

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,
SITTING IN ITS OCTOBER TERM, A. D. 2023.

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
BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR..... ASSOCIATE JUSTICE

Unity Party by and through its Secretary General of)
Grand Bassa County, Mr. Thomas Nimely and its)
Candidate for District #5 of Grand Bassa County,)
Juah S. Dennis Appellant)
)
Versus) Appeal
)
National Elections Commission, Liberia)
..... 1st Appellee)
)
And)
)
Mr. Thomas Goswell II, Declared Winner CPP, District)
#5 of Grand Bassa County 2nd Appellee)

GROWING OUT OF THE CASE:

Unity Party by and through its Secretary General of)
Grand Bassa County, Mr. Thomas Nimely and its)
Candidate for District #5 of Grand Bassa County,)
Juah S. Dennis Appellant)
)
Versus) Appeal to the Board
) of Commissioners,
) National Elections
National Elections Commission, Liberia.....) Commission
..... 1stAppellee)
)
And)
)
Mr. Thomas Goswell II, Declared Winner CPP, District)
#5 of Grand Bassa County 2nd Appellee)

Heard: January 9, 2024

Decided: January 17, 2024

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT.

On October 17, 2023, the appellant herein, the Unity Party by and through its Secretary General, Mr. Thomas A. Nimely of the Grand Bassa Chapter, along with its Electoral District #5 representative candidate, Juah Dennis, filed with the Election Magistrate of Grand Bassa County a complaint of

elections' irregularities. The complaint substantially alleged that while voters were in the queue to cast their ballots at Polling Precinct #: 09013, the Presiding Officer (PO) ordered the poll closed by 6:00 pm, which deprived voters of their rights to vote. Additionally, there were lots of discrepancies on the Representative Record of the Counts during the tallying process at Polling Precinct#s 09007 and 09009. The appellant therefore requested that a re-run be ordered at Polling Precinct #: 09013-Zondo Town Public School and a re-count at Polling Precinct #s: 09007-LIBINC Old Palava Hut and 09009-Behn Town Palava Hut, in Electoral District #5, Grand Bassa County. The complaint is here under quoted verbatim.

October 17, 2023
Mr. David A. Logan
Electoral Magistrate
Grand Bassa County
Fair Ground, Buchanan City
Grand Bassa County

Ref: Complaint:

Dear Mr. Logan:

We write requesting a Re-run at Polling Precinct 09013-Zondo Town School and a recount at Polling Precincts 09007-LIBINC Old Camp Palava Hut and 09009-Behn Town Palava Hut, in Electoral District 5.

On elections day, while voters were still in the queue waiting to cast their ballots at Polling Precinct 09013-Zondo Town School, the polls were closed by 6pm without affording the voters an opportunity to vote. Even though the National Elections Commission procedures mandate the Queue Controller (QC) to stand behind the last person on the queue by 6pm or draw a line behind the queue in order to allow voters already in the queue to vote but that did not NOT happen. The Presiding Officer (PO) and his team refused to allow the voters in queue to vote.

When our party agents sort inquires and requested a Complaint Form to record the incident, they were forced out of the center. The sorting and counting processes began with none of our party agents present, due to the incident.

Though we won Center 09013-Zondo Town School, we are requesting a RE-RUN at this mentioned center to afford an opportunity to the voters that were barred from voting to cast their ballots.

Also, we observed lots of discrepancies on the PO's representative Record of the Count during the tallying process at Polling Precincts 09007-LIBINC Old Camp Palava Hut and 09009-Behn Town Palava Hut, for which we request recount at these centers based on evidence of figures tempering from PO's Representative Vote of the Count in our possession.

The Hearing Officer initially dismissed the complaint on the ground that the appellant filed the same outside of the time allowed by the NEC's regulation. However, on appeal, the Board of Commissioners reversed the Hearing Officer's decision and remanded the complaint for investigation. During the investigation, the appellant produced seven witnesses as follows: Mr. James B. Vahgbanat, a voter, Johnson Borbor, a poll watcher for Candidate Lee Dennis, Jacob B. Nyankankpe, a voter and senior elder of Zondo Town, Abraham Willie, Poll watcher for Unity Party, Conferencegar Peters, a voter, Joseph V. Philips a voter, and Vanessa P. Karn, poll watcher for Unity Party and Candidate Juah Dennis assigned at Yawah Village.

The testimonies of the first six witnesses of the appellant, as gathered from the records, are in one accord; that is, the NEC staff assigned at precinct 09013 Zondo Town Public School either denied them or other voters of their right to vote thereby denying them the opportunity to participate in the election. Their testimonies tend to establish that voting at the precinct started at 8:00 am, and by 6:00 pm, the Presiding Officer (PO) ordered the Queue Controller (QC) to place a line behind the last person in the queue, and as a consequence, those who came to vote after 6:00 pm did not vote; the witnesses also testified that some of those who were on the line did not vote when the PO ordered the polls closed due to time factor.

Appellant's seventh witness, Venessa P. Karn, testified to irregularities committed during the vote counting and tallying, and to alterations on the Representatives Record of The Counts in almost the entire district for which, she believes that a total recount of the votes in the entire district should be ordered so as to clear the doubt on the electoral process of District #5 in Grand Bassa County. She told the hearing that in Behn Palava Hut with Precinct Code # 09009, polling place # 2, for example, the

total ballot papers accounted for after the close of the poll totaled 573 or 23 ballots over and above the number of ballot papers that are allotted to a polling place. That at Yaweh Village, Precinct Code # 09157, polling place # 2, The Representatives Record of the Counts was altered to the extent that if all of the votes recorded are tabulated and added to the unused ballot papers, the total ballot papers in this polling place will exceed the number to be allotted to a polling place by 183; that at the Bold Dollar Precinct # 09184, polling place # 1, the total ballots were above the allotted ballot by 6; that at the Old Lady Market Precinct # 09456, polling place # 3, the total ballot was above the allotted ballot by 4; That at the Town Market Polling place # 3, the total ballot was above the allotted ballot by 3.

It is worth mentioning here that the appellant did not produce any documentary evidence to support the allegation contained in the testimony of the witnesses during the time when the appellant was producing witnesses. However, at the close of the appellee's witnesses' testimonies, the appellant, by a letter dated November 28, 2023, applied to the hearing for the issuance of a subpoena deces-Tecum and Ad-Testificandum for the NEC to produce the originals of the Representatives Records of the Counts, of photocopies of which were attached to the said letter. The Hearing Officer denied this request on the ground that the appellant did not annex those instruments to their complaint, nor did they reference them in the said complaint. Being dissatisfied with this ruling, the appellant flew to the Board of Commissioners for a review, and the BOC confirmed the hearing officer's denial of the application for the subpoena.

The 1st appellee, the National Elections Commission (NEC), produced four witnesses as follows: Augustine D. Tarplah, Presiding Officer (PO) of polling Precinct 09013; Sarah Johnson, the NEC's Queue Controller (QC), also assigned at precinct 09013, B. Samuel Toe Matthews also assigned at precinct 09013 where the alleged denial to vote occurred and witness Emmanuel Olismeh Smith, Presiding Officer of Lapin Polling Center.

Witness Augustine D. Tarplah testified, amongst other things, that voting

started at 8:00m, and by 6:00 pm, he asked the Queue Controller (QC) to stand behind the last person in the queue and that after voting ended, all of the parties' representatives signed the Representatives Records of the Count without any objection or request for complaint form to lodge any disagreement whatsoever. The PO's testimony was corroborated by witness Sarah Johnson, the NEC's Queue Controller, and witness B. Samuel Toe Matthew. Interestingly, the appellant, who is seeking a Re-run at polling precinct 09013 Zondo Town Public School, obtained the highest votes cast at this precinct.

The records show that after the production of evidence and argument had by the parties, the Hearing Officer in his ruling reached the conclusion that the appellant failed to prove its allegations as are contained in its complaint. The appellant entered its exception to the ruling of the Hearing Officer and announced an appeal to the Board of Commissioners (BOC) of the National Elections Commission (NEC). Upon taking seize of the appellant's appeal, the BOC, after conducting a hearing, upheld the ruling as entered by the Hearing Officer and declared 2nd Appellee, Mr. Thomas Goswell II, as the winner of the October 10, 2023 representative election in electoral district #5, Grand Bassa County. For the benefit of this Opinion, we quote the relevant excerpt of the Board of Commissioners' ruling as follows:

“...with respect to appellant's request for rerun based on allegation that voters were in the queues before 6:00 pm but were denied the right to vote, the records that Augustine D. Tarplah, Jr., who served as Presiding Officer at precinct 09013, polling place #1 (Zondo Town School) denied the allegation. Witness Tarplah testified that at 6:00pm on October 10th, he told the queue controller to stand behind the last person in the line and the queue controller did so, and that nobody came after the queue controller stood behind the last person on the line. Witness Tarplah's testimony was corroborated by both Ms. Sarah Johnson, who served as the queue controller and by Samuel Toe Matthew, Presiding Officer at Zondo Town. The record shows that one of those who were allegedly denied the right to vote testified, or filed any complaint regarding this allegation. The record further shows that appellant won the election at said precinct.

As to appellant's request for a recount based on allegation that its poll watchers observed lot of discrepancies on the record of count during the tally process at precinct 09007 (LIBINC Old Camp Palava Hut) and at precinct 09009 (Behn Town Palava Hut) for which they were requesting a recount, the record show that appellant did not present

any documentary instruments, such as record of count or tally sheet to substantiate this allegation. “The law forbids the proving of fraud by testimony of witnesses based on presumption, hypothesis and deductions. *Intrusco Corp. v. Osseily*, 32 LLR 558 (1985)

The Honorable Supreme Court has held that there is a strong presumption in upholding the validity of an election result and that the party that challenges the results must prove irregularities or fraud sufficient to warrant a recount or change the outcome of the election. *Sando Johnson v. NEC*, Supreme Court Opinion, October Term, 2005;

Wherefore and in view of the foregoing, the appellant’s appeal is hereby denied and dismissed. The Hearing Officer’s ruling is affirmed, and this Board’s declaration of Hon. Thomas Goshua, II as the winner of the October 10, 2023 representative election in Electoral District #5, Grand Bassa County is hereby confirmed and affirmed.”

To this final ruling of the Board of Commissioners (BOC) of the National Elections Commission (NEC), the appellant entered its exception and announced an appeal to this Court of last resort. After due consideration of the appellant’s bill of exceptions, which the appellant filed pursuant to Section 6.7 of the New Elections Law, the parties’ briefs filed before this Court, and the argument had, we consider the following two issues as dispositive of this appeal:

1. Whether or not, after due consideration, the appellant is entitled to a Re-run in precinct 09013 Zondo Town Public School?
2. Whether or not, after due consideration of the records, the appellant is entitled to a Recounts in precinct 09007-LIBINC Old Camp Palava Hut and in precinct 09009-Behn Town Palava Hut?

We shall now proceed to address the issues in the order in which they are presented.

Relative to the appellant's prayer that a rerun be ordered in precinct #09013, Zondo Town Public School, this Court says that a review of the certified records shows that the appellant’s witnesses who testified in this regard were very clear and corroborative on what occurred during the voting process at this voting precinct. The witnesses testified that voting started at the precinct at 8:00 am and that at 6:00 pm, the Presiding Officer (PO) instructed the Queue Controller to stand behind the last voter in the

queue. Thereafter, all other voters who appeared later were disallowed to cast their vote. The 1st Appellee's witnesses did not deny this testimony of the appellant's witnesses that the Poll was closed by 6:00 pm. One of the witnesses even testified that they denied a voter the opportunity to vote who came by 11:50 pm after the poll was closed, alleging that he had a sick mother that he had to take to the clinic. They, however, corroborated the appellant's witnesses' testimony that all voters who were in the queues and in the precinct hall at 6:00 pm were allowed to vote.

This Court says that the right to vote is a constitutionally protected right provided for by Article 77 (a) and (b) of the Constitution and Section 4.8 of the New Elections Law (1986) for citizens to elect the candidates of their choice. The intent of the framers of both the Constitution and the statutory law governing elections is to ensure that the people have the opportunity to decide who represents them in their government. This right cannot be restrained, prohibited, or curtailed unwarrantedly and arbitrarily by any individual or institution without the pale of the law. The right of the people to the ballots is expressed in our organic law in Article 80 (c), which provides that "every citizen shall have the right to be registered in a constituency, and to vote in public elections only in the constituency where registered, either in person or by absentee ballot; provided that such citizen shall have the right to change his voting constituency as may be prescribed by the Legislature". This Court, in the case: *Mappy-Polson v. R.L* [2017] LRSC 6 (2 March 2017) articulated the principle of the right to vote as follows:

"...the right of a citizen to vote, no doubt, is essential to a people in any democratic society. It is through voting that citizens choose their leaders and remove them when they fail to listen and account to them. The right of the people to vote and participate in government is so germane and fundamental to liberty and freedom that it is expressly guaranteed in numerous international human rights instruments, to which Liberia is a party.

Article 77 (b) of the Liberia Constitution, under Political Parties and Elections, provides that "...every Liberian citizen not less than 18 years of age, shall have the right to be registered as a voter and to vote in public elections and referenda under this Constitution." Article 5 (b) of the Constitution, under the General Principles of National Policy, obliges the Legislature to enact laws that would encourage all citizens to participate in government. From the plain language of the Constitution, it

is clear that the framers of the Constitution intended to attach great significance of cosmic proportions to the right of people to vote and participate in the formation of government. There can be no question, therefore, that the right to vote is a basic democratic right that should be practiced by every eligible citizen, promoted widely by the government, and jealously protected without hindrance”.

The Legislature, in the exercise of the constitutional authority conferred upon them by Chapter V, Article 34 (i), enacted the Elections Law (1986), which provides in section 4.8 as follows:

“Section 4.8 the polls

- (1)The NEC Presiding Officer for each voting precinct shall be present at the Polling Place with the registration roll for the precinct.
- (2)The Poll shall be opened from eight O'clock in the morning until six O'clock in the evening.
- (3)Before any vote is cast, the NEC Presiding Officer shall exhibit the ballot box empty and then shall lock it.
- (4)The Commission shall prescribed regulations consistent with the following which in its opinion will portray farness of the election.
Marking of the hands of the voters;
 - (a)The production and marking of the registration cards;
 - (b)The marking of the register; and
 - (c)Such other matters as are necessary for the security of the poll, for the prevention of election offenses, and for maintaining secrecy.

From the reading of the above statute, it is clear that the act of the Presiding Officer (PO) complained of by the appellant, that is, by opening the polls for voting at 8:00 am and having same closed at 6:00 pm, finds support in the law and he would have been in violation of the express language of the law had he acted to the contrary. It is our Opinion, therefore, that the appellant's evidence, not having established legal ground to support the prayer of a rerun in Precinct 09013, Zondo Town School, District # 5 Grand Bassa County, we find no justification to disturb the holding of the BOC of the NEC on this issue.

With respect to the appellant's request for a recount in precinct #09007, LIBINC Old Camp Palava Hut, and precinct #09009, Behn Town Palava Hut, and as our analysis of the evidence revealed, the appellant's

evidence, especially the testimony of witness Venessa P. Karn, tend to establish that the record of counts from several of the polling places in the district had alterations and inconsistencies. The appellant, however, did not produce those records of counts to substantiate his claim. This Supreme Court has held in a plethora of cases that mere allegations do not constitute proof, and unless such allegations are supported by evidence, they shall remain mere allegations. It is evidence alone which enables the court, tribunal, or administrative forum to pronounce with certainty the matter in dispute. In the absence of proof, therefore, we cannot give credence to the allegations made by the appellant witness. *Knuckles v. TRADEVCO*, 40 LLR 511 (2001); *V.H. Timber Naca Logging Company et al.*, 42 LLR 527 (2005); *Kpoto v. William v. Williams*, Supreme Court Opinion, March Term, 2008; *Mr. Wamah Jones Kuteh v. NEC*, Supreme Court Opinion, October Term, 2023.

Ordinarily, it having been established that the appellant did not produce evidence to substantiate the allegation of vote alteration, this matter should be concluded at this point. We, however, take note that the vote difference between the two highest contestants is 49 votes. We also observed from our previous decisions instances where we ordered a recount when the vote difference released by the NEC was narrow. At the end of most of those recounts, a different result was obtained. This led the National Elections Commission (NEC) 2005 to promulgate regulations setting a threshold for the automatic recount of votes in the representative elections as follows:

“...House of Representative candidates: Recounts shall automatically be held, in the case of candidates for the House of Representatives, where the difference between the two candidates in the same district who received the greatest total number of valid votes casts is fifty (50) or less”

In 2017, this regulation was challenged before this Court as being inconsistent with our Constitution. This Court, in a unanimous decision, in the case: *Saye Minah v. NEC*, Supreme Court Opinion, 2017 held that “...recount was within the authority of the National Elections Commission,

and given that the margin of votes between the two highest contenders was narrow, a recount as a matter of policy was necessary, and such action was not in contravention of the Constitution, but enhances the transparency and validity of the process.”

This Court says that a recount is equitable in nature, and considering the narrow vote margin between the first two highest vote-obtaining candidates, a recount of the entire vote cast in Electoral District #5 of Grand Bassa County will be in the best interest of the voters and the candidates. This Court, therefore, ordered recounts of the votes of Electoral District #5 of Grand Bassa County in the interest of justice and transparency.

WHEREFORE AND IN VIEW OF THE FOREGOING, the appellant’s appeal is hereby denied in part and granted in part. The ruling of the Board of Commissioners of the National Elections Commission (NEC) denying a re-run in Precinct 09013, Zondo Town School, is hereby affirmed, and the ruling denying a recount is hereby reversed. The National Elections Commission is hereby ordered to conduct a re-count of the votes cast in Electoral District #5, Grand Bassa County, within seven (7) days of the reading of this Mandate of this Court. The Clerk of this Court is ordered to inform the National Elections Commission accordingly. Costs to abide the final determination of this matter. AND IT IS HEREBY SO ORDERED.

The ruling was affirmed in part.

When this case was called for hearing, Counsellor Bob B. Laywhyee appeared for the Appellant. Counsellors J. Augustine Toe and Peter Y. Kerkulah appeared for the 1st appellee, the National Elections Commission.