

**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 39**

APPEAL

Heard: July 8, 2015 Decided: August 13, 2015

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT.

This is the second time this matter has appeared before this Court on appeal involving a contestation to the results of the special senatorial election held on December 20, 2014, in Maryland County, in which, according to the NEC results, 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).

Dr. Bhofal Chambers alleged among other things that he had filed an administrative appeal to the Board of Commissioners of NEC, complaining the NEC's Election Management Team for Maryland County of its failure to afford him the basic legal principle of due process of law in addressing his complaint of gross irregularities in the electoral process in Maryland County and appealed the non-action of the Magistrate to NEC. The Board of Commissioners of the NEC ruled denying his appeal. On January 15, 2015, Dr. Bhofal Chambers, appealed the Board's ruling to this Honourable Supreme Court. In his bill of exceptions filed, he stated among other things that the hearing of the appeal was conducted by only 4 members of NEC's Board of Commissioners on January 9, 2015, but 5 Commissioners signed the ruling, which is against the basic legal principle that, "only he who hears must decide".

Based on the Elections Law, Section 2.4, "Quorum and Vote", that requires any five (5) members, including the Chairman, to constitute a quorum for the transaction of business of the Commission, and to decide any question before it, the Supreme Court, on February 17, 2015, ruled that the failure of the NEC to deny this allegation of the appellant amounted to an admission; that the Board of NEC acting without a quorum was incompetent to render a judgment and therefore its ruling was void and the Court had no ruling before it that could be reviewed on appeal. The Court remanded the case to NEC for a rehearing of the appellant's appeal by the Board of Commissioners in accordance with the statute.

Based on ruling of this Court, on February 17, 2015, the NEC resumed jurisdiction of the matter and assigned same for hearing, this time with six members of the Board of Commissioners sitting, which included the Chairman. After the hearing, the Board made a final ruling on May 26, 2015, denying Dr. Chambers' appeal. Dr. Chambers announced an appeal from the ruling, and filed a bill of exceptions before the Supreme Court in accordance with Chapter 6, Section 6.3 of the Elections Law of Liberia.

It is the appeal from the ruling of the NEC's Board of Commissioners entered on May 26, 2015, along with an amended motion to dismiss the appeal, filed by the 2<sup>nd</sup> appellee, J. Gbleh-Bo Brown, that this Court must now decide.

Relevant counts of the amended motion to dismiss read as follows:

3. appellee submits that a careful perusal of the file in the aforesaid proceedings indicates that appellant filed his bill of exceptions within statutory time with the clerk of this Honorable Court but miserably failed to file the required "recognizance" in keeping with section 6.8 of the new elections Law 2011; thus, rendering the appeal a fit subject for denial and dismissible as a matter of law.

4. Furthermore, section 6.4 "filing of bill of exceptions" of the same law states, "the contestant shall file with the clerk of the Supreme Court the bill of exceptions within seven (7) days after rendition of decision of the Commission and shall pay the cost of filing the bill of exceptions and of procuring a certified copy thereof the same as those paid by a plaintiff and/or appellant in a civil action", and section 6.8 "recognizance" of the same law says, "the contestant shall enter into a recognizance for payment of costs incurred on the appeal in the following amounts:

(b) with respect to the election of a Senator, the Liberian Dollar equivalent of Three Thousand United States Dollars (US\$3,000.00)."

Appellee submits that the failure of the appellant to comply with the provision of section 6.8 above within the statutory period of seven (7) days and up to and including the time of the filing of this motion renders the appeal dismissible and same should be dismissed.

5. Appellee further submits that even though the requirement of section 6.8 of the elections law relative to "recognizance" does not indicate the time for the entry of "recognizance", the general rule of appeals contained in the Liberian Code of Laws Revised, Civil Procedure Law of Liberia, chapter 51. section 51.4 " requirements for completion of an appeal", clearly states:

"The following acts shall be necessary for the completion of an appeal:

- (a) Announcement of the taking of the appeal;
- (b) Filing of the bill of exceptions;
- (c) Filing of an appeal bond;
- (d) Service and filing of notice of completion of the appeal.

Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal."

6. Appellee submits that the requirement of section 6.8 of the elections law relative to the entry of "recognizance" is no doubt in the nature of an appeal bond that is required to indemnify the appellee for "costs incurred" as a consequence of the appeal, which is one of the condition precedent for the filing and perfection of an appeal under the general rule of appeal quoted hereinabove.

7. Movant/2nd appellee submits and says the appellant and his counsel are knowledgeable of the statute cited above and their strict adherence requirements based on the fact that this happens to be the second time for which the appellant has taken an appeal to this Honorable Court. Notwithstanding their familiarity with the required procedure and the consequences for noncompliance, the appellant has refused and failed to file its recognizance in accordance with the laws mentioned supra.

8. Movant/2nd appellee further says and submits that the appeal is also dismissible because the

appellant/contestant/protestant miserably failed and neglected to comply with the mandatory requirement as stipulated in chapter 6, section 6.5 of the new elections law, which mandates that the bill of exception shall be signed by the appealing contestant. For reliance, movant quotes hereunder section 6.5 captioned "bill of exceptions: content:

1. Content: the bill of exceptions shall:

- (a) State clearly and distinctly the grounds of exception of the facts relied upon to reverse the decision of the Commission;
- (b) Contain a prayer for the relief sought; and
- (c) Be signed by the appealing contestant.

9. Further to count eight (8) hereinabove, movant says this failure and neglect to comply with the mandate in the above quoted statute renders the bill of exceptions and the entire appeal fatally deficient and incurable.

10. Movant/2nd appellee prays that this Honorable Court dismisses the appellant's appeal with utmost prejudice for (i) their intentional failure to file a recognizance within the seven (7) days statutory period with this Honorable in order to perfect its appeal and (ii) the failure of the contestant appellant to sign the bill of exceptions as mandated by law.

WHEREFORE and in view of the foregoing facts and circumstances, Movant/2nd appellee prays Your Honor to:

- A. Dismiss the appellant's appeal with utmost prejudice;
- B. Rule the cost of these proceedings against the appellant; and
- C. Grant unto the movant/2nd appellees all that Your Honor may deem just and equitable under the circumstances."

Resisting the 2nd appellee's motion to dismiss the appeal, the Respondent Dr. Chambers, filed his resistance as follows:

"Respondent respectfully prays Your Honors to deny movants' amended motion to dismiss respondent's appeal for the following legal and factual reasons to wit:

1. That pursuant to section 6.8(b) of the New Elections Law [Amended in 2004], the respondent did file and enter into a recognizance for the payment of United States Dollars Three Thousand (US\$3,000.00) cost incurred on appeal from the National Elections Commission (NEC) to the Supreme Court of Liberia on January 15, 2015. A copy of the payment receipt paid into the NEC' special account held at the Central Bank of Liberia is hereto attached as Respondent's Exhibit R/1.

2. That the Supreme Court remanded the appeal to the Board of Commissioners of the NEC for a de novo hearing of respondent's appeal, but the NEC continues to maintained possession of respondent's recognizance payment of United States Dollars Three Thousand (US\$3,000.00) as of the date of the filing of respondent's resistance to movants' amended motion to dismiss appeal.

3. That respondent's appeal to the Supreme Court involves the same forum, the same parties, and the same issues for determination before the Supreme Court en banc.

The Supreme Court ordered a de novo hearing of the appeal because of movant, NEC's board of

commissioners' lack of a quorum to have made a binding determination of respondent's administrative appeal to the NEC's board. Movants cannot now be suggesting that respondent is required to pay a second recognizance bond due to the sole neglect of movants.

That movants' motion to dismiss appeal is filed in bad-faith, because movants are aware that the respondent did pay the required recognizance as required by Section 6.8 (b) of the New Elections Law.

4. Movants' second contention that respondent's appeal should be dismissed because the contesting party, which is the one and same respondent, did not sign respondent's bill of Exceptions is not supported by the records before the court and the law extant in this Jurisdiction.

The records before the court will clearly indicate the respondent's bill of exceptions was duly signed by the contesting party, by and thru his legal representatives(s) of records, which is the practice of law hoary with age in this jurisdiction; and supported by section 1.8 of our Civil Procedure Statute entitled, Representation of parties in action 1LCLR (1LCLR).

A bill of exceptions intended for appellate review by the Supreme Court of Liberia, has always been signed by the appellant's counsel of record, supported by Sections 1.8 and 51.7 of our Civil Procedure Statute entitled, Representation of parties in action (1LCLR) and The pertinent wordings in Section 6.5 (c) of our New Elections Law state that the bill of exceptions is to "Be signed by the appealing contestant". The pertinent wordings in Section 51.7 of our Civil Procedure statute also state that "the appellant shall present a bill of exceptions signed by him to the trial judge." Predicated upon law and practice hoary with age in this jurisdiction, the Supreme Court of Liberia has never dismissed an appeal solely because the appellant's/contesting party's bill of exceptions intended for appellate review, is signed by the appellant's /contesting party's counsel of record.

Since the inception of the Republic, our Supreme Court has always taken recognizance that a party litigant in an action can either be represented by himself or his lawyer. Section 1.8 of our civil Procedure Law, (1LCLR)

5. Movants' motion to dismiss respondent's appeal is a further attempt on movants' part to prevent the due process hearing/investigation of respondent's protest before a NEC's designated magistrate/hearing officer, in the extraordinary exercise of electing a Senator of the Republic.

WHEREFORE, and in view of the foregoing, respondent respectfully prays Your Honors to deny movants' motion to dismiss respondent's appeal, and grant unto respondent any and all other relief your Honors may deem just, fair and reasonable under the circumstances".

After the hearing of arguments on the motion to dismiss, the Court suspended passing on the motion, requesting that the parties proceed with the hearing of the appeal; thereby consolidated the appeal from the ruling of the Board of NEC and the motion to dismiss.

In our previous opinion on this matter, we outlined the complaint of Dr. Chambers, the appellant, but did not delve into the substantive issues of the appeal due to what this Court referred to as being void due to the lack of quorum of the Board of Commissioners who sat to hear and rule in the case. Having now sat to decide the issue of contest raised by the appellant to the election and relying on

the records before us to make the determination, we deemed it fit to again incorporate the appellant's complaint and other evidentiary records presented for a determination of this case.

A review of the records sent up to this Court, show that 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 date 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, and his letter 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 endeavour 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 Dlstlct#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 other 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.

Yours sincerely,  
Dr. Bhofal chambers

Cc: UNMIL  
Cc: ECC  
Cc: US Embassy  
Cc: European Union (EU)

After this Communication of December 24, 2014, to the Chairman of the NEC, we see no response to this communication of December 24, 2014. However, there were admissions by Dr. Chambers and others before us that after this letter to the Chairman of NEC by Dr. Chambers, NEC's Chairman ordered that the NEC's Election Management Team in Maryland conducts an investigation into the matter. We see in the records handwritten minutes of a hearing alleged to have been conducted on December 27, 2014, at 10:00 a.m. in Harper City, which was transcribed and made part of the records. These minutes we shall come to later on in the Opinion.

On January 2, 2015, the Administrative Assistant to the Chairman of NEC received the following document, venue 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 Wutuken, 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 will 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 Nemecken 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 Nemecken 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 Kenmeken Town Hall voting center. Petitioner respectfully informs the Commission that petitioner intends for his representative assigned at Nemecken 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 Nemecken 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 an administrative sanction against the NEC's agent responsible for the unlawful and irregular removal of NEC's designated ballot for Wutuken 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 fictitious voting precinct of Maryland, Maryland County, from the NEC's official final tally result, each contesting candidate 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 Intent 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 withholding 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."

Having outlined the contentions of the parties in both the motion to dismiss and the appeal, we shall firstly proceed to deal with the appellee's motion to dismiss the appeal.

In the motion to dismiss the appeal, the 2<sup>nd</sup> appellee contends that though the appellant paid a recognizance fee when he took an appeal to this Court in January 2015, this Court ruled on the appeal sending it back to the NEC's Board of Commissioners for hearing in accordance with law. The Board had a subsequent hearing and made a ruling to which the appellant excepted and appeal there from. This means that in order to place this appeal before the Supreme Court, the appellant should have again paid a recognizance fee in accordance with the election statute.

The Elections Law, Section 6.8: "Recognizance" requires a Senatorial Contestant appealing from ruling of the Commission's determination of an elections contest to pay costs incurred on an appeal to the Supreme Court an amount of three thousand United States Dollars (US\$ 3, 000.00).

The appellant in resisting the motion to dismiss the appeal prayed the Court to deny the motion to dismiss. He claimed that the appeal involved the same issues and same parties and he had previously paid his recognizance when he came up on appeal from the ruling of the Board of Commissioners in January 2015. He cannot be required to pay another recognizance fee where the matter was sent back by the Supreme Court due to the negligence of the movants. And as regards the issue of the bill of exceptions not being signed by the appellant himself, the appellant said that this contention of the appellee is not supported by the law extant in this jurisdiction. The bill of exceptions signed by the legal representative of the appellant is a practice hoary by age in this jurisdiction and is supported by Sections 1.8 and 51.7 of our Civil Procedure Statute (1973), "Representation of parties in action", and "Filing of the Bill of Exceptions". And, since the inception of the Republic, our Supreme Court has always taken recognizance that a party litigant in an action can either be represented by himself or a lawyer.

This brings us to the issue, whether the appellant was under a legal obligation to file another recognizance fee during this subsequent appeal?

The appellant has stated that the matter involves the same parties and the same issue; that the matter having been remanded because of the NEC's failure to hear the appeal as required by the Elections Law, the appellant should not be made to pay for the negligence of the NEC where he had previously paid his recognizance fee.

In the previous hearing of this matter by the Court, the Court held that since the NEC had failed to rebut the appellant's allegation that NEC Board of Commissioner held a hearing without a quorum, and the issue of a quorum requirement is jurisdictional and not merely procedural, the four member of the Commissioners which convened to hear the matter had no jurisdiction to have proceeded to hear the appellant's complaint, and in which case this made the NEC's ruling void with no matter on appeal before the Supreme Court. The case was therefore remanded, with an order 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 appeal de novo.

Technically, this is the first ruling of NEC's board on this matter to be reviewed by this Court. It would be unconscionable for the appellant who previously made a recognizance payment to have his appeal reviewed by the Supreme Court, and the Court ruled that the previous ruling of NEC's Board was void with no matter on appeal before the Court and therefore had the matter remanded for a new hearing, that on this appeal from a de novo hearing, the appellant be required to make a second recognizance fee. The appeal before this Court in essence was suspended for the proper hearing and ruling by the NEC's Board, and its subsequent ruling, if brought on appeal before the Court, the Court would then properly delve into the matter and make a decision thereon.

The appeal being the first appeal from a legal ruling of NEC's Board on this matter, therefore, no other recognizance fee was necessary to be paid by the appellant.

The second issue in the motion is a prayer by the 2nd respondent that this Court dismissed the appeal because the appellant contrary to the Elections Law did not sign the bill of exceptions himself but rather his legal counsels.

The Elections Law Section 6.5: states that the Bill of Exceptions shall:

- (a) State clearly and distinctly the ground of exceptions of the facts relied upon to reverse the decision of the Commission;
- (b) Contain a prayer for the relief sought; and
- (c) Be signed by the appealing contestant (emphasis ours)

The bill of exceptions of Dr. Chambers, this Court has observed, was not signed by the appellant himself but by his legal counsels, Farmere G. Stubblefield and Snosio Nigba.

The appellant, in resisting the motion to dismiss the appeal on this issue, equates section 6.5 (c) of the Elections Laws to that of section 51.7 of the Civil Procedure Law which requires that the appellant "shall present a bill of exceptions signed by him to the trial judge within ten (10) days after rendition of the judgment". Counsels for the appellant argued that in our practice hoary with age in this jurisdiction, it has always been the counsel for the appellant who has signed the bill of exceptions on behalf of his or her client in accordance with our Civil Procedure Law, Section 1.8 which provides that a party may prosecute or defend a civil action in person, by attorney or both and that the Supreme Court has never dismissed an appeal solely because the appellant/contesting party bill of exceptions was signed by the appellant/contesting party of record.

This Court says that it agrees with the contention of the appellant that Section 6.5 of the Elections Law can be equated to Section 51.7 of the Civil Procedure Law (1973) requiring the appellant to sign a bill of exceptions made to a judgment, decision, order, ruling or other matter excepted to on the trial. This Court has never dismissed the appeal based on the fact that the bill of exceptions was never signed by the appellants but their legal counsel(s). Predicated upon Law and practice hoary with age in this jurisdiction, the Supreme Court in this jurisdiction has never required the appellant himself to sign the bill of exceptions or dismissed an appeal solely because the appellant's bill of exceptions intended for appellate review was signed by the appellant's counsel of record.

The Court has allowed a party appearing before it to be represented either by himself/herself or his/her lawyer, and has allowed counsels for parties to sign all documents on behalf of their clients. This Court has only dismissed matters where papers filed before the court is signed by a party's legal counsel when the statute specifically requires that the contesting party himself signs the document. An example in point is where the law requires that in a petition for a writ of prohibition the affidavit to the petition be signed by the petitioner himself and not his legal counsel. In a recent opinion of this Court, handed down on December 13, 2014, the Court, in a prohibition proceeding based on application by several parties to it to prohibit the National Elections Commission from conducting the Special Senatorial Elections of 2014, denied and refused to entertain the petition filed by the National Democratic Coalition (NDC), represented by its Chairman, Mr. Alaric K. Tokpa, on the ground that the petition filed by NDC did not meet the requirement of the statute. Section 9.4 (2) (b) requires that a complaint in an action of a prohibition proceedings shall in every case be verified by the party himself (emphasis ours). In the NDC's petition for prohibition, the legal counsel of NDC, Counsellor J. Laveli Supuwood, signed the affidavit to the petition instead of the representative of NDC, the petitioner. This Court held that, the signing of the affidavit signed by Counsellor Supuwood rendered the affidavit defective, and as the Supreme Court does not treat improper verification as harmless error, it would not entertained the petition. The Court relied on precedent set in several cases and therefore threw out the NDC's petition. *National Vision Party et al. v. National Elections Commission*, Supreme Court Opinion, March 2014; *Nyumah et al v. Tulay et al*, 39LLR 678 (1999); *Wilson v. Kandakai et al.*, 21 LLR 452 (1973).

The signing of the bill of exceptions is not analogous to the signing of an affidavit of a petition for a writ of prohibition. A bill of exceptions signed by legal counsel(s) of an appellant appealing a ruling or judgment of a court or administrative body is not dismissed based on the principle that a party can be represented by himself or counsel. This is buttressed by NEC's own Regulations on "Complaints and Appeals" (July 20, 2005), Part II, Sections 6.2 & 6.3 on Exceptions. The regulation requires every bill of exceptions to be signed by the objector. Section 6.3 states where the objector is an individual person, by that individual or an authorized legal representative; where the objector is a registered political party, by an authorized representative of the party; and where the objector is a registered candidate, by the candidate or an authorized representative of the candidate.

In this regard, the Court upholds the long standing practice that a legal counsel of record serves in a capacity as a legal agent of an appellant, and is in the capacity to do any and all things pertaining to the legal representation of his/her client except as specifically dictated otherwise by statute. A legal counsel of record acting on behalf of his client appearing before a tribunal is eligible to sign pleadings and bill of exceptions in his representative capacity. The practice of allowing the legal counsel of an appealing party to sign the bill of exceptions is predicated on the fact that the counsel who has participated and represented a client in a hearing is in a better position to note and articulate the errors in a bill of exceptions said to have been made during a hearing.

Moving now to the substantive issue, the appeal before us, the record shows that the Board of Commissioners of NEC, now legally constituted, convened a hearing on Friday, May 22, 2015. Minutes of the hearing reveals that counsels for the appellant were asked to proceed with their legal citations and argument.

In their argument before the Board, the counsels stated: "We want this Board to determine that we said there was no hearing by the Magistrate concerning the letter of December 24, 2014; there was no investigation conducted. The ruling of this Board said an investigation was conducted on December 27, 2014, which we are not aware of whatsoever."

A reading of the submission of the appellant's counsel reveals his insistence that his complaint lodged of December 24, 2014, had not been investigated by the Election Magistrate and he was insisting that the Board allowed the parties to go back so the Election Magistrate could conduct a proper investigation of his client's complaints of election's irregularities.

The record shows the following exchange during the Board's hearing:

BOC: The pleading which resulted to this hearing now, what is it? Is that an appeal or a fresh complaint?

Appellant's Counsel: They say in law, the substantive matters should be heard before you say whether that is an appeal..... the Magistrate refused to confirm the letter of December 24, 2014, avoiding jurisdiction in our complaint which alleged gross irregularities and factual issues that should be presented before the Hearing Officer and staff to counter argue and present evidence.

BOC: Was there a refusal to hear your complaint?

Appellant's Counsel: All we are saying let us go back there and there be a proper investigation.

BOC: Do you have a matter pending before the Magistrate for hearing?

Appellant's Counsel: The Magistrate refused jurisdiction over our complaint. And as far as we are concerned, there was no due process.

The 2<sup>nd</sup> appellee on the other hand contended that there was a hearing and that appellant should have taken an appeal from the hearing as is required under the NEC's Regulations, which states the time within which a party is required to appeal from a NEC Magistrate's ruling. The appellee countered that the regulation required seventy-two (72) hours or three days for taking of an appeal from an Election Magistrate's ruling, but the appellants appeal was filed on January 2<sup>nd</sup> which doubled the time allowed for the taking of the appeal from the Magistrate's ruling. These regulations, the appellee argued, insist that a party affected by a decision must announce an appeal and file a bill of exceptions to any decision no matter how crazy the decision is, and the appellant failed to follow these procedures.

After the hearing, the Board culled two issues for the determination of the appeal before them. The issues were:

1. Whether a candidate is entitled to an automatic/total recount of the votes cast when the margin of the vote exceeds the threshold set for triggering an automatic recount.
2. Whether the appellant failed to comply with the law and rules on taking appeal.

The board held that while it takes the rights of complainants seriously, it also takes the rights of all candidates seriously, and fairness to all candidates requires that a complainant provides evidence to support his or her allegations so as to provide the other parties and the Commission proper notice of what is being challenged. Automatic recount in a non-presidential election, the board held, is set in NEC's guidelines which states: "In the electoral contests where the preliminary results show the difference in vote count of less than 50 votes between the winning candidate and the second candidate, a recount of all ballots in the district or county shall be conducted by the relevant Magistrate." Primarily relying on the case, David Saydee v. NEC & Roland Blalue, Supreme Court Opinion, March Term, 2012, in which according to the Board, the Supreme Court set the standards necessitating an automatic recount of votes. In an election, the Board held that there existed a 76-vote margin between the appellant and co-appellee Brown which exceeded the threshold for automatic recount; therefore, the appellant was not entitled to an automatic/total recount of the votes cast in Maryland County; to necessitate a recount, the Appellant Dr. Bhofal Chambers needed to tie his allegation of irregularities to a precinct or center, and he needed to present any proof or evidence supportive of allegations that would meet the threshold requirements for necessitating a recount. The Board also held that the authority to order an automatic recount resides with It, and not the Elections Magistrate. The Commission may order a recount where an Investigation/hearing establishes clear and convincing evidence of irregularity likely to have an impact on the outcome of the election. Hence, the hearing officer did not err when he informed the appellant that his request for an automatic/total recount was outside the purview of the Magistrate's office.

Regarding the second issue of whether the appellant failed to comply with the law and rules on taking appeal, the Board held that the appellant, Dr. Bhofal Chambers having left his cell phone number and email address with the Elections Magistrate as means of contact, he was informed by the Magistrate via cell phone that the hearing into his complaint was scheduled for December 27, 2014; the appellant appeared at the hearing on December 27, 2014, along with his witnesses, Robert

S. Togba and David T. Collins, and wrote his name and cell phone numbers on the attendance sheet; the appellant also cross-examined a witness in person of Alexander Lonklo. Other monitors and observers who witnessed the hearing included representatives from the Catholic Justice & Peace Commission and the Movement for Justice in Liberia also wrote their names and cell phone numbers on the attendance sheet. At the end of the hearing, the Elections Magistrate made a ruling that overruled the appellant's complaint but the appellant did not except to that ruling nor did he announce an appeal therefrom or file a bill of exceptions to said ruling before the Board of Commissioners.

The Board also held that the appellant's appeal failed to state the complaint, decision or lack of decision by the lower tribunal and the statement of the error assigned to the conduct of the lower tribunal, but the appellant's appeal was rather filled with allegations of facts and new accusations not filed before the Hearing officer or Magistrate and therefore never heard or decided by them.

The Commission further held that dissatisfaction with a hearing or ruling made by a court or a tribunal of competent jurisdiction does not relieve a party from complying with the statutory and regulatory requirements for taking an appeal. The appellant having appeared and submitted himself to the December 27, 2014 hearing, participated in said hearing, he should have followed the statutory and regulatory requirements for taking appeal.

The board concluded that though the appellant's counsels in their argument tried to impress upon the board that a hearing did not take place on December 27, 2014, to the contrary, the record showed that the appellant attended the December 27, 2014 hearing, participated in said hearing, and failed to perfect an appeal from the Election Magistrate's ruling, and that the records of the Magistrate's investigation included the attendance sheet on which the appellant wrote his name and cell phone number.

Excepting to the ruling of the Board of Commissioners, the appellant filed the following bill of exceptions:

1. That the NEC's Board of Commissioners' ruling delivered on Thursday, June 4, 2015, overlooked that on January 2, 2015, appellant filed an administrative appeal to the Board of Commissioners of NEC, complaining that the NEC's Election Management Team for Maryland County, via its Chief Magistrate and designated Hearing Officer, failed to conduct a hearing of appellant's initial complaint of gross elections irregularity, dated December 23, 2014; but instead, the designated hearing officer in the Magisterial office summarily decided via letter dated December 24, 2014, that the Magistrate's office lacked the jurisdiction and authority to hear appellant's complaint and make a determination.

The Board of Commissioners in its ruling of June 4, 2015, committed a reversible error when it overlooked the fact that in the absence of a hearing in an open court/investigation, as evidenced by the letter dated December 24, 2014, from the Hearing officer of the Maryland County Election Magisterial Office, to the compliant of appellant dated December 23, 2014, that the appellant could not have announced an appeal In the absence of a formal hearing, as contemplated by the laws extant in this jurisdiction.

That the Board of Commissioners ruling overlooked that after NEC's Hearing Officer made a determination of appellant's complaint without a hearing, but by letter dated December 24, 2014, the Board Chairman acting administratively, ordered the Magistrate to conduct a new investigation

of appellant' complaint, predicated upon appellant's telephone and written appeal to the board chairman; but the hearing officer failed and neglected to conduct a proper investigation by citing all parties of interest to the intended investigation of December 27, 2014, which is mandatory. In keeping with the doctrine of the due process of law.

That the NEC's Board of Commissioners' ruling delivered on Thursday, June 4, 2015, overlooked that the Magistrate failed to conduct an investigation on December 27, 2014, as mandated by the Supreme Court rulings in several cases. The Supreme Court of Liberia has mandated and required that citations for all elections investigation be sent to all parties of interest; that is, as a pre-requisite for the Magistrate to have conducted a legitimate investigation on December 27, 2014, the Magistrate should have cited the appellant, and the 1st and 2nd appellees/respondents to the investigation. Our Supreme Court have maintained in several of its opinions concerning elections, that the failure of the magistrate to have cited the 1st and 2nd appellees to the December 27, 2014 hearings, makes all and any determination made by the Magistrate on December 27, 2014, null and void and of no legal effect.

That the NEC's Board of Commissioners' ruling of Thursday, June 4, 2015, committed reversible error when it ruled that appellant failed to except to the alleged Magistrate's ruling of December 27, 2014 and announced an appeal, when in fact said hearing was inconsistent with the elections laws, regulations and the several Supreme Court Opinions; hence, the said December 27, 2014, hearing was of no legal effect from which an exceptions could have been made, an appeal announced, and a bill of exceptions file within the contemplation of the law.

That the NEC's Board of Commissioners' ruling overlooked that the board already assumed jurisdiction over appellant's administrative appeal with appellant's consolidated complaint attached thereto, when the board made an official determination that the December 27, 2014 investigation conducted by its Magistrate in Maryland County, constituted a legal and valid investigation and determination of appellant's complaint of election irregularities; to which ruling appellant appealed to the Supreme Court.

The Board's ruling overlooked that it cannot assumed jurisdiction, and make a determination on appellant's administrative appeal, and at the same time claim that it's lack of jurisdiction to simply reinstruct a NEC's Magistrate to conduct a new investigation contemplated by the perimeters set by our Supreme Court in several of its opinions. That is, the investigation must involve the participation of all the parties of interest.

The Board Chairman's decision to instruct the Magistrate to re conduct an investigation of appellant's complaint was administrative in nature. It did not require the announcing of an appeal at an open election investigation, which then will require the regular appeal process to the Board. The Hearing Officer made a determination without intending to conduct a hearing and afford appellant due process of law.

The Board assumed jurisdiction over appellant's administrative appeal, when the board made a determination that the allege December 27, 2014 investigation was valid, overlooking the mandatory requirement for due process of law, to cite and invite all parties of interest to the intended December 27, 2014 investigation. Now, the same board is claiming that it lacks the jurisdiction over appellant's same administrative appeal, to instruct the Magistrate to conduct a proper investigation of appellant's complaint as contemplated by several opinions of our Supreme Court.

The Board cannot assumed jurisdiction to validate the December 27, 2014 actions of the Election Magistrate, and at the same time deny jurisdiction to instruct and designate a Magistrate to conduct an investigation, which must involve the participation of both the appellant and appellees.

2. That the Board's ruling apparently misunderstood appellant's administrative appeal to it, requesting that the Board exercise its supervisory and administrative authority to instruct a NEC's Magistrate to conduct an investigation of appellant's complaint attached to the administrative appeal.

Appeal is a simple request to the Board seeking the Board use of its administrative and quasi-judicial authority, to instruct a designated Magistrate to afford appellant due process law at a schedule investigation to hear and determine appellant's consolidated complaint of gross election irregularities, filed to the NEC within the seven (7) days period after NEC announced its preliminary elections results.

3. That the Commissioners' ruling failed to take into consideration that appellant's complaint was about gross election irregularities, and not about automatic recount of ballots cast. The automatic recount of ballots cast in an election is guided by NEC's own regulations, which places a fiduciary duty on NEC to initiate the conduct of automatic recounts. That duty is on NEC, and not a party praying for recount because of allegations of elections irregularities.

4. Appellant came to the Board because NEC's Magistrate and hearing officer never provided appellant due process of law as contemplated by the Supreme Court opinions, which required the Magistrate and hearing officer in Maryland County, to cite petitioner and other parties of real interest, as a necessary pre-requisite to conduct an election investigation of petitioner's complaint.

5. That the manner of election investigation contemplated by Article 83 (c) of the Constitution of Liberia, section 6.2 (1) of the New Elections Law of 1986, and several Opinions of our Supreme Court, imposed a legal duty on NEC's Magistrate and Hearing Officer to cite both appellant and 2nd appellee to a particular place, and at a certain time, for the investigation and hearing of appellant's allegation of gross irregularities during the election process.

6. Appellant says the Commissioners' ruling overlooked that the December 24, 2014 letter from NEC's designated hearing officer in Maryland County, and the alleged December 27, 2014 determination of the Magistrate, cannot be considered as proper and valid elections investigations, because in both cases, all parties of real interest were never cited by the hearing officer or Magistrate to attend and participate in the investigations. The presence and participation of all parties of real interest in an elections investigation is a mandatory requirement of our Supreme Court. See alliance for Peace and Democracy (ADP) of Lofa County versus NEC et al.. decided by our Supreme Court on June 1, 2015, Saydee v NEC, Supreme Court Opinion, October Term, 2011; Kuku Dorbor, et al. vs. NEC, UP and Bill Twehway, decided June 22, 2012;

7. Predicated on the failure of NEC's Hearing Officer and Magistrate to cite all parties of interest to conduct an election investigation, appellant's available legal remedy under the circumstances was to file an administrative appeal to the Board, because the board not being a regular appellate court, and unlike our Supreme Court, lacked the authority to issue any of the four alternative writs to compel and/or correct the Magistrate's failure to cite all parties of interest to conduct a valid election investigation.

8. Appellant takes exceptions to NEC's Board of Commissioners' ruling In essence that, the failure of NEC'S Magistrate or his designated hearing officer in Maryland County to cite all parties of interest to an elections investigation, is irrelevant and immaterial to the December 27, 2014 determination made by Magistrate.

9. Appellant takes exceptions to NEC's Board of commissioners' ruling in essence that, taking an appeal to the Supreme Court from a subordinate Court is the same appeal procedure required as taking an appeal to an administrative or quasi judicial body like the NEC'S Board of Commissioners.

Appellant takes exceptions to NEC's Board of Commissioner's ruling in essence that; appellant had the opportunity to have announced an appeal at a NEC investigation where all parties of interest were absence.

10. NEC'S Board of Commissioners' ruling overlooked that as a result of its Chairman's admitted instruction to NEC's Magistrate to conduct an investigation for December 27, 2014, no announcement of appeal could have been made by appellant, when NEC's Magistrate in fact, attempted to conduct an election investigation of appellant's complaint, but failed to do so, because the Magistrate did not cite and involve all parties of interest in the intended investigation.

11. Appellant takes exceptions to NEC's Board of Commissioners' ruling, when the board failed to instruct a designated Magistrate to investigate and make a determination of appellant's consolidated complaint filed with the NEC, within the constitutional and statutory seven (7) days period allowed by law, after the preliminary announcement of the of the elections results.

12. Appellant takes exceptions to NEC's Board of Commissioners' ruling, which has effectively denied appellant of his constitutional right to be afforded due process of law.

13. Appellant takes exception to the Chairman and Board of Commissioners of the NEC's refusal to correct the minutes of the proceedings, which resulted in the erroneous ruling of NEC's Board of commissioners; and the board refusal to designate a clerk to take credible records of the minutes of the proceedings.

WHEREFORE AND VIEW OF THE FOREGOING, appellant respectfully prays your Honors to order the NEC's Board of Commissioner to do the following:

a) Designate and instruct a credible NEC's Magistrate to investigate appellant's consolidated complaint attached to appellant's administrative appeal, filed with the NEC within the constitutional and statutory seven (7) days period allowed by law, after the announcement of the preliminary elections results on December 24, 2014; and

b) Cite appellant and appellee to the scheduled investigation of appellant's consolidated complaint; and

c) Appoint a clerk typist to record the minutes of the investigation conducted by the Magistrate; and

d) Allow for the corrections and verification of minutes by Interested parties involved in the investigation; and

e) Grant unto appellant any and all other relief that Your Honor may deem just, fair and equitable under the circumstances.

We have observed from the appellant's appeal to NEC's Commissioners complaining the Election Magistrate in Harper Maryland, dated January 2, 2015, that it incorporates other complaints of elections irregularities besides the issues raised in his letter of December 24, 2014. For example, appellant alleged that even though seals placed on ballot boxes are expected to be opened and removed for counting of ballots cast in the presence of all contesting parties, he recovered a genuine NEC's election seal on the public highway of Barrobo Statutory District on December 24, 2014, and he was in actual possession of the discarded seal which he would present to the Commission at the hearing of his appeal to the Commission; that NEC's Election Management Team in Maryland County deliberately, inadvertently, and unilaterally created a new voting station named and styled "Maryland Maryland" that was not listed as NEC's official designated voting center prior to the elections and that he received only one vote while his opponent received 103 votes; that the NEC's Election Management Team denied his designated monitor access to monitor the voting process for four hours at the voting center in Nemekem Town Hall, and that he took photo of a ballot box which was unlawfully kept in the Magistrate's office, and the number and markings on the box should not have any time been kept in the Magistrate's office.

The NEC's Regulations on Complaints and Appeals, Part III: "Complaints: Types". Section 7. Contested Election (July 20, 2005), reads as follows:

7.1 Under the Liberian Constitution, Article 83 (c), and the New Elections Law, Chapter 6, the primary method of complaint and appeal for parties and candidates contesting an election is through the contested election procedure (or post-election contestation) that seeks to overturn the results of an election. The statutory timelines and procedures for such contestations, including the filing of exceptions during the election process under these regulations, must be strictly complied with.

7.2 To preserve the right to initiate a post-election contestation, as for submitting other complaints, the filing of bill of exceptions with the NEC must occur within seventy-two (72) hours after the occurrence of any event complained of, and in accordance with Section 6.6 of the New Elections Law, all such exceptions must be filed not later than five (5) days after election day.

Apparently, the appellant realizing that the subsequent allegations in the appellant's appeal of January 2, 2015, not having been filed as per NEC's regulations on complaints herein above stated, and Section 6.6 of the Elections Law which states, "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", the appellant in his brief and argument before this Court, set out a lone issue which was based on his December 23 and 24, 2014 communications to NEC, emphasized in the appellant's bill of exceptions and vehemently argued by his counsellors before this Court. Appellant's lone issue being "whether there was a hearing on December 27, 2014, and whether the appellant was accorded due process as contemplated by law?"

In his bill of exceptions, the appellant alleged that the Magistrate failed to conduct a hearing of appellant's initial complaint dated December 23, 2014, of gross election irregularities but instead summarily decided via letter dated December 24, 2014, that the Magistrate's Office lacked the jurisdiction and authority to hear appellant's complaint and make a determination thereof.

Written supra, appellant's two letters of December 23, 2014, to the Election Magistrate are of two-folds: the first registering the appellant's concern of gross missteps on the part of the NEC's Office in Harper relative to the final results placed on NEC's bulletin, requesting for the tally sheets of all

143 polling places and requesting a prompt investigation of alleged glaring irregularities; the second, stating that based on a review of the tally sheets, which appellant alleged had glaring discrepancy, appellant was requesting for a total recount of all ballots.

Based on the first letter of the 23rd, the Magistrate gave the tally sheets to the appellant as per his request. However, in response to the second letter requesting a recount of the total ballots cast, the Magistrate wrote the appellant on the next day, December 24, 2014, informing him that the request for a total recount did not fall within the Election Magistrate's purview.

This Court says that the appellant's contention that the Magistrate failed to investigate his first complaint of December 23, 2014, cannot be upheld because the Magistrate did provide the appellant the tally sheets as requested, and as the Magistrate contended, he was without the authority to conduct a total recount of all the ballots. Besides, the appellant's allegation in letters of December 23, 2014, alleging gross missteps and glaring irregularities were not specific as to what constituted missteps and gross irregularities for which the Magistrate could have called for an investigation.

The two letters of December 23, 2014, obviously did not contain a written explanation which identified the circumstances giving rise to the exception with sufficient specificity to enable the NEC's Magistrate to determine what is alleged to have happened, where, involving which persons (if they can reasonably be identified), and with what adverse effects. We do not see what was the appellant's complaint in his first letter of December 23, 2014, and how the Magistrate could have investigated such sweeping allegations of gross misstep and glaring irregularities. The appellant in his first letter of December 23, 2014, stated that he was of the conviction, judging from empirical data gathered by his agents, he was in a commanding lead to be declared the winner of the election. He therefore requested that the NEC provide him the tally sheets of all 143 polling places so as to properly process the totality of all of the results. In this letter, he gave notice that he was formally registering a complaint to the results for a prompt investigation so as to ensure that justice is served.

The appellant's second letter of December 23, 2014, this time requested that the Magistrate conduct a recount of all ballots for reason again that the ballots of all the 143 polling precincts had glaring discrepancy. The Magistrate wrote and informed the appellant that this request did not fall within his purview. But assuming that the Magistrate could authorize a recount of the all ballots as request by the appellant, what was the "glaring discrepancy" said to have been found on the tally sheets. This was never specified so as to form a basis for an investigation which was necessary to consider a recount. The Magistrate could not have reviewed or investigated the appellant's alleged gross discrepancy found on the tally sheets when the appellant was not specific as to what he considered gross discrepancy after his totaling of all of the results. The appellant having said that he was in a "commanding lead" for which he requested the tally sheets for the 143 precincts, did not state an empirical data of the tally sheets showing his lead and how the tally sheets sent to him upon his request differ from that brought in to him by his polling representatives. It would have been naive for the Magistrate to call for an investigation for something that was not specifically pointed out to him, which was against the election's regulations; besides, the Magistrate had no authority to order a recount.

Recourse to NEC's Regulations on Complaints and Appeals on contestation of alleged pre-election complaints provide:

6.1 In order to preserve the right to have a complaint considered by the NEC concerning actions by electoral officials under the direction and supervision of the NEC, which includes election magistrates, NEC presiding officers, or other electoral officials or workers, the aggrieved party must submit a written bill of exceptions to the NEC within seventy-two (72) hours after the occurrence of an event which forms the basis of the exception.

6.2 The submission of an exception must be on a form (if any) prescribed by the NEC, and contain a written explanation which identifies the circumstances giving rise to the exception with sufficient specificity to enable the NEC to determine what is alleged to have happened, where, involving which persons (if they can reasonably be identified), and with what adverse effects.

The form and any other written material or evidence supporting an exception must be separately prepared and dated for each accident complained of. Every bill of exception must be signed by the objector:

6.3 Where the objector is an individual person, by that individual or an authorized legal representative. Where the objector is a registered political party, by an authorized representative of the party; and where the objector is a registered candidate, by the candidate or an authorized representative of the candidate.

6.4 Complaints about incidents that are alleged to have occurred during the voting or counting of votes, must also be entered into the log book of the relevant polling station, or be submitted in writing to the relevant county electoral magistrate within twenty-four (24) hours after the occurrence of the event which forms the basis of the exception. (July 20, 2005) (Part II Initial Regulations Requirements: Section 6. Exceptions").

The subsequent letter of December 24, 2014, addressed to the NEC's Chairman, however, was specific as to what the appellant outlined as election's irregularities. The appellant alleged in his letter as follows: (1) that our information reveals that one of the ballot boxes intended for the town of Wutuken in Barrobo District was taken to Cavalla, a town that was not listed as an official center by NEC. The box was brought back to Wutuken after several hours with marked ballots in it; (2) we have also established that the tallying of ballots done on Sunday and Monday of December 21 and 22 respectively at the Magistrates office in Harper was done without the presence of our agents as we were not contacted, whereas our his opponents were invited and present; (3) that there was an incident in the town of Sedeken in District #2, where over 80 votes cast in my favour were declared invalid simply because they were either marked on the face, the logo or elsewhere in the same box similar conditions were allowed in other areas.

It is this investigation said to have been conducted by the Magistrate on December 27, 2014, based on the Chairman's instruction, that is in issue before us: whether the investigation was ever conducted, and if it were, whether it was carried out in conformity with due process of law?

The appellant insists that there was no hearing or investigation held by the Election Magistrate in accordance with due process so as to have enabled him appeal the Magistrate's ruling.

An election's hearing conducted by NEC is an administrative hearing which this Court has held is not hinged to the strict rules of court. What is required is the basic requirement of a formal notice of the complaint, a date, time and place for hearing of the matter to be investigated. Tokpa v.

National Elections Commission, et al., Supreme Court Opinion, March Term 2015.

The Board in its ruling denied the appellant's request for a further investigation stating that there was a hearing and appellant's failure to except the hearing and appeal the ruling of the Magistrate in line with NEC's regulations prevented the Board from going into the appeal. Besides, the Board held that the appellant did not present clear and convincing evidence of irregularities likely to have an impact on the outcome of the election.

We should note that the appellant's counsel, during arguments before this Court, made conflicting statements as to whether or not the appellant, Dr. Chambers, was called to an investigation on December 27, 2014, and participated in the investigation, so that his failure to except and appeal from the Magistrate's ruling constitutes a waiver of NEC's further hearing into his complaint.

Below is an excerpt of minutes of hearing on the first appeal at the Supreme Court, held on January 27, 2014.

Ques: What was the complaint filed before the Magistrate at the time?

Ans: The complaint was for the investigation of the entire 143 polling stations and for 1st appellee (NEC) lack of due process in investigating the complaint.

Ques: Was your client cited for the hearing of the complaint?

Ans: We were never cited.

Ques: Was there an investigation?

Ans: There was no investigation conducted.

Ques: Are you saying that in the face of the records before this Court from the National Elections Commissions, there was no hearing conducted?

Ans: There was no hearing conducted Your Honors.

Ques: Were the records manufactured?

Ans: Yes Your Honor, the records submitted by the NEC were manufactured.

Minutes of the hearing of the subsequent appeal of this Court, dated July 8, 2015, reflects as follows:

"Counsels for the appellants argued as per their brief and presented the following issue for the determination of the Court:

"Whether the alleged December 27, 2014, investigation of NEC's designated magistrate was held in keeping with the Elections Laws and regulations, and the law extant in this jurisdiction."

The following questions were posed to the counsel for appellants by the Bench:

Ques: Did you raise the Issue that all the parties of interest were not present during the investigation?

Ans: Yes, Your Honors, it was raised at the investigation.

Ques: Were there two investigations/hearings conducted by the Magistrate?

Ans: There was no hearing, Your Honors. The hearing that was ordered by the Chairman of the National Elections Commission did not conform to due process of law.

Ques: Did you say that the appellant, Dr. Bhofal Chambers, was not present at the hearing or that he was not accorded due process?

Ans: Your Honors, we said that Dr. Chambers was present, but that because of the absence of the other party, J. Gbleh-bo Brown, Dr. Chambers walked out of the proceedings. (emphasis ours).

Ques: Did you file your complaint within the time allowed by statute?

Ans: Yes, Your Honors.

The certified record to this Court incorporates minutes of the hearing held on December 27, 2014. We reproduce herein the full text of the minutes of the hearing, and the ruling of the Election Magistrate herein below:

"Minutes into Complaint filed by Hon. Bhofal Chambers/CDC  
December 27, 2014

Hearing Called to order at 10:A.M., Harper City  
Observers are briefed of the Complaint  
Parties (Chamber/CDC and NEC Maryland) asked to present witnesses  
Hon. Chambers provides 2 witnesses and NEC represented by Thomas Wilson(A.M.) provide 2 witnesses  
Witnesses are sworn by kissing the Bible and asked to wait in the waiting room.

FIRST WITNESS FOR COMPLAINANT (ROBERT TOGBAH) TAKES THE STAND:

PRESIDING (Magistrate Daniel Newland): Questions the witness:

Q: Mr. Witness, which of the points raised in the complaint that you have come to testify?

Ans: (Mr. Togbah): The Sedeken Issue.

Q: What do you know about the Sedeken Issue?

Ans: (Mr. Togbah): My party agent complaint to me about ballots that were invalid against our candidate.

Q: Did he inform you that he made the complaint formal to the PO

Ans: (Mr. Togbah): No.

Second (2nd) witness for complainant (Mr. Daniel T. Collins) Supervisor, CDC poll watchers:

Magistrate Daniel Newland: Questions the witness:

Q: Mr. Witness, which of the points in the complaint you have come to testify to?

Ans: How did you know it?

Ans: (Mr. Collins): My party told me about the invalid ballot in the afternoon.

Q: Mr. Witness, be clear, what do you call afternoon hours? Ans: (Mr. Collins): I mean going to 5: p.m.

Magistrate Daniel Newland: Mr. Wilson do you have any question?

Ans: No Sir.

Hon. Chambers interrupts: The poll watcher in question is outside there.

PRESIDING (Magistrate Daniel Newland): Hon. Chambers ,why you chose to leave the poll watcher who was on the scene? Don't you think he is your prime witness?

Ans: Let him come in.

Third Witness S. Habakkuk Williams ( Poll Watcher- Sedeken)

Magistrate Newland: Are you S. Habakkuk Williams, poll watcher at Sedeken?

Ans: Yes.

Magistrate Newland: What do you know about the Sedeken issue?

Ans: Prior to the counting process, the PO said NEC had mandated him that ballot marked out of the marking box will be considered invalid. During the counting most of the ballot made invalid was In favor of my candidate.

Magistrate Newland: Mr. Wilson, do you have any question?

Ans: Yes.

Q: Mr. Witness, do you know that you signed the record of the count?

Ans: Yes.

Q: Mr. Witness, do you know your function at the polling place?

Ans: Yes. I was there to protect my Candidate.

Q: Do you know what it means for you to sign the result that was posted at the polling place?

Ans: Yes, it means I was there and in agreement with it.

Q: If so, why did you later complain to your supervisors that some of your ballots were made invalid?

Ans: I told them later when I left the center.

NEC Witness Alexander Lonklo-Elections Supervisor (ES)

Magistrate Newland: Mr. Lonklo, what do you know about the complaint in your assigned area (Sedeken)?

Ans: On Elections Day, I made visitation to all precincts assigned to me, encountering no problem anywhere. In the evening I started collecting my TEE-3 from precinct to precinct as we were advised to do. I collected all including Sedeken but did not receive any complaint. I inspected all records of the count before sealing them.

Q: Hon. Chambers, do you have any question?

Ans: Yes.

Q: Mr. Witness, how long have you served in this position?

Ans: That question is to go to my employer.

Q: Do you know that there were 85 invalid votes in Sedeken?

Ans: Yes.

Q: Do you see that as a professional work?

Ans: Hon. Chambers, I cannot question that because your agent who was present there signed the record of the count.

BALLOT BOX SHUFFLED FROM WUTUKEN TO CAVALLA

Magistrate Newland: Hon. Chambers, all of your witnesses brought did not mention anything about this, do you have any physical evidence?

Ans: No, I was informed by people from there.

Q: Hon. Chambers, you mean you got this by hearsay?

Ans: Yes.

SUBMITTED UNDER MY HAND THIS 27TH DAY OF DECEMBER, A.D. 2014

Daniel G. Newland

Election Magistrate

OBSERVERS PRESENT

1. Abraham Wleemogar Tyler- JPC 0886696402

2. Paul K. Targbe - JPC - 0886580052

WITNESSES - NEC MARYLAND COUNTY

1. Emmanuel Paygar - NEC Supervisor

2. Alexander Lonklo - NEC Supervisor

WITNESSES FOR HON. CHAMBERS/CDC

1. Robert Togba (CDC)
2. David T. Collins (CDC)
3. Habakkuk Williams - Poll Watcher/CDC - Sedeken"

The Magistrate thereafter ruled on the investigation, as follows:

"Wutuken is a precinct in Karluway and not in Barrobo. You could not provide witness or physical evidence to sustain your complaint; complaint hereby overruled.

Sedeken:

(1) Two of your witnesses said that party agent told them about making ballots in your favor as invalid. One of them, Mr. Collins, said that he was informed in the afternoon (going to 5pm). At this time voting is still in process and invalid can only be discovered during the counting which begins after 6 p.m.

(2) Your Party Agent, S. Habakkuk Williams signed the records of count which indicate his satisfaction with the process at the polling place. Your complaint cannot be sustained: Complaint is hereby overruled.

(3) Granted that you were not present at the Tally Center, records from the field are only transmitted to Data Center at Headquarters at the County's Tally Center. There is no change from the file in the Tally Center. This is why your request for the records of the count from the Tally Center was honored from where you raising your complaint.

Now, therefore, your request for a re-run of the 2014 Special Senatorial Election in Maryland County cannot be sustained; and is **HEREBY OVERRULED**.

Signed: Daniel G. Newland  
Election Magistrate"

The appellant, in his bill of exceptions, contends that the NEC's Board of Commissioners' ruling overlooked that it is an undisputed fact, that the NEC's Magistrate failed to cite the 1st and 2nd appellees to the December 27, 2014 planned hearing, and as such, in keeping with guidelines set by the Supreme Court, the appellees were to have been cited to the December 27, 2014; therefore, any and all determination made by the Magistrate on December 27, 2014, are void and of no legal meaning and that the NEC's Board of Commissioners' ruling overlooked the fact that appellant could not have announced an appeal to the Board on December 27, 2014, because the December 27, 2014 alleged hearing did not constitute a valid elections hearing/investigation, as contemplated by law in this jurisdiction. The law contemplates that all parties of interest be cited for hearing at all investigations involving allegations of elections irregularities.

Firstly, we are baffled as to the stance of the appellant regarding the investigation held by the Election Magistrate in Harper, Maryland County. - The appellant in his brief and argument before this Court argued that an investigation was never held and the minutes of the hearing was manufactured. During the subsequent hearing, the appellant admitted appearing for the investigation but walked out after he noticed that the 2nd appellee was not present. The failure of the Magistrate to conduct the hearing within the parameters as mandated by the Supreme Court's

ruling in several cases, did not accord him due process.

This Court has held that a statement made by a person which is wholly at variance and inconsistent with what was previously said and done tends to show that the person is unworthy of credit; *Ware v. Republic*, 5 LLR 381, 391 (1937); *Logan v. RL*, 5 LLR 398, 399 (1937); *Speare-Hardy v. RL*, 14 LLR 547, 553 (1961).

The Board held that it believe that on December 27, 2014, there was a hearing in which the appellant participated, and at the hearing there were credible observers who signed their names, and wrote their telephone numbers on the sheet of the investigation evidencing that they were present. During their argument before us, Counsels for the appellant were asked during the argument before the Court whether they got affidavit(s) from any of these observers stating that they were not present at the investigation of December 27, 2014 and that their signatures were forged. The appellant's counsel responded "no".

The Supreme Court has held that it will take cognizance of matters apparent in the record made in the lower court, other administrative hearings and certified by the clerk (emphasis ours). *Hulsmann v. Johnson*, 2 LLR 20 (1909); *Kanga and Kanga v. Williams*, 11LLR 299, 301 (1952); *Donzoe v. Thorpe*, 27 LLR 166, 172 (1978); *IBM v. Tulay*, 33 LLR 105, 111 (1985). Like the Board, this Court is inclined to believe there was an investigation in which the appellant participated especially when appellant has not presented convincing evidence to the contrary.

We note that lawyers representing the appellant in persons of Counselors Famere Stubblefield and Snonsio Nigba when asked by the Bench during their second appearance in this matter before this Court as to whether the appellant was present at the hearing or that he was not accorded due process, they answered that the appellant was present and that because of the absence of the co-appellee J. Gbleh-bo Brown, the appellant walked out of the proceedings. It is worth noting that the same lawyers when asked as to whether the appellant was present at the hearing conducted by the Magistrate in Maryland County during the hearing of the appellant's first appeal, they responded emphatically that the appellant was never present at the hearing, and that the minutes was manufactured.

The glaring variance between the two statements made by the appellant's Counselors has the propensity of misleading this Court in the discharge of its statutory and constitutional duties. The Supreme Court has held that any attempt to deceive or mislead a court of justice renders the offender liable to contempt proceedings. *In re J. Dossen Richards et al.*, 10 LLR 153 (1949); *In re: Petitions of Kolina et al*, 29 LLR 370, 380 (1981).

This brings us to the bill of exceptions wherein the appellant states that the Board of Commissioners' ruling overlooked that the hearing officer failed and neglected to conduct a proper investigation by citing all parties of interest to the intended Investigation of December 27, 2014, which is mandatory in keeping with the doctrine of due process of law; and the NEC's Board of Commissioners' ruling delivered on Thursday, June 4, 2015, overlooked that the Magistrate failed to conduct an investigation on December 27, 2014, as mandated by the Supreme Court rulings in several cases where the Supreme Court have mandated and required that citations for all elections investigation be sent to all parties of interest; and as a pre-requisite for the Magistrate to have conducted a legitimate investigation on December 27, 2014, the Magistrate must have cited the appellant, and the 1st and 2<sup>nd</sup> appellees/respondents to the Investigation as the Supreme Court

maintained in several of its opinions concerning elections, and the failure of the Magistrate to have cited the 1st and 2nd appellees to the December 27, 2014 hearings, makes all and any determination made by the . Magistrate on December 27, 2014, null and void and of no legal effect.

Due process to which the appellant refers has been interpreted by this Court in numerous of its Opinions. The case *Wolo v. Wolo*, 5 LLR 423 (1937) has been the bedrock or foundation for many future enunciation on this principle. Enunciating the principle of due process of law in *Wolo v Wolo*, The Supreme Court held that due process is a law "which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial". The Court has held "notice" as fundamental to all hearings, be it legislative, judicial, administration, or executive. Our Administrative Procedure Act, section 82.4, provides that "a person entitled by law to a hearing, and before an agency determination becomes final, shall be given reasonable notice thereof.

The Supreme Court has proceeded to expound on this prime and essential element of due process, "notice" relying on the facts and circumstances as presented and has categorized "notice" into actual and constructive.

In the case *Meridien BIAO Bank of Liberia Limited, (MBBIL) v. His Honor Joseph W. Andrews, NBL and the Episcopal Church of Liberia*, 40 LLR 111,121(2000), MBBIL and the Episcopal Church of Liberia had a lease agreement for property located on Randall and Ashmun Streets. The MBBIL closed its door to its customers because of liquidity problem which prompted a seizure by the National Bank of Liberia (NBL) of the Bank's assets. The seizure by NBL was published in a newspaper in Monrovia. The Church had notice of the existence of this fact upon the publication of the seizure order. Section 12 of lease agreement provided for automatic termination of the agreement in the events of cessation of the bank business in Monrovia. In such case the Bank was required to give the Church 360 days' notice upon the happening of this event. However, a period of two years passed and the Bank failed to give the Church notice of its cessation, the Church then proceeded to institute an action of summary proceeding to recover possession of Its property. The lower court ruled In favour of the Church and the Bank filed a petition before the Justice in Chambers seeking to prohibit the lower court from enforcing its judgment. The Justice in Chambers denied the peremptory writ and the matter was brought on appeal to the full bench, The Court upheld the Chambers Justice's ruling, stating that the failure and refusal of the Bank to give the Church the required notice in keeping with section 12 of the lease agreement was irrelevant and immaterial. Defining "notice" In this case, the Supreme Court held that a notice is defined as that which embraces knowledge of circumstances that ought to induce suspicion or belief or put a prudent person on inquiry, as well as direct information of the fact. The publication In a newspaper of the seizure order of the petitioner by the National Bank of Liberia was direct information to the Church of the fact that said financial institution had ceased its banking functions. The Court held that generally a notice is regarded in law as actual when the person sought to be affected by it knows of the existence of the fact.

In the case *Krauh v. Weah*, 42 LLR 148, 155 (2004), the Court held that publication is a more reliable and substantive means of notice than radio announcement. Apparently in its attempt to dispense with formal notice under certain unique circumstances, the Court defined notice as "information, advice, or written warning, in more or less formal shape, intended to apprise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know and the duty of the notifying party to communicate.

In the case *Jos Hansen & Soehne (Liberia) Ltd. V. CitiBank*, 35 LLR 10, 20, (1988), this Court refers

to the two grades of notice, namely, actual and constructive notice. Actual notice is defined as "the notice expressly and actually given, and brought home to the party directly." Constructive notice, on the other hand, is defined as "information of knowledge of fact imputed by law to a person, although he may not actually have it, because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it.

In the case, *Albert Tyler et al. v. Intestate Estate of Jesse G. Cole*, delivered by the Supreme Court during its March Term, 2012, the appellants, In their bill of exceptions, alleged that the assignment for reading of the board of arbitrators' report was not served on them so as to give them the opportunity to object to the said report. The appellee insisted that the assignment for the reading of the report was served. This Court, ruling on the issue, held that though there was no clear evidence that appellants' counsel did receive the assignment for the reading of the report, however the appellants' counsel received the assignment for the court's ruling on the board's report. This subsequent assignment, the Court ruled, gave the appellant's counsel constructive notice that a report was made to the court. Said counsel should not have then sat by supinely as he was under a legal duty to follow up with the court on the arbitrators' report and file an objection within 30 days as provided for by the statute. The appellants' counsel, having received and signed for the assignment for the court's ruling on the arbitrators' report, he should have appeared in court and informed the court of his lack of knowledge of the arbitrators' report and requested for time to serve his motion for objection to the report as provided for by the statute. The appellants, having had constructive notice that the report had been made to the court upon receipt of the assignment for the ruling on said report, but failed to appear in court or to file an objection to the report, the Court held that the appellants' counsel waived his right to contest the report.

Recently in the case *Hon. David Saydee v. NEC*, Supreme Court Opinion, October Term, A.D. 2011, the appellant David Saydee, a Representative Aspirant for District #3 contended that after the counting and tallying of votes which declared him winner of the election, with no notice to him, a recount was conducted by NEC based on a complaint by Mr. Roland I. Blablu, the candidate with the next highest votes. He alleged in his complaint that he only got to know of the recount when he went to NEC's Office to get the final copy of the tally sheet. The NEC countered that the Unity Party on which ticket Hon. Saydee ran as an aspirant was contacted and that the NEC's procedure for disseminating information or doing business with a candidate is through the political party.

Ruling in this case, the Supreme Court held consistent with its opinion in the *Dorbor et al. v. National Elections Commission*, handed down previously, that the Hearing Officer was in error in determining that notice was not required to be accorded the appellant and that once notice had been given to the Unity Party, the notice requirement had been met.

In the case of *Hon Saydee v. NEC*, Supreme Court Opinion, October Term, A. D. 2011, the Court held, a party of real Interest should be notified of any hearing or recount that would affect him. The Court ruled in line with the general rule that where a statute requires notice to be given as in an election matter, actual notice is required. That is, that is Accordingly, where a challenge is made to the results of an election and possible recount could be ordered following an investigation, all communications from NEC to parties and candidates contending any electoral contest must be in writing and not by phone calls.

This brings us to the issue of the case now before us, whether the appellant who filed a complaint contesting certain electoral irregularities and presented himself along with his witnesses for an investigation of the allegations made by him, and participated In the hearing, can contend that he

was not given due process as he was not cited as per Supreme Court Opinion requiring that all communications regarding any electoral contest be in writing.

This case can be distinguished from the Saydee's case in that the NEC did not deny that Hon. Saydee was not cited to appear for a hearing and a recount of the ballots, but rather NEC said it cited the Unity Party, which was the principal contender in the election and on whose ticket Saydee ran. The Court held that Saydee was a party of interest and should have been formally cited. The Court therefore remanded the matter for a recount.

In this case now on appeal, it is admitted that the parties were cited by phone. This citation, though contrary to the Supreme Court's ruling in the Saydee case, seemed to be the mode of communication by the parties as the appellant himself admitted that before his written communication to the Chairman, he called the Chairman to lodge the Magistrate's complaint when he refused to honor the request for a re-run of the election. However, despite not having been written to appear for the investigation as required in the Saydee case, the appellee voluntarily submitted himself to the investigation, and in so doing, waived his right to the formal notice as required by this Court in elections cases.

This Court has held in a litany of opinions that when a party to a judicial proceeding admits himself by some act or conduct the jurisdiction of a court, he may not thereafter, simply because his interest has changed, deny the court's jurisdiction, especially when such change would be to the prejudice of another party who has acquiesced to the position formerly taken. *King v. Williams*, 2 LLR 523, 525 (1925); *Lloyd's Insurance Company v. African Trading Company*, 24 LLR 70, 83(1975); *Greaves v. Jantzen*, 24 LLR 420, 425-426 (1975), *Gallina Blanca v. Nestle*, 25 LLR 116, 120 (1976).

The minutes of the December 27, 2014, hearing before the Election Magistrate shows that the appellant did not only appear but participated in the hearing and that while at the hearing, he cross examined Mr. Alexander Lonklo NEC's Supervisor who covered the Sedeken as part of his assigned area.

Appellant's first witness, Mr. Robert Togbah, said he had specifically come to testify to the Sedeken allegation that eighty votes cast in appellant's favour were declared invalid because they were either marked on his face, logo or elsewhere in the same box whereas similar conditions were allowed in other places. The witness who testified did not give evidence as to the other polling centers where this marking were allowed. Besides, he said that what he testified to was told him by his Party (CDC) agent. Asked whether the agent made a formal complaint to the presiding officer by filling in the complaint sheet, he answered, "no".

The second witness, Daniel T. Collins, Supervisor of CDC's poll watchers, also testified to what Mr. Togbah had said, and like Mr. Collins, admitted that what he testified to was told him by the poll watcher.

At this stage, the record reflects that Dr. Chambers informed the court that the pool watcher referred to was outside in the vicinity of the place where the hearing was being conducted. The Magistrate then asked Dr. Chambers, why he chose to leave out the poll watcher who was on the scene and was the prime witness. Dr. Chambers then proceeded to invite the poll watcher of Sedeken, Mr. S. Habakkuk Williams.

In his testimony, Mr. Williams testified that prior to the counting process, the polling officer of NEC told him that he had been mandated that ballots marked out of the box should be considered invalid and most of the ballots made invalid were in favour of the appellant. When asked whether he signed the record of account, he stated that he did. When also asked if he knew what it meant to sign a result that was posted, he answered that it meant he agreed with it.

Regarding the allegation of ballot shuffled from Wutuken to Cavalla, the Magistrate brought to Dr. Chambers' attention that none of his witnesses testified to this allegation, and Dr. Chambers had not brought any witness to testify to this allegation. The Magistrate inquired from Dr. Chambers, appellant, if he had any physical evidence but he replied "no he was informed by people from there".

It was thereupon these testimonies of Dr. Chambers witnesses that the Magistrate ruled that Wutuken was a precinct in Kartuway and not in Barrobo as alleged by the appellant; that Mr. Collins, one of the witnesses who testified to the marking of ballots not favourable to the appellant in Sedeken had stated that he was told this information in the afternoon, about 5:00 p.m., but at the time he alleged he was told, voting was still in process and a valid ballot could only be discovered during the counting which began after 6:p.m. As to the third witness, the party agent present at Sedeken at the polling center, he testified to signing the records of account which indicated his satisfaction with the process at the polling center; and finally, the tally records from the field transmitted to the data center showed no change from the field and that of the tally center. Therefore, Dr. Chambers request for a re-run of the elections could not be sustained.

The Supreme Court has interpreted due process to imply that the person whose rights are affected be present before the tribunal pronounces decision concerning his right, and to have the right of controverting by proof every material fact which bears on the question of his interest in the matter involved; Republic of Liberia v. Bernice Trading Center, Supreme Court Opinion, October Term, A.D. 2014; Kruah et al. v. Weah 42 LLR 148, 155- 156 (2004).

This Court holds that the appellant having appeared for the investigation he waives his rights to a formal citation as required in the Saydee case. We agree with NEC that the evidence brought by the appellant was not sufficiently substantiated to have NEC grant a re-run. Evidence considered to require a re-run of an election process must be material and proved with certainty. Hearsay evidence produced which is not based on the certain knowledge of the witnesses in an election investigation is insufficient to substantiate a conclusion for re-run of the election.

On the issue of having failed to appeal the Magistrates ruling within five (5) days as regulated by NEC, the appellant contends in his bill of exceptions that NEC's Board of Commissioners' ruling overlooked that as a result of its Chairman's admitted instruction to NEC's Magistrate to conduct an investigation for December 27, 2014, no announcement of appeal could have been made by appellant, when NEC's Magistrate in fact, attempted to conduct an election investigation of appellant's complaint, but failed to do so, because the Magistrate did not cite and involve all parties of interest in the intended investigation.

The 2nd appellee, on the other-hand, argued that the appellant by not excepting to the Magistrate's ruling because the opposing party was not present meant that he abandoned his cause; that It is a practice extant that when the opposing party is not present in a hearing, the present party move for either abandonment or for default judgment; that it is the opposing party who should complain

about due process and not the appellant.

In its answer to the inquiry put to it by the Bench as to whether the Co- appellee Gbleh-bo Brown was invited, counsels for the 2nd appellee answered "yes", but the complaint of irregularity was not against him (Minutes of the 25th day Session of the Supreme Court, Wed. July 8, 2015). The records reveal that the supervisor of the NEC was present along with other election's observers for the investigation. if it were important to the appellant that the 2<sup>nd</sup> appellee be present for the investigation, and the appellant wanted to secure his presence, he should have raised this at the investigation. Having gone through the investigation with NEC, he was estopped from raising it thereafter.

This Court holds there was a hearing held into the appellant's complaint, on December 27, 2014; that the appellant and his witnesses voluntarily appeared and participated into the investigation before the Election Magistrate who was competent to hear the appellant's Election's complaint; that the appellant had an opportunity to confront NEC and cross examined its witness, the issue of appellant not having been accorded due process because the 2<sup>nd</sup> appellee was absent cannot be upheld, especially where since there is no showing on the record of the appellant's insistence that the 2<sup>nd</sup> appellee be present at the investigation, a showing that the appellant's rights were violated by the nonappearance of the 2<sup>nd</sup> appellee.

The Court therefore upholds the ruling of the Board of Commissioners of NEC that there was a hearing conducted on December 27, 2014, from which the appellant failed to appeal. Having failed to timely announce an appeal from the ruling of the Election Magistrate of Harper, Maryland County as provided by NEC's Regulations, the appellant's appeal cannot be entertained. The appellant's appeal is therefore denied and dismissed.

WHEREFORE AND IN VIEW of the foregoing, the Clerk of this Court is ordered to send a mandate to the National Elections Commission (NEC) informing it of the Court's decision. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLORS FARMERE G. STUBBLEFIELD AND SNONCIO NIGBA OF THE STUBBLEFIELD, NIGBA at ASSOCIATES, INC., APPEARED FOR THE APPELLANT, DR. BHOFAL CHAMBERS. COUNSELLOR JOSEPH N. BLIDI, ONE OF IN-HOUSE-COUNSELS OF THE 1<sup>st</sup> APPELLEE APPEARED FOR THE 1<sup>st</sup> APPELLEE, THE NATIONAL ELECTIONS COMMISSION (NEC). COUNSELLOR GOLDA A. BONAHE-ELLIOT AND ALBERT S. SIMS OF THE SHERMAN AND SHERMAN, INC., APPEARED FOR THE 2<sup>nd</sup> APPELLEE, GBLEH-BO BROWN.