

BEFORE THE HONORABLE SUPREME COURT OF 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 HER HONOR:	JOSEPH N. NAGBE.....	ASSOCIATE JUSTICE

Conmany B. Wesseh, Daniel Naathen, Milton Teahjay,
and Oscar Coioper, all Senators/Members of the Liberian
Senate, all of Capitol Building, City of Monrovia, Republic
of Liberia.....PETITIONERS

VERSUS

Senators Saah H. Joseph, Senator Jonathan Kaipay,
Senator J. Gleh-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,
Senator Dallars A. V. Gueh, Senator Matthew Jaye, all of the
Capitol Building, City of Monrovia, Republic of Liberia

IN RE:
THE
CONSTITUTIONALITY
OF AMENDMENT OF
SENATE STANDING
RULES

.....RESPONDENTS

Heard: November 18, 2018

Decided: February 6, 2019

MADAM JUSTICE JAMESETTA HOWARD WOLOKOLIE DISSENTS.

The genesis and factual bases of this case have been laid out in the Majority Opinion of this Court giving rise to the disposition of the case in the way and manner I fundamentally and essentially disagree with. Hence I have decided to withhold my signature to the judgment emanating from their decision and therefore file this dissenting opinion.

My dissent in this case emanates from a yearning for settlement of a constitutional issue that has recently been propping up before the Supreme Court and which the Court seems to be evading, refusing to delve into and settle this crucial issue of the interpretation of a provision of the Constitution head-on.

Recounting the genesis of this issue which has been raised by four members of the Liberia Senate, in 1986, the people of Liberia abrogated the 1847

Constitution of Liberia and adopted a new Constitution. Article 71 of the new Constitution (1986) provides for the impeachment of Chief Justice, Associate Justices of the Supreme Court and judges of subordinate courts, based on proved misconduct, gross breach of duty, inability to perform the function of the office, or conviction for treason, bribery or other infamous crimes. Article 43 mandates the Legislature to prescribe the procedure to regulate and govern impeachment proceedings, and same must be in conformity with the requirements of due process of law.

In July 2018, the House of Representatives of the Legislature of Liberia, based on a petition by two of its members, commenced an impeachment proceeding against one of the Associate Justices of the Supreme Court of Liberia, His Honor Justice Kabineh M. Ja'neh. The issue of the procedure being adopted by the Legislature in carrying out its impeachment proceedings against the Associate Justice has become a subject of national debate in both political and legal circles. Many questions being raised about the manner and form in which the impeachment is proceeding, with many looking forward to guidance from the court to address this crucial issue as regards the alleged arbitrariness in which the Legislature is proceeding with the impeachment process.

On August 6, 2018, Mr. Justice Ja'neh filed a petition for a writ of prohibition before the Chambers Justice against the House of Representatives praying for a writ of prohibition. In his petition, the Justice alleged that the attempt to impeach him is based on an allegation of his misinterpretation and misapplication of the law, and his abuse of discretion while he served as Chambers Justice of the Supreme Court. These grounds engendering the impeachment against him, he questioned as being in violation of Article 73 of the Liberian Constitution (1986). Besides, Justice Ja'neh's petition questioned the arbitrariness of the impeachment proceedings, as the Legislature has not prescribed a procedure for impeachment in conformity with the requirements of due process and as mandated by Article 43 of the Constitution of Liberia. He therefore sought to have this Court declare their impeachment proceedings arbitrary and unconstitutional.

Because of the several constitutional issues raised in his petition, Justice Ja'neh prayed the Chamber Justice for the alternative writ to be issued and

the petition forwarded to the Supreme Court *en banc* for hearing and determination thereof and to have the peremptory writ issued prohibiting the House of Representatives from proceeding contrary to Article 43 of the Constitution.

Justice Sie-A-Nyene G. Yuoh, the Chambers Justice presiding, had the alternative writ issued and the matter forwarded to the full bench. The four Justices after hearing and debating on the issues raised in the petition could not obtain a majority decision; therefore, the Chief Justice sought the permission of the President, George Menneh Weah, to allow the more senior serving judge, His Honor Judge Boima Kontoe, to serve as an ad hoc justice on the matter. A subsequent hearing was then held with Judge Kontoe sitting as Ad Hoc Justice. A majority of the bench then ruled that the petition of Mr. Justice Ja'neh was filed prematurely. The alternative writ was therefore quashed and the peremptory writ prayed for denied and the petition dismissed.

The issue of the procedure being adopted in the proceedings to impeach Justice Ja'neh has again come before this Court; this time, raised by four members of the Liberian Senate, prospective jurors in the pending impeachment trial. The four Senators filed an *In Re* petition before the Supreme Court, questioning the action of majority members of the Senate, who upon receiving a bill of impeachment which is basically an indictment from the House of Representatives, to proceed with the impeachment trial as set out in Article 43 of the Constitution; that the Senate has in fact, contrary to Article 43 of the Constitution (1986), expanded the internal Rules of the Senate for the conduct of the impeachment trial. This action of the Senate expanding Rule 63 of the Senate Rules for the conduct of an impeachment trial, the petitioners of the Senate contend, is contrary to the Liberian Constitution which provides that "The **Legislature** shall prescribe procedures for impeachment proceedings". The adoption of the internal rules of the Senate for the conduct of an impeachment trial, the petitioners say, runs contrary to the Constitution; hence the petitioners have come to the Supreme Court requesting the Court to so declare. The four petitioning Senators sought a clarity from this Court regarding the procedure for an impeachment as prescribed under Article 43 of the Constitution (1986).

Mr. Justice Ja'neh being a party in interest to the resolution of this issue, and considering that the issue at bar is centered around the impeachment proceedings against him, recused himself from the hearing and determination of the petition filed by the Senators.

Unfortunately, the majority of this Court upon a hearing of the Senators' petition have again decided to dismiss the petition on procedural grounds.

By their decision, the Court has lost the opportunity to settle once and for all this case of crucial national concern surrounding the constitutionality or otherwise of the procedure being adopted by the Legislature in carrying out its impeachment proceeding against Associate Justice Kabineh M. Ja'neh. The Court yet again has lost an opportunity to resolve an issue which is critical to ensuring that the Legislature follows the requirements of due process in impeaching a judicial officer.

The majority of my colleagues have dismissed the petition of the Senators on the following procedural grounds: (1) The petitioners brought the petition against individual Senators instead of the Senate as a body, and (2) The Supreme Court cannot exercise original jurisdiction over the Senators petition.

The first reason given by the Court for dismissing the petition filed by the four Senators, the Majority say, is the naming of several Senators as respondents, and the attempt by the petitioners to join the Senate at the Supreme Court, contrary to our Civil Procedure Law Revised (1973).

As much as I agree with the majority that the Senate was the proper party to be named, if any party was necessary to be named, and that our Civil Procedure Law Rev. Code 1: 5.54 does not allow for joinder of parties at the level of the Supreme Court, this Court has frequently propounded that jurisdiction is determined from the averments contained in the complaint. *Blamo v. Zulu et al*, 30 LLR 586 (1983); *Matthies and Fima Corp. Ltd. v. Alpha International Ltd.* 40 LLR 561 (2001); *Harouni v. Griegre*, Supreme Court Opinion, March Term 2011.

The averments of the petition filed by the four Senators read as follows:

"PETITIONER'S PETITION

AND NOW COMES Petitioners in the above-entitled cause of action seeking a declaration of this Honorable Court on the Constitutionality of the Senate amended Rule 63, to provide for impeachment and sheweth the following legal and factual reasons, to wit:

1. That petitioners say that they are citizens of Liberia and currently, Senators/members of the Liberian Senate.
2. That petitioners say that the Constitution of Liberia, specifically Article 2, provides, "This Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic. Any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect. The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional."
3. That petitioners say that the power and authority to make a declaration on the constitutionality of any act, action or decision resides exclusively in the Judiciary, headed by the Supreme Court of Liberia as follows: "Article 66 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."
4. That petitioners say that consistent with its exclusive power, authority and jurisdiction to say what the law is, the Supreme Court of Liberia has made decisions in the past regarding the constitutionality of legislative acts and executive actions.
5. That petitioners say that, as provided for in Article 29 of the Constitution of Liberia "The legislative power of the Republic shall be vested in the Legislature of Liberia which shall consist of two separate houses: A Senate and a House of Representatives, both of which must pass on all legislation. The enacting style shall be: "It is enacted by the Senate and House of Representations of the Republic of Liberia in Legislature assembled."
6. That petitioners say that consistent with Count Three (3) of the petition above, they are praying the Supreme Court being mindful that the authority and power to impeach a public official, specifically the President of Liberia, the Vice President of Liberia, the Chief Justice and Associate Justices of the Supreme Court of Liberia and judges of subordinate courts whose removal from

office can only be done through impeachment, as provided in Article 43 lies, exclusively, with the House of Representatives and the authority to try an impeached public official lies, exclusively with the House of Senate; and when it comes to the procedure for impeachment, the said Article 43 of the Constitution provides, "The Legislature shall prescribe the procedure for impeachment proceedings which shall be in conformity with the requirements of due process of law."

7. That petitioners say contrary to the clear mandate of Article 43 of the Constitution of Liberia regarding authority of the Legislature as a branch to prescribe the procedure for impeachment proceedings, petitioners say that their colleagues proceeded to amend Rule 63 of the Standing Rules meant for the normal conduct of the business of the Senate, which were prescribed by the Senate alone, to provide therein the procedure for impeachment proceedings, thereby arrogating unto itself the authority and power to prescribe the procedure for impeachment to the exclusion of the House of Representatives. Petitioners say that the action of the Senate and its product, the amended Senate rule to provide for impeachment are unconstitutional and pray this Honorable Court to so declare. Hereto attached is a copy of document entitled, "Instrument of Approval by the Liberian Senate of Amendments Made to Senate Standing Rules 63" with another document entitled Amended Rule 63 of the Senate's Standing Rules The Senate when sitting on impeachment trials attached thereto marked in bulk "P/1" to form a cogent part of the petition.
8. That also as to Count Five (5) of the petition above, petitioners say, the unconstitutionality of the amended Senate rule to provide for impeachment cannot be cured, even by the concurrence of the House of Representatives, because the House of Representatives cannot, legally, draft, approve, or amend rules for the conduct of any activity of the Senate, a separate layer of the legislature; hence, any attempt by respondents to have the House of Representatives concur with the action of respondents and an affirmative response on the part of the House of Representatives would also be unconstitutional.
9. That petitioner say that the Constitution of Liberia prohibits the submission of any citizen or resident of the Republic of Liberia to any law that was not in effect at the time of the offense that a person is accused of to have committed, as clearly provided for in Article 21 (a) as follows:
 - a) 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 fact law". Consequently, petitioners say that amendment of the Senate Rules to provide for the impeachment of Justice Kabineh

Ja'neh is unconstitutional. Petitioners so pray that this Court so declares.

10. That also as to Count Nine (9) of the petition, petitioners say the sole purpose of amendment of Senate Rule 63 of the Liberian Senate by the respondents was to adopt a procedure to enable the Liberia Senate to conduct a hearing on the impeachment of Associate Justice Kabineh M. Ja'neh, there being no such procedure at the Liberian Senate, prior to the impeachment of Justice Ja'neh by the House of Representatives as is clearly evidenced by the report of the expanded Judiciary Committee to review Rule 63 of the Senate Standing Rules on impeachment. Hereto attached is a copy of the said report entitled, "Report on the Expanded Judiciary Committee to Review Rule 63 of the Senate Standing Rules on impeachment and Propose a Timeline for the impeachment Trial of His Honor Associate Justice Kabineh M. Ja'neh" marked Exhibit "P/2."
11. That petitioners say that as Senators, they have a duty to ensure that their actions and the actions of the entire Liberian Senate, as a separate body of the Legislature, are in conformity, at all times with the people's law, the Constitution of Liberia; hence, they are prepared to work together with their colleagues and members of the House of Representatives to prescribe the rules to govern the procedure and process of impeachment of all public official, whose removal can only be done by means of impeachment, consistent with Article 43 of the Constitution of Liberia.

WHEREFORE AND INVIEW OF THE FOREGING, petitioners pray this Honorable Court for respondents to stay further proceeding on the matter out of which the petition grew; grant petitioners' petition by declaring the action taken by the respondents to amend Rule 63 and the amended rule unconstitutional, and grant unto petitioners such further relief as this Court may consider just and legal."

A review of the Senators' petition above simply states that the Constitution is the supreme law of the nation and it has binding force and effect on all authorities and persons throughout the Republic; that any laws, regulations, etc. found to be inconsistent with it shall to the extent of the inconsistency be void and of no legal effect; that the power and authority to make a declaration on the unconstitutionality of any act, action or decision resides exclusively in the Judiciary, headed by the Supreme Court, which is the final arbiter of Justice; that consistent with its exclusive power and jurisdiction, the Supreme Court of Liberia has made decision in the past regarding the constitutionality of legislative acts; that as provided for in Article 29 of the Constitution of Liberia, the legislative power of the Republic shall be vested

in the Legislature which shall consist of two separate houses - a Senate and a House of Representatives; that when it comes to procedure for impeachment, Article 43 provides that **the Legislature shall** [emphasis ours] prescribes the procedure for impeachment proceedings; that, however, their colleagues of the Senate have proceeded to amend Rule 63 of the Senate Standing Rules which is meant for normal business of the Senate to conduct the trial proceedings for the impeachment of Justice Ja'neh; that by this act, the Senate alone has taken unto itself to prescribe the procedure for impeachment proceedings, arrogating unto itself the power to prescribe impeachment procedure to the exclusion of the House of Representatives. The petitioners say that the action of the Senate and its conduct to amend the Senate Rules to provide for impeachment are unconstitutional, and the petitioners pray this Honorable Court to so declare. The caption of their petition reads: "*In Re: THE CONSTITUTIONALITY [OF THE] AMENDMENT OF THE SENATE RULES TO PROVIDE FOR IMPEACHMENT*"

My colleagues have stated in their Opinion that an *In Re* is a judicial proceeding in which an adverse party is not formally designated or named or wherein the proceeding is uncontested. The respondents themselves, in their returns, also state that an *In Re* proceedings is pursued before this Honorable Court to determine the constitutionality of the law or any action of the legislature and no legislator is named to be personally liable.

My question then is, why the emphasis on the naming of respondent(s) especially when the caption and the averments of the petition in substance clearly puts the resolution of the issue raised squarely within the jurisdiction of the Supreme Court. I do not see the petition before us as a request for this Court to hold the Senate or any senator liable for its/his/her action, but rather a prayer to this Court to settle the impeachment issue in relation to Article 43 of the Constitution (1986), and whether the expansion of the Senate Rule 63, as being adopted by the Senate for the impeachment of the Associate Justice, is in conformity with Article 43 of the Constitution. The crux of the Senators' petition is simply to have this Supreme Court declare and settle this issue of adoption of a proper procedure for impeachment of

persons as listed under Article 43 of the Constitution. Petitioners in their petition, and like the previous petition filed by Mr. Justice Ja'neh, are requesting this Court, the guardian of the Constitution, to settle this issue so as to guide against the unlawful actions of the Legislature in conducting its impeachment proceedings.

In re proceedings have been employed and has originated on various occasions at the Supreme Court, where petitioners prayed the Court to declare an act or law unconstitutional. This Court itself held that both prohibition and *In re* proceedings have been employed originally before the Court on many instances to determine the constitutionality of either a law, act or conduct of the legislative or executive branches of Government, making references to the cases: *The Republic of Liberia v. The Leadership of the Liberian Bar Association of the Republic of Liberia*, 40LLR, 635, 636 (2001); *Ayad v. Dennis et al.*, 23LLR, 165 (1974); *Scott et al. v. The Job Security Scheme Corporation Inc.*, 31LLR 552 (1983).

I believe that a resolution of this important question as urged by the petitioners cannot be evaded simply on grounds of procedural technicality, especially given that this Court has often emphasized that in the dispensation of justice, substance prevails over form; and that the Court is not inclined to look favorably upon technical points which do not affect the merits of the controversy." *LA Fondiaria Insurance Companies, Ltd., vs. David Hevdakor*, 20 LLR 471, 474 (1971). Naming of respondents in an *In Re* proceeding is unnecessary and has no impact on the crucial constitutional issue raised, and therefore said technicality should not have been a basis to dismiss the case.

In this period of our country history where aggrieved persons are beginning to look to the court for settlement of issues, we must consider in all of our judicial disposition of cases that mere procedural technicality or form should not gain precedent over substantive issues. Emphasis must be placed on settlement of issues. The time has now come for us to look seriously at, and consider the spirit and intent of our civil procedure statute, Procedure Law, Rev. Code 1:1.4. The section reads:

Construction. The provision of this title shall be construed to promote the just, speedy and inexpensive determination of every action".

It is in this light that in the matter just ruled on few days ago by this Court, *Atlas Enterprises Inc. and Maalouf vs. National Security and Welfare Corp*, decided January 3, 2019, this Court opined that the party who instituted the case had no legal standing to institute said action. But the Supreme Court did not throw out the appeal. In fact, the Court delved into the matter and settled the substantive issue in order to put a finality to the matter. The Court considered that the case, if dismissed on the lack of standing, the identical issue of statute of limitation would apply to a subsequent action filed by the proper party and therefore saw it fit and expedient to settle the matter once and for all to avoid time and costs.

I firmly believe that it is error for the majority to favor such strict application to the form of the petition filed by the petitioners, much to the detriment of substantive rights, or the interpretation or substantiation of an alleged constitutional violation.

The second reason given by the Majority for dismissing the petition is that the Court cannot exercise original jurisdiction over the subject matter of the petition, holding that the petition does not fall into the category of "cases involving ambassadors, ministers or cases in which a county is a party" within the contemplation of Article 66 of the Constitution. The majority hold that the petitioners should have commenced their action for the interpretation of Article 43 of the constitution at the lower court and then thereafter refer the matter to this Court for final determination since this Court is the final arbiter of constitutional issues.

In the case, *RL v. The Leadership of LNBA et al*, 40 LLR 635 (2001), lawyers instituted a boycott of all court proceedings when the President of the Montserrado BAR and the Vice President of the Liberia National BAR Association were cited in contempt and imprisoned by the Legislature. Lawyers then decided to boycott the courts and not appear for any case until the Officers of the two BAR Associations were released from prison. Upon a writ of mandamus filed by the Government of Liberia to compel the lawyers to return to the courts, the Supreme Court held that the LNBA proceeded wrongly; that they should have sought judicial redress of their grievances by filing a writ of prohibition or an *In re Petition* against the Legislature before

the Supreme Court. This Court held that both prohibition and "*In re*" proceedings can be employed by the Supreme Court to determine the constitutionality of either a law, act or conduct of the Legislative and Executive branches of the government. This opinion has not been recalled and therefore remains the law of the land.

Also, as recent as 2010, this Court entertained an *In Re* proceeding filed by Counsellor Marcus R. Jones and others against the Legislature following the passage of the joint resolution of the Legislature setting an electoral threshold for the conduct of the 2011 elections. In that case several petitioners sought the intervention of the Supreme Court to declare as unconstitutional the Legislature setting of the electoral threshold for the conduct of the 2011 General and Presidential elections. The Court, in assuming original jurisdiction over that matter, proceeded to ascertain from the petitioners whether they represented the genuine interests of their institutions as claimed; the Court determined that only Counsellor Marcus Jones was properly before the Court to challenge the constitutionality of the Electoral Threshold Bill. That *In Re* petition was filed directly before the Supreme Court, and did not commence in the court below. The Court entertained the hearing into the petition, but declined to pass upon the constitutionality of the Legislature's action, not on grounds of the petitioner's failure to commence the petition at the lower court, but rather based on the fact that the petition raised a political question that is nonjusticiable. The Court has also held that although a political association does not fall within the jurisdictional purview of the Supreme Court, the Court will assume original jurisdiction when no other court is competent to do so and when the exigency of issues so requires. *Republic vs. The Grand Coalition et al.*, 34 LLR 70, 80-81 (1986);

I believe that this Court should have proceeded to delve into the substantive issue raised regarding the interpretation of Article 43 of the Constitution and once and for all settle the question of the procedure being adopted by the Legislature in its impeachment proceedings against Mr. Justice Kabineh Ja'neh. By dismissing the petition, the Majority have reneged on the Constitutional duty of the Supreme Court as provided in Article 2 of the

Constitution (1986). This provision of grants unto the Supreme Court the exclusive authority to determine the validity or invalidity of any law or act coming in conflict with the Constitution. Article 2 reads:

"The Constitution is the supreme and fundamental law of Liberia and its provision shall have binding force and effect on all authorities and persons throughout the Republic.

Any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect. **The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional"**

Consistent with this constitutional provision above cited, the Court like in other cases cited, recently exercised original jurisdiction in an *In re* petition filed before it by the Victory for Change Party which sought a declaration of unconstitutionality of the joint resolution of the Legislature setting out the date for the conduct of the Bong and Montserrado Counties by-elections. In that case *In Re: Petition to Determine the Constitutionality of Joint Resolution LEG-003/2018 setting July 31, 2018, as the date for the conduct of the Bong and Montserrado Counties by-elections, Supreme Court Opinion, March Term 2018, July 30, 2018, the Court held that:*

"While Article 66 of the Constitution itemized the instances in which the Supreme Court has original jurisdiction, Article 2 of the Constitution equally vests in the Supreme Court the authority to exercise original jurisdiction in all matters wherein a constitutional challenge is made to an Act of the Legislature".

The Senate expanded rules which are enacted in accordance with Article 38 of the Constitution, have been attacked for being in violation of Article 43 of the Constitution (1986), and as in other cases of similar nature which use the "In Re Constitutionality" action to file contestation of constitutional issues before the Supreme Court, the petitioners, based on these precedents, filed their petition originally before the Supreme Court. I therefore believe that the Supreme Court has jurisdiction to review and determine the constitutionality of the expanded Senate Rule 63 being adopted for an impeachment proceeding. In as much as an allegation of constitutional violation is raised or highlighted before the Court, it is incumbent upon the

Court to take the necessary action in determining the veracity of the allegation and take the necessary concrete action in keeping with law considering that our Constitution provides that "no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law; and that Justice shall be done without sale, denial or delay..." Article 20(a).

I firmly believe that whenever an issue or question of this nature is raised before this Court, it is incumbent upon members of this Court to speak to the issue in order to settle the controversy, establish the path for the growth and development of our democracy and the rule of law. As a matter of fact, if the core issue raised in the petition is properly and legally addressed, it does not jeopardize the rights of any party. If answered, it sets the basis of deterrence of any arbitrariness that may be carried out by the Legislature in its constitutional function of conducting impeachment proceedings. The substantive determination of this case is germane to ensuring the sacredness, inviolability and purity of our Constitution. A determination strengthens the rule of law and advances our democracy and our justice system.

For this Court to dismiss this petition and avoid delving into and settling this crucial national and democratic debate based on the form of the petition filed when the averments clearly pray the Court to make a declaration on an alleged violation of the Constitution; where the Supreme Court itself has held that an *In Re* petition can originate before it, and numerous precedents of this Supreme Court show that it has assumed original jurisdiction in *In RE* proceedings regarding the question of the constitutionality of an Executive or Legislature action, I am left baffled.

The Majority further state that, though the 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 internal rules because same is a constitutional right granted to said body under Article 38 of the Constitution. Under the constitutional provision of separation of powers, the Senate Rules are not reviewable by the Court.

I think the Majority miss the point. My reading of the petition does not reveal that the petitioners are questioning the Senate adoption of their rules of procedures to govern the Senate's actions or legislative proceedings which is purely within the purview of the Senate in line with Article 38 of the Constitution; obviously any attempt by the Court to review said rules would be in violation of the separation of power. What I understand the petitioners to be questioning, and wants this Court to settle, is whether the Senate rules of procedure for conduct of its business can be expanded and used to conduct an impeachment trial handled by it. Whether such action by the Senate using the Senate rules for an impeachment proceeding is in consonance with the requirement set forth in Article 43 of the Constitution? In other words, can rules adopted in accordance with Article 38 governing Senate procedures also govern impeachment? Does not the Constitution (Article 43) mandate that impeachment procedures shall be prescribed by both houses of the Legislature?

The Majority also state that petitioners have not raised an issue that the rule of procedure that is being challenged has injured them. What I see here is that the petitioners as forthcoming jurors in the impeachment case before the Senate, are seeking the benefit of the Court's direction, especially when the Senate alone is adopting the rules of procedure for the impeachment trial. Having taken oath to support and protect the Constitution, the petitioners want this Court to declare whether the rules of procedure being adopted by the Senate under Article 38 is constitutionally applicable to impeachment proceedings as provided for under Article 43 of the Constitution.

Article 26 of the Liberian Constitution (1986) states in part that:

"Where any person or any association alleges that any of the rights granted under this Constitution or any legislation or directives are constitutionally contravened, that person or association may invoke the privilege and benefit of court direction, order or writ, including a judgment of unconstitutionality; **and** anyone injured by an act of the Government or any person acting under its authority, whether in property, contract, tort or otherwise, shall have the right to bring suit for appropriate redress. All such suits brought against the Government shall originate in a Claims Court; appeals from judgment of the Claims Court shall lie directly to the Supreme Court."

I maintain my previous position taken along with former Associate Justice Philip A. Z. Banks, III, in the case *Citizen Solidarity Council vs. GoL*, Supreme Court Opinion, March Term 2016, that Article 26 has two separate and distinct parts. In the first part as quoted above, the right is granted to any person or any association to seek court direction predicated solely upon the allegation that an act of the legislature or directive of the Government, is in contravention to the Constitution. This part does not require that in order to challenge the constitutionality of an act of the Legislature, a person or association must show that he/she /it is likely to be injured or will suffer harm by the Act. The provision accords a blanket right to a citizen, natural or legal, to challenge the constitutionality of any act of the Legislature believed to be in contravention of the Constitution. The second part of the Article 26 refers standing on anyone personally injured by an act of the Government and any person acting under its authority. This first part of the provision of the Constitution written above therefore confers standing on the four petitioners of the Senate.

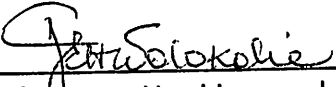
The precedent followed by this Court, that one contesting the constitutionality of an act by the Legislature or Executive must be directly affected by said act is contrary to the first part of Article 26 of the Liberian Constitution (1986) cited above; this principle based on precedent of the United States of America needs to be overturned and the right interpretation given to this provision of the Liberian Constitution which is clear on its face and needs no interpretation.

I see the dismissal of the petition by the Court as an obvious attempt by this Court to avoid its constitutional responsibility of addressing the alleged arbitrariness of the Legislature in its procedure to impeach a judicial officer. We must be reminded that it is squarely the function of this Court to keep the powers of the government in their respective constitutionally defined orbits, maintaining an agile resistance to attempts at exercise of power not in conformity with the constitution. In short, this Court must ensure that the law takes precedence over anarchy, that power is restrained and placed at its proper constitutional axis, and that might does not make right. The business of this Court is to resolve controversies especially those in which it

has jurisdiction. As final arbiter of constitutional issues, it is obvious that until this issue of the interpretation of Article 43 is settled by this Supreme Court, this issue will keep resonating before it, as the law extant in this jurisdiction is that a lower court judge cannot decide a case when the constitutionality of an act of the Legislature is squarely challenged. Hence, the lower court, will ultimately have the case forwarded to the Supreme Court for determination of the constitutionality of the conduct of the Senate as raised. This path can be avoided as this Court has done in the Atlas vs. NSSWCORP case which decided that it was expedient to settle the issue raised once and for all to avoid time and costs.

For the reasons stated above, and for which I believe that the Court should have gone into and make a determination of the constitutional issue raised, I have declined to append my signature to the Opinion.

The Clerk will file this Dissenting Opinion in the archives of the Supreme Court.

Signed: 
Jamesetta Howard Wolokolie
ASSOCIATE JUSTICE, SUPREME COURT OF LIBERIA