on the Second Tuesday in October, 2014, those events were not carried out at the scheduled constitutional time because of the advent of the deadly Ebola Virus which had inundated the nation. We also take judicial notice that as a consequence of the attack of the Ebola Virus, the President of Liberia declared a State of Emergency and, as a result thereof, issued a Proclamation suspending the holding of the constitutional scheduled elections, done pursuant to and in accordance with Chapter Nine of the 1986 Constitution which provides that in such crisis situation, as the nation faced at the time, the President could and is vested with the authority to declare a State of Emergency, with the subsequent approval of the Legislature, suspend any and all rights granted by and under provisions of the Constitution, except for those specifically exempted by the Constitution.

On account of the foregoing actions and events, National Elections Commission, with the approval of the Legislature, re-scheduled the Special Senatorial Elections for December 20, 2014. It is the manner in which the senatorial election was conducted in Lofa County and irregularities alleged to have been committed in the course of conduct of that election, including the counting of the votes cast, that are the subject

of several challenges advanced by the petitioner/appellant, the Alliance for Peace and Democracy (APD), for an on behalf of its candidate, Counsellor Joseph Jallah.

In its undated complaint, under the signatures of Messrs. Jusu C. Kollie, Campaign Secretary of APD, Lofa County, and Momoh Teah, Campaign Manager of APD, Lofa County, the following specific challenges were set forth in respect of District No.1 and District No. 4:

- "1. That on the day of the election the Hon. Eugene Fallah Kpakar called on radio Kintima and Voice of Lofa in Voinjama [to] pronounce winning 26,000 votes for Foya alone. How [did] he know when the votes were not even counted?
2. That many of the tally sheets (sent record of the count) from Districts 1 & 4 issued were not stamped by NEC officials, which we feel is against the Elections Law of Liberia, thereby making all the votes of at least 1,500 as invalid.
3. Hearing Officer was seen in the tallying room working along with Data Clerk reading result for entry into the computer.
4. The Magistrate and Assistant Magistrate were out of the office during tallying process, leaving the office with the hearing officer whose duty is not tallying, which is against the Electoral Laws.
5. The Electoral Magistrate for Lower Lofa refusal to give the APD Party Agent the complaint form. [This] showed his prejudice against our Party.
6. Therefore, in view of the foregoing, we kindly request your office for a recount of the votes in Districts 1 & 4 to ensure transparency in the electoral process. Attach is a copy of the previous complaint filed to the local office of the Election Commission (NEC) in Lower Lofa, which have been expanded in this complaint [and they] should therefore be consider as one document. Meanwhile, we promise to provide all necessary evidence during the hearing. We await your timely response.

Kind regard."

We note that in the complaint quoted above, the complainant made reference to an earlier complaint filed with the local authorities of the National Elections Commission in Lofa County, which it said it was incorporating into the quoted complaint. Because in the quoted complaint the complainant indicated that it was incorporating therein by reference the earlier complaint to form an integral part of a holistic complaint, we believe that it is important, both for the purpose of the analysis and decision of the Court that the said earlier complaint be similarly quoted so that the challenges are viewed in the context of a comprehensive totality. Accordingly, we

herewith quote the earlier referenced complaint, as follows:

"Simple local argument is that it is not possible that all candidate in a precinct center that will obtain equal vote in 12 different centers. Especially in District numbers 1 & 4. With this evidence sheet indicate the result that was published by the official website of the National Elections Commission (www.necliberiaspeciqlelectionresult.com).

With this evidence we are calling on the National Elections Commission for a recount. The inconsistent attitude of the Commission in terms of the punching of the vote attain is clear evidence of malpractice.

The document that was published by the National Elections Commission on December 24, 2014, with candidates that contested the election having equal votes, equal invalid for the various polling precincts is clear manifestation of election fraud."

The Chairman of the National Elections Commission, upon receipt of the communication from the petitioner/appellant, directed the complaint to the Commission's Chief Dispute Hearing Officer, instructing him to proceed to undertake an investigation into the allegations set forth in the complaint documents. The Chief Dispute Hearing Officer, Atty. Muana S. Ville, upon receipt of the complaint and on the Chairman's directive, cited to a conference the parties to the dispute, inclusive of the representatives of the petitioner, the NEC Officials, the winning candidate, Mr. Zargo and his party, the Liberty Party, and Representative Eugene F. Kpakar, a member of the House of Representatives from Lofa County, whom the petitioner accused of announcing the results of the votes in District No. 4 when the votes had not been counted.

A formal hearing of the complaint as commenced on January 5, 2015. We note two occurrences at the call of the case. The first is that the petitioner made a submission before the hearing Officer for the holding of a pre-trial conference. The submission, although resisted, as granted by the Hearing Officer and a pre-trial conference ordered convened. The second occurrence at the Hearing was a submission made by 2nd Respondent Zargo formally submitting himself to the jurisdiction of the Hearing. This is what the said 2nd Respondent said in the submission: "Co-defendant Zargo: We welcome a joinder by virtue of the fact that the complaint seems to be both NEC and I, so we will want to join NEC in this proceeding, since NEC herself is similarly situated like us in this complaint filed, so we want to join NEC."

Following the production of evidence by the petitioner/appellant, the winning candidate, the 2nd

Respondent, Stephen J. H. Zargo, on January 12, 2015 filed a document which he denominated as "Motion for Judgment During Trial", stating as the basis thereof

that the testimonies of the witnesses produced by the petitioner did not attribute any wrongdoing to him personally. We note that the resistance to the motion indicated that 2nd Respondent Zargo had earlier submitted himself to the jurisdiction of the proceedings, and that he therefore could not thereafter file motion for judgment during trial as to him when the National Elections Commission, which had been accused of the irregularities, had not presented evidence to refute the claim of the petitioner. We shall deal with this later in this Opinion.

Notwithstanding, and for which it may be worth, but particularly because 2nd Respondent Zargo has maintained, even at the level of the Supreme Court, that the Hearing Officer was in error in not disposing of the motion before proceeding to hear the evidence of the NEC, and given the fact that we shall address the issue subsequently in this opinion, we believe it is worthy to quote the motion. Hence, we herewith quote the motion, as follows:

"The 2nd Defendant in the a above-entitled cause of action, Stephen J.H. Zargo, moves this Honorable Hearing to enter judgment during trial in his favor, and accordingly have the 2nd Defendant discharged, as a party-litigant , for the following reasons to wit:

1. That the six (6) count Petition of the Petitioner that is pending before this Honorable Hearing, neither state nor otherwise alleges any violation of the Law or any election offense committed by the 2nd Defendant. The Hearing Officer is respectfully requested to take judicial notice of the Petition before this Honourable Hearing. The absence of any violation on or breach of the law by the 2nd Defendant renders this entire Petition, as to the 2nd Defendant, a legal nullity and therefore judgment should be entered during the trial in favor of the 2nd Defendant, dismissing the entire action, as to the 2nd Defendant, and he so prays.

2. Also that the Petitioner has presented its side of the case, during the hearing before the Hearing Officer, through the Petitioner's two witnesses, who have completed their testimonies without alleging in the slightest way that the 2nd Defendant committed any election offense nor had any knowledge of any electoral offense nor conspire to commit any electoral offense. The Hearing Officer is respectfully requested to take judicial notice of the Minutes of this Honourable Hearing. Therefore, as both oral and documentary evidence of the Petitioner have failed to establish or even allege any election offense against the 2nd Defendant, the 2nd Defendant prays that judgment be entered during the trial in his favor, dismissing the entire action, as to the 2nd Defendant, and that he forthwith is discharged as a party-litigant to this proceeding.

3. And also that The New Election Law, Chapter 6, Contested Election, Section 6.2(5) says that, "No decision that any person returned was not elected, and no decision that an election is void, shall be made: (a) On the ground of any election offense committed by a person other than the candidate and without his knowledge or consent; or (b) On the ground of an election offense other than bribery or corruption." The 2nd Defendant submits that there exists no statutory ground or other condition for setting aside or otherwise questioning is election. The 2nd Defendant, therefore, prays that judgment entered during the trial in his favor, dismissing the entire action, as to the 2nd Defendant, and that he forthwith is discharged as a party-litigant to this proceeding.

4. And also that the Civil Procedure Law of Liberia, Section 26.2, 1LCL Revised, provide that, After the close of the evidence presented by an opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgment with respect to such claim or issue upon the ground that the moving party is entitled to judgment as a matter of law. The 2nd Defendant, therefore, prays that judgment be entered during the trial in his favor, dismissing the entire action, as to the 2nd Defendant, and that he forthwith is discharged as a party-litigant to this proceeding.

WHEREFORE AND IN VIEW OF THE FOREGOING, the 2nd Defendant respectfully prays the Hearing Officer to enter judgment during trial in his favor, dismissing the entire action, as the 2nd Defendant, and grant unto the 2nd defendant such other and further reliefs as are provided in law and equity. And respectfully submit.

Respectfully Submitted,

Petitioner by and thru its Counsel, BRUMSKINE & ASSOCIATES

Tubman Boulevard, Congo Town (Opp. Catholic Hospital Junction)

ATTYS. & CLLS. AT LAW

Dated this 12th day of January, A. D.2015."

At the close of the production of evidence by the parties and arguments on the facts presented and the laws relied upon by them, the Hearing Officer, on January 19, 2015, ruled denying the complaint and the prayer of the petitioner for a recount of the votes in Electoral Districts 1 and 4. The net effect of the Ruling was the upholding of the elections results and declaration made by the National Elections Commission, announced on December 27, 2014 by Chairman of the Board of Commissioners of the NEC that the winner of the elections was Stephen J. H. Zargo. In the Final Ruling, the Hearing Officer, after reciting verbatim the complaint,

said the following:

"The hearing of evidence began with the petitioner presenting four witnesses for qualification. The petitioner's witnesses included the following: Hamzat V. Sheriff, Moses A. Saah, Moses K. Yengbeh and Alhaji Dukuly. Below is the summary of the petitioner's two witnesses' testimonies after which the petitioner counsel dispensed with the rest of the other two witnesses.

The petitioner's first witness is Hamzat V. Sheriff who informed the Hearing that he was an APD party agent at the tally center and that on the second day of tally, he observed a record of the count sheet that was neither sign nor stamp by the poll workers; that he informed the Hearing Officer of this and he refer to it as harmless error; that it may have been manufactured by other people to inflict the entire process; that his supervisor join him and they both asked for complain form and they were denied; that the Hearing Officer was in charge of the process.

The petitioner's second witness is Alhaji Dukuly who also testified as follow: that he observed on the Internet that all the candidates had equal votes of 41 and equal invalid votes of 5; that also observed that record of the count coming in from the field were not stamp; that according to the election law, all that is stamped is valid all that is not stamp is invalid; that the Hearing Officer refused to issue us complaint form; that he saw on the Analyst New Paper Website that his candidate was in the lead. At the close of petitioner oral testimonies, petitioner's counsel submitted into evidence photocopies of NEC record of the counts signed and stamped by NEC Staff and those that were not stamped by the NEC Staff. The respondents also reduced two witnesses at the hearing including Henry W. Barkoun, the Magisterial Hearing Officer assigned to Lower Lofa; Augustine Bah the Data Entry Clerk assigned to Lower Lofa.

The respondents first witness was Henry W. Barkoun who testified as summarized below; that he did not receive any complaint from the field after the close of poll; that the Magistrate had an emergency call and had to leave the tally center and that before his departure he consulted with the parties that he the Hearing Officer should continue the tally in his absent and they all consented; that there was a record of the count from Kolahun High School that was not stamped but parties were consulted and they agreed that it was no problem; that they observed some more record of the counts from the field that were not stamped; that the unstamped record of the counts were compared to the TEE and presiding officer's journal the parties agreed when they observed them to be one and the same;

that Joseph Henneh the party agent of the APD attempted to offer him first US 2000 and again US 4000 and US 15,000 to manipulate result in favor of the APD.

The respondents second witness is Augustine Bah, the Data Entry clerk who testified as follow: that he started work with the magistrate reading the data and few minutes thereafter, the Magistrate had to leave the tally after receiving an emergency call from Vahun; that before the Magistrate departure, he informed the parties that the Hearing Officer will continue the reading of the data and all the parties consented; that he saw the first unstamped record of count from Kolahun High School and result from it was checked against the one from the field and both corresponded and the tally continued; that next day of the tally the Magistrate came to work but all the parties agreed that the Hearing Officer should continue; that figures on the unstamped record of the count was corresponding to what the agents received from the field but the argument was that it was not stamped; that he told the parties that the record of the count is one per polling place, and that it has security features, also the envelope containing the record of the count will not open without being destroyed; that the parties consented to the clarity and the tally continue to the end. At the close of oral evidence, the respondents also submitted for admission into evidence the attendance record of the parties during the tally, copies of the contract entered into by and between the Hearing Officer and the NEC.

There are two legal questions that are determinative of the controversy in this case they are:

a. Has the petitioner established sufficient proof of the allegation made in their complaint to/warrant the granting of recount of votes in Districts 1&4.

b. Whether or not the allege counts enumerated in the petitioner's complaint will obtain a full, fair and express remedy in the recount of votes in District 1&4?

At a pre-hearing conference before the commencement of the investigation, the petitioner informed the Hearing that it were not in readiness to provide proof on count one of its complaint relating to the pronouncement made on the Voice of Lofa by Eugene F. Kpakar.

In answering the question whether the Petitioner has provided evidence sufficient to warrant the granting of recount of votes in District 1 & 4, the Hearing Officer will first provide a practical definition of the phrase "recount of votes". Recount of votes is the re-tabulation of votes counted at the original

count. The petitioner and their counsel have argued that by the Hearing Officer reading the data and by the Magistrate and his Assistance being absent from the tally room, their votes were manipulated and therefore want votes be recounted . The granting of recount of votes in this manner requires a clear showing that the data obtained by the petitioner in the field varies with what is being reported by the NEC. Interestingly the petitioner testified at the hearing that he received data from the field they did not say whether the data received were different from those on the unstamped record of the count. The petitioner strong argument is that the records of the count were unstamped and therefore the data on them were invalid. The petitioner submitted into evidence copies of record of the count that were unstamped but yet signed by the presiding officers and party agents and some signed by agents of petitioner. The petitioner's agents after having signed the record of the counts at the Dec. 20, 2014 poll cannot come later to challenge what they through their agents confirmed at the poll. This argument is consistent with the Supreme Court ruling in the case Sando Dazoe Johnson vs. National Elections Commission decided by the Supreme Court on Dec. 16, 2005. The Hearing Officer does not agree that these procedural irregularities that have no impact on the actual votes obtained by candidates will defeat the will of the electorates of Lofa County.

Inferences about election irregularities can be drawn from facts but not from other inferences. Mirlisena vs. Fellerboff, 463 N.E.2d 115 (Ohio 1984).

As to the issue whether or not the allegations enumerated in the petitioner's complaint if established may be remedies by a recount of votes in Districts 4, the Hearing Officer say that recount of votes as requested by the petitioner is intended to ascertain the accuracy of the votes obtained by the candidates at the poll. The petitioner has not proven that by the Magistrate and his Assistant being absent from the tally room or by the Hearing Officer reading the data reduces their vote in any way. They did not even establish that their votes on the unstamped record of count were different from those brought in by their agents from the field to have compelled the NEC to revisit the ballot box for a recount of votes in District 1 & 4. The Hearing Officer is reluctant to recommend the order of recount of votes on what the petitioner has presented both in their pleadings and argument before us.

WHEREFORE AND IN VIEW WHAT IS ENUMERATED ABOVE, the

petitioner's petition for recount of votes in District 1 & 4 in Lofa County is hereby denied . IT IS HEREBY SO ORDERED."

The Board of Commissioners, having on January 23, 2015 heard the arguments of the parties, ruled on February 3, 2015, as follows, with Madam Sarah Jegede Toe, speaking for the Board:

"This appeal comes before the Board on a 5-count Bill of Exceptions filed by the Alliance for Peace and Democracy (APD), praying the Board to reverse the Chief Hearing Officer's Ruling of January 19, 2015. The facts are summarized as follows: In keeping with its constitutional and statutory duties, the National Elections Commission (NEC) on December 20, 2015, conducted the Special Senatorial Election throughout the fifteen Counties of the Republic of Liberia.

Consistent with Article 83(c) of the 1986 Constitution of Liberia which mandates the Elections Commission to declare the returns of the elections no later than fifteen days after the casting of ballots, the NEC on December 7, 2014 declared Stephen J. H. Zargo of the liberty Party as the Winner of the Special Senatorial Election for Lofa County, having obtained 12,797 of the total valid votes amounting to 26.2%.

Not satisfied with the conduct and result of the election, APD filed an undated complaint with NEC alleging: (1) that before the votes were counted on election day, Hon. Eugene F. Kpakar pronounced winning 26,000 votes from Foyah alone; (2) that many of the records of the counts from Districts 1 and 4 were unstamped by NEC officials which it felt violated the election laws making 1,500 votes invalid; (3) the hearing Officer was seen in the tally room working along with the data clerk reading results for entry into the computer; (4) the Magistrate and Assistant Magistrate were absent from the tallying, center leaving the Hearing Officer in charge of tallying against the electoral Laws; and (5) that election Magistrate refused to give the APD's agent a complaint form.

On January 5, 2015, the Chief Hearing Officer cited the parties for commencement of the investigation into APD's complaint. The records also show that the APD in presenting its side of the case, qualified four witnesses but only two of the four witnesses in persons of Hamzat V. Sheriff and Alhaji Dukuly testified for Petitioner and now Appellant. APD then rested and submitted its side of the case to argument after admitting into evidence documents

marked as exhibits P/1-P/4 in bulk to include the stamped and unstamped records of the counts.

The respondents, in presenting their side of the case, produced two witnesses in persons of the Local Hearing Officer Henry Barcon and Augustine Bah, the Data Clerk at the Tally Center in Lower Lofa County. Respondents then rested and submitted their side of the case to argument is after admitting into evidence documents marked as Exhibits D/1 and D/2 in bulk to include the Hearing Officer's contract, attendance records of Party agents, observers and other accredited persons present at the Tally Center.

The Chief Hearing Officer rendered his Final Judgment on January 19, 2015 dismissing the complaint. APD accepted to the Ruling and announced an appeal to the Board. Hence, this appeal. In connection with its appeal, Appellant APD submits a 5 count Bill of Exceptions which, for the benefit of this opinion, we quote herein:

1. "That Your Honor committed reversible error when you ignored the contention of the Petition that the ruling of your Honor is contrary to and against the weight of the evidence produced at the hearing. Petitioner submits that during the argument, you were informed that the two witnesses for the Respondents in their testimonies admitted that the unstamped records of the counts for the December 20, 2014 Special Senatorial Election of Lofa County, and stamped record of the said record of the Count, the Magistrate and Assistant Magistrate were out during the tally process and same was conducted by the Hearing Officer, including the denial of complaint form by the hearing officer, indicating that the Petitioner obtained higher vote, but by the act of NEC staffs the result of the Petitioner dramatically reduced from 8837 to 8854 votes, by NEC's own provisional and final reports, the total votes obtained by the Petitioner, you failed and refused to accord the same credence. Hence, your Honor committed reversible error.

2. That Your Honor committed reversible error when you failed to rule on the motion for judgment during trial filed by 2nd Defendant, Stephen Zargo on January 12, 2015 which was argued before your Honor pending determination.

3. That Your Honor committed reversible error when you deviated from the issues of unstamped record of the Count and stamped record of the Count which was admitted into evidence, the admission of Respondents two

witnesses for the absence of the Magistrate and Assist and Magistrate which tallying function was carried out by the Hearing Officer and the denial of complaint form by the Hearing Office to which you prejudicially, capriciously and erroneously ruled.

4. That Your Honor committed reversible error when you ignored the providing of the minutes for correction to be made during the hearing since it was a recording.

5. That Your Honor committed reversible error when during your final ruling, you failed to summarize the evidence produced by the Petitioner two witnesses, in that, the Petitioner two witnesses corroborated that there were unusually large number of unstamped record of the Count and stamped. Record of the count, absence of Magistr9te and Assistant Magistrate for the 21st and 22nd December 2014, Hearing Officer illegally conducted the tallying with ill-conceived motive and the denial of complaint form by the hearing Officer to which the Respondents witnesses admitted. Petition r says that the evidence produced by the Petitioner and the Witnesses been summarized accordingly, the ruling would have been otherwise. Hence, your Honor committed reversible error for which your final ruling should be reversed.

WHEREFORE AND INVIEW OF THE FOREGOING, Petitioner submits this Bill of Exceptions for your Honor's approval so that the records of this case would be reviewed by the Board of Commissioners." Having considered appellant's Bill of Exceptions, arguments of the parties, and the records of the case, the Board has decided that the following issues are germane and determinative of this case:

ISSUES:

1. Whether Appellant presented evidence sufficient to warrant a recount in Districts and 4?

2. Whether a par y may request recount of votes based on unstamped record of the count where such request is not supported by specific allegations of irregularities that substantially affected or tainted the voting or votes count of such party?

3. Whether the He ring Officer committed a reversible error when he did not rule on Co-Appellee Liberty Party's Motion for Judgment During Trial?

This Board will proceed to answer the first and second issues together because they both have the same subject-same being recount of votes.

In answering the first and second issues of whether Appellant presented evidence sufficient to warrant a recount in Districts 1&4, and, whether a party may request recount of votes based on unstamped record of the count where such request is not supported by specific allegations of irregularities that substantially affected or tainted votes count of such party, we answer both in the negative.

A recourse to the records shows that Appellant's request for recount was denied by the Hearing Officer on the following grounds: (1) that in order for recount to be granted, the requirement of a clear showing that the data obtained by the Appellant in the field varies from that which was reported by the NEC; (2) because Appellant's witnesses testified at the hearing that they received data from the field and there was no showing whether the data received were different from those on the unstamped record of the count; that the evidence of the copies of unstamped records of the count submitted by Appellant were signed by the presiding officers and party agents and some signed by agents of petitioner, and that the petitioner's agents after having signed the record of the counts at the Dec. 20, 2014 polls cannot come later to challenge what they through their agents confirmed at the poll. The Hearing Officer then cited the Supreme Court ruling in the case Sando Dazoe Johnson vs. National Elections Commission (Dec. 1 , 2005).

The Board agrees with the Hearing Officer for his refusal to grant the recounting of votes in Districts 1 and 4 on the grounds mentioned supra and it must be emphasized that the will of the electorates of Lofa County to choose their Senator cannot be allowed to be defeated, especially where the evidence submitted by appellant is not only insufficient but is void of any clear evidence of irregularities which substantially affected the actual votes of the Appellant. Such error of not stamping the records of the counts is harmless. The relevant law on this issue is found in Section 6.2(3) of the New Elections Law which states "Harmless errors not to vitiate election. No election shall be declared void on account of any delay of nominations; the polling or return of the writ, or on account of the absence of error of any officer which shall not be proved to have affected the result of the election."

This Board notes that petitioner's witnesses testified that over 10 records of the counts were not stamped; on the other hand, Respondents' witnesses also testified that the unstamped records of the count were tallied only after obtaining

the consent of all parties at the tally center and the results of votes appearing on the unstamped records of the count were not different from those counts results appearing in the presiding officer's journal and on the copies of the records of the counts of the representatives with the two highest votes.

Appellant states in count 1 of its bill of exceptions that the NEC gave it more votes than what it actually obtained and the relevant portion of count 1 the said Bill of Exception states: "that the Petitioner obtained higher vote, but by the act of NEC staffs the result of the Petitioner dramatically reduced from 8837 to 8554 votes, by NEC own [provisional and final reports, the total votes obtained by the Petitioner,". The Board says that assuming but without agreeing Appellant meant that NEC gave it 17 votes less, this does not change the outcome of the election. And still assuming but without agreeing that Appellant meant that NEC gave it 17 votes more, this is also does not change the outcome of the election, where the final result shows that the winning candidate Hon. Stephen J. H. Zargo obtained 12,797 of the total valid votes amounting to 26.2% and Cllr. Joseph Kpator Jallah of the APD obtained 8,554 of the total valid votes amounting to 17.5%.

In passing on this recount issue, the Board says that according to NEC Resolution of recounting of votes, the other criteria which triggers automatic recount is where the margin of votes between the first and second Candidates is 50 or less votes. In the instant case, Liberty Party Candidate Stephen J. H. Zargo final votes obtained were 12, 797 and APD's Candidate Joseph K. Jallah final votes obtained were 8,554. The difference between these two candidates is 4,243 votes which is more than 50 (x) 80 votes; therefore, there can be no automatic recounting of votes.

The Board also agrees with the Hearing Officer that the appellant has not proven that by the Magistrate and his Assistant being absent from the tally room or by the Hearing Officer reading the data reduces Appellant's vote in any way. Appellant did not even establish that its candidate's votes on the unstamped records of count were different from those brought in by their agents from the field to have compelled the NEC to revisit the ballot box for a recount of votes in Districts 1 & 4. Section 4.14 of the New Elections Law of 1986 requires the Magistrate of Election to endorse the Elections Tally and it reads: "When the Magistrate of Elections has received or been notified of the tally of the votes cast at each polling center in accordance

with the registrar prepared after the tally at polling places, he shall total all the votes cast in each constituency and endorse each tally...". In the instant case, the Magistrate did endorse the Final Tally as the records show and which was also testified to by witness Henry Barcon on the stand. Recourse to the records of this case show that petitioner presented two witnesses in persons of Hamzat V. Sheriff and Alhaji Dukuly who testified that they were not present in the tally center and that they were informed by others about what went on in the tally center. The testimonies of Petitioner's two witnesses showed that they did not testify from their certain knowledge and therefore, they were not the best evidence in that APD was represented by one Joseph K. Hench who signed all three of the 3-Days Tallying Process Day Visitor Lodge Sheets from December 21-23, 2014. The question that comes to the mind of this Board is, why didn't APD present Mr. Joseph K. Hench to testify during the trial because Agent Joseph K. Hench would have been the best evidence for a person who was present at the tallying of votes to testify from his certain knowledge.

The Board says it is a general principle of law that the best evidence which the case admit of must always be produced; that no evidence is sufficient which supposes the existence of better evidence (1LCLR Section 25.6). The Board also says that the Honorable Supreme Court has held that mere allegations are not proof and factual allegations pleaded must be proven at the trial for it is evidence alone which enables the Court to decide with certainty the matter in dispute (American Life Insurance Company, Inc. versus Beatrice Holder; 29 LLR 143 , syl. 4).

The Board will proceed to consolidate counts 1, 3, & 5 of Appellant's Bill of Exceptions because they raised the same contentions that will be answered in discussing issues 1 and 2. Also to be discussed in passing are the following contentions made by appellant in its bill of exception: the contention as found in count 4 of appellant's bill of exceptions which relates to providing of Minutes of the day's sitting; Appellant APD's contention relating to it being denied complaint forms; Appellant's contention that the magistrate did not have authority to appoint; and Appellant APD's contention that the Hearing Officer reading of tally is a violation of the Election. However, count 2 of Appellant APD will be discussed under issue # 2.

The Board will now proceed to discuss the above mentioned contentions in

passing. Petitioner APD contends that the failure of the Clerk to provide minutes of the previous day sitting is a reversible error which warrants the recount of votes in Districts 1 and 4. The Board says such contention of APD is neither supported by the records nor supported by law. The records show that the Hearing Officer ordered the Clerk to provide the minutes to the petitioner/appellant and in the Board's mind, it was the duty of Appellant APD to obtain the minutes from the Clerk, especially where the clerk transcribes the minutes after the recording of each day. The Board disagrees with Appellant APD that the minutes not been available is reversible error. This Board says that the Court cannot do for a party what it ought to do for itself. (John N. Williams vs. Republic; 15LLR99; text at 116).

As relating to Appellant APD's contention which has to do with it being denied complaint forms, the Board says same is moot because the case commenced on January 5, 2015 and Appellant APD is now here on appeal. As relating to Appellant's other contention which has to do with the Magistrate's authority to appoint deputy/deputies, the Board says the law provides under Section 4.4(2) of the New Elections Law of 1986 that the Magistrate has the authority to appoint a deputy or deputies to act specially or generally, or for a particular constituency. The Board says that the Magistrate leaving the Tallying Center with the Hearing Officer to read tally results---in the consent of all parties---does not violate the elections law; especially, where the Hearing Officer's contracts provides under case 4(b) that the Hearing Officer can perform other related duties and functions as may be required by the NEC. The Board also notes Section 6.2(3) of the New Elections Law which states "Harmless errors not to vitiate election. No election shall be declared void on account of any delay of nominations: the polling or return of the writ or on account of the absence of error of any officer which shall not be proved to have affected the result of the election."

This Board will now consider the third (3) issue of Whether the Hearing Officer committed a reversible error when he did not rule on Co-Appellee Liberty Party's Motion for Judgment During Trial? The Answer to this issue is in the Negative. But before expanding on the rationale of why the answer to this issue is in the Negative, this Board will quote the relevant portions of the law on motion for judgment during trial as found in Section 26.2 of our Civil Procedure Law (1 LCLR) and it states:

Section 26.2(1LCLR)- Motion for Judgment During Trial:

"After the close of the evidence presented by an opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgment with respect to such claim or issue upon the ground that the moving party is entitled to judgment as a matter of law. The motion does not waive the right to trial by jury or to present further evidence even where it is made by all parties. If the court grants such motion in an action tried by jury, it shall direct the jury what verdict to render, and if the jury disregards the direction, the court may in its discretion grant a new trial. If the court grants such a motion in an action tried by the court without a jury, the court as trier of the facts may then determine them and render judgment or may decline to render any judgment until the close of all the evidence. In such a case, if the court renders judgment on the merits, they shall make findings as provided in section 23. (2)".

The records show that on January 14, 2015, Co-Respondent Liberty Party through its Counsel, Atty. J. Baipaye Seelpee, moved the Hearing for judgment during trial after 1st Respondent National Elections Commission had begun producing evidence to prove its side of the case by putting Hearing Officer Henry Barcon on the stand.

The records also show that the motion was resisted by Petitioner's Counsel and the Hearing Officer made his ruling. For the benefit of this Ruling, we will note the relevant portion of the Hearing Officer's Ruling on the motion for Judgment during Trial: "Motion for Judgment During Trial: Hearing: having heard argument on the Respondent Stephen Zargo's Motion for Judgment during Trial and the Resistance thereto, the Hearing Officer will decline to make any judgment until the close of evidence."

In considering the relevant law and the ruling of the Hearing Officer on the motion for judgment during trial, the Board says that the law gives the judge the discretion to reserve ruling on the motion until he/she has heard the case on its merits and to take sufficient evidence so as to clear any doubt in the mind of the judge. The law states that "After the close of the evidence presented by an opposing party with respect to a claim or issue, or at any time on the basis of admission, any party may move for judgment with respect to such claim or issue upon the ground that the moving party is entitled to judgment as a matter of law..." The Board notes that 2nd Respondent Liberty Party made the motion at the wrong time because the opposing party who is

Petitioner/Appellant APD had rested evidence in toto and 1st Respondent NEC had just started to produce evidence to prove its side of the case when 2nd Respondent Liberty Party made this motion; therefore, the Board says that the legal maxim which says 'that anything which is not done legally, it is not done at all' is applicable in this instant case and 2nd Respondent Liberty Party's motion for judgment During trial is a legal nullity. The Hearing Officer did not commit any reversible error by reserving ruling on 2nd Respondent Liberty Party's motion and legally, the Hearing Officer did not have to pass on this motion because the relevant provisions of Section 6.2 provides that "after the close of the evidence presented by an opposing party with respect to a claim or issue, or at any time of the basis of admissions..". The Board says that the Hearing Office was not required to pass on such motion because 2nd Respondent Liberty Party and 1st Respondent NEC are not opposing parties; the Hearing Officer committed no reversible error by deferring judgment.

WHEREFORE and in view of facts and circumstances of the case, the evidence presented by all parties, the laws controlling, the arguments pros and cons , the records of the entire case, this board says that the January 11, 2015 ruling of the chief hearing officer is hereby confirmed and reaffirmed. The commission's declaration of Mr. Stephen J. H. Zargo as the winner of Lofa county December 20, 2014 special senatorial Election is hereby affirmed. And it is hereby so ordered."

It was from the above quoted ruling of the Board of Commissioners of the National Elections Commission that the petitioner announced a further appeal to the Honourable Supreme Court of Liberia and, consistent with the Provisions of the Elections Law, Guidelines and Regulations perfected its appeal to this Honourable Court for review thereof. One of the requirements under the Constitution and the Elections Law is that the appealing party submits to the National Elections Commission for its approval a Bill of Exceptions within seven days of the date of the decision of the Commission and subsequently, within seven days thereafter files same with the Clerk of the Honourable Supreme Court. Our inspection of the records forwarded to this Court by the National Elections Commission reveals that these requirements were met by the appellant within the time stipulated by law and duly approved by the Commission. We herewith quote the eleven-count bill of exceptions which states

the several alleged irregularities committed by the NEC and which the petitioner/appellant believes warrant the reversal of the decision of 1st Respondent National Election Commission.

"The above named petitioner/appellant in the above entitled cause of action, being dissatisfied with Your Honors' final ruling of February 3, 2015, her by submits this bill of exceptions for Your Honors' approval in order that his appeal is perfected to the Honorable Supreme Court, sitting in its October Term, A. D. 2014.

1. That the petitioner/ appellant seriously excepts to the Board of Commissioners decision to have confirmed and affirmed the erroneous ruling of the Chief Dispute Hearing Officer, instead of setting aside the prejudicial ruling of the Chief Dispute Hearing Officer.

2. That the Board of Commissioners' ruling is contrary to the five counts bill of exception filed for election irregularities.

3. That the Board of Commissioners ignored the weight of the evidence of unstamped record of the count and the contention thereof, as well as petitioner/appellant objection, raised for the absence of a Magistrate and Assistant Magistrate during the tally process which was admitted to by the respondent witnesses.

4. That the Commissioners committed reversible error when you ruled that the petitioner , APD, request was not supported by specific allegations of irregularities when the APD had accused NEC of including unstamped record of the count, the absence of the Magistrate and Assistant Magistrate which prompted the request for a complaint form and was denied by the Hearing Officer in Lower Lofa County.

5. That the Board of Commissioners committed serious legal error when you ruled that more than 10 to 500 unstamped record of the count that was discovered and objected to by APD, to which the respondent witnesses admitted during the hearing, were considered harmless error.

6. That the Board of Commissioners erred in your final ruling when you did not only fail to summarize the petitioner two witnesses testimonies, as was done in error by the Hearing Officer in his ruling; rather the Commissioners proceeded to misquote the testimonies of petitioner two witnesses as can be seen on page 4, paragraph 5, count 2: paragraph 7, line 2 to 3 and page 5,

the last paragraph of the Commissioners ruling.

7. The Board of Commissioners were in legal error when you ruled that the hearing Officer was not required to pass on the Motion for Judgment during trial, that which Petitioner seriously resists and says that our statute provide that a motion must be heard and disposed of before the main suit be proceeded with.

8. The Board of Commissioners were in gross error when you ruled out of context and contention of Petitioner request of the minutes of the proceedings to that of a substantive request for recount which is totally separate and distinct, the best evidence of this case at bar should be the receipt from NEC case file that Petitioner/Appellant signed for the minutes at the time of the Bill of Exceptions rather than quoting the hearing officer order in the minutes or records.

9. That also the Commissioners erroneously ruled by choosing Joseph K. Hench as the best witness for Petitioner/Appellant, when Petitioner had presented his best witnesses which were not objected by the Respondent.

10. The Board of Commissioners were informed during oral argument of the Petitioner that the Hearing Officer ignored the testimonies of Petitioner second witness that Petitioner vote was miscalculated between the provisional and the final result of NEC, and that the very recognition of the Commissioners of this fact be it significant or not was sufficient to trigger the "rule awakening" of the Commission for recount because this is just one proof in the "chain of evidence" that there were miscalculation in the tally process. Yet the Board of Commissioners ruled otherwise.

11 The Board committed error when you ruled that the denial of complaint form was moot by the commencement of the hearing on January 5, 2015 when the purpose was to document evidence on the field for onward transmission to NEC Headquarters in Monrovia for consideration, if applicable.

WHEREFORE and in view of the foregoing, Petitioner submits this bill of exceptions for our Honors' approval so that the records of this case would be reviewed by the Supreme Court of Liberia.

The National Elections Commission, upon receipt of the bill of exceptions, forwarded the records of the proceedings to the Supreme Court, as required by Article 83(c) of the Constitution, allowed subsequently by the filing of returns to the bill of exceptions. Notwithstanding, while we view the belated filing of

the Returns to the appellant's bill of exceptions as regrettable, we believe that for the purpose of highlighting the defenses raised by the Commission in support of the action of its Election Magistrate, the Ruling of its Chief Dispute Hearing Officer and the decision of its Board of Commissioners, we should quote the said "Returns". The four-count "Returns" reads, as follows:

Pursuant to its constitutional and statutory mandate, the Co- Appellee National Elections Commission conducted the Special Senatorial Election of December 20, 2014 throughout the fifteen counties of the Republic of Liberia, including Lofa County. Appellant Alliance for Peace and Democracy (APD) filed a complaint with the NEC alleging that:

- 1) Many of the Records of the Count were not stamped.
- 2) That the Magistrate of Elections and Assistant Magistrate were out of the office during the tallying process, leaving the office with the Hearing Officer whose duty is not tallying. Hence, APD contends this is against the elections laws.
- 3) That the Hearing Officer was seen working along with the Data Clerk in the tally room reading results for entry into the computer.
- 4) That on election day , Honorable Eugene Fallah Kpakar called on radio, Voice of Lofa, in Voinjama that Co-Respondent Zargo would obtain 26,000 valid votes in Foya alone. Appellant concluded its complaint by praying for a recount of the votes.

Subsequently, the Senior Hearing Officer of Co-Appellee National Elections Commission conducted a hearing at the end of which he dismissed Appellant's complaint.

The Appellant being dissatisfied with the Ruling of the Hearing Officer excepted to same, announced an appeal and perfected same to the Board of Commissioners (BOC) of Co-Appellee NEC. The Board of Commissioners heard the appeal and confirmed the Hearing Officer's Ruling.

The appellant filed a bill of exceptions to the Board's Final Ruling of, and perfected its appeal against the Board's Decision. Hence, this appeal is before this Honorable Court for a final determination of the case. Co-appellee NEC contends that both the Ruling of the Hearing Officer and the Final Ruling of the Board of Commissioners of Appellee NEC confirming the Hearing Officer's Ruling are consistent with the Law and facts in the case.

Co-appellee NEC says that all the allegations contained in appellant's

complaint do not singularly or jointly constitute ground for recount as appellant has requested, especially so when none of the allegations is attributed to Co-appellee Stephen Zargo. Wherefore and in view of the foregoing, Co-appellee National Elections Commission (NEC) respectfully prays this Honorable Court to deny and dismiss appellant's Appeal and grant unto Co-appellee NEC any and all other relief deemed legal, just and equitable.

Respectfully submitted

by the above named Co-appellee National Elections Commission (NEC)
by and thru its counsel

Joseph N. Blidi
COUNSELLOR-AT-LAW

Dated this 13th day of April, A. D. 2015."

The foregoing narration and referenced instruments provide a synopsis of the process and the electoral activity leading, firstly, to the elections dispute in the instant case, and secondly, the appeal taken to this Honourable Court by the appellant for its consideration, seeking this Court reversal of the ruling of the Board of Commissioners of National Elections Commission, which ruling of the Board confirmed the decision of the Senior Election Dispute Officer. Specifically, this Court is asked to consider whether the allegations levied in the complaint, most of which are not denied by 1st Respondent National Elections Commission, provide a sufficient basis for a recount of the ballots cast in Districts Nos. 1 and 4 in Lofa County during the December 20, 2014 Senatorial Elections held in those Districts.

In order to answer this question, we take recourse to the mandate stipulated in the Constitution and the Elections law, both of which we believe to be sacred to the nation and to its people. It is important also to emphasize that the manner in which elections for public offices and the results announced by the National Elections Commission affect not only a single individual or small groups of individuals, but entire communities, indeed the entire nation, and could determine the course of the nation, beneficial or harmful. That fact, and others which we shall examine in the course of this Opinion, and which we believe the framers of the Constitution must have been consciously aware of, makes it even more imperative and crucial that the electoral process is not only seen or perceived as being free, fair, and transparent but that in fact and indeed it is free, fair and transparent divorced of any violations that could taint the

process or the results announced d by the NEC, and expose them to suspicion and distrust, as to whether the results manifest the desire and wishes of the people expressed by them by their votes. In this connection, let us explore the intent of the framers of the Constitution, and even the statute governing the electoral process.

The Constitution of Liberia, which became effective January 6, 1986, and which remains effective today recognizes, in unmistakable terms, the right of every Liberian citizen who has attained 18 years of age to vote in elections for elective public offices and it imposes on the National Elections Commission (NEC) the duty and the obligation to ensure that the process is fair, is transparent, and is not tainted with any semblance of malpractice, and that votes cast by the electorate are counted in manner as reflect their aspirations and that the results announced represent those aspirations manifested in their votes.

The Supreme Court, in obedience to the mandate of the Constitution, recognized by the Court, as it was intended to be, the most sacred of the governing documents of the nation, has espoused numerous and consistently the law must be scrupulously adhered to by the Commission, both in terms of its wording and spirit and intent envisioned by the framers. We reiterate and reconfirm that stance, which this court has followed from the very inception of the nation, recognizing now, as was have done many times before, that the right of the citizens to vote for their public officials and the right to have their votes counted, like the Constitution itself which guaranteed the rights, must be held sacred at all times of the Constitution, and that the National Elections Commission, in carrying out its functions in that respect must adhere to that standard. There can be no excuse for deviation that could be seen to impair the exercise of those rights.

We should underscore also that the Supreme Court, as with the Constitution, highly values that the counting of the ballots, the mechanisms employed in and for such counting, and the process as to how votes cast are dealt with by persons charged with the responsibility for the process, the same as the process leading to the casting of the votes, must never be compromised, for all of those can determine the course and direction of the results and affect whether results announced are reflective of the actual votes cast. We see nothing in the records that the NEC deliberately pursued a course aimed at altering the result of the elections in the instant case. We must emphasize, however, that if the

process is flawed, no matter how good the Commission's intention may have been, especially if it departs from the prescribed manner or mandate of the law, it could have the propensity to impact negatively and severely, not just a single individual but, as in the instant case, an entire county wherein resides almost one-fifth of the nation's population. This is the underlining theme and mandate of the Constitution, that the Commission must not only ensure that the manner in which the elections are conducted is fair and transparent but also that the results must represent the true votes of the electorate. Thus a party feeling aggrieved may challenge not only the manner in which the elections were conducted but also the results of the elections.

Thus, pursuant to the mandate conferred upon it by Article 84, as well as the broad powers granted it by Article 34(i) to enact the Elections Law of the Land, the Legislature, in 1986, enacted new Elections Law. The appellant asserts that those laws, sections of which imposed specific mandates on the National Elections Commission, were violated by the Commission and its personnel in the course of that conduct of the December 14, 2014 Special Senatorial Elections in Lofa Count leading to the announcement of the results of the said elections. The appellant specifically assigned errors to the Senior Dispute Hearing Officer and the Board of Commissioners of the NEC for the manner in which it alleges they conducted the investigations of charges which it had levied against certain personnel of the Commission in the conduct of the elections and the tallying of the results of the votes casts by the electorate. Amongst the errors alleged by the appellant are the following:

- (a) That the Senior Dispute Hearing Officer and the Board of Commissioners of the NEC erred in concluding that the fact that tally sheets coming from the fields were not stamped does not invalidate the tally sheets; that in fact the error was a harmless one and was not of a sufficient magnitude to warrant a recount. In this connection, the appellant argues that the lack of stamp on several thousands of the tally sheets rendered such tally sheets invalid even though the law does not openly declare such sheets invalid.
- (b) That the Senior Dispute Hearing Officer and the Board of Commissioners of the National Elections Commission erred in concluding that the circumstances presented in the case provided a sufficient excuse for the hearing officer being in the tally room aiding the Data Clerk in reading the results for entry into

the computer, when in fact the substitution of the Elections Magistrate with the Hearing Officer was against the Elections Law.

(c) That the Hearing Officer and the Board of Commissioners erred in not giving credence to the fact that the NEC had posted on its website that all of the candidates had equal votes of 41 each and 5 invalid votes. Additionally, the appellant's candidate total vote decreased from 8837 to 8554 between the provisional and final reports.

(d) That the Board of Commissioner erred in ruling otherwise than that there was miscalculation in the tally process.

From the above, the following ancillary issues are presented for the consideration of the Court.

1. Whether the conceded fact that many of the tally sheets were unstamped forms a sufficient basis for this Court to order a recount of the ballots?

2. Whether the Local Hearing Officer or the Magistrate performing of the statutory function of the Sheriff in the tallying of the votes materially sullied the electoral process?

Other ancillary issues were argued but since the Supreme Court has the discretion to determine which issue it deems dispositive [*Mananaai v. Momo* decided on July 4, 2015; *Jawhary v. Hassoun*, 40 LLR 418 (2001); *Knuckles v. Liberian Trading and Development Bank*, 40 LLR 511(2001)], we do not consider them to be of sufficient magnitude to warrant any extensive consideration by this Court. Notwithstanding, in the course of the discussion of the issues stated above we shall, in passing, allude to number of those ancillary issues.

But let proceed therefore to consider the first ancillary issue stated above and which whether the acknowledged fact by the National Elections Commission that many of the tally sheets from the field were not stamped, as is required by the Elections Law, warranted a recount of the ballots in the Districts wherein the tally sheets were not stamped. The answer to this issue bears on the outcome of the main issue, which is, whether there exists a sufficient basis for a recount of the ballots in Districts 1 and 4, as demanded by the appellant. This is what the Senior Dispute

Hearing Officer said, in his final ruling, with regards to the said contention:

"The petitioner strong argument is that the records of the count were unstamped and therefore the data on them were invalid. The petitioner submitted into

evidence copies of record of the count that were unstamped but yet signed by the presiding officers and party agents and some signed by agents of petitioner. The petitioner's agents after having signed the record of the counts at the Dec. 20, 2014 poll cannot come later to challenge what they through their agents confirmed at the poll. This argument is consistent with the Supreme Court ruling in the case Sando Dazoe Johnson vs. National Elections Commission decided by the Supreme Court on Dec. 16, 2005. The Hearing Officer does not agree that these procedural irregularities that have no impact on the actual votes obtained by candidates will defeat the will of the electorates of Lofa County. Inferences about election irregularities can be drawn from facts but not from other inferences. *Mirlisena vs. Fellerboff*, 463 N.E.2d 1 5 (Ohio 1984).

As to the issue whether or not the allegations enumerated in the petitioner's complaint, if established, may be remedied by a recount of votes in Districts 1 & 4, the Hearing Officer says that recount of votes, as requested by the petitioner, is intended to ascertain the accuracy of the votes obtained by the candidates at the poll. The petitioner has not proven that by the Magistrate and his Assistant being absent from the tally room or the by Hearing Officer reading the data reduces their vote in any way. They did not even establish that their votes on the unstamped record of count were different from those brought in by their agents from the field to have compelled the NEC to revisit the ballot box for a recount of votes in Districts 1 & 4. The Hearing Officer is reluctant to recommend the order of recount of votes on what the petitioner has presented both in their pleadings and argument before us."

Not being satisfied with what the Senior Dispute Hearing Officer had said, the appellant raised the same issue before the Board of Commissioners of the NEC. The Board sustained the positions taken by the Hearing Officer which were (a) that the appellant's agents, having signed the records of the counts that were conducted at the poll, the appellant could not later raise the contention that the tally sheets were not stamped or challenge what its agents had confirmed at the poll by their signing of the records; (b) that the acts complained of were procedural irregularities that had no impact on the actual votes obtained by candidates and could therefore not be a basis to defeat the will of the electorates of Lofa County; (c) that the acts complained of were mere inferences about election irregularities in the elections not supported by

facts but by other inferences; and (d) that as the appellant had failed to establish that the votes of its candidate on the unstamped record of the count were different from those brought in by their agents from the field, it did not warrant a decision to compel the NEC to revisit the ballot box for a recount of votes in Districts 1 & 4."

The Board of Commissioners agreed with the decision and the rationale put forward by the Senior Dispute Hearing Officer for denying the contention of the appellant. The Board reasoned, similarly as did the Hearing Officer, that the "appellant did not even establish that its candidate's votes on the unstamped records of count were different from those brought in by their agents from the field to have compelled the NEC to revisit the ballot box for a recount of votes in Districts 1 & 4. Section 4.14 of the New Elections Law of 1986 requires the Magistrate of Election to endorse the Elections Tally, and it reads: "When the Magistrate of Elections has received or been notified of the tally of the votes cast at each polling center in accordance with the registrar prepared after the tally at polling places, he shall total all the votes cast in each constituency and endorse each tally..." In the instant case, the Magistrate did endorse the final tally as the records show and which was also testified to by witness Henry Barcon on the stand.

"Recourse to the records of this case show that Petitioner presented two witnesses in persons of Hamzat V. Sheriff and Alhaji Dukuly who testified that t they were not present in the tally center and that they were informed by others about what went on in the tally center. The testimonies of Petitioner's two witnesses showed that they did not testify from their certain knowledge and therefore, they were not the best evidence in that APD was represented by one Joseph K. Heneh who signed all three of the 3- Days Tallying Process Day Visitor Lodge Sheets from December 21- 23, 2014. The question that comes to the mind of this Board is, why didn't the APD present Mr. Joseph K. Heneh to testify during the trial because Agent Joseph K. Heneh would have been the best evidence for a person who was present at the tallying of votes to testify from his certain knowledge.

The Board says it is a general principle of law that the best evidence which the case admits of must always be produced; that no evidence is sufficient which supposes the existence of better evidence (RCLR Section

25.6). The Board also says that the Honorable Supreme Court has held that mere allegations are not proof and factual allegations pleaded must be proven at the trial for it is evidence alone which enables the Court to decide with certainty the matter in dispute (American Life Insurance Company, Inc. versus Beatrice Holder; 29 LLR 143, syl. 4)."

We are taken aback, firstly, at the apparent misunderstanding by the Board of Commissioners of the issues presented and, secondly, by its reliance on legal technicalities in deciding whether in fact in the counting and reporting of the ballots casts violated the law or whether the totality of the facts presented pointed to such violation. In that connection, we must emphasize that the National Elections Commission is an administrative agency, not a court. As an administrative agency, its role in the investigative process is primarily fact-finding, not legal technicalities. *The Management of Inter-Con Security Systems v. Edwin Walters et al.*, Supreme Court Opinion, March Term, 2009.

In the case of the NEC, this becomes even more critical since the NEC is not just another administrative agency of the Government; rather the NEC is an extraordinarily unique administrative agency, peculiarly placed such that it simultaneously and concurrently engages in (a) the promulgation of the rules and regulations under which elections for public offices are to be conducted; (b) conducts the elections for public offices; (c) monitors the conduct of the elections for public offices which it [the NEC] is conducting; (d) exercises original jurisdiction over and entertains complaints against it and its personnel as to the manner in which it conducted the elections; (e) entertain complaints against violations of the Elections Law by it and its personnel in the course of conducting elections for public offices, and which Elections Law, including the constitutional mandate, which it is charged with superintending, managing and enforcing; (f) is the investigator, judge and jury in deciding whether it or any of its personnel acted in violation of the Elections Law or whether acted in manner that infringed on the rights of candidates or the electorates or showed a bias towards any candidates against other candidates or in any way that could generate inference in that respect, subject only to appeal to this Court; (g) makes the declaration as to who is the winner in a contested election for public offices. These are but a few of the roles played by the Commission.

In the face of the above, and given the fact that not only is the NEC

charged with the responsibility of investigating its own conduct but is also charged with the seemingly conflicted responsibility of rendering a decision as to its conduct of any public election, the expectation is that it would conduct the investigation in a fact finding manner and not indulge in legal technicalities that would seem to cover-up errors made by its personnel in the conduct of the elections. The challenge for the Commission in an election dispute is not a legal contest or who can win the case on legal technical grounds or technicalities, but ascertaining the facts; it isn't about objecting or sustaining objections to questions on legal grounds but what evidence brings out the truth as to who the people voted for or who truly can be declared the winner as is reflective of the votes of the people. Why, we are tempted to ask, would the Commission allow itself or the investigator allow himself to entertain objections to a question posed to a witness on the purely technical grounds that are applied in the courts rather than entertaining evidence that brings out the truth either with regard to how the elections were conducted or as to the true results of the process or whether irregularities were committed, and whether those irregularities were of such magnitude when all of the facts are considered to warrant a recount of the votes. The Commission must take into account that the request of the appellant was not that new election be conducted; the request was only that a recount be conducted, an activity that would not have taken more than twenty- four to forty-eight hours. One would think that the Commission would see as its primary course in conducting an investigation a desire for the truth. Indeed, one would believe that commission, faced with any accusations of misconduct of any of its electoral would not so much require the complainant to produce evidence of the misconduct as would take it upon itself to investigate the incident and the officials accused of the misconduct to ascertain whether in fact such conduct was exhibited by the accused officials. That, we believe, is what the framers intended. To require otherwise would mean that in every elections, one could have to bring along a video camera, tape record or other electronic devices as would openly catch the officials engaging in the misconduct.

The Commission, faced with the accusation of misconduct by an official or personnel, should on its own undertake an investigation into the allegations by interviewing some of the Commission's personnel who were on the scene and

who participated in the process, and who may have first-hand knowledge of what truly transpired. It is not healthy for an election for the Commission to see it is alright for personnel of the Commission to violate the Elections law in any form or manner as long as a complaining party cannot present proof itself as an adversary and therefore requiring that a complainant produces evidence to substantiate the claim or be declared a loser. The Commission must not see itself as playing the role of challenging the claim or refuting the claim. Rather, the Commission must see itself as investigating the claim, even if it means introducing or calling upon persons who may have information that would show that the conduct complained of was in fact exhibited by the elections personnel accused of such conduct. The process must be seen to be independent, transparent, objective, and fact finding that would leave no doubt as to what really transpired at the scene of the elections. The focus should not be whether a complaining party is estopped from raising the issue of elections irregularities but rather whether the elections irregularities did occur and what impact those occurrences on the votes cast. The Commission should always be mindful of the fact that the credibility of an election result is determined by the transparency and lawfulness of the electoral process, which is why "[t]his Court has recognized and espoused that the overriding object of what the Elections Law seeks to accomplish in all electoral competitions is a secure, transparent and accurate determination of the results". *NPP v. NEC et al.*, decided February 10, 2015. See also *Dorbor et al. v. EC*, Supreme Court Opinion, decided January 6, 2012. This was the spirit intended by the framers of the Constitution, and, in turn, the drafters of the Elections law. Consequently, the Commission cannot, should not and must not indulge in the luxury of seeking to discredit a complainant by hiding behind legal technicalities rather than seeking to find and uncover the truth. The Commission must always have as its focus that the decision it renders in any electoral dispute or matter affects not merely the contestants for the public elective offices, but any entire community, placed in the context of the current dispute, the results will affect an entire country of more than one half million inhabitants or citizens of the country. And if the Commission pursues such a course, I could find that the contest, if it is one for the Presidency of the nation, could affect an entire nation of more than four and one-half million people.

In the instant case, the complainant did not merely allege that many of the tallies were not stamped, but also that the Elections Commission had posted on its official website figures in which it had indicated that all of the contestants had the same number of votes and all of the votes disqualified were also of the same number. The appellant also contended that the total vote count decreased between the release of provisional results and the final result ostensibly attributable to the Commission's staff. Did the Commission or the investigator not believe that it was important that he visits the website to ascertain as part of the investigation whether the allegation had substance? Nowhere in the records do we see that such a stance was taken by the Commission. In fact, to the contrary, counsel for the Commission, when asked by this Court as to whether the allegation was truth replied that he did not believe that the allegation was true. But the truth is, counsel could not verify the truthfulness of his answer as he had not visited the Commission's website nor interviewed any personnel to see if such was the case or not.

Our review of the records reveal that the appellant made the further allegation that the Magistrate of Election had left the venue where the tallying of the votes was being carried out and had instead left a Hearing Officer in his place to aid the Data Clerk in reading the results of the elections for entry into the computer. The questions which the Commission was faced with under the circumstances then were (a) Did this truly happen; did the Hearing Officer replace the Election Magistrate or perform the function of the Election Magistrate? (b) Whether under the Elections Law a Hearing Officer can perform such functions as are specifically delegated to a Magistrate of Election? (c) What risks did that conduct bring to the process, especially to the credibility of the results announced by the Commission; and (d) was it of such magnitude that a recount is warranted, in light of the allegations made against personnel of the NEC and the several acknowledgments made by the Commission in regard to some of those allegations. In ruling on the issue, the Senior Dispute Hearing Officer said that the witness produced by the National Elections Commission acknowledged that the allegation made by the complainant in respect of the Magistrate of Elections leaving the tallying venue was true. This is what the Hearing Officer said: "The respondent [meaning the National Elections Commission] first witness was Henry. Barkoun who testified as summarized below....that the

magistrate had an emergency call and had to leave the tally center and that before his departure he consulted with the parties that the Hearing Officer should continue the tally in his absent and they all consented..." This Court's review of the witness' testimony, a witness who was produced by the NEC, confirmed that the statement attributed to the witness was in fact made. This is what the witness said as reflected on page of the minutes of the Hearing conducted on 7th January 2015 by the Hearing Officer:

"The process began with the Magistrate and the Clerk, the tallying process and so the Magistrate introduce me to them as the Hearing Officer and so he stated the process by reading by reading the record of counts from the field, while reading the record of count he received a communication from his assistant Magistrate from Vahun who was assisting some of the officers on the ground, some of the polling staff said\ they couldn't have agree to turn over some of the ballot boxes if they don't receive their compensation, in that vein the Magistrate announced to the party representatives and the independent agents that were present and said to them that there is an urgent call and I need to attend to and this is a Hearing Officer he works with NEC, e is independent, what is your will and pleasure? And they s id this man happened to be the Hearing Officer we believe that he will be neutral and independent in your absence he will do the work you suppose to do, and he left, when he left I took over...."

I

This testimony of Henry Barkoun relative to the Magistrate of Elections designating him, the witness, who at the time was the Local Hearing Officer, to oversee and conduct thltallying of the votes, was confirmed by the NEC's second witness, in persons of Augustine Bah, who served as the Data Clerk at the center wherein the appellant made the subject of challenge of the manner in which the elections were conducted. This is what Mr. Bah said while on the witness stand: "My work started after the Election Day which was the 21st of December, we started around 12 the Magistrate started reading the result from the field after about 4 to 5 polling places he received a call that there was

trouble in Vahun some polling staff refused to give the ballot boxes so he needed to go there urgently, within that period the Assistant Magistrate was not around, the Logistics Officer was also busy in the warehouse so he asked that the Hearing Officer help him to carry on the work, so he asked everybody, the party agents that were present and everybody agreed that he should carry on, so the Magistrate left the process was so transparent that people were not complaining that the Hearing Officer read the result because I had monitor facing the crowd that everything I was typing they could see it, any mistake they could see it before I save it I ask them whether what on their paper matching with what on the screen if they say yes then I can save it and then we continue to the next one. The next day of the tally the Magistrate came and they said they were satisfied with the Hearing Officer reading because the Magistrate was slow and they want it to go fast so the Magistrate left and we continue."

The Senior Dispute Hearing Officer, although acknowledging the testimonies of the two witnesses for the NEC to be true, ruled that the testimonies were not of any significance as to warrant a recount, as prayed for by the appellant. He said: "The petitioner and their counsel have argued that by the Hearing Officer reading the data and by the Magistrate and his Assistance being absent from the tally room their votes were manipulated and therefore want votes be recounted. The granting of recount of votes in this manner requires a clear showing that the data obtained by the petitioner in the field varies with what is being reported by the NEC. The petitioner has not proven that by the Magistrate and his Assistance being absent from the tally room or the by Hearing Officer reading the data reduces their vote in any way. They did not even establish that their votes on the unstamped record of count were different from those brought in by their agents from the field to have compelled the NEC to revisit the ballot box for a recount of votes in District 1 & 4. The Hearing Officer is reluctant to recommend the order of recount of votes on what the petitioner has presented both in their pleadings and argument before us."

The Board does not deny that the Magistrate of Elections and his assistant had left the venue of the tallying or were not present at the venue. Indeed, the Board of Commissioners did not believe that there was anything wrong with the Magistrate of Elections leaving his post of assignment and delegating his

responsibility to the Local Hearing officer whose responsibility primarily was to resolve disputes in the particular election precinct. The contention instead is that the action by the Magistrate and his assistant did not violate the Elections Law, that the Hearing Officer's contract allowed him to perform the task assigned to him by the Magistrate of Elections, that the complainant had failed to show that the action by the Magistrate of Election had affected its vote or the outcome of the election, and that in any event this was a harmless error which could not vitiate the elections results.

We reject the contentions of the Commission, not only because of the clear contradictions on its face, but also because it conveys the impression that the violations impacted on his or her votes. Neither the Board of Commissioners nor the Hearing Officer can assure that what the Magistrate of Elections did in appointing or designating a Hearing Officer to proxy for him was not in violation of the Elections Law and at the same time and under the same breadth make the claim that under the same Elections Law harmless errors do not vitiate the election and that no election shall be declared void on account of ... the polling or return of the writ, or on account of the absence of error of any officer which shall not be proved to have affected the result of the election, once the parties consent to violate the Elections Law. If the Elections Law was not violated, as claimed by the Board and the Hearing Officer, then how does the matter of error come into play? But even more disconcerting is the further contradiction where the Board justifies what the Magistrate of Elections did in appointing or designating the Hearing Officer to proxy for him was within the terms of the contract which the Hearing Office held with the NEC. This is what the contract states:

REPUBLIC OF LIBERIA)

MONTSERRADO COUNTY)

DEFINITE CONTRACT FOR INDEPENDENT CONTRACTOR

This Definite Contract for Independent Contractor is entered into this 17th of December, A.D. 2014, by and between the National Elections Commission (NEC) of the City of Monrovia, Liberia represented by its Chairman, Cllr. Jerome G. Korkoya (hereinafter known and referred to as the NEC) and Mr. Henry W. Barkoun of the City of Monrovia, Republic of Liberia (hereinafter known and referred to as the CONTRACTOR), and together, herein known and referred to as "PARTIES" hereby:

WITNESSETH

1. That NEC is desirous of contracting a person with legal knowledge to serve as local hearing officer during the 2014 Special Senatorial Electoral process;
2. That the CONTRACTOR has the requisite legal knowledge and skills desired by NEC as referred to in count I hereinabove;
3. That the NEC has offered to the CONTRACTOR a contract to serve as Hearing Officer to be signed in Lower Lofa County;
4. That CONTRACTOR has accepted said contract which has been offered by NEC to perform the following duties and functions:
 - (a) Serve as Hearing Officer for the NEC during the 2014 Special Senatorial Election;
 - (b) Perform hearing and other related duties and functions as may be required by the NEC up to and, the completion of all disputes arising out the Local Hearing Officer's area of assignment;
5. That NEC has offered to pay or cause to be paid to CONTRACTOR Seven Hundred Fifty United States dollars {US\$750.00) for the duration of this contract;
6. It is hereby further agreed by the parties that this contract shall commence from the 17th day of Dec., A.D. 2014 and end on the day of Jan. 17th, A.D. 2015.
7. That either Party has the right to terminate this agreement, provided he or she gives the other Party seven (7) days' notice in writing;
8. Failure on the part of the NEC to give prior notice to Party of the CONTRACTOR that it will not renew or extend this contract shall NOT serve as a basis for automatic renewal or extension thereof;
9. This contract shall all be binding on both parties, as well as their successors in business, administrators, executors and their representatives as if they had signed this contract.

IN WITNESS WHEREOF, THE PARTIES TO THIS DEFINITE CONTRACT FOR INDEPENDENT CONTRACTOR HAVE HEREUNTO SET THEIR HANDS AND AFFIXED THEIR SIGNATURES THIS 17TH DAY OF DECEMBER, A.D. 2014.

IN THE PRESENCE OF

Cllr. Jerome G. Korkoya (J.D.)

CHAIRMAN (NEC)

NATIONAL ELECTIONS COMMISSION

/Henry W. Barkoun

LOCAL HEARING OFFICER."

Co-appellant National Elections Commission makes the claim, in support of the contention that there was no violation of the Elections Law, since under the contract it held with Mr. Henry W. Barkoun, who incidentally was the person to whom the Magistrate of Election had given the proxy to tally the votes and who was the first witness for the NEC, Mr. Barkoun, as Hearing Officer, could also serve in the stead of the Magistrate of Elections in tallying the votes under the rubric of Clause 4(b) of the Contract which states that: "The Contractor has accepted said contract which has been offered by NEC to perform the following duties and functions:...(b) perform hearing and other related duties and functions as may be required by the NEC up to and, the completion of all disputes arising out of the Local Hearing Officer's area of assignment."

We note that nowhere in the Contract does it state that the Contractor, the Local Hearing Officer, can perform any function statutorily or otherwise delegated to the Magistrate of Elections and to impute that he can perform such functions because of the provision stated in the Contract is a complete misinterpretation of the Contract. The primary function of the Local Hearing Officer is the hearing of disputes arising out of the area wherein the hearing officer is assigned. We do not believe that under such circumstances, reference to "other related duties and functions could vest in him the right to tally or superintend the tallying of votes. He is to hear disputes arising from the votes, including the tallying of the votes. He cannot therefore be the same person who supervises or perform the tallying of the votes and at the same time investigate complaints arising from such activity. But even assuming that he could exercise other functions, the NEC cannot claim, as it seems to do in the instant case, that the contract can override the law of the land.

But a second problem arises as to whether by the contract reference to the performance of duties and functions required by the NEC means that the Magistrate of Elections can be deemed to be the NEC holding such powers as he could then vest in the Local Hearing Officer to perform. In other words, should the Magistrate of Election have contacted the higher authority of the NEC and seek permission or instructions to have the Local Hearing Officer

serve as supervisor of the tallying exercise or engage in the tallying himself or could the Magistrate of Elections exercise such authority by himself without the knowledge or consent of the higher authorities of the NEC? Does the Elections Law vest such authority in the Magistrate of Elections? Does the Contract vest such right in the Local hearing Officer? Was it prudent for him to exercise such functions simultaneously? Would it impugn on the credibility of the electoral process or the hearing of elections disputes? But even assuming that authority was legally or properly vested in the Local Hearing Officer to tally the votes, what was the necessity of the NEC making the argument that the error (what error?) did not vitiate the validity of the elections or the elections results, for if the act was valid then there cannot at the same time be discussion or advocacy of the limited effect of error. Either no error was committed and therefore the act performed was legally valid or an error was committed but not of the magnitude to invalidate the elections or its results. It cannot be both of what are clear contradictions.

We should note additionally that even taking the question of error into further consideration, the appellant did not ask that the elections be invalidated or cancelled or that the results be overturned on account of the allegations made by it. Rather, it requested only that in those areas where the credibility of the elections was smeared and tarnished by the manner in which the counts were conducted and the persons who conducted the counts, that a recount be conducted under the proper and adequate safeguards and with strict adherence to the law. We do not believe that this was too much to ask of the Commission to undertake, given that error had been made and that the Commission was far within the timeframe provided or by law to undertake such recount and that the request was made within the time when the contracts which the Commissions had with hearing officers were still in effect? While the parties to a transaction or proceedings may waive certain rights to which they are entitled, there are certain requirements of the law that the parties cannot be in agreement or otherwise waive. This Court has also ruled that contractual parties cannot agree to contravene the law, thus any such contractual terms are void. *Harris v Mercy Corps (Liberia)* decided on December 21, 2006; *Norwegian Refugee Council v Bona et al* Supreme Court Opinion, October term, 2008. A clear example is an attempt by the parties to confer upon a court or body subject matter jurisdiction which by law the court does not have, or an attempt

by agreement of the parties to deprive the court of its subject matter unless and except the law vests in the parties such right. Ministry of Lands, Mines and Energy v. Liberty Gold and Diamond Company et al. decided on January 10, 2014; Blame v Zulu et a/., 30 LLR 586 {1983}; Tampa et al v. Republic of Liberia, 13 LLR 207 (1958). We hold that similarly the parties canna confer upon a person rights, power and authority which under the Law are vested in another person. Indeed, not even the National Elections Commission can confer such authority except where by law it is vested with the right to confer such authority.

This Court is aware that, und r certain circumstances, the vote difference between the two leading candidates can trigger an automatic recount [Dorbor et al. v. NEC decided on January 6 2012; Saydee v NEC decided on January 6, 2012] , but the Court is also aware that where errors are made or violations are committed of a magnitude that ring the electoral process credibility into question, a recount can appropriately be directed. In the instant case, we believe that a recount is justified. The requirement of the law, however, is two-fold. A challenge may be made not only to the results of the elections, as the correspondent NEC focuses, but it extends also to the manner in which the elections were conducted. Accordingly, no matter how close or far may be the difference in the number of votes of between the candidates, if any one of the two conditions is not met, a sufficient basis is set for a recount. Thus, the fact that even if the votes original y claimed by the appellant to have been deducted the declared winner would still win cannot provide the lone basis for sustaining the results, as in the instant case where irregularities were alleged and shown to have existed as would affect the ballots that were counted.

But let us further dissect the contention of the NEC and the complications which it poses by a direct examination of the Elections law, to which we herewith take recourse. Let us inspect, perhaps even scrutinize, the relevant provisions on appointment, functions and duties of the Magistrates of Elections. Section 2.4 of the Elections law states in that regard:

"In accordance with the provisions of section 2.9(1) of this title, the Commission shall appoint within each county/district as many Magistrates of Elections as shall be necessary, who shall serve as liaison between the Commission and the county/district they represent in respect of all election activities within their county of assignment. Each such Magistrate shall comply with all general as

well as special instructions issued to him by the Commission."

And specifically, with respect to the duties and functions of the Magistrates of Elections, the Elections Law states, at section 4.4, the following:

(1) Subject to any direction given by the Commission, the Magistrate of Elections shall, on receipt of the writ, endorse thereon the date of its receipt, and shall make all necessary arrangements for holding of the election.

(2) The Magistrates of Elections may, with the approval of the Commission, appoint a deputy or deputies to act specially or generally, or for a particular constituency, who shall have the authority to perform all the duties of the Magistrate of Elections or such duties as are mentioned in the appointment.

(3) The Magistrate of Elections shall take such steps as may be directed by the Commission to inform the political parties, independent candidates and the voters of:

(a) The dates by which acts have to be done, nominations made, or otherwise as required by this title;

(b) The time-table for the electoral process;

(c) the general arrangements for taking the poll, counting the ballots and declaring the result of the polls; and

(d) generally, as the conduct of the election and the duties of parties and candidates.

(4) The Magistrate of Election shall in accordance with any directive from the Commission:

(a) furnish the approved polling places and provide each one with a ballot box or boxes;

(b) provide each polling place with the necessary ballot papers prepared in the prescribed forms and furnished by the Commission.

Then at section 4.12 of the Election Law, the following is stated:

Following the close of the poll, the Sheriff shall in the presence of representatives of parties or candidates appointed under section 4.9 and 4.10:

(a) cause the clerk to tabulate the total votes cast;

(b) cause the tabulated register to be made in triplicate signed by the Sheriff, his clerk, the representatives of political parties and/or independent candidate(s).

The original copy shall be inserted into the ballot box, lock and sent to the Commission through the Magistrate. A duplicate shall be sent to the magistrate of Elections and the third copy shall be kept by the Sheriff of the poll.

- (c) cause the ballots cast to be tabulated with the recorded serial numbers.
- (d) all ballot papers cast at the election shall, other than questioned ballot, be placed in the ballot box; and,
- (e) close and seal the ballot box and forward it to the commission. [EMPHASIS OURS]

Further, at section 4.14, Endorsement of Elections Tally, the mentioned law provides:

When the Magistrate of Elections has received or been notified of the tally of the votes cast at each polling place in accordance with the register prepared, he/she shall total all the votes cast for each candidate in the constituency after the tally at the polling places and endorse each tally. He /she shall forward the writ forthwith to the commission and, not later than the date for return, endorsed thereon under section 4.3 of this Chapter and directly notify the Commission by the fastest means possible, in writing.

While the issue may not have been directly raised by the appellant, yet because the co-appellee National Elections Commission has stressed the legality of the process, we wonder how the Magistrate of Elections even placed himself into the role of tallying the votes, I t alone to give a proxy to the Local Hearing Officer to undertake such tallying i his absence. We see nothing in the quoted sections of the Elections Law that vest any of the authorities that were exercised by the Magistrate of Elections in the instant case. We do not believe that the Legislature intended that here should be such deviations as the case seemed to have revealed. If the framers of the law had intended such, they would have included them in the functions and duties of the Magistrate of Elections. In fact, to the contrary, i under the law, it is the Sheriff, not the Magistrate of Elections, that has the authority to cause the tabulation of the votes (or to tabulate the votes).i Elections Law, Rev. Code 11:4.12. The Magistrate of Elections, as the Board of Commissioner observed in its ruling, only totals the votes of the candidates as reflected in the tallies brought to him and he then endorses the tallies and forward the writs to the Commission designated Office. Elections Law, Rev. Code 11:4.14. Where was the sheriff, or was no sheriff appointed for the purpose, such that the magistrate of Elections was permitted to exercise the sheriffs statutory functions?

We hold the view, from our review of the entire records in the case and the laws appertaining to the circumstances revealed in the case, that the

justifications advanced by the principal co-respondent National Elections Commission to excuse the manner in which the elections were conducted in the Districts, as alleged in the complaint, are not legally sufficient to excuse the deviations by the Commission and its personnel from the clear mandate of the law, and to warrant denying a recount of the ballots in the mentioned Districts. Accordingly, and given all that have been narrated herein, we hold that there should be a recount of the votes in Districts 1 and 4, as requested by the appellant. Such recount should be conducted strictly as provided for by law under the supervision and charge of the persons designated by law to carry out such functions. We particularly believe this to be warranted because of the associated allegations made by the appellant and which the Commission chose to ignore or could not provide an explanation in any manner. The appellant alleged, for example, that the National Elections Commission official website carried figures showing that each of the contesting candidates had the same number of votes in the District, a possibility that seems highly impractical if not impossible; and assuming that this could be possible, did the exact numbers stated on the site total to the number of the votes said to have been cast in the elections?

We also must stress that in its complaint, the appellant alleged that the NEC had posted initial results which indicated that the candidate fielded by the appellant was leading in the votes but that in the final tally for the particular precinct in which the appellant's candidate was leading not only was he no longer shown to be in the lead but that the votes which was said to have had was reduced. We wonder in the face of such error why the NEC did not see fit to provide a cogent explanation, as for example, that there was an error made in the posting or in the counting. It could not hide behind this very serious allegation or mistake by resorting to legal technicalities. The NEC is an agency whose primary objection is ascertaining the truth. It therefore had an obligation to look into the allegation by seeing to find out whether in fact such error was made, by whom, and the number of votes that were affected by the error. We believe that such a course was important because when that error and the other errors pointed out by the appellant are reviewed, they bring into serious question whether had the votes been accurately reflected, the number may not have been sufficient to alter the results. We must emphasize that we do not say herein that the appellant's candidate would have

won the elections. All we say is that there was sufficient reason for the NEC to order a recount so that the results are distanced from any basis for allegation of taint or irregularity.

The Co-appellant National Elections Commission has relied heavily on the principle, and enshrined it in its ruling, that the appellant had the burden of proof and that it had failed to meet the burden. This Court does not dispute that in normal and ordinary cases it has said, and we confirm the principle stated in prior cases, that one who makes an allegation has the burden and the responsibility to prove the allegations by the production of evidence. *Kollie v Jarbo* decided on January 24, 2014 *Berry v Intestate Estate of Bettie* decided on January 16, 2014; Civil Procedure Law, Section 25.5(1). We therefore do not dispute that if this was a normal, and ordinary case, the appellant would have that burden of proof to show that what it alleged was true. But we do not accept that this is such ordinary case where one can speak of the burden of proof being upon the person who alleges a fact. The NEC, as we stated before, is in an extraordinary and unique position where it is placed to look into the said allegations, and especially when that fact is squarely within the knowledge or records of the National Elections Commission which has and controlled the website at the time, and which website it used to inform the public of the unfolding results of the elections. The Commission had the responsibility, once the allegation was made, to conduct an examination of its website to ascertain

whether the allegation was true, and not rely on the appellant to show that the site carried such figures as the appellant alleged. This demands that the NEC must first take an introspective look at itself, the manner in which its staff executed the responsibilities with which they were charged in the conduct of the elections. To shift the burden to the appellant would be tantamount to negating the functions and responsibility imposed on the NEC by the law which it is charged with administering and enforcing.

The further issue which we have determined to briefly comment on relates to the matter raised by appellee Zargo and the appellant assigning as error the refusal or failure of the Hearing Dispute Officer to rule on the motion made by co-appellee Stephen H. Zargo for judgment during trial. Co-appellee Zargo stated in the motion that none of the testimonies of the witnesses indicated that he had done anything wrong during the elections and hence that

judgment should be entered in his favour. The Hearing Officer ruled that he reserved ruling on the motion until co-appellant National Elections Commission had presented its evidence, at which time he would make a final ruling. We have difficulty understanding how the appellant believe that the failure of the Hearing Dispute Officer to rule on the motion of co-appellee Zargo affected the interest of the appellant, prejudiced the appellant, or impacted on the appellant, negative or otherwise, on the appellant, as would warrant consideration by this Court. To the contrary, we hold the view that it was in the interest of the appellant that the Hearing Dispute Officer refused to rule on the motion as requested by co-appellee Zargo. In any event, this was a grievance for co-appellee Zargo, not the appellant. Hence, as to the appellant, we see this as a non-issue not worthy of the consideration of the Court.

We believe that the same applies for co-appellee Zargo who raises it as an issue for this Court to pass upon. We are taken aback that co-appellee Zargo would even pursue such a course in view of the fact that Hearing Dispute Officer and the Board of Commissioners had ruled against the appellant. We note that no exceptions were taken by co-appellee Zargo to the ruling of the Hearing Dispute Officer or the Board of Commissioner. What, we are prompted to ask, is the basis upon which co-appellee Zargo appears before this Court and raises the issue of error by the Hearing Dispute Officer in not ruling on his motion for judgment during trial. One would believe that, to the contrary, co-appellee Zargo would be arguing in of the decision of the Hearing Dispute and the Board of Commission and not against those decisions on the ground that the Hearing Dispute Officer was in error in not ruling on the motion for judgment during trial.

Perhaps even more perplexing for this Court is why the motion for judgment during trial was filed on the first instant. The motion did not seek to have the Hearing Dispute Office dismiss the entire action or proceedings; rather, it sought to have the Hearing Dispute Officer dismiss the proceedings only as to co-appellee Zargo. His argument was that none of the witnesses produced by the appellant had accused him of any wrongdoing and that hence judgment should be entered in his favour and the case dismissed as against him. This would have left co-appellee National Elections Commission still a party to the Proceedings. Did counsel for co appellee Zargo or co-appellee Zargo himself, as lawyer and because he also represented himself during the proceedings before the hearing

Dispute Officer, no believe that if the proceedings were adjudged against the National Elections commission he would automatically be affected thereby and in such a case stood the chance of losing the senatorial seat which he had been declared as winner of? Was he or his counsel not aware of the decisions of this Court that made it mandatory for the complainant or losers in any elections for public office o compulsorily make the winning candidate or his political party a party to the proceedings since any results of the proceedings could affect the party and the candidate's interest without him or her also having the benefit of the due process of law? See Saydee v NEC, Supreme Court Opinion, October Term, 2011. H w then could co-appellee Zargo not want to be a party to the proceedings to i s very end knowing that he had an interest to protect and that any decision t at the elections were improperly conducted or was tainted with fraud or other illegalities or irregularities could deprive him of the senatorial seat had he was declared to have won? His reliance on Section 6.25(2) of the Elections Law and the Civil Procedure Law is totally misplaced in the circumstances of the instant case. The reference in section 6.25{2) is only to offences by the candidates or their persons without the knowledge or consent of the candidate. The section is not applicable to irregularities or illegal acts committed by the Commission in the course of the elections which would render the elections invalid or require that other steps such as recount or new elections be held. For this reason, and other reasons stated herein, we believe that the Hearing Dispute Officer\would have been legally correct in denying the motion for judgment during trial as the said motion was adverse to the decisions of this Court and was in any event premature under the circumstances of this case.

It is also important that we comment on the fact the co-appellee Zargo gives the impression and assert that he and the NEC are one and the same as far as the case is concerned. We would like to make it clear that this is not the case. The National Elections Commission is independent of the candidates and its role is and also will and should be neutral in all disputes, notwithstanding it may have made a decision in favor of particular candidate.

We have the further difficulty appreciating how co-appellee Zargo could in the same brief filed before the Court make the argument that the Hearing Officer

erred in not ruling on the motion for judgment during trial thereby warranting the reversal of the said ruling, and at the same time make the argument in support of the Hearing Officer and the Board of Commissioners, and thereby praying the affirmance of the said ruling and decision by this Court. The two positions cannot be taken simultaneously by the Court. Hence, both for this reason and for the reasons stated above, we do not believe that they warrant the attention of the Court in determining whether the Hearing Officer erred in not ruling on the said motion.

We also do not believe that the refusal or refusal to provide the appellant with a complaint form is worthy of our consideration since the matter of which it complained was cured by the Commission taking cognizant of its subsequent complaint and its investigation of the said complaint, the same as would have happened had the appellant been provided the complaint form which would have contained the same allegations. No harm or prejudice was suffered by the appellant and hence we need not make any determination of the issue. As stated earlier, this Court has held numerously that it is obliged to pass only on the issues that it deems are germane and which it considers to be of substance and not on every issue by the parties.

WHEREFORE, and in view of all we have said, the facts analyzed, the laws cited and controlling, and the entire circumstances presented in the case, we hold that the Senior Hearing Dispute Officer and the Board of Commissioners were in error in denying the appellant's request for a recount of the votes conducted in Districts Nos. 1 and 4 given that the NEC declined to investigate its internal mechanism and staff, as we believe it had a duty to do, with respect to the claims made by the appellant plus the improper roles played by the Local Hearing Officer and the Magistrate of Elections. Accordingly, the ruling of the Hearing Officer and the decision of the Board affirming the said ruling are reversed, and the appellant's request for a recount of the votes in the mentioned Districts is hereby granted. However, we do not by this decision affect the status of the co-appellant Zargo and the declaration made by co-appellee National Elections Commission as to his winning of the Special Senatorial Elections held in Lofa County, and that any effect on the status of co-appellee Zargo shall await the results of the recount ordered herein. It is our further order that the recount exercise, as herein directed, be conducted within the time allowed by law.

The Clerk of this Court is ordered to send a Mandate to the National Elections Commission to resume jurisdiction and conduct a recount of the ballots casts in District No. 1 and District No. 4, inform the parties of this decision, and to advise that they a in consonance therewith to facilitate the recount ordered. AND IT IS HEREBY SO ORDERED.

COUNSELLOR SAM V. COPPER OF LEGAL MINDS INC. AND COUNSELLOR JOSEPH JALLAH APPEARED FOR THE PETITIONER/APPELLANT. COUNSELLOR JOSEPH N. BLIDI, IN-HOUSE COUNSEL FOR THE NATIONAL ELECTIONS COMMISSION, APPEARED FOR THE RESPONDENT/APPELLEE.