

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

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

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IN RE: THE CONSTITUTIONALITY OF SECTIONS 16.1 AND 16.2 OF THE ACT TO AMEND AND RESTATE AN ACT TO ESTABLISH THE LIBERIA ANTI-CORRUPTION COMMISSION AND TO RE-ESTABLISH THE LIBERIA ANTI-CORRUPTION COMMISSION, APPROVED ON JULY 22, 2022 AND PRINTED IN HANDBILL ON JULY 25, 2022.

Heard: December 1, 2022

Decided: January 26, 2023

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The genesis of this case is traced to the date of August 21, 2008, when the Legislature, pursuant to its authority enumerated in Articles 34(1) and 89 of the Constitution (1986), passed into law, “An Act to Establish the Liberian Anti-Corruption Commission. The purpose of this Act in a nutshell, was to create the Liberia Anti-Corruption Commission (LACC) with the power to investigate corruption and prosecute same in conjunction with the Ministry of Justice. According to Section 6.1 of this law, the LACC was to be composed of five (5) Commissioners appointed by the President, one of whom was to serve as Chairperson and one as Vice-Chairperson. Under this law, all the Commissioners were accorded tenure for 5 years and could only be removed by the President for gross breach of duty, misconduct in office, or any proven act of corruption.

On July 19, 2021, President George M. Weah, Sr. appointed Counsellor Edwin K. Martin, the petitioner herein, as Chairperson of the LACC. Under the 2008 LACC Act, Commissioner Martin was to serve as Chairperson of the LACC for five (5) years with the duties and functions of investigating corruption and prosecuting same in conjunction with the Ministry of Justice.

On July 22, 2022, the Legislature with the intent of restructuring the LACC and in keeping with their constitutional authority promulgated a law known as “An Act to Amend and Restate an Act to Establish the Liberia Anti-Corruption Commission and to Re-Establish the Liberia Anti-Corruption Commission. Under this new law, the LACC which was established in 2008 was abolished and a new LACC was created with powers to investigate corruption and prosecute same independent of the Ministry of Justice; the new LACC Act of 2022 increased the number of Commissioners to seven (7), one of whom is an Executive Chairperson and another an Executive Vice Chairperson. Under this new law the Commissioners are given 7 years tenures. In concluding the New LACC Act, the Legislature declared in Sections 16.1 and 16.2 that the current Commissioners, including the petitioner, holding office under the 2008 LACC Act should serve as temporary Commissioners until new corps of Commissioners are appointed; and that the independent

prosecutorial powers of the LACC are suspended until the new corps of Commissioners are duly appointed by the President. We quote verbatim Sections 16.1 and 16.2 of the new LACC Act hereunder to wit:

Section 16.1 states:

“The Commissioners confirmed by the Senate under the Anti-Corruption Commission Act (2008) in office at the time of the passage of this Act shall temporarily perform the powers and functions under this Act until the appointment of the successor Commissioners pursuant to Part VI of this Act. Additionally, these Commissioners are also eligible to appointment as Commissioners pursuant to this Act provided that they comply with the requirements of this Act and are subjected to the vetting process through the Ad-hoc Committee.

Section 16.2 further states that “*the function provided in Section 5.2(d) is suspended until such time that the Commissioners are appointed pursuant to the process provided in Section 6.7 of this Act.*”

On October 19, 2022, the petitioner filed an *In Re* proceedings challenging the constitutionality of Sections 16.1 and 16.2 of the new LACC Act of 2022 on grounds that the said provisions violate his constitutional right to due process since he is being removed from his 5 years tenureship without a hearing, or proven misconduct or gross breach of duty; that the Legislature acted *ultra vires* Article 20(a) of the Constitution by adopting Sections 16.1 and 16.2 of the 2022 LACC which terminated his tenureship and removed him from office without due process; that Section 16.1 of the new LACC Act violates his contractual right under Article 25 of the Constitution without due process; that by the passage of Section 16.1 of the new LACC Act requiring the petitioner to illegally and unconstitutionally relinquish their posts without any “proven cause, the Legislature arrogated unto itself the exercise of administrative power vested in the President as head of government or “chief administrator.”

Counts 6,7,8,9,10,11,12,13,14,15 and 17 of the petition being reflective of the petitioner’s basic contentions same are hereby quoted herein below, to wit:

6. Petitioner says that having being appointed, confirmed, commissioned and given a tenure of five (5) consecutive years each under Section 6.6 of An Act to Establish the Liberia Anti–Corruption Commission which was approved August 21, 2008 and printed in handbill on August 28, 2008 (Petitioner’s Exhibit P/1), he has been vested with the exclusive constitutional rights to occupy, duly exercise and perform his functions and responsibilities without any molestation or hindrance, and shall be removed “upon proven cause” under Section 6.8 of An Act to Establish the Liberia Anti-Corruption Commission” which was approved August 21, 2008 and printed in handbill on August 28, 2008 (Petitioner’s Exhibit P/1) consistent with due process of law as laid under Article 20(a) of the 1986 Constitution of Liberia.

7. That notwithstanding the averments of facts contained in counts one

(1) through four (4) above and the laws cited in counts five (5) through six (6) above, the National Legislature of Liberia passed into law “An Act to Amend and Restate an Act to Establish the Liberia Anti-Corruption Commission and to Re-Establish the Liberia Anti-Corruption Commission” which was approved on July 22, 2022 and printed in handbill on July 25, 2022. The said Act at Sections 3.1 and 3.2 abolished the Act which established the Liberia Anti-Corruption Commission in 2008 and in its stead, established a new independent and autonomous Commission in the Government known as the Liberia Anti-Corruption Commission as a successor to the Liberia Anti-Corruption Commission established in 2008. Attached hereto and marked as Petitioner’s Exhibit “P/3” is a copy of the herein mentioned Act in substantiation of the averment contained herein.

8. That notwithstanding the averments of facts contained in count one (1) through four (4) above of laws contained in counts five(5) through eight (8) above, the National Legislature in Section 16.1 of the Act referred to in count seven (7) above, Petitioner’s Exhibit P/3, provided for the commissioners, including Petitioner, confirmed by the Senate under the Anti-Corruption Commission Act (2008) in office at the time of the passage of the said Act, would temporarily perform the power and function under said Act until the appointment of the successor commissioners pursuant to Part VI of said Act; and additionally, the said commissioners would also be eligible for appointment as commissioners provided they comply with the requirement of the herein-mentioned Act and subject to the vetting process through the Ad hoc committee as provided for in said Act. Also, Section 16.2 of the herein-mentioned Act provides for the suspension of the functions of Section 5.2 (d) of said Act until such time that the commissioners are appointed pursuant to the process provided for in Section 6.7 of the Act, Petitioner’s Exhibit P/3. Petitioner maintains that Sections 16.1 and 16.2 of “An Act to Amend and Restate an Act to Establish the Liberia Anti-Corruption Commission and to Re-Establish the Liberia Anti-Corruption Commission” which was approved on July 22, 2022 and printed in handbill on July 25, 2022, are unconstitutional for reasons stated in counts one (1) through six (6) of this petition.

9. Petitioner says the legislative enactment of Part XVI, titled: “Transitional Provision”, Section 16.1 of An Act to Amend and Restate an Act to Establish the Liberia Anti-Corruption Commission and to Re-Establish the Liberia Anti-Corruption Commission” which was approved on July 22, 2022 and printed in handbill on July 25, 2022 (Petitioner’s Exhibit P/3) seeking petitioner’s arbitrary abdication or abandonment of his position without any proven or legitimate cause”, clearly violates petitioner’s rights to due process of law as provided for under Article 20(a) of the 1986 Constitution. Petitioner therefore craves the indulgence of this Honorable Court to declare unconstitutional said provision.

10. Petitioner says that Section 16.1 of An Act to Amend and Restate an Act to Establish the Liberia Anti-Corruption Commission and to Re-Establish the Liberia Anti-Corruption Commission” which was approved on July 22, 2022 and printed in handbill on July 25, 2022 (Petitioner’s Exhibit P/3) expressly states: The Commissioners confirmed by the Senate under the Anti-Corruption Commission Act (2008) in office at the time of the passage of the ACT should temporarily perform the powers and functions under this ACT until the appointment of the successor commissioners pursuant to Part IV of the Act. Additionally, these commissioners are also eligible to appointment as commissioners pursuant to this Act provided that they comply with the requirements of this Act and are subjected to vetting process through the Ad hoc committee.

11. Petitioner says his tenure constitutes legitimate contract under Article 25 of the 1986 Constitution which can neither be impaired nor arbitrarily cancelled by the mere passage of a law without due process in keeping with Article 20(a) of the 1986 Constitution

12. Further, Article 25 of the 1986 constitution states: Obligation of contract shall be guaranteed by the Republic and no laws shall be passed which might impair this right. Petitioner says the enactment of Section 16.1 of An Act to Amend and Restate and Act to Establish the Liberia Anti-Corruption Commission and to Re-Establish the Liberia Anti-Corruption Commission which was approved on July 22, 2022 and printed in handbill on July 25, 2022 (Petitioner’s Exhibit P/3) constitutes a blatant impairment of petitioner’s contractual tenure of five years without any due process and therefore should be declared illegal and unconstitutional as a matter of law.

13. Petitioner says the portion of Section 16.1 of An Act to Amend and Restate an Act to Establish the Liberia Anti-Corruption Commission and to Re-Establish the Liberia Anti-Corruption Commission which was approved on July 22, 2022 and printed in handbill on July 25, 2022 (Petitioner’s Exhibit P/3) which states” The commissioners confirmed by the Senate under the Anti-Corruption Commissioner Act (2008) in office at the time of the passage of the Act should temporality perform the powers and functions under this ACT until the appointment of the successor commissioners pursuant to Part IV of this Act, is illegal and unconstitutional and it amounts to exercising administrative supervisory powers in the Executive, far beyond the bounds of legislative lawmaking, and it constitutes a willful and deliberate arrogation of the administrative constitutional powers vested in the President under Article 50, as head of government or chief administrator clothed with the power and authority to regulate and supervise the administrative actions and activities of all appointed public officials in the executive.

14. Petitioner further contends that the passage of Section 16.1 of An

Act to Amend and Restate and Act to Establish the Liberia Anti-Corruption Commission and to Re-Establish the Liberia Anti-Corruption Commission” which was approved on July 22, 2022 and printed in handbill on July 25, 2022 (Petitioner’s Exhibit P/3) requiring petitioner to arbitrarily relinquish his tenure position without any proven cause violates the doctrine of the separation of powers of Article 3 of the 1986 Constitution and amounts to usurpation to the exercise of the pleasure power of the President of the Republic of Liberia under Article 56 of the 1986 Constitution and therefore should be declared unconstitutional.

15. The Petitioner submits and says while the President has the exclusive constitutional powers to exercise Article 56, which instructs that all public officials in the Executive serve at his/her pleasure, and in the case of the LACC, may invoke or rely upon Section 6.8 of an Act to Establish the Liberia Anti-Corruption Commission which was approved August 21, 2008 and printed in handbill on August 28, 2008 (Petitioner’s Exhibit P/1) to remove petitioner from his post, but only upon a proven cause, there is absolutely no evidence to date to prove or demonstrate that the President of the Republic of Liberia has exercised Article 56 of the 1986 Constitution or Section 6.8 of An Act to Establish the Liberia Anti-Corruption Commission which was approved August 21, 2008 and printed in handbill on August 28, 2008 (Petitioner’s Exhibit P/1) because there has been no proven cause established to remove petitioner, your Honors are most respectfully requested to take Judicial notice of the Article 56 of the 1986 Constitution and Section 6.8 of An Act to Establish the Liberia Anti-Corruption Commission which was approved August 21, 2008 and printed in handbill on August 28, 2008 (Petitioner’s Exhibit P/1).

17. Petitioner submits that by the passage of Section 16.1 of the new LACC Act requiring the petitioner to illegally and unconstitutionally relinquish their posts without any “proven cause” consistent with due process, the Legislature arrogated unto itself the exercise of administrative power vested in the President as head of government or “chief administrator” under Article 50 , and the supervisory “pleasure powers” of the President under Article 56 which may be invoked by exercising Section 6.8 of an Act to Establish the Liberia Anti-Corruption Commission” which was approved August 21, 2008 and printed in handbill on August 28, 2008(Petitioner’s Exhibit P/1) to remove petitioner for “proven cause” consistent with due process.

The Supreme Court ordered the Clerk to summon the Government of Liberia to appear and filed its returns to the petition on or before November 10, 2022. In obedience to the Supreme Court’s mandate, the Government through the Ministry of Justice filed returns on November 10, 2022, but withdrew its returns and amended same on November 14, 2022. In its amended returns, the respondent alleged that Sections 16.1 and 16.2 of the new LACC Act of 2022 are Constitutional; that the

petitioner does not have any exclusive constitutional right to the Chairmanship of LACC; that the petitioner was not removed as alleged but rather he lost his tenureship as a result of legislative enactment which abolished the old LACC; that the Legislature has the right to pass all laws for the efficient governance of the State; that the Legislature acted within their constitutional powers when they decided to create the LACC in 2008, and subsequently the LACC Act of 2022; that the petitioner's tenureship is only contractual and intended to create an independent Commission; that this contractual relationship does not give the petitioner a constitutional right to the LACC Chairmanship; and that the restructuring of the LACC Commissioners by the Legislature does not conflict with the Constitution. We quote relevant Counts of the Returns as found in 3,4,5,6,7,8,9,10,15,21,23,27, and 28, to wit:

3. As to count six (6) of the Petitioner's Petition, Respondent denies the assertion of the Petitioner that his appointment to the office of Chairman of the 2008 Liberia Anti-Corruption Commission grants him "the exclusive constitutional rights to occupy, duly exercise, and perform his functions and responsibilities", for neither the office nor the appointment of the Petitioner is based on or created by the Constitution, and so none is constitutional.

4. Further to count three (3) of these Returns and in further traversal of Count six (6) of the Petitioner's Petition, Respondent says the office and appointment of the Petitioner were created by statute, and remains during the validity of the 2008 LACC Act that created them, and therefore expired with repeal of the said 2008 LACC Act by the Legislature, which thereupon enacted a new law of general application to all Liberians, and not only the Petitioners or Commissioners or staff of the LACC.

5. Respondent submits that the averments contained in count seven(7) of the Petitioner's Petition present no traversable issue, except that the action of the Legislature to have amended, restated and re-established an independent and autonomous commission by the enactment of an Act to Amend and Restate an Act to Establish the Liberia Anti-Corruption Commission and to Re-Establish the Liberia Anti-Corruption Commission, Approved on July 22, 2022 and printed in handbill on July 25, 2022" (hereinafter the 2022 LACC Act") is an exercise of the lawmaking power of the Legislature granted and guaranteed by Article 89 of the Constitution of the Republic of Liberia (1986). Your Honors are respectfully requested to take Judicial Notice of the following well-known facts:

A. The Legislature, like legislatures in other jurisdictions, do periodically amend and repeal laws;

B. In the course of amending and repealing existing laws, the Legislature has created new public bodies as successors to existing ones, and examples are the Central Bank of Liberia (CBL), which succeeded to the old National Bank of Liberia; and the Liberia Revenue

Authority (LRA), which succeeded the Department of Revenue at the former Ministry of Finance, now Ministry of Finance & Development Planning (MFDP);

C. Where a successor body is created, the law creating such body generally contains transitional provisions for dealing with the assets and staff of the old entity; and

D. The 2022 LACC Act contains detailed transitional provisions applicable to the office and person of the Petitioner and others similarly situated persons.

6. That as to counts 8,9 and 10 of the Petitioner's Petition, Respondent denies that Sections 16.1 and 16.2 of the 2022 LACC Act are unconstitutional. Sections 16.1 and 16.2 are essentially the transitional provisions the Legislature established for effectuating the legislative policy and scheme represented by the 2022 LACC Act, and they are indispensable to the validity of the 2022 LACC Act. Respondent submits that the challenged provisions (Sections 16.1 and 16.2) are not the substantive provisions of the 2022 LACC Act, but they are indispensable to operationalizing the 2022 LACC Act as they simply require(i) the Petitioner and all other Commissioners confirmed under the 2008 LACC Act to temporarily perform the powers and functions granted by the 2008 LACC Act until the appointment of the successor commissioners (ii) that the said commissioners are eligible for appointment as commissioners provided they meet the requirements specified in the 2022 LACC Act.

7. Further to Count six(6) above, and still traversing counts 8, 9 and 10 of the Petitioner's petition, Respondent says and submits that the Liberian Legislature is the only Branch of the Government that can make new laws or change existing laws and this power of the Legislature is supported by Article 29 of the Constitution, which states that "the legislative power of the Republic shall be vested in the Legislature of Liberia which shall consist of two separate houses: A Senate and a House of Representatives, both of which must pass on all legislation". Respondent submits that the action of the Legislature to amend, and restate Section 6.1 of the 2008 LACC Act affecting the appointment and composition of commissioners of the current LACC, and Section 11.2 of the same Act does not in any way, shape or form violate any known provision of the Liberian Constitution or any right, property, or privilege of the Petitioner for the Legislature's action is based on compelling state interest to fight corruption, which is and continues to be rampant in the Liberian society notwithstanding the establishment of the Anti-Corruption Commission in 2008.

8. Still traversing counts 8,9 and 10 of the Petitioner's Petition, Respondent says the Petitioner has not been removed from office, and

the removal provisions of the 2008 LACC Act are not applicable and therefore cannot be violated. Removal from office is separate and distinct from loss of office. Removal from office is done by an appointing authority which, in the case of the Petitioner, would be the President of the Republic of Liberia. Certainly, the President has not removed Petitioner from office, and so the law restricting his removal power is not relevant here. Similarly, the Legislature did not appoint the Petitioner neither has it removed him from office. Further, neither Section 16.1 nor Section 16.2 works a removal of the Petitioner from office nor is either self-executing.

9. Respondent further says that assuming the Petitioner has any protectable privilege, interest or right, contractual or proprietary-such interest or right is statutory and must be weighed against the constitutional right of the Legislature and the Government of Liberia to legislate for the common welfare, including pressing law, creating, modifying and abolishing agencies of government.

10. Further to Count Nine (9) of these Returns, Respondent submits that where a statutory right comes in conflict with a constitutional right or power, the latter prevails. Hence, any asserted contractual or statutory right of the Petitioner is subordinated to the constitutional law-making power of the Respondent and/or the entire Republic.

15. Respondent further submits that those positions the Constitution intended to and did award tenure are clearly stated in the Constitution. For example: the positions of (i) President and Vice President, (ii) Chief Justice and Associate Justices, (iii) legislators, (iv) judges of subordinate courts of records; etc. All other positions without tenure in the Constitution are creatures of the Legislature, which reserves the same legislative power and authority to remove those creatures through its lawmaking power and function based on legitimate purpose, which advances a broad societal interest rather than a narrow class.

21. Respondent submits that a scrupulous review of the challenged Sections 16.1 and 16.2 together with the entire legislation, leaves no shred of uncertainty that the legislation is primarily designed to address the systematic and rampant acts of corruption that is so pervasive in the public and private sector, and the risk of abuse of public resources by public officials for personal gain. Furthermore, Chapter V, Article 34(L) of the Liberian Constitution (which is commonly accepted as the “Necessary and Proper” Clause of the Liberian Constitution) empowers the Lawmakers “to make all other laws which shall be necessary and proper for carrying into execution....all other powers vested by this Constitution in the Government of the Republic, or in any department or office thereof.” These include the authority to “ ...create other agencies as may be necessary for the effective operation of Government”, as the Legislature may deem compelling to further overriding state interest and to enhance public policy probity. This



Court has opined in statutory construction that “It is the law that “in ascertaining whether a statute is constitutional, its various applicable provisions must be considered as a whole. Court will in order to avoid declaring any part of an act unconstitutional, give such a construction as will enable it to take effect in all its parts, since it is their duty, if possible, not only to construe as a whole and harmonize all valid legislation’s provisions valid. *Mappy-Polson v. R.L.*[2017] LRSC 6(2 March 2017)

23. Respondent submits that the Legislature acted properly in exercise of the powers and authority granted to it by inclusion of the provisions of Sections 16.1 and 16.2 in the 2022 LACC Act. In the wisdom of the Legislature, the inclusion of Sections 16.1 and 16.2 in the 2022 LACC Act were compelling necessity to strengthen the LACC capacity and capability to robustly combat acts of corruption.

27. That as to count 19 of the Petitioner’s Petition, Respondent recognizes and acknowledges the legal principle cited in the case *Martin Sallie Kollie vs the Executive Branch of the Government of the Republic of Liberia*, but asserts that the facts and circumstances in that case are not analogous to the facts and circumstances of the case at bar. The martin case involved the President removal of a public officer holding a tenured position, while the law under which he was appointed remains and did preclude such removal, but here the situation does not involve removal of the Petitioner by the President but the Petitioner’s loss of his tenured position by operation law arising from the legislature enactment of a new statute based on legitimate public policy.

28. Further to count 27 of these Returns, Respondent says that in Martin case, Martin Sallie Kollie sued the Executive Branch of the Government of the Republic of Liberia because the President of the Republic of Liberia, His Excellency Dr. George Manneh Weah, nominated Mr. Reginald K. Nagbe as Director General of the National Lottery Authority (NLA) and submitted his name to the Liberian Senate for confirmation, when, in fact, Petitioner Martin S. Kollie, was nominated, confirmed and commissioned by former President Ellen Johnson Sirleaf, prior to the election of President Weah, and the position of Director General of the NLA had a secured tenure of four(4) years. Following the hearing of arguments pro et con, this Court upheld the constitutionality of the Act creating the NLA and opined that it was therefore wrong for the current President of Liberia to have appointed another person as Director General of the National Lottery Authority, while the tenure of the Petitioner as Director General of the National Lottery Authority had not expired. Your Honors are respectfully requested to take judicial notice of the holding in the Martin case, which was ‘that it was therefore wrong for the current President of Liberia to have appointed another person as Director General of the National Lottery Authority, while the tenure of the petitioner...had not expired.

Here, there are two distinguishing facts:

A. the president has not removed the petitioner or nominated anyone while the Petitioner's tenure had not expired; and

B. The petitioner tenure has expired upon the passage of the 2022 LACC Act, which effectiveness the petitioner has not challenged.

On December 1, 2022, the Supreme Court entertained oral arguments on the petition and the returns thereto, after having thoroughly examined the petition and returns thereto coupled with the briefs filed by counsels representing the parties.

The counsels representing the parties have urged this Court to pass upon a number of issues which they deem dispositive of this matter. Notwithstanding, it has been the practice hoary with age in this jurisdiction that the Supreme Court only passes on issues that it deem meritorious and pertinent to deciding a particular case. *CBL v. TRADEVCO*, Supreme Court Opinion October Term 2012; *Knuckles v. TRADEVCO*, 40 LLR 49, 53 (2000); *Vargas v. Morns*, 39LLR 18 24 (1998); *Rizzo et al v. Metzger et al*, 38 LLR 476 (1997). *Transport of Belgium v Family Textile Center*, 38 LLR 49 (1995). Accordingly, and consistent with this legal precedent, we will limit ourselves to entertain and pass only upon issues which we have determined to be germane to the disposition of this case.

In count 9 of the petition, the petitioner argues that the enactment of Section 16.1 of the new LACC Act of 2022 which allows the petitioner and other Commissioners to temporarily perform the powers and functions as Commissioners until the appointment of successor Commissioners clearly violates the petitioner's right to due process. For the benefit of this Opinion, we quote count 9 of the petition verbatim hereunder to wit:

“Petitioner says the legislative enactment of Part XVI, titled: “Transitional Provision”, Section 16.1 of An Act to Amend and Restate an Act to Establish the Liberia Anti-Corruption Commission and to Re-Establish the Liberia Anti-Corruption Commission” which was approved on July 22, 2022 and printed in handbill on July 25, 2022 (Petitioner's Exhibit P/3) seeking petitioner's arbitrary abdication or abandonment of his position without any proven or legitimate cause”, clearly violates petitioner's rights to due process of law as provided for under Article 20(a) of the 1986 Constitution. Petitioner therefore craves the indulgence of this Honorable Court to declare unconstitutional said provision.”

In order to properly address this contention of the petitioner, we take judicial notice of Article 20(a) of the Constitution and a plethora of Supreme Court Opinions on due process which guarantee the right of a person to a fair hearing/trial before he suffers any penalty or loses his/her property.

Article 20(a) of the Constitution provides:

“No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law. Justice shall be done without sale, denial or delay; and in all cases not arising in courts not of record, under courts martial and upon impeachment, the parties shall have the right to trial by jury.”

The Supreme Court as far back as 1937 defined due process of law as: “a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial. *Wolo v. Wolo* 5 LLR 423, 428- 429 (1937). The Court speaking through Mr. Justice Grimes espoused that: “it is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard”. Id.

Restated, due process implies 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. *Kruah et al v. Weah* 42 LLR 148, 155-156 (2004). Simply stated, “it is the right of a person to a fair hearing or trial before he suffers any penalty”. *Kruah et al v. Weah* 42 LLR 148, 155-156 (2004). Id.

We affirm the Supreme Court holdings on the fundamental right to due process articulated herein above and state here that the Supreme Court pursuant to its authority granted in Article 2 of the Constitution will not hesitate to strike down any laws, treaties, statutes, decrees, customs, and regulations found to be inconsistent with Article 20 (a) of the Constitution or any other provisions of the Constitution.

But before exercising this inherent constitutional power to declare an Act of the Legislature unconstitutional, we are cautioned to approach constitutional questions with careful consideration and great deliberation, exercising this power of judicial review with the greatest possible caution and even reluctance. *Fazzah v. National Economy Committee et al.*, 8LLR, 85 (1943); *Paye v. The Leadership of the Unity Party*, Supreme Court Opinion, March Term. A.D. 2020.

This Court has held that “the Constitution must be interpreted in light of the entire document rather than a sequestered pronouncement, because every provision is of equal importance and even where there is apparent discrepancy between different provisions, the Court should harmonize them if possible.” *Garlawolu et al v. NEC*, 41LLR, 377, 384-386(2003), *the Liberia Institute of Certified Public Accountants v. Ministry of Finance, et al.*, 38LLR 657 (1998), *The Estate of Frank Tolbert v. Gibson-Sonpon*, 37 LLR 113 (1993).

As a matter of fact, it is stated that the right and power of judicial tribunals to declare whether enactments of the Legislature exceed constitutional limitations and are invalid is one of the highest functions and authorities of the courts as it involves a grave responsibility and a solemn duty that requires much delicacy. 16 Am Jur2d

Constitutional Law § 112.

In view of this we will not be remiss to first take judicial cognizance of the inherent constitutional authority of the Legislature to create administrative agencies and then proceed to see if in the exercise of such authority it violated the petitioner's fundamental right to due process when it included Sections 16.1 and 16.2 in the new LACC Act of 2022.

This being said, the Court takes judicial notice of Articles 34(1) and 89 of the Constitution which expressly empowers the Legislature to pass any laws, or create agencies, or empowers any public officer with duties and responsibilities for the efficient administration of the State.

Articles 34(1) states thus:

“The Legislature shall have the power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the Republic, or in any department or officer thereof.”

Likewise, Article 89 also states:

“The following Autonomous Public Commissions are hereby established:

- A. CIVIL SERVICE COMMISSION;
- B. ELECTIONS COMMISSION; and
- C. GENERAL AUDITING COMMISSION

The Legislature shall enact laws for the governance of these Commissions **and create other agencies as may be necessary for the effective operation of Government.**” [Note our Emphasis]

The Supreme Court has held that where the wordings of the statute or Constitution is clear on its face, the Court should go no further in giving interpretations to same but must only apply/enforce the expressed words of the statute or Constitution as it is. *Kennedy et.al v. Goodridge et.al*, 33 LLR 398, 404 (1985); *International Trust Co. v. Doumouyah et.al* 36 LLR 358, 363 (1989); *Yancy v. RL*, 4 LLR 204, 207 (1934). In view of this, it is the Opinion of the Court, that the above quoted Articles of the Constitution need no further interpretation as same are clear and unambiguous as to the Legislature inherent constitutional authority to establish executive and independent agencies of Government; grant specific powers and functions to agencies of Government; allot an operational budget; and where necessary dissolve, restructure, or merge these agencies for the effective operation of the Government.

We have no doubt that it was pursuant to Articles 34(1) and 89 of the Constitution that the Legislature in 2008 created the LACC; and in doing so they provided for a multi-member command structure comprising five (5) Commissioners; and provided a tenureship for the Commissioners thus making the LACC an independent agency

within the Executive Branch of Government.

This Court observes that by making the LACC an independent agency of Government in 2008, the Legislature in their wisdom, decided to place the leadership of the LACC into the care of five (5) unbiased professionals who are less vulnerable to Presidential controls and special interests. Howbeit, we must quickly note here that by making the LACC an independent agency, the Legislature did not intend for the LACC to be functionally independent from the Government or that the Commissioners are beyond the scope of Legislative control. Rather the independence of the LACC is based only on the fact that the Commissioners are insulated from the President to some extent since they cannot be removed by the will and pleasure of the President as is done with executive agency. *Martin Sallie Kollie v. The Executive Branch of Government, Supreme Court Opinion, October Term 2019*

Now since we have established that the LACC and its Commissioners are not functionally independent of the Government or beyond the scope of the Legislature, can it be stated that the Legislature acted ultra vires in 2022 by abolishing the LACC of 2008 and creating a new LACC wherein the petitioner and other current Commissioners are given temporary status until a new corps of Commissioners are appointed?

The petitioner in response to this question has answered in the affirmative and has advanced the argument that because he has a contractual right to the Chairmanship of the LACC which guarantees him 5 years, Sections 16.1 and 16.2 of the new LACC Act of 2022 violate Article 25 of the Constitution. We disagree.

Our disagreement is premised on the fact that the opportunity to hold public office is a privilege and not a constitutional right. It is stated that public officers generally possess no vested right to a public office since there is no fundamental, innate, inherent or constitutionally protected right to government employment except those offices/officers that are clearly and expressly protected by the Constitution. 63(c) Am Jur2d Public Officers and Employees § 11. This assertion is buttressed by the fact that administrative agencies are creatures of the Legislature; and that public offices are created by the Legislature or the Constitution to meet the needs of the people and a sovereign government has within its own jurisdiction the right and power to create [or abolish] whatever public offices it may regard as necessary to its functioning and its own internal administration. 2 Am Jur2d Administrative Law § 23; Id Public Officers and Employees § 42.

In light of the above, we are compelled to give deference to the rule which states:

“where the public office is of legislative creation, the Legislature may, unless prohibited by the Constitution, control, modify or abolish it whenever such course may seem necessary, expedient, or conducive to the public good and that absent any express constitutional limitation, a legislative body has the full and unquestionable power to abolish an office of its creation or to modify the terms of the office in the interest of the public, even though the effect may be to curtail an incumbent’s

unexpired term. Am Jur2d Public Officers and Employees §44; Id §47

In other words, it goes without saying that the Legislature may, before the expiration of the term of the incumbent, legislate him or her out of office by incorporating the duties of his/her office into that of another position or may legislate the officer out of one and into another office. It has been held that removal from office as a result of legislative redistribution is not a deprivation of an incumbent's procedural right to due process once there was notice and a public meeting on the matter. Id. §172.

Now, applying the above quoted rules to the present case, this Court says that the Legislature pursuant to Articles 34(1) and 89 of the Constitution created the LACC in 2008 and then subsequently abolished the 2008 LACC and establish a new LACC in 2022 with substantial changes in the old law to include but not limited to increasing the multi-member hierarchy from five (5) Commissioners to (7) Commissioners; changing the nomenclature of petitioner's position from Chairperson to Executive Chairperson; increasing the tenureship of the Commissioners from 5 years to 7 years; granting the LACC an independent prosecutorial powers exclusive from the Ministry of Justice; and then designating the current Commissioners as temporary trustee of the LACC until a new corps of Officers are appointed. We hold here that because the LACC and its offices are both creature of the Legislature without any express constitutional protection/constraints, the Legislature has the unquestionable power to control, modify, or abolish the LACC as it deems necessary, expedient, or conducive; and that this legislative power includes the authority to legislate the petitioner and all other Commissioners out of office before the expiration of their tenure.

The petitioner further argued in counts 13 and 17 of the petition quoted *supra* in this Opinion, that by the passage of Section 16.1 of the new LACC Act of 2022 which abolished the tenure of the petitioner and other Commissioners under the LACC Act of 2008, the Legislature unconstitutionally and illegally arrogated unto itself administrative powers vested in the President.

This Court does not deny, and indeed admits, that the Constitution does provide for the separation of power amongst the three Branches of the Government. In fact, the Constitution expressly vests in the Supreme Court the full power and authority to declare any actions by any of the Branches of Government, which are in violation of the provisions of the Constitution to be unconstitutional. *Catholic & Peace Commission et al. v. Republic of Liberia, March Term, 2006; Snowe v. Some Members of the House of Representatives, Supreme Court Opinion, October Term, 2006; Morlu II v. House of the Senate, Supreme Court Opinion, March Term, 2008; Broh v Hon House of Rep. et al, Supreme Court Opinion, October Term, 2013*

However, before the Supreme Court can execute its solemn obligation of declaring an act of the Legislature unconstitutional there must be a clear showing that the said act is in violation of the Constitution, in the instant case, the interference of the Legislature in the affairs of the Executive.

In making our determination as to whether the Legislature by the passage of the LACC Act of 2022 arrogated unto itself powers vested in the President, we revert to the facts and circumstances of this case. A thorough review of the certified records of this case

reveals no attempt by the Legislature to interfere with or exercise any of the powers ascribed to the Executive Branch of Government. All we see is the legitimate exercise of legislative functions by the Legislature as evident by the passage of the new LACC Act of 2022 which abolished the LACC Act of 2008.

Notwithstanding, assuming the Legislature unconstitutionally exercised Executive powers vested in the President, is the petitioner the proper party to raise such issue? To put it differently, does the petitioner have the standing to raise issues relating to the unauthorized use of the President's powers? This Court answers in the negative.

The Supreme Court has held in a litany of cases that mere 'interest' in a problem, no matter how qualified the person or an organization is in evaluating the problem, is not sufficient by itself to render a person or an organization adversely affected or aggrieved for the purpose of giving said person or organization standing to obtain judicial review. *Citizens Solidarity Council v RL*, Supreme Court Opinion, March Term A.D. 2016; *Center for Law & Human Rights Education et al v MCC et al*, 39 LLR 32, 39; *Concerned Sector Youth v LISGIS et al*, Supreme Court Opinion, March Term A.D. 2010

This being the case, we hold that the petitioner lacks the standing to raise issues affecting the unconstitutional use of the President's powers especially where the petitioner is not legally authorized to take such actions.

Noting the petitioner's challenge to the hold-on clause as provided in Section 16.1 of the new LACC Act of 2022 as being unconstitutional, this Court says that for a petition to be considered ripe for judicial determination, it must be shown that the petitioner will suffer hardship if the Supreme Court withholds consideration of the matter until a later time. On the other hand, a petition may be considered unripe or prematurely filed if it is based upon future events that may not occur as predicted or at all. Applying this standard to the case at bar, we observe that the petitioner and other Commissioners are still occupying their respective positions and enjoying all of the associated benefits despite the temporary status enshrined in the new LACC Act of 2022. How then can the petitioner claim that he has been unconstitutionally removed from office without due process? Can a person be unconstitutionally removed from office while at the same time enjoying all of the immunities associated with same? We think not. The mere fact that Section 16.1 of the new LACC Act of 2022 grants the petitioner and other Commissioners temporary status until successor Commissioners are appointed does not *ipso facto* violate the petitioner's due process rights. What if the petitioner and other Commissioners continue to hold-on as temporary trustees for as long as the President wishes, will the petitioner still view Section 16.1 of the new LACC Act as violative of his due process rights? What will be the effect of a decision rendered by this Court when the petitioner and other Commissioners are still occupying their respective offices and enjoying all of the immunities?

This case is reconcilable with the Supreme Court holding in the case *Janeh v. House of Representatives of the National Legislature*, Supreme Court Opinion, October Term A.D. 2018. In the Janeh case, two members of the House of Representatives, Hon. Acarous M. Gray and Hon. Thomas P. Fallah presented a petition for the impeachment of Justice Janeh; subsequently the petition was forwarded to an ad hoc

committee with instruction to study same and report to the Plenary of the House of Representatives. Up to that time no decision was taken by the Plenary of the House of Representatives to impeach the petitioner as the matter was still with the ad hoc committee set up by the Speaker of the House of Representatives. Surprisingly, the petitioner, filed a writ of prohibition before the Chambers Justice which eventually came before the Full Bench of the Supreme Court. The Supreme Court, having perused the petition and the returns thereto, held that the writ of prohibition was prematurely filed as no decision was taken by the Plenary of the House of Representatives concerning the impeachment of the petitioner.

In the instant case, while the Legislature enacted the LACC Act of 2022 abolishing the 5 years tenureship of the petitioner and other Commissioners, we observe that the LACC Act of 2022 allows the petitioner and other Commissioners to continue to function as temporary Commissioners until successor Commissioners are appointed. This means that the petitioner and other Commissioners are still occupying their respective positions and enjoying all the immunities and have not yet been removed from office. The 2022 Act stipulates no time frame when successor commissioners are to be appointed!

In furtherance of the Petitioner's argument that the Legislature acted ultra vires by abolishing the LACC of 2008 and creating a new LACC Act of 2022 wherein the petitioner and other current Commissioners are given temporary status until a new corps of Commissioners are appointed, the petitioner has cited as reliance the legal principle espoused in the case *Martin Sallie Kollie v. The Executive Branch of the Republic of Liberia*, Supreme Court Opinion March Term A.D. 2019. Hence, we deem it necessary to review the facts and circumstances in the *Kollie Case* to make a determination as to whether they are analogous or applicable to the case at bar.

A close inspection of the Martin case reveals that the facts and circumstances are clearly distinguishable from the instant case. First, the *Kollie Case* involved the President's attempt to remove without cause a public official holding a tenure position by appointing another person to said position while the Act under which the tenure holder was appointed was still in force and his tenure had not yet expired. On the contrary, the certified record in the case at bar is void of any attempt by the President to illegally remove the petitioner as Chairperson of the LACC or to appoint another person in his stead during his tenureship under the 2008 LACC Act. Instead, the tenureship of the petitioner under the LACC Act of 2008 expired by operation of law effective upon the passage and printing into handbills of the new LACC Act of 2022. Moreover, unlike the *Kollie Case* where the petitioner posed no challenge to the Legislature's authority to make, amend, modify or abolish administrative agencies, the petitioner, in the instant case, has described as unconstitutional the Legislature's act of abolishing the old LACC Act of 2008 by creating the new LACC Act of 2022 without respecting his due process rights. Additionally, while the petitioner in the *Kollie Case* petitioned this Court to prohibit the President's illegitimate exercise of appointing another person to his legally occupied tenure position especially where said tenure had not expired, the petitioner in the instant case is seeking this Court's intervention in the legitimate exercise of legislative functions contrary to the dictates of the Separation of Powers Clause as enshrined in



Article 3 of the Constitution. Hence, the petitioner's reliance on the *Kollie Case* is untenable as the facts and circumstances in the *Kollie Case* are glaringly distinguishable from the present case.

This Court however takes note of the legal and legitimate status of the Chairman and all of the Commissioners of the LACC who were duly nominated by the President of the Republic of Liberia, confirmed by the Liberian Senate, and subsequently appointed by the President of the Republic of Liberia to serve the State as Commissioners of the LACC under the 2008 LACC Act. These Commissioners, consistent with this former Act establishing the LACC, were appointed by the President to serve tenures of five (5) years each; they could however be removed by the President for misconduct or for cause. Based on the letter of the statute, it is implied that the Commissioners entered into a valid contract with the Republic of Liberia to serve in their respective capacities for the period indicated therein. Hence, the sanctity of contract enshrined in the Constitution should be given due consideration should it becomes necessary to terminate the services of the petitioner and others similarly situated in the event of their removal before the expiration of their contractual rights.

WHEREFORE AND IN VIEW OF THE FOREGOING, the petitioner's petition is denied. The Clerk of this Court is ordered to inform the parties in these proceedings of the decision of this Court. Costs are disallowed. AND IT IS HEREBY SO ORDERED.

*Petition denied.*