

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

Present: His Honor: Francis S. Korkpor, Sr.Chief Justice
Present: His Honor: Kabineh M. Ja'neh.....Associate Justice
Present: Her Honor: Jamesetta H. Wolokolie.....Associate Justice
Present: His Honor: Philip A. Z. Banks, IIIAssociate Justice
Present: Her Honor: Sie-A-Nyene G. Yuoh.....Associate Justice

Lester M. Paye, Representative Candidate, District #4,)
Bong County.....Appellant)
VERSUS)
Robert Flomo Womba, Representative Candidate (UP),) APPEAL
District #4, Bong County, and National Elections)
Commission, Republic of Liberia.....Appellees)
GROWING OUT OF THE CASE:)
Robert Flomo Womba, Representative Candidate (UP),)
District #4, Bong County,..... Movant)
versus) MOTION TO
) DISMISS APPEAL

Lester M. Paye, Representative Candidate (ANC),)
District #4, Bong County.....Respondent)
GROWING OUT OF THE CASE:)
Lester M. Paye, Representative Candidate (ANC),)
District #4, Bong County.....Appellant) APPEAL
VERSUS) BEFORE THE BOARD
Robert Flomo Womba, Representative Candidate (UP),) OF COMMISSIONERS
District #4, Bong County.....1st Appellee) OF THE NATIONAL
AND) ELECTIONS
National Elections Commission.....2nd Appellee) COMMISSIONS
GROWING OUT OF THE CASE:)
Lester M. Paye, Representative Candidate (ANC), District)
#4, Bong County.....Complainant)
VERSUS) ELECTORAL
Robert Flomo Womba, Representative Candidate (UP),) MAL-PRACTICES/
District #4, Bong County.....1st Defendant) FRAUD
AND)
National Elections Commission.....2nd Defendant)

Heard: January 11, A.D. 2018

Delivered: January 19, A.D. 2018

Counsellor Thompson A. Jargba of the Law offices of Jargba, appeared for the Appellant.
Counsellor Albert S. Sims of Sherman & Sherman, Inc., appeared for Appellee. While
Counsellors C. Alexander B. Zoe of National Elections Commissions in association with Frank
Musah Dean, Jr. and Counsellor Joseph N. Bliidi, Sr., appeared for the 2nd appellee.

MR. JUSTICE JA'NEH *delivered the Opinion of the Court.*

Lester M. Paye, appellant in these proceedings, on October 10, 2017, contested on the ticket of the Alternative National Congress (ANC) as a candidate for the Representative Seat of Electoral District # 4, Bong County. At the close of the polls conducted by the National Elections Commission, first appellee, herein, Robert Flomo Womba, contesting on the ticket of the Unity Party (UP), was declared as the winner.

Following posting of the provisional result, Appellant Paye, on October 11, A.D. 2017, filed a formal complaint before the Magistrate of Elections for Upper Bong County, Mr. Daniel Newland. The complaint alleged that the district elections were marred by bribery, irregularities and fraud. For the benefit of this Opinion, we herewith reproduce the referenced complaint as follows:

*"Mr. Daniel Newland
Election Magistrate
Upper Bong County-Liberia.*

October 11, 2017

Dear Mr. Newland:

Re: Formal complaint for the re-run of election in Shankpalla and Nyensue respectfully in Zota District.

Following reports of electoral malpractices in Shankpalla and Nyensue, Zota District, one of the boxes containing marked ballot papers was spotted wrapped in cloth on motorcycle reportedly coming from Shankpalla and Nyensue enroute to Gbarnga on October 11, 2017 without security.

My information is that the box in question was deliberately left behind while the others were already in Gbarnga. The guy with the box was arrested by staff enroute from Shankpalla and taken to the police and the police turned the box over without any investigation.

Sir, the action by the NEC workers in those [area] mentioned has risen serious tension among citizens regarding transparency; hence, electoral fraud has been detected.

In light of these concerns, I write to request a re-run of election in those areas mentioned based on the following:

- 1. That the election in Shankpalla and Nyensue were marked by fraud as evidenced by the reported missing/forgotten ballot box; in short, the box was tampered with as there report of it being open.*
- 2. In Nyensue, a young man who went through NEC's training, enlisted and assigned as P.O, was not only threatened but his name was removed upon instruction allegedly by Mr. Robert Womba. I flagged this alleged action to you through a telephone conversation, you said you were eating and were going to get back to me but did not.*

I therefore beseech your timely intervention in this grave issue that has the propensity to breed confusion.

*Regards,
Lester M. Paye
Rep. District #4
Bong County-Liberia."*

Upon receipt of the afore-quoted complaint, Elections Magistrate Newland cited the parties to a hearing on October 13, 2017. At the hearing, Co-Appellee Robert Womba moved the hearing to dismiss the complaint. He argued substantially (1) that the allegation of bribery brought against him, Co-appellee Robert Flomo Womba, partook of crime and therefore not cognizable before the Magistrate; and (2) that the evidence upon which Appellant/Complainant Paye alluded to was "hearsay". Hence, Movant/Co-appellee Womba therefore requested the Magistrate of Elections to dismiss the complaint for "lack of jurisdiction". The motion was resisted and argued, and in a ruling, entered on October 14, 2017, the Magistrate of Election granted same and the complaint was dismissed.

Appellant Paye excepted to the adverse ruling and announced an appeal to the Board of Commissioners, National Elections Commission. As required under the law extant, appellant placed his bill of exceptions before the Magistrate of Elections seeking his approval thereof. According to the records certified to this Court, Magistrate Newland, on October 17, 2017, approved Appellant Paye's bill

of exceptions. The said approved bill of exceptions was subsequently lodged with the Board of Commissioners of the NEC.

Counsellor Thompson Jargba, for and on behalf of Appellant Paye, on November 7, 2017, filed a petition before the Justice in Chambers seeking the issuance of a writ of mandamus. In the petition, Petitioner Paye sought an order directed at the Board of the National Elections Commission to hear appellant's appeal. Said appeal, appellant contended, had been unduly pending before the Board of the NEC undetermined while other similarly situated appeals were being promptly heard and determined by the NEC. We will return to matter of this petition later in this Opinion.

The Board of Commissioners, on December 28, A.D. 2017, convened to conduct a hearing of the appeal and to entertain arguments, *pro et con*, thereon. When the hearing commenced, Co-Appellee Robert Flomo Womba moved the Commission to refuse jurisdiction over the appeal. Co-appellee Womba contended that the Magistrate of Elections of Upper Bong County, Electoral District #4, Daniel Newland, delivered and made available his final ruling on Appellant Paye's complaint on October 14, 2017. According to Co-appellee Womba, Appellant Paye having received the ruling of the Magistrate of Elections on 14th October, 2017, the filing by appellant of his bill of exceptions on October 20, A.D. 2017, in excess of forty eight-hours, constituted a blatant violation of the law on time period within which a bill of exceptions in elections matters should be filed. Co-appellee/Applicant Womba further contended that the act of filing by appellant of the bill of exceptions without the statutory time effectively deprived the Commission of its appellate jurisdiction to entertain the appeal; hence, the Board of Commission of the NEC should dismiss Appellant Paye's appeal as a matter of law.

The Board of Commissioners of the NEC, in its ruling made on December 29. A.D. 2017, granted Appellee Womba's application and dismissed the appellant's appeal principally for want of jurisdiction. The ruling entered by the Magistrate of Elections dismissing Appellant Paye's complaint was therefore upheld.

For the benefit of this Opinion, we hereunder reproduce the ruling of the Board of Commissioners of the NEC:

“When this matter was called for hearing of the appeal before the Board, Counsel for Appellee/Movant Robert F. Womba made a Motion for the Board to dismiss Appellant/Respondent Lester M. Paye’s appeal on grounds that same was not filed with the Board of Commissioners within the mandatory 48 hour period.

The question as to whether a party complied with the statute/regulations for appealing a decision of a Hearing Officer or elections magistrate is jurisdictional because, in the absence of compliance with the statute/regulations, this Board lacks jurisdiction to hear the appeal on the merits.

The record in this case shows that on October 11, 2017, appellant/respondent Lester Paye filed a complaint with the Elections Magistrate for upper Bong County, alleging irregularities and fraud concerning the October 10, 2017 Representative Election in District #4, Bong County. When the parties appeared before the Hearing Officer in Bong County for commencement of the hearing, defense counsel made a motion requesting the Hearing Officer to dismiss appellant Paye’s complaint. The Hearing Officer heard arguments from the parties, and on October 14, 2017 rendered final ruling dismissing appellant’s complaint. Not satisfied with the said ruling of the Hearing Officer, appellant filed his bill of exceptions with the Board of Commissioners on October 20, 2017, along with his legal memorandum.

Taking recourse to Section 5.12, subsection 4 of the New Elections Law, we observe that it provides that a decision by an Elections Magistrate may be appealed to the Board within forty eight (48) hours after the posting of the decision by the Magistrate. Section 5.12, subsection 5 of the New Elections Law, states that a decision by a Hearing Officer may be appealed to the Board [of Commissioners] within forty eight (48) hours after the posting of the decision by the Hearing Officer. Additionally, Article 12.1 of NEC’s Hearing Procedure mandates that a party not satisfied with a decision of the Magistrate/Hearing Officer shall have the right to appeal to the Board of Commissioners no later than 48 hours after the decision is rendered, and that a Bill of Exceptions approved by the Magistrate/Hearing Officer

shall be filed with the Board of Commissioners before the end of the said 48 hours period.

During argument before us, Respondent's counsel admitted that Respondent received the Hearing Officer's ruling on October 14, 2017. Counting 48 hours from the Hearing Officer's October 14, 2017 final ruling in the case, appellant/respondent Paye had up to Tuesday, October 17, 2017 to file his bill of exceptions with the Board of Commissioners. Counsel argued further that Respondent filed his appeal with the Board within the said 48 hours period. We disagree.

The record shows that Appellant filed his bill of exceptions with the Board on October 20, 2017. As further confirmation as to the date Respondent Paye filed his appeal with the Board, we take administrative notice of the November 7, 2017 petition for mandamus that Mr. Paye, represented by Cllr. Thompson Jargba, filed with His Honor Kabineh M. Ja'neh, Associate Justice Presiding in Chambers. In said petition for mandamus, specifically count one, Mr. Paye states as follows: "That respondent National Elections Commission received an appeal filed by petitioner on October 20, 2017, but refused to hear same up to the filing of his appeal." With Respondent Paye having filed his bill of exceptions with the Board beyond the required 48 hours period, this Board lacks jurisdiction to hear his appeal on the merit.

WHEREFOE AND IN VIEW OF THE FOREGOING, the motion to dismiss the appeal being sound in law, same is hereby granted the Appellant/respondent Paye's appeal is hereby dismissed for lack of jurisdiction. The Hearing Officer's final ruling in these proceedings is hereby confirmed and affirmed. AND IT IS HEREBY SO ORDERED."

It is from this adverse ruling appellant has placed before us a bill of exceptions containing three (3) counts, which we do herewith quote as follows:

1. That Your Honors erred when you granted the motion to dismiss appellant's appeal on ground that the bill of exceptions, approved October 17, 2017, was not filed within statutory period in the absence of documentary evidence as records in your office has no filing date.

2. *That Your Honors erred when you took the date of appellant's legal memorandum to be the filing date of the bill of exception.*
3. *That Your Honors erred when you affirmed the ruling of the Hearing Officer, which denied appellant of his constitutional right to due process of law.*

Wherefore and in view of the foregoing, appellant submits this Bill of Exceptions for your approval for the Honorable Supreme Court to review your ruling during its October term, 2017."

One germane question is dispositive of this appeal: Did the Board of Commissioners err when it dismissed the appellant's appeal for want of jurisdiction? Or put differently, did the appellant comply with the forty-eight hour legal requirement for the filing of an appeal before the Board of Commissioners?

It must be noted here that a number of applicable and controlling laws addresses this question. Section 5.12(4) of the New Elections Law of Liberia stipulates that a decision by an Elections Magistrate may be appealed to the Board of Commissioners of the NEC within forty-eight (48) hours after the posting of the decision by the hearing officer. Article 12.1 of the National Elections Commission Regulations also directs that a party not satisfied with a decision of the Magistrate/Hearing Officer shall have the right to appeal to the Board of Commissioners no later than forty-eight hours after the decision is rendered; Article 12.1 further dictates that a bill of exceptions approved by the Magistrate/Hearing Officer shall be filed with the Board of Commissioners before the end of said forty-eight hour period.

A review of the records certified to this Court reveals that Appellant Paye's bill of exceptions bore no filing date on its face. Yet counsel for appellant during argument before the Board of Commissioners of the NEC yet strongly argued that his bill of exceptions was filed within the prescribed forty-eight hour time period. Counsel for appellant expressed disappointment over the persistent position taken by Co-appellee NEC in matters of electoral controversies as if the Commission were an adversary party. In some instances, says the appellant, NEC does everything in its reach to frustrate the resolution of elections disputes in the interest of justice.

Counsel explained that in the instant case, he had to file a petition before the Chambers Justice seeking the issuance of a writ of mandamus in order to get the NEC to entertain appellant's appeal. Only after the Chambers Justice convened a conference with the parties did the NEC proceed to entertain appellant's appeal. Counsel for appellant, in conclusion, pleaded with the Supreme Court to disregard all the technicalities being employed by the appellees, reverse the decision of the Board of Commissioners of the NEC, and proceed to hear appellant Paye's appeal on its merits.

In order for the Board of Commissioners of the NEC to acquire jurisdiction over a matter of an appeal taken from a ruling entered by a Magistrate of Elections, the appealing party must strictly fulfill the requirements of the appeal within the time limit stipulated by statute. In the case *Rogers and the Commissioner of Insurance, Republic of Liberia, versus Universal Insurance Company*, this Court held that where a court or administrative tribunal lacks jurisdiction, the judgment thereon is void. 40 LLR 609, 616 (2001); *Donzo versus Thorpe*, 27 LLR 166 (1978); *Tompo et al. versus Republic*, 13 LLR 207 (1958); *Umehai and Kpukuyou versus The Management of Mezbau, Inc.* 35 LLR 406, 412 (1988).

This means that an appellant, as in the instance of Appellant Paye, should have filed his bill of exceptions within the forty-eight hour time period stipulated by law, including Section 5.12, subsection 4, of the New Elections Law. The referenced section provides that a decision by an Elections Magistrate may be appealed to the Board within forty eight (48) hours after the posting of the decision by the Magistrate. Section 5.12, subsection 5, of the New Elections Law, restating the same time period, dictates that a decision by a hearing Officer may be appealed to the Board within forty eight (48) hours after the rendition of the decision by the Hearing Officer.

In the case at bar, the absence of a filing date on appellant's bill of exceptions posed a serious difficulty as to the exact time appellant lodged his bill of exceptions with the Board of Commissioners of the NEC. We view the act of counsel for the appellant in not ensuring that a filing date was placed on the instrument filed with the Board of Commissioners as sheer negligence.

This Court has said time literally without number that it is the responsibility and obligation of counsel for a party to so secure the interest of his/her client and surround the client with all the requisite safeguard in order that the client's case is not placed in jeopardy. A part of that responsibility is for counsel to ensure that the dates of filing of any and all instruments filed on behalf of the client are placed on those instruments by the filing authority. In other words, counsel for the appellant in the instant case was under the obligation therefore to make sure that the relevant personnel at the NEC who received the appeal documents placed a date not only on the original document but also on copies returned to counsel for the appellant. In the absence of such diligence by counsel for the appellant, this Court has difficulty accepting that the appeal documents were filed within the forty-eight hour time frame prescribed by the New Elections Law and the Regulations promulgated by the NEC.

But greater doubt is cast on the representation made by counsel for the appellant that the appeal documents were filed within the statutory time. Here we take a look at the appellant's own petition filed with the Justice in Chambers wherein he sought the issuance of writ of mandamus to compel the Board of Commissioners of the NEC to expeditiously hear and dispose of the appellant's appeal, then pending before the Board of Commissioners. It is noteworthy that in disposing of the appellant's appeal, the Board of Commissioner of the NEC specifically took judicial notice of allegations made by the appellant in the petition for the writ of mandamus. Here is how the Board, in its ruling, quoted excerpts from the appellant's petition filed with the Justice in Chambers in that respect:

"That respondent National Elections Commission received an appeal filed by petitioner on October 20, 2017, but refused to hear same up to the filing of his appeal.

This Court has taken resort to the petition filed by the appellant with the Justice in Chambers and has found the quotation by the Board of Commissioner to be correct. This Court, the same as the NEC, has the legal obligation to take judicial notice of its records. Under that legal obligation, we herewith take judicial notice of the statements made by the appellants in the petition for the writ of mandamus, which indicate, by the appellant's own assertion, that he indeed filed

his appeal documents with the Board of Commissioners of the NEC on October 20, 2017, and not sooner than that date. In the absence of any written instrument refuting the acknowledgment of the filing on October 20, 2017, the appellant cannot now be allowed to contradict or explain away, by oral testimony, that he filed his appeal documents on a date other than acknowledged by him in his written petition filed before the Chambers Justice. Counsel for appellant should not forget that in fact, were this Court to even accept or give credence to the oral representation made in contradiction to the written petition, it would mean that the said counsel had lied under oath to this Court. It would mean that the Court would be obliged to attach consequences to the act of counsel for such perjury or misrepresentation to the Court.

Moreover, this Court holds that the acknowledgment made by counsel in the petition for the writ of mandamus was an admission of the greatest grade made by a party against himself. This admission justifies the conclusion reached by the Board of Commissioners of the NEC that the bill of exceptions was without the forty-eight 48 hour time period mandated by statute. This being the case, it goes without saying that the Board of Commissions was without authority to delve into the merits of Appellant Paye's case. Appellant's failure to comply with the statute controlling renders the appeal dismissible and same is hereby dismissed in keeping with law extant. The fatality of lack of jurisdiction cannot, in any way, be cured by mere appearance before the Supreme Court. This Court has repeatedly held that in the absence of jurisdiction, a court cannot render any legal judgment. *Tonios Baaklini and Talinco General Construction & Trading Enterprises Inc. versus Karel Logging Corporation*, 37 LLR 247 (1993).

WHEREFOE AND IN VIEW OF THE FOREGOING, the ruling entered by the Board of Commissioners of the NEC dismissing Appellant Paye's appeal for want of jurisdiction, same being in perfect harmony with law extant, is confirmed and affirmed. The appeal is therefore ordered denied and dismissed.

The Clerk of this Court is directed to send a mandate to the National Elections Commission (NEC) to resume jurisdiction over this case and give effect to this Judgment. AND IT IS HEREBY SO ORDERED.