

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS OCTOBER TERM, A.D. 2018

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 HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE

IN RE: Conmany B. Wesseh, Daniel Naathén,
Milton Teahjay, and Oscar Cooper, all
Senators/members of the Liberian
Senate, all of Capitol Building, Monrovia,
Liberia,.....PETITIONERS

Versus

Senator Saah H. Joseph, Senator Jonathan
Kaipay, Senator J. Gbleh-bo Brown, Senator
H. Dan Morias, Senator Varney G. Sherman,
Senator A. Marshall Dennis, Senator G.
Alphonso Gaye, Senator Prince Y. Johnson,
Senator Thomas Grupee, Senator Henry
Yallah, Senator Henrique Tokpa, Senator
George T. Tengbeh, Senator Morris G.
Saytumah, Senator Sando Dazoe Johnson,
Senator Albert T. Chie, Senator Peter S.
Coleman, Senator Jim Tornonlah, Santor
Dallas A. V. Gueh, Senator Matthew Jaye,
all of the Capitol Building, Monrovia,
Liberia,.....RESPONDENTS

IN RE:
THE CONSTITUTIONALITY
AMENDMENT OF THE
SENATE RULES TO PROVIDE
FOR IMPEACHMENT

Heard: November 27, 2018

Decided: February 6, 2019

Counsellors Tiawon S. Gongloe and Momolu G. Kandakai of the Gongloe and Associates, Inc. appeared for the petitioners/movants. Counsellor Fredrick Doe Cherue of the Dugbor Law Firm, and Counsellor G. Varney Sherman, one of co-respondents, appeared for the respondents.

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT.

This case comes to the Full Bench of the Supreme Court of Liberia on an In Re petition filed by four (4) members of the Liberian Senate (petitioners) against twenty one (21) other members of the Liberian Senate (respondents) requesting the Supreme Court to determine the constitutionality of the decision of the twenty-one (21) Senators to

amend Rule 63 of the Senate Standing Rules to provide for Impeachment. Upon the filing of petitioners' petition, the Chief Justice, His Honor Francis S. Korkpor, Sr., consistent with the practice and procedure in this jurisdiction, ordered the Clerk of the Supreme Court to write the Minister of Justice/Attorney-General of Liberia, Counsellor Musa F. Dean, informing him of the filing of the petition and to have him make presentation on the side of the law to aid the Court in determining the constitutionality of the Senate amended Rule 63, subject of these proceedings. The Chief Justice also ordered the Clerk to write Counsellors Cyril Jones, Gloria M. Musu Scott, Benedict F. Sannoh and Stephen B. Dunbar to serve as *amici curiae* to make individual presentations regarding the constitutionality of amended Senate Rule 63 for impeachment.

The facts reveal that on November 9, 2018, petitioners filed an eleven-count petition with this Honorable Court requesting the Supreme Court to declare unconstitutional the act of the respondents in amending Rule 63 of the Senate Standing Rules on impeachment. The petitioners are contending principally that the singular purpose for the amendment of Rule 63 of the Senate Standing Rules was to conduct impeachment trial of Associate Justice Kabineh M. Ja'neh against whom the House of Representatives had prepared a Bill of Impeachment. The petitioners argue that this act on the part of the respondents is contrary to, and violates Article 43 of the 1986 Constitution of Liberia, which states that "the Legislature shall prescribe the procedure for impeachment proceedings which shall be in conformity with the requirements of due process of law". Consequently, the petitioners requested the Supreme Court to declare the action of the respondents unconstitutional.

The petitioners contended further that the Constitution is the supreme and fundamental law of the Republic of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic; that "any laws, treaties, statutes, customs and regulations, found to be inconsistent with it, shall, to the extent of the inconsistency be void and of no legal effect"; and that "The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional".

The petitioners also contended in counts three (3) and four (4) of their petition that Article 66 of the Liberian Constitution provides that "the Supreme Court shall be the final arbiter of Constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of records, courts not of records, administrative agencies, autonomous agencies or any other authority, both as to law and fact

except cases involving ambassadors, ministers, or cases in which a county is a party; that in all such cases, the Supreme Court shall exercise original jurisdiction; that the Legislature shall make no law or create any exceptions as would deprive the Supreme Court of any of the powers granted herein"; that consistent with the exclusive power, authority and jurisdiction of the Supreme Court to say what the law is, the Court is requested to declare the constitutionality of the act of the respondents to amend Rule 63 of the Senate Standing Rules for the sole purpose of conducting impeachment trial against Mr. Justice Kabineh M. Ja'neh.

The petitioners further contended in counts four (4) and five (5) and subsequently in counts seven (7), eight (8) and nine (9) of their petition that they were before this Honorable Court to request Court to take cognizance of the provision of the 1986 Constitution which clearly provides that the authority and power to impeach a public official, specifically, the President, the Vice President, the Chief Justice and Associate Justices of the Supreme Court of Liberia and Judges of subordinate courts whose removal can only be done through impeachment as spelled out in Article 43, lies squarely with the House of Representatives and with the House of Senate. The petitioners maintained that when it comes to the procedure for impeachment, Article 43 of the Constitution says that "The Legislature shall prescribe the procedure for impeachment proceeding which shall be in conformity with due process of law" but contrary to the clear mandate of Article 43 of the Constitution of Liberia regarding the authority of the Legislature to prescribe the procedure for impeachment proceeding, respondents elected to proceed with the amendment of Rule 63 of the Senate Standing Rules that are meant for the normal conduct of the business of the Senate alone, to be used in the impeachment of Mr. Justice Ja'neh. According to the petitioners, the decision of respondents arrogating unto themselves the power and authority to prescribe the procedure for impeachment to the exclusion of the House of Representatives is therefore unconstitutional. The petitioners pray this Honorable Court to declare the amended Rule 63 of the Senate Standing Rules unconstitutional consistent with Article 2 of the 1986 Constitution which provides in part: "the Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional".

Concluding their petition in counts nine (9), ten (10) and eleven (11), petitioners say that the Constitution of Liberia prohibits the subjection of any citizen or resident of this Republic to any law that was not in effect at the time an offense a person is accused of was committed,

relying on Article 21(a) of the Constitution which provides: "no person shall be made subject to any law or punishment which was not in effect at the time of commission of an offense, nor shall the Legislature enact any bill of attainder or ex post facto law". Consequently, the petitioners say the amendment of the Senate Standing Rules to provide for the impeachment of Justice Kabineh Ja'neh is unconstitutional.

In response to the petitioners' petition, the respondents filed a 30-count returns contending essentially that the petitioners' petition should be denied on the strength of Article 42 of the 1986 Constitution of Liberia which states in part: "All official acts done or performed and all statements made in the chambers of the Legislature shall be privileged; and no Legislator shall be held accountable or punished therefor". The respondents submit in their returns that naming them as individuals in the petition and, requiring them in the language of the citation issued by this Honorable Court to appear before this Court and to show cause why petitioners' petition should not be granted, is tantamount to holding the respondents personally and individually accountable, which therefore is a violation of the privilege guaranteed them by Article 42 of the 1986 Constitution as quoted supra.

The respondents contended that in view of this violation, the petitioners' entire petition should be summarily denied and dismissed with cost against petitioners. The respondents requested this Honorable Court to take judicial notice that legislative privilege is universally recognized as spelt out in Black's Law Dictionary, 8th Edition, page 1235; that when an In Re Proceeding is brought before the Honorable Supreme Court to determine the constitutionality of the law or any action of the Legislature, no legislator is named to be personally liable therefore this Court lacks jurisdiction over the persons in this proceeding; hence, this petition should be dismissed.

The respondents further prayed this Honorable Court to note that the Senate Standing Rules, including Rule 63 which is the subject of these proceedings were approved and validated by the Liberian Senate of the 52nd Legislature on Monday, March 30, 2009 during the Senate's 2nd Day Sitting in Session; that the inherent power and authority of the Senate to promulgate the Senate Standing Rules is found at Article 38 of the 1986 Constitution of Liberia which provides in part: "Each House shall adopt its own rules of procedure....All rules adopted by the Legislature shall conform to the requirements of due process of law laid down in this Constitution".

At the call of the case, one of petitioners' counsel objected to the representation and participation of Counsellor Cyril Jones in the In Re proceeding for reason that Counsellor Jones, prior to his appointment as an *amicus curia*, had discussions with Co-petitioner Oscar Cooper as well as Counsellor Tiawon S. Gongloe, counsel for petitioners bordering the merits of this case; that consistent with the code of ethics governing the professional practice of law, specifically dealing with Rule 9 on conflict of interest, it is but proper that *amicus curia*, Counsellor Cyril Jones withdraws his representation, for his view may be adverse to petitioners.

In response, Counsellor Cyril Jones said that it is the prerogative of this Honorable Court to select who would be an *amicus curia* (friend of the court) and that a request by this Honorable Court to serve as an *amicus curia* is mandatory and not discretionary, thus when the Court mandated that he should serve as an *amicus curia*, he was obliged to accept. Counsellor Jones however conceded that he had discussions regarding this case with Co-petitioner, Senator Oscar Cooper and Counsellor Tiawon S. Gongloe, counsel for petitioners before the filing of the In Re petition and prayed that the Court will decide on the appropriate course whether or not he should serve as an *amicus curia* in this case. The Supreme Court, in passing on the application of the petitioners and the concession made by Counsellor Jones, and in accordance with law, granted the application and therefore relieved Counsellor Cyril Jones from serving as an *amicus curia* in this case. The brief filed by Counsellor Jones was therefore ordered stricken from the records of the case.

Counsellor Stephen B. Dunbar informed the Court through a written communication dated November 20, 2018, that he would not be within the bailiwick of the Republic because he was travelling to the United States of America to attend to urgent family matter; he therefore requested to be excused and his excuse was granted. As regards the representation of *amicus curia* Counsellor Gloria M. Musu Scott who was in Court, the Court ascertained from her as to whether she had filed a brief. She informed Court that due to illness, she was unable to prepare a brief. Hence, her service as an *amicus curia* was dispensed with by the Court.

In his brief filed with this Court on November 23, 2018, the Minister of Justice/Attorney-General contended that the petitioners in these proceedings and the respondents thereto are all integral and inseparable members of the Liberian Senate, and that when a decision is made by the Liberian Senate, it is immaterial or irrelevant as to

whether a member votes for or against that decision; that the decision so taken is the decision of the entire Senate. The Minister of Justice/Attorney-General also contended that in decision making at the Liberian Senate, each Senator has the right to vote on the action(s) and/or decision(s) of the Senate meaning, that a Senator is given the opportunity to vote for or against the decision and in spite of a Senator's opposition to an action or decision of the Senate, he or she being an indivisible and inseparable part of the Senate, is bound by actions and decisions of his/her majority Colleagues and cannot file suit against such decisions.

The Minister of Justice/Attorney-General also maintained in his brief that the laws extant in this jurisdiction do not create a dual capacity in both the plaintiff or defendant, petitioner or respondent; that a party in a case must be a plaintiff or defendant, petitioner or respondent, claimant or defendant, libellant or libellee as provided for in the Civil Procedure Law, Rev. Code 1:5.1. The Minister of Justice/Attorney-General further contended that a person who should be joined in an action before any court except the Supreme Court of Liberia is either joined as a plaintiff or defendant; that joinder is permitted only in keeping with the Civil Procedure Law, either as a plaintiff or defendant; that both cannot serve in dual capacity, hence, petitioners' prayer to this Honorable Court to permit the Liberian Senate to be joined as a party respondent to this petition is a violation of the law and should not be allowed.

On the question of legal standing of the petitioners to challenge the constitutionality of the Senate amended Rule 63, the Minister of Justice/Attorney-General maintained that the petitioners must first demonstrate a legal standing; that is, the petitioners must be prejudiced or threatened by the enforcement of the aforesaid amended Rule 63, or that petitioners stand to be adversely affected individually or collectively if the Senate amended Rule 63 were to be enforced against them. The Minister of Justice/Attorney-General concluded by asserting that nowhere in the petitioners' petition had they shown that the implementation of the Senate amended Rule 63 would work prejudice against the individual or collective interest of petitioners.

Counsellor Benedict F. Sannoh, the only Counsellor who participated in the case as an *amicus Curia*, of the four Counsellors appointed by this Court, also opined in his brief that the petitioners herein lacked legal standing to invoke the intervention of the Supreme Court, they not having shown that they have suffered, sustained or were threatened

with any injury as a result of the amendment of Rule 63 on impeachment of the Senate Standing Rules. Therefore, Counsellor Benedict F. Sannoh prayed this Honorable Court to deny the petitioners' petition; that if this Court were to agree that petitioners had no standing to file the In Re proceeding, this Court cannot delve into the merits and demerits of the In Re petition to determine the constitutionality of Senate amended Rule 63 of the Senate Standing Rules on impeachment.

Counsellor Sannoh maintained, also, that this Court, before proceeding further into the hearing of the In Re petition, must first determine whether or not this action is properly brought before this Honorable Court to warrant the exercise of jurisdiction over the matter; that the petitioners denominating their petition as a complaint against the respondents with the view to make the Supreme Court to declare the amended Rule 63 of the Senate Standing Rules unconstitutional cannot lie because the Supreme Court cannot exercise original jurisdiction over the respondents, they not being ambassadors, ministers and there being no county involved or named as a party respondent. Counsellor Benedict F. Sannoh is also of the view that the Supreme Court lacks jurisdiction to review the official acts done or performed in the Chambers of the Senate, for these acts being political enjoy constitutional privilege for which Senators, individually or collectively, cannot be held accountable; that the petitioners having elected to file this petition against the respondents herein who themselves are Senators, and not against the Liberian Senate as a body that passed the resolution amending the Senate Rule 63 of the Senate Standing Rules, this Court cannot, under the Constitution of this Republic, review the process employed by the Senate to amend Rule 63 of its Standing Rules. Petitioners' petition must therefore be denied and dismissed.

Following the filing of the respondents' returns, the briefs filed by the Minister of Justice/Attorney-General and *amicus curia* Counsellor Benedict F. Sannoh in which they vehemently argued that the Supreme Court lacks original jurisdiction over the respondents as they were named as individual Senators over whom the Supreme Court cannot exercise original jurisdiction, it appears that the petitioners realized their error in proceeding against the wrong parties, that is the respondents, by naming individual Senators as respondents, were in serious error. In an apparent move to correct this egregious error, the petitioners, on November 20, 2018, filed before this Court, a five (5) count motion to join the Liberian Senate as a party respondent in this In Re petition. We quote verbatim the petitioners' motion for joinder:

"MOVANTS' MOTION

And now come movants in the above entitled cause of action and respectfully move this Honorable Court for a joinder of the Liberian Senate, as 2nd respondent in the petition out of which this motion grows and is being filed, and sheweth the following legal and factual reasons therefor, to wit:

1. That movants filed a petition before the Full Bench of the Honorable Supreme Court based on action taken by some members of the Liberian Senate in their official capacities as members of the Liberian Senate, and which action was endorsed by the Liberian Senate as a body, making it necessary that the Senate, as a body and an indispensable part of the action complained of, be made a party to the petition and these proceedings, but which was inadvertently omitted by the petitioners. Hereto attached and marked Exhibit "M/1" is a copy of the motion to form a part of the motion.
2. That movants say that the action of the named members of the Senate having been endorsed and acted upon by the Senate, as a body, and predicated upon which the Senate, as a body, proceeded to take steps in regard to the action referenced in the petition, petitioners are of the view that without the inclusion of the Liberian Senate as an indispensable party co-respondent, and given that the Senate, as a body will necessarily be affected by the decision and judgment of the honorable Supreme Court, a complete relief will not be obtainable if the Liberian Senate is not made a party co-respondent to the petition and the current proceedings so that it will be legally bound by the decision and judgment of this Honorable Court.
3. That movants say that the Civil Procedure Law provides for a motion to join as follows: "persons (a) who ought to be parties to an action if complete relief is to be accorded between the persons who are parties to such action..." Civil Procedure Law, Rev. Code 1:5.51. Hence, petitioners pray for the granting of this motion as a matter of law as complete relief in this case is not possible without the Liberian Senate being joined by the Court as a co-respondent, given that the Senate has not voluntarily and of its own volition joined to defend against the petition regarding the action of the Senate.

4. That movants say "All persons may be joined in one action as defendants against whom there is asserted jointly, severally, or in the alternative any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any question of law or fact common to all of them would arise in the action." Petitioners say that the instant proceedings have common issues of law and fact that affect and relate to all of the parties named in the petition and the correspondent Liberian Senate, and therefore necessitate that the said Senate be made a party to the proceedings, especially enabling this Court to acquire personal jurisdiction over that body and making any judgment enforceable against the said body.
5. That this motion is being filed in good faith and is not intended to delay and baffle these proceedings.

WHEREFORE AND IN VIEW OF THE FOREGOING, movants most respectfully pray this Honorable Court to grant movants' motion, order the issuance and service of a writ of summons, along with a copy of the petition on the Liberian Senate in order for it to file its returns as a respondent, issue a stay order against the use of the amended Rule 63 of the Liberian Senate governing impeachment trial by the Liberian Senate, and such further relief as this Court may consider legal and just.

Respectfully submitted: the within named
Movants by and thru their legal counsel:
Gongloe & Associates, Inc.
CEDE Building, Ashmun Street

Tiawon S. Gongloe
Counsellor-At-Law

Momolu G. Kandakai
Counsellor-At-Law

Samuel W. Nyazeegbou
Counsellor-At-Law

Philip Y. Gongloe
Counsellor-At-Law"

In response to petitioners/movants' motion for joinder, respondents filed a nine (9) count resistance which is also quoted verbatim herein below for easy reference:

"AND NOW COME RESPONDENTS in the above entitled proceeding and in response to movant's motion for Joinder of the entire Liberian Senate as party respondent, say that aforesaid motion is

so fatally flawed that it is a fit subject for summary denial, and for reasons, sheweth the following:

1. That as to the entire motion for joinder of the Liberian Senate as party respondent (hereinafter the "Joinder of Party Motion" in the main "in Re: The constitutionality of amendment of Senate rules to provide for impeachment" (hereinafter the "constitutionality of Senate Rules Amendment Proceeding"), respondents submit that the fundamental principle of law on joinder of parties, provided for by Liberian law is: "persons... (b) who might be inequitably affected by a judgment in such action shall be made plaintiffs or defendant therein". (Emphasis ours). Civil Procedure Law, Rev. Code 1:5.51(1), page 69; Sio v. Sio, 35 LLR 92 (1988), syl. 2. Simply stated the party to be joined as either a plaintiff or a defendant ; the joinder must never be such that the person sought to be joined serves in a dual capacity as both plaintiff and defendant in the same case/proceeding. Respondents therefore submit that these are good and sufficient reasons to deny this motion for joinder; and respondents so pray.
2. That respondents submit it is clear from this fundamental law on joinder of parties that a person cannot be both a plaintiff and a defendant or a petitioner and respondent in one and the same case/proceeding. And this fundamental principle of law on joinder of parties is universally recognized and practiced. For example, in the United States, the dual capacity of plaintiff and defendant is disallowed, not permitted. 59 Am Jur 2d parties Section 6. The general principle of law is that without adversary parties a court is without jurisdiction and it therefore follows that one person cannot be both plaintiff and defendant in the same action; and this rule applies regardless of the character of the action, even where such person sues in one capacity and defends in another. Or where one agency of the United States Government seeks to sue another. Ibid. Respondents therefore submit that these are good and sufficient reasons to deny this motion for joinder; and respondents so pray.
3. That respondents say that where it appears from the fact and circumstances of a case or proceeding that a person appears in two capacities or characters, the person ought to appear only as a plaintiff or as a defendant, setting forth his or her several rights in the subject matter of the action. For example, being that under the law a partnership, as a business organization, is one and the same as each of the partners; a partnership cannot use one of its

members at law. 59 Am Jur 2d Parties Section 6. Similarly, a Senator, in his capacity as member of the Liberian Senate, is the Liberian Senate; the two are indistinguishable in law. As such, four (4) Senators cannot invoke a judiciary inquiry against the Liberian Senate in a matter, issue or proceeding in which they participated and a decision was reached by a majority vote, as that decision is binding on them with the force of law. Respondents therefore submit that these are good and sufficient reasons to deny this motion for joinder; and respondents so pray.

4. That respondents pray Your Honors to take judicial notice that movants (minority Senators who refused to sign the Resolution for the Amendment of Rule 63 of the Senate Standing Rules to govern the procedure for impeachment) are members of the Liberian Senate, which took the decision (by a vote of 21 members of the Liberian Senate to amend the aforesaid Rule 63); and even though they dissented, they are part and parcel of that decision. Movants, as minority Senators, cannot therefore turn around and bring a law suit against the Liberian Senate (of which they are members), as that would be a weird, strange and unacceptable procedure where the plaintiff/petitioner is also simultaneously the defendant/respondent in the same matter before a court of law. Such a procedure is a violation of Liberian law, as under Liberian law, a person may be either a plaintiff or a defendant in a case; a person shall not serve in the dual capacity as both plaintiff and defendant in the same case. Respondents therefore submit that these are good and sufficient reasons to deny this motion for joinder; and respondents so pray.
5. That as to counts one (1) and two (2) of the motion, respondents say that the Liberian Senate is not an indispensable part of the action complained of by movants because for the determination of the constitutionality of a law or action of the Liberian Senate through an "In Re" proceeding, no party need be made to answer and no party has ever been made to answer. There is precedence in Liberia's jurisprudence where the Honorable Supreme Court determined the constitutionality of an act of the Legislature through "In Re" proceedings; but there is no precedence where the entire Legislature or any of its two houses (the Liberian Senate or the House of Representatives) has been made a party to appear and defend the legislation sought to be declared unconstitutional. Respondents refer to Counts two (2) and nine (9) of the returns in the main "Constitutionality of Senate Rules Amendment Proceeding" pending before Your Honors is false,

misleading and baseless. Respondents therefore submit that these are good and sufficient reasons to deny this motion for joinder; and respondents so pray.

6. That as to count three (3) of the motion, respondents do not deny the existence of the first clause of Subsection 1 of Section 5.51 of the Civil Procedure law; but respondents say that the second clause of the aforesaid Subsection 1 clearly provides that the person sought to be joined must be joined either as a plaintiff or defendant. Subsection 2 of this Subsection 5.1 of the Civil Procedure provides that if a person who is to be joined as a plaintiff refuses to do so, he may be joined as a defendant. Nowhere in this law is it said that a person who is a plaintiff may also be joined as a defendant in the same case. Respondents therefore submit that these are good and sufficient reasons to deny this motion for joinder; and respondents so pray.
7. That supplementing counting six (6) above, it is indisputable that movants are Senators and movants admit that they are Senators, who participated in the legislative proceeding that led to the amendment of Rule 63 of the Senate Standing Rules and lost on the decision by 21 votes for the amendment and 4 votes (movants) against the amendment. This was a political process and respondents submit that movants cannot extricate themselves from their membership of the Liberian Senate and cause a judiciary inquiry into that political process which they participated in. Simply stated, a member of the Liberian Senate cannot and should not be allowed to file legal action against the Liberian Senate in respect of a legislative proceeding in which he/she participated, because to do so would be to entertain the weird and unprecedented proceeding where a person serves in a dual capacity of both plaintiff/petitioner and defendant/respondent in the same case or proceeding – a matter in which the person sues himself/herself. Respondents therefore submit that these are good and sufficient reasons to deny this motion for joinder; and respondents so pray.
8. That as to count four (4) of the motion, respondents do not deny the existence of the quotation of law therein (Civil Procedure Law, Section 5.55, Subsection 2, ILCLR, page 71) but this quotation of law should be applied with reference to its first part (Civil Procedure Law Section 5.55, Subsection 1, ILCLR, pages 70 to 71), which provides that: “As to plaintiffs. All persons may join in one action as plaintiffs who assert any right to relief jointly, severally,

or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any question of law or fact common to all of them would arise in the action." Nowhere in these provisions of law on "when joinder permitted" or in any other provision of law (statutory or decisional) is it provided that a party plaintiff/petitioner may also be joined as a party defendant/respondent in the same case/matter, as movants sought to have done. Respondents submit that movants are inextricably members of the Liberian Senate, part and parcel of its decisions and bound by law by those decisions; and so they cannot be party plaintiffs/petitioners and at the same time party defendant/respondents in the same matter which challenges the law made by them. Respondents therefore submit that these are good and sufficient reasons to deny this motion for joinder; and respondents so pray.

9. That as to count five (5) of the motion, respondents deny that it has been filed in good faith. Respondents say this motion has been filed in bad faith and intended to delay and baffle the main petition to determine the "constitutionality of Senate Rules amendment proceeding". That is, movants know that they cannot be both plaintiffs and defendants or petitioners and respondents in the same case or proceeding; movants know that the request to this Honorable Supreme Court to have the main "constitutionality of Senate Rules amendment proceeding" would be tantamount to making movant both petitioners and respondents in that proceeding because movants are inextricably part of the Liberian Senate. This motion is unprecedented. Unpalatable and unjustifiable; this motion is a judicial mischief and movants should not be allowed to accomplish this judicial mischief. Respondents therefore submit that these are good and sufficient reasons to deny this motion for joinder; and respondents so pray.

WHEREFORE and in view of the foregoing, respondents pray Your Honors to deny the motion for joinder and to grant unto respondents any other and further relief as in such matters is made and provided by law.

Respectfully submitted:
Respondents by & thru their
legal counsel:

DUGBOR LAW FIRM
Frederick Doe Cherue
Counsellor-At-Law

H. Varney G. Sherman
Counsellor-At-Law & pro Se"

At the call of the case for hearing, petitioners/movants brought to the attention of Court that they have filed a motion for joinder and as a fundamental requirement in our practice and procedure, motions are disposed of before the main suits; hence, they prayed Court to allow the hearing of the motion and its resistance thereto before the hearing of the In Re petition and its returns. The respondents interposed no objection. This Court granted the application and ordered that the motion for joinder and resistance thereto and the In Re proceeding and returns thereto be consolidated and argued consistent with Civil Procedure Law, Rev. Code 1:6.3, page 78, captioned: "Consolidation of claims" which provides "when actions involving a common question of law or facts are pending before a court of record, the court, upon motion by any party or *sua sponte*, may order a joint trial of any or all the matters in issue or the consolidation of the actions; and it may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Taking a critical look at the motion for joinder and the resistance thereto, coupled with the arguments pro et con of both parties before this Court, the first issue that presents itself for determination is Whether or not a motion for joinder is cognizable before the Supreme Court?

In their 5-count motion for joinder, petitioners/movants noted that their decision to file the motion for joinder grew out of the fact that they "inadvertently omitted" the Liberian Senate as a party respondent; that not making the Liberian Senate a party would not grant them the relief they are seeking before this Court. The court is of the opinion that the procedure employed by the petitioners/movants to file this motion as a means of curing the defect in their petition is a novelty in the practice and procedure in this jurisdiction. The known and accepted practice and procedure, as provided by the statute, is where a party has "inadvertently" left out or omitted or erred in the filing of an action or responsive pleading is to withdraw and amend. Civil Procedure Law, Rev. Code 1:9.10, page 112 captioned: "Amendment to Pleading

permitted”: provides: “At any time before trial, any party may, insofar as it does not unreasonably delay trial, once amend any pleading made by him by:

- a) Withdrawing it and any subsequent pleading made by him;
- b) Paying all costs incurred by the opposing party in filing and serving pleadings subsequent to the withdrawn pleading; and
- c) Substituting an amended pleading.”

As we see it, it is a serious error for the petitioners to have filed an action which has the obvious intent of seeking to prevent the Liberian Senate from pursuing a course of action but failing to name the said Liberian Senate as a necessary party. Article 42 of the Constitution of Liberia (1986) provides that: “all official acts done or performed and all statements made in the chambers of the Legislature shall be privileged and no Legislator shall be held responsible or punished therefor”. Therefore, naming the Respondent Senators as individuals in the ‘In Re’ petition and requiring them to appear before this Court to show cause why the petitioners’ petition should not be granted is tantamount to holding the named individual Senators personally and individually accountable for their actions which they took as Senators; this would amount to a glaring violation of the privilege guaranteed them by the Constitution, for this the motion to join is fatally defective.

The petitioners, in an attempt to cure its error, proceeded to file a motion for joinder to bring the entire Liberian Senate under the Jurisdiction of this Court. But joinder cannot cure the defect in the *In re* petition, because under Liberian law, joinder is not permissible at the level of the Supreme Court.

Civil Procedure Law, Rev. Code 1:5.54, subsections (1) & (2), provide as follows:

“Procedure. Parties may be added by order of any court except the Supreme Court on motion of any party or on its own initiative at any stage of the action on any terms that are just.

For relief as counterclaims. When the presence of persons other than the parties to the original action is required for the granting of complete relief as to a counterclaim, any court except the Court may on application in a proper case order them to be brought in as parties to the action if jurisdiction can be obtained over them”. (Emphasis added)

On the motion for joinder filed before this Court requesting Court to make the Liberian Senate a party respondent, this Court reiterates that motion for joinder may be filed as provided by law to join a party as plaintiff or defendant, petitioner or respondent before any court except the Supreme Court of Liberia. It can be well concluded that petitioners took cognizance of the fact that their petition against respondents was improperly filed as the Supreme Court cannot exercise original jurisdiction over the respondents, petitioners decided to file this motion to replace respondents with the entire Senate, which cannot be done under the law for respondents are not ambassadors, ministers or a county over whom this Court can exercise original jurisdiction.

The Constitution on the jurisdiction of the Supreme Court provides in Article 66 that:

“The Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies, autonomous agencies or any other authority, both as to law and fact except cases involving ambassadors, ministers or cases in which a county is a party. In all such cases, the Supreme Court shall exercise original jurisdiction. The Legislature shall make no law nor create any exceptions as would deprive the Supreme Court of any of the powers granted herein”.

Relying on the language, the intent and dictates of this constitutional provision, the motion for joinder cannot and should not be venued before this Court. The general application for motion as provided for in Civil Procedure Law, Rev. Code 1:10.4, page 115, captioned motion papers, states: “a notice of motion shall specify the time and place of the hearing of the motion, the supporting papers upon which the motion is based, the relief demanded, and the grounds therefor.” This presupposes that the determination of the motion for joinder will take into consideration factual issues to decide who the party is that should be joined; and since the Supreme Court does not take evidence to determine the factual relevance and correctness of the motion for joinder, this Court, in addition to its lack of original jurisdiction, cannot legally entertain and pass on this motion.

Going further, the parties before this Court, petitioners and respondents, are all Senators; the Liberian Senate cannot be joined as a party respondent, for to allow that would create a dual capacity situation that is, petitioners would be respondents and would invariably

be petitioners at the same time. This is a strange practice in our jurisdiction.

If this Court were to allow this motion for joinder to stand as is, this Court would be delving into a strange practice in our jurisdiction, a total novelty not provided for by statute or by case law. The statute clearly defines who should be joined in a law suit and in what capacity that person/party is joined. Civil Procedure Law, Rev. Code 1:5.55, page 70 provides: "All persons may join in one action as plaintiffs who assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any question of law or fact common to all of them would arise in the action" vis-à-vis defendant, but not in dual capacities. We therefore sustain the contention of the respondents that the party to be joined as either a plaintiff or defendant, must not be such a person who seeks to join that will serve in a dual capacity as a plaintiff or defendant in the same case.

So clearly, the motion to join the entire Senate being *ultra vires*, same cannot be granted, and we so hold. The net effect of the denial of the motion for joinder is that only the *In Re* proceeding is before the Court given the previous order that the motion to join and the *in re* proceeding be consolidated.

An *In re* is a judicial proceeding in which an adverse party is not formally designated or named or wherein the proceeding is uncontested. This may be done, for example, where a party who has been fined or held in contempt by the Supreme Court prays for reconsideration. *In re* is also used in a title or name of a case where the proceeding involves the determination of the status of a thing, and therefore the rights of persons generally with respect to that thing. See Black's Law Dictionary, Ninth Edition, page 864. This Court also notes that in our jurisdiction, the term *In re* has been adopted in proceeding involving contempt as it was done in the case: "*In re* contempt proceedings against Rodney Sieh, Supreme Court Opinion, October Term, 2010. *In re* proceedings are also applicable in this jurisdiction wherein the Supreme Court determines that a proclamation of the Legislature of a particular act usurps some delegated functions of another branch of government. The Liberian jurisprudence is replete with cases dealing with the applicability of the *In re* proceedings as laid down in cases heard by this Court. See cases which include: *In re Counsellor C. Abayomi Cassell*, 28 LLR 107 (1979); *In re Application of Bailey*, 36 LLR 803 (1990); *In re Acolatse*, 22 LLR 219 (1973); *In re Judicial law 12.5 & 12.6*, 24 LLR 37 (1975), and *In re Constitutionality of*

Legislative Act, 2 LLR 157 (1914). In all these cases parties are not designated as plaintiffs or defendants, petitioners or respondents as was done in the case before us.

The Supreme Court's application of *In re* proceedings as contained in its opinions as stated herein above, the present case does not fall within the category of cases which this Court has recognized as *in re* proceedings. First, the caption of the present petition involves two parties, one of whom is an adversary party. Even in matters opined on by this Court which involved actions of the Legislature, said actions involved the entire body as a complete branch of government. In the present case, the petitioners are a group of Senators who are requesting the Supreme Court to assume jurisdiction over a matter that stems from the Senate's internal proceedings. Although this Court has the authority to determine the constitutionality of acts passed into law which are at variance with the Constitution of Liberia, said authority does not extend to the Senate's internal rules because same is a constitutional grant to said body and not reviewable by this Court by virtue of Article 3 of the Constitution on the principle of separation of powers. For example, in the case, *In re Constitutionality of Legislative Act (1914)*, 2 LLR 157, the Supreme Court *sua sponte* instituted *in re* proceedings and invited the bar to participate in discussions, led by the Attorney General to determine the constitutionality of said Act. The Act of 1914 promulgated by the Legislature sought to infringe upon the authority of the Judiciary by imposing rules for the practice of law, a right exclusively for the Supreme Court; the Supreme Court held that the Legislature had "transcended its constitutional limitation.

Moreover, Article 38 of the 1986 Constitution provides that: "*each House shall adopt its own rules of procedure, enforce order, and with the concurrence of two thirds of the entire membership, may expel a member for cause. Each House shall establish its own committees and sub-committees; provided, however, that the committees on revenues and appropriations shall consist of one member from each county. All rules adopted by the Legislature shall conform to the requirements of due process of law laid down in this Constitution*".

It must also be well stated that the Constitution under reference grants to the Judiciary similar right provided in Article 75 that: "*the Supreme Court shall from time to time make rules of court for the purpose of regulating the practice, procedures and manner by which case shall be commenced and heard before it and all other subordinate courts. It shall prescribe such code of conduct for lawyers appearing before it and all other subordinate courts as may be necessary to facilitate the proper*

discharge of the court's functions..." Given that similar constitutional right as mentioned above granted to the Judiciary, and which cannot be usurped by any other branch of government, Rule 63 of the Senate Standing Rules, unless it is shown to be in contravention to the due process procedure laid down by the Constitution is not reviewable by the Supreme Court unless for the purpose of determining its due process effect on the members of the Senate.

In the instant case, the petitioners attempt to impress upon us that the action by the Senate in amending rule 63 of its own standing rules to include impeachment, means that this provision of the Senate rules could or would be applicable to future impeachment proceedings of individuals who are not members of that body. This assertion, to say the least, is pre-emptive and this Court is not a forum for speculation.

The provision of Article 38 of the Constitution as quoted supra is clear and unambiguous granting the House of Senate the right to adopt its own rules for the purpose of procedure and enforcement order that may be used to expel a member for cause based on the concurrence of two thirds of its entire membership. The present petitioners have not alleged that the rules being challenged, as to them, are without due process of law or that they are injured thereby.

At the very foundation of our Constitution of 1986, the forbearers of that sacred document, particularly being deliberate of the form of Government they intended and the requisite democratic safeguards underpinning such governance structure, resolved that this Country is a Unitary Sovereign State with a Republican form of Government which has three equal, separate but coordinate branches: Legislative, Executive and Judiciary. The framers did not end here; they posited, and premised same on the constitutional principles of the separation of powers and check and balance that: *"no person holding office in one of these branches shall hold office in or exercise any of the powers assigned to either of the other two branches except as otherwise provided in this Constitution...."* See Art. 3, LIB. Const. 1986.

Having laid down the grounds for the application of *In re* proceedings as prescribed in the preceding paragraphs of this Opinion, this Court cannot entertain any matter in the form of an *In re* proceeding where it is apparent that one of the parties involved constitutes members of the group sought to be brought under the jurisdiction of the Court. Moreover, where the action would involve the Supreme Court inquiring into the internal activities of the House of Senate as provided for under the Constitution, *In re* proceedings will not lie to give this Court

jurisdiction over the respondents since they are designated as an adversary party in this case.

This takes us to the second issue as to whether the Senate's action in amending Rule 63 of its own standing rules this Court can exercise original jurisdiction over the petitioners and the respondents herein.

The language of the 1986 Constitution is clear and void of ambiguity in which the authority of the Supreme Court is defined and the cases in which it exercises original jurisdiction. Article 66 of the 1986 Constitution provides that "the Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies, autonomous agencies or any other authority, both as to law and fact except cases involving ambassadors, ministers or cases in which a county is a party. In all such cases, the Supreme Court shall exercise original jurisdiction. The Legislature shall make no law nor create any exceptions as would deprive the Supreme Court of any of the powers granted herein". The Senators not being ambassadors, ministers or counties, cannot be brought before this Court in their first instance of appearance individually as is done in this instant case. In the case: *Estate of the late Frank E. Tolbert v. Gibson-Sonpon*, 37 LLR 113 (1993) the Supreme Court, speaking through Mr. Chief Justice Bull said: "The Supreme Court has final appellate jurisdiction in all cases, both as to law and fact, except cases involving ambassadors, ministers, and a county of the Republic in which it has original jurisdiction." The Court went further to say that "it is common knowledge in our jurisdiction that the general jurisdiction of the Supreme Court is appellate in nature, and its original jurisdiction is limited". *Kamara and Kollie v. Kindi et al*, 39 LLR 102 (1998).

Thus, considering the facts and circumstances of this case, we hold that the petitioners, not being ambassadors, ministers or a county of this Republic, this Court cannot exercise original jurisdiction over them.

WHEREFORE, AND IN VIEW of the foregoing, the petition, In Re: the constitutionality of the amendment of the Senate Rule 63 to provide for impeachment, and a subsequent motion to join the Liberian Senate as a party respondent as filed by the petitioners/movants, are hereby denied and same dismissed. The Clerk of this Court is ordered to inform the parties in these proceedings the decision of this Court. Costs are disallowed. AND IT IS HEREBY SO ORDERED.