

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS OCTOBER TERM, A.D. 2017.

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

Evans V. Koah, Representative Candidate,)
Coalition for Liberia's Progress, District #7,)
Nimba County, R.L..... Appellant)
)
Versus) APPEAL
)
Roger Domah, Representative Candidate)
Unity Party, (UP) also of District #7)
Nimba County , R.L.....1st Appellee)
)
And)
)
The National Elections Commission)
.....2nd Appellee)
)
GROWING OUT OF THE PROCEEDING:)
Evans V. Koah, Representative Candidate,)
Coalition for Liberia's Progress, District #7,)
Nimba County, R.L.....Appellant)
)
Versus)
) APPEAL BEFORE THE
) NEC BOARD OF
) COMMISSIONERS
Roger Domah, Representative Candidate)
Unity Party, (UP) also of District #7)
Nimba County , R.L.....1st Appellee)
)
And)
)
The National Elections Commission)
.....2nd Appellee)
GROWING OUT OF THE CASE:)
)
Evans V. Koah, Representative Candidate,)
Coalition for Liberia's Progress, District #7,)
Nimba County, R.L.....Complainant)
)
Versus) ELECTIONS
) IRREGULARITIES
)
Roger Domah, Representative Candidate)
Unity Party, (UP) also of District #7)
Nimba County , R.L.....1st Defendant)
)
And)
)
The National Elections Commission)
.....2nd Defendant)

HEARD: January 24, 2018

DECIDED: February 9, 2018

MADAM JUSTICE YUOH DELIVED THE OPINION OF THE COURT

This appeal is before the Supreme Court for the second time growing out of an electoral complaint filed by Evans V. Koah, the appellant herein, against Roger Domah, the 1st appellee and the National Elections Commission (NEC), the 2nd appellee.

The first appellate review of this case shows that on October 10, 2017, the 2nd appellee, NEC, conducted Presidential and Representative Elections throughout the Republic of Liberia including District No. 7, Nimba County which comprised twenty-nine (29) voting precincts and eighty-two (82) polling places; that the appellant, Evans V. Koah, and the 1st appellee, Roger Domah, and fifteen (15) other representative candidates contested for the legislative seat of District No. 7, Nimba County, and that after the counting and tallying of the votes cast, the 2nd appellee, the NEC preliminarily declared results from District No. 7, Nimba County stating that the 1st appellee, Roger Domah, was in the lead above the other contestants in that District.

On October 11, 2017, the appellant being dissatisfied with the preliminary results announced by the 2nd appellee, the NEC, filed a complaint in the office of the Magistrate of Elections of the said District No. 7. The complaint of the appellant being three (3) fold states that: (1) electoral irregularities were committed by the 2nd appellee, the NEC, and the 1st appellee, Roger Domah, in that the 2nd appellee, the NEC, closed the polls before the statutory period of 6:00pm in Saclepea which the appellant claimed was his 'stronghold', but allowed the polls to remain opened in other areas of the District he termed to be his opponent Roger Domah's 'stronghold'; that as a result of this action by the 2nd appellee, the NEC, his supporters were denied their rights to vote in his 'stronghold' (Saclepea) while 1st appellee's supporters were given additional time to cast their votes. (2) the appellant stated that the 2nd appellee the NEC's queue controllers improperly managed the voting queue, a factor that he claimed discouraged and deprived his supporters from casting their votes; and (3) that the 1st appellee, Mr. Roger Domah was seen at polling places canvassing by distributing cash to voters that were in the queue and interacting with the NEC's staff. Based upon these allegations the appellant requested the 2nd appellee, the NEC to conduct a rerun of the representative elections in District No. 7, Nimba County. We quote herein below the appellant's complaint of October 11, 2017 in its entirety.

"October 11, 2017

Saclepea City
District #7
Nimba County

Mr. Bledor Flomo
Elections Magistrate
Tappita City
Lower Nimba

Dear Mr. Flomo:

I write to file a protest or objection to the preliminary result of the Representative elections in District #7, Nimba County, based on a number of irregularities in the conduct of the elections in the aforementioned District.

Included amongst the irregularities observed were the denials of many potential supporters of ours to cast their votes by the untimely closure of several polling places in Saclepea (our Stronghold) while allowing polling places in our opponent's stronghold in other parts of the District to be extended by up to three (3) hours in some places.

Also, due to the lack of proper procedures put in place by NEC's personnel at many of the polling places in Saclepea, many of our supporters, particularly elderly ones were made to stand in long line only to be told that they were in the wrong line for the second time. As a consequence of that, many of those supporters got discouraged and abandoned the process.

Thirdly, Mr. Roger Domah was sighted at many polling places engaging in campaign activities by distributing money to voters that were already in the queue during the exercise. Furthermore, Mr. Domah was also sighted entering the voting areas/polling centers and interacting with elections officials and intimidating police officers at the polling center.

In view of the foregone, I am asking the NEC to conduct a rerun of the election in District #7 to enable all voters that were denied the opportunity to participate in the electoral process.

Sincerely yours,

Evan V. Koah
Representative Candidate
District #7, Nimba County
Cell: 0886840268/0770221384"

The third issue raised in the appellant's complaint which this Court sees as being critical, is the allegation by the appellant that the 1st appellee, Roger Domah, was seen at many polling places on election day engaging in campaign activities by distributing money to voters in the queues, and was also seen interacting with the NEC's staff and intimidating police officers at the polling centers. On October 12, 2017, during the Magistrate of Elections pre-trial conference conducted to look into the appellant's complaint, he informed the parties that he had no jurisdiction to investigate the allegation of bribery, and therefore scheduled the hearing for the next day, October 13, 2017, only on the other two issues raised in the complaint, which asserted electoral irregularities and the improper management of the voting queues by the NEC's queues controllers.

This issue of elections bribery is addressed in Chapter 10, Section 10.4 of the New Elections Law. This Court sees it as a critical issue which the NEC has jurisdiction to investigate. However, the records show that not only did the appellant not challenge this refusal of the Magistrate of Elections to delve into the issue of bribery in his bill of exceptions filed before the Board of NEC for review of the Magistrate's ruling, but even in his appeal brought to this Court, the bill of exceptions filed for this Court's review, the appellant did not include therein exceptions on the Magistrate of Elections failure to address this issue. Again, we note from the records that the appellant and his witnesses did not testify to this allegation that the 1st appellee on the elections day distributed money to voters in

the **voting** queues, or testify to the identification of those persons to whom the **money** was distributed.

It is a settled principle of law in our jurisdiction that appellants who are dissatisfied **with** the ruling or findings of lower courts and administrative bodies and who seek **appellate** review of said rulings/findings must set out their complaints clearly and **distinctly** in the bill of exceptions as to what the appellant seeks to reverse. Section 6.5 of the New Elections Law also states that Bill of Exceptions shall state clearly and distinctly the grounds of exceptions of the facts relied upon to reverse the decision of the Commission. The law extant in this jurisdiction is that that issue(s) not included in the bill of exceptions is considered waived. *Benson v. Johnson*, 23LR 290 (1974); *Cooper v. Davis*, 27LLR 310(1978); *The Heirs of the Intestate Estate of the late S.B. Nagbe Jr., v. The Intestate Estate of the late S.B. Nagbe Sr.*, 40LLR, 337, 348(2001); *Universal Printing Press v. Blue Cross Insurance Company*, Supreme Court Opinion, March Term, A.D. 2014; *Bowah v National Elections Commission*, Supreme Court Opinion October Term A.D. 2017. Accordingly, the issue of bribery not having been challenged and made a component of the appellant's bill of exceptions to this Court, same is considered waived and cannot be passed upon by this Court, and we so hold.

Our distinguished Colleague, in his dissent has disagreed with us and advanced a dissenting opinion stating *inter alia* that the appellant's witnesses testified to the issue of bribery and that the Magistrate of Elections and the NEC Board ignored this issue of bribery. Our distinguished colleague has premised this assertion on minutes purportedly prepared and summarized by a Hearing Clerk of District No. 6, lower Nimba County.

It should be firstly noted that the summarized minutes referenced by our distinguished colleague was prepared in District No. 6; and not District No.7, where the alleged bribery occurred; that the minutes comprised allegation and counter allegation of the parties summarized by the Hearing Clerk of District No. 6, Nimba County, Julius Hamilton Gribby; that said summarized allegations are not the testimonies rendered by the appellant's witnesses during the investigation before the Magistrate of Elections in District No.7, Nimba County. The records from the investigation before the Magistrate of Elections, District No.7, Nimba County show that the appellant's witnesses rendered testimony under direct and cross examination and that during these examinations the witnesses did not give any indication that Mr. Roger Domah was involved in bribery.

Further, our Distinguished Colleague, by his dissent, would have this Court violate principles enshrined both in our Constitution and the statutory laws of this jurisdiction, including the very New Elections Law upon which he relies, in taking up an issue which the appealing or complaining party did not place before this Court. He specifically informs us that the appellant raised before the hearing Officer of the NEC the issue of the co-appellee passing out money to voters to vote in his favor. Our Distinguished Colleague correctly states that the Magistrate of Elections ruled that he could not entertain the issue because, the matter was of a criminal nature, and that he lacked the requisite jurisdiction over the allegation. The matter, the Magistrate of Elections said, was properly cognizable before the criminal forum designated by law to handle such allegation of the commission of a crime. We do not dispute that the Magistrate of Elections was in error in ruling that

he lacked jurisdiction over the matter relating to the alleged bribery. The New Elections Law clearly vest in the National Elections Commission the authority to investigate such allegations and to render a decision therein, and that where the accused is found to have engaged in such conduct, to impose any one of a range of penalties outlined by the statute.

But just as the law set out the jurisdiction of the NEC, so also does the law set out the jurisdiction of this Court and the procedure by which this Court acquires jurisdiction of a matter. In order for this Court to entertain any allegation, the law says and this Court has ruled numerous, the party must first have raised the issue in the lower court, must have excepted to the adverse ruling of the lower court, and must have included the issue in the bill of exceptions. Under the Civil and Criminal Procedure Law, also adopted by the New Elections Law, the party must not only raise the issue in the bill of exceptions but he or she must state with particularity the issue, so that the adversary party is not left guessing as to what the issue is and that the Supreme Court does not indulge in the realm of speculation as to what the party intends to present before the Court. In the instant case, we see that the only part of this requirement that the appellant conformed to was to first present the issue before the Magistrate of Elections. The Magistrate of Elections ruled that he lacked the jurisdiction to entertain the matter. The appellant noted no exceptions to the ruling on that issue for review by the Board of Commissioners. He also did not raise the issue before the Board of Commissioners so that the Board could review and pass upon the ruling made by the Magistrate of Elections.

But what is even more disturbing is that nowhere in the bill of exceptions submitted to the Board of Commissioners for its approval and filed with this Court did the appellant make any reference to the ruling made by the Magistrate of Elections that he did not have jurisdiction over the bribery allegation. Yet, and in spite of the fact that this Court has for more than a century and a half opined that it can only decide an issue that is raised before it, as mandated by the Civil Procedure Law, our Colleague would have us violate this rule to accommodate a party simply because the party and his counsel have been so negligent as not to place the issue either before the Board of Commissioners of the NEC or before this Court. The law does not operate on the basis of accommodation or speculation.

Our Colleague believes that that the failure or refusal by the appellant to place the issue in the bill of exceptions and the confirmation by this Court of the long standing rule and law, fully backed by the Constitution, is a "technical application of the law" which he says "defeat the true purpose for which the law has been made. These are not mere bribery allegations which affect the appellant alone as a candidate but the entire citizenry of the electoral district." What our Colleague failed to recognize is that none of the citizens of that District lodged any complaint before the Hearing Officer against the co-appellee in respect of the alleged bribery. It was the appellant who made such allegation before the Magistrate of Elections. This is particularly important because it is the appellant that had a special stake in the results of the elections but who chose not to pursue the issue before the Board of Commissioners or the Supreme Court by inclusion of the issue in his bill of exceptions filed before both forums. This Court is not in the position to sua sponte raise the issue of the jurisdiction of a lower court where the parties have elected not to raise the issue at the several appellate levels; or to take cognizance of the issue, not raised in the bill of exceptions, but for the first time in the brief filed by the appellant. This Court has said that taking cognizant of the issue is not controlled by the briefs filed by the parties but rather by the bill of exceptions and that no party

can include in the brief issues not contained in the bill of exceptions. This is particularly crucial for the appellant who has brought the matter before the Court for review of what he deems were errors made by the lower tribunal. The law does not allow such and we are not prepared to violate the law under any excuse, as our Distinguished Colleague proposes that we do.

Reverting to the narrative of the facts of the appeal, on October 13, 2017, the records show that the appellant and five (5) witnesses in persons of Chris Zeuser, a poll watcher, Stephen Barto, a poll watcher, King Toway, a registered voter Archie Gonyon a registered voter and Nelson Payieh, a registered voter, all testified to the allegations of the polls remaining opened beyond 6pm at his opponent's stronghold, while those within his stronghold were closed early and that his supporters, particularly the elderly abandoned the process of voting having remained in the queues for extended period of time.

On the same day of October 13, 2017, after the parties rested with the production of evidence, the Magistrate of Elections rendered his final ruling dismissing the complaint stating *inter alia*, that the appellant did not prove that Saclepea was his 'stronghold' or that Gbehyi Tengbin is the 'stronghold' of the 1st appellee, Roger Domah, and that the appellant did not prove that those potential voters who were allegedly denied their rights to vote were indeed the appellant's supporters. We herein quote excerpts of the Magistrate of Elections' ruling which reads as follow:

"Issue:

1. Whether or not the Complainant's Prayer to have a Rerun of the entire election in District 7 is attainable given the facts and circumstances of the case?

To properly answer this question, there are some key issues to be considered. Firstly, a registered voter must be a citizen of legal age of maturity, and of sound mental capacity. Therefore, if he or she is deprived, disenfranchised, and or denied the right to vote, there is always a remedy that can be pursued by such individual. Moreover, there is no evidence that the Complainant is in any legal position to file any form of action for and on behalf of the alleged disenfranchised voters. Secondly, it is difficult, if not impossible to conclude that a particular person or a group of individuals are supporters of a particular candidate, especially on Election's Day, after all campaign activities have ceased. Similarly, it is also very impossible to declare a particular locality as a "Stronghold", as that could only be determined following the official pronouncement of final results.

Therefore, given these circumstances, the above stated question "whether or not Complainant's Prayer to have a re-run of the entire election in District No. 7, Lower Nimba County, is attainable given the facts and circumstances of the case," is answered in the negative.

Wherefore in view of the foregoing, the Complainant's Complaint is hereby dismissed. It is hereby ordered.

Signed: _____
J. BledorFlomo

Elections Magistrate, Lower Nimba County/NEC”

The appellant excepted to this ruling of the Magistrate of Elections, and announced appeal to the Board of Commissioners of the NEC to have the said ruling reviewed by the Board. Although the Magistrate of Elections heard and made a final determination into this case he however neglected to sign his final ruling but delegated this duty to the Hearing Officer, who in compliance thereto, signed the ruling on behalf of the Magistrate of Elections but refused to approve the appellant's bill of exceptions; that due to this refusal, the appellant was compelled to travel to Monrovia in pursuit of the Magistrate of Elections to obtain the approval of the bill of exceptions, which duty the Magistrate of Elections performed on October 19, 2017, four (4) days after the statutory period of 48 hours.

At the hearing of the appeal before the Board of Commissioners on November 9, 2017, the appellees made a submission on the records, requesting the Board's dismissal of the appellant's appeal on grounds that the Board lacked jurisdiction over the appeal since the bill of exceptions was filed beyond the statutory period. The appellant resisted this submission stating that the Magistrate of Elections abandoned his post after rendering his ruling and that the Hearing Officer who signed the ruling refused to approve the bill of exceptions.

On December 4, 2017, the Board after listening to arguments on the submission and the resistance thereto rendered its final ruling dismissing the appellant's appeal on ground that it lacked jurisdiction to hear the appeal. The appellant excepted to the final ruling of the Board, announced an appeal therefrom to the Supreme Court, and filed his bill of exceptions which was approved by the Board of Commissioners of the NEC.

On December 14, 2017, the Supreme Court listened to the arguments, *pro et con*, and thereafter reversed the final ruling of the NEC's Board stating *inter alia* that the Magistrate of Elections who heard the complaint should have signed his final ruling and that it was a reversible error for the Hearing Officer to sign the ruling on behalf of the Magistrate of Elections who heard the case and made a determination thereon. The Supreme Court pursuant to its powers of judicial review remanded the case to the Board of Commissioners of the NEC with the mandate that the Magistrate of Elections should enter his ruling and sign same, and that the 48 hours period for the filing of the bill of exceptions should commence as of the signing and delivery of said ruling, thus the conclusion of the first appellate review of this case by the Supreme Court.

In compliance with the mandate of the Supreme Court, the Magistrate of Elections on December 30, 2017, resumed jurisdiction over this case, rendered his final ruling similar to the one quoted earlier in this Opinion, signed and delivered same to the appellant. The appellant excepted to the ruling, announced an appeal to the Board of Commissioners and on January 2, 2018, prepared and filed a second bill of exceptions which was approved by the Magistrate of Elections of District No. 7, Nimba County.

On January 3, 2018, the Board of Commissioners listened to arguments on the merits of the appeal and thereafter on January 9, 2018, rendered its second ruling, denying the appellant's appeal stating among others that the appellant did not prove that Saclepea was his 'stronghold' or that Gbehyi Tengbin is the

'stronghold' of the 1st appellee, Roger Domah; that the appellant did not present evidence to set aside the votes and order a rerun of the entire District No. 7, Nimba County. We herein quote relevant excerpts of the Board's ruling as follow:

"ISSUE PRESENTED

1. Whether the Elections Magistrate erred in denying Appellant's request to call additional witness to prove late opening of polls.
2. Whether Appellant presented evidence to warrant the annulment of the October 10, 2017 representative election results in electoral district #7, Nimba County.

DISCUSSION

In addressing issue #1 as to whether the Elections Magistrate erred in denying Appellant's request to produce additional witnesses to prove late opening of polls, we answer no. Chapter 25, Section 25.4 of the Civil Procedure Law provides that "All evidence must be relevant to the issue; that is, it must have a tendency to establish the truth or falsehood of the allegations."

Appellant alleged in his complaint "That many of his potential supporters were denied the right to vote due to **untimely closure** of the polling places in Complainant's "Stronghold", while polling places on Respondent's "Stronghold" remained open for up to 3 hours beyond the closing time." Appellant, however, alleges in his bill that over 3,500 of the approximately 8,600 registered voters in Saclepea alone did not get the chance to cast their vote. The Board notes that this new allegation was not alleged in the complaint and there is no record that it was testified to during the hearing.

The record here shows that Appellant Koah called three witnesses who said they were registered voters but were denied the right to vote due to untimely closure of the polling places. This allegation was denied by defense witnesses Sam Karyeah and Jeremiah Paybayee, electoral supervisors, in District #7, Lower Nimba County who testified further that any voter who was already in the queues prior to the official closing time of 6:00 p.m. was allowed to vote, in accordance with the regulations of NEC. Certainly, the averments of the complaint and bill of exceptions are different. Appellant did not make any allegation in his complaint about late opening of polls; his allegation concerns "untimely closure" and seeking to call additional witness to testify to late opening of polls is irrelevant as to support appellant's allegation of "untimely closure." Hence, the Magistrate did not err in denying appellant's request to bring additional witness to prove late opening of polling places.

In addressing issue #2 as to whether Appellant presented evidence to warrant the annulment of October 10, 2017 representative election results in electoral district #7, Nimba County, we begin by noting that the Honorable Supreme Court has held that elections results are presumed to be valid, and that a party that challenges an election result has the burden to prove its allegations. For reliance, see: **Management of the Forestry Development Authority (FDA) v. Walters et al**(which held that "it is evidence alone which enables the court, tribunal, or administrative forum to pronounce with certainty the matter in dispute."); **Sando D. Johnson v. National Elections Commission et al**(decided December 16, 2005, which held that one who "challenges an election result must overcome a strong presumption in favor of validity of the election process and results."); **Kuku Dorbor et al v. National Elections Commission**(decided 2012).

In the instant case, Appellant Koah alleged in his complaint essentially that many of his potential supporters were denied the right to vote due to untimely closure of the polling places in Complaint's "Stronghold", while polling places on Respondent's "Stronghold" remained open for up to 3 hours beyond the closing time." In his bill of exceptions, however, Appellant introduces a new allegation by claiming that over 3,500 of approximately 8,600 registered voters in Saclepea alone did not get the chance to cast their vote. Again, apart from this allegation not being in the complaint, the record shows that same was not testified to during the hearing. The record further shows that Appellant Koah called six witnesses, including himself. Appellant Koah testified to the averments in his complaint, and

stated that many of his supporters were denied the right to vote as they were pushed from one place to another, thereby causing them to become discouraged and abandoned the process. He testified further that polling centers in his stronghold were closed untimely at his disadvantage while polling places in his opponent's stronghold remained opened at the advantage of his opponent. On cross examination, when appellant Koah was asked whether he was present at the polling places mentioned in his testimony during direct examination, he answered in the negative and said that his agents provided him with the information.

Appellant's second and third witnesses testified similarly that polling did not commence at the official time (8:00 a.m.) at the places in which they were assigned, and that the polls remained opened up to 10:30 p.m., and that people who arrived after the official closing hour were allowed to vote. Appellant's last three witnesses testified to the effect that they, having been duly registered in possession of valid voter registration cards, were denied by NEC's staff at their different polling places.

For their part, Defendants called two witnesses in persons of Sam Karyeah and Jeremiah Paybayee, both of whom served as electoral supervisors in District #7, Nimba County. In his testimony, witness Karyeah explained that as per official reports received from his presiding officers from the field, polling commenced at the various polling places at 8:00 a.m. and closed at 6:00 p.m. However, those who were already in the queues prior to the official closing time were all allowed to vote, in accordance with the regulations of the NEC. He denied that anyone was ever allowed to enter the queue after 6:00 p.m.

Witness Jeremiah Paybayee testified that polling commenced at 8:00 a.m. and closed at 6:00p.m. He further explained that prior to the formation of the official queues, voters who arrived earlier at a particular precinct formed their own lines. As the results of such, people were displaced. NEC's queue controllers requested the voters to move in their proper queues. Some consented, while others refused on grounds that they had spent long time standing and could not be moved to another queue where they would start from the bottom; and that some potential voters might have become wearied of the long line and abandoned the process.

Taking administrative notice of the records, we observe that 75.32% of the registered voters in district #7, Nimba County voted in the October 10, 2017 representative election, while 75.19% of all registered voters voted nationally in the Presidential and House of Representative elections. Moreover, in keeping with the above cited opinion of the Honorable Supreme Court that one who challenges an election result must overcome a strong presumption in favor of the validity of the result, this Board believes that assuming that a party could show authorization to sue on behalf of a voter who alleges denial of his or her right to vote, the party would still have to present sufficient evidence, whether oral, documentary, or both, that would change the outcome of the election., The record here clearly shows that Appellant Koah did not produce evidence to prove his allegation that many of his potential supporters were denied the right to vote due to untimely closure of the polling places in his "stronghold." Accordingly, we hold that Magistrate did not err in denying Appellant's request for a re-run of the election in electoral district #7, Nimba County.

WHEREFORE AND IN VIEW OF THE FOREGOING, this Board holds that Appellant's appeal is hereby denied and dismissed. The final ruling of the Elections Magistrate in these proceedings is hereby confirmed and affirmed. AND IT IS HEREBY SO ORDERED."

The appellant excepted to this ruling quoted supra, announced an appeal to the Supreme Court and filed a thirteen (13) count bill of exceptions. We observe that although the bill of exceptions is lengthy the counts therein are repetitious and only dealt with the two main allegations of the appellant's complaint of October 11, 2017 which are: (1) the NEC, closed many of the polling places before the

statutory period of 6:00pm in Saclepea which he claimed to be his 'stronghold' while allowing the polls to remain opened in other areas of the District he termed to be his opponent Roger Domah's 'stronghold'; and, (2) that the 2nd appellee the NEC's queue controllers improperly managed the voting queue in many polling places, a factor that he claimed discouraged and deprived his supporters, particularly the elderly and the consequence of which many of his supporters abandoned the process of voting. For a better appreciation of the appellant's thirteen (13) count bill of exceptions quote same herein below the bill of exceptions:

"APPELLANT'S BILL OF EXCEPTIONS

AND NOW COMES APPELLANT and most respectfully prays the Board of Commissioners of the National Elections Commission to approve of his Bill of Exceptions so that the Honorable Supreme Court may review and reverse the many reversible errors that the Board of Commissioners made and showeth as follows:

1. That the National Elections Commission Board of Commissioners erred and made a reversible error when it completely rejected all of Appellant's evidence provided in support of all of the averments and arguments made thereto.
2. Appellant says that the Board of Commissioners committed a reversible error when it disagreed that the Saclepea Community was Appellant's stronghold, just as the Gbehyi Tengbein area is the stronghold of the Appellee, without taking Administrative notice of the outcome of previous elections in which Appellant had participated, including the October 10, 2017 result.
3. That the NEC Board of Commissioners erred and committed reversible error when it ignored the testimonies of witnesses who testified that several hundred persons who were in the queue, specifically within the Saclepea area, were denied opportunity to vote as a result of the untimely closure of the polling places.
4. Appellant further avers that the Board of Commissioners erred and made a reversible error when it ruled that Appellant did not originally complain about the late opening of polling centers, when there is no record that shows that the said averment was ever challenged by Appellee.
5. That the Board of Commissioners erred and made a reversible error when it misconstrued Appellant's revelation of statistical facts, as per record, to mean the introduction of new allegation.
6. That the NEC Board of Commissioners erred and committed a reversible error when it failed to have taken into consideration that it was a denial of Appellant's right when the Magistrate denied him the opportunity to have provided rebuttal witnesses, as provided by our law and practice.
7. That the NEC Board of Commissioners erred and made a reversible error when it failed to consider and accept that in the Saclepea area there were no queue controllers, as a result hundreds of voters who stood in the wrong lines for several hours, had to leave and abandon their desire to vote.
8. The NEC Board of Commissioners erred and made a reversible error when it said in its own ruling that the burden of proof lies with the Accuser, therefore to have denied the Appellant the opportunity to produce evidence in support of his allegations, was a reversible error.
9. Appellant says that the NEC Board of Commissioners erred and made a reversible error when it ruled that Appellant failed to prove several of his averments, including the allegation regarding the number of persons denied the

right to vote, even though the record shows that Appellant's witnesses were rejected by the Elections Magistrate during the hearing of the matter.

10. Appellant further says that the NEC Board of Commissioners committed a reversible error when it considered information provided by his Poll Watchers regarding the untimely closure of polling centers in the Saclepea area as hearsay.
11. That the NEC Board of Commissioners erred and made a reversible error when it disregarded the testimony of Appellee's second witness, Jeremiah Paybayee, who confirmed that many voters abandoned the voting process because, having stood in queues for several hours, they were told to change their queues and begin from the tail of another.
12. Appellant says and avers that the NEC Board of Commissioners erred and committed a reversible error when it ruled that the Electoral Magistrate did not err in denying Appellant's request for a re-run of the election in the centers that were heavily impacted by the irregularities.
13. Appellant says that the NEC Board of Commissioners committed reversible error when it failed to consider Appellant's averment and witnesses testimonies that all Saclepea's Polling Centers were shut down at 6:00 p.m. while hundreds of voters were still in queue and then by contrast, at Appellee's stronghold of Gbehyi Tengbein, voting hours were extended up to 10:30 p.m. when there were no existing queues at the official closing time of 6:00 p.m. It was also further averred that groups of voters were intermittently coming between 6:00 p.m. to 10:30 p.m. and bursting into the Polling Centers and were allowed to vote without any objection from NEC's officials.

WHEREFORE AND IN VIEW OF THE FOREGOING, Appellant most respectfully prays the Board of Commissioners of the National Elections Commission to approve of his Bill of Exceptions so that the Honorable Supreme Court of Liberia can review and correct the many reversible errors that were committed by the Board of Commissioners and to also grant unto Appellant and all further relief that the Honorable Supreme Court may deem just, legal and equitable.

In view of the aforesaid, this Court says that the singular issue for a determination of this appeal is:

- 1) Whether or not the appellant established elections irregularities to warrant his request for a rerun of the representative elections in District No. 7, Nimba County.

In order to address this issue, it is imperative that we first take judicial cognizance of the statistical facts published on the NEC's website which shows that twenty three thousand six hundred eighty-nine (23,689) votes were cast in the twenty-nine (29) voting precincts which includes eighty-two (82) polling places dispersed across the entire District No. 7, Nimba County. Recourse to the appellant's complaint and his evidence adduced show that the appellant seeks to have the entire twenty three thousand six hundred eighty-nine (23,689) votes cast in all twenty-nine voting precincts annulled, on his claim that the NEC's staff irregularly conducted the queues and the polls in Saclepea, his purported 'stronghold' thus, depriving his supporters from voting while at the same time allowing the polls in Gbehyi Tengbein, the alleged 'stronghold' of the 1st appellee to remain opened beyond the statutory period of 6:00pm.

The appellant's testimony on these allegations is as follows:

"On Tuesday, October 10, 2017, while polling was ongoing, I received information from the field through some of my supervisors that Mr. Roger Domah, one of the representative candidates was seen at a polling place in Gbehyi Tengbin interacting with elections officials and intimidating police officers. I was informed that many of my supporters were denied the right to vote in my strong-hold, Sacleapea, due to the untimely closure of the poll, while polling was extended for up to three (3) hours in Mr. Domah's strong-hold town of Gbehyi Tengbin. Additionally, many of my supporters most of whom were elderly people were made to stand in long queues, only to be told that were in the wrong queues, and that they should go and stand at the beginning of different queues. They later began weary and abandoned the process. Therefore, Honorable Magistrate I request that you cancel the results of the election and order a rerun, so as to enable the participation of everyone."

This testimony of the appellant was similar to his five (5) witnesses who did not render any additional evidence that the 1st appellee, Roger Domah was campaigning by distributing cash. Example, the appellant's second witness, Chris Zeuser testified that he was assigned as a poll watcher at Gbehyi Tengbin polling place No. 2, where he observed that the 2nd appellee NEC's staff allowed the polls to remain opened beyond the statutory period of 6:00pm thus permitting supporters of the 1st appellee to vote beyond the said statutory period of 6:00pm. The appellant's third witness, Stephen Barto, testified that he was also assigned as a poll watcher at Gbehyi Tengbin polling place No. 1 where he observed that the 1st appellee, Roger Domah was interacting with the NEC's staff in polling place No. 2. The appellant remaining three (3) witnesses in persons of King Toway, Archie Gonyon and Nelson Payieh testified that they hold valid registration cards but were denied the right to vote in Sacleapea because their names were not found on the Final Registration Roll.

At the conclusion of the appellant's evidence, the appellees produced two of the NEC's Electoral Supervisors, in persons of Sam Kayeh and Jeremiah Paybayee, as its witnesses who testified that the polls in Sacleapea and Gbehyi Tengbin were opened at 8:00am; that at the hour of 6:00pm the queue controllers stood at the back of the queue to prevent additional persons from entering the queue and that only those who were in the queue before 6:00pm were permitted to vote after the hour of 6:00pm. These testimonies by staff of the NEC were never rebutted by the appellant or his witnesses. In fact, the appellant's own witness, Nelson Payieh, during direct examination testified that he abandoned the queue after standing for an extended period of time; that he returned later in the evening to vote but was informed by the NEC staff [queue controller] that he was late and was not allowed to vote. On cross examination, Witness Payieh testified that he did not remember the time he returned to the polling place to cast his vote, and was unaware of the law that the polls are officially closed at 6:00pm and that anyone coming after that time is not allowed to join the queue to vote.

We opine here, that this political concept of a candidate claiming 'stronghold' over a particular election geographical locale, finds no legal basis in judicial proceedings as same is completely doubtful, uncertain and speculative in that only the electorates via their valid votes cast can determine whether or not a candidate is widely influential within a particular locale; and this conclusion of ours is supported by the precedent espoused in the case *Liberia Reconstruction Party v. National Elections Commission*, Supreme Court Opinion, October Term A.D. 2011. The facts in this case show that the appellant challenged the elections result in her complaint stating *inter alia* that she had more supporters then her opponent and that her votes were rigged in favor of her opponent. The appellant in an attempt to prove the allegations in her complaint at the level of Hearing Officer of

the NEC produced a witness, one James Bimba from Suba Town, Paynesville who testified that the appellant has an enormous supporters in Suba Town, Paynesville; that his household comprising of eight (8) registered voters collectively agreed to vote for the appellant but, after the elections the results from Suba Town, Paynesville revealed that the appellant only received three (3) votes instead of eight (8) thus the allegation of the rigging of the appellant's votes. At the conclusion of the investigation the Hearing Officer dismissed the appellant's complaint for lack of sufficient evidence which decision was also confirmed by the NEC's Board of Commissioners. On appeal before the Supreme Court, the Court denied the appellant's appeal holding *inter alia* that the testimony of witness James Bimba relating to the appellant's enormous supporters within Suba Town, Paynesville and other parts of the country was too doubtful and uncertain since the voting process is by secret ballot. The Court in rejecting the testimony of witness James Bimba and his household of eight (8) registered voters that agreed to support the appellant held as follow:

“...this aspect of his [James Bimba] testimony cannot stand to substantiate that the appellant's votes were rigged. It could be that there was no agreement amongst the members of the Bimba household that all of them would vote for the appellant. It could also be that they all agreed to vote for the appellant but some of them later changed their minds. Since voting in the elections was privately done through secret ballot, one cannot say, with certainty that a voter voted for a particular candidate. It is only the voter who knows for whom he/she voted; and since the other members of the Bimba household did not testify to say how they voted, witness James Bimba's testimony leaves a serious doubt and is overruled.”

Applying the principles in the *Liberia Reconstruction Party case*, we hold that the allegations by the appellant that voters in a certain locale were his supporters is speculative and uncertain as voting in elections within our jurisdiction is done by secret ballot, therefore no one can say with certainty that a voter or voters in a certain locale voted for a particular candidate. Moreover, this Court will not delve into speculations and uncertainties regarding political strongholds and as such this contention of the appellant is overruled in its entirety. *Levin v. Juvico Supermarket* 24LLR 187, 194 (1975); *The Heirs of the Late Jesse R. Cooper v. The Augustus W. Cooper Estate* 39LLR 750, 757(1999); *Knuckles v. TRADEVCO* 40LLR 511 525(2001); *Reynolds v. Garfuah* 41LLR 362, 371 (2003).

Further, we observed from the records that the appellant and his five (5) witnesses failed and neglected to provide any compelling reasons in terms of proof of the alleged irregularities at a particular polling place or number of polling places in Saclepea and Gbehyi Tengbein to persuade this Court to order a rerun of the entire elections in District No. 7, Nimba County. The Supreme Court has held that “*to state a cause of action for affirmative relief in an election contest the pleading must do more than merely state generalities of presumptions and that the appellant is required to establish a prima facie case of alleged irregularities. The Supreme Court usually use the concept of prima facie case in the sense of a complainant producing evidence sufficient to render a reasonable conclusion in favor of the complainant's allegations he asserts and that the evidence is so compelling to allow the court reach a conclusion in favor of the complainant*”

The principle of law governing an election contest in Liberia is that the Judiciary should exercise restraint in interfering with the elective process. The Supreme Court has held that

“the power to throw out an entire election results of a district must be exercised very sparingly and with the idea in mind that neither an individual voter nor a group of voters is to be disenfranchised at elections except for compelling reasons.” *Congress for Democratic Change v. National Elections Commission*, Supreme Court Opinion, October, Term A.D. 2011; *Dr. Tokpa v. National Elections Commission*, Supreme Court Opinion March Term A.D. 2015.

Given the fact that the appellant’s evidence have not established a prima facie case it is our holding that the appellant did not prove his allegations of elections irregularities to have this Court declare the entire twenty three thousand six hundred eighty-nine (23,689) votes cast in the twenty-nine (29) voting precincts, District No. 7, Nimba County null and void and order that the NEC conduct a rerun of the representative elections in said district.

WHEREFORE, and in view of the foregoing, it is the holding of this Court that the appellant’s appeal should be and same is hereby denied. 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 this Judgment. And it is so ordered.

Appeal Denied.

Counsellor Cooper W. Kruah of the Henries Law Firm appeared for the appellant. Counsellors Joseph N. Blidi, F. Musah Dean and C. Alexander B. Zoe appeared for the co-appellee National Elections Commission (NEC). Counsellor S. Lofen Kanneh Jr., appeared for the co-appellee Roger Domah.