

Dr. Bhofal Chambers, the Congress for Democratic Change's (CDC) Candidate for the Senatorial-ship for Maryland County, Republic of Liberia, APPELLANT VERSUS The Board of Commissioners, National Elections Commission, 9th Street, Sinkor, Monrovia, Republic of Liberia, 1st APPELLEE AND J. Gbleh-bo Brown, Independent Candidate for the Senatorial-ship of Maryland County, Republic of Liberia, 2nd APPELLEE

LRSC 13

APPEAL

Heard: January 27, 2015 Decided: February 17, 2015

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT.

In accordance with Article 83 (a) of the Liberian Constitution which provides for the holding of election for members to the Senate, the National Elections Commission (NEC), the body authorized by law to conduct said elections, held a Special Senatorial Election in the fifteen counties of Liberia on December 20, 2014, for the purpose of electing fifteen members to the Senate to occupy seats which would have become politically vacant by January 14, 2015. Pursuant to Article 83 (c) of the Liberian Constitution which allows for challenges by a candidate or party to elections results, the New Elections Law, Chapter 6, "CONTESTED ELECTION" sets the procedure for filing and hearing of complaints contesting elections.

This appeal stems from a challenge to the elections results held in Maryland County in which fifteen candidates participated. According to the results declared by NEC, Mr. Gbleh-bo Brown emerged as the candidate with the highest votes, followed closely by Honourable Dr. Bhofal Chambers, the current Representative of District # 2, Maryland County, who participated in the Senatorial Election on the ticket of the Congress for Democratic Change (CDC).

Section 6.6 of the Elections Law provides that during the process of an election, any irregularity observed shall be noted and filed with the Commission as a complaint not later than five (5) days from the date of the elections.

Accordingly, on December 23, 2014, three days after the election was held, Dr. Bhofal Chambers wrote to the Elections Magistrate the following letter:

"Hon. Bhofal Chambers
Candidate of the Special Senatorial Election
Maryland County

December 23, 2014

The Hon. Magistrate
Maryland County
National Elections Commission
Republic of Liberia

Dear Hon. Magistrate:

I present my sincere compliments and best wishes as we celebrate the Holiday seasons.

I write purposely to register my concern over what I will consider as gross missteps on the part of your office in Harper relative to the "final results.. as have been placed on your bulletin. I am of the conviction, judging from empirical data gathered by our agents, that we have a commanding lead sufficient to be declared the winner of this election.

Notwithstanding, with the current data shown on your bulletin indicating otherwise, we therefore request that you provide us the tally sheets of all 143 polling areas so as to properly process the totality of all of the results.

By this communication and with glaring irregularities by the local office of the National Elections Commission, I wish to formally register my formal complaint to the results for a prompt investigation so as to ensure that justice is served.

With trust and confidence be unabated, I remain.

Yours sincerely,

Dr. Bhofal Chambers"

On the same day, after the tally sheets had been provided Dr. Chambers as requested, he wrote another letter as follows:

"Hon. Bhofal Chambers
Candidate of the Special Senatorial Election
Maryland County

December 23, 2014

The Hon. Magistrate
Maryland County
National Elections Commission
Republic of Liberia

Dear Hon. Magistrate:

I present profound compliments and sincere best wishes in the spirit of the holiday seasons.

In furtherance of my earlier complaint regarding gross missteps by the local elections office in Harper and having further meticulously reviewed the tally sheets of all 143 polling precincts with glaring discrepancy, I write, this time, to call for a total recount of all ballots.

I strongly believe that such action is absolutely necessary so as to bring credibility to the process.

Thanks for your understanding and cooperation in the premise. With trust and confidence to be unabated, I remain.

Yours sincerely,

Dr. Bhofal Chambers

CC: Head Office, Monrovia
CC: UNMIL
CC: ECC'

This time, the Magistrate in responding to the request for a total recount wrote to Dr. Chambers the following day a letter which reads as follows:

December 24, 2014

Hon. Bhofal Chambers
Candidate for the Special Senatorial Election
Maryland County, Liberia

Dear Hon. Chambers:

RESPONSE TO YOUR COMMUNICATION DATED DECEMBER 23, 2014

I present my compliments and wish to notify you that your request for the total recount of all the ballots does not fall in the purview of the Magisterial Office in Maryland County.

Please accept my thanks and appreciation for your kind understanding.

Sincerely yours,

Joseph C. Flahn
HEARING OFFICER
MARYLAND COUNTY ELECTIONS MAGISTERIAL OFFICE

cc: NEC HEAD OFFICE
: UNMIL
: ECC

This letter from the Hearing Officer prompted Dr. Chambers to write the Chairman of the NEC on the same day, December 24, 2015, which reads:

"Hon. Bhofal Chambers
Candidate of the Special Senatorial Election
Maryland County

December 24, 2014

The Chairman
Board of Commissioners
National Elections Commission (NEC)
Monrovia, Liberia

Dear Hon. Chairman:

I present my profound compliments and sincere best wishes in the discharge of your duties as you endeavor to execute this herculean national task.

Honorable Chairman, I wish to once more draw your attention to the unfolding realities of the last few moments since my communication to you on my earlier position regarding a total recount of all ballots.

Accordingly, based upon sober reflections and intense consultations with my party, and in view of glaring irregularities by the local magistrate office in Maryland County, we have therefore resolved to request for a re-run of the Special Senatorial Elections in Maryland County between me (Bhofal Chambers) and Candidate Gbleh-bo Brown.

Our information reveals that one of the ballot boxes that were intended for the town of Wutuken in Barrobo District was taken to Cavalla, a town that is not listed as an official center by NEC. The ballot box was later brought back to Wutuken after several hours with marked ballot papers in it.

We have also specially established that the tallying of ballots done on Sunday and Monday of December 21 and 22 respectively at the Magistrate's Office in Harper was done without the presence of our agents as we were not contacted whereas our opponents were invited and present.

There was also an incident in the town of Sedeken in District#2 where over 80 votes cast in my favor were declared invalid simply because they were either marked on the face, on the logo or elsewhere in the same box whereas similar conditions were allowed in the areas.

Hon. Chairman, based on manifest necessity coupled with new information gathered over the last few days, we are compelled to take this latest position and therefore asking your kind intervention in the premise so as to bring some sanctity and credibility to the process.

Thanks for your understanding and cooperation in the premise. With trust and confidence to be unabated, I remain.

Your sincerely,

Dr. Bhofal chambers

Cc: UNMIL Cc: ECC

Cc: US Embassy

Cc: European Union(EU)

We see no previous written communication to NEC's Chairman in the file or any response to this communication of December 24, 2014, however, there are admissions by Dr. Chambers and others that Dr. Chambers called the Chairman of NEC via telephone, complaining of the failure of NEC's Management Team in Maryland to address his concerns, and NEC's Chairman ordered its Management Team in Maryland to conduct an investigation into the matter.

We see in the records handwritten minutes of a hearing said to have been conducted by the Election Magistrate. Dr. Chambers denies that this investigation was actually held and that he ever participating in the investigation.

On January 2, 2015, the Administrative Assistant to the Chairman of NEC received the following document venued before the Chairman and other Commissioners:

"CASE SUMMARY

This case comes on appeal to the Chairman and Members of the Board of Commissioners of the National Election Commission (NEC) of the Republic of Liberia from the inaction and failure of the NEC's Election Management Team in Maryland County, to put into place the requisite and proper machinery to conduct an investigation, organize an official hearing to afford Petitioner the basic and constitutional right of due process of law to challenge the results of the Senatorial race in Maryland County.

SUMMARY OF THE FACTS

That the Petitioner, the Honorable, Dr. Bhofal Chambers, participated in the recent Special Senatorial Election as the Congress for Democratic Change's (CDC) candidate for the Senatorial-ship for Maryland County, Republic of Liberia. The By-Election was conducted under the auspices and supervision of the constitutionally based National Elections Commission (NEC) of Liberia under the Chairmanship of Counselor Jerome Korkoyah.

The election took place on the 20th day of December, A.D. 2014, and official results from the election were announced and published by the NEC on December 24th, 2014. Before the final results were announced on December 24, 2014, the petitioner on the 23rd day of December, 2014, filed a written protest with the NEC via its appointed Chief Magistrate for Maryland County, Mr. Daniel Newland, claiming gross irregularities in the Senatorial Election process held in Maryland County. The petitioner requested that the Magistrate conduct an investigation of the alleged irregularities, and demanded a recount of the votes cast because of glaring irregularities in the electoral process.

Despite petitioner's written protest filed and served on the Chief Magistrate, the NEC's Election Management Team in Maryland County, failed to put into place the requisite and proper machinery to conduct an investigation, organize an official hearing to afford petitioner the basic and constitutional right of due process of law, to challenge the results of the Senatorial race in Maryland County. Instead of officially addressing and responding to Petitioner's written protest, the NEC's Election Management Team in Maryland County, through the Chief Magistrate, verbally informed the Petitioner that the Petitioner's request for an investigation and demand for a credible recount of the votes was above his jurisdiction. Howbeit, Mr. Joseph C. Flahn, a NEC appointed hearing officer, officially informed Petitioner by letter dated December 24, 2014, that Petitioner's concerns were above his jurisdiction to be properly addressed, and as such, directed Petitioner to the NEC's central office in Monrovia. A copy of NEC's representative letter to petitioner is hereto attached as Petitioner's Exhibit" P/1.

Confused by the deliberate conduct of NEC's Maryland County Election Management Team not to act, or react to Petitioner's protest concerns, Petitioner promptly informed the Chairman of the NEC via telephone, of the failure of NEC's Management Team in Maryland County to address Petitioner's protest concerns.

In response to Petitioner's information, NEC's chairman, assured Petitioner that he had ordered his management team to conduct a recount of the votes, but no such recount of the votes were ever conducted by the NEC's Election Management Team in Maryland.

It is from the failure of the NEC's Election Management Team in Maryland County to perform its official duty by conducting a preliminary investigation, organize a formal hearing to address Petitioner's claim of gross irregularities in the Senatorial election process in Maryland County, and conduct a recount of votes cast, which have prompted the Petitioner to file this appeal before the Chairman and members of the National Election Commission of the Republic of Liberia for proper and equitable redress.

PETITIONER'S COMPLAINT

1. That the particular ballot box designated and predetermined by the NEC for use in Gwutuken, was unlawfully and irregularly removed from Gwutuken voting precinct, taken to Cavalla, and returned to Gwutuken with ballots in the box. Petitioner says that neither was he, nor his designated representative assigned to the Gwutuken voting precinct were present in Cavalla when the ballots were placed in the box at Cavalla. Mr. Anthony Allison, a member of the NEC's Maryland County Election Management Team, and Petitioner's representative assigned to Gwutuken voting precinct can both verify and confirm Petitioner's assertion hereto.
2. That even though it is internationally accepted best practice that seals placed on ballot boxes are expected to be opened and removed for counting of ballots cast in the presence of all contesting parties or their representatives during a credible election counting process, Petitioner however, alleges gross irregularity in the removal of a NEC's seal in Maryland County, because Petitioner recovered a genuine NEC's election seal on the public highway in Barrobo Statutory District on December 20, 2014, the day of the elections. Petitioner respectfully informs the Commission that Petitioner is in actual physical possession of the irregular discarded NEC's ballots box seal; and Petitioner will present same to the Commission at the hearing of Petitioner's appeal to the Commission.
3. Petitioner says that even though he made his telephone number and email address available to the election Magistrate in Maryland for any eventuality, neither Petitioner nor any of the Petitioner's representative were invited and present during the final counting of ballots cast in Maryland County. Petitioner says as a contestant in the election, it is elementary and common sense that Petitioner should have been officially informed by the NEC's election management team in Maryland County, of the day, time and all votes cast in Maryland County. The failure of the NEC's election management team in Maryland County to invite Petitioner to the final tallying of ballots in conducted manner the seal of ballot boxes were broken for the final counting of Maryland County, especially where Petitioner represents the opposition political party. It is not only irregular and unlawful, but it creates a circumstance of assuming that the final counting process was not transparent.
4. Petitioner was shocked and amazed when petitioner discovered that the NEC's election management team in Maryland County deliberately or inadvertently, unilaterally created a new voting station in an unknown part of Maryland, named and styled Maryland, Maryland. Although the unilateral created new voting center was not listed on NEC's official and designated voting center prior to the election, it is of significant importance that the Commissioner observe that the results of the tally sheet from this unofficial and lawful voting center indicates that the NEC declared winner received 103 votes, while the Petitioner obtained only one (1) single vote in Maryland, Maryland. A copy of the tally sheet from Maryland, Maryland County is hereto attached as petitioner's Exhibit "P/2" to form a cogent part of this Petition.
5. Further to count 4 above, petitioner says that the natural consequence of such unlawful creation of voting center in Maryland, Maryland, is to cancel all votes claimed to be cast in Maryland, Maryland. The resulting effect of such cancellation and deduction of votes from each contestant in the senatorial election process in Maryland County will mean a necessary change and adjustment of NEC's official and final tally of votes cast in Maryland County's senatorial race.
6. Petitioner further alleges gross irregularity in the invalidation process of ballots cast, conducted by the NEC's election management team in Maryland County. Even though petitioner was successful at the Sedeken voting precinct, petitioner respectfully request the Commission takes Administrative Notice of its own records, and investigates invalid votes determined by NEC's Election Management Team in Sedeken, Maryland County. Petitioner respectfully informs the Commission that petitioner intends for his representatives assigned at Sedeken voting centers to testify on petitioner's behalf at the hearing of petitioner's appeal before the Commission. A copy of the tally sheet from Sedeken, Maryland County is hereto attached as Petition's Exhibit "P/3."
7. That at NEC's predetermined and designated voting center Nemeken Town Hall, NEC's election management

team in Maryland County, denied petitioner's designated monitor access to monitor the voting process for four (4) hours. Although the voting process continued at NEC's designated voting center at Nemeken Town Hall, while petitioner's representative was denied access to monitor, NEC's election management team in Maryland County, took four(4) hours to confirm and allow Petitioner's representative to monitor the election process at Kemeken Town Hall voting center. Petitioner respectfully informs the Commission that petitioner intends for his representative assigned at Nemeken Town Hall to testify on petitioner's behalf at the hearing of petitioner's appeal before the Commission. A copy of the tally sheet from Nemeken Town Hall, Maryland County is hereto attached as Petitioner's Exhibit "P/4."

8. Petition contends that voting process conducted by NEC's Election Management Team in Maryland County was full of prima facie evidences of unlawful and irregular acts. For example, Petitioner took a photo of a box, which was unlawfully kept in Magistrate Daniel Newland's office. The number and marking on the box in the photo indicates that the markings thereon was for a designated voting center in Maryland County, and should not have any time been kept in a voting Magistrate's office. Petitioner humbly request the Commissioner to inquire from Magistrate Newland to explain to the Commission and Petitioner, why the box in the picture was doing in his office, and not kept with the other ballots boxes. A copy of the photo is hereto attached as Petitioner's Exhibit "P/5".

Wherefore and in view of the foregoing, Petitioner respectfully requests the Chairman and Members of the National Elections Commission of Liberia, to grant Petitioner's Petition as follows:

a. ORDER ADMINISTRATIVE SANCTION AGAINST THE NEC'S AGENT RESPONSIBLE FOR THE UNLAWFUL AND IRREGULAR REMOVAL OF NEC'S DESIGNATED BALLOT FOR GWUTUKEN VOTING PRECINCT TO CAVALLA.

b. ORDER ADMINISTRATIVE SANCTION AGAINST THE NEC'S AGENT RESPONSIBLE FOR DISCARDING NEC'S BALLOTS BOX ON THE BARROBO HIGHWAY.

c. ORDER THE CANCELLATION AND DEDUCTION OF ALL VOTES CAST IN THE FICTICIOUS VOTING PRECINCT OF MARYLAND, MARYLAND COUNTY, FROM THE NEC'S OFFICIAL FINAL TALLY RESULT, EACH CONTESTINGCANDIDATE RECEIVED IN THE FICTIONAL VOTING PRECINCT, NAMED AND STYLED, MARYLAND, MARYLAND COUNTY.

d. ORDER THE VALIDATION OF VOTES CAST AT SEDEKEN VOTING PRECINCT, DETERMINED BY THE RESPONDENT TO BE INVALID, WHICH CLEARLY ESTABLISH THE INTEND OF THE VOTING PARTY.

e. ORDER ADMINISTRATIVE SANCTION AGAINST NEC'S AGENT RESPONSIBLE FOR DENYING PETITION'S AGENT THE RIGHT TO MONITOR THE VOTING PROCESS AT NEMEKEN VOTING PRECINCT FOR FOUR (4) HOURS.

f. ORDER ADMINISTRATIVE SANCTION AGAINST NEC'S CHIEF MAGISTRATE, MR. DANIEL NEWLAND, FOR WITH-HOLDING AND KEEPING DOCUMENTATION IN HIS OFFICE RELATING TO NEC'S DESIGNATED VOTING PRECINCT.

AND GRANT UNTO PETITIONER ANY, AND ALL OTHER RELIEF THAT THE BOARD OF COMMISSIONERS OF THE NEC MAY DEEM JUST FAIR, EQUITABLE UNDER THE CIRCUMSTANCES."

The Board of Commissioners of NEC denied the appeal, holding among other things that Dr. Chambers failed to assign the error made by the Magistrate, and in fact did not complain about the ruling held in Maryland in his appeal before the Board, but he instead raised new allegations of facts which were never raised before the Magistrate, heard and disposed of, and which in fact seemed to make the appeal a new complaint.

Dr. Chambers appeal the ruling of the Board of Commissioners in a 29 count bill of exceptions venued before this Court, among which he alleged that the hearing was done by four of the Commissioners but five signed the ruling. Count 15 of the appellant's bill of exceptions reads:

"Appellant takes exceptions to NEC's Board of Commissioners' ruling because only 4 members of NEC's Board of Commissioners heard appellant's appeal on January 9, 2015, but 5 Commissioners signed the ruling which is against the basic legal principle that "only he who hears must decide".

In his brief before this Bench, the appellant again raised the question, whether a 5th member of NEC's Board of Commissioners who did not sit on the hearing could have legally signed the Board of Commissioners' ruling along with the four members who heard and made the decision on the matter?

This similar issue was raised in the case *LAMCO v. Kashami and Board of General Appeals*, 35 LLR 181, 186, 187 (1988) brought before this Court. One of the issues in the appellant's bill of exceptions was that one member of the Board of General Appeals was alleged to have signed the ruling in a labor dispute when he did not participate in the hearing. The appellant on appeal before the Supreme Court contended that this issue was raised before the Labor Judge on appeal before him but the Judge ignored and refused to pass upon the issue. This Court in sustaining this contention of the appellant's bill of exceptions, held that the signing of the ruling by a member of the Board who did not participate in the hearing was contrary to law since one who makes a decision must be one who hears the controversy, as only he who hears must decide. We view this allegation in similar manner that a member of the Commission who did not sit on the hearing should not have signed the ruling.

The issue we must consider is where only four (4) members of the Board of the NEC were present and heard its complaint, but that five Commissioners signed the ruling, whether this rendered said ruling of the Board of Commissioners invalid?

Ordinarily, the ruling would not have been invalid in a typical case where four out of a seven member board would constitute a quorum for the sitting, hearing, and transaction of business, and the ruling would not have been affected by the fifth signature. But we must look to each operating body as to what constitutes quorum for the transaction of business.

A look at the Elections Law, Section 2.4, Quorum and Vote, specifically states what a quorum in an elections hearing before the Board of Commissioners constitutes. It states, "Any five (5) members, including the Chairman, shall constitute a quorum for the transaction of business of the Commission; they shall decide any question before it, and said decision shall be binding on the Commission."

Black's Law Dictionary, 9th Edition (p.1372) defines quorum as the minimum number of members who must be present for a deliberative assembly to legally transact business. It is also held that a quorum requirement is jurisdictional and not merely procedural and a hearing is a nullity if a quorum is not present. 83 Am Jud 2d, Section 698.

As serious as this allegation of the lack of quorum raised in the appellant's bill of exceptions and brief was, and though the bill of exceptions was available to the NEC, it failed to deny the allegation, and the records sent up to us include no minutes of the hearing to substantiate the presence of those Commissioners that sat on the hearing. This Court has held that failure of a party to dispute a claim amounts to an admission. *Wlo Flo v. R.L.*, 29 LLR 3, 12, (1981); *Inter-con Security Systems v. Yarkparwolo*, 38 LLR 633 (1998); *Kamara et al. v. Kindi*, 39LLR 102, 108 (1998).

This Court must emphasize the absence of the minutes of the hearing of the Board of Commission in the record. Article 83 (c) of the Constitution requires that " ... The Elections Commission shall within seven days of receipt of the notice of appeal, forward all the records in the case to the Supreme Court, which not later than seven days thereafter, shall hear and make its determination..." This requirement that the NEC forwards to the Supreme Court all the records in a case to enable the Supreme Court to make an informed determination of the case brought before it.

"A judgment in order to serve as a basis for the maintenance of an action must be valid, since a void judgment is in legal effect not a judgment at all and can confer no rights." 47 Am Jud 2d, Necessity of valid judgment, Section 771. This Court has also held that "a judgment is void if not rendered by a court with competency to render it." *Kennedy v. R.L.* 19 LLR 376, 379 (1969); and, "a void Judgment is in effect no legal judgment", *Union National Bank v. M.C.C.*, 22 LLR 32, 34 (1973).

A quasi-judicial body rendering a decision without a quorum can also be said to be incompetent to render said judgment. This means then that NEC's ruling is void and this Court has no ruling before it which can be reviewed on appeal.

In view of the fact that the issue of a quorum is jurisdictional, and the four member of the Commissioners which convened to hear this matter had no jurisdiction to have proceeded to hear the appellant's complaint, and in which case makes the NEC's ruling void, we remand this case, ordering that the Board of the National Elections Commission reconvene in strict compliance with Section 2.4 of the Elections Law to sit and hear the appellant's complaint and make a determination thereof. Where there is an appeal from this de novo hearing, NEC is mandated to send up to the Supreme Court all records in the case, to include all minutes of hearings so that the Court can make an informed determination thereof.

The Clerk of this Court is ordered to send a mandate to the National Elections Commission, forwarding to it our decision for a rehearing of the appellant's appeal in accordance with law. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLORS FARMERE G. STUBBLEFIELD, NIGBA & ASSOCIATES APPEARED FOR THE APPELLANT, DR. BHOFAL CHAMBERS. COUNSELLOR JOSEPH N. BLIDI, ONE OF IN-HOUSE COUNSELS OF THE 1ST APPELLEE APPEARED FOR THE 1ST APPELLEE, THE NATIONAL ELECTIONS COMMISSION (NEC). COUNSELLOR T. NEGBALEE WARNER OF THE HERITAGE & PARTNERS LAW FIRM APPEARED FOR THE 2ND APPELLEE, J. GBEH-BO BROWN.