

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA SITTING
IN ITS SPECIAL SESSION, A. D. 2023

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. KABAASSOCIATE JUSTICE
BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

Alfred C. Sheah, Alex Rogers of District #1 and District #4,
and Eminent Citizens & Residents of Margibi County, Republic
of Liberia.....1st Appellant

And

Joseph Y. Yarkpawolo of Margibi County2nd Appellant

Versus

Hon. Nathaniel F. McGill of Margibi County.....Republic of
Liberia..... Appellee

GROWING OUT OF THE CASE:

Hon. Nathaniel F. McGill of Margibi County, Republic of Liberia
Republic of Liberia Appellant

VERSUS

Alfred C. Sheah, Alex Rogers of District #1 and District #4,
and Eminent Citizens & Residents of Margibi County, Republic
of Liberia.....1st Appellee

And

Joseph Y. Yarkpawolo of Margibi County2nd Appellee

GROWING OUT OF THE CASE:

Hon. Nathaniel F. McGill of Margibi County, Republic of Liberia
..... Movant

Alfred C. Sheah, Alex Rogers of District #1 and District #4,
and Eminent Citizens & Residents of Margibi County, Republic
of Liberia.....1st Respondent

And

Joseph Y. Yarkpawolo of Margibi County2nd Respondent

APPEAL

APPEAL

Board of Commissioners
NEC

MOTION TO DISMISS

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This is an appeal from a ruling made by the National Elections Commission (NEC) on a motion

to dismiss a complaint challenging the eligibility of the appellee, Mr. Nathaniel F. McGill, to contest as a senatorial candidate of Margibi County in the 2023 Presidential and Legislative Elections.

The genesis of this appeal as per the records is that, on July 10, 2023, one Peter F. Mulbah, referring to himself as an eminent citizen of Margibi County, wrote a letter to Madam Davidetta Brown Lassana, Chairperson of the National Elections Commission (NEC) objecting to the certification of Mr. Nathaniel F. McGill to contest in Margibi County as a senatorial candidate. He alleged that Mr. McGill lied under oath when he stated that he domiciles in Margibi County, whereas, he lives in the R-2 Community located in Montserrado County.

Subsequently, on July 13, 2023, several citizens referring to themselves as Eminent Citizens and Residents of Margibi County, represented by Alfred C. Sheah of Electoral District #1, Lower Margibi County, and Alex Rogers of Electoral District #4, Upper Margibi County, again wrote to the NEC Chairperson objecting to the registration and certification of Mr. Nathaniel McGill to contest in Margibi County as a senatorial candidate. These citizens, who attached copies of their voter registration cards and a resolution to their complaint, contended that Mr. McGill is not qualified to contest as a senatorial candidate in their County as he never resided therein nor has he domiciled in any of the five electoral districts in the County to qualify him to contest for any legislative seat as required by Article 30(b) of the Liberian Constitution (1986); that Mr. McGill lives in District 6, Montserrado County and he being domiciled in Montserrado County, he is disqualified as per the Constitution to contest for a legislative position in Margibi County.

On July 21, 2023, a similar complaint was written to the Chairperson of the NEC by Mr. Joseph Yarpuyan Yarkpawolo who resides in Electoral District #1 and is a senatorial candidate in the 2023 Elections for Margibi County. He wrote complaining to the NEC Chairperson that Mr. McGill is ineligible as per the Constitution to contest in Margibi County as he lives in District #6 of Montserrado County.

In response to the complaints/objections, the Appellee Nathaniel McGill filed a motion to dismiss the objections file to his nomination, contending that Peter F. Mulbah and the Eminent Citizens and Residents of Margibi County are mere voters who lack the legal capacity or legal standing to filed complaint or objections to the nomination of the appellee in keeping with the NEC Nomination Guidelines and Procedure for the 2023 Presidential and Legislative elections; that the complaints/objections were prematurely filed as the NEC had not published the Provisional Listing of nominees when the complaints /objections were filed.

Regarding the complaint/objection filed by Mr. Joseph Yarpuyan Yarkpawolo of Electoral District #1, the appellee contended that though Mr. Joseph Yarpuyan Yarkpawolo had standing in keeping with the NEC Nomination Guidelines and Procedure, 2023, he however filed his objection or challenge a day after the required period laid out in the NEC's Regulations of 2023, for challenging the appellee's nomination. The appellee therefore prayed that Mr. Joseph Yarpuyan Yarkpawolo's objection to the appellee's nomination be also dismissed.

The NEC's Regulations and Guidelines of 2023 General Elections, the law upon which the appellee relied in seeking to dismiss the objections/complaints against his nomination, read as follows:

"Challenges to names on the Provisional List

A candidate, participating political party, coalition or alliance may challenge, where applicable, the eligibility of a candidate on the Provisional list. Such a challenge must be in writing (with all relevant documents/evidence attached) and filed with the NEC no later than two days after the publication of the said Provisional Listing of Candidates. The following are the grounds for challenge:

That the candidate:

1. Has not attained the Constitutional age;
2. Has not been domiciled in the Electoral District one year prior to October 10, 2023 (for the House of Representative); or has not been domiciled in the County one year prior to October 10, 2023 (for the Senate);
3. Has not been resident in the Republic for ten years immediately prior to October 19, 2023 (for the Presidency and Vice Presidency; or
4. Has dual citizenship".

"Decision on registration/challenge

A challenger or challenged aspirant/candidate not satisfied with an investigative/hearing decision may, within 24 hours following receipt of the said decision, perfect its appeal to the Board of Commissioners of the National Elections Commission. A challenger or challenged aspirant/candidate dissatisfied with the Board of Commissioners' decision may, within 48 hours following receipt of the said decision, perfect its appeal to the Honorable Supreme Court."

When the case was called for hearing before the Hearing Officers of the NEC, counsel for the objectors prayed that the objections be consolidated since they raised the same issue regarding the residency of the appellee. The Civil Procedure Law provides that when actions involving common question of law and facts are pending before a court of record, the court upon motion or *sua sponte* may order a joint investigation of any or all of the matters in issue

or the consolidation of matters in issue of the actions; and it may make such other orders concerning the proceedings therein as may tend to avoid unnecessary costs and delays Civil Procedure Law, Rev. Code 1:6.3.

The Hearing Officers consolidated the objections and entertained a hearing into the motion to dismiss filed by the appellee and thereafter entered a ruling on the same day, granting the motion with regards the objection/challenge filed by the senatorial aspirant, Mr. Joseph Yarpuyan Yarkpawolo. The Hearing Officers held that the records before the NEC show that the provisional listing was published on July 18, 2023, and Mr. Joseph Yarpuyan Yarkpawolo filed his objection/challenge to the nomination of the appellee on the 21st of July, 2023, three days after the publication of the provisional list, contrary to the NEC Guidelines which required the filing of objection within two days after publication of the provisional listing, that is, on July 20, 2023.

With regards to the challenge made by the Eminent Citizens and Residents of Margibi County, the Hearing Officers held that it would proceed to hear the challenge made by these voters of Margibi County; that the Appellee McGill in his motion to dismiss relied on the NEC's Regulations 2023 regarding "Challenge to Name on the Provisional List" which required that only a candidate, participating political party, coalition or alliance may challenge the eligibility of a candidate on the provisional listing; however, the voters relied on their rights under Section 5.9 of the New Elections Law, which states that a voter as well as a candidate, or a registered political party had a right to file a complaint with the NEC alleging that offenses against the Constitution or Elections Law or violation of a regulation issued by the Commission has occurred in connection with the administration of an election and during any stage of the elections. The Hearing Officers held that in face of Section 5.9 of the New Elections Law, the NEC Nomination Procedure which allows only candidates and political parties and coalitions to file a complaint challenging a candidates' nomination must crumble and that the registered voters as spelt out in the statute has a right to file or object to a candidate on the provisional listing. The Hearing Officers therefore ruled that the objection be proceeded with on its merits.

Counsel for the appellee noted exceptions and appeal the Hearing Officers' ruling to the Board of Commissioners of the NEC. The appellee in his bill of exceptions complained that: (a) the Hearing Officers refused to dismiss the complaint against the Eminent Citizens, who are voters of Margibi County, although the appellee had brought to the attention of the Hearing Officers that these citizens had filed their challenge prematurely; (b) that the Hearing Officers overruled the appellant's contention, questioning the capacity of the objectors under the NEC's Regulation to challenge or object to a candidate on the published provisional listing,

but the Hearing Officers declared that the said NEC's Regulation is inconsistent with the statute; (c) that the objectors filed no written relevant documents/evidence with their complaint/challenge to support their allegation as required by the NEC Regulation; (d) that the Hearing Officers reliance was erroneous as Chapter 5 of the New Elections Law, titled "Voting" is not related to complaints challenging the nomination of candidates, and (e) the Hearing Officers having found the NEC Regulation and Guidelines inconsistent with the Elections Statute, they should have declared the Guidelines and Regulations *void ab initio* and should not have taken seized of and entertained a complaint filed pursuant to the very Guidelines and Procedures.

The Co-appellant Mr. Joseph Yarpuyan Yarkpawolo, filed a Motion for Relief from Judgment before the Chief Hearing Officers, stating that the NEC did in fact release its Provisional Listing of Candidates on July 20, 2023, and not July 18, 2023 as it alleged. He attached to his Motion for Relief from Judgment a photocopy of the Heritage Newspaper, Vol. 25, No. 355,347 published in Monrovia, Liberia, on Thursday, July 20, 2023. There is no record of a hearing on this motion for relief from judgment but the very newspaper attached to the motion reported on page 18 that the NEC released the names of aspirants on Tuesday, July 18, 2023.

The appellants (voters) upon being cited for a hearing by the Board of Commissioners of the NEC, filed their response to the appellant's appeal contending therein:

1. That the Commissioners should dismiss the appeal as it was prematurely filed; that the investigation was not completed and a final ruling made from which an appeal could have been made; that under the law, the Commissioners can only acquire jurisdiction based on an appeal from the final ruling of the Hearing Officers; in this case, the Hearing Officers have not completed the investigation of the matter before it; accordingly, the appeal should be dismissed;
2. That where the Commissioners proceed to make a ruling void of jurisdiction, the judgment will be void;
3. That the bill of exceptions was inadvertently signed by the Hearing Officers because there is an ongoing investigation scheduled in the matter and the appellee could only have filed for a summary proceeding to the Board of Commissioners and not an appeal as the denial of the motion to dismiss did not bring a finality to the case; therefore, the Commissioners should have the matter returned to the Hearing Officers for completion of the hearing and a final judgment made upon which the appellee could appeal if he so desires.

The Board of Commissioners had a hearing into the appeal and entered a ruling reversing the Hearing Officers decision.

In addressing the question of its jurisdiction to hear the appeal since the Hearing Officers had not concluded the hearing below and made a final ruling, the Board stated that the approval of the bill of exceptions indicates that a final ruling had been rendered in the case and the Hearing Officers had therefore lost jurisdiction, and that the Board took note of the Supreme Court's Opinion in the case, *Blamo v. Zulu et al*, 30 LLR 586 (1983), in which the Supreme Court opined that that it is from the averments of the complaint that the cause of action is determined.

On the question of whether the 2023 General Elections Nomination and Registration Procedures formulated by the NEC pursuant to its authority is inconsistent with Chapter 5 of the Elections Law, the Board answered "no". The Board held that the 2023 General Elections, Nomination and Registration Procedures are not inconsistent with Chapter 5 of the Elections Law; that Chapter 2, Elections Law, captioned "Power and Duties" subsection 2.9(h) expressly states that the NEC has authority to "formulate and enforce guidelines controlling the conduct of all elections for elective public offices which guidelines shall not be inconsistent with provisions of the Constitutions and the election Law" The Board held that the restrictive prescription for limiting the filing of objections and complaints before the NEC to only a candidate, political party, alliance and coalition is intended not to complicate or overwhelm the nomination and registration processes with too many complaints coming from individuals who do not have the legal standing or capacity to bring such complaints; that the regulation was formulated as a consequence of the NEC's past review and analysis of complaints coming from individuals who wanted to frustrate the registration and nomination processes with numerous complaints; that the Supreme Court has long since interpreted Chapter 5 of the Elections Law in the case, *NEC v. Siebo* (motion of dismiss appeal, decided September 5, 2017) in which the Honorable Supreme Court considered the issue of whether Chapter 5 of the Elections Law applies to the candidate nomination\registration process. Answering in the negative, the Honorable Supreme Court stated:

"We observe, from the onset, that the Elections Law is silent on the procedures to be followed in the case of the rejection of the nomination application of an aspirant seeking to be a candidate in an ensuing public election, as in the instant case.; that Chapter 5 does not deal with candidates or aspirants registration or the registration process, but rather deals exclusively with voting. Accordingly, we hold that the procedures for the filling of complaints articulated in Chapter 5, and especially at subsection 5.9 through 5.12 (6), apply squarely to the time of 'voting' and not 'nomination of candidates'.... We take note, and impress on counsel for movant to do the same, that each chapter of the

Elections Law deals with separate and distinct topics or aspects of the elections and that... Chapter 5 only deals exclusively with 'voting' and no more..."

The Board of the NEC ruled that the Hearing Officers incorrectly ruled that the complainants (as voters) have legal standing to object to a candidate whose name appears on the provisional listing of candidates. The Board vacated the Hearing Officers' ruling conferring standing on the appellants to file objection to the nomination of the appellee.

The appellants, Eminent Citizens and Residents of Margibi County excepted to and announced an appeal from the Board's Ruling to the Supreme Court. The appellants basically complain that the Appellee McGill's appeal to the Board of the NEC from the Hearing Officers ruling on his motion to dismiss was premature as the ruling was interlocutory and the Board of the NEC could not assume jurisdiction and hear an appeal from an interlocutory ruling; that if the appellee believed that the Hearing Officers' ruling on his motion to dismiss was not supported by law, he should have filed a summary proceeding before the Board of Commissioners to correct whatever errors that was allegedly committed by the Hearing Officers.

The Court having carefully perused the records, has determined that there is only one main issue determinative of this case, and that is: Whether the appellants have standing to file objections challenging the certification of the appellee Nathaniel F. McGill to contest in Margibi County as a senatorial candidate?

We note that during argument before this Court, counsel for Mr. Joseph Yarpuyan Yarkpawolo conceded that he filed his objection in violation of the NEC Nomination and Registration Procedures (2023), and that he did not except and file an appeal to the Board of the NEC from the dismissal of his objection. Therefore, the only appellants before us are the Eminent Citizens and Residents of Margibi County comprising of registered voters of that County. Before addressing the issue indicated above, we must first address the appellants' contention regarding the jurisdiction of the Board of Commissioners of NEC to entertain the appeal filed by the appellee as it is a requirement in this jurisdiction that every court, including a quasi-judicial forum like the NEC, is duty bound to first determine its jurisdiction over a given matter because where jurisdiction is wanting, every action take by such body is *null and void ab initio*. *Scanship (Lib) Inc. v Flomo* ; 41 LLR 181, 186 (2002), *Vargas v. Morris*, 39 LLR 18, 22 (1998).

The appellants claim that the Board of the NEC prematurely assumed jurisdiction of the matter since the Hearing Officers had not completed the investigation before it and the Board could have only acquired jurisdiction based on an appeal from the Hearing Officers' final ruling.;

that where the board proceed to hear and make a ruling void of jurisdiction, its judgment is void.

The Court notes that the Board of Commissioners of the NEC, exercises jurisdiction over disputes relating to elections in two forms: jurisdiction to review challenges made to interlocutory rulings entered by the NEC's Hearing Officers and jurisdiction to review their final decision rendered on appeal. In order for the Board to review an interlocutory ruling, the proper procedure is for a party dissatisfied with the ruling made by a Hearing Officer to file a summary proceeding before the Board, or where a final ruling is made by a Hearing Officer, the dissatisfied party appeals from the final ruling to the Board. It is important to emphasize, however, that the jurisdiction exercised by the Board, whether in reviewing interlocutory rulings or in reviewing a final ruling of the Hearing Officers, its review is appellate in nature. Thus, when a challenge is made to the jurisdiction of the Board regarding its review of a particular ruling, the inquiry will focus on the legal relevance of said ruling on the entire controversy as a whole.

In this case, we agree with the appellants that the ruling made by the Hearing Officers denying the motion to dismiss filed by the appellee was interlocutory, and that the appellee should have filed a summary proceeding instead of an appeal to the Board of Commissioners for the review of said ruling. However, notwithstanding the error in procedure, the Board still had jurisdiction to entertain the issue passed upon by the Hearing Officers, and the fact that the Hearing Officers themselves had approved the bill of exceptions, they, themselves, must have been aware that this critical issue had to be settled by the Board of the NEC before moving into other issues raised and that was why they proceeded to sign the bill of exceptions since the Board is the final arbiter of all electoral disputes brought before the NEC. More besides, timeliness is of the essence in disposing of electoral matters; thus, this Court will overlook errors in procedure in favor of the expeditious disposition of election cases where such action does not work prejudice a party.

This brings us to the issue of the standing of the appellants to object to the nomination of the appellee Nathaniel McGill.

The Supreme Court has held that where it is alleged that a party lacks standing to institute an action, the court must first decide the issue of standing, and if it is established that the party indeed lacks standing to bring the action, the action is dismissed without deciding the substantive issues in the pleadings. *The Board of Commissioners of NEC & Brownie J. Samukai v. Movement for Progressive Change and Ministry of Justice*, Supreme Court Opinion, March Term, 2021.

The appellants contend, and to which the Hearing Officers agreed in its ruling, that the NEC nomination guidelines eliminating voters from filing a complaint, objecting to a candidate nominacy is in violation of section 5.9 of the Elections Law, and therefore registered voters, such as the appellants, have the right to vote since the NEC's regulation cannot be in violation of the Elections Statute.

This Court says that this assertion by the appellants that the NEC Guidelines and Procedures regarding candidates' nomination is in conflict with Chapter 5, specifically 5.9 of the Elections Law, has been addressed by this Court. In its Opinion, *NEC v. Seibo* (2017), this Court held that Chapter 5 of the Elections Law deals exclusively to "voting" and applies to challenges emanating from complaints of irregularities noticed during voting or connected to the voting process and not to complaints relating to pre-election matters such as challenges to nomination of candidates. Each Chapter of the Elections Law has a heading to which that section of the law addresses matters falling therein. In this case, the Elections Law, Section 5.9, relied on by the Hearing Officers, does not support the appellants contention of its right to file an objection under this Chapter and the Hearing Officers ruling sustaining the appellants contention, since Chapter 5 of the Elections Law refers specifically to "voting" and pre-election challenges such as nomination and registration do not fall within this Chapter of the Elections Law. We therefore uphold the ruling of the Board of NEC that section 5.9 of the elections Law is inapplicable in this case.

Our Civil Procedure Law, Section 11.2, provides that a party may by motion pray the dismissal of an action where the complaining party lacks the capacity to bring the action (*Citizen Solidarity Council vs. the Government of Liberia*, Supreme Court Opinion, October Term 2015). This Court says that from a review of the issue in this case, the appellants not being among those listed in the National Elections Commission Nomination and Registration Procedures (2023), they lack the capacity and legal standing to challenge the appellee's nomination and certification.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the Board of Commissioners of the National Elections Commission is affirmed. The Clerk of this Court is ordered to send a mandate to the National Elections Commission to resume jurisdiction over this case and proceed in accordance with this Opinion. Costs are ruled against the appellants. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR SAM Y. COOPER OF LEGAL MINDS APPEARED FOR THE APPELLANTS. COUNSELLOR SAYMA SYRENIUS CEPHUS, Esq. OF AFDASA CONCULTANCY, INC. APPEARED FOR THE APPELLEE. COUNSELLOR MICAH WRIGHT AND PETER Y. KERKULA APPEARED FOR THE NEC.