

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

Madam Ruth Sawmadal, Coalition for Democratic Change )  
Representative Candidate, District #2, Rivercess County, RL )  
.....Appellant )  
 )  
Versus )  
 ) APPEAL

National Elections Commission(NEC) and Staff Rivercess County) )  
.....1<sup>st</sup> Appellee )  
 )  
And )  
 )

Mr. Steve Tequiah, Independent Representative Candidate and )  
declared winner, District #2, Rivercess County, RL )  
.....2<sup>nd</sup> Appellee )  
 )

GROWING OUT OF THE CASE: )  
 )

Madam Ruth Sawmadal, Coalition for Democratic Change )  
Representative Candidate, District #2, Rivercess County, RL )  
.....Appellant )  
 )  
Versus )  
 ) APPEAL to Board

National Elections Commission(NEC) and Staff Rivercess County) of )  
.....1<sup>st</sup> Appellee ) Commissioners )  
 )

And )  
 )

Mr. Steve Tequiah, Independent Representative Candidate and )  
declared winner, District #2, Rivercess County, RL, )  
.....2<sup>nd</sup> Appellee )  
 )

Heard: January 9, 2024 Decided: January 17, 2024

MR. JUSTICE GBEISAY, SR. DELIVERED THE OPINION OF THE COURT

This case came before this Court *en banc* for appellate review of the final ruling of the Board of Commissioners of the National Elections

Commission (NEC), entered on December 23, 2023, dismissing the appellant's appeal resulting from a complaint she filed before the Hearing Officer of NEC, praying for a total recount of votes cast from the Electoral District #2 of Rivercess County in the representative elections conducted on October 10, 2023 in Rivercess County, and affirmed the ruling of the Hearing Officer.

A review of the records in this case shows that twelve (12) candidates participated in the October 10, 2023 representative election in Electoral District #2, Rivercess County. At the end of the count and tally results, independent candidate co-appellee, Steve Tequiah was declared winner with 2,734 of the valid votes. Appellant, Madam Ruth Sawmadal of the CDC came second. Appellant complained further that voters at Quito Public School and Darsaw Town Public School who were in queue before 6 pm were turned away and denied the right to vote; that there was an increase in invalid votes at eleven (11) precincts; that at some centers considered their stronghold the invalid votes against 2<sup>nd</sup> appellee were turned into valid votes by some of the poll workers and that the Presiding Officer at Farh Polling Center failed to provide copy of the records of counts to the first and second winners.

The appellant, being dissatisfied with the results, the CDC Rivercess County Chapter on October 16, 2023 filed a complaint with the Elections Magistrate, Mr. Isaac Y. Williams, which complaint was withdrawn and an amendment complaint filed on October 20, 2023.

We quote herein said complaint:

October 20, 2023

Mr. Isaac Y. Williams  
Elections magistrate  
National Elections Commission  
River Cess County  
Republic of Liberia

Dear Mr. Williams.

The Coalition for Democratic Change extends her heartfelt felicitation to you and the entire staff of the magisterial area of the NEC for the peaceful conduct of the just ended October 10, 2023 elections.

While the party acknowledges, the peaceful nature of the process, the party writes to notify your office of concern about the fraud at several polling precincts within District #2 affecting the election for the House of representative. Therefore, we crave your honorable office indulgence to do a total recount of the following centers based upon information gathered from trusted sources.

At some polling centers voters were denied voting right by queue controllers' due to what they term as time factor equally so those voters were part of the queue before 6:00 pm. Following are centers that heave such problem, Charles Town Public School and Darsaw Town Public School.

Meanwhile, some center workers turned some invalid votes against Hon. Steve Tequiah to valid votes in his favor. Following are centers with similar problem; Rocks Cess, Solo Gold Camp Palava Hut, and Fred Bernard Public School. Even at the Charles Town Public School votes that were in favor of Hon. Ruth Sawmadal were turned into invalid votes. We believe that those centers are our strong hope and no one can win us there

Moreover, the increase in the invalid votes is one of our greater concerns at the following centers:

- | No. | Center   |
|-----|--|
| 1   | Wruah Town Palava Hut                                |
| 2   | J.L. Travel Public school                            |
| 3   | Sannah Town school                                   |
| 4   | Charles Town school                                  |
| 5   | Voin Palava Hut                                      |
| 6   | Farh Palava Hut Gbarsaw Public School                |
| 7   | Solo Gold camp Palava Hut                            |
| 8   | Fred Bernard School                                  |
| 9   | Kleygb Beach Public school                           |
| 10  | Upper Timbo Public School and other to be identified |

Lastly, Mr. Magistrate, one of the Presiding Officer (Farh Polling Center) refused to give the copy of the record of the count to first and second winner because he said he was having something still to write on the record of count.

Therefore Hon. Magistrate, the party (Coalition for Democratic Change) asked your Hon. Office to conduct a total recount of the Representative ballot in electoral district two Rivercess for peace sake.

Thanks for your understanding and cooperation as we await your intervention.

Sincerely yours,  
Foday Tunkara, Secretary  
Leif Wheagar, Co-County Chair  
Amos S. Kuieh, County Chairman

The record reveals further that when the case was assigned for hearing by the Hearing Officer in Cestos City, Appellant requested and prayed

for a change of venue from Rivercess County to the NEC Head Office in Monrovia which request was granted and the case was transferred to the Head Office of NEC on 9<sup>th</sup> street, Sinkor, Monrovia. The parties appeared before a Panel based upon a citation and at the call of the case, 2<sup>nd</sup> appellee filed a motion to dismiss appellant's complaint alleging that said complaint was filed out of the time required to file complaint in keeping with the NEC's Regulations. The Motion to dismiss was heard and after argument, appellant's complaint was dismissed. To which ruling of the Panel, appellant took appeal to the BOC. After arguments by the parties, the BOC upon consideration of the case, ruled on the 5<sup>th</sup> of November, 2023 reversing and remanding the case and mandated the Magistrate to resume the hearing of the October 20, 2023 complaint on the merits. 2<sup>nd</sup> appellee excepted to the ruling of the BOC's and which exception was duly noted.

When the remanded case was called for hearing by the Panel, appellant testified that her certified poll watchers were replaced by those from the Congress for Democratic Change (CDC); that she contested as a candidate for the Coalition for Democratic Change in the representative election for District #2, Rivercess County; That during a political meeting of the five collaborating parties of the Coalition for Democratic Change which fielded her in the elections as a candidate, all those in attendance decided that their poll watchers would be qualified by the candidates and the party chairmen; that most of her valid votes were declared invalid; and that 1<sup>st</sup> appellee posted photo of him and her Standard Bearer, President George Weah during the campaign; that ballot stuffing occurred at Neebah Polling Place, that the records of counts were not signed by her certified poll watchers but by supervisors of the Congress for Democratic Change and that at Neebah, the ballot issuer was identifying individuals to assist people with special needs or disabilities. At the hearing, appellant produced four witnesses namely Jayjan George, Eric Sobeur and Leif I. Wheagar and herself and three rebuttal witnesses namely, Philip D. Toby, Eric Sobeur and Jayjan George who corroborated her testimony.

2<sup>nd</sup> Appellee in response to appellant's complaint alleged that the appellant did not produce sufficient evidence to support her allegation of fraud and irregularities. 2<sup>nd</sup> Appellee testified that he contested representative seat of District #2 for Rivercess County as an

independent candidate; that he printed photo of him and President Weah in support of President Weah's reelection; that he had poll watches at various polling places; that at no time he engaged CDC's officers or citizens of Rivercess to appeal to the appellant to withdraw the case and that no irregularities were reported. 2<sup>nd</sup> appellee produced four witnesses namely Kpallah Reeves, Cerance B. Wesseh, Amunchin Clafford Flanjay who corroborated his testimony. Counsel for appellant prayed for the qualification of three witnesses Philip D. Toby, Eric Sobeur and Jayjan George to serve as rebuttal witnesses to the various testimonies of 2<sup>nd</sup> appellee and his witnesses. After the resting of oral and documentary evidence, the Panel ruled dismissing appellant's complaint stating that appellant's had not proven irregularities to warrant a recount of the ballots cast in Electoral District #2. The appellant being dissatisfied with the ruling of the Panel, announced an appeal to the BOC and filed her bill of exceptions.

On November 7, 2023, the BOC issued assignment for hearing of the appeal on the 8<sup>th</sup> of November, 2023. During the hearing before the BOC, 2<sup>nd</sup> appellee prayed that the complaint be dismissed alleging that the complaint was prematurely filed and after the hearing, the BOC denied and dismissed appellant's appeal and affirmed and confirmed the ruling of the Panel and declared 2<sup>nd</sup> appellee as the winner of the October 10, 2023 representative election in Electoral District #2, Rivercess County. Being dissatisfied with the ruling of the BOC, appellant excepted thereto and announced an appeal to the Honorable Supreme Court of Liberia.

Having examined the records, considered the allegations contained in the Bill of exceptions and considered the arguments made before this Court at the hearing of this appeal, we find a single issue determinative of this appeal and that is "whether or not the allegations as contained in appellant's complaint amount to irregularities and if so, whether they are sufficient to order a recount in the polling places complained of by appellant?" Our decision to limit the scope of our determination of this appeal to a single issue finds reliance in the rudimentary principle of law extant in this jurisdiction that notwithstanding the errors purported to have been committed by the trial tribunal, as contained in appellant's bill of exceptions, it is the prerogative of this Court to determine which errors are germane to determination of the

appeal. *Sensee Kowo v. Republic of Liberia*, Supreme Court Opinion, March term, 2023

Before embarking upon this examination and consideration, it is worth noting from the onset that this Court has established as a principle governing the resolution of election dispute that *“the overriding objective of what the Election Law seeks to accomplish in all electoral competition is a secure, transparent, and accurate determination of the results. This means that the voters’ votes, which are expressions of their choice, must be respected. In order to achieve this objective, voters must be allowed to exercise their right to vote and not disenfranchised”* *Othello Doe Nagbe v. NEC et.al.*, Supreme Court Opinion, March Term, A. D. 2021, decided on April 1, 2021”. Our overriding concern in cases of this nature is to determine whether the irregularities complained of actually occurred and if they did occur, whether they affected the result as announced by the NEC. We shall examine the alleged irregularities in light of this concern.

As mentioned herein, the appellant’s four regular witnesses including herself and three rebuttal witnesses who testified in substantiation of the allegations contained in her complaint and in her testimony, the appellant basically narrated that most of her valid votes were declared invalid; that 2<sup>nd</sup> appellee posted photo of him and her Standard Bearer, President George Weah during the campaign; that ballot stuffing occurred at Neegbah Polling Place, that the records of counts were not signed by her certified poll watchers but by supervisors of the Congress for Democratic Change when she was a candidate on the ticket for the Coalition for democratic Change and that at Neegbah, the ballot issuer was identifying individuals to assist people with special needs or disabilities.

The records reveal that appellant testified that at some polling centers, voters were denied voting right by queue controllers’ due to what they term as time factor equally so those voters were part of the queue before 6:00 pm and these centers that had such problem were Charles Town Public School and Darsaw Town Public School and that some center workers turned some invalid votes for 2<sup>nd</sup> appellee to valid votes in his favor. Centers such as Rocks Cess, Solo Gold Camp Palava Hut, and Fred Bernard Public School and other centers where she had stronghold and no one can win her there had problems resulting in the

winning votes difference of 198 coupled with the unusual numbers of invalid votes. Appellant's testimonies were all corroborated by her witnesses.

The Court observes that from the certified records before it revealed that BOC erred when it confirmed and affirmed the ruling of the Panel dismissing the appellant's complaint stating that appellant did not prove her case. In the mind of this Court, the allegation of election irregularities should have been investigated to ascertain the truthfulness of appellant's allegations but this was not done. This Court notes that in keeping with the practice in our jurisdiction, a court of record relies on both oral and documentary evidence to render a decision in a controversy. More besides, the certified records revealed that there were discrepancies between the appellant's records and that of NEC which was never investigated by the NEC officials in Rivercess County, even though NEC has a statutory mandate to ensure the conduct of a free, fair, and transparent election process in Liberia. *New Elections law chapter 2 subsection 2.9 (u)*. Part of the process of conducting a free and fair elections is to investigate complaints of discrepancies and irregularities brought before it, which sadly was not done in this case. *New Elections law chapter 5 subsection 5.12 (3)*. This court says that unlike in an action at law where legal and factual technicalities are entertained by courts, the role of an administrative agency in the investigative process is primarily fact finding and not technicalities. Election disputes are principally concerned with determining whether the outcome of an election is a true reflection of the people's choice rather than an endorsement of technicalities. *Charles Walker Brumskin et al v. National Election Commission, Supreme Court Opinion October Term AD 2017*.

2<sup>nd</sup> appellee argued that according to the NEC's Regulation of recounting of votes, the criterion which triggers automatic recount is where the margin of votes between the first and second candidates is 50 or less votes. This Court observed that the difference in the margin of votes between appellant and 2<sup>nd</sup> appellee is 198 votes which in the mind of this Court a recount should be ordered in the interest of justice and to ensure that all votes cast are the expression of the choice of the voters.

Similarly the court observed that the appellant filed a complaint alleging discrepancies and irregularities which were acknowledged by the hearing officer and yet, this was never investigated. This was testified to by appellant and which testimony imposed an obligation on the hearing officer to have conducted an investigation into the veracity of this allegation to meet the standard of a fair and impartial investigation. These discrepancies and irregularities discovered in the certified records before this Court that were overlooked in the Hearing Officer's ruling which were confirmed by the BOC to form the basis for a recount at district #2, Rivercess County at the eleven polling places highlighted in this opinion. Therefore, the NEC should be cognizant of its responsibilities, especially in the conduct of its administrative hearing by granting each candidate equal status that appears before it in any election related disputes.

WHEREFORE AND IN VIEW OF THE FORGOING, the appellant's appeal is hereby granted and the ruling of the Board of Commissioners (BOC) affirming the ruling of the Hearing Officer of the National Elections Commission (NEC) is reversed. The National Elections Commission (NEC) is hereby ordered to conduct, within seven (7) days as of the reading of the Mandate of this Court, a re-count in the eleven (11) centers including the two (2) centers where the Representative Record of the Counts were withheld. The Clerk of this Court is ordered to inform the National Elections Commission (NEC) accordingly. Costs are to abide the final determination. AND IT HEREBY SO ORDERED.

*Ruling Reversed*

WHEN THIS CASE WAS CALLED, COUSELLOR DAVID N. KATIA APPEARED FOR APPELLANT. COUNSELLORS J. AUGUSTINE TOE AND PETER Y. KERKULA APPEARED FOR NEC. COUNSELLOR BOB B. LAYWHYEE, SR. APPEARED FOR 2<sup>ND</sup> APPELLEE.