

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2016

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR CHIEF JUSTICE
 BEFORE HIS HONOR: KABINEH M. JA'NEH ASSOCIATE 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

Jonathan Boye Charles Sogbie of the city of Fish Town,)
 River Gee County, Senatorial Candidate of the Alliance)
 Of Peace and Democracy (APD) in River Gee County)
 In the 2014 Special Senatorial Elections.....Appellant)
 Versus) **BILL OF INFORMATION**

The National Elections Commission by & thru it's)
 Chairman Counselor Jerome Kokoyah & Members of)
 The Board of Commissioners including all Elections)
 Magistrates, Directors and Supervisors under their control)
 Of the city of Monrovia, Liberia.....1st Respondent)
 AND)

The Unity Party and Mr. Commany Wesseh...2nd Respondent)

GROWING OUT OF THE CASE:)

Jonathan Boye Charles Sogbie of the city of Fish Town,)
 River Gee County, Senatorial Candidate of the Alliance)
 Of Peace and Democracy (APD) in River Gee County)
 In the 2014 Special Senatorial Elections.....Petitioner)
 Versus)

**PETITION FOR A
WRIT OF PROHIBITION**

The National Elections Commission by & thru it's)
 Chairman Counselor Jerome Kokoyah & Members of)
 The Board of Commissioners including all Elections)
 Magistrates, Directors and Supervisors under their control)
 Of the city of Monrovia, Liberia.....1st Respondent)

HEARD: February 6, 2017

DECIDED: March 1, 2017

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

This bill of information, as amended, was filed by Jonathan Boyecharles Sogbie of the City of Fish Town, River Gee County, Republic of Liberia, a senatorial candidate on the ticket of the Alliance for Peace and Democracy ("APD") in the 2014 Special Senatorial Elections ("informant"), against the National Elections

Supreme Court and to hear and determine his complaint. Counts 4 & 5 of the informant's amended bill of information which sum up the informant's contention state:

Count 4. "Informant respectfully informs Your Honors, that since your February 17, 2015 mandate directed to the NEC, neither has the NEC's Acting Chairman, the designated Commissioner with oversight responsibility for River Gee County, nor a designated Magistrate/Hearing Officer implemented their legal duty imposed by law, to commence the hearing/investigation of the informant's complaint pending before the NEC in accordance with law."

Count 5. "Informant further says that it has been a practice hoary with age in this jurisdiction, that mandates emanating from our Supreme Court are usually read within seven (7) days upon receipt of the mandate from the Clerk of the Supreme Court; howbeit, the Board of Commissioners at the NEC have neglected to fulfill their legal duty imposed upon each of them by the Constitution of Liberia, to obey and implement the orders of this Court."

Before delving into the claims and counter claims of the parties, it is important, for clarity, to provide the facts and circumstances surrounding this bill of information as follows:

In October, 2014, Special Senatorial Elections were conducted in Liberia. Some of the political parties and independent candidates that took part in the elections filed complaints of electoral irregularities against the NEC. While the complaints were still pending final determination, the NEC declared and certificated some winners in the Special Senatorial Elections. This prompted many dissatisfied contestants, including the informant, Jonathan Boycharles Sogbie, to file various petitions for the writ of prohibition with the Justice presiding in the Chambers of this Court. Informant Jonathan Boycharles Sogbie's petition for the writ of prohibition prayed for the de-certification of Commany B. Wesseh, who the NEC had declared and certificated as the winner in the Special Senatorial Election in River Gee County in which the informant was also a contestant. The matter eventually came up to this Court *en banc*. We consolidated the petitions for the

The informant has filed this bill of information alleging essentially that: (a) he is one of the beneficiaries of the Supreme Court's mandate to the NEC ordering and directing the NEC to resume jurisdiction and commence the hearing/investigation of the informant's complaint pending before the NEC in accordance with law; and (b) that since the February 17, 2015, mandate of this Court, directed to the NEC, the NEC has not read the said mandate. The informant therefore prayed the Supreme Court to hold the NEC in contempt for refusing to read the mandate of this Court and resume jurisdiction to hear and determine the informant's pending complaint.

The NEC filed returns in which it denied failing or refusing to read the mandate of the Supreme Court. The NEC contended that it read the mandate issued out of this Court on February 17, 2015, growing from the consolidated petitions for the writ of prohibition and has since implemented the said mandate. The NEC further contended that the informant has filed the wrong form of action, in that where, as in the instant case, an official or entity of Government is refusing to perform an official duty imposed by law, the right form of action or remedy is a petition for mandamus and not a bill of information; that the truth of the matter is that on December 23, 2014, the Hearing Officer of the NEC in River Gee County heard the complaint filed by the agents of the informant's political party on behalf of the informant, and on December 27, 2014, dismissed the said complaint; that the party agents of the informant's political party announced an appeal from the ruling of the Hearing Officer in River Gee, but failed to pursue the appeal in keeping with the Guidelines and Regulations of the NEC; that to show that the complaint was heard and dismissed and an appeal was taken, the informant's counsel wrote a letter on February 18, 2015, addressed to the Chairman of the NEC, Counsellor, Jerome G. Kokoyah, requesting that the informant's purported appeal should be assigned for hearing before the Board of Commissioners.

For his part, co-respondent Commany B. Wesseh filed returns expressing surprise that he was named in the bill of information as a party at the level of the

assign and investigate the informant's complaint filed with the NEC. But when asked whether the portion of the mandate regarding the other parties to the consolidated petitions for prohibition was read and implemented, the counsel answered in the affirmative. We quote the relevant portion of the minutes of this Court at the hearing of the bill of information on *Thursday, February 6, 2017, 14th Day's Session*. At that hearing, the following questions were posed to the counsel for the informant by this Bench:

"Ques: How many parties were involved in the prohibition case?

Ans: Six (6) parties were involved in the prohibition case, Your Honors.

Ques: If there is a situation of multiple parties and there is a ruling, would all the issues be the same?

Ans: No, Your Honors.

Ques: In respect of your client, what was the relief you sought?

Ans: The relief we sought was to prohibit the seating of the declared winner as senator.

Ques: Was there a matter involving your client pending before the NEC at the time the petition for prohibition was filed?

Ans: Yes Your Honors, the complaint filed by our client was still pending undecided in River Gee County.

Ques: Your contention now is that, the National Elections Commission has refused to read the mandate of the Supreme Court. What would have obtained, with respect to your client, if the mandate of the Supreme Court was read?

Ans: Our complaint would have been heard.

Ques: Do you know what happened with respect to the other parties to the consolidated prohibition proceedings, when the matter was decided by the Supreme Court?

the contention to the

Ans: In the case of Honorable Bhofal Chambers, who we also represented, the mandate was read and investigation was conducted..."

Based on the foregoing exchange between the informant's counsel and the Supreme Court Bench, as well as the records before us, it is clear that the contention of the informant that the mandate of the Supreme Court was not read cannot be true. This is because, as we have said, the various petitions for the writ of prohibition that came up to this Court were consolidated and in deciding the petitions we issued one consolidated Opinion and one consolidated Judgment in respect of all the parties. Appropriate references, however, were made to all the parties in the Opinion concerning the specific relief prayed for by each party and this was reflected in the Judgment out of which the mandate to the NEC grew. How was it possible, then, that the portions of the mandate relating to the other parties to the same consolidated prohibition petitions, contained in the same Opinion and Judgment were read, but that the aspect of that mandate relating to the informant was never read?

As acknowledged by the informant's counsel in an answer to a question posed to him by this Bench during the hearing of this bill of information, there were six (6) parties involved in the consolidated petitions for the writ of prohibition, each seeking a specific relief. However, only one Opinion and one Judgment were handed down by this Court as opposed to six separate Opinions and Judgments. As such, only one mandate embodying all of the claims of all six petitioners was transmitted to the NEC. The informant's counsel agreed that with respect to the other parties, the mandate was read and implemented. He admitted that in the case of Honorable Bhofal Chambers, for example, who he said he also represented, the mandate was read and implemented by the NEC. We therefore hold that since the mandate to the parties in the consolidated petitions for prohibition grew out of the same Opinion and Judgment, and since the said mandate, contained in one instrument, as opposed to several instruments, was read to the other parties to the consolidated petitions for the writ of prohibitions, the aspect of the mandate referring to the informant was also

read by the NEC. Hence, we disagree with the informant's contention to the contrary in this regard and decline to hold the NEC in contempt as prayed by the informant.

The next issue is whether or not the NEC failed or refused to hear the informant's complaint?

As stated in count (4) of his bill of information quoted *supra*, the informant has consistently maintained that since this Court's mandate of February 17, 2015, which informant says directed the NEC to commence the hearing/investigation of his complaint pending before the NEC in accordance with law, the NEC has failed and refused to do so. Concerning this point, the informant and the NEC exchanged communications which, for the benefit of this opinion, we have deemed necessary to quote.

In an apparent reply to an earlier letter received from Attorney Anthony Toga NIMELY, II, of the CEMAR Law Offices on behalf of the informant, the Acting Chairman of the NEC, Counsellor Sarah Jegede-Toe wrote as follows:

"REPUBLIC OF LIBERIA
NATIONAL ELECTIONS COMMISSION (NEC)
TUBMAN BOULEVARD, 9TH & 10TH STREETS, SINKOR, P.O. BOX 2044
MONROVIA, LIBERIA
Email: inf0@necliberia.org/FAXL 23177226245

OFFICE OF THE CO-CHAIRMAN
RL/NEC/SMT/008/15

February 23, 2015

Atty. Anthony Toga Nimely, II
Case Management Director
CEMAR LAW OFFICES
Benson & Center Streets Intersection
Bedell Bldg. 1st Floor

Monrovia, Liberia

Dear Atty. Nimely:

I present compliments on behalf of the National Elections Commission, and herein acknowledge receipt of your letter dated February 18, 2015, in which you claimed that your client, Mr. Jonathan Boye Charles Sogbie, of the Alliance for Peace and Democracy (APD), has an appeal pending before the Board of Commissioners.

Upon review of our records, the records show that Mr. Sogbie does not have an appeal pending before the Board of Commissioners of NEC.

Kind regards.

Truly yours,

Sarah Jegede-Toe (Cllr.)
ACTING CHAIRMAN

To the above letter, the CEMAR Law Offices, through Attorney Nimley, replied as follows:

"CEMAR LAW OFFICES
Benson & Center Streets Intersection
Bedell bldg, 1st Floor
Monrovia, Liberia

Mobile: +231886464/886513547/886551415

February 26, 2015

Hon. Cllr. Jerome G. Korkoyah
Chairman
National Elections Commission, R.,L.
9th. Street, Sinkor
Tubman Boulevard
Monrovia, Liberia

Dear Cllr. Korkoyah:

Your communication RL/NEC/SMT/008/15 is herewith acknowledged and we use this medium to thank you for your timely response, however you may not be aware that your Hearing Officer, Hon. N. Welleh Valentine in Fish Town, River Gee County, responsible to investigate all elections irregularities and/or complaint filed in the Special Senatorial elections held on 20th December, 2014, refused to hear the complaint filed by our Client Mr. Jonathan Boye Charles Sogbie, as he claimed that said complaint was beyond his authority. See receipt of complaint by the said Hearing Officer for your ease of reference.

Accordingly, Petitioner proceeded to Monrovia and filed a complaint before your Honourable selves at the Commission, that he had a complaint pending before the Election Magistrates at Fish town, but again his complaint was baffled. Your letter as referenced above, in which you noted Petitioner has no appeal pending before the Commission, is far from reality as the complaint before Magistrates Valentine and Flomo is still pending and needs expeditious hearing. See election complaint receipts received from Fish Town, River Gee, for your ease of reference.

Consequently, as this is an election matter which is time bound, it is our prayer that you will without delay instruct your Election Magistrates at River Gee, N. Welleh Valentine and Messrs. Flomo, respectively, to expeditiously [and] consistent with law governing election matters hear the pending elections matter concerning the massive fraud alleged, massive vote rigging and your denial of his political party, the Alliance for Peace and Democracy the right to assign representatives to each of the 19 pooling centers, places where the rigging reportedly transpired. We solicit your kind cooperation in the premises consistent with law.

Regards.
Faithfully,

Attorney Anthony Toga NIMELY, II
CASE MANAGEMENT DIRECTOR

Cc: FILE"

To answer the question whether or not the NEC failed or refused to hear the informant's complaint, we take recourse to the records. The records before us reveal that agents of the informant's political party, APD, Hawkins Younge and McArthur Jarlajue filed a complaint with N. Welleh Valentine, the NEC's Hearing Officer of Fish Town, River Gee County, on December 23, 2014, alleging ballot paper fraud such as false ballots in box, and other violations of the elections law and regulations during the time of the Special Senatorial Election in Fish Town, River Gee County. Hearing Officer Valentine dismissed the complaint on ground that the said complaint was filed 120 hours after the occurrence of the alleged election violations. He held that he did not have jurisdiction to hear complaints filed forty eight (48) hours after an offense or alleged violation has occurred and cited the NEC Polling and Counting Manual, page 23. We quote the ruling entered by the Hearing Officer:

"Republic of Liberia
NATIONAL ELECTIONS COMMISSION
(NEC)
MONROVIA, LIBERIA

December 27, 2014

Case Title

Mr. Hawkins Younge & McArthur Jarlajue
APD Party Agents Complainants
vs.
National Elections Commission (NEC) Staff
Fish Town City, River Gee County.....Defendant

Offenses Alleged

1. Ballot paper fraud, such as false ballot in box
2. Other violations of law or regulations.

Legal issue presented by the case:

Whether or not the county magisterial hearing officer has jurisdiction to hear and decide a case of allege[d] election offense against NEC local staff in the county if that complaint is filed 120hrs after the offense occurred and that local staff has completed the tally process and forwarded results of the election in the county to NEC Headquarters in Monrovia?

Holding/Rule:

No. the magisterial hearing officer has jurisdiction to hear only complaints signed and filed with the magisterial officer within 48 hours after the offense or violation occurred, see NEC polling and counting manual page 23.

Disposition of Case:

The case is dismissed for late filling and is hereby so order.

Signed: Welleh Valentine

Magisterial Hearing Officer, Fish Town, River Gee County"

There is no doubt that the informant was aware of the decision of the Hearing Officer quoted above dismissing his complaint. We take this position based on the letter written to the Chairman of the NEC, Counsellor Jerome G. Kokoya on behalf of the informant by the Cemar Law Offices, by and through Attorney Anthony Toga Nimley, II. In that letter, the informant, through his counsel acknowledged that the Hearing Officer in Fish Town, River Gee County had received and passed on the complaint filed by the informant. What we cannot comprehend, however, is while the informant's counsel recognizes in the first paragraph of his own letter written to the Chairman of the NEC that the Hearing Officer had dismissed his client's complaint for lack of jurisdiction, he contends in the second paragraph of the very same letter that the matter was still pending before the Hearing Officer at Fish Town, River Gee County. So, instead of requesting that the Board of Commissioners of the NEC hears his client's complaint on appeal, he requested the Chairman of the NEC to instruct the same Hearing Officer in River Gee County who had dismissed the complaint to hear the same complaint again.

Clearly, this request of the informant's counsel is not tenable in the face of the December 27, 2014 ruling of the Hearing Officer quoted above. In our opinion, the complaint of the informant having been dismissed, the only remedy left to the informant was to appeal the ruling of the Hearing Officer to the Board of Commissioners of the NEC within the time prescribed by the guidelines and regulations of the NEC. The question we ask is, did the informant timely appeal the decision of the Hearing Officer of the NEC in Fish Town, River Gee County?

Article 8 (4) of the *Guidelines and Regulations of the NEC on Challenges and Complaints Arising Before and During Elections* (July 12, 2011) provides:

"Determination of [a] Hearing Officer shall be appealed to the Board of Commissioners no later than 48 hours after determination."
[Emphasis supplied].

In the records before us, there is no showing that the informant or the party agents of his political party timely appealed the decision of the Hearing Officer dismissing the complaint within 48 hours as provided by the *Guidelines and Regulations of the NEC on Challenges and Complaints Arising Before and During Elections*. The decision of the Hearing Officer dismissing the complaint was rendered on December 27, 2014. The records show that the informant's party agents filled in the appeal form provided by the NEC, but nowhere in the records do we see that they filed the said form with Hearing Officer Valentine's office to constitute and form the basis of the informant's appeal with the NEC's Board of Commissioners. To the contrary we see that the agents of the informant's political party elected to take the informant's complaint to another hearing officer of the NEC for hearing.

We see in the records a letter dated December 30, 2014, and addressed to the Hearing Officer, National Elections Commission, Tubman Boulevard, Monrovia, Liberia and signed by Hawkins S. Younge and MacArthur Jalarjue, the same party agents who filed the complaint of election irregularities before the Hearing Officer in Fish Town, River Gee County, on behalf of the informant. The letter

which was attested by the informant, Jonathan Boy Charles Sogbie himself, was intended as "a follow-up" to the informant's complaint. We must note that the attestation of the letter by the informant marked his first direct involvement with the complaint of alleged election violations. All along the informant had remained aloof; it has been the party agents of his political party, APD, who were involved in the matter. Howbeit, we say that the letter of December 30, 2014, addressed to the Hearing Officer, National Elections Commission, Tubman Boulevard, Monrovia, Liberia was indeed misdirected. It should have been addressed, instead, to the Chairman of the NEC for the attention of the Board of Commissioners of the NEC in respect of the informant's appeal and not to another hearing officer, who, in our view, was without authority to hear the informant's purported appeal. But even if we were to take it that the letter constituted an appeal to the NEC's Board of Commissioners through the office of the Hearing Officer in Monrovia, such appeal would still not be considered on its merits because it was outside of the 48 hours guidelines and regulations of the NEC.

There was another misstep by the informant with respect to his purported appeal. On January 3, 2015, the informant filed a petition for the writ of prohibition, praying the Justice presiding in the Chambers of this Court not to certificate NEC's declared winner of the Special Senatorial Election conducted in River Gee County. As we have indicated above, the petition for the writ of prohibition filed by the informant was denied. This Court held that concerning persons already certificated by the NEC before the consolidated petitions for the writ of prohibition were filed, prohibition will not lie to undo their certification. Therefore, since the informant's petition for the writ of prohibition sought to de-certificate co-respondent Commany Wesseh who had already been certificated by the NEC before the filing of the informant's petition for the writ of prohibition, the informant's petition for the writ of prohibition was denied and dismissed.

We should note that in this jurisdiction, the writ of prohibition cannot take the place of an appeal. In accord: *Fazzah v. NEC et al*, 8LLR 85, (1943); *Kennedy et al v. Goodridge et al*, 33LLR,398 (1985); *Dolo et al v. Kroma et al*, 30LLR 816 (1982); and *LAC v. Hage et al*, 38 LLR 259 (1995); Therefore, the informant should have timely pursued his appeal instead of resorting to the alternative writ of prohibition. Or, alternatively, he should have pursued the two processes at the same time. But he took a risk when he failed to timely pursue his appeal and resorted to prohibition which was denied by this Court. He certainly cannot now return to the appeal from the ruling of the Hearing Officer which is time bound, as a viable option.

As indicated from the letter written by the Acting Chairman of the NEC, Counsellor Sarah Jegede-Toe quoted above, the first time the informant brought to the attention of the Chairman of the NEC, Counsellor Jerome G. Kokoya, that the informant's appeal was pending before the Board of Commissioners of the NEC was February 26, 2015, about two months after the Hearing Officer had dismissed the informant's complaint. From all indications, it is abundantly clear that the informant did not pursue his appeal in 48 hours in keeping with the *Guidelines & Regulations of the NEC on Challenges and Complaints Arising Before and During Elections* (July12, 2011). We are therefore in full agreement with the NEC that the informant has no appeal before it for hearing and determination.

Let us emphasis that the filing of the informant's petition for the writ of prohibition and the issuance of the alternative writ did not serve as a stay to the investigation of the complaint filed by the informant with the NEC or any appeal which could or should have been taken from the decision of the Hearing Officer. The petition for the writ of prohibition dealt solely with the issue of whether or not the NEC could certificate a person declared winner of the Special Senatorial Elections while the complaint before the NEC was still awaiting disposition. The issuance of the writ did not serve to stay investigation of the complaint. To the

contrary, the law anticipates that the hearing of the complaint could proceed even as the petition for the writ of prohibition was being heard and disposed of. This is squarely in line with both the Constitution and the Elections Law as they fully recognize that a challenge in election matter should be heard expeditiously. To have expected that the petition for the writ of prohibition, which did not go to the merits of the complaint filed by the informant growing out of the conduct of the Special Senatorial Elections would have stayed the hearing of the complaint or appeal that was or should have been taken therefrom would clearly have contravened the Constitution and the Elections Law. This Court is not prepared to compensate the informant for this clear negligence demonstrated by him and his counsel.

It is incumbent on a candidate in an election to ensure that he has in place a qualified legal team so that in the event he believes that election violations have occurred, he would be in the position to adequately take advantage of the law, especially within the timeframe prescribed by the law for asserting a challenge and timely appealing from any decision related to the challenge. Had such been the case, the informant would have known, firstly, that he had a period of forty-eight (48) hours within which to appeal the decision of the Hearing Officer dismissing the complaint. Secondly, he would have known that his appeal lies with the Board of Commissioners of the NEC and not with another hearing officer of the NEC. And thirdly, that the petition for the writ of prohibition did not stay the continuation of the hearing or appeal process at the NEC which informant was obligated to follow in order to have his case heard both by the NEC Board of Commissioners and the Supreme Court.

The last issue we address is- whether or not a bill of information will lie in this case?

This is what the Revised Rules of the Supreme Court provides concerning the filing of a bill of information before the Supreme Court: