

BEFORE HER HONOR: SIE-A-NYENE G. YUOH..... CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR..... ASSOCIATE JUSTICE

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The records transmitted to this Court reveal that the Appellant, Quanuquanei Alfred Karmue, through his Campaign Chairwoman, Sannie Suakollie, filed a complaint on October 13, 2023, with the Senior Elections Magistrate of the National Elections Commission stationed in Upper Bong County, in which he levied a series of allegations against the NEC Staff who conducted the Representative Elections for District 04, Voting Precinct no. 6004, Belefana Administrative Building. In the said letter of complaint, the complainant alleged that throughout Election Day, October 10, 2023, a certain individual, fraudulently wearing a NEC vest, intimidated voters to vote for Candidate Robert Flomo Womba, 2nd Appellee herein. In addition, the complaint alleged that the individual who admitted that he did not have NEC identification was allowed by the NEC staff to continue to permit voters into Room 1, unmonitored, after the voting time of 18:00 hrs. and to carry on voting process with no NEC staff or other observers present.

The records further reveal that subsequent to the filing of the original complaint, a second complaint was filed, this time by the Appellant himself, although it was signed jointly by the Appellant and his Chairwoman. This new letter of complaint alleged that massive electoral fraud had occurred at multiple voting precincts in District #4, Upper Bong County. Specifically, the appellant alleged that the total number of votes (valid and invalid) exceeded the number of officially registered voters in several voting locations, that the number of discarded ballots placed in ballot boxes differed from the figure of such ballot carbon copies of the tally sheets filed at numerous voting precincts; and that the number of votes per candidate, namely, Jonah Nulee Togbah and Susannah L.M. Seton, showed large discrepancies between the record of count and the carbon copies. He, therefore, requested an immediate investigation into the allegations and a recount of the polling centers in question.

The records reveal further that on the same day, October 16, 2023, another complaint was filed by the appellant, this time before Madam Davidetta Brown Lansanah, Chairperson of the National Elections Commission. The new complaint reiterated the same allegations that were contained in the second complaint filed before the Senior Elections Magistrate in Upper Bong County. What is perplexing to us is that there are no indications in the record that at the time of the filing of

this new complaint before the NEC Chairperson, the previously filed complaints before the Senior Elections Magistrate in Upper Bong County had been withdrawn, with or without reservation.

Instead, the records disclosed that at the call of the case for hearing before the Hearing Officer in Gbarnga, Bong County, on October 19, 2023, counsel for the appellant placed on the minutes of the Investigation in Gbarnga City, Upper Bong County, under the caption "KARMUE MINUTES FOR WITHDRAWAL OF TWO COMPLAINTS", a submission stating: "The complainant hereby agrees to file a notice of withdrawal from both complaints filed by Quanuquanei Karmue in an action of election offenses and that this submission serves as a notice of withdrawal pending a written notice that will be served with this investigation and complainant counsel respectfully prays and submits." One day thereafter, that is, on October 20, 2023, the counsel filed with the Hearing Officer a formal Notice of Withdrawal which reads as follows:

MAY IT PLEASE YOUR HONOR

We write to extend our compliment and to submit this communication as a "Notice of Withdrawal" in the case captioned below reserving the right to amend and refile consistent with Chapter 6, Section 6.1 of the New Elections law.

Quanuquanei Karmue, independent Candidate of Bong
County.....COMPLAINANT

VERSUS

National Elections Commission (NEC).....DEFENDANT

It is worth noting that all of the actions by the appellant outlined hereinabove were irregular and contrary to law. To begin with, The elections law provides that challenges and disputes arising out of the manner and form of an election must be interposed by the candidate or by the political party on whose ticket he is fielded and not a representative, observer, or polling agent. Therefore, the complaint filed by Sannie Suakollie as Campaign Chairperson does not conform to the election regulations. Additionally, our Civil Procedure Law clearly provides, in Section 9.10, that a party may once withdraw and amend a pleading. In the instant case, the appellant filed three complaints with the NEC at diverse time, each without first withdrawing the previous. This is also in clear violation of the above statutory provision. However, the hearing proceedings at the NEC being an administrative

hearing, they are not subject to the strict rules and procedures of a formal court sitting; we will, therefore, relax the applications of those rules, especially considering that not only did the parties not raised them, but also because no substantial rights of the parties were affected.

Considering the complication created as the consequence of the multiple filing of complaints and the vagueness of the Notice of withdrawal, we will assume that the complaint considered by the investigation was the last complaint filed with the Magistrate by the complainant and his representative, which was the same as that filed with the Chairperson of the NEC.

The 2nd appellee, Mr. Robert Flomo Womba, who had been accused by the appellant of election irregularities during the voting, also filed a letter of complaint with the National Elections Commission, alleging irregularities in the conduct of the elections by certain of the staff of the NEC assigned to the District, especially as it relates to alleged discrepancies relative to the tally sheets and the voter's eligibility to vote in the election. The complaints filed by the two contesting candidates were consolidated by the Hearing Officer, the rationale being that the two complaints had the same prayer and involved the same polling places.

In any event, at the consolidated hearing conducted by the Hearing Officer, the appellant chose to have the Chairwoman of his campaign, Sonnie Suokollie, testify on his behalf. The witness reiterated the allegations made in the last complaints filed with the Senior Elections Magistrate and the Chairperson of the National Elections Commission and referenced the documents that were attached to the complaints in support of the allegations set forth in said complaints. The appellant chose not to take the witness stand himself.

Thereafter, Mr. Robert Flomo Womba, the 2nd Appellee, took the stand and testified on his own behalf. He also reiterated the allegations in his letter of complaint but produced no other witness to corroborate his allegations. When the two complainants had rested evidence, the NEC produced two witnesses to rebut the allegations made by the complainants. The witnesses, Emmanuel Campbell and Michael Suah testified, denying the allegations of irregularities and malpractices made against the NEC staff by the complainants. Interestingly, however, although both witnesses made reference to the Presiding Officer's journals, there is nothing

in the records to show that the instruments were presented or produced during the hearing and that it was identified, testified to, and subjected to the rigor of cross-examination relative to the figures and other information contained in the said journals. When questioned in this connection, the only answer that one of the 1st appellee witnesses gave was: "The records I am referring to is in my Presiding Officer Journal, my Record of Count, and PO Worksheet, which was placed in the box and submitted to the NEC. These documents are my evidence." The Court wonders why the records are void of any of those instruments, considering that the parties' accusations are directed at the 1st appellee and that the 1st appellee is the custodian of all the instruments being alluded to by the 1st appellee's witnesses. Instead, the records show that immediately after the witness made reference to the documents, the investigation discharged the witnesses and scheduled the final ruling on Thursday, the 19th of October, A. D. 2023."

In the final Ruling, the Hearing Officer denied the claims of the complainants and dismissed the complaints, stating the following points as reasons for the dismissal: (a) That the filing of the complaints was untimely or premature as a matter of law and lacked legal merits in that the complaints were filed prior to the finalization and announcement of the Final Results by NEC from the fifteen counties; (b) that Sannie Suokollie was not a representative candidate in the elections for the House of representatives and hence did not have the right to file a complaint against the results, that right being reserved for the candidates, and hence she lacked the capacity to file a complaint on behalf of the appellant; (c) that the Records of the Count for the House of Representatives appearing on the tally sheets, as announced, were the same as the tally forms conducted at the NEC Magisterial Office; (d) that during the tally process, there were local and international representatives present throughout and who witnessed the process; (e) that the evidence produced by the complainants did not support the allegations since the figures from the field matched the figures on the tallying forms; (f) that the evidence presented by Complainant Womba had discrepancies and were contrary to the records; and (g) that the evidence did not support the claims of the complainant.

It is from the dismissal of the complaints by the hearing officer that the appellant, appealed to the Board of Commissioners (BOC) of the NEC for a review. The BOC, after entertaining arguments by the parties, affirmed the Ruling of the

Hearing Officer. From this ruling of the BOC, the appellant took an appeal to this Court, stating that the BOC had made a number of reversible errors in affirming the ruling of the Hearing Officer and requesting that this Court reverse the said Ruling of the BOC and order a recount of the votes at the centers, which he said were tainted with fraud and irregularities.

That being said, we shall now examine the substantive issues certified by the appeal. In the instant case, the lower tribunal, the NEC, had a single issue to address, that is, whether there were irregularities committed by the NEC staff at the various polling places named by the two complainants in their complaints. From the examination of the records, this Court is of the opinion that there were discrepancies and irregularities at the polling places mentioned. The Court observes that the testimony of the appellant's witness at the hearing substantiating his claim of discrepancies and irregularities was supported by documentary evidence produced at the hearing, which was not only acknowledged by the Hearing Officer but which was not discredited by any documents to the contrary. The two witnesses produced by the NEC, while testifying to the existence of the presiding officer's journal, records of count, and worksheet, failed to produce any of such documents during the said hearing to rebut the written evidence produced by the appellant and 2nd appellee Womba. The NEC officers only informed the hearing that the documents they referenced were placed in a box and sent to the headquarters of the NEC. This was sheer negligence on the part of the NEC to not produce the said documents and to have its witness testify to the same and have them admitted into evidence. The NEC negligence also deprived the complainants of the required notice, the right to inspect the documents referred to, and to cross-examine the witnesses as to the authenticity of the documents.

Hence, in the absence of the production of those instruments by the NEC this Court is perplexed by the ruling of the Hearing Officer that there were no discrepancies or irregularities as alleged by the appellant and that the documents in the custody of the NEC showed the contrary. We are particularly taken aback that the Hearing Officer seemed not to have appreciated that it was important and necessary to have the referenced documents (that is, the presiding officer's journal, the record of the count, and the worksheet) produced so as to counter the appellant's accusation.

The Court notes that in keeping with the law and practice in this jurisdiction, courts of record rely on oral and documentary evidence to render a decision in a controversy. Indeed, this Court has said repeatedly, and as stated by the Civil Procedure Law, the best evidence must always be produced and that no oral evidence can explain a written document that a party has failed to produce. In this case, the administrative hearing should have secured and admitted into evidence the written documents relied upon by the Hearing Officer in making a final ruling in the matter. This was particularly important since the NEC was not just the defendant but also the judge and jury in the matter, the regulator of the proceedings, and the promulgator of the regulations under scrutiny. But instead of following the course referred to by this Court, the Hearing Officer simply concluded, without the required supporting evidence, that the allegations made by the appellant of discrepancies and irregularities did not occur in the polling places and, therefore, were untrue.

More than that, the records certified to this Court revealed that there were discrepancies between the records submitted by the appellants and the NEC's records and assertions. The NEC officials in Upper Bong County never undertook to do an internal investigation in the face of the appellant's complaint and the instruments attached thereto even though the NEC has a statutory mandate to ensure the conduct of a free, fair, and transparent election process in Liberia. *New Elections Law, chapter 2, subsection 2.9 (u)*. Part of conducting a free and fair election is investigating internal complaints of discrepancies and irregularities brought against staff of the NEC rather than behaving as if the NEC is just another adversary.

Sadly, this process was not done in this case with the focus of objectivity and impartiality in mind. *New Elections Law, chapter 5, subsection 5.12 (3)*. This Court says that unlike in an action at law where legal and factual technicalities are entertained by courts, the role of an administrative agency, such as the NEC, in the investigative process is primarily fact-finding and not legal or other technicalities. Election disputes are principally concerned with determining whether the outcome of an election is a true reflection of the people's choice rather than an endorsement of technicalities. *Charles Walker Brumskine et al. v. National Election Commission*, Supreme Court Opinion, October Term, A. D. 2017.

Similarly, the Court observed that the second appellee filed a complaint alleging discrepancies and irregularities at the same polling places and presented six documents as evidence, which were acknowledged by the Hearing Officer. Yet, this was never fully investigated, especially when the second appellee stated in his testimony before the hearing that "the judgment of our people, I believe, was either undermined..." This damning testimony imposed an obligation on the Hearing Officer to conduct an investigation into the veracity of this statement and to ascertain the availability of documents to the contrary to meet the standard of a fair and impartial investigation.

The discrepancies and irregularities discovered in the certified records before this Court were overlooked in the Hearing Officer's ruling, which was confirmed by the BOC. We are of the considered opinion, from our review of the entire records, that the discrepancies, which are apparent on the face of the records, were of such magnitude as to form the basis for a recount of the ballots in the two-voting precincts of Electoral District 04, Upper Bong County as follows: precinct No. 6130, Mbelequah Public School, Room #s 1 and 2, and Voting Precinct No. 6129, Yowee Public School, Room #s 1, 2 and 3.

On a serious note, this Court observes that the hearing officer conferred an 'Honorable' status on 2nd Appellee Robert Flomo Womba during the hearing of this matter. We are of the opinion that this action by the hearing officer was irregular as it tended to put one candidate in a privileged status over the others. We therefore caution and admonish the NEC to guide itself against any act or conduct that would give even the slightest negative impression, whether at an administrative hearing or other assembly, by granting any candidate a preferred status over other candidates.

WHEREFORE AND IN VIEW OF THE FOREGOING, the appellant's appeal is granted. The ruling of the Board of Commissioners of the NEC which confirmed the ruling of the Hearing Officer is hereby reversed. The NEC is directed to conduct a recount of the votes at the five polling places mentioned in this Opinion within seven days as of the date of the reading of the Mandate of this Court.

The Clerk of this Court is ordered to send a Mandate to the National Elections Commission to resume jurisdiction over the case and to give effect to Judgment of this Opinion. Costs shall abide final the determination. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUSELLOR GEORGE D.W. SAGBEH OF THE SAGBEH AND SAGBEH LAW CHAMBERS APPEARED FOR APPELLANT. COUNSELLOR ALBERT S. SIMS APPEARED FOR 2ND APPELLEE. COUNSELLOR J. AUGUSTINE TOE AND PETER Y. KERKULAH APPEARED FOR NEC.