

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'NEH .....ASSOCIATE JUSTICE  
BEFORE HER HONOR: JAMESSETTA H. WOLOKOLIE .....ASSOCIATE JUSTICE  
BEFORE HIS HONOR: PHILIP A.Z. BANKS III .....ASSOCIATE JUSTICE  
BEFORE HER HONOR: SIE-A-NYENE G. YUOH .....ASSOCIATE JUSTICE

Saye Mianah, Representative Candidate )  
District #8, Nimba County.....APPELLANT )

VERSUS )

BILL OF EXCEPTIONS

National Election Commission.....1<sup>st</sup> APPELLEE )

AND )

Larry P. Younquoi.....2<sup>nd</sup> APPELLEE )

**GROWING OUT OF THE CASE:** )

The National Elections Commission )  
(NEC).....1<sup>st</sup> APPELLANT )

AND )

) Appeal to the Board of  
) Commissioner of NEC

Larry P. Younquoi, Rep. Candidate, District )  
#8.....2<sup>nd</sup> APPELLANT )

VERSUS )

Saye Mianah, Representative Candidate, District #8, )  
Nimba County.....1<sup>st</sup> APPELLEE )

**GROWING OUT OF THE CASE:** )

Saye Mianah, Representative Candidate, District )  
#8, Nimba County.....COMPLAINANT )

VERSUS )

The National Elections Commission )  
(NEC).....1<sup>st</sup> DEFENDANT )

AND )

) ACTION:  
) CHALLENGE TO RE-  
) COUNT

Larry P. Younquoi, Rep. Candidate, District )  
#8.....2<sup>nd</sup> DEFENDANT )

HEARD: January 9, 2018

DECIDED: January 19, 2017

**MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT:**

The Constitution of Liberia, at Article 1, carves a picture that captures the core principles of our democracy, the form of government that this Republic espouses. The Article vests solely in the people the authority to institute the government, the right to direct the government to work in their best interest, the right to institute reform in and/or change the government as the people deem necessary, and the right to, from time to time, and as part

of that reform elect a new core of officials who will serve and promote the best interest and wellbeing of the people.

In furtherance of the Article 1 provision, the Constitution, in other latter Articles, prescribes the basic mechanisms and guidelines that must be met in order to ensure that the right granted the people to choose individuals who will govern them is exercised and unhindered. One of such mechanisms which the Constitution has put into place for the exercise of the Article 1 right is the right of citizens to vote for persons seen fit to represent them and their interests. These latter Articles also set out the process and procedure for casting of votes by citizens. The procedure process and mechanism associated with the right to vote are found in Chapter 7 of the Constitution which contains eight (8) Articles, Articles 77-84.

We note, even more specifically, that the Constitution, at Article 77(b), gives to the National Elections Commission, established under Article 88 of that revered document, the authority to conduct public elections in the Republic, outlined throughout Articles 77-84, pursuant to which those elected by the people will be placed in leadership of the Country. Further, the Legislature, being clothed under Articles 34(i), 82 and 84 of the Constitution to enact elections law to achieve the goals of the mentioned Articles, enacted the New Elections Law which set forth additional detailed duties and responsibilities of the Elections Commission, now known as the National Elections Commission (NEC), inclusive of safeguards laid down in the Constitution. Article 2.9 of the New Elections Law is one of such Articles that enumerates and details the list of duties and responsibilities of the NEC.

At sub-section (h) of the mentioned Article, the NEC is empowered to formulate and enforce guidelines, consistent with the Constitution and Elections Law, controlling the conduct of all elections for elective public offices. It is pursuant to that authority that the NEC has from time to time promulgated series of guidelines and regulations to govern pre-elections, elections and post elections activities. One of such regulations was a resolution adopted by the NEC in 2005, the provisions of which govern and is core to the determination of the instant case before this Court. Said 2005 Resolution reads in part:

**Automatic Recount of Votes and Drawing of Lots**

"The following procedure shall applied (a) to determine when a recount of votes must be held and (b) to determine who is elected to any office, where the number of valid votes cast received by those candidates who receive the highest number of votes falls within the range specified below or (c) to establish who has been elected to

office, in the event candidate contesting for the same office receive an equal number of valid votes cast, resulting in a tie.

*House of Representative Candidates:* Recounts shall automatically be held, in the case of candidates for the House of Representatives, where the difference between the two candidates in the same district who received the greatest total number of valid votes cast is fifty (50) or less.

Recounts shall be conducted by Electoral Magistrates at their respective County Tally Centers, once it has been established that any of the conditions requiring a recount of votes pertain."

In the case before us, the facts reveal that on November 15, 2017, the appellant, Mr. Saye S. Mianah, one of the ten candidates who contested the Representative Seat of District #8, Nimba County, during the 2017 Presidential and Representative Elections, filed a complaint with the Board of the NEC stating that a recount was carried out by one Mr. Daniel Gegbeson of the NEC who is not an Electoral Magistrate; that said recount was null and void as it was inconsistent with Article 83 (b) of the Liberian Constitution and the Supreme Court's Ruling in the case LINU, *Sherman and Cherue vs. NEC*, (2011); and in which case the Supreme Court upheld the application of the Simple Majority System in all non-presidential and vice presidential elections. The appellant asserted that following the closure of elections on October 10, 2017, the ballots were counted and he acquired nineteen (19) votes higher than his closest rival, the incumbent representative, Hon. Larry P. Younquoi; that the Co-appellee Younquoi and all the other contenders accepted the credibility of the process, conceded by congratulating him, and voluntarily signed the tally records without any form of complaint against the said outcome. However, the appellant asserts, twenty days later, the NEC unilaterally invoked the afore quoted 2005 Board of Commissioners Resolution and proceeded to conduct an automatic recount, on grounds that the difference between him and Honorable Younquoi, 2<sup>nd</sup> appellee, was less than fifty (50) votes. Assuming, the appellant said, that the re-count was based on or was supported by a Resolution of the NEC which says that when the difference between the top two contenders is fifty (50) or less, there must be an automatic re-count, the only Resolution of the NEC which makes reference to automatic recount in a representative election is that which was adopted in 2005 to address a situation involving a close election, or a tie in votes, for the purpose of the October 11, 2005 Presidential and General elections. The appellant contends that the quoted Resolution was adopted specifically for the 2005 Presidential and General Elections, and does not apply to the recent elections of 2017; that

assuming however, that the Resolution was in vogue, the application of this Resolution to the 2017 elections contravenes Article 83(b) of the Constitution of Liberia which was amended in 2011. Thus, said application by the NEC was unconstitutional and void.

The appellant further contends that contrary to the provision of the 2005 Resolution which requires that recount shall be conducted by *Electoral Magistrate* at their respective Official Tallying Centers, the recount conducted in his District, District # 8, Nimba County, was by a special team from NEC's Monrovia Office with no evidence of the participation and knowledge of the assigned Electoral Magistrate of the County. Besides, the NEC in August 2016, approved and subsequently published a compilation of Regulations to govern the 2017 elections, and a review of the document has shown no mention of anything regarding automatic recount for legislative ballots, specifically where there is no complaint from any of the candidates against a result. The decision by the NEC therefore to conduct a recount was unsupported by any standing resolution, Regulation, or standing law whatsoever, and which, the appellant said, made the entire recount exercise grossly illegal and subject to nullification.

The NEC, upon receipt of the appellant's complaint, referred the matter to its Hearing Officer, Counsellor John Wonsehleay, who conducted a hearing thereon.

The NEC Hearing Officer, having listened to the testimonies of the parties and considered the contentions raised by the appellant, held that the compilation of Regulations approved and published on August 22, 2016, and the New Elections Law as enacted, are the legitimate and appropriate legal framework to guide all elections in Liberia; that the NEC Board's Resolution of 2005 was adopted for the purposes of October 11, 2005 Presidential and General elections, and was carried out under the absolute majority system which is not a legally appropriate instrument upon which to base one's legal authority for the purposes of the 2017 Presidential and Representative Elections under the present amendment to the constitution creating the rule for determination of election under the simple majority rule for all public offices except for president and vice president; that the Electoral Magistrates having followed the regular statutory and constitutional procedures promulgated by the NEC to guide all elections, the legitimate results of the October 10, 2017 Representatives election in Electoral District #8 in Nimba County which gave the appellant, Mr. Saye Mianah, the lead over his closest rival, Mr. Larry P. Younquoi, by 19 votes, be restored and upheld.

The Hearing Officer further held that in consequence of the irregular and illegitimate authority upon which the November 1-4, 2017 automatic recount was ordered and the processes leading thereto, the recount result was void and should be set aside for lack of the appropriate and legitimate regulatory framework for the management and conduct of said election, adding that good faith compliance with regulatory and statutory requirements in any election is a defence on the merits.

The 2<sup>nd</sup> appellee, Hon. Larry Younquoi, excepted to the ruling of the Hearing Officer and filed an appeal before the NEC Board of Commissioners. Upon hearing of the appeal, the Board ruled overturning the Hearing Officer's ruling. The Board held that the recount based on a margin of 50 or less votes between the two highest votes did not violate Article 83(b) of the Liberian Constitution; that nowhere in Article 83(b) is there any prohibition on conducting a recount; that by the NEC ordering and conducting an automatic recount, this did not in any way mean that a candidate cannot defeat his or her opponent(s) by as low as one vote; and that the election recount by the NEC in this case is simply a repeat of tabulation of the votes cast to determine the correctness of an initial count.

From this ruling of the Board of Commissioners, appellant Mianah took exceptions and filed a bill of exceptions with the Supreme Court of Liberia, which reads verbatim as follows:

#### **APPELLANT'S BILL OF EXCEPTIONS**

AND NOW COMES APPELLANT and most respectfully prays this Board to approve this Appellant Bill of Exceptions so that the Honourable the Supreme Court can review and correct the many reversible errors that were made in your ruling in the above entitled cause of action.

1. That, the Board erred and made a reversible error because the Board concluded, contrary to the records, that the Electoral Magistrate fully participated in the re-count exercise where in fact the Assistant Electoral Magistrate, under Oath, told the investigation that he was made a mere "Reader", while the Magistrate told the Hearing that the recount was conducted by the team from NEC that he would come in and out only to see whether the process was still ongoing.
2. That, the Board erred and made a reversible error because the Board failed to have taken into account that the NEC Board 2005 resolution mandatorily required that re-count be conducted by Electoral Magistrate and at the tally Center of the Electoral District.

3. That the Board erred and made a reversible error in that the Board failed to have taken into account the testimony of the Electoral Magistrate when he told the hearing that where all the records from the polling places were received, they were re-counted before importing the data in the computer. The action by the Electoral Magistrate contradicts the re-count as contemplated by the 2005 Board resolution thereby making a re-count by individuals other than the Electoral Magistrate void.
4. That the Board erred and made a reversible error because the Board failed to have taken judicial notice that the NEC promulgated several Resolutions for the conduct of the 2017 elections, namely:
  1. Resolutions establishing Electoral District;
  2. Resolutions on Voters Registration;
  3. Resolutions on Candidates Nomination;
  4. Resolutions Campaign Finance;
  5. Resolutions on Polling and Counting;
  6. Resolutions on Complaint and Appeals;
  7. Resolutions on Referendum;
  8. Resolutions on Hearing Procedures;

Nowhere in these Resolutions is there a mention of any Automatic Re-count.

5. That, the Board erred and made a reversible error because the Board failed to have taken into account that in the Kuku Dorbor case decided by the Supreme Court during its March Term, A.D. 2012, the Supreme Court held that the re-count shall be conducted by the relevant Magistrate. The fact that November 4, 2017, re-count was conducted contrary to the very Board Resolution and the Supreme Court Ruling, constitutes a reversible error.
6. That, the Board erred and made a reversible error because the Board failed to have taken into account that in the two instances where NEC had carried out re-count, there were complaint filed and investigated. In the instant case, there were no complaint against the results, meaning that there was no basis for the re-count especially so by any party without jurisdiction.
7. That, the Board erred and made reversible error because the Board failed to have taken into account that jurisdiction is not conferred by the consent of the parties but established by law. Assuming without admitting that the 2005 Board Resolution was applicable, the person that has the jurisdiction was the electoral Magistrate, who should have conducted same at the Electoral Tally Center.
8. That Your Honors erred and made a reversible error when, in your ruling held that the outcome of the 2011 National referendum, specifically proposition Four (4), which constitutionalized the use of the simple Majority System in deciding the winner in all public elections, except for non-

Presidential and Vice Presidential elections, does not contradict the provision of Article 83 (b) of the Constitution, as amended through said Referendum.

9. That Your Honors erred and made a reversible error when you said in Your ruling that there is nowhere in Article 83 (b) is there any Prohibition on conducting a re-count. Article 83 (b) is clear on what is permissible in the instant situation; same being the applicable methodology in determining the winner in elections for public officers who are not President or Vice President. By Your Honors' above argument, there is also no part of the Provision of Article 83 (b) where the NEC is authorized to conduct a re-count, as was done.
10. That Your Honors also made reversible error when Your Honors reinstated the result of the re-count, even though the evidence was clear that the process was conducted manners contrary to the definition of election re-count, as provided in Your Honors' ruling, and the 2005 Resolution.
11. That Your Honors erred and committed reversible error when Your Honors, in Your ruling, drew an analogy between the case NEC vs. Kuku Y. Dorbor et al. and the instant case. The re-count ordered in the former, grew out of a formal complaint, whereas the recount in the instant the case was automatic, based on a 2005 resolution of NEC.
12. The Board erred and made a reversible error when the Board ignored all of the evidence that showed that:
  - a. The re-count was not done by the Election Magistrate of the District;
  - b. The re-count was not done at the District Tally Center;
  - c. The Appellant was not adequately represented during the recount;
  - d. The arbitrary validation of invalid ballots led to the injury suffered by appellant;
  - e. The Appellant's representative at the re-count were thrown out when they protested against the validation of invalid votes;
  - f. The re-count was not based on any complaint, specifying any fraud in the October 10, 2017 result.
13. That the Board made a reversible error when the Board failed to state what error or fault that was corrected during the re-count, which led to the change in the result of the October 10, 2017 vote tally.
14. That the Board of commissioners erred and made a reversible error when the Board said in its ruling that there was no winner in the October 10, 2017 process, contrary to the fact that tally result posted at the NEC local office, and also published on NEC's website, clearly placed Appellant in the winner's position with Nineteen votes lead over his nearest rival. Under the Simple Majority System, as we live

in our jurisdiction, Appellant had clearly won the election.

15. That the Board committed a reversible error when the Board sustained the result of the November 4<sup>th</sup> 2017 re-count, even though it was not conducted by the relevant Magistrate, as required by the 2005 Resolution, and also as referenced by the Supreme Court in its ruling in the case NEC et al vs. Kuku Dorbor et al (March Term 2012).
16. That the Board erred and made reversible error when the Board held that the Hearing Officer was in error when he interpreted Chapter 2, Section 2.9 (h) of the New Elections Law, which states in summary "that the NEC shall make no guidelines that are inconsistent with the provisions of the constitution and the Elections Law". That emphasis by the Hearing Officer was in no way the usurpation of the constitutional authority of the Supreme Court as final arbiter of constitutional matters.
17. The Board erred and made a reversible error when it averred in its ruling that the appellant did not allege fraud and irregularities in the complaint. Contrary to this assertion, the appellant complained about the grossly irregular and fraudulent manner in which the entire process was carried out, beginning with the appointment of a team from Monrovia, to the validation of votes already declared invalid on October 10, 2017, which was confirmed by the signatures of all parties and candidates representatives.
18. That the Board erred and made a reversible error when it ruled that because appellant participated in the re-count, he cannot thereafter complain against it or its outcome, even if fraud or illegality was associated with it.
19. That the Board made a reversible error when it ruled that the Hearing Officer erred when he recognized that the provision of the 2005 NEC Board Resolution was in conflict with the provision of Article 83 (b) of the Constitution, as amended in 2011 by the outcome of the National Referendum.

WHEREFORE AND IN VIEW OF THE FOREGOING, appellant most respectfully prays this Board of Commissioners to approve this Appellant's Bill of Exceptions, so that the Honorable Supreme Court can review and correct the many reversible errors that were made by this Honorable Board of Commissioners."

A hearing was scheduled and counsels representing the respective parties appeared and made arguments in support of their averments and contentions. Having reviewed the facts and listened to the arguments, we find this issue determinative of this case:

Whether Resolution 2005-52 passed by the NEC in 2005 which stipulated the conditions for triggering an automatic recount of ballots having expired on its face, did the action of the NEC in conducting an automatic recount because the votes between the two highest contenders was less than fifty

constitute a violation of Article 83 (b) of the Constitution, as amended in 2011.

Addressing this issue, we quote Resolution 2005 which reads as follows:

"Republic of Liberia  
NATIONAL ELECTIONS COMMISSION  
(NEC)  
TUBMAN BLVD., SINKOR P.O. BOX 2044  
MONROVIA, LIBERIA

DECISION OF THE BOARD OF COMMISSIONERS

Decision Number: 2005-52

Subject: The Board of Commissioners decides the following regarding recount and ties.

Reference:

Time, Date of Meeting:

Meeting Number:

Commissioners Present: Chairman Johnson-Morris  
Co-Chairman Fromayan  
Commissioner Brownell  
Commissioner Chelley  
Commissioner Boryeneh  
Commissioner Sackor  
Commissioner Weedor

The Board of Commissioners decided:

To unanimously adopt the attached document entitled Automatic Recount of Votes and Drawing of Lots for the purposes of the October 11, 2005 Presidential and General Elections. ...."

The reading above shows that the adoption of this Resolution 2005-52 of the NEC Board of Commissioners, was intended for the conduct of the 2005 Presidential and General Elections; that NEC did not incorporate it in its compilation of Regulations adopted August 22, 2016, and used for the conduct of the 2017 Presidential and Representatives Elections.

The 2<sup>nd</sup> appellee, Larry Younquoi, testified that he filed a complaint with the NEC Magistrate in Nimba County but said complaint was not adjudicated because when the case was called for hearing, the Hearing Officer in Nimba County informed him that due to his request for a recount, the matter was only cognizable with the NEC in Monrovia, and therefore he should file his

complaint in Monrovia. He stated that he then filed his complaint in Monrovia and that was what led to the NEC withholding the announcement of the result of District #8. Though we see no such complaint in the case file, but the records show that during the hearing before the Hearing Officer, 2<sup>nd</sup> Appellee Younquoi while testifying admitted into evidence a copy of his complaint filed with the NEC relative to a recount. Notwithstanding, there being no evidence of a hearing into the 2<sup>nd</sup> appellee's complaint, it is public knowledge that the NEC during the announcement of official results from the October 10, 2017 Presidential and Representative Elections did not announce any results from District #8, Nimba County. The Chairman stated that the announcement of the result was withheld by the NEC because it was conducting an on-going investigation. We must therefore agree with the appellant that the recount of the votes was done by the NEC *sua sponte*, relying on the Resolution of 2005 and its practice, where the difference of votes between the two highest contenders is fifty or less, a recount is conducted.

Under the circumstances, where the records show that no investigation was conducted into the complaint filed by 2<sup>nd</sup> appellee Younquoi and given that the 2005 Resolution was promulgated specifically for the 2005 elections, could the principle be used for the 2017 Presidential and Representatives Elections? This Court answers in the affirmative.

The NEC has the constitutional mandate to conduct elections in the Republic of Liberia. This prerogative was further legitimized by the Legislature through the enactment of Section 2.9 (q) vesting the NEC as the sole judge of all contests relating to the elections results. The NEC therefore is the only authority to certify elections results, acting in the spirit of the Constitution, and can thereby *sua sponte* institute an investigation and act upon the findings of such investigation if it has reasons to believe that the conduct of an election was irregular, or to ensure that the ballots cast constitute the will of the people.

We find in the records a report of the recount which in its overview provided a comprehensive rationale and background of the factor that triggered the process. It reads:

"The key principles of the Liberian democratic electoral processes are meant to uphold the integrity of the National Elections Commission (NEC), and to ensure that the processes which it carries out are credible. Amongst these various principles are the following:

1. Transparency
2. Accountability
3. Impartiality

#### 4. Fairness

Supported by these characters and the understanding, the Commission has always made efforts to follow best practices, apply the appropriate and important Resolutions to control the management of the processes which it carries out. This is done in an open and fair manner.

The NEC, based on its application of these basic principles, has initiated measures to ensure its internal institutional evaluation, self-check, having noted close margins in the difference of votes obtained between two of the ten contestants in the Nimba County Electoral District #8, House of Representatives Election."

Automatic recount of votes is not a new concept developed by the NEC. It is more of a universal best practice intended to repeat tabulation of votes cast in an election, and will often take place in the event that the initial vote tally during an election is extremely close, and in such case, would be warranted so as to correct potential errors which usually occur during vote tabulations including human fallibility, such as misreading of ballots paper, etc. It is possible that an election recount may change the results of initial tallies which mostly are due to reinterpretation of voters' intent.

We note the various complaints from the recent October 10, 2017 Presidential and Representative elections, in which it was alleged that the October 10 elections were marred by gross incompetence due to the lack of training of the NEC personnel who were designated to man the polling centers, and inadequate awareness educating citizens how to vote. The October 10, 2017 Elections Report registered more than eighty thousand invalid votes; of this number, the Electoral District #8, Nimba County, registered One Thousand Four Hundred and Thirty-Six (1,436) invalid votes. During the recount process in District #8, Nimba County, Two hundred and Eighteen (218) of the 1,436 invalid votes were reinterpreted as valid votes and allotted to the various candidates in the District based upon the clear intent of voters derived from the face of the ballots. Appellant Mianah's votes were increased from Six Thousand One Hundred and Eight (6,108) votes reported at the October 10 polls to Six Thousand One Hundred and Seventy-Four (6,174) votes during the recount, a difference of Sixty-Sixty (66) votes; while 2<sup>nd</sup> appellee Younquoi's votes increased from the original count of Six Thousand Eighty-Nine (6,089) votes to Six Thousand One Hundred and Ninety-One (6,191) votes during the recount, a difference of One Hundred and Two votes; thus, putting him in the lead by 17 votes over the appellant.

The NEC being the foremost police of the electoral system, given its duty to ensure free, fair and transparent elections at all times, the onus is on it to

validate and revalidate the electoral processes especially where it sees the need. It not having announced an official results from a poll, it may at any time, based upon good cause, especially a cause entrenched in international best practices and in the interest of free, fair, and transparent election, verify and re-evaluate an election process before releasing the result. Of course, objections may ensue if such measures are marred by irregularities or intended to or being used as a means to perpetrate fraud.

However, the appellant did not object to the recount or alleged that any irregularities were committed during the recount. He has not contended that his ballots were given to another contestant during the recount or that a ballot that was duly discarded and made invalid was given to another contestant. In other words, he fully participated in the recount without protest. It seems clear that had he emerged as the winner, this complaint would most likely not be before us. The minutes of November 28, 2017 investigation conducted by the Hearing Officer, John K. Wonsheleay, reveals the following on the cross examination of Appellant Mianah:

Q. You brought your complaint Mr. Witness.

A. My complaint is centered on the illegal act

Q. And not the result?

A. Not the result, because that result we are saying is illegal and I will not comment on something that was done illegally.

We should note that an election result emerges from a combination of processes which end at the NEC's Headquarters, and only with the NEC. When the NEC verifies and satisfies itself of the electoral process and result through its Commissioners, it is only the NEC that has the authority to announce such results or returns of the elections. Any attempt by this Court to hold that the NEC cannot take action to satisfy itself of elections results forwarded to it before pronouncing said result is tantamount to the Court stripping the NEC of its power to conduct elections independently. It is the responsibility of the Magistrate of Elections to collate, check and counter check the ballots cast, authenticate figures before his/her endorsement for onward announcement by the NEC. And as the Constitution demands, these accounts must be valid. Hence, the NEC must satisfy itself that all and every necessary safeguards against elements that could impeach the validity of the votes cast and the integrity of the Commission are eradicated before announcing same to the public. We therefore see the process of automatic recount enunciated by the NEC finds support in the Constitution when it repeatedly says that only those candidates who obtain valid votes are

considered true winners. It is to ensure that there are valid votes at all times that trigger the idea and concept of automatic recount. Thus, rather than being unconstitutional we see the idea of automatic recount as buttressing the Constitution.

We cannot agree more with the NEC on the intent and spirit that accompanied the execution of the recount in Nimba County District #8 and as clearly articulated in its recount report. It is by all means an account, a well-intended and quite expedient undertaking which any well-meaning Liberian must embrace and encourage the NEC to do under the circumstance. Were the NEC to sit supinely and wait for challenges to the conduct of elections before undertaking appropriate investigation, even where it has reasons to believe that there are visible indications that could suggest or warrant a further evaluation of the process, based on the reason that the NEC must promulgate Resolutions for every act it performs in the discharge of its statutory duty to conduct elections, it would be losing its function and essence; that is, to ensure free, fair and transparent elections. We believe that it is sufficient that the hallmark of the NEC's decision be based on ensuring transparency, impartiality and fairness and a will to reflect elections results based on the will of the people and the dictates of the Constitution. In this regard, we hold that the NEC was not in error to sua sponte conduct a recount under the circumstances, and that such self-initiative by the NEC was lawful.

Regulations are intended to provide further clarification to the law or prescribe procedures by which certain activities mandated by the law are carried out by the competent entity or those it regulates. Where the law is so clear that NEC is clothed with the authority to conduct a free fair and transparent election, a procedural safeguard or Resolution may not be needed to take steps in enforcing or ensuring adherence thereto. For instance, the NEC does not necessarily need a resolution to re-evaluate vote counts to ensure it was done properly as doing so is an inherent part of its functions and duties derived from the Constitution and Statute.

Failure of any showing of unlawfulness on the part of the NEC in the recount of the ballots in District 8, Nimba County, the NEC's recount cannot be declared unlawful simply because the Resolution 2005 had expired. To hold so would suggest that the NEC cannot take appropriate measure to ensure the correctness of an election.

We hold that although Resolution 2005-52 was restricted to the 2005 elections, however, the principles and ideas stated therein could be applied

to subsequent elections. It would be advisable, nevertheless, that the NEC embeds this principle in its regulations as an inherent part thereof for the avoidance of doubt as to NEC's action in conducting automatic recount.

As to whether the NEC's automatic recount violated Article 83(b) of the Constitution as amended in 2011, we hold no.

In the appellant's brief filed before this Court, he raised the question "whether or not a resolution of an agency of government that runs contrary to the Constitution may be given effect without breaching the Constitution?" By this question, the appellant contends that the practice of the NEC, gathered from its Resolution adopted in 2005, requiring automatic recount of votes where the difference between the two highest contenders is fifty or less cannot be used in the 2017 elections, for to do so would be violative of the constitutional amendment of 2011 which instituted the simple majority vote system and espoused in Article 83(b) of the Constitution of Liberia. Appellant argues that by not proceeding with the announcement of the result, but rather instituting a recount, the NEC was in violation of the Constitution, since the Resolution upon which it relied to conduct the recount was void for inconsistency with the Constitution.

As stated previously, Section 2.9 (h) of the Elections Law states that the NEC has the power to formulate and enforce guidelines controlling the conduct of all elections for elective public offices which guidelines shall not be inconsistent with the provision of the Constitution and the Elections Law.

The NEC argues that the appellant's simple majority right is not affected by the automatic recount but rather, the automatic recount is intended to avoid human error where the margin between the two highest contenders is negligible and the NEC's act of conducting a recount is simply for reconfirming the initial count.

We note that the simple majority voting system for public elective positions other than the Presidency and Vice Presidency which Article 83(b) amended is an amendment to the 1986 Constitution of Liberia. The Constitution previously provided for absolute majority, the most popular mandate an elected candidate can get, until in 2011, when an amendment to the Constitution growing out of the 2011 referendum was adopted. A number of reasoning attended this amendment, but the most persuasive was the financial constraints and burden the absolute majority system imposed on our financially and economically challenged country emerging from years of civil war, and considering that majority of the contestants participating in public elections had failed to obtain an absolute majority during elections.

Under the absolute majority system, the NEC could conduct the elections and if no candidate obtained 50% and one (1) vote, the two candidates with the highest votes would go to a run-off election which will then be decided on a simple majority basis.

The recount of the votes by the NEC in this case was an exercise that simply re-opened the ballot boxes and verified the votes and corrected the results. The NEC did not conduct a run-off election between the two highest candidates of District #8, Nimba County, so how is the action of the NEC equated to violating the simple majority provision of the Constitution? The NEC's act of conducting a recount for verification of the result did not contravene Article 83(b) of the Constitution as this provision of the Constitution can only be infringed upon if the NEC had failed to announce the appellant as the winning candidate and required a run-off election between the appellant and the 2<sup>nd</sup> appellee due to the negligible difference in votes between them, the two highest candidates. Under the circumstances of the recount, where all candidates took part, and even were the recount to show a margin of one vote difference between the top two highest contenders, the contestant with the higher vote of one would have been declared the winner. In this case, the recount revealed that the 2<sup>nd</sup> appellee, Hon. Larry P. Younquoi, obtained a vote of seventeen (17) over and above the votes obtained by the appellant, Saye Mianah.

Article 83(b) is clear and unambiguous and the NEC's actions, under the circumstances of this case, not having in anyway contravened Article 83(b) of the Constitution, we cannot uphold the contention of the appellant.

The appellant further contention that the recount was not conducted by the Electoral Magistrate of the District or carried out in Tappita, the Official Tally Center of District #8, as per the NEC Resolution of 2005, is untenable for the same reason that said Resolution did not apply to the 2017 Elections. Besides, the NEC's team sent to conduct the recount was headed by Mr. Daniel Gegbeson, Deputy Director of Training of the NEC. In such case, he and the Director of Training having conducted trainings for Magistrates of Elections and others selected to man the voting polls, he was in a better position to re-evaluate the votes set aside as invalid votes. Therefore to agree with this contention of the appellant is to place form over substance, which this Court will not indulge in. And we so hold.

Having found that the conduct of the recount was within the authority of the National Elections Commission, and given that the margin of votes between the two highest contenders was narrow, a recount as a matter of policy was

necessary, and such action was not in contravention of the Constitution, but enhanced the transparency and validity of the process.

Wherefore, the Ruling of the Board of Commissioners is confirmed and affirmed. The Clerk of this Court is ordered to send a mandate to the NEC to resume jurisdiction and give effect to the Judgment of this Court. And it is hereby so ordered.

THE APPELLANT WAS REPRESENTED BY COOPER W. KRUAH OF THE HENRIES AND HENRIES LAW FIRM. THE CO-APPELLANT, THE NATIONAL ELECTIONS COMMISSION (NEC), REPRESENTED BY COUNSELLORS JOSEPH N. BLIDI, IN-HOUSE COUNSEL, NEC, FRANK MUSAH DEAN AND C. ALEXANDER B. ZOE. THE CO-APPELLEE, LARRY P. YOUNQUOI, REPRESENTED BY COUNSELLORS ALBERT SIMS AND J. LAVELI SUPUWOOD.