

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

HEARD: NOVEMBER 17, 2023 DECIDED: NOVEMBER 28, 2023

MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT.

This case is before us on appeal taken from the Ruling of the Board of Commissioners (BOC) of the National Elections Commission (NEC) wherein the Board of Commissioners confirmed the Ruling of the Hearing Officer of the NEC dismissing the complaint filed before the NEC by the Appellant herein. In his complaint, filed on October 13, 2023 before the Electoral Magistrate for Maryland County, the appellant, a candidate fielded under the ticket of the Coalition for

Democratic Change (CDC), raised a single act of irregularity by the NEC staff stationed at the polling centers, that is, that his poll watchers were asked out of six vote counting facilities, thus depriving them of access to the vote counting process at those centers and the right to participate in the process. He therefore requested that there be a recount at the six centers named in his complaint. For the benefit of this Opinion and the determination of the correctness or error allegedly made by the Board of Commissioners in confirming the Ruling of the Hearing Officer, we quote the appellant's complaint in its entirety verbatim, as follows:

"October 11, 2023

Magistrate

Harper City, Maryland C

West Africa, Liberia

Dear Magistrate:

Ref: Official Complaint

I am pleased to present my sincere greetings and write to officially complain the following voting center in Electoral District #3, in which our poll watchers were deprived access to the vote counting process, at which they were asked out and did not participate. And those centers include:

1. Kliliken Town Hall - 27057;
2. Yobloken Town Hall - 27058;
- 3, Karloken Elem. & Jr. High School - 27055;
4. Henogbe Elem. School - 27069.
5. Warten Town Hall-27052
6. Wlowien Town Hall - 27072

Therefore, we are requesting recount at these above mentioned centers.

Thank you for your kind consideration,

Sincerely submitted,

Candidate - CDC

Electoral District #3

Tel: +231 886-517-255 / 0777-770-001"

Upon receipt of the Letter of Complaint on October 13, 2023, the Elections Magistrate ordered the parties cited for an investigation to commence on October 14, 2023. At the

investigation, the appellant, testifying in his own behalf, reiterated the allegations which he had made in his complaint, principally that his poll watchers were denied access to the vote counting centers and that therefore he was deprived of his right to participate in the counting process.

Thereafter, a second witness was called to testify on behalf of the appellant. This second witness did not corroborate the allegations made by the appellant in his complaint and testimony that the appellant's poll watchers were denied access to the vote counting centers; rather, the witness made new allegations to the effect that (a) voting was allowed to run from 8:00 a.m. on October 10, 2023 to 12:30 a.m. on October 11, 2023; (b) he had asked the NEC staff twice for a complaint form but that they had refused to honor his request; (c) he had disagreed with the NEC staff declaration of some of the votes as invalid votes; (d) the ballot boxes were not sealed after the counting of the votes as should have been the case; and (e) he had asked for his signature to be rescinded from the tally sheet which he had signed but that the NEC Staff had refused to allow him to rescind his signature.

At the close of the testimony of the appellant's second witness and the appellant having no other witness, Mr. Joseph Allison, the presiding officer for Kililiken, took the stand and refuted the testimony of the appellant's second witness. He testified that the voting started at 8:00 a.m. and ended at 10:00 p.m. the same day and that only persons who were at the center at 6:00 p.m. were allowed to vote; that the witness did not request any complaint form as he had alleged; that at the close of the voting the ballot boxes were sealed in the presence of all of the pool watchers and observers and hence that no one raised any issue in that connection.

The Elections Magistrate also produced the records of the attendance at the various polling centers and noted on the minutes of the investigation that from the records all of the poll watchers for all of the participating parties and independent candidates were present, including the representatives from the CDC, the political party that had fielded the appellant as a candidate. The records further reveal that on October 15, 2023, counsel for the appellant requested and was granted permission to spread a submission on the minutes of the investigation. We believe it important to quote the exact wording of the submission, as follows: "Counsel for complainant moves this hearing that he does not see the need for oral testimony when there are records such as the record of counts, presiding officer journal, and the attendance of those in the tally hall that

can prove or disprove what the witnesses are to testify to.” To this submission made by counsel for the appellant, the Hearing Officer noted the following: “Based on the submission made by counsel for complainant that we review the records which may dispose of the contentions of the parties, the office of the Hearing Officer have consulted with the office of the Magistrate as regards to these records, and the magistrate had informed the office of the Hearing Officer that her office is ready to make available these records from the centers the complainant claimed his poll watchers were not allowed access to. She further stated that the tally process regarding these precincts were now completed, as such, records from these precincts were now opened to all interested persons who meet the legal requirement.”

The Hearing Officer having agreed with the submission, the records from the Elections magistrate were produced. The records reflected the following:

1. ‘That the presiding officer's records/journal revealed that there were CDC poll watchers in the polling places the complainant claimed CDC poll watchers were not presence.
2. The record of counts also show that CDC poll watchers were also presence in these polling rooms.
3. Furthermore, the attendance from the tally rooms equally show that CDC representatives are present since the tallying stated.’

Whereupon the parties were allowed to question the Elections Magistrate as to the records which had been received by the investigation. Here is the question posed by the appellant/complainant, as reflected by the records. “Question: Isaac B. Roland, the complainant. Though there are indications that CDC poll watchers were presence in some of the places, my question is, whether besides the party poll watchers, we as Individual candidate can have our own poll watchers?” here is the answer given by the Elections Magistrate: “**Answer from Magistrate Saylee:** no, under NEC regulations, candidates running on political party's ticket fall under the umbrella of the political parties. So, once the parties have poll watchers in the polling rooms, they represent everyone running on that party ticket.” At the end of the questioning by the appellant, and there being no further questions, the Hearing Officer remarked: “If there are no more questions or concerns, this

investigation is hereby closed for the taking of both oral and written evidence pending final ruling."

We have quoted the records because we believe they bear direct relevance to this Opinion and the decision we make herein. In any event, predicated upon the foregoing the Hearing Officer ruled dismissing the complaint, stating that contrary to the allegations made by the appellant/complainant in his complaint, the records showed that indeed representatives from the CDC were present at the various polling and counting centers, and that as the CDC was represented at these centers, other representatives directly representing the candidates were not needed or required to be present at the centers. He concluded that the complaint therefore had no legal or factual basis and hence was dismissed.

From the ruling of the Hearing Officer, the Appellant appealed to the Board of Commissioners and filed a five count Bill of Exceptions for review, noting that the Hearing Officer had made a series of errors in dismissing the complaint. He noted the following as errors made by the Hearing Officer: (a) that the Hearing Officer erred in the manner and form in which he conducted the hearing; (b) that the Hearing Officer erred in ruling that CDC poll watchers were present in all of the polling places since there were no records of all of the polling centers to back the conclusion; (c) that each political party was entitled to two poll watchers at each polling place but that the records from the Polling Officer's Journal showed that there was only one poll watcher from CDC who signed the tally sheets; (d) that the Hearing Officer erred in accepting the polling officer denial of Witness Eric Klar allegation that the ballot box was not sealed following the counting of the ballots without the polling officer presenting any evidence to back the denial since under the law the burden of proof shifted to the polling officer to provide evidence supportive of his denial; and (e) that the Hearing Officer did not show any record that a CDC representative was present and that only one person of the party needed to sign the tally sheet, which issue was a legal issues and should have been disposed of legally.

The Board of Commissioners, after reviewing the records transmitted to it, affirmed the Ruling of the Hearing Officer, denied and dismissed the appeal, upheld the Board's declaration of Co-appellee Austin Blidi Taylor as winner of the election in Electoral District #3, Maryland County. The Board reasoned that as the

appellant had failed to provide sufficient evidence to prove irregularity or fraud sufficient to change the result of the election or to warrant a recount, there was a strong presumption in upholding the validity of the election result.

This appeal is before us from the above Ruling of the Board of Commissioners of the national Elections Commission. Although there are presented other ancillary issues which were not raised in the complaint of the appellant or in his testimony before the Hearing Officer in substantiation of the allegations made in the complaint, we shall address the single issue raised in the complaint, alluding to other issues only in passing. Accordingly, the Court has identified as the single issue warranting disposition by the Court the following: Was the CDC represented by poll watchers at the various polling centers enumerated by the Appellant in his letter of complaint and does the law require that in addition to the representatives of the political party there should also be allowed representatives fielded by the individual candidate?

In proceeding to provide answer to this issue, the Court takes note of a number of principles enunciated by this Court and which have become the governing jurisprudence in this jurisdiction. The first is the principle of notice. *Kromah V. Badio and Hill* 34 LLR 85, *Nyumah V. Kemokai* 34 LLR 226. Although the instant case is one that centers on elections, the pleadings and proceedings growing therefrom are governed, as with any other cases, the principle of notice. Thus, a complaint, whether in an election case or any other case, is required to outline matters which form the grievances alleged by the plaintiff's and which the plaintiff intends to prove at the trial. This is to intended not only to give notice to the defendant or respondent of the grievance of the plaintiff or complainant or of the allegations made by the plaintiff or complainant and what he/she will be proving at the trial, but also to provide the opportunity to the defendant or respondent to address the allegations and raise a defense or rebuttal against the allegations made in the complaint. *Intrusco Corporation V. Tulay and Dennis* 32 LLR 36 syl. 3

In the instant case, the complainant set forth in the letter of complaint a single grievance, a single allegation, which is that his representatives were not allowed to be present or were ejected from six polling centers, named in the letter of complaint, at which the votes were counted. This was the single issue that the complainant was required to prove and which the defendant, in the instant case

the National Elections Commission (NEC) was expected to address or rebut. At the hearing or investigation conducted by the Hearing Officer, the complainant testified in his own behalf, reiterating his single complaint that his representatives had been denied access to and participation in the counting of the votes at six of the polling centers. He produced a single witness who testified not to the denial or absence of the appellant's representatives at the six polling centers, but to other matters not listed in the complaint. The Board of Commissioners of the NEC decided that the Appellant had failed to meet the burden of proof required by him under the law. In that respect, we are in full agreement with the decision of the BOC. The Appellant had indeed not met the burden of proof. The law in this jurisdiction, as pronounced not only by our statutory law, the Civil Procedure Law, but also subscribed to in several cases decided by the Supreme Court, stated that the burden of proof on the party making the allegation. The Management of Lamco J. V. Operating Company v. Gardiner et al., 33 LLR 31.

In the instant case, the burden of proof rested on the appellant, since it as he who had made the allegations that the NEC had denied his representation from being at and participating in the counting of the ballots at six of the polling centers in the constituency in which he had contested for the representative seat.

This Court has also decided in a number of cases that mere allegations are not proof and that where allegation are made, proof must be presented and that sustaining the burden of proof means that the person making the allegations must at the trial of the case prove that the allegations made are true and correct. Saydee v. National Elections Commission, Supreme Court Opinion, October Term, A. D. 2011. Indeed, in the case The Movement for Progressive Change (MPC) et al. v. The National Elections Commission et al., decided by the Supreme Court at its March Term, A. D. 2011, the Supreme Court said. "Proof. This Court will not countenance or entertain any action wherein allegations are made and not substantiated, as the Court neither has the authority to provide advisory opinions nor base its decisions on the mere speculation of a party.

The Court notes that there were ten candidates who contested for the representative seat for District No. 3, Maryland County, of which the appellant was one. Yet, the appellant failed to produce any witness, other than himself, to show

or verify his allegation that no representative of his was present at the centers named in his complaint or to which he had testified. Evidentiary wise, this Court had expected, as per the law governing burden of proof, that the appellant would have produced other witnesses, some of whom could have been representatives of some of the other contestants, to verify that his representatives were denied access to the polling centers where the votes were counted. This he failed to do.

But more than that, not only did the lone other witness which the appellant produced to testify in his behalf not corroborate the appellant's claim that he was not represented at the polling centers named in the complaint, he in fact contradicted the appellant by testifying that he, the witness, Eric N. Klar, was at one of the polling centers mentioned by the appellant in his letter of complaint, the Kliliken Town Hall, serving as a poll watcher for the Appellant and that he had witnessed the counting of the ballots and signed onto "the record of count" commonly the tally sheet, authenticating that the votes were counted were correct. This witness testified that he had only challenged the correctness of the declaration of some votes as invalid and had therefore demanded the rescission of his signature on the tally sheet since the NEC officials had ruled maintain and retaining the status of the invalid votes. Nowhere was there any mention by the witness in his statement in chief or otherwise that the appellant was not represented at any of the polling centers named in the complaint. Instead, he irregularly introduced testimony as to new matters which were not contained in and did not form part of the appellant's complaint. As noted before, the introduction of this new evidence attempted to deprive both the NEC and the winning candidate, Mr. Austin Blidi Taylor, of the opportunity to traverse and rebut same, and had nothing to do with the appellant's being denied the right to have his representative present at the polling centers named in the complaint. But even with respect to the new allegations, no other witnesses were produced by the appellant to corroborate what this witness had alleged, including no witnesses who represented at the polling centers any of the other nine contestants.

This Court is further concerned that the allegations made by the appellant's witness related to incidents and events which the witness claimed occurred on October 10, 2023, the date of the elections. Yet the appellant failed to make mention of them in his letter of complaint which he filed on October 13, 2023,

three days after the conduct of the elections. What prevented the appellant from including in his letter of complaint the further allegations made by the witness in his testimony at the investigation. This Court says that the act of the appellant was a clear neglect and failure to exercise the right granted him by law, but the conclusion can also be reached that the Appellant failure to give adequate notice seemed to be effectively designed to evade the legal requirement of notice. With respect to the former, this Court has said repeatedly that it will not do for a party that which the party is legally bound to do for himself. *Bility v. Lewis*, 30 LLR 512.

Notwithstanding the above, the Court notes from the records that the NEC in fact produced a witness who traversed not only the allegations made by the appellant in his complaint and testimony that he was denied representation at the polling centers named in his complaint and where the counting of the votes occurred, but also that the allegations made by the appellant's lone other witness, Mr. Eric N. Klar, that the polling had gone on from 6:30 a.m. on October 10, 2023, to 12:30 a.m. October 24, 2023, and that the ballot boxes were not sealed at the conclusion of the counting, were untrue. On the other hand, the witness of the NEC narrated not only that the polling center had opened on schedule but that it had closed as anticipated by law, having done a cut-off line at 6:00 p.m. and allowing only persons in the line at that time to vote, although by the time these persons voted it was about 10:00 p.m. This critical damaging testimony was never contradicted or rebutted by the appellant by the production of any rebuttal witness, including persons representing any of the other contesting candidates. Instead, when the hearing resumed, his counsel proceeded to request permission to make a submission on the records of the investigation, which request was granted. The submission made was to the effect that the counsel for the appellant did not see the need for any further oral evidence since the issues of contention could be resolved by the record of count, the presiding officer journal and the attendance of those in the tally hall, all of which could "prove or disprove what the witnesses are to testify to."

The records certified to the Court reveal that the requested documents were produced and witnesses testified to them. Indeed, the records show further that the only question which the appellant himself asked, following the testimony of the Magistrate as to his Record Report, was this: "Though there are indications

that CDC poll watchers were present in some of the places, my question is, whether besides the party poll watchers, we as individual candidate can have our own poll watchers?" To this question, the witness responded as follows: "No, under NEC regulations, candidates running on political party's ticket fall under the umbrella of the political parties. So, once the parties have poll watchers in the polling room, they represent everyone running on the party ticket." No further questions were asked.

The foregoing formed the basis upon which the hearing officer dismissed the complaint of the appellant and upon which the Board of Commissioners affirmed the said dismissal. As we stated before, we affirm the decision of the Board of Commissioners, not only because the appellant had failed to meet the burden of proof but also because the records of the NEC clearly contradicted the allegations made in the complaint. Firstly, the records revealed that the appellant contested for the seat of representative for District No. 3 for Maryland County under the ticket of the Coalition for Democratic Change (CDC) and that the CDC was represented at all of the polling and counting centers; secondly, other than himself, the appellant produced no further witness to authenticate or verify the allegation that his representatives were denied access to the polling centers named in his complaint; thirdly, that the CDC, which fielded him as a candidate, was represented at all of the polling and counting centers. Under the circumstances, the investigation and the Board of Commissioners could not legally sustain the contention of the appellant.

The Elections Law, at Section 4.9, states:

"To ensure a fair and impartial democratic election:

(1) Any registered political party or any independent candidate shall appoint a representative to attend any polling place with sufficient identification in any constituency in a voting precinct in which the party has nominated candidates or in which the independent candidate is a candidate. Any such appointment shall be made in a form to be prescribed by the Commission and a copy thereof shall be sent to the Magistrate of Elections not later than two (2) weeks before the election."

The argument of the appellant that in addition to the CDC being represented at the various polling center, he was entitled to have person representatives at such

center is without any legal merit. He was fielded by the CDC; he represented the CDC. Thus, once the CDC had designated representatives at the various polling centers, it follows that the appellant was represented. His contention that he should have been separately represented only show the lack of coordination between him and the party that fielded him as a candidate, or in the alternative that he did not trust the party that fielded him. Whatever the case, we hold that as his candidacy was represented at each of the polling center by the party that fielded, it follows that he was represented.

We note also that the CDC, the party that fielded the appellant did not see it befitting to join with the appellant or to represent the appellant in these proceedings, from the stage of the hearing officer to the Supreme Court. We wonder that had the CDC believed that there was merit to the allegations made by the appellant, and given that the CDC has a vested interest in the outcome of the case since a loss by the appellant would mean one less seat in the Legislature for the CDC, it would not have participated in the proceedings to protect that interest? We are constrained, as we have done on many occasions in previous Opinions of this Court to comment on the display and apparent lack of knowledge by counsel for the appellant of the simple procedural rules of this jurisdiction. We make specific reference of the manner pursued by counsel for the Appellant in seeking to have this Court command the NEC to forward to this Court missing records of the proceedings held before that Body. At the call of the case on the first assigned date, counsel for the Appellant requested the Court to make a submission, a request which the court granted. The nature of the submission was to have this Court direct that the NEC produce for the court missing parts of the records which counsel for the Appellant indicated the NEC had failed to transmit to the Court.

Although, because of the nature of the case, we determined to direct that the NEC forward any missing records, we must express our displeasure with the procedure adopted by counsel in seeking to have this Court direct the forwarding of the record to this Court. As part of the submission, the counsel has displayed what he said was a letter written to the NEC to forward missing parts of the complete records of the proceedings before that Body. Normally, and the law requires that where certain things are missing from the records certified to this Court, the party may request of this Court, by way of a motion, for the diminution of records. In the instant case, the counsel, rather than filing a motion for the diminution of records, requested on the

strength of the letters written to the NEC, that this Court will direct the NEC to forward the missing records.

Firstly, we expect that counsel should know of the legal procedure to be followed in such a case, and we are constrained to admonish counsel of the continued display of a lack of knowledge of the law that obtains in this jurisdiction. If counsel is not in knowledge of the law, then counsel should not represent parties before this Court as it reflects poorly on counsel not to be in the position to follow the correct procedure provided for by law to have the Court perform or direct the performance of a certain act. Should any incident of this nature be repeated, this Court will dismiss the request and proceed as provided by law.

Secondly, we must admonish counsel of the timing of making such request. If counsel noticed that certain parts of the records were missing, he owed this Court and his client the legal duty to file a motion prior to the call of the case. However, because of the procedure adopted by the counsel for the Appellant, we had to reassign the case to another date for hearing. We do not want to believe that the counsel is unaware that the case is an election case, and that the Constitution places a time factor on this Court within which the Court must dispose of the case.

We are further constrained to comment on a novelty this court is not in the position to accept introduced by Appellee's Counsel who filed a 'Response to Appellant's Bill of Exceptions', in which he traversed the counts in the Bill of Exceptions. This puts the Court in a position to educate the counsel for Appellee that Bill of Exceptions are complaint of errors committed during a trial committed by a trial Judge or at an administrative hearing. This court reiterates that it is an established procedure that issues raised in a Bill of Exception are address in a formal brief filed before this court, and not by way of response as erroneously done by Appellee's Counsel in this case.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the Board of Commissioners of the National Elections Commission (NEC) which confirmed the ruling of the Hearing Officer of Maryland County, dismissing the appellants complaint, is hereby affirmed. The Clerks hereby ordered to send a mandate to the

NEC to resume jurisdiction over this case and give effect to this Judgment. Costs are ruled against the Appellant. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Syrenius Cephus appeared for the appellant. Counsellor Arthur T. Johnson of the Consortium of Legal Practitioners in association with Counsellor Mark A. Kollie of the Woah and Associates appeared for the Appellee. Counsellors G. Augustine Toe and Peter Y. Kerkula appeared for NEC.