

**IN THE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SPECIAL SESSION SEPTEMBER, A.D. 2005**

**BEFORE HIS HONOUR: HENRY REED COOPER CHIEF JUSTICE
BEFORE HIS HONOUR: FRANCIS S. KORKPOR, SR... ASSOCIATE JUSTICE
BEFORE HIS HONOUR: JOHN L. GREAVES ASSOCIATE JUSTICE
BEFORE HIS HONOUR: ISHMAEL P. CAMPBELL ASSOCIATE JUSTICE
BEFORE HER HONOUR: FELICIAL V. COLEMAN ASSOCIATE JUSTICE**

The Rejected Independent Presidential Candidates)
And their running mates, Cllr. Marcus R. Jones and)
His running mate, Sam Mohammed Kromah; Cornelius)
N. Hunter and His Running Mate, Cecelia Teah;)
Garkpe Gedekpoh; and the Independent Representative)
Candidate, Isaac Johnson, For Electoral District # One,)
Gbapolu County, Republic of Liberia)
.....APPLICANTS/APPELLANTS)

A P P E A L

VERSUS

The National Elections Commission, Represented by and)
Thru its Chairperson, Cllr. Frances Johnson Morris of)
16th Street, Sinkor, Monrovia, LiberiaAPPELLEE)

GROWING OUT OF THE CASE:

The Rejected Independent Presidential Candidates and)
Their running mates and the Independent Representative)
For electoral district number one Gbapolu County,)
Republic of LiberiaAPPLICANTS)

NOTICES OF
REJECTION OF
NOMINATION
APPLICATIONS

VERSUS

The National Elections Commission, Represented by and)
Thru its Chairperson, Cllr. Frances Johnson Morris of)
16th Street, Sinkor, Monrovia, LiberiaAPPELLEE)

APPEAL GRANTED IN PART AND DENIED IN PART

HEARD: September 7, 2005

DECIDED: September 27, 2005

MR. JUSTICE CAMPBELL DELIVERED THE OPINION OF THE COURT

This appeal is before this Supreme Court, growing out of the rejection by National Elections Commission (NEC) of the nomination applications of Appellants, presidential and vice presidential independent aspirants Marcus R. Jones and his running mate Sam Mohammed Kromah; Cornelius N. Hunter and his running mate Cecelia F. Teah; Garkpah Gedekpoh; and independent representative aspirant Isaac Johnson for Electoral District #1, Gbarpolu County, R.L.; respectively, who sought to contest the October 11, 2005, presidential and legislative elections as independent candidates.

The records show that the Appellants respective applications for accreditation and registration as independent candidates were rejected by the Appellee National Elections Commission, (NEC) in Notices of Rejection bearing various dates, but served on the Appellants at about the same time on August 12, 2005.

The Notice of Rejection of the Nomination application for Presidential aspirant Marcus R. Jones is dated August 12, 2005, and shows that his application was rejected because his Petition List is not valid. NEC's comments on the Notice of Rejection states that "the applicant submitted Petition List for 12 counties; that the Petition List for 9 counties had at least 500 valid petitioners, but the Petition List from three counties had less than 500 valid Petitioners." The Notice of Rejection concluded that "the applicant did not meet the requirement of Section 17 of the Guidelines, same being the guideline relating to the registration of political parties and independent candidates, etc. dated 17 January 2005." Co-Appellant Sam Mohammed Kromah, Vice Presidential running mate of Marcus R. Jones, received his Notice of Rejection on August 12, 2005, and the notice is dated August 12, 2005. Grounds for rejection of his nomination application are exactly the same as those grounds stated for aspirant Marcus R. Jones.

The Notice of Rejection of the application for Presidential aspirant Cornelius N. Hunter is dated August 9, 2005, and the reason for his rejection is the same as those for the rejection of Marcus R. Jones, except that in his case the Petition Lists for twelve Counties, one County had four hundred and seventy six (476) Petitioners and another County had four hundred seventy-seven Petitioners. A hand written note at the bottom of the Notice of Rejection of Cornelius N. Hunter states Presentation of list started from the 21st of July to August 6.

The records show no separate Notice of Rejection for Cecelia F. Teah, vice presidential running mate of Cornelius N. Hunter.

The Notice of Rejection for presidential aspirant D. Garkpah Gedepoh is dated August 9, 2005, and shows that this aspirant was rejected for reason that whilst he had named his vice presidential running mate to be Sylvester Singbe, this running mate “did not submit any nomination application.

The Notice of Rejection to Isaac M. Johnson, independent aspirant for the House of Representative for District #1, Gbarpolu County, is dated August 11, 2005. The NEC’s comments state that Ahis Petition List is not valid in keeping with Section 18.2 of the Guidelines since the Petition List shows that less than three hundred Petitioners were registered voters.”

The records show that the Appellants together prepared a letter dated August 12, 2005, addressed to the Chairman of the NEC, which appellants referred to as a ANotice of Exception/Protest,” which notice was served on the NEC on the 13th day of August A.D. 2005. Appellants exhibited a receipt from the NEC showing that the letter was received by Police Chief of Operation National V. Gardua, (who must have been a policeman assigned at the entrance to the NEC’s building), and Appellant alleged that this notice has not to date been acknowledged by the NEC.

The records further show that Appellants filed another notice on August 22, 2005. This notice dated August 17, 2005, was again addressed to the Chairman and Members of the NEC, and it is a notice of exception and announcement of an appeal@ to the Honourable Supreme Court from the August 12th rejection of Appellants. The records also show that the Appellants filed before the National Elections Commission a Bill of Exceptions which is dated August 26, 2005, and approved by the Chairman of the NEC on August 30, 2005. This brought the matter before the Supreme Court on its Special Elections Case Docket.

For the benefit of this Opinion, we deem it necessary to quote verbatim Appellants' eleven-Count Bill of Exceptions, as follow:

- “1. That Appellants are natural born Liberian who in 2004 to 2005 severally filed declarations of intent to contest the forth coming general and presidential elections scheduled for October 11, 2005, as independent candidates in exercise of their rights as provided for under the Constitution of the Republic of Liberia. The Appellants' declarations of intent were thereafter supported and endorsed by several thousands qualified registered voters, in keeping with law and the elections Guidelines dated on the 17th day of January 2005.”
- “2. That despite the Appellants' declarations of intent and the subsequent submission of the required listing of qualified registered voters of Appellants and all the necessary required documentations to the Respondent Commission, the Appellants were treated with latitude and careless abandonment by the respondent Commission, in that while the Respondent Commission held regular weekly meetings with political parties, and regular mail boxes for communication were created and installed for political parties at Respondent's Headquarters, the independent candidates were only met with twice (one for familiarization meeting on July 8, 2005 and the second on July 16, 2005 for a workshop at the YMCA building), throughout the preparatory period, and that no communication boxes were ever made available for independent candidates.

Neither did the Respondent Commission acknowledge receipt of a communication from Appellants/Independent Candidates since the commencement of the process. This circumstance denied the independent candidates their rights and opportunity to regularly consult and relate with the Respondent Commission, in clear violation of the Appellants' constitutional rights to equal access and treatment from the Respondent Commission, as it did and has been doing with the political parties in these elections processes.”

“3. That on the 12th day of August A.D. 2005, the independent candidates were all called by telephone to report to the Respondent's security desk to receive a very important letter respectively, which turned out to be their Notices of Rejection of Nomination Applications served on them by the Respondent, thereby notifying them about the rejection of their applications and candidature by the Respondent Commission, for various reasons which were vaguely described to include failure to meet the required mandatory number of valid registered voters for some counties in gross violation of Appellants' constitutional rights to due process of law to be heard before being condemned. Copies of Appellants' Notices of rejection of Nominations Applications are hereto attached and marked Exhibit 'A' in bulk, to which rejection notices Appellants excepted and announced an appeal.”

“4. That the Respondent Commission failed to indicate which Counties and by what number of Appellants' counties listing had failed to meet the alleged requirements of the Respondent Commission. The Respondent Commission failed to give the appellants the opportunity to correct any and all of the alleged defects, if any, on the Appellants' documentations, as required under the Respondent Commission=s own guidelines, as the Respondent did with political parties and others, except appellants herein, as can be more fully seen from Exhibit 'A' in bulk, to which Appellants also excepted and announced an appeal.”

- “5. That the Respondent Commission permitted and allowed political parties the right to make amendment and or corrections on any defects on their applications, but denied the same right to the independent candidates; which denial is a flagrant violation of the Respondent Commission’s Guidelines and the rights of the Appellants, as guaranteed by our Constitution to participate and contest the elections, as well as the denial of the electorates’ constitutional rights to freely choose their leaders as demonstrated by their signatures affixed to Appellants’ registered voters’ listing as submitted to Respondent, which were illegally rejected. Appellants submit that the Respondent Commission has violated the Constitution by employing double standards in dealing with participants/candidates in these elections, thereby clearly indicating that Respondent’s playing field is not level between the independent candidates and the political parties. Therefore, appellants submit that the Respondent commission must resign or be replaced to avoid another round of violence, because the Respondent Commission has commenced cheating one group in favor of another group already. Appellants excepted to say alleged, prejudicial and reversible decision of August 12, 2005 and appealed.”
- “6. That the Appellants have promptly served a notice of exception/protest to the Respondent Commission’s Notices of Rejection of Nominations Applications in favor of Appellants and that the Respondent Commission has failed to respond to the notice of exception/protest served on it since the 13 day of August A.D. 2005, notifying Respondent of violating its guidelines/rules and requesting/demanding of Respondent to grant Appellants the(7) Seven days period within which to remedy any and all defects, as is required under the elections guidelines issued by the Respondent Commission, but to no avail. Respondent has again demonstrated arrogance towards the Appellants/Independent candidates without a simple acknowledgement of Appellants’ exception/protest.

Copy of Appellants' exception/protest request/demand dated August 12, 2005 along with the receipt evidencing the fact that Respondent Commission received the Appellants' exception/protest are hereto attached and marked Exhibit 'B' in bulk, to said illegal and prejudicial decision, Appellants excepted and appealed."

"7. Appellants further submit that in addition to the filing of Appellants' exception/protest to Respondent Commission's Notices of Rejection of Nominations Applications as stated in count six above, without the deference of an acknowledgement by the Respondent, appellants filed Notice of Intent to Appeal, dated August 17, A.D. 2005 and served on the Respondent on August 22, A.D. 2005, in compliance with Respondent Commission's own Regulations on complaints and appeals, published July 20, A.D. 2005. Appellants contend that the Respondent again, neglected, failed and refused to have responded to Appellants Notice of Intent to Appeal within (3) three days as is required by the Respondents' own rules. Copies of Appellants Notice of Intent to Appeal along with the receipt evidencing receiving the said notice by the Respondent, is hereto attached and marked Exhibit 'C' in bulk. For the said failure of Respondent to respond, Appellants have now appealed."

"8. That the Respondent Commission constantly changed the rules and guidelines during the period of voters exercise and the nomination process to the disadvantage of independent candidates to the effect that the said independent candidates were only given three weeks within which, to secure the required number of registered voters signatures, the same being a total of (6000) Six Thousand registered voters from not less than (12) Twelve counties in the Republic, in utter disregard to the prevailing conditions in the country, specifically the security, the weather, and the deplorable road conditions.

While on the contrary, political parties were given several months to accomplish less stringent requirements than appellants herein. Appellants contend that the Respondent having demonstrated partially in this electoral process against the independent candidates and their supporters, the Respondents credibility to conduct a free, fair and impartial elections is now questionable, in that, the Respondent Commission has demonstrated its inability to carry out its mandate in conducting a free, fair, and democratic elections on a level playing field in Liberia, as mandated by the CPA, the Constitution of the Republic of Liberia, the Elections law of the Republic of Liberia, the Electoral Reform Law of 2004 and the guidelines of the Respondent as well as internationally accepted standards on elections matters and this lack of credibility on the part of Respondent, must therefore, be remedied by the removal and replacement of the members of the Respondents Commission to avoid violence and confusion in the process, to which unconstitutional and reversible decision of the National Elections Commission, Appellants excepted and appealed.”

“9. That the Appellants have exhausted all available remedies as provided for under the Respondent Commissions own guidelines, and the Administrative Procedure Act, and therefore have come before this Honorable Court of last resort, for redress. Appellants hereto attach copy of their receipt as evidence of payment of the required appeal fees in the sum of Seventeen Thousand Liberian Dollars (LD17,000.00) as required by Respondent as a condition precedent by the Respondent, for appeals from its decisions, marked Exhibit ‘D’”.

“10. Appellants further submit that from all indications, predicated upon Respondents partiality, wanton and reckless attitude towards the independent candidates, to include Respondents Chairman, Cllr. Frances Johnson-Morris asking Co-appellant Cllr. Marcus R. Jones to excuse a meeting that was being held with political parties at Respondents Headquarters for the purpose of drafting a Memorandum of Understanding sometimes in late December 2004 or thereabout, because he is an independent candidate.

The chairman of the Respondent Commission acknowledged receiving Co-appellant Cllr. Marcus R. Jones letter of intent as an independent candidate and informed him that the Respondent Commission would call in independent candidates at a later date in order to draft their own code of conduct. Up to and including the filing date of this Appeal, appellants informed this Honourable Court and Your Honors that the Respondent Commission neglected, failed and refused to invite the independent candidates to its offices for the conduct of similar exercise to draft a code of conduct or a MOU for the independent candidates as Respondent did with political parties. Appellants submit that up to and including the filing of Appellants' appeal, the Respondent Commission has refused to draft a Code of Conduct or a MOU for the independent candidates to guide them during this electoral process. On the contrary, political parties were accorded preferential treatment to the extent that the Commission and the political parties executed a Code of Conduct and a MOU which now protect and direct the affairs and relationship between political parties and the National Elections commission. To which partial and illegal decision of the National Elections Commission, Appellants accepted and appealed.”

- “11. Appellants further submit that another wanton and malicious conspiracy perpetrated against the Appellants herein, was the signing of Appellants= Notices of Rejection of Nominations Applications between the 9th and th12th days of August A.D. 2005, but that the said notices were served on August 12, A.D. 2005. Co-Appellant Cllr. Marcus R. Jones' notice of rejection was the last that was signed on August 12, 2005 and served on the same date with a Press Release issued by Respondent Commission over electronic media, informing the whole world that Co-Appellant Cllr. Marcus R. Jones, the President of the Liberian National Bar Association is one of the rejected independent Presidential candidates without any opportunity to be heard prior to such announcement, can only be interpreted by Appellants that Respondent attitude was preconceived and calculated maliciously to damage and defame Appellants in the eye of the public and the world at large,

When the Appellants were not protected at all by Respondent as required by law as was done for political parties, as mandated by the CPA, the Constitution of the Republic of Liberia, the Elections Law of the Republic of Liberia, the Electoral Reform Law of 2004 and the Guidelines of Respondent and its own rules and regulations. Appellants contend that Respondent's Press Release of August 12, 2005 was conspiratorially calculated to insinuate that the President of the National Bar Association of Liberia and the Treasurer of the West African Bar Association (WABA), is incapable of comprehending the Guidelines of Respondent. As a result, Cllr. Jones failed to have met the requirements of said Guidelines. The question to be answered by the Respondent is: WHY DID RESPONDENT FAIL TO GRANT APPELLANTS HEREIN THE OPPORTUNITY TO RECTIFY ANY AND ALL INCOMPLETE DOCUMENTATION WHEN APPELLANTS HAVE SUCH RIGHT AT THEIR DISPOSAL, AS PROVIDED BY SECTION 19 OF RESPONDENTS' OWN GUIDELINES ON DETERMINATION OF NOMINATIONS PROCEDURE OF 17TH JANUARY, 2005?"

"Wherefore and in view of the foregoing, Appellants most respectfully pray this Honourable Court and your Honors to grant them the following relief:

- a) Mandate Respondent to grant Appellants their respective letters of acceptance forthwith, NUNC PRO TUNC for flagrantly violating Appellants' rights to due process of law to participate in these elections,
- b) Mandate Respondent to grant Appellants their respective letters of acceptance forthwith, these proceedings are determined by this Honourable Court, appoint time for Respondent to appear and show cause if any why Appellants' appeals should not be granted and the injustices meted out against Appellants corrected and the rights of Appellants are restored;

c) Mandate Respondent to send a full and complete transcript of the Appellants respective case file to this Court for your Honors' perusal to have the said unconstitutional, illegal and prejudicial rejection notices reviewed and reversed;

d) Mandate the removal and replacement of the members/commissioners of the Respondent Commission for lack of credibility to conduct a free, fair, transparent and democratic elections as contemplated by the CPA and the Laws of Liberia; and finally

e) To grant unto Appellants any and all further relief as deemed just and legal by this Honourable Court, with costs in these proceedings against Respondent.”

To this Bill of Exceptions of the Appellants, Appellee NEC filed a 17 count Returns praying this Court to deny and dismiss the Appellants' appeal. For the benefit of this Opinion, we hereby quote below the Returns of the Appellee to the Bill of Exceptions, as follows:

- “1. As to the entire Appeal of Appellants, Appellee asserts that the Appellants having each accepted and submitted themselves to the rules and procedures lay down by the National Elections Commission (NEC), suffer laches and waiver in their attempt to challenge the identical rules which govern the electoral process.”
- “2. that as to Count one (1) of the Appellants' Bill of Exceptions, Appellee acknowledges the truthfulness and says further that Count one (1) presents no traversable issue.”

- “3. As to count two (2) of the Appellants’ Bill of Exceptions, Appellee denies its truthfulness with specific reference to the averment that the Appellants were treated with levitude and careless abandonment by NEC. Appellee says every effort has been exerted by the National Elections Commission to ensure equal treatment to all political parties and independent candidates contesting the October 11, 2005 elections. Hence, Appellee says count (2) of the Appellants’ Bill of Exceptions should be overruled.”
- “4. Further to count two (2) above, Appellee contends that assuming without admitting that the Appellants herein were not treated in a fair manner that will ensure a level playing field, the appellants suffered laches and waiver under the law for their failure and neglect to timely challenge the National Elections Commission and bring it to book to ensure that they act correctly. For the Appellants to quietly accept all the rules and guidelines laid down by the Appellee Elections Commission including the Electoral Reform Law but only elect to cry foul when they are being rejected for failure to meet up with mandatory requirements is unfair and unjust to the Respondent/Appellee. Hence, count two (2) of Appellants’ Bill of Exceptions should be overruled.”
- “5. That as to count three (3) of Appellants’ Bill of Exceptions, Appellee says that it strictly complied with the 1986 Elections Law, Electoral Reform Law of 2004 and the Guidelines Relating to the Registration of Political Parties and Independent Candidates and all other relevant laws. The Appellee says it sees no deviation on its part from the above laws and guidelines.”
- “6. Still addressing count three (3) above, Appellee submits that the Appellants were all entitled to the benefit of section 19.3 and 19.5 of the Guidelines Relating to the Registration of Political Parties and Independent Candidates which offer an opportunity for correction of missing/incomplete records within seven (7) days.

However, the Appellants could not take advantage of this opportunity because all of them submitted their documents to the screening committee at the very dead end of the time allotted for such exercise. The Appellants having waited for the very last minute before submitting their documents for scrutiny, they in effect, denied themselves the opportunity of making any correction. Hence, count three (3) of the Bill of Exceptions should be overruled and the entire appeal dismissed.”

“7. As to count (4) of the Appellants’ Bill of Exceptions, Appellee says that a random screening conducted by the Appellee’s data center shows that certain percentages of the total number of registered voters submitted by each Appellant herein were invalid thereby reducing the number of registered voters less than the minimum required. Hereto attached is a facsimile of each Applicant/Appellant’s total number of registered voters submitted and the number of invalid registered voters discovered marked NEC/1 to form a cogent part of these Returns.”

“8. As to Co-Appellant D. Garkpe Gedepoh, he applied to the Appellee NEC to run as independent presidential candidate. The Co-Appellant submitted his documents for scrutiny, but his Vice Presidential running mate, Sylvester Singbe failed, refused and neglected to submit his documentation in clear violation of the Appellee NEC’s Guidelines and relevant laws. Co-Appellant D. Garkpe Gedepoh could not have contested the presidency without a vice presidential candidate. Consequently, he was rejected in line with the approved Guidelines Relating to the Registration of Political and Independent Candidates. Hence, count four (4) should be overruled and the entire appeal dismissed.”

“9. As to count four (4) of the Appellants’ Bill of Exceptions, Appellee NEC submits and maintains that it has at no time employed double standards in dealing with political parties and independent candidates or denied the independent candidates the right to correct their documentation.

The opportunity for correction or amendment of documentation was provided across the board, but same must have been exercised within the time frame. For example independent candidates who submitted their documents more than seven (7) days to the deadline set for the closure of nomination and whose documents were incorrect were advised and they corrected or amended their documents. But the Appellants herein took the risk of submitting their documents in less than seven (7) days to the closure of the deadline set for nomination. In such case they denied themselves the opportunity to re-submit their document if found to be defective. Hence, count five (5) and the totality of the appeal should be overruled and dismissed.”

“10. Still as to count five (5) of the Appellants’ Bill of Exceptions, Appellee says that the Elections of 2005 is time-bound by the Constitution and the Comprehensive Peace Agreement. Consequently, the Appellee NEC produced and published an Electoral Time Line which is fixed and necessary for a successful free, fair and transparent Democratic Elections. The time-line and the Guidelines relating to registration of Political Parties and Independent Candidates have been with the Appellants for months unchallenged. Hence, the Appellants suffered laches and waiver for issues belatedly raised as to different time and standards for political parties and independent candidates.”

“11. As to count six (6) of the Appellants’ Bill o Exceptions, Appellee NEC, reiterates that the seven (7) days grace period was applicable within a specific time frame. NEC made it abundantly clear in meetings with the independent candidates, press conference, radio talk shows, etc. that it was in the interest of the candidates to submit their documents timely enough to enable them take advantage of the seven (7) days grace period for correction or amendment. The Appellants= failure or neglect to take advantage of the opportunity cannot be considered as a violation by the Appellee of its own guidelines. Hence, Count six (6) should be overruled and the entire appeal dismissed.”

- “12. That as to count seven (7) of the Appellants’ Bill of Exceptions, Appellee NEC says that the Appellants’ argument or contention that NEC failed and refused to hear Appellants’ notice of intent to appeal does not hold water, in that the Appellants failed to file their notice of intent with the Chairman’s office or the Legal secretary of NEC. The filing being improper, the consequence thereof cannot be attributed to the Appellee NEC. Hence, count (7) should be overruled.”
- “13. As to count eight (8) of the Appellants’ Bill of Exceptions, Appellee NEC says that if the Appellants strongly believe that the Guidelines and the time line set by NEC was impartial, it should have challenged same or engaged NEC as done in the case of a period originally set for campaign. But the Appellants having submitted themselves to the Guidelines and the timeline and only elected to cry foul when rejected, it is wrong and should not be countenanced by this Honourable Court. Again the Appellants suffered laches and waiver at this very belated day when ballots are already being printed.”
- “14. As to count nine (9) of the Appellants’ Bill of Exceptions, Appellee NEC thanks them for complying within the condition for appeal, but re-emphasizes that the appellants having had the Guidelines from January 17, 2005 to present, they seriously suffered laches and waiver for these issues now being raised.”
- “15. As to count (10) of the Appellants’ Bill of Exceptions, Appellee NEC says the action of NEC’s Chairman Frances Johnson-Morris of asking Co-Appellant Marcus R. Jones to excuse the meeting intended only for political parties was clear demonstration of this Commission’s transparency and its commitment to free, fair democratic elections. To have allowed independent candidate Cllr. Marcus R. Jones to participate in said meeting would have been prejudicial to other candidates and perhaps another action would have come before this Honourable Court charging NEC’s Chairman with preferential treatment to Cllr. Jones.

As to the question of Memorandum of Understanding signed with political Parties, the fact that both NEC and the independent candidates did not see need to draw a Memorandum of Understanding considering the circumstances is not enough ground to accuse NEC that it acted partially.”

“16. That as to count (11) of the Appellants’ Bill of Exceptions, Appellee submits and argues that the signing of Appellants’ Notice of Rejection between the 9-12 of August has no element of Conspiracy. According to the nomination procedures, all corrections and/or amendments should have been done between July 21 and 6 August 2005. So, whether or not notice of rejection was signed on August 7, 8 or 9 do not really matter because there was no opportunity to correct documentation outside the deadline set by the Commission. Hence, count eleven (11) should be overruled and the entire appeal dismissed.”

“17. Appellee hereby denies all and singular allegation of both and facts set fourth in Appellants’ Bill of Exceptions not denying and specifically traversed in these Returns.”

From the facts and circumstances surrounding this case, the issues that are crucial to the determination of this Appeal are:

1. Whether or not in fairness to the Independent Candidates, the Appellants, the Appellee/NEC give them the same or equal opportunities given to Political Parties in the Elections process?
2. Whether or not the Appellee/NEC erred when it did not hold a hearing on the complaint filed by the Appellants after their nomination applications were rejected?

3. Whether or not the Appellee/NEC erred when it did not allow Appellants seven (7) days to correct any “errors” observed in their nomination applications, in keeping with the Elections Law and Regulations of Liberia?

We shall now dispose of the first issue, Whether or not in fairness to the Independent Candidates, Appellants, NEC give them the same or equal opportunities given to Political Parties in the Elections process? This Court has carefully reviewed the Guidelines relating to the Registration of Political Parties and Independent Candidates promulgated by the National Elections Commission on 17 January 2005.

GUIDELINES FOR POLITICAL PARTY

Section 2 Sub-section 2.1(c) Guidelines Relating to Registration of Political Parties and Independent Candidates and Guidelines Relating to Coalition and Alliances, dated 17 January 2005, defines “ “Political Party” to mean “an association with a membership of not less than 500 qualified voters in each of at least (12) counties of Liberia in the case of new political parties, or such membership in each of at least six (6) counties in the case of existing political parties, who activities include canvassing for votes on any public issue or in support of a candidate for elective public office.”

Chapter 2 sections 3, Sub-section 3.1 Notification to the Commission of Intention to canvass for Membership, provides form pp-001 annexed to the Guideline. On the same form, the deadline for submission of notification of intention is seven months prior to election (11 March 2005). Application for Registration of a Political Party is by use of form: pp-002. Deadline for Submission of application is 11 April 2005.

There is also is a form Notification of Objection to Membership List of Proposed Political Party form pp-003.

Chapter III Section 7.1 provides that “no entity shall function as a political party unless it has been registered with the commission within the meaning of article 79 of the Constitution and in accordance with present guidelines. Consequently, no political party shall be allowed to participate in elections or otherwise engage in political activities other than those defined in section 7.3 hereunder prior to or without being registered with the Commission.”

Section 4 Correction of Deficiencies: If the requirements to canvass for membership were not met the Proposed Party would be informed with seven days of receipt of notification and proved opportunity to the Proposed Party to correct any deficiency within seven (7) days thereafter.

Section 5 requires that Notification shall be received by the Commission seven (7) months or less before the election.

Under Chapter III, Registration of Proposed Political Parties, Section 8.1 (b) it is provided that “A notarized membership list of not less than five hundred (500) eligible voters in each of at least twelve (12) counties of the Republic. The list shall include the names, addresses, and other contact details of the members, as well the date of their membership. The list shall be grouped by County. The list may also be submitted in electronic format.

Section 8.4 of the same Chapter, page 4, provides that “A proposed political party or political party organization which proposed to contest the 2005 elections shall apply for registration for political party status not less than six (6) months prior to the elections.”

Section 9.2 of the same Guidelines of 17 January 2005, page 4, provides that the “commission shall, upon receiving an application, review whether the proposed political party has submitted all required documents as prescribed in section 8 above.

The commission shall, within seven (7) days of receipt of the application, notify the party liaison officer if any of the required form and documents are missing or incomplete, and offer an opportunity to correct them and return them to the commission within seven (7) days thereafter.”

Guidelines for Independent Candidate

PART III, chapter V., Section 17: Independent Candidate for the Office of President and Vice President of Liberia of the Guidelines provides that:

“Anyone aspiring for the Officer of President or Vice President of Liberia as an Independent Candidate shall file with the Elections Commission, in addition to his/her letter of intent, a Petition requesting him/her to stand for the Presidency or Vice Presidency of the Country. The Petition must be signed by a representative group of registered voters of not less than five hundred (500) from each of at least 12 Counties in the Country, listed by counties...” (Emphasis ours).

Section 18: Independent Candidate for the National Legislature of the Guidelines of 17 January 2005, page 10 provides under sub-section 18.2 thereof that:

“Anyone aspiring for election to the House of Representatives as an Independent Candidate shall, in addition to his/her letter of intent, file with the Commission a Petition signed by not less than three hundred (300) citizen who are registered voters in the electoral district in which the aspiring candidate proposes to stand for election...” (emphasis ours).

Section 19. Verification and determination procedure, of the same **Guidelines of 17 January 2005**, subsection 19.1, page 10 thereof, provides that:

“no aspiring Independent Candidate shall be allowed to submit his/her letter of intent to the Commission eight (8) weeks or less prior to the elections.” Also subsection 19.3 of the Guidelines of 17 January 2005, provides that “the Commission shall, upon receiving a letter of intent, review same to ascertain whether the aspiring independent has submitted all required documents as prescribed in sections 16, 17 and 18 above. The Commission shall within seven (7) days of receipt of the application, notify the aspiring candidate if any of the forms and documents are missing or incomplete, and offer an opportunity to correct them and return them to the Commission within seven (7) days thereafter.”

This Court says that from a careful analysis of the above sections and subsections of the Guidelines Relating to the Registration of Political Parties and Independent Candidates promulgated by the National Elections Commission on January 17, 2005, it does not appear as if Independent Candidates were given equal opportunities as were given to the Political Parties. For example, one of the registration requirements laid down by the NEC for Independent Candidates is that the Petition List must be signed by “Registered Voters”, from each of at least 12 Counties (could not be possible before registration of voters), while NEC’s requirement for Political Parties to canvas for members could begin before Proposed Political Parties were even registered with the Commission; and the proposed Political Parties were only required, under Section 8.1 (b) of the Guidelines, to present to NEC a notarized membership list of not less than five hundred (500) “eligible voters” from of at least 12 counties under Section 2, subsection 2.1 (c) in defining political parties, required proposed or new political party to provide five hundred (500) qualified voters in at least 12 counties in the country, while existing parties were to have five hundred (500) qualified voter in at least six (6) counties in the Country. This means that as noted above, the registration process for Independent Candidates started after the completion of Voters Registration and publication of the Voters Registration List by the NEC. Voters Registration was not completely finished and published until June 30, 2005.

Although campaigning had not been officially announced, it is clear that Political Parties were given a big head start over Independent Candidates. But the worst unfairness by NEC was to permit the Political Parties to register with five hundred (500) “eligible voters” which they canvassed for during several months before mid March 2005, why requiring the Independent Candidates to go fine five hundred (500) “Registered Voters,” starting July 2005, the height of the raining season when roads though the Country were impossible. This discriminatory action of NEC was particularly unfair in the face of the argument with the Appellants that anyone who looked like he was 18 years of age or above could be and was accepted as a party member, whereas Independent Candidates were forced to look only for “Registered Voters,” as per the Voters Registration List of the NEC. The time the Independent Candidates were permitted to go out to prepare their Petition Lists, many “Registered Voters” were already committed to vote for candidates of the Political Parties.

Political Parties were required to complete the registration process by April 11, 2005 while the NEC did not get around to even have meeting with Independent Candidates until the beginning of January 2005. This presented a situation in which, although Political Parties and Independent Candidates were vying for the same public offices, the parties could begin the race for elective offices several months before the Independent Candidates even got started. It almost appears as if the aim of the NEC was to concentrate their effort on Political Parties rather than also on Independent Candidates although it is clear that both categories of all person are running for the same public offices.

The CPA and the Constitution of Liberia provide for equal protection under the law. Under Article XV III of the CPA, the parties agreed that the present electoral system in Liberia shall be reformed and that a reconstructed NEC “shall operate in conformity with UN standards, in order to ensure that the rights and interest of Liberians are guaranteed and that elections are organized in a manner that is acceptable to all”. Article 11 (c) of Chapter III, FundamentalRights of the Constitution of the Republic of Liberia, page 5, 1986, provides that “All persons are equal before the law and are therefore entitled to equal protection of the law.”

This means that the registration process of Independent Candidates started only after the completion of Voters Registration and publication of the Registration List thereof by the NEC. More besides, Political Parties were given not less than six (6) months prior to elections for registration, while the Independent Candidates were given not less than eight (8) weeks prior to elections to perform a more stringent requirement of producing registered voters as compared to Political Parties who were required to produce list of eligible voters.

Even though the National Elections Commission has the power to promulgate Guidelines for the 2005 elections under the CPA, this Court holds that the National Elections Commission was unfair to the Independent Candidates by not giving them equal protection of law and equal opportunities as was done with the Political Parties, thus providing a level playing field for all participants in the elections process.

The second issue for our consideration is: Whether or not the Appellee erred when it did not hold a hearing on the complaint filed by the Appellants after their nomination applications were rejected?

The records before us show that upon the receipt of their respective notices of rejection, Appellants addressed a letter of complaint to NEC dated August 12, 2005, and submitted same on August 13, 2005. There is no indication that NEC responded to the Appellants' letter of August 12, 2005. Because of the failure of the Appellee to address the complaint of the Appellants, they appealed to this Court for redress.

Liberian law contemplates that hearings must be conducted by an administrative body, such as NEC, to probe into the complaints of the parties and make administrative decisions. Support for this position is found under Article 20 subparagraph (a) of the 1986 Constitution of Liberia, wherein it is provided that a person shall not be deprived of "life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law."

But, NEC's Regulation, which is dated just "July 2005" and may have been circulated at the end of July 2005, appears to have cut off any kind of hearing in this matter before us, by providing in a regulation dated July 20, 2005, and issued at the end of July 2005 that (**See Section 11.2** thereof) "If the NEC does not respond in writing to the Complainant before the end of the three-day notice period, the complainant may proceed to the Court." In the normal situation under our law, an appeal from a final decision of an administrative agency would lie, not to the Supreme Court, but to the Circuit Court, and on such an appeal, a review by the Court shall be conducted without a jury and shall be confined to the records. Section 82.8(6) Proceedings Before Reviewing Court, Administrative Procedure Act of Liberia.

Since the Constitution as well as the Elections Law provide for appeals of pre-election complaints directly to the Supreme Court of Liberia which does not take evidence, NEC should have had hearings on these complaints and made records to aid a review by this Court, which NEC has not done. We observe that Counsel for NEC was unprepared to answer questions concerning NEC, pertaining to appeals, particularly concerning pre-election matters. It is NEC, with the help of international experts that brought about the changes to our Constitution, laws and regulations and caused the NTLA to enact into law, the Electoral Reform Law of December 23, 2004. NEC published elections rules and regulations entitled "Guidelines Relating to Registration of Political Parties and Independent Candidates", dated January 17, 2005. We have before us two copies of these Guidelines: one in Xeroxed form signed by all of the Elections Commissioners; and the other one in printed form with indication at the end that it been signed.

We were informed by NEC's Lawyer during the argument that the printed copy, which was circulated later than January 17, 2005, perhaps a month later, is different in parts from the signed copy, which this Court received on August 30, 2005. In response to our question as to whether the corrections had been made and circulated to the parties concerned, Counsel for NEC said no corrections had been made so far, but stated in his belief, that aspirants for elective offices knew about the corrected regulations.

But Counsel for the Appellants denied having knowledge about the signed Xeroxed copy. What a contradiction! Counsel for NEC had no proof that the situation was otherwise.

Since the changes to our laws were initiated by NEC and since the situation of the ensuing elections are peculiarly within the knowledge of NEC, NEC's lawyers should have been better prepared to provide much needed information and explanation to this Court especially given that there are serious flaws in the regulations they promulgated. But they were not so prepared.

We must note at this point that laws and regulations are required to be duly published in order to be binding and effective. To just mark a document with a date and not circulate it to the parties concerned is not sufficient evidence of publication. For instance, regulations in the U.S.A. are required to be published in the Federal Register. In Liberia, statutes have to be duly published under authority of the Bureau of Printing, Ministry of Foreign Affairs, and some important regulations are required to be published in the Liberian Official Gazette. We do not have any evidence to show that the regulations promulgated by the Appellee were properly published and circulated.

It is therefore the holding of this Court that the Appellee erred when it refused to have a hearing on the complaint filed by the Appellants.

This brings us to the last issue which is: Whether or not the Appellee erred when it not allowed Appellant seven (7) days to correct any errors observed in their nomination applications, in keeping with the Elections Regulations and Laws of Liberia?

In disposing of this issue, it is necessary for us to take a look at Section 19, Sub-section 3, Verification and Determination of Political Parties and Independent Candidates, dated January 17, 2005 which provides that: "the commission shall, upon receiving a letter of intent, review same to ascertain whether the aspiring independent candidate has submitted all required documents as prescribed in sections 16, 17 and 18 above.

The Commission shall within seven (7) days receipt of the application, notify the aspiring candidate if any of the forms and documents are missing or incomplete, and offer an opportunity to correct them and return same to the Commission within seven (7) days thereafter”.

We also see Section 19.7 of the same Guidelines which reads as follows: “If the Commission rejects the request of the aspiring candidate to stand for elective office, the Commission shall notify the aspiring candidate of the reasons therefore in writing. If the Commission determines that requirements contained in Sections 16, 17 and 18 have not been met, the aspiring candidate shall have an opportunity to rectify and resubmit the request within seven (7) days of the date of receipt of the Commission’s determination. The Commission will make a determination on the re-submitted request within seven (7) days thereafter and shall notify the aspiring candidate accordingly.”

While subsections 19.3 and 19.7 of the Guidelines of January 17, 2005, quoted above, have not been revoked, the National Elections Commission promulgated another regulation entitled “Candidate Nomination Procedures” dated “July 2005” and included on the first page thereof a Time Line for nomination of candidates; listing August 6, Saturday, as the “last day for submission of correct and complete nomination application to NEC. A note at the bottom of the page states that the NEC may make adjustments to the above dates if necessary. This shall be without prejudice to date and deadlines established by law.” And on the same first page of that regulation, it is provided that August 6, Saturday, is the “last day of nomination of Candidates. Nomination closes at 5:00 P.M. 2005.” Rule Six (6) one (1) (b) and 1(c), Nomination Procedures, provides as follows: “(b) The Nomination period closes on Saturday, August 6, 2005, at 5.00 p.m., (c) The close of the nomination period August 6, 2005 is the last day for submission of correct and complete nomination applications to the NEC.”

During argument, Counsel for Appellants denied that his clients ever had knowledge of this “July 2005” regulation. On the other hand, it was brought to our attention that the above mentioned Time Line was first published in a local daily newspaper on July 27, 2005, barely 10 days before the time that aspirants had to meet the August 6th deadline for submitting corrected applications to the NEC or the last day for nomination of candidates.

Counsel for the NEC also could not say whether or not these two Regulations, i.e., the one dated “July 2005” and the other dated “July 20, 2005,” were actually made available to aspiring candidates during the month of July 2005. He agreed that the first regulations could have been published and circulated at any time between July 1st and July 31st, and he seemed to accept that both regulations may have in fact been circulated at the end of July, 2005. The obvious conclusion is that the NEC changed the rules of the elections process from time to time and in very unfair manner. For this Court, we say that when we became aware of these new regulations for the first time on August 30th during the hearing of an appeal, we were surprised to see therein an attempt by NEC to deal with procedures governing pre-election disputes between prospective candidates and the NEC, an issue that had not been dealt with up to that time in all of the various amendments to the Constitution, Statutes and Regulations.

We note that the Appellants herein submitted their letters of intent to the National Elections Commission on August 5, 2005; the NEC rejected Appellants for failure to meet with the Guideline for Registration for several reasons without given them an opportunity to be heard and to correct and resubmit their letters of intent with the necessary corrections.

This Court says the action taken against the Appellants was contrary to the Constitution, the Elections Laws, the NEC’s own Regulations promulgated, and the CPA. We agree with the contentions of Appellants and therefore we hold that Appellee erred when it refused to give Appellant seven (7) days to correct the above mentioned defects by NEC as was done to political parties.

Before concluding this Opinion, there are a few related matters on which we wish to make some observations.

The entire NTGL, including this Supreme Court, is a creature of the Accra Comprehensive Peace Agreement. The NTGL was established through extra-constitutional means by the kind efforts of the International community and given specific tasks to perform, cardinal amongst which is the conduct of the ensuing general and presidential elections in order to return this country to constitutional rule. Every Liberian is therefore very eager for these elections to take place, but as much as we are anxious to have the elections take place, the elections should not be conducted in the midst of serious violations and transgressions of rights of our citizens who desire to be part of the process. Needless to say, the outcome of any such irregularly held elections will not be satisfactory to the People and this is not good for the re-emerging democracy that we all expect. This is why we must let the rules of the game be fairly applied to all alike, because everyone is equal before the law. Since this Court is the last place of last resort, it is our duty, especially during this post war era, to give hope to the People through the decisions that this Court renders, without fear or favor. In this way, our People will consider the courts to be the principal fora for the settling of disputes.

We must comment on another issue, and that is, the argument made by lawyers for NEC that NEC has already printed ballots; that the international community has no funds to print other ballots; and that the international community which is financing the elections would have no funds available for that purpose, if any decision of this Court were made contrary to the position of NEC.

First of all, we note that NEC, with the assistance of the international experts, promulgated the rules relating to the conduct of the ensuing elections and included in the Guidelines that a party may appeal from NEC to the Supreme Court. (This is also partly a constitutional requirement.) Against this background, we cannot understand how the same NEC would now appear to take a posture that it will not accept decisions from this Court.

Secondly, NEC was fully aware of these Court cases, that is, the parties had appealed from the decisions of NEC, and NEC knew or ought to have known that the outcome of any of these appeals against it would affect how NEC would proceed with printing of ballots. Yet, NEC stated that it went ahead with the printing of ballots. This is preposterous, to say the least. Might we conclude that the NEC was guided in such action to print ballots by any UN standards? Or EU standards? Or USA standards? We think not!

Thirdly, we think that our international friends who are committing resources to the cause of our Nation mean well and they want their resources to yield the desired results, and that is, for these elections to be fairly conducted so that the results will be credible and accepted. According to the CPA, the NEC is supposed to “operate in conformity with UN standards, in order to ensure that the rights and interests of Liberians are guaranteed, and that the elections are organized in a manner that is acceptable to all.” If the process leading to the elections is not fair and all-inclusive, the result will not be accepted; and we do not think that our international friends would wish for this to happen. We are therefore in partnership with the International Community to ensure that these elections are free and fair.

It should be noted that the NEC is an autonomous administrative agency of the Republic of Liberia and that, like other such agencies, it must also operate within the laws of Liberia. It is therefore very unfortunate that the NEC should have moved to anticipate what decision this Court would make, even before cases were heard, and to formulate the late regulations on complaints and appeals marked “July 20, 2005,” in which it is stated in **Section 12** thereof that the NEC would determine whether an order of the Supreme Court is “capable of efficient application and implementation before the elections occur,” and if a determination were made by the NEC to the contrary, any such matter would be submitted to mediation under the CPA. (See **Part VI-National and International Review, Section 12. Judicial and International Action, page 10, NEC regulations on Complaints and Appeals, July 20, 2005.**)

This Court considers it contemptuous of Liberian members of the Bar Association in the employ of the NEC to have not advised against the making of this last mentioned provision of the regulation and to have argued that this Court should rule in favour of the NEC because the NEC has already printed the ballots.

It is noted finally that the principal response of Counsel for NEC is that Appellants committed laches and must suffer waiver of their rights to participate as candidates in the forthcoming elections. It might appear that Appellants could have complained against the NEC before the time that this appeal was made to the Court. After review of this matter and considering how the NEC changed its regulations from time to time without making sure that Appellants knew of what the NEC was doing, how the regulations were changed almost near the time of the deadline set by the NEC for completion of the nomination process for independent candidates, we do not feel that the Appellants committed any laches, nor do we find that they waived any of their rights. Laches and Waiver are applicable where the defendant has relied to his detriment on action or inaction of the plaintiff. In order to find laches we would have had to find conduct of the Appellants which would have placed the NEC in a situation where its rights would be imperiled and its defenses embarrassed. This conduct of Appellants we did not find.

In view of what we have said above, this Court hereby grants in part and dismisses in part the Appellants appeal. The appeal against the decision of the Elections Commission rejecting Co-Appellants Marcus R. Jones, and his running mate, Sam Mohammed Kromah; Cornelius N. Hunter and his running mate, Cecelia Teah; and Independent candidate Isaac Johnson is hereby granted. NEC is ordered to give seven (7) days to these Co-Appellants, starting from the date of the delivery of this Opinion, for Appellants to correct error(s), if any that may be on their documents submitted with their declaration of intents. If and when the said correction(s) are satisfactorily made, NEC is ordered to have their names included on the ballots for the October 11, 2005 general and presidential elections.

In respect of the Co-Appellants Garkpe Gedekpah and his running mate Sylvester Singbe this court confirms and affirms the ruling of NEC rejecting them which is based on the fact that Sylvester Singbe did not present his document(s) as required by NEC's Regulation or Guidelines. Our law requires that a presidential candidate must have a Vice Presidential running mate. Thus, where the presidential candidate's running mate is rejected for not presenting his/her document(s) in keeping with Guidelines renders the presidential Candidate without a running mate. In such case, the rejection of the Presidential Candidate by NEC is justified.

WHEREFORE and in view of the foregoing, the Appellants' appeal is granted in part and denied in part as aforesated. The Clerk of this Court is hereby ordered to inform NEC to give effect to this Opinion. Costs disallowed. AND IT IS HEREBY SO ORDERED

COUNSELLORS MARCUS R. JONES AND M. WILKINS WRIGHT
APPEARED FOR THE APPELLANT.

COUNSELLORS JOSEPH N. BLIDI, YAMIE Q. GBEISAY AND NORWU
COOPER OF NATIONAL ELECTIONS COMMISSION APPEARED FOR
THE APPELLEE.