

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS OCTOBER TERM, A.D. 2014.

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEHASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESSETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A.Z. BANKS, III.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE

The National Patriotic Party, represented by its
National Secretary General, Andrews Peters of
The City of Monrovia, Republic of
Liberia.....APPELLANT

Versus

The National Elections Commission represented
By its Chairman, Counselor Jerome G. Korkoya
And the Board of Commissioners of the National
Elections Commission and all those operating
Under their scope of authority.....1st APPELLEE

AND

Morris Saytumah, of the City of Tubmanbury
Bomi County and the Unity Party, Republic of
Liberia.....2nd APPELLEE

Growing out of the case:

The National Patriotic Party, represented by its
National Secretary General, Andrews Peters of
The City of Monrovia, Republic of
Liberia.....PETITIONER

Versus

The National Elections Commission represented
By its Chairman, Counselor Jerome G. Korkoya
And the Board of Commissioners of the National
Elections Commission and all those operating
Under their scope of authority.....1st RESPONDENT

AND

Morris Saytumah, of the City of Tubmanbury
Bomi County and the Unity Party, Republic of
Liberia.....2nd RESPONDENT

APPEAL

Complaint of Elections
Irregularities and fraud

HEARD: January 27, 2015

Decided: February 10, 2015

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

On December 20, 2014, the National Elections Commission (NEC), the 1st appellee herein, conducted Special Senatorial Elections in all the fifteen (15) counties of the Republic of Liberia. The National Patriotic Party (NPP), the appellant herein, selected an incumbent Senator, Hon. Lahai Gbabyte Lansanah, as its candidate to contest the senatorial seat in Bomi County. Also contesting the senatorial seat was

Counsellor Morris Saytumah of the Unity Party, the 2nd appellee in these proceedings.

On December 21, 2014, after the casting of votes, the tallying and reconciling of the votes commenced in the presence of poll watchers from all political parties contesting the elections, including the parties before us, as well as members of the civil society.

On that same day, December 21, 2014, during the process of tallying and reconciling, it was discovered that there were discrepancies in the votes from the electoral district of Talaymu, specifically, Talaymu palava hut precinct # 03015, polling place number 2, where the presiding officer's worksheet recorded more votes than the number found in the ballot box. Based upon this, it was agreed by all the participating political parties, contestants, including the appellant before us and other interested parties that the ballot boxes from those polling places with calculation errors be set aside and investigated subsequently, in order to speed up the process. Thus, the tallying process continued and the preliminary results emanating therefrom were in favour of the second appellee, Counsellor Morris Saytumah. He was in the lead, followed by the appellant's candidate, Mr. Lahai Gbabyte Lassanah.

At the conclusion of the early tallying exercise, but before the parties could revisit the issue of the Talaymu palava hut precinct # 03015 as was agreed, on the very next day that is, December 22, 2014, the appellant filed an official letter of complaint in the office of the Election Magistrate. The appellant basically complained of irregularities and fraud that occurred in the self-same Talaymu palava hut precinct # 03015. For the benefit of this opinion we quote below the appellant's letter which reads:

"The Magistrate
National Elections Commission
Bomi branch, Tubmanburg
Bomi County, Liberia

Dear Mr. Magistrate:

We are pleased to present our compliments and herein write to officially forward our complaint regarding a fraud within the Bomi County 2014 Special Senatorial Election.

Mr. Magistrate, we observed that there were several irregularities within the Special Senatorial Election of Bomi County. Some of these irregularities are as follow:

- ✓ In Electoral District # 3, precisely Tulaymu voting precinct code: 03015, polling place two, results were changed in favor of the Unity Party Candidate, Mr. Morris Gato Saytumah.
- ✓ The Election Supervising Officer (ESO), Mr. Charles Farmah vehemently ordered the Presiding Officer, Mr. Gbanjah Seh of said

polling center to turn over the tally sheet of the center prior to the closure of the center to him.

- ✓ There were also tallies of other precinct centers that could not correspond with that of the tally sheets and the ballot papers in the boxes.

In view of the aforementioned, the National Patriotic Party having observed these irregularities on the part of your officers (National Elections Commission-Bomi County) in this 2014 Special Elections, requests that prompt investigation and findings be made before the announcement of the final results so as to make this electoral process a free, fair and transparent one.

While we anxiously await your timely investigation, it is our hope that this complaint be given your ardent attention.

Best regards. ~

Respectfully yours,

J. Nelson Bogar, Jr.
Chairman
National Patriotic Party-Bomi Branch

Cc: Cllr. Theophilus C. Goud
Chairman, National Patriotic Party
File

The records further show that predicated upon the appellant's letter of complaint quoted *supra*, a meeting was convened. At that meeting, all of the parties, and observers, including the parties before us agreed that the issue of fraud be investigated by the police and recommended a recount of the ballots of the disputed precincts to the Board of Commissioners of the National Elections Commission (NEC), the 1st appellee. Based on this agreement, NEC forwarded the elections supervising officer and the presiding officer suspected of being involved in the alleged fraud to the police for investigation and granted the magistrate permission to conduct a recount. The notice of the recount was circulated among all participating parties scheduling the recount for December 24, 2014. Accordingly, on December 24, 2014, the Magistrate proceeded with the scheduled recount but, in the absence of the appellant and its candidate.

We note that while there are no pieces of documentary evidence in the records to support the appellant's reason for being absent, this Court by law takes judicial cognizance of matters of public knowledge which are not subjected to reasonable argument or debate. Civil Procedure Law Rev Code 1:25.2, *Super Cold Service Liberian American Insurance Corporation* 40LLR 189, 196 (2000), *Lamco J. V. operating Company v. Garlawolu et al.*, 34LLR 712, 723 (1988). On December 24, 2014, the date scheduled for the recount based on the appellant's complaint to t

NEC, there were reports and stories in the public media about the arrest of Hon. Lahai G. Lansanah and his wife by security forces for conduct believed to be in violation of the law. The arrest of an incumbent Senator could not have gone unnoticed by all and sundry in Bomi County, including the Election Magistrate. As a party of interest in the election and of which this Court has often held presence be ensured in an investigation of compliant of elections irregularity, the Election Magistrate should have suspended the recount until at which time Hon. Lansanah was present or adequately represented.

This Court has recognized and espoused that the overriding object of what the elections law seeks to accomplish in all electoral competitions is a secure, transparent and accurate determination of the results. *Dorbor et al. v. NEC*, Supreme Court Opinion, March Term A.D. 2011. Given this principle of law and the note we have taken of the arrest of the appellant's candidate we are of the strong belief that Election Magistrate, in the spirit of transparency and credibility should have postponed the recounting of the ballots *sua sponte*, to another date.

The records show that the Election Magistrate having conducted the recount in the absence of the appellant, ruled on December 24, 2014, in favor of the 2nd appellee, Counsellor Morris Saytumah. Thereafter, on December 27, 2014, the 1st appellee, the NEC announced the official results from Bomi County declaring the 2nd appellee, Counsellor Morris Saytumah as the winner.


Following the aforementioned declaration, on December 31, 2014, the appellant filed a second complaint addressed to the Chairman and Members of the Board of Commissioners of the NEC. The second complaint occasioned the scheduling of a hearing for January 9, 2015, of which the appellant and the 2nd appellee were duly notified. The records show that upon receiving the citation to appear for the hearing, the appellant, through its lawyer and Chairman, on January 8, 2015 addressed a letter to the Election Magistrate, registering its inability to attend the scheduled hearing. Appellant reason advanced for its absence was a purported assignment of a case requiring the counsel personal appearance at the Supreme Court on January 9, 2015. The appellant's letter being relevant to this appeal is quoted *infra*:

"Honorable Ben Barco
Magisterial Election Magistrate
Bomi County,

Honorable Barco:

I have the honor to acknowledge receipt of the letter of assignment by your directive in the case: Lahai G. Lassannah vs. Morris Saytumah.

Your honor, I regret my inability to attend this first hearing due to an assignment from the Honorable Supreme Court reference to the same parties requiring our appearance on Friday, January 9, 2015 at 9:00 a.m. Please find hereto attached a copy of said assignment for easy reference.



In view of the above and giving the fact that we have had an earlier assignment in an ongoing investigation, (Dr. Henrique F. Tokpa vs. Jewel Howard-Taylor) at the headquarter of the National Elections Commission for Monday and Tuesday. Please re-assign this matter for hearing on Thursday, January 15, 2015. This request is made in good faith.

Your usual administrative and judicial consideration in the premises is anticipated

Kinds Regards

Professionally yours

Theophilus C. Gould
Counsellor-At-Law &
National Chairman"

The Court notes that the appellant attached to this letter a copy of an alternative writ of prohibition issued out of this Court but directed to and specifically named the 1st and 2nd appellees, commanding them to appear before the Chambers Justice by filing their returns to the appellant's petition for the writ of prohibition. It was based upon this letter of excuse with the attached writ that the appellant's lawyer failed and neglected to appear at the hearing of January 9, 2015.

The Election Magistrate, on the scheduled date of January 9, 2015, called for the investigation into the appellant's complaint. During the hearing, the 2nd appellee, Counsellor Saytumah moved that the appellant's letter of excuse be dismissed on grounds that the alternative writ directed to the 1st & 2nd appellees to file their returns was not an assignment or citation from the Supreme Court to appear as indicated in the appellant's letter. The 2nd appellee also moved that the appellant's entire complaint be dismissed on the doctrine of *res judicata*. The Election Magistrate granted the 2nd appellee's motion, denied the appellant's excuse and dismissed the entire complaint on grounds of *res judicata*. We quote an excerpt of the said ruling as follow, to wit:

"The record reveals that the NPP filed a complaint on December 22, 2014 before the Elections Magistrate of Bomi County. According to the records on this case, this complaint led to the quarantined of fourteen polling places in Bomi County. The records reveal further that a recount of votes was ordered and conducted. Also, the petitioner's December 22, 2014, complaint led to the arrest of temporary staffs of the National Elections Commission who are presently under going trial for elections offence.

Attached to the petitioner's complaint, was a voice recording in which the petitioner claimed that the Bomi elections magistrate had admitted to irregularities and fraud. In the purported voice recording, the elections magistrate had referred to the criminal conduct of the temporary staffs that are presently being held on elections offence. The recount results on the case file reveal that the irregularities referred to in that attached voice recording were proven at the recount and corrected. All the petitioner's contentions in their present

complaint were addressed in the petitioner's complaint of December 22, 2014; under the doctrine of res judicata the petitioner is barred from resurrecting these issues.

Wherefore and in view of the foregoing, the petitioner's petition to declare the election of Morris Saytumah void and to declare Lahai G. Lansanah winner is hereby denied and dismissed."

The appellant appealed from this ruling to the NEC Board of Commissioners which subsequently entertained arguments on January 14, 2015. On January 16, 2015, the Board denied the appellant's appeal and affirmed the ruling of the Election Magistrate stating *inter alia* that the appellant failed to register its exceptions and appeal from the Election Magistrate's ruling of December 24, 2014, which ruling according to the Board, became conclusive and binding on the appellant. The Board also stated that the appellant abandoned its case on January 9, 2015 by failing to appear and that the Election Magistrate committed no error by denying the appellant's excuse which the Board deemed was an attempt to mislead the Election Magistrate.

Having stated earlier that the overriding object of in electoral competitions is to accomplish a secure, transparent and accurate determination of the results, and that the Election Magistrate should have postponed the hearing to another date, this Court cannot ascribe to the Board's ruling referencing the recount of December 24, 2014 as a basis to exert the doctrine of res judicata. We hold therefore, that the Board was in error when it confirmed the Election Magistrate's ruling of December 24, 2014, which we deem would be tantamount to defeating the essence of the electoral credibility and transparency.

The appellant excepted to the ruling of the Board in an 11- count bill of exceptions contending that the Board erred by affirming the ruling of the Election Magistrate and that it had not abandoned its complaint filed on December 31, 2014.

This Court, having frowned upon the recount of December 24, 2014, and having rejected the doctrine of res judicata, the only issue that needs to be passed on is whether the appellant abandoned its cause by its non-appearance at the January 9, 2015 hearing?

Section 6.1 of the Elections Law provides thus:

"any political party or candidate who has justifiable reasons to believe that the elections were not impartially conducted and not in keeping with the elections law, which resulted in his defeat or the defeat of a candidate shall have the right to file a complaint with the commission; such complaint must be filed not later than seven days after the announcement of the results of the elections."

The appellant having had a second opportunity based on the law quoted above and having complained to the Board of Commissioners of the NEC, and the Commission having instructed the Election Magistrate to investigate this second complaint, the failure of the appellant to appear for the investigation as scheduled was clearly a show of abandonment.

From all indications a reasonable mind would expect that one in the appellant's position would exert every effort this second time around to ensure that the

opportunity provided the appellant to investigate its complaint be fully utilized given the fact that it had missed the recount of December 24, 2014. We note that instead of availing itself to this opportunity of January 9, 2015, to have the entire process reviewed and investigated the appellant through its lawyer and chairman elected to absent itself from the hearing on a deceptive excuse of being scheduled to appear before the Supreme Court when this was not the case. In other words, he was not required to be present before the Supreme Court on that day and time of the scheduled hearing before the Election Magistrate. What a travesty!

It is trite law that the mere filing of an excuse does not ipso facto mean the granting of the excuse or that the court is bound to grant same. To the contrary, the Supreme Court has held that

“the parties to an action are entitled to a prompt trial unless a good cause for postponement is shown and the court will refuse an application for a continuance which is sought merely for the purpose of vexation and to delay the administration of justice.” *Metco v. Chase Mathattan Bank* 34LLR 419,437 (1987)

Also, this Court espoused that:

“the courts are generally liberal in granting continuance where they are necessary to prevent miscarriage of justice, but continuance are not favored where they are sought merely for the purpose of delay.” *Id.* 438.

The Court re-affirms this holding enounced *supra* and states that once a case has not been completed the counsel of record is bound to honor all assignments issued and served on him until the case is finally decided or he will be presumed to have abandoned the case.” *Vijayaraman et al., v Xoanon Liberia Limited* 42LLR 47, 56 (2004), *A.M.E Church v. Massaquoi*, Supreme Court Opinion, October Term A.D. 2014. The Court also holds that where continuance is filed with the intent to baffle the ends of justice like the one filed by the appellant herein same will be denied for being frivolous and unmeritorious. Further, we hold that the appellant having failed and neglected to appear and prosecute its complaint of December 31, 2014, the said complaint is hereby deemed abandoned.

Having said this, we take note of the petition for a writ of prohibition pending before this Court. The alternative writ was issued ordering a stay of the certification of the 2nd appellee, Morris Saytumah. The merits of this case having been dismissed on appeal, now renders the writ of prohibition moot. Accordingly, the alternative writ is hereby quashed, the peremptory writ denied. The 2nd appellee, Morris Saytumah is ordered forthwith certificated with full benefits and emoluments.

WHEREFORE AND IN VIEW OF THE FOREGOING, the appeal is denied and dismissed.

The Clerk of this Court is hereby ordered to send a mandate to the National Elections Commission to give effect to this decision. AND IT IS SO ORDERED