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REPUBLIC OF LIBERIA



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# Jupica vs Nec

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HEARD: December 8, 2014

DECIDED: December

13, 2014

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

In order to fully understand the circumstances surrounding and culminating into the prohibition proceedings before us, it is essential that we briefly delve into the factual background.

In February, 2014, or thereabout, Liberian health authorities announced the presence of the deadly ebola virus in Lofa County, north of Liberia, bordering the neighboring Republic of Guinea. There had been an earlier report of an outbreak of the disease in the Republic of Guinea. Efforts to contain the virus in Lofa County did not succeed, thereby causing it to spread fast and wide, ravaging the nation in no small measures. Many citizens and foreign nationals lost their lives to the dreadful disease, with no indication as to when it would be contained. Rather, reports continued to emerge that the disease was in fact spreading exponentially. There was report, also, of the spread of the virus into other West African Countries—Sierra Leone and Nigeria. By August, 2014, what started in one county in Liberia had reached all fifteen counties in the country with statistics showing that a total of three thousand five hundred (3,500) people had died from Guinea, Sierra Leone, Liberia and Nigeria, the four countries in West Africa where the outbreak had been reported, and that Liberia accounted for more than half of the deaths.

Furthermore, and according to experts, unless drastic measures were taken, as many as one million four hundred thousand (1,400,000) people in Liberia and Sierra Leone were likely to be infected with the virus by the end of January, 2015. The economy of Liberia was seriously impacted by the ebola disease. These were public information and records of which we take due note.

Faced with the devastating effect of the disease, the President of the Republic of Liberia, Ellen Johnson Sirleaf, by authority granted under the Constitution of Liberia (1986) declared a state of emergency on August 6, 2014, for a period of 90 days in order to fight the disease. The declaration and the measures to fight the ebola virus were endorsed by the Legislature. Pursuant to the declaration, actions were taken which affected certain rights guaranteed under the Constitution. For example, public gatherings in large numbers and the movement of people were restricted. This led to the National Elections Commissions (NEC) informing the Government and the public in general of the impossibility of holding the special senatorial elections scheduled for October 14, 2014.

On October 4, 2014 the President issued a proclamation suspending the holding of the special senatorial elections.

The Legislature, in a Joint Resolution no.002/14, endorsed the action of the President suspending the special senatorial elections, however, with the *provisio* that the elections be held not later than December 20, 2014. In the Joint Resolution, the Legislature directed NEC to consult with all relevant stakeholders, civil society groups, including political parties, religious leaders, etc.

On November 3, 2014, the Chairman of NEC, Counselor Jerome G. Korkoya, reported that the stakeholders had agreed to hold the special senatorial elections on December 16, 2014. In a Joint Resolution no.003/14 issued by the House of Representatives and the House of Senate, the Legislature resolved that the elections be held on December 16, 2014. The Joint Resolution was approved by the President of the Republic of Liberia and campaign activities were to begin November 20, 2014.

Not satisfied with the actions of the Legislative and the Executive Branches of the Government, the petitioners herein fled to the Justice presiding in the Chambers of this Court with requests for the issuance of the extraordinary writ of prohibition to restrain, prohibit, or undo the actions of the

named two Branches of Government by setting the date of the elections. They requested the Justice in Chambers to halt NEC from conducting the ensuing special senatorial elections.

The central contentions in all of the petitions are: a) that the Joint Resolution passed by the Legislature setting the date for the special senatorial elections is unconstitutional and illegal; b) that the decision to conduct the special senatorial elections while the ebola virus is still present in Liberia is improper; and c) that NEC does not have a voters roll as required by the elections law. The petitioners have therefore requested this Court to halt the conduct of the ensuing special senatorial elections.

Our Colleague, Mr. Justice Philip A.Z. Banks, III, presiding in Chambers, before whom the petitions were filed ordered the Clerk of the Supreme Court to issue the alternative writ of prohibition prayed for and have the respondents file their returns "on or before the 2nd day of December, A.D. 2014." And because of the many constitutional issues raised, the Justice further ordered the Clerk to forward the petitions and the returns thereto to this Court sitting *en banc* for hearing and determination. Meanwhile, all the parties withdrew and amended their petitions filed before the Chambers Justice. We will return to the issue of withdrawing and filing amended petitions later in this opinion. But for now, let us see whether the instruction of the Justice in Chambers directing that the petitioners file their returns on or before December 2, 2014 was carried out.

According to the records before us, NEC filed its returns in keeping with the instructions of the Justice; that is to say, NEC filed its returns with the Clerk of this Court on December 2, 2014. But the records show that the Government of the Republic of Liberia did not file its returns as in keeping with the Justice's instruction; the Government filed returns on December 3, 2014 at 3:15 p.m. The Government claims that on December 2, 2014, at about 6:30 pm, while finalizing its returns to the petition, it received a notice of withdrawal and an amended petition filed by Blamoh Nelson, J. Emmanuel Bowier, Milton Nathaniel Barnes, Eminent Citizens and Registered Voters and John Ballon, Registered Voter and Chairman of the Movement for Progressive Change. This seems to be the excuse by the Government for not filing its returns as directed by the Chambers Justice. In other words, the Government seems to suggest that because it had to file responsive pleadings to the amended petition, it did not file its returns to the original petition filed by the Concern Group of Eminent Citizens, the Movement for Progressive Change, (MPC) and leaders of Political Parties and Civil Society Organizations (CGEC) by and thru their spokespersons, Blamoh Nelson, J. Emmanuel Bowier, John Ballon and Milton Nathaniel Barnes on December 2, 2014, as directed by the Chambers Justice.

We do not agree with this contention of the Government attempting to justify the late filing of its returns to the original petition. We see in the records that on December 3, 2014, at the time of filing its amended returns, the Government also filed returns to the original petition. Now, we wonder what was the essence in filing the returns to the original petition on December 3, 2014, when it was not filed on December 2, 2014, the due date? By December 3, 2014, it was no longer necessary for the Government to file returns to the original petition because by that time, what was before the Court was an amended petition. So, if the returns was ready, as the Government wants us to believe, but was not filed on December 2, 2014, as ordered by the Chambers Justice, then there was no useful purpose of filing it on December 3, 2014, or at any other time, since the said returns had become time barred. The records show, also, that the Government filed returns to the

petition filed by Justice and Public Consortium Africa also on December 3, 2014, again outside the period ordered by the Justice in Chambers. Parties before this Court are required to proceed in strict compliance with the orders of the Court. Lawyers for the Government knew or ought to have known that the proper thing they should have done was to first file the returns as directed by the Chambers Justice and within the time designated so as not to be in breach of the orders of the Chambers Justice. Of course, in respect of the withdrawal and amendment to the petitioner's petition, the law provides that, a party respondent be given time to file an amended returns, if that party so desires. But to say that a party did not file returns to the original returns as directed because of the receipt of a notice of withdrawal and an amended petition is a position we cannot accept. Petitions and returns filed before the Chambers of this Court are pleadings, and our law provides that when a party files a pleading outside of statutory time that pleading will be stricken. Normally, before the Supreme Court, when a party fails to file brief, the Rules of the Supreme Court provide that that party will be fined. But in the instant case, this is not a brief; this is returns which the Chambers Justice specifically ordered the 1st and 2nd respondents to file in a designated period, but that order was not carried out in time. This Court will not permit party litigants, through their counsels, to flout its orders with impunity as non-compliance to orders hampers the work of this Court.

Clearly, the records show that the Government filed its returns to the petitions of the petitioners, Blamoh Nelson, J. Emmanuel Bowier, Milton Nathaniel Barnes, and John Ballon, Eminent Citizens and Registered Voters, and the Movement for Progressive Change (MPC) outside the time directed by the Chambers Justice. The Government was also late in filing returns to the petition filed by the Justice and Public Interest Consortium Africa (JUPICA). Under the circumstance, and because of the decision we are taking in this case, and further because we must be even handed in dealing with all parties, we hereby order the returns filed by the Government stricken as if the Government had filed no returns in response to the petitions filed before this Court. Coming to the issue of amended pleadings, we see in the records that the Concerned Group of Eminent Citizens, the Movement for Progressive Change (MPC) and Leaders of Political Parties and Civil Society Organizations (CGEC) by and thru their spokespersons, Blamoh Nelson, J. Emmanuel Bowier, John Ballon, and Milton Nathaniel Barnes of the City of Monrovia filed a Petition for Prohibition on November 24, 2014. That petition, filed on their behalf by Cllr. Cyrenius Cephas, was withdrawn on December 2, 2014 and replaced with another petition, intended as an amended petition. It must be noted that when a party withdraws a petition and files an amended petition, the parties still remain under the jurisdiction of the Court, and consistent with the practice in this jurisdiction, the original party litigants cannot be dropped, substituted, or added without leave of court and in the manner provided for under the Civil Procedure Law. The Civil Procedure Law is very instructive on these requirements. See

1LCL R, section 5.36(1) which states that, "a party can only be substituted upon orders of the court based on a motion duly served on all parties or upon orders of the court *suas sponte*. See also Section 5.54(1) which states that additional parties cannot be brought in matters in the Supreme Court.

A careful inspection of the purported amended petition filed by the petitioner shows that of the original parties to the action, namely, the Concerned Group of Eminent Citizens, the Movement for Progressive Change (MPC) and the Leaders of Political Parties and Civil Society Organizations

(CGEC), the Concerned Group of Eminent Citizens, and the Leaders of Political Parties and Civil Society Organizations (CGEC) have been dropped. Blamoh Nelson, J. Emmanuel Bowier, John Ballon and Milton Nathaniel Barnes, who are not under the jurisdiction of the Court in their individual capacities but rather purporting to be representatives of Leaders of Political Parties and Civil Society Organizations (CGEC) have been added and designated as the new petitioners, thereby changing the essential character of the petition, and making it a new cause with new parties as opposed to an amended petition with the same parties. The change in the parties was not made by a motion or by orders of this Court. Therefore, this Court lacks jurisdiction over the petitioners named in this case, they not having been brought under the alternative writ issued on orders of the Justice in Chambers. Consequently, the original petition having been withdrawn is no longer before the Court. And the purported amended petition by Blamoh Nelson, J. Emmanuel Bowier, Milton Nathaniel Barnes, and John Ballon, Eminent Citizens and Registered Voters, and the Movement for Progressive Change, filed after the alternative writ of prohibition had been issued, is not properly before us and cannot be entertained.

In respect of the National Democratic Coalition, represented by and thru its Chairman, Mr. Alaric K. Tokpa and the Movement for Progressive Change (MPC), by and thru its Chairman, Mr. John Baloon, a motion was filed by NEC to dismiss their petition on ground of improper verification. NEC contended in the motion to dismiss that the affidavit attached to the petition for the writ of prohibition was signed by Cllr. J. Laveli Supuwood instead of the petitioners.

We have reproduced the affidavit in contention which reads:

“PERSONALLY APPEARED BEFORE ME, a duly qualified Justice of the Peace for and operating within the city of Monrovia, County of Montserrado and Republic of Liberia Counselor J. Laveli Supuwood one of counsel for PETITIONER in the foregoing and annexed Petition and made OATH according to law that all and singular the allegations as set forth in the petition are true and correct to the best of his knowledge and belief and as to those matters of fact he verily believes them to be true and correct.

SWORN AND SUBSCRIBED TO BEFORE ME THIS 21ST DAY OF NOVEMBER, A.D. 2014

JUSTICE OF THE PEACE MONTSERRADO CO. R.L.

1. J. Laveli Supuwood

COUNSELLOR-AT-LAW/DEPONENT S. CiaphaGbollie

Vice Chairman Adm/NDC/Deponent” (HANDWRITTEN)

We note from the affidavit that it was only Cllr. Laveli Supuwood who appeared before the Justice of the Peace as seen in the body of the affidavit. The affidavit says, “Personally appeared before me, a duly qualified Justice of the Peace for and operating within the city of Monrovia, County of Montserrado and Republic of Liberia Counselor J. Laveli Supuwood one of counsel for PETITIONER”. [Emphasis supplied]. No other deponent appeared before the Justice of the Peace along with Cllr. Supuwood. Had other deponent(s) appeared along with Cllr. Supuwood, the name(s) of such other deponent(s) would have been so stated in the affidavit. But this was not the case. We note

however, that the name "S. Ciapha Gbollie" (in handwriting) was written below the name of Cllr. J. Laveli Supuwood as another deponent. This seems to be an afterthought, that is, it appears that on remembering that a lawyer is not permitted by law to sign the affidavit in a prohibition matter, the name of S. Ciapha Gbollie" was forced on the instrument. We say forced because space was not provided for a second deponent, so one can clearly see that an imprecision was made, as the name, S. Ciapha Gbollie and title Vice Chairman-Adm/NDC/deponent could hardly fit in the space.

There is another affidavit attached to the same petition also signed by Cllr. J. Laveli Supuwood over his name which was typewritten. And again, the name S. Ciapha Gbollie appeared on this affidavit in handwriting with the position Vice Chairman-Adm/NDC/Deponent. This second affidavit, unlike the first affidavit quoted above, was never signed by a Justice of the Peace.

We do not know of any law that requires two affidavits to verify one pleading. Moreover, the law requires that pleadings in a prohibition matter be verified by the parties themselves. *1 LCL Rev. Civil Procedure Law, section 9.4 (2) (b)*; the case: *Raymond International v. Dennis*, 25 LLR 131, (1976). And where a pleading is not properly verified, that pleading will be stricken. *1 LCL Rev. Civil Procedure Law, section 9.4(5)*

In a recent case, the *National Vision Party et al. versus National Elections Commission*, decided March, 2014, this Court held that "our statute does not treat a failure to verify or improper verification as harmless error. In that case, also involving political parties, as in the case before us, a lawyer improperly verified a pleading by signing as counsel for the respondent when he was actually the counsel for the petitioner. That lawyer was Cllr. J. Laveli Supuwood.

We see, also, that Counselor Supuwood filed three different petitions, one after the other, naming National Democratic Coalition as petitioner. Firstly, all of the said petitions were verified by Counselor Supuwood, rather than the parties themselves as required by law. And secondly, there is no showing that the procedure provided by statute was followed; rather, the records show that the first petition by NDC was filed on November 21, 2014, and a second petition was filed on November 26, 2014, without paying the accrued costs and withdrawing the first petition filed on November 21, 2014. The records further show that a third petition denominated as amended petition was filed on December 5, 2014, and again without following the procedure laid down by law. In other words, the first petition was not withdrawn and an amended petition filed as required.

Section 9.10 of 1LCL Rev., Civil Procedure Law provides:

1. "Amendment to pleading permitted. At any time before trial any party may, in so far as it does not unreasonably delay trial, once amend any pleading made by him by:
  1. a. Withdrawing it and any subsequent pleading made by him;
  2. b. Paying all costs incurred by the opposing party in filing and serving pleadings subsequent to the withdrawn pleading; and
  3. c. Substituting an amended pleading."

As seen from the quoted statute, a party can only once withdraw and amend. But this was not the case with the NDC; it kept filing, through its counsel, one petition after the other, in complete

disregard to the law on amendment of pleadings. For the reasons enumerated above, we are constrained to follow the law and disallow the cause filed by NDC.

We having determined that the Government as a party respondent did not file returns in the time designated, and having stricken its returns, all other pleadings/ papers filed by the Government are considered not before this Court and will not therefore be passed upon.

We having determined, also, that the Eminent Group of Concern Citizens et al, withdrew the entire cause filed and there was nothing left before the Court, all pleadings filed by them cannot be entertained.

Further, we having determined that the original petition filed by NDC on November 21, 2014, was improperly verified and that the purported amendments were not done consistent with statute, all pleadings filed by NDC cannot be entertained.

This leaves us with the petition of the Justice and Public Interest Consortium Africa (JUPICA) as 1stpetitioner, and Edwin K. Martin, Register Voter, as 2ndpetitioner, and the returns thereto filed by NEC. Incidentally, and as we have said earlier, the parties in this case raised issues that are similar. In other words, though we shall not now entertain the petitions and returns we have stricken and disallowed, for reasons stated, the pleadings raised almost identical issues as the issues raised by the remaining parties, JUPICA, Martin and NEC. In fact this is why we ordered consolidated, all the pleadings of the parties in this case and heard them at the same time.

We will now quote counts 1—23 of the amended petition filed by the Justice & Public Interest Consortium of Africa and Edwin K. Martin.

COME NOW THE PETITIONERS, by and thru duly accredited and licensed Counsels, of this Honorable Supreme Court Bar, and most respectfully pray Court and Your Honor for the issuance of the Alternative Writ of Prohibition against the within named Respondents for reasons as showeth to wit:

1. 1. "The 1st Petitioner, hereinafter referred to as [THE 1st PETITIONER] is a civil society organization, a body corporate, duly registered, licensed, operating and existing under the laws of Liberia. 1st Petitioner is an advocate of public interest, human rights, rule of law, accountability, democracy, women and children's rights, economic and political rights, the environment, as well as the media and brings this cause of action as a civil and democratic "watchdog" of the democratic tenets and practices of all stakeholders, agencies and institutions created under the 1986 Constitution, not least the 1st and 2nd Respondents herein, and prays court to prohibit, inhibit and prevent the 1st and 2nd Respondents from conducting a false and fictitious elections termed as: Midterm Elections, Special Elections, or whatever', in violation of Articles 37 and 46 of the 1986 Constitution. Petitioner hereby attaches a copy of its Articles of incorporation as proof of its legal existence as a civil society organization marked as Exhibit "P/1" in Bulk.
2. 2. The 2nd Respondent hereinafter referred as [THE 2ND RESPONDENT] is Honorable Edwin K. Martin, a natural person, a duly registered voter, a citizen of the Republic of Liberia, and a

resident of Paynesville City, Monrovia, Republic of Liberia brings this petition in his own name and complains as follows:

1. a. That he feels threatened and completely defenseless and lives in utter fear and a state of shock and dismay that the holding of senatorial elections by the 1st and 2nd Respondents which is characterized by campaigns, huge public gatherings and in which crowds will rub against each other will not only violate the procedures set in place to fight Ebola but will further exacerbate the current Ebola crisis and will lead to new Ebola cases at an alarming rate which could lead to more premature and untimely deaths of Liberian citizens across the country;
1. b. That he feels vulnerable and is deeply frightened that as horrific as the projections for the astronomical rise in new Ebola cases is, and could reach an alarming proportion, based on the forecasts from the Center for Disease Control(CDC) and the World Health Organization(WHO), the 1st and 2nd Respondents have disregarded or are openly advising people to flagrantly disregard all of the fundamental safety measures put in place against huge public gatherings, over-crowdedness simply to hold elections for 15 senators at the expense of the innocent lives of 2nd Petitioner and his fellow compatriots;
1. c. That 2nd Petitioner lives in horror and is deeply distressed in that despite the fact that all schools, hospitals and major economic institutions have closed down and all foreign investors have fled the Republic of Liberia and their returns are contingent upon the defeat of the killer Ebola virus, the 2nd Respondent has not mobilized or set aside sufficient precious economic and financial resources to fight the deadly Ebola virus, instead, it is only interested setting aside huge financial resources to hold senatorial elections which could exacerbate the spread of the killer Ebola virus, thus, 2nd Petitioner harbors the fear that schools, hospitals and economic institutions will remain perpetually shut down because there is a likelihood for more and new Ebola cases from 10,000 at the end of November, 2014 to 1.4 M(one million four hundred thousand) by mid-January 2015, according to both CDC and WHO, which could lead to alarming death rate of more citizens most of whom are relatives, friends and fellow compatriots of 2nd Petitioner;
1. That 2nd Petitioner fears that the future of his little sons and daughters, including the children of Liberia, who are the "precious jewels" and future leaders of our country is gambled and trampled underfoot in violation of Article 6 of the 1986 Constitution by the continued closure of educational facilities as a result of the deadly Ebola virus and the 2nd Respondent being the custodian and protector or defender of the sovereign rights of petitioner and all Liberians, specifically with the power to protect life and property, has done nothing or is showing no sign that it cares or is worried about the danger that the Ebola virus poses to the stability of the Liberian state and the happiness of its people;
1. e. That 2nd Petitioner fears that the 2nd Respondent has lost focus in the war on Ebola for the fact that it is interested in conducting elections for 15 senators rather than intensifying the war to eradicate Ebola, thus, its actions at the detriment of Petitioner, the lives of millions of Liberians is not only self-serving but is counterproductive to the peace and security of all Liberians;

1. And finally, 2nd Petitioner fears that the Republic of Liberia is slipping into the abysmal path of self-destruction and the purported senatorial elections although unconstitutional and inconsistent with the provisions of Articles 46 and 37 are being held or will be held when there is no vacancy at the Honorable Liberian Senate which is the only constitutional conditions under which elections held to fill in vacancies; and though the 1st and 2nd Respondents are aware of this, and also know that there will be no international electoral observers because of the present of the Ebola virus which the 2nd Respondent says is still prevalent, it is callously proceeding to hold elections that could turn out to be a recipe for chaos, public unrests and instability and 2nd Respondent fear that this could again frustrate any attempts to open schools, hospitals and major economic institutions, thus the future of the children of 2nd Petitioner remains bleak because of the atrocious conduct of the 1st and 2nd Respondents to sport with lives of 2nd Petitioner's children and the children of Liberia; and
  1. g. And Petitioner fears that the holding of senatorial elections amid the current Ebola virus amounts to misplaced priority and will further harm the national treasury which could undermine the future allocation of financial resources to support educational and health institutions when they reopened because by then, the national treasury will be reduced to a "sorry state" and the resources therein would have been squandered or spent to fund an electrical process that will not save life and property but instead, could lead to the spread of Ebola cases fourfold , and
  2. h. The 2nd Petitioner fears that the current senatorial elections have no voters' rolls and this could become a recipe for chaos and confusion which could undermine the current democratic order and plunge the country into serious political crisis in the event that a contest over voters' roll arises. As further evidence that 2nd Petitioner is a bona fide registered voter, it hereby attaches a copy of its voter registration card marked as *Exhibit "P/2."*
4. 4. 1St and 2nd Petitioners submit that there is no Midterm or Special Senatorial Elections under the 1986 Constitution and that the Constitution provides under Articles 46 and 37 as follows:
  - (a). Article 46: "...The seats of Senators of the first category shall be vacated at the expiration of the ninth year..."
  - (b). "In the event of a vacancy in the Legislature caused by death, resignation, and expulsion or otherwise, the presiding officer shall within 30 days notify the Elections Commission thereof. The Elections Commission shall not later- than 90 days thereafter cause a by-election to be held..."
5. 5. Petitioners submit that the Constitutional interpretation of Articles 46 and 37 is that the current batch of senators being senators of first category shall vacate their offices at the end of the ninth year, and then the vacancy(ies) created under the constitutional expression of "OTHERWISE" as used in Article 37 of the 1986 Constitution, will ultimately give the presiding officer the power to notify the National Elections Commission(NEC) within 30 days, after which the Elections Commission shall not later than 90 days cause the holding of a by-election for such vacancy(ies).

6. 6. 1st and 2nd Petitioners submit that they have both the legal capacity or Standing to raise these issues or challenge a policy decision of the 1st and 2nd Respondents as a civil society organization dedicated to human rights, rule of law, accountability, transparency, constitutional adherence and reforms, the protection and defense of public interests and social justice and its action and as natural person, a sovereign citizen to challenge the current decisions of the 1st and 2nd Respondents consistent with Article 26 of the 1986 Constitution which expressly states: "Where any person or any association alleges that any of the rights granted under this Constitution or any legislation or directives are constitutionally contravened, that person or association may invoke the privilege and benefit of court direction, order or writ, including a judgment of unconstitutionality; and anyone injured by an act of the Government or any person acting under its authority, whether in property, contract, tort or otherwise, shall have the right to bring suit for appropriate redress..." Your Honor is most respectfully requested to take judicial notice of Article 26 of the 1986 Constitution.

7. 7. Further, 1St Petitioner submits that it brings this action in its own name and on behalf of Edwin K. Martin, a natural person and a citizen of the Republic of Liberia and resident of Paynesville City, Monrovia, because the sovereign power vested in the people of Liberia under chapter 1 Article 1 of the 1986 Constitution is being illegally hijacked, abused and grossly violated for either selfish or pecuniary purposes, a conduct for which 1st and 2nd Respondents have gained notoriety nationally and internationally and petitioners fearing that the Respondents' actions could jeopardize the current democratic order; are compelled to challenge the authority of both the 1st and 2nd Respondents. Chapter 1 Article 1 of the 1986 Constitution titled: "STRUCTURE OF THE STATE" expressly states:

"All power is inherent in the people. All free governments are instituted by their authority and for their benefit and they have the right to alter and reform the same when their safety and happiness so require.

In order to ensure democratic government which responds to the wishes of the governed, the people shall have the right at such period, and in such manner as provided for under this Constitution, to cause their public servants to leave office and to fill vacancies by regular elections and appointments." Your Honor is most respectfully requested to take judicial notice of Article I of the 1986 Constitution.

8. 8. Also, Petitioners say the constitutional expression of: "In order to ensure democratic government which responds to the wishes of the governed, the people shall have the right at such period, and in such manner as provided for under this Constitution, to cause their public servants to leave office and to fill vacancies by regular elections and appointments" as used in Article 1 of the 1986 Constitution solely vests power in the people and only the Liberian people alone can "cause their public servants to leave office and to fill vacancies by regular elections and appointments" and not the 1st and 2nd Respondents who are nothing but mere servants under the Constitution, and their actions to hold elections at all cost being illegal and "void ab initio" constitutionally, Petitioner has both the legal capacity or legal standing to bring this action.

9. Further to count 3 above, Petitioners say and aver that when such a situation exists and that vacancies at the House of Representatives and Liberian Senate, political parties consistent with chapter 4, section 4.5 of the New Elections Law titled: Nomination of candidates, "shall send to the Commission a list of the candidates who will stand for election to the several elective offices, in this case for senators in the several constituencies". Petitioner says and submits that it will be both statutory and constitutional violations of provisions of the new elections law as well as articles 46 and 37 of the 1986 Constitution were the 1st Respondent to hold elections for senators in December 2014 when there are no vacancies in the Honorable Liberian Senate and when there has been declaration and notification to the 1st Respondent to proceed with the conduct of elections.

10. Petitioners say the 2nd Respondent hereinafter referred to as [THE 2ND RESPONDENT] is the sovereign Government of the Republic of Liberia, the manager and controller of all natural resources; the custodian of the national treasury and all finances realized from the levy and collection of multiple taxes, sometimes unduly extracted from unsuspecting citizens and businesses under the pretext of development and has the constitutional responsibility to protect life and property. The Republic of Liberia of which the 2nd Respondent is the chief magistrate or captain of its governance process is in the state of paranoia— schools, hospitals and major economic institutions have closed down, investors have fled, thousands of citizens have died as a result of the deadly Ebola virus outbreak.

11. Petitioners say that as a result of the current Ebola crisis although said to have been significantly reduced, notwithstanding, still present and prevalent and killing more peaceful citizens, a group of wise and eminent Liberian citizens headed by the venerable social commentators and political activist Blamoh Nelson, Mother Mary Brownell and others wrote the 2nd Respondent who is the principal of the 1st Respondent to see reason to defer the pending senatorial elections to a later date consistent with the provision of Article 1 of the 1986 Constitution until after the Ebola crisis but the 1st and 2nd Respondents viewing themselves as "Bosses" rather than "Servants" of the people have arrogated unto themselves the power and authority delegated to the people of Liberia under Article 1 of the 1986 Constitution, and have therefore decided to flout or abuse the Constitution by setting their own elections date of December, 2014—a date not provided for under the 1986 Constitution at expense of the lives of the Liberian people for their own selfish financial interest. Petitioner gives notice to court that it will produce witnesses if the need be at the conference to prove these allegations. Petitioners hereby attach a copy of the letters and press statement written by eminent Liberian citizens marked as Exhibit "P/3" in Bulk.

12. And because 1st Petitioner says and submits that it lives in fear because if the war on Ebola virus is not intensified and the killer virus is defeated and eradicated more citizens will die because the projections made by the Center for Disease Control (CDC) and the World Health Organization (WHO) present a rather precious picture of the dangerous health situations in Sierra Leone, Guinea and Liberia which are regarded as the hardest hit, more deaths, more cases, yet the 2nd Respondent has taken no affirmative action to put in place a strategic plan to fight the virus, thus, 1st Petitioner fears that its constituency that is inhabited by the

downtrodden masses of Liberians has been neglected and exposed to premature deaths by the 1st and 2nd Respondents if they are allowed to hold senatorial elections. 1st Petitioner hereby attaches two different reports written by CDC and WHO containing the alarming projections rate of the killer Ebola virus by January 2015 marked as Exhibit "P/4" In Bulk.

13. Also, in further testament of the lack of interest in the wellbeing of the lives of the Liberian people, the 2nd Respondent herein despite the alarming death toll from the Ebola outbreak has only been able to earmark and has provided a meager resource of US\$5m (US Five Million Dollars) from its national budget to the fight against the Ebola virus which is nothing more than a drop in the ocean, and lacking the requisite financial resources to mount a robust challenge in the form of a strategic response, openly outsourced the war on Ebola to international medical institutions and other friendly government while schools, hospitals and major concession institutions remain closed with the departure of foreign experts. Your Honors are most respectfully requested to take judicial notice of the continued closure of schools, hospitals and other institutions as signs of abnormality due to the presence of the deadly Ebola virus.
14. 1st and 2nd Petitioners say the 2nd Respondent quite unmindful of the current precarious health situation in the country as a result of Ebola and demonstrating no sound leadership or shared vision in the war on Ebola, which although is said to have been significantly reduced, notwithstanding, has the potential to make an astronomical rise from a projection of 10,000 cases at the end of November, 2014, to 1.4m(one million four hundred thousand) by mid-January 2015, the 2nd Respondent is not preparing for the worse moment in new Ebola cases that may rise in January 2015, instead, it has set aside or is attempting to set aside millions of US dollars from taxpayers' money to aid the 1st Respondent to hold a senatorial election in December 2014 that is neither constitutional nor statutory in nature and that is in total contravention of Articles 46 and 37 of the 1986 Constitution.
15. Petitioners say a petition for a writ of prohibition will lie because part of the sovereign and constitutional authority of the 2nd Respondent is not to aid and abet an illegal process or gamble the lives of its citizens for pecuniary purposes; instead, it has the mandate constitutionally to protect the lives of all Liberians irrespective of tribes, color, height or political persuasion.
16. Petitioners submit that the one and same 2nd Respondent who could not find or provide money to fight the deadly Ebola virus is the same 2nd Respondent that is mobilizing millions of US dollars of taxpayers' money to hold senatorial elections which are in total violation of the 1986 Constitution.
17. Petitioners also submit that the 1st Respondent plan to hold senatorial elections on 16 December, 2014 is not only illegal and without any constitutional foundation but also the exercise will be in total breach of *Sub-chapter B chapter 3, section 3.4 -titled, "REGISTRATION ROLL"* which provides: "Registration Rolls shall be kept in a form prescribed by the Commission and, among other things, shall contain the family name and given name, residence, and sex of each voter. The names shall be numbered in regular progressive arithmetical order, commencing with number one (1). "Petitioners say the 1st Respondent at

the moment does not have an updated Registration Roll for the pending elections which could spark a major confusion amongst registered voters and did publish or open for public view or contest the Registration Roll consistent with chapter 3, section 3.6 titled: *“Roll to be Kept for Public Inspection which expressly states-*. The general registration roll for each registration center shall be opened for public inspection at the office of the Magistrate of Elections without a fee on any day in a week during the hours the office is opened. A copy of each roll may be kept at such other places as the Commission may designate for public inspection.”

18. Petitioners submit that Article 83(a) of the 1986 Constitution, which the 1st and 2nd Respondents are relying upon as a basis for their actions refers to national and general elections and it expressly states as follows: “Voting for the President, Vice President, members of the Senate and members of the House of Representatives shall be conducted throughout the Republic on the second Tuesday in October of each election year.” Petitioner says when a statutory or constitutional provision is succinctly clear on its face, it requires no further interpretation as a matter of law, thus, Article 83(a) refers to a national and general elections and not a midterm senatorial election. Your Honors are most respectfully requested to take judicial notice of Article 83(a) of the 1986 Constitution.

19. Further, Petitioners aver that the pending senatorial elections in December

2014 are illegal and unconstitutional because in the face of the continued closure of schools, health facilities and major economic institutions which are signs of instability, holding elections at this time will be in total violation of Articles 6 and 7 of the 1986 Constitution which provide as follows:

1. a. Article 6: The Republic shall, because of the vital role assigned to the individual citizen under this Constitution for the social, economic and political well-being of Liberia, provide equal access to educational opportunities and facilities for all citizens to the extent of available resources. Emphasis shall be placed on the mass education of the Liberian people and the elimination of illiteracy”;
1. b. Article 7: “The Republic shall, consistent with the principles of individual freedom and social justice enshrined in this Constitution, manage the national economy and the natural resources of Liberia in such manner as shall ensure the maximum feasible participation of Liberian citizens under conditions of equality as to advance the general welfare of the Liberian people and the economic development of Liberia.”
2. Petitioners submit that the expressions: “Emphasis shall be placed on the mass education of the Liberian people and the elimination of illiteracy and the maximum feasible participation of Liberian citizens to advance the general welfare of the Liberian people and the economic development of Liberia” as used in Articles 6 and 7 of the 1986 Constitution have been undermined and destabilized because the current Ebola virus which the 2nd Respondent is reluctant to confront and defeat poses a clear and present danger to the economic lives and survival of the Liberian people, thus leading to the perpetual closure of schools, hospitals and major economic activities, and despite this, the 2nd Respondent is determined to support an electoral process that is neither constitutional nor statutory.

WHEREFORE IN VIEW OF THE FOREGOING, IT IS THE PRAYER OF MOVANT THAT YOUR HONORS WILL:

1. Grant Petitioners' Petition and issue an Alternative Writ of Prohibition against the 1st and 2nd Respondents to enjoin, stop and stay any further actions or proceedings on their part;
1. b. Regarding the holding of senatorial elections throughout the length and breadth of this Republic;
1. c. Order a stay on any withdrawal, use or allocation of financial resources or any logistics geared at holding the pending elections which are totally illegal and unconstitutional;
1. Order a stay on all actions and activities whether constructive, actual or implied or physical in the form of campaign meetings, gatherings, political rallies or exchanges of communications between would-be candidates as well as press releases, radio talk shows and order the parties to refrain from all actions in the form of campaigns pending the final determination of this petition;
1. e. Issue the Peremptory Writ of Prohibition after the conduct of a conference with the parties, and thereafter impose other imperative ex parte remedial actions necessary to prevent and avert any further abuse and violations of the 1986 Constitution specifically Articles 46 and 37;
1. Order that the parties return to STATUS QUO ANTE and instruct the 1St and 2nd Respondent not to hold any program regarding the said elections pending the final determination of this petition;
1. g. Make or issue any instruction that will compel the 2nd Respondent herein to refrain from wasting precious state resources on a fake and illegal elections and compel both 1st and 2nd Respondents to file their Returns and show cause why the Peremptory Writ cannot be issued;
1. h. Set aside the any insalubrious constitutional argument regarding the so-called State of Emergency, curfew and the lip service fight against Ebola on grounds that holding of senatorial elections at this time could spread the deadly Ebola virus and expose our citizens to premature deaths;
1. i. Pass any order, make any declaration to declare the senatorial elections unconstitutional pursuant to the intent and purposes of the constitutional guarantee of chapter 1 Article 1 of the 1986 Constitution which exclusively and unequivocally vests power in the people to determine the form and manner of holding elections to fill in vacancies and guarantee unto Petitioners and all Liberians pursuant to the interpretative powers of this Honorable Court under Article 2 of the 1986 Constitution a free and unfettered democratic environment and declare as constitutionally *void ab initio* the entire December 16, 2014 senatorial electoral process;
1. j. Grant unto Petitioners these and all further relief that Your Honor will determine as fair, just, legitimate and legal to advance the aspirations of the people's rights under Article 1 of the 1986 Constitution so as to protect the current democratic process from all forms of political

erosions and dictatorial interferences and narrow interpretations of constitutional provisions for selfish gains; and

1. k. Authorize the 1st and 2nd Respondents to abide by all provisions of the 1986 including Articles 1, 6, 7, 46 and 37 of the 1985 Constitution and initiative legitimate democratic processes to avert a recurrence of constitutional violations and other forms of dictatorial practices so as to ensure and protect the current democratic order at all times according to the laws and Constitution of Liberia.

RESPECTFULLY SUBMITTED:

PETITIONER REPRESENTED BY COUNSELS JUSTICE AND PUBLIC INTEREST CONSORTIUM AFRICA (JUJICA) 1st FLOOR, BEDELL BLDG, BENSON & CENTER STREETS INTERSECTION, MONROVIA

LIBERIA

Signed: \_\_\_\_\_

SAYMA SYRENIUS CEPHUS COUNSELOR -AT-LAW

Dated this 21ST day of NOVEMBER A. D. 2014

The National Elections Commission file returns to the petition which we quote: AND NOW COMES 1st Respondent, in the above entitled cause of action, and most respectfully file its Returns in the form and manner as follows, to wit:

1. Because as to the entire petition, 1st Respondent says same should be denied and dismissed because this Honorable Court has repeatedly held that prohibition is proper only to restrain an inferior court or administrative tribunal from taking action in a case without jurisdiction, or having jurisdiction, proceeds beyond its jurisdiction, or attempts to proceed by rules different from those which ought to be observed at all times. For reliance, see: Parker v. Worrel, 92 LLR

525, 526 (1925); Fazzah v. National Economy Committee. 8 LLR 85, 8991 (1943); Thomas v. Ministry of Justice, 26 LLR 129, 134 (1977); Nelson v. Boye,

27 LLR 174, 179 (1978).

2. And also as to the entire petition, 1st Respondent says it is conducting the 2014 Special Senatorial Election in accordance with duty imposed by law, and that prohibition will not lie where a respondent is performing a legal duty and has neither exceeded its duty nor assumed jurisdiction not granted it by law. For reliance, see also: Kaba & McCromsy v. Township of Gardnersville, 39LLR 549.

3. And further to the entire petition, 1st Respondent says it was established as an Autonomous Commission under Article 89(B) of the 1986 Liberian Constitution and, pursuant to Chapter 2, Section 2.9, Subsection (a) of the New Elections Law of 1986, is empowered to administer and enforce all laws relative to the conduct of elections, including the 2014 Special Senatorial Election throughout the Republic of Liberia. Respondent says that it has exclusive jurisdiction to conduct elections in keeping with law; that its decision to proceed with the conduct of the

2014 Special Senatorial Election on December 16, 2014, is authorized by law; and that prohibition cannot lie to restrain Respondent from exercising its authority within the law.

4. Further to the entire petition, 1st Respondent says that pursuant to Article 34(i) of the 1986 Constitution of Liberia, the Legislature has the power to enact elections laws.

(a) That further to count 4 above, Article 35 of the 1986 Constitution of Liberia recognizes and echoes the power of the Legislature to enact a resolution.

(b) That under Article 35 of the Constitution, once the President approves/signs a resolution passed by the Legislature, said resolution shall become law.

(c) That further to count 4 above, the Legislature passed Joint Resolution #002/2014 mandating that the 2014 Special Senatorial Election be held not later than December 20, 2014, and Her Excellency, President Ellen Johnson Sirleaf, signed said Resolution into law. Please see hereto attached Joint Resolution # 002/2014 marked as Exhibit "R/1" in bulk.

5. *That this Honorable Supreme Court has issued several Opinions, recognizing that a Resolution passed by the Legislature, and signed by the President, is law. For reliance, see: Sen. Garlawolu et al v NEC et al, 41 LLR 377 (May 9, 2003) (which acknowledged a Joint Resolution which, after the elections in July 1997, reinstated the 1986 Constitution and returned our Nation to constitutional governance); Liberty Party v. NEC, decided by the Supreme Court on June 14, 2011 (which acknowledged the power of the Legislature, through a Joint Resolution, to enact a law setting a threshold for reapportionment of electoral constituencies); see also Williams et al v Smith et al. 30 LLR 633 (February 4, 1983); Bryant et al v RL. 6 LLR 128 (December 31, 1937); Brumskine v Vietor et al. 2 LLR 123 (June 13, 1913).*

6. That His Honor, Justice Banks, III, speaking for this Honorable Court, reechoed the three things that are necessary to justify the issuance of a writ of prohibition: "The court, officer or person against whom it is directed has or is about to exercise judicial or quasi-judicial power; that the exercise of such power by such court, officer, or person is unauthorized by law; and that it will result in injury for which there is no other adequate remedy." For reliance, see: Broh v Hon House of Rep, et al., decided by the Supreme Court on January 24, 2014; see also Doe et al. v. Ash-Thompson and The Proposed Liberia Action Party. 33 LLR 251, 269-70 (1985).

7. That further to the entire petition, 1st Respondent says it is clear that the authority to conduct all public elections, including the 2014 Special Senatorial Election, is conferred upon Respondent by the Constitution, the New Elections Law, and Joint Resolution #002/2014.

8. That further to the entire petition. Respondent says that by carrying out its duty to conduct the 2014 Special Senatorial Election, Respondent was proceeding within the scope of its authority. Accordingly, the writ of prohibition will not lie where the act complained of is neither wrong, nor illegal, but rather within the scope of the authority of the person or office complained against. See also: Komai vs. the Ministries of Justice & Public Works et al, 36 LLR 518 (1989.) Hence, the petition should be dismissed in its entirety, and Respondent so prays.

### Improper Verification

9. That as to the entire petition, 1st Respondent says same should be denied, dismissed and set aside for failure to verify or improper verification. 1st Respondent says that there are several petitioners in the above captioned action for prohibition. The law controlling contemplates and requires that an affidavit to a petition for the writ of prohibition, filed by petitioner/petitioners, must be verified by each and all petitioners. The records reveal that the affidavit attached to Petitioners' petition is only verified by co-petitioner, Blamoh Nelson. Accordingly, Petitioners' petition should be stricken as if it were never filed. For reliance, see: Civil Procedure Law, Chapter 9.4(1), 9.4(2b), and 9.4(5), 1 LCLR pages 107-108; see also King vs. King, 23 LLR 418 (May 24, 1974, holding that an "application for a writ of prohibition must be duly verified by the party himself and not by counsel").

10. Further to count 9 above, 1st Respondent says that the affidavit to a petition for prohibition must be signed by the petitioner/s. The record in this petition reveals that Concerned Group of Eminent Citizens, the Movement for Progressive Change, the Leaders of Political Parties, represented by Blamoh Nelson and J. Emmanuel Z. Bowier, John Ballon, Milton Nathaniel Barnes all of whom did not execute the attached affidavit. The authenticity of the petition is therefore questionable and hence the said petition as filed should be ignored and the entire petition dismissed and 1st Respondent so prays. For reliance, and in addition to the citations provided in count 1 above, see also the opinion of the Honorable Supreme Court in the case: National Vision Party of Liberia et al v. National Elections Commission, page 17 (decided March 2014, holding that our "statute does not treat a failure to verify or improper verification as a harmless error").

11. Still further to count 9 above, 1st Respondent says that there are six petitioners named in the petition and contrary to law, only Blamoh Nelson signed the affidavit which constitutes improper verification which is a fatal error. 1st Respondent says that Article 26 of the 1986 Constitution of Liberia provides thus: "Where any person any association alleges that any of the rights granted under the constitution or any legislation or directives are constitutionally contravened, that person or association may invoke the privilege and benefit of court's direction, order or writ, including a judgment of unconstitutionality; any one injured by an act of the Government or any person acting under its authority whether in property, contract, tort or otherwise, shall have the right to bring suit for appropriate redress. All such suits brought against the government shall originate in the claim court; appeals from judgment of the claim court shall lie directly to the Supreme Court." 1st Respondent says therefore that this petition is improperly venued and should be dismissed.

13. And also because as to the entire petition, 1st Respondent says that prohibition will not lie where a respondent is performing a legal duty and has neither exceeded its duty nor had assumed jurisdiction not granted it by law. For reliance, see Kaba & McCromsy v. Township of Gardnersville, 39LLR 549.

14. And also because as to the entire petition, 1st Respondent says that it has acted pursuant to law. Under Article 35 of the Constitution of the Republic of Liberia when the Resolution of the Legislature is approved by the President as in this case, said resolution then have the full force and effect of the law. 1st Respondent says that pursuant to the Resolution approved by the President is legal and therefore prohibition will lie.

15. And also because as to the entire petition, 1st Respondent says that the Legislature is empowered to enact the Elections laws and that the performance of that duty and the subsequent compliance therewith cannot be construed as illegal, arbitrary and contrary to law. Prohibition therefore will not lie. The Honorable Supreme Court in the case Ware v. Republic decided March Term 2012, Justice Banks speaking for the court said: "This Court has held that prohibition is the proper remedial process ... to restrain administrative tribunal from taking action in the case over which it has no jurisdiction or where it acts beyond its jurisdiction." 1st Respondent says that this not being the case, prohibition will not lie.

16. Further to count (7) above, the Honorable Supreme Court has said that three things must be present to justify the issuance of a writ of prohibition:

1. i. The respondent against whom it is directed has or is about to exercise judicial or quasi-judicial powers;
1. ii. That the exercise of such power by such respondent is unauthorized by law;

and,

iii. That it will result to injury for which there is no other adequate remedy.

1st Respondent submits that neither of the above actions has been performed by it and hence, prohibition will not lie against it.

17. And also because as to actions (1-4) of the petition, 1st Respondent says that same are mere recitals of various articles of the constitution which do not constitute grounds for the issuance of a writ for prohibition. 1st Respondent submits that the power of the people to remove a public official when elected is circumscribed by the Constitution; specifically in this case Article 46 thereof. Actions 1- 4 have no relevance and should therefore be ignored and denied.

18. That as to action 5 of the petition, 1st Respondent is to elect senators as provided under Article 83 (a) and Section 1.2(f) of the New Elections Law and therefore it is a lawful duty which is not subject to prohibition or subject to be prohibited. Action 5 is misleading and therefore should be ignored.

19. And also because as to actions 6, 7, and 8 same constitute a repetition of various counts of similar petition and therefore same should be ignored and the entire petition be dismissed.

20. And also because as to action 9 of the petition, 1st Respondent says that the Constitution provides under Article 86 that the President may in consultation with the Speaker of the House and the President Pro Tempore declare a state of emergency where there is a threat. The Article further provides that the President thereto may suspend or affect certain rights, freedom and guarantee in the Constitution. That authority is constitutional and the exercise thereof is within parlance of the law. Action 9 therefore is merely intended to mislead this Honorable Court.

21. And also because as to actions 10, 11 and 12, 1st Respondent says that same is a mere restatement of the facts and constitute no basis for the issuance of a writ of prohibition. Said

action and the entire petition is a fit subject for dismissal and 1st Respondent so prays.

22. And because as to action 13 of the Petitioners' petition, 1st Respondent says that consultations were held and the parties in recognition of the impossibility of complying with Article 33 of the Constitution agreed and had reaffirmed their commitment to the holding of elections to avert any constitutional crisis which could roll back the progress in maintaining our democratic values. Please see hereto attached a statement reaffirmation signed by the parties and marked as Exhibit "R/2" in bulk.
23. And also because as to action 14, 1st Respondent says that the counsel for petitioners has a misunderstanding as to his Exhibit E. 1st Respondent says the activities covered under Exhibit E covered up to November 28, 2014 and hence, the insertion in said count as to the back dating of the instrument up to 2013 is false and malicious and hence, the said count should be ignored and denied. 1st Respondent says although not recognized to do so, it acting pursuant to its authority under 2.9 (h and U) of the New Elections Law, promulgated EVD preventative guidelines to be adhered by all participants, including voters, candidates, staff, and observers. Please see hereto attached the referenced EVD preventative measures marked as Exhibit "R/3" in bulk.
24. And as to Action 15, 1st Respondent says same present no traversable issue.
25. And also because as to action 16, same is false and misleading as 1st Respondent has received and dispatched all logistical materials to the various counties and polling centers. Further, 1st Respondent's actions are consistent with law, and the voters roll are available for inspection at each of 1st Respondent's offices and at 1st Respondent's headquarters as provided for by the New Elections Law, Subsection(b), Section 3.6 thereof. Action 16 should therefore be overruled and dismissed.
26. And also because of action above, Respondent says that Section 4.2(4) of the New Elections Law requires the list of polling places to be published not less than ten days before the election. The 2014 Special Senatorial Election is scheduled for December 16, 2014. Accordingly, Respondent has up to December 6, 2014, to publish the list of polling places. Count 7 therefore should be ignored and the entire petition be dismissed.
27. And also because counts 1 through 8 of the petition are repetitive and present no legal ground for the issuance of a writ of prohibition.
28. And also because as to the entire petition, 1st Respondent denies all and singular the averments contained therein not made subject of special traverse herein.

WHEREFORE AND IN VIEW OF THE FOREGOING, 1st Respondent prays that Your Honors will grant its Motion; deny the petitioners' petition, order the electoral process continued and grant unto 1st Respondent any and all relief as Your Honors may deem just, legal and necessary.

Given the respective positions and counter positions of the parties which we have meticulously presented, we will consider the following as the deciding issues in this case:

1. 1. Whether or not the setting of the election date under Joint Resolution of the House of Representatives and the House of Senate which Joint Resolution was signed into law by the President is in violation of the Constitution?
2. 2. Whether or not the decision to schedule the elections while the ebola virus is still present in Liberia is in violation of the Constitution? And assuming that the answer to this question is in the affirmative does this present a justiciable issue which can be determined by this Court?
3. 3. Whether or not prohibition will lie, given the factual circumstances of this case?

The answer to the first question requires a review of relevant Articles of the Liberian Constitution (1986).

*Article 86 (a)* provides:

“The President may, in consultation with the Speaker of the House of Representatives and the President Pro Tempore of the Senate, proclaim and declare the existence of a state of emergency in the Republic or any part thereof. Acting pursuant thereto, the President may suspend or affect certain rights, freedoms and guarantees contained in this Constitution and exercise such other emergency powers as may be necessary and appropriate to take care of the emergency, subject, however, to the limitations contained in this Chapter.”

*Article 88* provides:

“The President shall, immediately upon the declaration of a state of emergency, but not later than seven days thereafter, lay before the Legislature at its regular session or at a specially convened session, the facts and circumstances leading to such declaration. The Legislature shall within seventy two hours, by joint resolution voted by two thirds of the membership of each house, decide whether the proclamation of a state of emergency is justified or whether the measures taken there under are appropriate. If the two thirds vote is not obtained, the emergency automatically shall be revoked. Where the Legislature shall deem it necessary to revoke the state of emergency or to modify the measures taken there under, the President shall act accordingly and immediately carry out the decisions of the Legislature.” When read in tandem, Article 86(a) and Article 88 of the Constitution authorize the President to declare a state of emergency and restore certain rights suspended pursuant to a state of emergency while the state of emergency is still in force and effect; and the Legislature to modify, if the Legislature so decides, the measures taken by the President under the state of emergency.

Recounting the sequence of events leading to the case before us, on August 6, 2014, the President, in response to the spread of the ebola virus in the country which posed a threat amounting to clear and present danger to the survival of the State, declared a state of emergency for a period of 90 days. The declaration and accompanying measures to deal with the virus were endorsed by the National Legislature.

On October 4, 2014, while the state of emergency was still in force and effect, the President issued a proclamation suspending the holding of the special senatorial elections slated for October 14, 2014. The Legislature, by Joint Resolution, endorsed the action of the President suspending the

election. The Resolution stated, however, that the elections should be conducted not later than December 20, 2014. In the Joint Resolution, the Legislature directed NEC to consult with all relevant stakeholders including political parties, other civil society groups and religious groups among others, in order to decide on the date of the elections. As a consequence of the consultations, the relevant stakeholders agreed on December 16, 2014, as the date for the elections.

On November 3, 2014, the Chairman of NEC wrote a letter informing the Legislature that the stakeholders had agreed on December 16, 2014 as the date for the holding of the special senatorial elections.

Both Houses of the Legislature then passed a Joint Resolution authorizing the holding of the elections on December 16, 2014, and the Joint Resolution was signed into law by the President. It is important to note that the Joint Resolution was passed by the Legislature and signed into law by the President when the state of emergency was still in effect. We hold that because the Joint Resolution was passed by the Legislature and signed into law by the President when the state of emergency was still in effect, the said Joint Resolution, while carrying the effect of law, also constitutes a modification of the measures taken by the President pursuant to the state of emergency as required by Article 88 of the Constitution.

The position we have taken is supported by *Article 29* of the Constitution, which provides:

“The legislative power of the Republic shall be vested in the Legislature of Liberia which shall consist of two separate houses: A Senate and a House of Representatives, both of which must pass on all legislation. The enacting style shall be: ‘It is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled.’”

And *Article 35* of the Constitution provides:

“Each bill or resolution which shall have passed both Houses of the Legislature shall, before it becomes law, be laid before the President for his approval. If he grants approval, it shall become law. If the President does not approve such bill or resolution, he shall return it, with his objections, to the House in which it originated. In so doing, the President may disapprove of the entire bill or resolution or any item or items thereof. This veto may be overridden by the re passage of such bill, resolution or item thereof by a vote of two thirds of the members in each House, in which case it shall become law. If the President does not return the bill or resolution within twenty days after the same shall have been laid before him it shall become law in like manner as if he had signed it, unless the Legislature by adjournment prevents its return.”

Consistent with the above quoted constitutional provisions, the House of Representatives and the House of Senate on October 14, 2014, passed a Joint Resolution authorizing NEC to conduct a special senatorial election to replace those Senators whose terms of office expire on January 16, 2015. That Joint Resolution was subsequently signed into law by the President. This being the case, the Resolution became a law of this Republic that is not only binding on the National Elections Commission, but also a law that is binding on all citizens of this nation. We hold, therefore, that both the President and the National Legislature having performed acts within the pale of the law did not violate the Constitution.

The petitioners have argued that it is only the people of this country who have the authority to set a new election date, after the second Tuesday in October (October 16, 2014) set for the conduct of the special senatorial elections was suspended by the President pursuant to the state of emergency declared. In challenging the authority of the President and the Legislature to set the elections date the petitioners rely on *Article 1* of our 1986 Constitution, which provides:

“All power is inherent in the people. All free governments are instituted by their authority and for their benefit and they have the right to alter and reform the same when their safety and happiness so require. In order to ensure democratic government which responds to the wishes of the governed, the people shall have the right at such period, and in such manner as provided for under this Constitution, to cause their public servants to leave office and to fill vacancies by regular elections and appointments.”

The petitioners contend that in keeping with Article 1 of the Constitution quoted above, it is the people, and not the Legislative and/or Executive Branch of Government, who have the power to convene a conference at which a new election date must be set for Senators. They therefore request this Court to issue the extraordinary writ of Prohibition to restrain, prohibit and enjoin the President and the National Legislature from setting an election date and NEC from conducting any election until the people convene a conference at which the people can set a date for senatorial election. This contention of the petitioners raises two basic questions: (a) what exactly does this provision of the Constitution mean? (b) What kind of power is “inherent in the people?”

We are of the considered opinion that Article 1 of the Constitution cannot be construed as conferring the power on the people to administer the affairs of the nation on the body politic as a whole. This is a misguided view and interpretation of that Article. We hold that when Article 1 refers to power being inherent in the people, it means the right of the people to decide the leadership of the nation through elections organized by those who are charged with the responsibility of conducting elections consistent with the Constitution. The power of the people therefore can be and is exercisable only by those who have been duly elected by the people themselves to represent their interests. It is inconceivable to argue, as the petitioners do, that the drafters of the Constitution intended *Article 1* of the Constitution to be construed as proposed by them. The text of Article 1 itself supports our conclusion, otherwise, how would the people “have the right at such period, and in such manner as provided for under this Constitution, to cause their public servants to leave office and to fill vacancies by regular elections and appointments.” Who shall organize and supervise such elections if the entire body politic, including those seeking public office, have the power to decide when elections are to be had? Clearly, it was not intended by the framers of this Constitution that the entire population of this nation would converge and exercise such power. Instead, it is intended that someone or group among the body politic, already duly elected or appointed, as the case may be, would be responsible to act or take decisions on their behalf. In this case, the Legislative and the Executive Branches of Government are the proper representatives of the people responsible for deciding on the date, organizing and conducting an orderly election.

Next, we address the primary issue presented by this case, which is whether or not the decision to schedule the elections while the ebola virus is still present in Liberia is in violation of the Constitution? Assuming the answer to this question is in the affirmative, does this present a justiciable issue which can be determined by this Court?

A fair disposition of this issue, we believe, requires a discussion of basic fundamental principles of our constitutional Government. The three Branches of the Government of the Republic of Liberia derive their authorities wholly from the powers granted to them by the Constitution, which is the supreme source of power authorizing action by any Branch of Government. The Constitution vests the power to make law in the Legislative Branch; the power to enforce law in the Executive Branch; and the power to interpret law in the Judiciary Branch of Government headed by the Supreme Court. One Branch cannot perform the duties and functions specially ascribed to another Branch. Therefore, this Supreme Court cannot exercise any power other than judicial power. In this regard, *Article 65* of the Constitution provides: "The Judicial Power of the Republic shall be vested in a Supreme Court and such subordinate courts as the legislature may from time to time establish. The courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature. Judgments of the Supreme Court shall be final and binding and shall not be subject to appeal or review by any other branch of Government. Nothing in this Article shall prohibit administrative consideration of the justiciable matter prior to review by a court of competent jurisdiction."

The petitioners have contended that this Court has power to determine the issue raised in their petition that the ebola virus still being present and prevalent in Liberia, it is a violation of their rights guaranteed under the Constitution for the elections to be held. As we see it, for this Court to grant the relief sought, it must clearly be shown that the petition raises a justiciable issue, and not a political question. In our opinion, the determination sought by the petitioners in their challenge to the conduct of the elections on account of the ebola virus is one which this Court, being the head of the Judicial Branch of our Government, cannot make because of the doctrine of separation of powers enshrined in our Constitution and also because of the political question doctrine. The political question doctrine recognizes the principle of separation of powers, which is inherent in our Constitution and therefore excludes some disputes from judicial determination.

According to the political question doctrine, a subject matter is inappropriate for judicial resolution where it is exclusively assigned to the political branches of our government or where the political branches are better-suited than the judicial branch to determine the matter. Hence, the political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations only committed for resolution by the Legislative or Executive Branch of our Government.

In the case: *Massaquoi v. The Republic*, 3LLR 41 (1933) this is what this Court said:

"Matters which are by their nature solely political should be confined within the realm of politics. There is a vital difference between justiciable matters and matters political. Courts of law are instituted for the purpose of deciding only such questions as are susceptible of determination by the application of well recognized rules of law or equity by which they can be decided. The only rule applicable to the adjustment of such questions is the rule of conciliation or compromise; and when a court of law embarks on such turbulent seas, it immediately loses its office as a judicial tribunal and abdicates its forum where pettifogging politicians resort to ventilate their little minds. Any verdict based upon non-justiciable matters is therefore illegal, and the appellate Court shall remand the cause to be tried *de novo*."

The foregoing position of this Court taken about two scores and a year ago, was confirmed in a more recent case: In re: *Constitutionality of Legislative Joint Resolution, Leg.-002 (210), Supreme Court Opinion Special Session*, October 11, 2010. We reconfirm that position today. As a judicial tribunal, we are not alone in our stance to decline to address political questions. The conditions which may trigger the political question doctrine and thus prevent a court from reviewing a case were spelled out by the United States Supreme Court in *Baker v. Carr*, 369 U.S. 186, 217 (1962), as follows: "Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question." In *Harisiades v. Shaughnessy*, 342 U.S. 580, 589 (1952), the United States Supreme Court stated that "policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government... are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." Applying these standards to the case before us, we find that the issues raised by petitioners which in essence requires the determination of whether the time is ripe for the conduct of elections is an issue which this Court cannot decide. The determination of such issue falls within the purview of the political Branches of the Government; it involves policy choices which cannot be made by this Court, but are the proper role of the Legislative and Executive Branches of Government. Even though we take due note that the virus has significantly reduced in the country, it is not our place to decide whether it is appropriate to conduct the elections at this time or at any time. This is a political question within the discretionary and administrative duties of the Executive and Legislative Branches. Hence, it would constitute usurpation of executive and legislative powers and therefore a violation of the doctrine of separation of powers for this Court to interfere in such matter.

Article 34 of the Constitution provides in relevant part: "The Legislature shall have the power: i) to enact the election laws... ii) to make all other laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the Republic, or in any department or officer thereof. Pursuant to this constitutional provision the Legislature, by a Joint Resolution authorized the conduct of the senatorial election on December 16, 2014.

If this Court were to agree with the petitioners, grant their petition and restrain and enjoin NEC from conducting the pending special senatorial election on the date set, will this Court also have any authority to determine a new date for the holding of the senatorial election, if not, does this Court have any authority to compel the Legislative and Executives Branches of Government to decide a new date? We answer these questions in the negative.

The judiciary of our country was created and empowered, specifically, to resolve justiciable issues and not to formulate policies and set standards, except in matters which involve legal disputes. The political question doctrine therefore restrains the courts from interfering in a matter that is purely

political or involved policy choices, such as whether or not to declare war; whether or not to establish diplomatic relations or to sever same; or whether or not the government should develop a social welfare policy aimed at helping the poor or elderly, etc. And in this case, whether or not to hold the pending senatorial elections while the ebola virus is still present in the country.

In passing, however, we say that we are all concerned about the dreadful disease in our country. Should the elections be held at this time, or at any other time, as determined the political Branches of Government, it would be advisable for NEC to put guidelines in place to be strictly followed by voters. There should be a realistic process of monitoring and ensuring that such guidelines are followed with consequences of penalty by violators. The adequacy and comprehensiveness of such guidelines would give comfort to voters to turn out in mass, and in a free and fair manner, exercise their franchise, while at the same time ensuring that the health of others would not be compromised. Further, in passing, elections, being what they are, timelines and schedules of activities have been prepared but due to these proceedings were suspended; it is therefore not unreasonable under the circumstance of this case, that lost time would be restored. Again, we must say that the determination is left with the political Branches of the Government.

Finally, we address the issue, whether or not prohibition will lie given the factual circumstances of this case. Prohibition as, defined by statute “is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein.” *Civil Procedure Law Chapter 16, Section 16.21.3*. It is also “that process by which a superior court prevents an inferior court or tribunal possessing judicial or quasi-judicial powers from exceeding its jurisdiction in matters over which it has cognizance, or usurping matters not within its jurisdiction to hear and determine. It is a means of restraint on judicial personnel or bodies to prevent usurpation of judicial power, and its essential function is to confine inferior courts to their proper jurisdiction and to prevent them from acting without or in excess of their jurisdiction; it is preventive in nature rather than corrective.” In accord: *The Management of Catholic Relief Services v. Natt et al.*, 39 LLR 415, 424 (1999), citing BLACKS’ LAW DICTIONARY 1212 (6th ed. 1990). See also *Kaba and McCromsy v. Township of Gardnersville et al.*, 39 LLR 549 (1999); *Sawan v. Cooper et al.*, 39

LLR 598 (1999).

These well-established standards lead logically to the question, did the 1st and 2nd respondents: (a) assume jurisdiction not otherwise ascribed to them; (b) exceed their designated jurisdiction; or (c) in the exercise of their lawful jurisdiction, proceed by wrong rules other than those which should be observed at all times? We answer these questions in the negative. Here, the 1st and 2nd respondents had statutory and constitutional jurisdiction over the subject matter of the issue raised in this case by virtue of the fact that the Joint Resolution of the Legislature, which became a law of this Republic, mandated them to conduct a special senatorial election on December 16, 2014. Therefore, they did not assume jurisdiction not otherwise ascribed to them.

Furthermore, by complying with the mandate of the Joint Resolution and exercising the powers thereby authorized, they were executing executive duties, which *Article 53(a)* of the Constitution mandates them to execute and were not exercising judicial or quasi-judicial powers.

But assuming that they were exercising judicial or quasi-judicial powers, we hold that they did not exceed their jurisdiction or proceed by wrong rules other than those which should be observed at all times, because they were specifically mandated by the Joint Resolution of the Legislature to conduct the special senatorial election on a specified date which is December 16, 2014. Hence, prohibition will not lie against them.

WHEREFORE, the alternative writ of prohibition issued is ordered quashed, the stay order placed on the holding of the special senatorial elections lifted, and the peremptory writ prayed for is denied. The Clerk of this Court is ordered to inform the parties accordingly. It is so ordered.

Petition denied.

Counselors Sayma Syrenius Cephus appeared for petitioners, Justice and Public Interest Consortium Africa (JUPICA), Honorable Edwin K. Martin, the Concerned Group of Eminent Citizens, the Movement for Progressive Change (MPC), Leaders of Political Parties and Civil Society Organization (CGEC).

Counselor J. Laveli Supuwood of the Supuwood & Associates Law Firm in association with S.L. Lofen Kaneah, Jr. appeared for Petitioners National Democratic Coalition (NDC) and the Movement for Progressive Change (MPC).

Counselor Theophilus C. Gould of the Kemp & Associates, Counselor F. Musa Dean of the Dean & Associates and Counselor George E. Henries of the Henries Law Firm appeared for 1st Respondent, National Elections Commission (NEC).

Counselor Benedict F. Sannoh, Acting Minister of Justice and Counselor Betty Lamin Blamo, Solicitor-General appeared for 2nd Respondent Government of Liberia.

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