

BEFORE THE HONORABLE SUPREME COURT OF REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2020

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOHASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

The Collaborating Political Parties by & thru its Secretary)
General, Mr. Aloysius Toe of District # 9 Montserrado County,)
Republic of Liberia.....APPELLANT)

Versus)

The National Election Commission by & thru its Authorized)
Representatives of the Republic of Liberia..... 1ST APPELLEE)

AND)

Frank Saah Foko, Aspirant Candidate of the Coalition for,)
Democratic Change (CDC) of District # 9, Montserrado)
County, Republic of Liberia.....2nd APPELLEE)

APPEAL

GROWING OUT OF THE CASE:

The Collaborating Political Parties by & thru its Secretary)
General, Mr. Aloysius Toe of District # 9 Montserrado County,)
Republic of Liberia.....APPELLANT)

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The National Election Commission by & thru its Authorized)
Representatives of the Republic of Liberia.....RESPONDENTS)

ACTION:

ELECTIONS IRREGULARITIES

HEARD: February 23, 2021

DECIDED: March 2, 2021

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

This case is on appeal before us from the final ruling entered by the Board of Commissioners of the National Elections Commission (NEC) dismissing the complaint filed by the appellant, the Collaborating Political Parties (CPP), by and through its purported Secretary General, Aloysius Toe, against the NEC and the Coalition for Democratic Change (CDC), by and through Frank Saah Foko. For purposes of clarity the complainant is designated hereinafter as appellant; the NEC as the 1st appellee; and the CDC as the 2nd appellee. Here are the facts:

Due to a vacancy created by the death of Representative Muna Pelham Youngblood of District #9, Montserrado County, a By-election was conducted by the NEC to fill the vacancy.

The By-election took place on December 8, 2020, the same day the NEC also conducted the Special Senatorial Election throughout the country. Eight candidates participated in the By-election for District #9, Montserrado County. Those who participated are: B. Miller Catakaw, Independent Candidate, James Salinsa Debbah, Independent Candidate, Rahaile M. Foday of the Movement for the Liberation of Liberia (MOL), Frank Saah Foko, Jr. of the Coalition for Democratic Change (CDC), Cyvette Gibson, Independent Candidate, Fubbi Franklin Armah Henries of the Collaborating Political Parties (CPP), Edmond K.P.P. Lloyd, Independent Candidate, and Saah Roberts of the Rainbow Alliance (RA). The National Elections Commissions(NEC) announced Frank Saah Foko, Jr. of the CDC as the winner of the Representative By-election for District #9, Montserrado County with 8,650 of the valid votes cast, ahead of Fubbi Franklin Armah Henries of the CPP who, according to the NEC, came second with 8, 542 votes.

On December 13, 2020, a letter of complaint was addressed to Madam Davidetta Browne Lansanah, Chairperson of the Board of Commissioners of the NEC on the letterhead of the CPP and under the name of Aloysius Toe, Secretary General of the CPP. The letter was not signed by Aloysius Toe, someone signed on his behalf using "PP." The complaint alleged irregularities, serious missteps, and deliberate acts of misconduct by the NEC during the By-election. The complaint specified that many voters could not vote on December 8, 2020, at the Nancy B. Doe School Precinct because their voting rights were transferred to the Blamasee Public School in District #17, Montserrado County; that pre-marked ballot papers were given to voters at the Don Bosco Youth Center; and that several persons were denied the right to vote because their pictures were not seen on the voters' roll. The complaint requested the NEC to correct the voters' roll at the Nancy B. Doe School Precinct and conduct a rerun at that center; conduct a rerun at the Don Bosco Youth Center; and conduct a rerun of the election in the entire District #9, Montserrado County because several persons were denied the right to vote on the day of the election. For the benefit of this opinion, we quote the letter:

"COLLABORATING POLITICAL PARTY (CPP)

December 13, 2020

Madam Davidetta Brown Lansanah
Chairperson
Board of Commissioners
National Elections Commission
9th Street, Sinkor, Mon., Republic of Liberia

COMPLAINT FROM DISTRICT #9 MONTSEERRADO BY-ELECTION

Dear Madam Commissioner,

Please accept our compliments with high esteem.

We write to officially seek your attention to some very serious missteps and deliberate acts on the part of the National Elections Commission (NEC) which undermined the credibility of the December 8, 2020 by-election in District #9 and threatened the peace of the Country.

Kindly note the following:

1. Many of the voters did not vote on December 8, 2020 at the Nancy B. Doe School Precinct, Code 30385 because their voting rights were transferred to Blamasee Public School (Precinct Code 30358) in District #17, Montserrado County.
2. We also noticed Pre-marked Ballot Papers given to voters at the Don Bosco Youth Center (Precinct Code – 30406). This incidence was reported in the media and in several observers' reports.
3. Additionally, lots of people were denied the right to vote because their pictures were not seen on the Voters Rolls, even though their ID#s and names were available.

In this light, we are requesting the following:

1. The correction in the Voter's Roll at the Nancy B. Doe School, Precinct Code 30385 and conduct a rerun at that center.
2. Rerun at Don Bosco Youth Center, Precinct Code 30406.
3. Based on the turning down of several voters, we seek rerun of [the] District #9 By-election.

Thanks for your fullest cooperation.

Truly yours,

PP: _____
Aloysius Toe
Secretary-General"

On December 16, 2020, the NEC's assigned Magistrate at Brewerville cited the parties to a hearing of the complaint. At the hearing, two submissions were made. The counsel for the complainant requested a change of venue from Brewerville to Monrovia, while the counsel for the NEC requested the CDC, by and through Frank Saah Foko, the declared winner of the By-election in District #9 to be joined as a party of interest. Both submissions were granted.

On December 21, 2020, the NEC was given the opportunity to respond to the complainant's complaint. The NEC, through its counsel spread on the minutes of the hearing that the complaint lacks merit and that it was not properly filed. The NEC therefore requested the Hearing Officer to deny and dismiss the entire complaint. The records do not show, however, that the Hearing Officer dismissed the complaint; instead, the complainant took the witness stand and produced eight witnesses in support of its cause. Here are the summaries of the complainant's witnesses:

The first witness for the complainant, Helena Kanneh, testified that she registered at the Nancy B. Doe School, Old Matadi in District #9, Montserrado County, Precinct Code

30385; that on the day of voting, she showed her voting card, and the NEC Officer searched for her name but did not find her name on the Final Registration Roll (FRR); The witness also testified that she went to the Head Office of the NEC to seek clarification and she was advised to go to Blamasee, Brewerville to vote, but she refused to go; as a result, she did not vote. She said she informed Fubbi Henries of what had happened. She also said that she did not take part in the "exhibition" which ran from October 28, 2020 to October 31, 2020 because she went to Grand Cape Mount County to take care of her grandmother who had "gowa" on her foot.

The complainant's second witness, Morris Kamara, testified that he had been voting in Lofa County but decided that in 2020 he would vote in Montserrado County; that he gave his old voting card for a new card to allow him vote in Montserrado County; that upon receiving the new card, he went to the place where he registered to vote but was denied and advised to go to Matadi to vote; that he was also denied voting in Matadi because his name was not found on the FRR; and that he complained to Fubbi Henries who advised him to write his name and have it submitted for a formal complaint to NEC.

The complainant's third witness, Moses Bondo, testified that on December 8, 2020, he went at the Nancy B. Doe Precinct to vote, but a lady assigned at the center told him that his I.D number and photo were not there; that he complained to his father and both of them went back to the center, but the lady said to his father that his name and photo were not at the center. Therefore, he did not vote. He informed the hearing that he heard about "exhibition" but did not go to check; and that he is a first-time voter.

The complainant's fourth witness, Telly Bondo, testified that on December 8, 2020, he went to vote; that when he presented his voting card a lady looked at the center code and checked his name, but his name could not be found so the lady told him that he could not vote; therefore, he was denied voting on that day.

The complainant's fifth witness, Chelah Okenzee, testified that he registered at the Nancy B. Doe Old Matadi; that upon arrival there to vote, his name could not be found on the list; that he was advised by the Presiding Officer to go to Blamasee in Brewerville; that he refused because he did not register in Brewerville, this is why he did not vote. The witness testified that he did not participate in the "exhibition" process.

The complainant's sixth witness, Aletha Karpeh testified that she is a first-time voter; that she went to the polling room number two (2) to vote but could not see her name or ID number; that a lady assigned at the room informed her that her name could not be found; that it was later discovered that her name was at District #17, Blamasee Community School, Brewerville; that she refused to go Brewerville because she did not register there, this is why she did not vote. She testified that she had no idea of the "exhibition" and therefore did not participate in that process.

The complainant's seventh witness, Josiah Larkpor, testified that he registered and voted at Don Bosco in District #9, Montserrado where he served as a Poll Watcher for the CPP; that he noticed that a voter came from behind the voting screen and informed the Presiding Officer that he was given a ballot paper that was pre-marked with blue ink; that the Presiding Officer, in the presence of all interested parties, put the pre-marked ballot paper in a spoiled ballot envelope, and gave the voter a new ballot paper; that the voter went behind the voting screen and came back and complained again that the second ballot paper was pre-marked; that the second ballot paper was also considered spoiled and placed in an envelope; that the voter subsequently voted and left and that the situation caused tension, but things were quieted and voting continued.

The complainant's eighth witness, Fubbi Henries, testified that early on election day he received series of complaints from his poll watchers, partisans and supporters; that at the Don Bosco Youth Center he received complaint that a pre-marked ballot paper was issued to an individual which was displayed on Joy TV and other stations; that complaint forms at the St. Nan Academy, where NEC denied people from voting were available; and

that he also got reports from different centers across the district where people were denied their rights to vote on the basis that their names were not seen on the FRR. He said that upon the receipt of the complaints he advised those persons that were denied their voting rights to submit their names to him for formal complaint to NEC. He also said that by virtue of the fact that most of the people who were denied their voting rights to vote came and complained to him, it proves and established that they were his supporters.

When the complainant rested evidence, the NEC took the stand and produced four witnesses. We also present below, the summaries of the NEC's testimonies:

NEC's first witness, Isaac G. Morris testified that on December 8, 2020, he was assigned at the Don Bosco Youth Center in New Matadi, District #9 as a Poll Watcher and Supervisor for the CDC in Room Six (6); that while there a voter came in to vote and was given three ballot papers: the Representative, Senatorial and Referendum ballot papers, and he proceeded to vote; that after more than three minutes, the voter raised an alarm saying that there was something on the ballot paper; that the NEC Official at the center got concerned and ask the voter what he was talking about and the voter said the ballot paper given to him was marked; that the NEC Official then ask the voter to give her the paper; that upon receiving the paper from the voter, she saw a blue ink mark on the ballot paper and the NEC Supervisor said, we use black ink from the NEC Office, how did you get a blue ink mark on the ballot paper?. The witness said that interestingly, the voter had a blue pen with him; that when all the poll watchers saw him with the blue ink, the voter said that he had not used the pen to mark the ballot paper; that the NEC Official took away the ballot paper from the voter and with the consent of every poll watcher in the room, the paper was quarantined and classified as spoiled ballot; that the NEC Supervisor gave the voter another ballot paper and upon receipt of the ballot paper, he voted and left. The witness further testified that when the voter left the voting center, he gave an interview on Spoon TV, the online station and made wide allegations that ballot papers were marked in favor of the CDC candidate.

The NEC's second witness, Alexander Bayon, testified that on December 8, 2020, he served as a Supervisor representing the CDC at the Nancy B. Doe School where many voters turned out and voted; that after voting, tally sheets were issued to the first two parties/candidates with the highest votes; that the first winner carried one tally sheet and the second winner carried another tally sheet; that on the tally sheet is the Precinct Code number 30385 and the precinct name is Nancy B. Doe, and on the second sheet were the names of candidates; that Fubbie Henries accumulated 75 votes in polling place room #3 and Frank Saah Foko obtained 55 votes in the same room #3; that while in polling place room #1 at the Nancy B. Doe School polling place 30385, Fubbie Henries got 164 votes and Frank Saah Foko obtained 71 votes, and at polling place #2, Nancy B. Doe School 30386, Fubbie Henries got 82 votes, while Frank Saah Foko obtained 52 votes.

The NEC's third witness, Madam Hannah Cooper, testified that she was assigned as the Presiding Officer at the Don Bosco Youth Center, in polling place #6; that while there a voter came in and was given a ballot paper to vote; that she called the voter and ask why did you stay long behind the screen and the voter said that the paper was pre-marked, therefore he decided not to vote; that she took away the paper and observed that the mark placed on the paper was in blue ink, while all the NEC Officials were using black pen; that later, she discovered that the voter had a blue ink pen in his pocket and she asked him whether he did not mark the ballot with it and he said no; that she took away the ballot paper and informed all the observers present at the center and that the voter was given another ballot paper and he voted and left.

The NEC's fourth witness, Edmond L. Johnson testified that he participated in the voter registration update from September 11 - 25, 2020; the exhibition from October 28-31, 2020; and that he participated in the final activities of the election. He said he initially put up provisional listing for everybody to go and see their names before the NEC came up

with the final registration roll (FRR) for the elections day. He also said that after the registration update, there is a process called "exhibition" where the provisional registration roll is released for the registered voters to go and see their names; that if there is any mistake or error in the names, corrections are made before the final registration roll is processed. The witness further testified that on December 8, 2020 at 4:30 P.M., he got calls from 43 voters at the Nancy B. Doe Precinct 30385 who said that their names were not on the voter roll of the entire precinct; that he asked them whether they took advantage of the "exhibition" process and they said no.

After hearing evidence from the parties, the Hearing Officer, on January 22, 2021, ruled dismissing the complaint in its entirety. The complainant/appellant appealed to the Board of Commissioners of the NEC, who entertained argument *pro et con* and ruled confirming the decision of the Hearing Officer. The complainant/appellant noted exception to the final ruling of the Board of Commissioners of the NEC and announced an appeal to this Court for appellate review.

This case involves several issues engendered and set forth by the contentions and counter-contentions of the parties. Cardinal amongst them is the issue of whether or not the complainant/appellant, who claimed to be acting in a representative capacity, established legal standing to file this complaint on behalf of the CPP? This is a jurisdictional question the determination of which will propel or preclude from deciding other issues. This Court has said that standing involves jurisdictional issues which concerns the power of courts to hear and decide cases and does not concern the ultimate merits of substantive claims involved in the action. Where it is determined that the party lacks standing to institute the action, the action is dismissed without deciding other substantive issues. So, we must first decide in this case whether the complainant/appellant was authorized and had legal standing to file this complaint on behalf of the CPP, a conglomeration of political parties associating for political purposes.

Article 78 of the Constitution of Liberia (1986) defines and designates a political party as an association when it provides:

"As used in this chapter, unless the context otherwise requires, an "association" means a body of persons, corporate or otherwise, which acts together for a common purpose, and includes a group of people organized for any ethic, social, cultural, occupational or religious objectives; a "political party" shall be an association with a membership of not less than five hundred qualified voters in each of at least six counties, whose activities include canvassing for votes on any public issue or in support of a candidate for elective public office; and an "independent candidate" shall be a person seeking electoral post or office with or without his own organization, acting independently of a political party".[Emphasis supplied].

In the case before us, a group of political parties (in other words group of associations) agreed to relate with one another to do political business each, however, maintaining its independent identity. They called themselves the Collaborating Political Parties (CPP). In law this is

recognized. The CPP, as an association, is a legal entity, considered in law a fictional person distinct from its constituent officers and members and with separate rights and liabilities. The CPP is a proper plaintiff in a suit to assert a legal right and a proper defendant in a suit to defend and protect a legal right. However, since it is a fictional person, it is required to sue and be sued through a properly designated natural person. And in making or defending claims in courts or before administrative bodies such as the NEC, it is required that a person purporting to act on behalf of the CPP be properly authorized to do so.

In the case: *Republic of Liberia v. The Independent Newspaper* decided during the March Term, 2007, this is what this Court said:

“...[T]he legal person, the corporation, has no hands, no feet, eyes and ears and lacks the ability to speak for itself. Therefore, for the purpose of achieving its goal, [including the filing of lawsuits or complaint as the case maybe], and for the convenience of those who interact with this legal person, it is practical and logical that actions for and against it be channeled through a designated [natural] person. But the corporation cannot act just through any natural person. The practice in vogue is for the corporation to act by and thru a corporate officer. A corporate officer is a person who fills the office which is provided for in the charter or articles of incorporation of the corporation such as president, vice president, general manager or treasurer. In the case, of political parties, its Chairman, Vice Chairman, Secretary General or any other agent so designated. In our jurisdiction, a corporation may also act through its chairman of the board of directors. In all such cases, however, the corporation's board of directors should authorize the action through a board resolution.

In the instant case, Aloysius Toe, purporting to be the Secretary General of the CPP, did not proffered any form of authorization from the CPP to file the complaint alleging irregularities, serious missteps, and deliberate acts of misconduct by the NEC during the By-election in District #9, Montserrado County. Moreover, Aloysius Toe did not even sign the letter of complaint; the complaint was signed by an unknown person supposedly acting for Aloysius Toe. That unknown person himself was never authorized and his identity remains a mystery.

During argument before us, the counsel for the appellant informed this Court that the person who signed the letter of complaint was the Assistant Secretary General of the CPP. But the alleged Assistant Secretary General in question did not appear before the NEC to testify that he wrote and signed the letter of complaint and that he was the Assistant Secretary General for the CPP. And no officer or official of the CPP testified to the identity of the unknown person. How then, can we accept, in the absence evidence, that the person who authored the letter of complaint was indeed doing so for and on behalf of the CPP? Under the circumstance, we hold that the appellant did not establish legal standing to file the complaint on behalf of the CPP.

This Court defined standing in the case: *Alex Tyler of the CDC vs. NEC*, (Supreme Court Opinion, October Term 2020, delivered February 19, 2021) to mean that a party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. Standing is a concept utilized to determine if a party is sufficiently affected to ensure that a justiciable controversy is presented to court. The basic and outstanding requirement of standing is satisfied if it can be said that the plaintiff has a legally protectable and tangible interest at stake in the litigation. This Court has also said that standing is a jurisdictional question which does not concern itself with the merits or demerits of the case. The purpose of the law on standing is to protect against improper parties. The doctrine of standing ensures that the court will have the benefit of a real adverse parties in cases before deciding contentious issues. The question whether a party has standing to participate in a judicial proceeding is therefore not simply a procedural technicality but, rather involves the remedial rights affecting the whole of the proceeding. And it has been held that one must not only have an interest, but he must also be the real party in interest.

So, without identity and authorization, the author of the letter of complaint, subject of this case has established no legal standing to enjoy the benefit of a judicial decision. This is especially so since the Supreme Court does not give advisory opinions.

But there is another dimension of standing involved in this case. The complaint giving rise to this case essentially alleges that on December 8, 2020, many voters could not vote in the By-election because their names were not found at the original places where they had registered to vote. According to the NEC, the public was duly informed to check the Provisional Registration Roll at each polling place during the "exhibition" process to ensure that their names appeared and were correctly spelled, so that if there were errors regarding their names such errors would be rectified before putting up the Final Registration Roll (FRR). The NEC said that the voters who complained in this case admitted that they did not take advantage of the "exhibition" process and that the situation affected all candidates.

Now, the complainant/appellant claimed that the people who did not vote went to the CPP Candidate, Fubbi Henries and complained, therefore they were all CPP supporters; we disagree.

Firstly, there is no evidence that all those who allegedly complained to the CPP Candidate were going to cast votes for the CPP. Elections in Liberia are conducted by secret ballots; voters decide who to vote for and that decision remains on their chests until they are behind the screens in enclosed areas. So, no one political party or candidate can say with certainty,

that all of the votes that should have been cast, if the voters who did not vote due to the incidence of the "exhibition" process had voted, would have been for the political party or candidate. We believe that all the political parties were one way or the other affected.

Secondly, there was no listing or showing of the voters who, the complainant/appellant claimed were prepared to vote for the CPP but were not allowed to vote. In our opinion, to make a compelling case of standing to file a complaint on behalf of such persons who did not vote, it was incumbent on the complainant/appellant, to have meticulously listed the names, and attach membership cards of any constituent party of the CPP and an affidavit stating that such persons were partisans of the CPP who were set to vote for the CPP. But this was not done. Under the circumstance, we hold that the complainant/appellant did not establish that it had standing to file this complaint on behalf of those who did not vote in the By-election in District #9, Montserrado County. We are therefore in full agreement with the final ruling of the Board of Commissioners of the NEC for dismissing the appellant's complaint.

WHEREFORE AND IN VIEW of the foregoing, the final ruling of the NEC declaring Frank Saah Foko as the winner of the December 8, 2020 By-election conducted in District #9, Montserrado County is hereby affirmed. The Clerk of this Court is ordered to send a mandate to the National Elections Commission to resume jurisdiction over this case and give effect to this Judgment. IT IS hereby so ordered.

Counsellor Moiffie Kanneh appeared for the appellant.

Counsellor J. Augustine Toe appeared for the 1st appellee.

Counsellor Peter W. Howard appeared for the 2nd appellee.

Appeal denied.

