

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,
SITTING IN SPECIAL SESSION

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

Siah Jarmie Tandapolie, New Liberia Party, James Marwieh,)
 Emmanuel K. B. Togbah, ALP et al., of the city of Monrovia)
Appellants)

Versus)

Appeal)

Thomas Nimene Tweh Aspirant Representative,)
 District Number (11), Montserrado)
 County LiberiaAppellee)

GROWING OUT OF THE CASE:)

Siah Jarmie Tandapolie, New Liberia Party, James Marwieh,)
 Emmanuel K. B. Togbah, ALP, et al., of the City of Monrovia)
Appellants)

Versus)

Appeal From
BOC, NEC)

Thomas Nimene Tweh Aspirant Representative,)
 District Number (11), Montserrado)
 County LiberiaAppellee)

GROWING OUT OF THE CASE:)

Siah Jamie Tandapolie, New Liberia Party,)
 Representative, Candidate District (11))
 Montserrado CountyComplainant)

And)

James Marwieh Eminent Citizen District 11 Montserrado)
 CountyComplainant)

And)

All Liberian Party (ALP), represented by its National Chairman)
 Theodore Momo Montserrado County..... Complainant)

Versus)

Objection to
Nomination)

Thomas Nimene Tweh representative Aspirant)
 District (11) Montserrado County Defendant)

Heard: August 22, 2023.

Decided: August 31, 2023

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This appeal emanates from the final ruling of the Board of Commissioners (BOC) of the National Elections Commission (NEC), wherein the BOC affirmed the ruling of the Hearing Officers of the NEC and dismissed the appellants' appeal.

The certified records show that on June 19, 2023, co-appellants Siah J. Tandapolie, of the New Liberia Party, Emmanuel K.B. Togba, of the All Liberian Party, and James Marwieh, referring to himself as an eminent citizen of District # 11, filed separate complaints before the NEC, objecting to the nomination and certification of Dr. Thomas Nimene Tweh, the appellee herein, as a provisional candidate vying for the Representative Seat in District # 11, Montserrado County. In summary, the appellants contend in their separate complaints, that the appellee held dual citizenship, Liberian and American which disqualifies him from contesting the representative seat; that in substantiation of the said allegation, the appellants proffered copies of the biometric page of an American Passport and a driver's license of the State of California purportedly belonging to the appellee; that the appellants further alleged that the appellee is not domiciled in District # 11 as he claimed, but rather domiciled in Louisiana, which is situated in District # 1, Montserrado County.

On July 24, 2023, the hearing of the appellants' complaints was commenced before the Hearing Officers. Following the parties' respective representations, the appellee's counsel made a submission requesting the Hearing Officers to dismiss the complaints because the NEC lacked jurisdiction to probe into questions regarding his citizenship.

Following arguments on the appellee's submission to dismiss the complaints, the Hearing Officers reserved ruling thereon and proceeded to hear the complaints. The records further show that given the similarity of the averments contained in the respective complaints, the Hearing Officers ordered the complaints consolidated, and proceeded with the hearing thereof on the merits.

The appellants presented three regular witnesses in persons of Siah Jarmie Tandapolie, Emmanuel Togbah, and McArthur Wisseh Helton, and two rebuttal witnesses in persons of John A. B. McIntosh and E. Francis Woods, whereas the appellee testified *pro se* as his lone witness.

Following the resting of evidence *in toto* by both the appellee and the appellants, the Hearing Officers ruled, firstly denying the appellee's submission to dismiss the appellants' complaints, and thereafter dismissing the complaints on ground that the appellants failed to prove their objections to the appellee's nomination by preponderance of the evidence. The appellants noted exceptions to the final ruling of the Hearing Officers, and announced appeal to the Board of Commissioners (BOC) of the NEC.

While their appeal was pending, the appellants filed a motion for newly discovered evidence before the BOC, to which motion the appellee filed his resistance.

The BOC entertained arguments on both the motion for newly discovered evidence and the appeal, and thereafter ruled denying the motion for newly discovered evidence on ground that the BOC was not the proper forum for the filing of said motion.

As to the main appeal, the BOC held that the Hearing Officers had the opportunity to listen to the arguments of the parties and the testimonies of their respective witnesses; that having observed the demeanor of the witnesses, the Hearing Officers were best situated to determine the credibility of the testimonies proffered by the witnesses. Hence, the BOC affirmed the ruling of the Hearing Officers which denied the complaints on ground that the appellants did not prove their case by preponderance of the evidence. The appellants noted exceptions to the final ruling of the BOC and announced appeal to the Supreme Court.

Thereafter the appellants filed a seven count bill of exceptions for review by this Court. It is trite law that the Supreme Court need not pass upon every issue raised in the bill of exceptions, except those that are germane to the disposition of the case. *Olivia Newton v. Augustus D. Kormah*, Supreme Court Opinion, October Term, A. D. 2022; *Frederick Kromah et al. v. Bea Mountain Mining Company*, Supreme Court Opinion, October Term, A.D. 2022; *CBL v. TRADEVCO*, Supreme Court Opinion October Term 2012; *Rizzo et al v. Metzger et al*, 38 LLR 476 (1997). Accordingly, and upon review of the records, we are of the considered view that three (3) issues are dispositive of this appeal, viz.:

- 1) Whether or not the appellants have legal standing to challenge the candidacy of the appellee?
- 2) Whether or not the NEC lacks jurisdiction to probe into questions regarding dual citizenship?
- 3) Whether the electoral maps of Districts numbers 1 and 11, adduced by the appellants and subsequently confirmed by the Director of the GIS Section at the NEC, proved appellee's eligibility to contest in Electoral District #11?

Before proceeding with our discussion of the issues, we shall review the oral and documentary evidence presented by the parties in substantiation of their respective sides.

As stated earlier, the appellants presented three regular witnesses and two rebuttal witnesses. The first witness testified *inter alia* that she, appellant Tandapolie, is a representative aspirant in District #11; that the appellee bears citizenship of Liberia and the United States of America; that proof of the appellee's American citizenship was provided by the appellee's mother in the form of a copy of the appellee's American Passport as well as copy of his driver's license issued by the State of California, United States of America.

On cross examination the witness confirmed that she obtained copies of the purported American Passport and driver's license of to the appellee from his mother.

The appellants' second witness, co-appellant Emmanuel Togbah testified that he noted a posting on social media wherein copy of the appellee's purported American passport was

displayed; that having observed the appellee's name on the provisional listing published by the NEC, he obtained a copy of said passport from the social media website where same was posted and thereafter he proceeded to file an objection to the nomination of the appellee with the NEC, attaching copy of the purported American Passport.

The appellants' third witness in person of McArthur Wisseh Helton testified that the appellee is his biological brother; that the appellee is an American citizen and possesses an American Passport, a copy of which was sent to him by their biological mother who also resides in the United States of America; that the appellee is domiciled in Louisiana, specifically around the Rockhill Community.

On cross examination and in response to a question as to whether the appellee's place of residence was not situated within District # 11 according to the electoral map published by the NEC, the witness testified that the appellee resides in Louisiana which is situated in District # 1 and not District #11, the area in which the appellee was contesting a legislative seat.

Following the testimony of its final witness, the appellants' counsel requested for the issuance of a writ of subpoena duces tecum to be served on the American Embassy near Monrovia, to testify to the authenticity of the American Passport offered into evidence by the appellants' witnesses. The appellee objected to the issuance of the subpoena and the Hearing Officers sustained the appellee's objection. Thereafter, the appellants rested in toto with the production of evidence.

The appellee testified *pro se*, that he is a resident of God's Grace Community which is situated in District # 11, Montserrado County according to the electoral map published by the NEC, and to prove his assertion, testified to two electoral maps: one map of District # 11 and the other map of District #1; that although he personally took his mother to America, the instruments presented by the appellants' witnesses purporting to be his passport and driver's license are not his; and that he did not send a copy of any passport to his mother as alleged by the appellant's third witness.

On cross examination, the witness was asked to confirm whether the date of birth contained in the purported American Passport was accurate, and he confirmed same to be his date of birth, but maintained that the picture imprinted on the biometric page of the passport was not his.

Having reviewed the testimonies of the witnesses of both the appellants and the appellee, we shall now address the issues in their order of presentment.

As we stated *supra*, at the initial stage of the investigation, the appellants filed three (3) separate objections to the candidacy of the appellee. As a matter of law, we must first determine whether the appellants satisfied the criteria of legal capacity and standing to institute an objection to the candidacy of an aspirant whose name has been published by the NEC. The 2023 General and Presidential Elections Nomination and Registration Procedures stipulates *inter alia* the procedure for challenging the eligibility of a

candidate to contest the 2023 Elections. Appertaining to a challenge of a name published on the provisional list of nominees, the procedure states thus:

"Challenge to Name on the Provisional List

A candidate, participating political party, coalition or alliance may challenge, where applicable, the eligibility of a candidate on the Provisional List. Such a challenge must be in writing (with all relevant documents/evidence attached) and filed with the NEC no later *than two (2) days after the publication of the said Provisional List of Candidates.* [emphasis supplied] The following are grounds for challenge:

That the candidate;

- 1) Has not attained the constitutional age;
- 2) Has not been domiciled in the Electoral District one year prior to October 10, 2023 (for the House of Representatives); or has not been domiciled in the County one year prior to October 10, 2023 (for the Senate);
- 3) Has not been resident in the Republic for ten years immediately prior to October 10, 2023 (for the Presidency & Vice Presidency); or
- 4) Has dual citizenship"

It is worth noting that the Hearing Officers' consolidation of the objections filed by the three (3) objectors was in consonance with the law. The Civil Procedure Law provides that when actions involving common questions of law and facts are pending before a court of record, the court, upon motion or *sua sponte*, may order a joint investigation of any or all of the matters in issue or the consolidation of matters in issue of the actions; and it may make such other orders concerning the proceedings therein as may tend to avoid unnecessary costs and delays. Civil Procedure Law, Rev. Code 1:6.3; *National Port Authority v. The Executive Committee of the six Consolidated Group of Retirees and Compulsory Employees of the National Port Authority*, 39 LLR 244 (1998). Hence, the Hearing Officers were not in error when they consolidated the three (3) complaints.

Notwithstanding the legality of the consolidation of the objections filed by the three (3) objectors, one of whom referred to himself as an "eminent [resident]" of District # 11, it is important to indicate from the onset that the consolidation in no way gives standing to the "eminent resident" or imputes to any "concerned citizen" standing to institute an objection to a candidate on the provisional listing before the NEC, as the latter's regulation quoted *supra* provides that only candidates, political parties and alliances are eligible to challenge the nomination of candidates, which this Court upholds. Therefore, predicated on the NEC Nomination and Registration Procedures that only political parties, alliances, coalition and candidates are competent to challenge nominees on the provisional list of the 2023 General and Presidential Elections, Madam Siah J. Tandanpolie of the New Liberia Party, and Mr. Emmanuel K. B. Togbah of the All Liberian Party both have the standing to challenge the nomination of Dr. Thomas Nimene Tweh. Mr. James Marwieh, a voter having not fall in any of the NEC Regulation, lacks the legal capacity and standing to challenge the nomination of the appellee, and we so hold.

This brings us to the second issue which is, whether or not the NEC lacks jurisdiction to probe into questions regarding dual citizenship? Section 2.9 of the New Elections Law authorizes the NEC to screen candidates vying for elective offices. Moreover, the section of the Nomination and Registration Procedures entitled “*Challenge to Name on the Provisional List*”, which we quoted earlier, states that one of the grounds for challenging the candidacy of an aspirant is that the candidate has dual citizenship.

Furthermore, Article 4, Section 1 of an Act to Amend and Nullify Certain Provisions of the Aliens and Nationality Law, approved on July 22, 2022 and printed into handbill on July 25, 2022 states thus:

"A Liberian citizen who holds the citizenship of another country shall not be eligible for any elective public office while still a citizen of another country. Should such person desire to contest for elective public offices, the person must renounce the citizenship of the other country at least 1(one) year prior to applying to the National Elections Commission to contest for an elective public office and such documentary evidence of such renunciation of citizenship of the other country shall be filed with a circuit court in Liberia and with the National Elections Commission at least one (1) year before application to the National Elections Commission to contest for elective public office."

In consonance with the above quoted provision of the law, the NEC has the authority to probe into whether or not the appellee possessed dual citizenship, and if so, if he had renounced the foreign one, especially given that a copy of his purported passport had been proffered by the appellants as the basis of said allegation. Hearings before the NEC are for the purpose of fact finding on elections related issues, and making determination as to the outcome of said findings within the confines of the law. This Court has held that ‘investigation done by administrative forums for the purpose of ascertaining the authenticity and validity of documents, as in the case of dual citizenship, cannot be equated to the proceedings required to be commenced by the Attorney General/Minister of Justice as provided for under Section 21.50 of the Aliens and Nationality Law of Liberia. *LNBA v.-A.-Ndubuisi-Nwabudike*, Supreme Court Opinion, March Term, 2021.

Section 21.50 of the Aliens and Nationality law provides thus:

“Grounds for revocation.

It shall be the duty of the Attorney General, upon affidavit showing good cause therefor, to institute proceedings for the purpose of revoking and setting aside the order admitting a person to citizenship and cancelling the certificate of naturalization on any of the following grounds...”

Hence, an investigation by NEC is to ascertain as to whether the aspirant denounced the foreign citizenship to meet the eligibility requirements to contest for elective public office in Liberia and not to determine citizenship, given that the law recognizes dual citizenship. Therefore, the NEC being authorized by law to investigate candidates and scrutinize documents proffered by aspirants/candidates seeking to contest an election, an investigation into whether an aspirant/candidate has renounced his or her foreign

nationality cannot be equated to proceedings usurping the functions of the Attorney General/Minister of Justice under Section 21.50 of the Alien and Nationality Law, and we so hold.

As earlier stated, while their appeal was pending, the appellants filed a motion for newly discovered evidence before the BOC. It is evident from the records that the appellants' subsequent motion for newly discovered evidence was intended to introduce into evidence a current American Passport of the appellee.

It is the law that "a motion for newly discovered evidence shall be granted only if the moving party shows to the satisfaction of the court by affidavit that at the time of service of the pleading he did not know and could not have with reasonable diligence, known of the facts as to which such evidence is offered." *Civil Procedure Law Rev. Code 1: 9.11, Morgan v. Republic, Supreme Court Opinion, October Term, 2021.*

Accordingly, the BOC properly dismissed the motion for newly discovered evidence, albeit not on the basis which they premised their ruling, but on the ground that the evidence the appellant sought to introduce did not fall within the realm of newly discovered evidence because the appellants already had knowledge that said evidence existed, and could have uncovered same had they applied diligence in obtaining said evidence, albeit not *via* the issuance of a subpoena directly upon a diplomatic mission as was done by the appellants before the Hearing Officers.

As to the third issue, the records show that the appellee pleaded the electoral maps of District # 11 and District # 1, and testified that he is a resident of "God's Grace Community" in Caldwell; that although the appellee testified that God's Grace Community is within District # 11, he failed to indicate same on the electoral map of District # 11; that the appellants presented two rebuttal witnesses who testified *inter alia* that the appellee is not domiciled in District # 11; indeed that God's Grace Community is not within the territorial boundary of District # 11; and that even the electoral map of District #11 does not indicate that the said community is within the said district.

The appellants' first rebuttal witness, in person of John A. B. McIntosh, Land Commissioner of Barnersville, testified that God Grace Community, which the Appellee stated and testified to be his place of domicile falls outside of the electoral map of District # 11.

The appellants' second rebuttal witness in person of E. Francis Woods, Commissioner of the Township of Caldwell, testified that God's Grace Community is not located in Caldwell but rather in Louisiana, and that Louisiana does not fall within the electoral map of District #11.

The records further show that although the appellee failed to show his community on the electoral map of District # 11, he testified that the said community is located just before an area called "Cassava Hill Community". However, while the electoral map of District # 11 shows the said "Cassava Hill Community", it does not show God's Grace Community as one of the communities within District # 11.

It is also worth noting that the Hearing Officers' ruling failed to address the actual location of God's Grace Community, even though the testimonies offered by the two rebuttal witnesses indicated that the said God's Grace Community is without District # 11. In fact, one of the rebuttal witnesses stated that God's Grace Community is situated in Louisiana, which according to the electoral map, is in District # 1. Notwithstanding this damning testimony regarding the location of his community of residence, the appellee failed to controvert same.

More importantly however, the records show that the Hearing Officers brought in the Director of the Geographic-Information System (GIS) Section within the NEC to confirm whether or not the map pleaded by the appellee was the actual map of the said District. The GIS Director confirmed that the map produced by the appellee was the official map published by the NEC, and that the map showed that God's Grace Community was not mentioned in District # 11. Accordingly, as per the undisputed facts that Candidate Dr. Thomas Nimene Tweh resides in Louisiana, which falls within District # 1, he is ineligible to contest in District # 11. This Court, in the case *National Patriotic Party vs NEC, Supreme Court Opinion, March Term 2006*, giving interpretation to Article 30(b) of the Constitution which opined, that those who represent the people must be one of their kind, domiciled in the same constituencies with them to fully know and appreciate their aspirations; that the owning of properties and payment of taxes thereon without being domiciled in the constituency was not, in itself, sufficient to satisfy the requirement of Article 30(b) of the Constitution. Article 30(a)(b) state thus:

“Citizens of Liberia who meet the following requirements are eligible to become members of the Legislature:

- (a) For the Senate, have attained the age of 30 years and for the House of Representatives, have attained the age of 25 years;
- (b) **Be domiciled in the county or constituency to be represented not less than one year prior to the time of the election and be a tax payer” (OUR EMPHASIS)**

It is clear from the plain language of the constitutional provision referenced above that the requirements for one to be elected to represent a county or constituency he/she must have been domiciled in the constituency /county not less than one year prior to election and be a tax payer. These are conditions precedent to the qualification of individuals who aspire to become legislators. Domicile is defined as where one habitually eats, sleeps and makes one's homes. We find nothing in the records to convince us that Dr. Tweh has met this constitutional standard or requirement.

In the face of this glaring violation of the requirements of the Elections Law regarding the domiciliation clause, as well as the Regulations on Nomination and Registration Procedures of the NEC, specifically the grounds for challenge to the candidacy of an aspirant, the Hearing Officers were in error in ruling that the appellants failed to prove their claim by a preponderance of the evidence. What other evidence could have sufficed to prove that the appellee resided outside of District # 11 other than the official electoral map published by the NEC itself? Hence, it having been established by the Geo-Information Services (GIS) of the NEC that the Appellee, Dr. Thomas Nimene Tweh is not domiciled in Electoral District #11, he is not eligible to contest in said District.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the Board of Commissioners of the NEC which confirmed the ruling of the Hearing Officers, is hereby reversed. The Clerk of this Court is ordered to send a Mandate to the National Elections Commission to resume jurisdiction over this case and give effect to the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors Lafayette B. Gould, Sr. and Henry W. Barkoun appeared for the appellants. Counsellors Oswald Tweh and J. Johnny Momoh appeared for the appellee. Counsellors M. Wilkins Wright and Peter Y. Kerkula appeared for the National Elections Commission (NEC).