

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS SPECIAL SESSION, A.D. 2023

BEFORE HER HONOR: SIE-A-NYENE G. YUOHCHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIEASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABAASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY,SR.....ASSOCIATE JUSTICE

Odesco Tarpeh, Qualified Registered Voter, District #5) Montserrado County, Liberia.....Appellant)	APPEAL
Versus)	
National Elections Commission by and thru Madam) Davidetta Browne Lansanah, Chairperson, National) Elections Commission, Republic of Liberia...1 st Appellee)	
And)	
Mr. Eric Vaye, Representative Aspirant, District #5) Montserrado County, Republic of Liberia....2 nd Appellee)	
<u>GROWING OUT OF THE CASE:</u>)	
Mr. Eric Vaye, Representative Aspirant, District #5) Montserrado County, Republic of Liberia.....Movant)	MOTION TO DISMISS
Versus)	
Odesco Tarpeh, Qualified Registered Voter, District #5) Montserrado County, Liberia.....Respondent)	
<u>GROWING OUT OF THE CASE:</u>)	
Odesco Tarpeh, Qualified Registered Voter, District #5) Montserrado County, Republic of Liberia.....Petitioner)	OBJECTION TO NOMINATION
Versus)	
Mr. Eric Vaye, Representative Aspirant, District #5) Montserrado County, Republic of Liberia....Respondent)	

Heard: September 6, 2023

Decided: September 13, 2023

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The facts as culled from the records in this case are that, on August 21, 2023, the appellant Odesco Tarpeh, a registered voter of Electoral District #5, Montserrado County, filed a letter of complaint to the National Elections Commission (NEC) objecting to the eligibility of the Co-appellee Eric Vaye to contest as representative candidate in Electoral District #5,

Montserrado County. In the complaint, the appellant alleged that Co-appellee Eric Vaye is ineligible to contest because he was convicted for the commission of a felony and was sentenced to a prison term of five (5) years, and that he had not served the prison sentence levied against him.

On August 17, 2023, the Liberia First Movement Party, by and thru its Chairman, Layee Togba, filed a motion to join, praying the NEC to join it as a party in the case because it is qualified and suitable to be an objector to ensure that a convict who has not served his prison term be disallowed from contesting for an elected position in Liberia.

On August 18, 2023, the Co-appellee Eric Vaye filed a motion to dismiss the appellant's complaint on ground that the appellant lacks standing to object to the Co-appellee's candidacy in keeping with the Nomination and Registration Procedures of the NEC (2023). The Co-appellee further stated that the complaint should be dismissed because it was filed beyond the time required to file objection to the inclusion of an aspirant's name on the Provisional Listing of candidates published by the NEC. According to the Co-appellee, the Provisional Listing of candidates was published by the NEC on July 18, 2023, while the complaint was filed on July 21, 2023 outside of the two days required by the Nomination and Registration Procedures of the NEC (2023) for filing objections to names included on the Provisional Listing.

The Hearing Officer of the NEC conducted hearing into the motion to dismiss and the motion to join filed by the Liberia First Movement Party. Thereafter, on August 21, 2023, the Hearing Officer delivered a consolidated ruling in which he granted the motion to dismiss the appellant complaint and denied the motion to join. The Hearing Officer held that the appellant lacks standing and that he filed his complaint beyond the time required for filing objections; that because the filing date of the complaint filed by the appellant controls the case, that means that the motion to join was also belatedly filed, and therefore, dismissible.

The appellant Odesceo Tarpeh excepted to the Hearing Officer's Ruling and announced appeal to the Board of Commissioners of NEC. The counsel for the Liberia First Movement Party did not appeal the decision of the Hearing Officer.

On appeal, the Board of Commissioners of NEC affirmed the ruling of the Hearing Officer, holding that the appellant lacks legal standing to file objection against the Co-appellee and that the complaint was filed beyond the time required for filing objections.

The appellant excepted to the Board of Commissioners of NEC ruling and announced an appeal to this Court for final appellate review.

The main contention of the appellant is that Section 5.9 of the New Elections Law (as amended) confers standing upon him to challenge the inclusion of the Co-appellee Eric Vaye's name on the Provisional Listing of Candidates.

The issue for our determination in this case is, whether the appellant has legal capacity and standing to challenge the candidacy of the Co-appellee Eric Vaye.

This Court has held in numerous of its opinions that for a party to commence and sustain a suit, the party must have legal capacity. *Citizen Solidarity Council v. The Government of Liberia*, Supreme Court Opinion, October Term 2015. The Civil Procedure Law, at Section 11.2, states that a party may by motion pray the dismissal of an action where the complaining party lacks the capacity to bring the action.

This is the fourth time that a case involving a challenge made by a registered voter to the inclusion of an aspirant's name on the NEC's Provisional Listing has come before this Court. In each of the previous three cases, this Court has declined to probe into the merits of the objections made by the registered voters on ground that they lacked legal capacity and standing.

The first two of the cases denying objections by registered voters on ground of lack of legal capacity and standing were decided by this Court on August 31, 2023. In the case, *Alfred C. Sheah, et al. v. Nathaniel F. McGill*, we denied the objection against the candidacy of Nathaniel F. McGill filed by Alfred Sheah, Alex Rogers and other registered voters of Margibi County on ground that they lacked legal capacity and standing in keeping with the Nomination and Registration Procedures of the NEC (2023). In that case, we specifically affirm our holding in the case *NEC v. Siebo* (2017) in which we held that Section 5.9 of the New Elections Law deals exclusively with "voting" and is not applicable in cases of pre-election objections. Also, in the case *Concerned Registered Voters of Sinoe County v. J. Miltion Teahjay*, we again denied the objection made by registered voters to the candidacy of Hon. J. Milton Teahjay on the same ground of lack of legal capacity and standing.

The third case involving legal standing of registered voters to challenge an aspirant's name on the Provisional Listing of NEC was decided on September 6, 2023. In the case *Hussein Seimavula, Registered Voter of Cape Mount v. Madam Bintu Mansaray*, we rejected another registered voter's objection to the candidacy of Madam Bintu Mansaray on ground that he lacked legal capacity and standing in keeping with the Nomination and Registration Procedures of the NEC (2023).

Our holding in each of the referenced cases has been that the National Elections Commission's nomination and regulation procedure named those qualified to challenge nominees whose names appear on the provisional list for the 2023 General and Presidential Elections, which are, a candidate, participating political party, coalition or alliance. Hence, voters, not being among those listed in the Regulation, they lack legal capacity and standing to file objection to the nomination of a candidate.

We uphold the holding of this Court quoted supra, and declare that the appellant Odesco Tarpeh, being a registered voter, lacks legal capacity and standing to challenge the candidacy of the Co-appellee Eric Vaye.

In view of our holding, we are precluded from deciding the merits of the appellant's complaint because he fails to overcome the jurisdictional hurdle of legal capacity and standing to enable us consider the assertions contained in his complaint. (See: *Alfred C. Sheah, et al. v. Nathaniel F. McGill, ibid; The Board of Commissioners of NEC v. Movement for Progressive Change and Ministry of Justice*, Supreme Court Opinion, March Term, 2021).

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the Board of Commissioners confirming the ruling of the Hearing Officers of the NEC dismissing the appellant's objection is hereby affirmed. The Clerk of this Court is ordered to send a mandate to the National Elections Commission to resume jurisdiction over this case and proceed in accordance with this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLOR JIMMY SAAH BOMBO APPEARED FOR THE APPELLANT. COUNSELLOR JAMES BOIPAYE SEEKPEE APPEARED FOR THE APPELLEE. COUNSELLORS M. WILKINS WRIGHT AND PETER Y. KERKULA APPEARED FOR THE NATIONAL ELECTIONS COMMISSION.