

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
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. WOLOKOLIEASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A.Z. BANKS IIIASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH ASSOCIATE JUSTICE

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| Hon. Evans V. Koah, Rep. Candidate, District #7 |) | |
| Lower Nimba County..... |) | |
| |) | |
| Versus |) | APPEAL |
| |) | MOTION TO DISMISS |
| The National Elections Commission (NEC) |) | |
|1 st APPELLEE |) | |
| |) | |
| AND |) | |
| |) | |
| Hon. Roger Domah (UP), District #7 |) | |
|2 nd APPELLEE |) | |

GROWING OUT OF THE CASE:

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|---|---|----------------|
| Hon. Evans V. Koah, Rep. Candidate, District #7 |) | |
| Lower Nimba County..... |) | |
| |) | |
| Versus |) | ELECTION |
| |) | IRREGULARITIES |
| Roger Domah (UP), Representative Candidate |) | |
| Candidate, District #7, Nimba County |) | |
|DEFENDANT |) | |

HEARD: December 14, 2017

DECIDED: December 20, 2017

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This appeal emanates from the final ruling of the Board of Commissioners of the National Elections Commission, dismissing the appellant's appeal on grounds that the appellant failed to perfect his appeal within the time period provided by Section 5.12 of the New Elections Law of Liberia and Section 12.1 of the National Elections Hearing Procedure Regulations. The provisions pursuant to which the Board of Commissioners of the NEC dismissed appellant's appeal are quoted as follows:

Section 5.12(4) of the New Elections Law reads:

"A decision by the Magistrate may be appealed to the Commission within forty (48) hours after the posting of the decision by the Magistrate."

Section 12.1 of the NEC Elections Hearing Procedure Regulation also reads in part:

"A party not satisfied with the decision of the Magistrate shall have the right to appeal to the Board of Commissioners no later than forty eight (48) hours after the decision is rendered. A bill of exceptions approved by the Magistrate shall be filed with the Board of Commissioners before the end of the forty eight hours period....."

Having noted the basis upon which the Board of Commissioners dismissed the appeal taken to it by the appellant, let us recap the facts that led to the appeal to the Board.

On October 10, 2017, the National Elections Commission (NEC) conducted Presidential and Legislative Elections throughout Liberia as mandated by the Article 83 (a) of the Constitution of Liberia. Appellant contested the representative seat for District #7 in Nimba County, along with fifteen (15) other candidates, including the 2nd Appellee Roger Domah. 2nd appellee, Roger Domah, was announced by the NEC as the candidate with the highest vote following the election conducted in the District. The appellant, as per the quoted Elections Law and the NEC Hearing Procedure Regulation above, filed on October 11, 2017 a complaint with the Magistrates of Elections of that District, Mr. J. Bleedor Flomo, alleging that a number of irregularities and fraud occurred during the voting, and calling for a rerun of the election of the entire District.

On October 12, 2017, a day after the filing of the complaint, the Magistrate of Elections conducted a hearing thereon, and on October 13, 2017, entered a final ruling dismissing the appellant's complaint. Exceptions to the ruling was noted by the appellant and an appeal announced therefrom to the Board of Commissioners of the NEC. However, the records show that although the appellant received the ruling on October 14, 2017, his bill of exceptions was approved by the Magistrate of Elections who presided over the hearing of the complaint on October 19, 2017, and filed with the Board of Commissioners the next day, October 20, 2017.

The appellants contention as contained in his bill of exceptions for review before this Court is that the late filing of his bill of exceptions before the Board of Commissioners of NEC was due to no fault of his; that he filed his complaint as per the NEC's Regulation which was heard by the Magistrate of Elections in Tappita on Friday October 13, 2017; that a copy of the

Magistrate's ruling was signed by the Hearing Officer of the NEC, rather than the Magistrate of Elections who heard the case and said ruling delivered to him on Saturday, October 14, 2017; that consistent with computation of time under the Civil Procedure Law, Section 1.7 (a), the forty eight (48) hours to perfect the appeal from the Magistrate of Elections decision, as required by the Elections Law and Regulations, started to toll on Monday, October 16, 2017, and ended on Tuesday, October 17, 2017. The appellant alleged that he went to Tappita on October 16, 2017, where the Magistrate of Elections resided for the approval of the bill of exceptions but that the said Magistrate was absent. He alleged that he was told that the Magistrate had traveled to Monrovia. The appellant said he then asked the Hearing Officer who had signed the Magistrate of Elections' ruling to approve the bill of exceptions on Magistrate behalf, but that the Hearing Officer refused, stating that the Magistrates of Elections had asked him only to sign his ruling but did not give him the authority to approve the bill of exceptions.

The appellant alleged further that he made frantic efforts to find the Magistrate, including calling him on the phone to ascertain his whereabouts and that the Magistrate confirmed that he was on his way to Monrovia. Being cognizant of the deadline for perfecting the appeal as per the elections regulation, the appellant said, he immediately pursued the Magistrate to Monrovia in an effort to get him to approve the bill of exceptions. However, he stated that all efforts to locate the Magistrate in Monrovia failed as the Magistrate subsequently refused to answer the appellant's call. The appellant then got Counsellor Stanley S. Kparklain to call the Magistrate on October 19, 2017, to find out where he could be reached for the approval of the bill of exceptions. The appellant explained that it was only because the telephone number used was other than the appellant's number, that the Magistrate answered the call, and, when asked where he was, he answered that he was in Saclepea. The appellant said he immediately scanned the bill of exceptions and sent it to a friend in the vicinity who immediately took it to the Magistrate for his approval. The Magistrate in approving the bill of exceptions then placed the date of October 19, 2017, as the date of approval. Immediately thereafter, on October 20, 2017, the bill of exceptions was brought to Monrovia and filed with the NEC's Board of Commissioners, Thus, the filing was three days/seventy-two hours from the date the statute tolled.

At the call of the case for hearing by the Board of Commissioners of the NEC, on November 9, 2017, Counsel for the 2nd appellee, Roger Domah,

moved the Board to dismiss the appeal for lack of compliance with the NEC Elections Hearing Procedure Regulation. The Board granted the 2nd appellee's motion to dismiss, ruling that the appellant had filed his bill of exceptions outside the period provided by the Elections Law and Regulations. Thus, this appeal by the appellant who excepted to the Board's ruling, filing with it a bill of exceptions to be reviewed by this Court.

In view of the facts and circumstances, we shall determine whether the dismissal of the appellant's appeal by the Board of Commissioners of the NEC was proper.

The records certified by the NEC and forwarded to this Court reveal that the matter was called for hearing by the Board on November 9, 2017. At the November 9, 2017 hearing of the Board, the appellant resisted the 2nd appellee's motion to dismiss, giving the reasons stated above. Following the spreading of the appellant's resistance to the motion, and argument held thereafter, the matter was suspended by the Board who noted that in the interest of justice it would hear from the Magistrate who presided over the complaint before deciding the matter. On November 18, 2017, the case was again called with the Magistrate, J. Bleedor Flomo, present to provide clarification on the appellant's allegation. Magistrate Flomo denied receiving calls from the appellant regarding the signing of his bill of exceptions, but asserted that he authorized the Hearing Officer, one Azzonto, to sign his ruling. The Board of Commissioners of the NEC, based upon the Magistrate's denial, granted the 2nd appellee Roger Domah's motion to dismiss and denied the appellant's appeal.

The appellant's main contention and for which the Magistrate of Elections was cited by the Board of Commissioner was that the Magistrate after the hearing of the appellant's complaint left the county and could not be found to approve the appellant's bill of exceptions. However, we see no expressed statement in the minutes that the Magistrate addressed this contention. Notwithstanding, this Court can infer that the Magistrate indeed left his assigned jurisdiction since he did not sign his own ruling, admitting that he authorized the Hearing Officer to sign it on his behalf. If the Magistrate was at his assigned election station, why then did he have to designate the Hearing officer to sign the ruling?

During the argument before this Court, the Counsel for 2nd appellee did admit that the Magistrate left his assigned jurisdiction and came to Monrovia the day he rendered the ruling, October 13, 2017; that he left his ruling to be typed and further authorized the Hearing Officer to sign the ruling.

The Court views the facts and circumstances in this case as analogous to the case *Harris v. Cavalla Rubber Corporation*, decided by the Supreme Court during its March Term, A.D. 2012. In the Harris case, the appellee/movant Polo Harris moved the Supreme Court to dismiss the appellant/respondent, Cavalla Rubber Corporation, appeal. The movant contended that the respondent had filed its bill of exceptions within the statutory time, but had failed to file its appeal bond and notice of completion of appeal within the statutory period of sixty (60) days. The respondent resisted the motion on the ground that its failure to perfect the appeal in sixty days was due to no fault of respondent, as the judge who had to approve the appeal bond traveled out of the circuit for the Christmas holiday and was not in his assigned circuit for the approval of the appeal bond. The judge's absence, the respondent alleged, led to the delay of the approval of the appeal bond and the late filing of the notice of completion of appeal, and that this fault ought not to attach to it. The movant did not deny the absence of the trial judge from the circuit, but shifted the burden to the respondent whom he said had the responsibility to go about to locate the judge wherever he was.

In denying the movant's motion to dismiss in the Harris' case, the Supreme Court held that though it has often opined that a party who takes an appeal has the duty to superintend his appeal, this however, cannot be so unreasonable as to require an appealing party to chase a judge around the country to sign an appeal bond; absence of a judge from his assigned circuit should not work hardship on an appealing party. The Court further opined that it has granted extension of time for filing of late appeal based on good cause; that is, a legally sufficient reasons for non-compliance with the statute on appeal or a failure which the law may excuse in the case where the appealing party fails to take proper step at the proper time, not because of the party's own carelessness or willful disregard of the law but because of some unexpected or unavoidable hindrance.

Just as in the Polo Harris case *supra*, the reason for the appellant's inability to file his bill of exceptions with the Board of Commissioners within the 48 hour prescribed by law can in no way be ascribed to the appellant's negligence or failure to act. The Board of Commissioners should have therefore taken into account the undisputed circumstances for the late filing of the appellant's appeal and considered the extension of the appellant's late filing of his bill of exceptions, denying the 2nd appellee's motion to dismiss in the interest of justice and fairness. To characterize the act of the appellant as negligent or delinquent in respect of his late appeal, there ought to be

shown that there was no impediment to the appellant's compliance with the NEC's Regulation, since to do otherwise, would work unnecessary hardship on him who may have a properly legal reasons for a review of the Magistrate of Elections' ruling. In this case, the Magistrate having left his jurisdiction and was not present to approve the bill of exceptions, a step required by the Elections Law and the NEC Regulations for the filing of the appeal with the NEC Board of Commissioners, the fault ought not to attach to the appellant. We therefore hold that Board of Commissioners committed a reversible error.

Further, in this case, the appellant argued, and the Court sees in the minutes of the November 18, 2017, Magistrate J. Bleedor Flomo admission that he did not sign the ruling, that it was the Hearing Officer who, though did not preside over the hearing of the appellant's complaint, was authorized by the Magistrate to sign the complaint. This act of the NEC Magistrate is contrary to several of the Supreme Court Opinions, which holds that "he who hears must decide"; *LAMCO v. Kashami and Board of General Appeals*, 35 LLR 181, 187 (1988); *Chambers v. NEC et al*, Supreme Court Opinion, A.D. 2015; *LAMCO J.V. Operating Co. v. Kashani, et al.*, 35 LLR 524,525(1988); *Keita v. Keita*, Supreme Court Opinion, March Term, A.D.2016.

In the case *Chambers v. NEC et al*, supra, the appellant, Bhofal Chambers, raised similar concern, contending that during the hearing of his appeal before the NEC Board of Commissioners, the Chairman was absent and only four (4) Commissioners sat for the hearing. However, the NEC's final ruling was signed by the Chairman along with the four Commissioners that sat. The Court, having confirmed the truthfulness of this allegation, besides holding that the NEC's ruling was null and void based on the jurisdictional issue of quorum and the absence of the NEC's Chairman from the hearing which was in violation of Section 2.4 of the New Elections Law that requires at least five (5) members including the Chairman to constitute a quorum for hearing of an election appeal, the absented Chairman could not have signed a ruling of a hearing on which he did not sit and participate in. Referring to the *LAMCO* case supra, the Court held that the signing of the ruling by a member of the Board who did not participate in the hearing was contrary to law since one who makes a decision must be the one who heard the controversy; only he who hears must decide.

Though the appellees argued before us that the Magistrate prepared the ruling and left it to be typed and signed by the Hearing Officer, it does not

matter since it is a settled law that the signatory to a ruling should be one who presided or sat on the hearing of the complaint. The Hearing Officer not having sat to hear the complaint, his signing of the ruling made said ruling null and void and of no legal effect; and the NEC should have voided the ruling and remanded it to conform to the law. The Board of Commissioner of the NEC not having done so, it was again in error to have granted the motion to dismiss the appellants appeal on a ruling that was void.

In the instant case, the Magistrate of Elections, having heard the complaint, subject of this case, should have signed the ruling, signifying that indeed he made the decision. Such a responsibility should not have been delegated to the Hearing Officer who did not hear the case. Hence, the Hearing Officer not having sat and heard the complaint, his signing and issuing of the ruling on behalf of the Magistrate of Elections renders said ruling null and void and of no legal effect. Therefore, the ruling of the Board of Commissioners of the NEC is hereby reversed. The case is remanded with instructions that the Magistrate of Elections who heard the complaint should enter a ruling thereon. The 48 hours period for perfecting the appellant's appeal with the Board of Commissioners NEC, shall take effect as of the signing and delivery of the ruling of the Magistrate of Elections.

The Clerk is ordered to send a mandate to the National Elections Commission, forwarding to it our ruling on this matter. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR COOPER W. KRAUH, SR., OF THE HENRIES LAW FIRM APPEARED FOR THE APPELLANT. COUNSELLOR JOSEPH N. BLIDI, IN-HOUSE COUNSEL OF THE NATIONAL ELECTIONS COMMISSION (NEC), AND COUNSELLORS F. MUSAH DEAN AND C. ALEXANDER B. ZOE APPEARED FOR THE 1ST APPELLEE. COUNSELLOR S.L. LOFEN KENEAH APPEARED FOR THE 2ND APPELLEE.