

CHRISTIE W. DOE, City Mayor of the City Corporation of Barclayville, Grand Kru County, and **CALEDONIA J. YOUNG**, City Mayor of the City Corporation of Sasstown City, and **THE NATIONAL DEMOCRATIC PARTY OF LIBERIA (NDPL) CANDIDATE FOR MAYOR**, Sasstown City, Petitioners, v. **HONOURABLE ISAAC M. RANDOLPH**, Chairman, Special Elections Commission, et al., Respondents.

Heard: (Undated). Decided: December 30, 1988.

1. A court may obtain jurisdiction only as provided for according to law.
2. The statutory requirements governing jurisdiction are mandatory and must be conformed to.
3. The Supreme Court has no authority to extrapolate the intent of the legislature beyond the specific wording of a statute; this limitation is mandatory where the statute in question specifies the only manner in which an act may be done.
4. A party alleging a fact must prove it.
5. A party who submits himself to the jurisdiction of a tribunal by appearing before it and contesting issues cannot properly thereafter object to the jurisdiction of the tribunal over his person with respect to the issues so contested.
6. If an inferior court has jurisdiction over both the subject matter and the person, prohibition will not lie to correct errors of law for which there is an adequate remedy by appeal or otherwise, whether the errors are merely apprehended or have been actually committed.
7. Prohibition is a preventive rather than a corrective remedy and issues to prevent the commission of a future act rather than to undo an act which is already performed.
8. Courts do not have the authority to add or subtract from legislation where the meaning is plain.
9. Where the legislature has made no exception to the positive term of a statute, the presumption is that it intended to make none.
10. Courts do not have the authority to introduce exceptions to the positive terms of a statute by construction.

Petitioners filed protests following the outcome of local elections in their respective cities. Prior to the expiration of the time within which the Elections Commission was required by law to decide such protests, petitioners sought a writ of prohibition from the Supreme Court to restrain the Elections Commission and the Minister of Internal Affairs from inducting into office certain named persons who had been declared winners in a recent election. The Clerk was ordered to issue the alternative writ of prohibition to the Elections Commission, which filed its returns. In arriving at a determination of the case, the Court reasoned that the only issue before it was whether prohibition would lie to restrain the commission and the minister from inducting into office persons declared winners in the disputed elections. The Court noted that the period in which the commission had to act on the process had not expired. Therefore, the Court concluded that prohibition will not lie in a case such as this one to prevent "errors that are merely apprehended," and for which there is an adequate remedy by appeal. *Petition denied.*

Isaac C. Nyeplu for petitioners. *Roger K Martin* for respondents.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

Petitioners have filed before us a petition for a writ of prohibition praying that this Honourable Court issue a writ of prohibition requiring Co-respondents Elections Commission and Edward K. Sackor, Minister of Internal Affairs, to refrain from inducting into office Co-respondent J. N. Yandeh Mendeh, mayor-elect of Barclayville City and George Worjloh of Sass-town City, Grand Kru County respectively, and grant unto petitioners such other and further relief as law, justice and equity demand. Accordingly, the petitioners have alleged the following:

"1. Petitioners/deponents in answering say that count one of respondent elections commission's returns is indeed filthy, indistinct and unintelligible; in that the elections commission is a constitutional body created by the Constitution of January 6, 1986 of the Republic of Liberia, and as such, the constitution has clothed the elections commission with certain quasi-judicial jurisdiction to "...conduct an impartial investigation and render a decision which may involve a dismissal of the complaint or a nullification of the election of a candidate. Any political party or independent candidate affected by such decision shall not later than seven days appeal against it to the Supreme Court..." LIB. CONST. Art. 83, sub-sec. c, page 36. Petitioners contend that to adjudicate a matter and grant an appeal is a judicial function which can only be exercised by a judicial forum or a quasi-judicial tribunal as in the case of the Elections

Commission. Hence, at this time why should the Commission shy away from its constitutionally imposed duty as respondent attempts to portray in count one of the returns; hence, count one of the amended returns should crumble.

2. And also because petitioners/deponents say that count two of the amended returns is also unintelligible, if not nonsensical in nature, in that since the Elections Commission is constitutionally vested with quasi-judicial jurisdiction, prohibition will lie against its members for usurpation and abuse of powers and jurisdiction confided to it by the constitution of Liberia. Further, petitioners/ deponents maintain that if the elections commission was a creature of the Executive or Legislative agency as portrayed by respondent, prohibition would lie against it for the abuse of the power conferred upon it. In the case *Fazzah v. National Economy Committee, et al.*, 8 LLR 85, 95 (1943), this Court, speaking through Justice William V. S. Tubman, held that in *Cyclopedia of Law and Procedure* it is stated that: "Upon application for prohibition the only inquiries permitted are whether the inferior tribunal is exercising jurisdiction it does not possess, or, having jurisdiction, has exceeded its legitimate powers. Consequently, the Court will not investigate the merits of the cause upon application for a writ of prohibition. 33 *Id., Prohibition*, 629-30 (1909). Petitioners/deponents submit that the National Economy Committee was created by an Act of the Liberia National Legislature and 'given certain plenary powers to investigate economic crimes; and that Committee, having abused the power confided to it by the Legislature, petitioner Fazzah applied to the Supreme Court for a writ of prohibition which was granted. Hence count two of co-respondent's returns, besides being inefficacious, woefully lacked even the intelligence of the constitutional definition of the Elections Commission, for there is great difference between executive, legislative and administrative agencies, although all of them are subject to prohibition for excess of jurisdiction and abuse of power. Also see text 106-7, of the same book on the subject matter. 22 R. C. L., *Prohibition*, § 7, at 8-9 (1918), text at 107. *Id., Prohibition* 630 (1909), text at 108-9, the same book, the same subject matter. Count two should therefore be dismissed.

3. Petitioners/deponents say that count three is blatantly misleading this Honourable Court, in that co-petitioner/ deponent Christie W. Doe's protest was filed on January 2 1987, the very day the Elections Commission's chairman, Isaac Randolph, announced the mayoral elections result at the Centennial Pavilion in Monrovia, while Co-petitioner/ deponent Caledonia J. Young's protest was filed on January 7, 1987, five days later, and the original petition for the writ of prohibition was filed on January 21, 1987, twenty and fifteen days, respectively, after the filing dates of the two pro-tests. Upon petitioners/deponents repeated demands for the hearing of the

protest, and co-respondent having demanded \$2,000.00 (Two Thousand) Dollars cash deposit with respondent (what the respondent called recognizance fees for appeal before hearing) coupled with the fact that whilst the protest was pending, unheard and undetermined by co-respondent, respondent Elections Commission had already cited all alleged winners of December 20, 1986 mayoral election to Monrovia to be certificated by the Minister of Foreign Affairs. The certification of Mendeh and Worjloh was done in spite of the pendency of the protest, and arrangement being made for their induction by the Minister of Internal Affairs. Petitioners/ deponents, in consonance with Supreme Court opinion that the filing of the application for a writ of prohibition must be timely, had no alternative but to file the petition against the excess of jurisdictional abuse and usurpation of power exemplified by members of the Elections Commission. The Supreme Court of Liberia held in the case of *Coleman et. al., v. Cooper et al.* that: 'A party who submits himself to the jurisdiction of a tribunal by appearing before the tribunal and contesting issues cannot properly thereafter object to the jurisdiction of the tribunal over his person with respect to the issues so contested.' The right to apply for a writ of prohibition will be deemed waived by failure to file timely application therefor. *Id.* Litigants cannot properly demand that courts perform acts which the litigants should have performed themselves. The court further observed that: "Prohibition is a preventive, rather than a corrective remedy and issues to prevent the commission of a future act rather than to undo an act which is already performed. It will not be granted when the act sought to be prevented is already done, even where such act has been done pending the application for the writ; but where the act sought to be prohibited is not a full, complete and accomplished judicial act, the writ will lie, and any further proceeding may be prohibited, and complete relief may be afforded by undoing what has been done." 50 C. J. 62-63, *Prohibition*, §18; *Coleman et al. v. Cooper et al.*, 12 LLR 226 (1955), text at 230, 231. Hence, petitioners/deponents could not complacently and supinely sit and allow the accomplishment of the excess of jurisdiction and usurpation and abuse of power by members of the Elections Commission before applying for the writ of prohibition, especially when there has also been prescription on the right of appeal to the Supreme Court which is unconstitutionally derogated in Article 20 (a) and (b), Article 21(d) and (ii) of the Constitution of Liberia. Count three should therefore be dismissed.

4. Count four of the co-respondent's amended returns is unintelligible and absolutely nonsensical in its entirety, in that, the issue therein as to voter registration card and the right to vote was raised in the protest which the Elections Commission ignored and caused the Minister of Foreign Affairs to certify upon notification of Mendeh and Worj loh. Additionally, how could the Elections Commission have exercised an

investigative jurisdiction in this case when it is accused of gross abused of power and of exceeding their jurisdiction when it elected *sua sponte* to divest the magistrate of elections of his statutory authority to count the ballots and declare the results in his county/district, a fact and/or accusation which the respondent did not deny (i.e. that it counted the ballots originally in Monrovia). See Elections Law, Section 4.4: Duty of Magistrate of Elections with specific reference to sub section (d) which states: 'Arrange for the pool and the count and the declaration of the results in his county/district'. Page 20. Since this requirement of the law has been violated by members of the Elections Commission, now co-respondent, count four should crumble.

5. And also because petitioners/deponents further answering say that count five of the amended returns, being a misinterpretation of section 4.12 of the Elections Law, should be dismissed, in that neither section 4.12 nor section 4.14 of the Elections Law confer the exercise of original jurisdiction of counting the ballots cast on the co-respondent. Section 4.14 provides that "When the magistrate of elections has received or been notified of the tally of the vote cast at each polling center in accordance with the registrar, prepared after the tally places, he shall total all the votes cast in each constituency and endorse each tally. He shall forward the writ forthwith to the commission, and not later than the date for return, endorse thereon under section 4.3 of this chapter and notify the commission by telegraph or otherwise of the tally." Petitioners/deponents contend strongly that this statutory requirement was never done in the city of Barclayville or in the city of Sasstown. If these statutory requirements were met by the sheriff and/or magistrate of elections as count five sought to aver, why is it that the substantive records, if any, from the magistrate of elections or the sheriff in consonance with sections 4.4, 4.12 and 4.14 of the Elections Law are not attached to respondent's returns, especially since there was sufficient notice of petitioners/deponents accusation made against them that they originally transported the ballots from Barclayville and Sasstown on the same day of the election to Monrovia and counted the ballots at the Centennial Pavilion. Commissioner Toogbabu transported petitioners/deponents, Christie W. Doe's ballot box from Barclayville to Sasstown including Mendeh' s and transported petitioner/deponent Caledonia J. Young's ballot box and that of Worjloh from Sasstown to Monrovia. Petitioners/deponents therefore submit that respondent, having failed to deny the truthfulness of count four of petitioners/ deponents' amended petition but, rather, admitted counting the ballots originally, contrary to Article 83(c) of the Constitution of Liberia, which gave them the only authority to announce the results of the election, prohibition will lie to undo what has been done and grant relief to petitioners/ deponents, there being an abuse of the authority and

power conferred by Article 83(c) of the Constitution. The contention therein raised by respondent in count five is worth no comment. Hence said count should be dismissed.

6. Petitioners/deponents in answering further say that whilst count seven of the returns justified the collection of \$2,000.00 from a candidate as a precondition for the granting of an appeal to the Supreme Court of Liberia, corespondent challenged the raising of this constitutional issue by prohibition without respondent's counsel conducting a thorough research to determine whether such issue can be raised by prohibition or appeal. This Court held in 3 LLR, page 337, in the matter of the *Petition of C. D. B. King former President of Liberia: Prayer for a Writ of Prohibition*, submitted April, 1931, decided April, 1932. At page 343, the Court, speaking through Chief Justice Johnson against the unconstitutional exercise of jurisdiction or excess of jurisdiction, said:

"The author remarks that this doctrine is quite reasonable and in accordance with general principles governing the employment of an extraordinary remedy, for if such remedy as is available in the ordinary course of law does not afford a party the specific relief to which he is entitled or if it does not meet the emergencies of his case, it is no bar to injunction, mandamus or other remedies of an extraordinary character, why, then, such fruitless resort stand in the way of prohibition." *Id.*, at § 1730.

It was also held by the Court that the writ of prohibition shall issue in proper case on the application of the person beneficially interested. 22 R. C. L., § 756. Also see texts at 344-345. Petitioners/deponents submit that Article 20(b) of the Constitution of Liberia states: "The right of an appeal from a judgment, decree, decision or ruling of any Court or administrative board or agency, except the Supreme Court, shall be held inviolable. The Legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal."

Further, Article 21(d) (ii) provides that: "Excessive bail shall not be required, nor excessive fines imposed, nor excessive punishment inflicted." Also Article 84 further provides: "The Legislature shall by law provide penalties for any violations of the relevant provisions of this Chapter, and shall enact laws and regulations in furtherance thereof not later than 1986; provided that such penalties, laws or regulations shall not be inconsistent with any provisions of this Constitution. LIB. CONST. Ch. VIII, Political Parties and Elections.

Petitioners/deponents submit that Chapter VIII on Political Parties and Elections of

the Constitution of Liberia, having restrained, prohibited, inhibited and enjoined the Legislature from enacting inconsistent penalties, laws, or regulations in regard to political parties and elections, the proscription placed on the right of appeal from a judgment of the Elections Commission to the Supreme Court, by section 6.8, recognizance of the Elections Law of Liberia requiring \$5,000.00 from the presidential candidate, \$3,000.00 from the vice presidential candidate and with respect to all other elections \$2,000.00, is unconstitutional and said law should therefore be declared unconstitutional as a relief to the Liberian people, by Your Honours, especially since the commission has termed it bond fees in its returns. Count seven should therefore be dismissed

7. And also because petitioners/deponents say that count eight of the returns is fatally sentimental and should be dismissed. Further to count eight of the returns, the case cited is not analogous to these prohibition proceedings, in that syl. 4 of the opinion of the Supreme Court states that: 'In the case of contested elections, each house is the sole judge of the elections returns and qualifications of its own members; the Court has no jurisdiction over such cases.' Further, the text at page 35 of 3 LLR, states: "Blackstone in his commentaries says: "There is no Court that has power to defeat the intent of the legislature when, couched in such evident and express words, as leave no doubt where it was the intent of the legislature or not" unless, we may add, it infringes some provision of the constitution. Petitioners/ deponents submit that this court has jurisdiction because the intent of the legislature infringes on Article 20(b), Article 21,(ii) and Article 84 of the Constitution of Liberia. Hence count eight is of no legal substance and/or effect. Same should therefore be dismissed.

8. Count nine of the returns should also be dismissed.

9. Petitioners/deponents in further answering the amended returns of co-respondents Mendeh and Worjloh, say that counts one, two, three and four should all be dismissed in their entirety because the issues therein raised have already been addressed by petitioners/deponents in answering corespondent Elections Commission's amended returns and, to do otherwise, would be an endless recitation of what has already been said. Further to count three of the Mendeh and Worjloh's amended returns, petitioner/deponents say that Black's Law Dictionary Fifth Edition at page 54, define affidavit as follows:

"A written or printed declaration of statement of facts, made voluntarily, and confirmed by the oath of affirmation of the party taking it, taken before a person having authority to administer such oath or affirmation. *State v. Knight*, 219 Kan. 863,

549 p. 2nd 1397, 1401." See also Certification; Jurat Verification. Also see the case of George R Fazzah, herein above cited. Prohibition and its Affidavit at Texts 99-100.22 R.C.L. Prohibition § 30, at 30 (1918). Count three should therefore be dismissed.

10. Petitioners/deponents contend that count eight of the amended returns of co-respondents is unintelligible in that Worjloh, not being a registered voter in any constituency within the Republic of Liberia, could not have been a candidate in the elections he allegedly won by fraudulent manipulation of co-respondent Elections Commission. Count four must therefore be dismissed.

11. Count five lacks any substantive issue to comment upon in the amended returns of co-respondent since Senator Seedee conducted an unauthorized caucus obscurely in the name of NDPL and declared his nephew Mendeh a winner, and the only candidate of NDPL in the mayoral election. This action obviously promoted nepotism and abuse of power, which the Constitution of Liberia prohibits. Count five should therefore be dismissed.

12. Petitioners/deponents further say that count six of the co-respondent's amended returns should be dismissed, in that the conduct of the unauthorized caucus held by Senator Seedee in the name of NDPL for the mayoral election when, in fact, the Elections Law was still being debated by the Legislature in July and August of 1986, pushed copetitioner/deponent, Christie W Doe, to the independent camp. Hence, count six should crumble.

13. Petitioners/deponents say that count seven of the corespondents' returns should be dismissed as the averment therein contained had already been addressed in this answering affidavit. Count seven should therefore crumble and the entire amended returns of the respondents be denied with cost against them.

14. Petitioners/deponents submit that counts eight and nine of the respondents' amended returns should be dismissed for they had already been addressed, for the unconstitutionality of a statute can be raised by a petitioner for a writ of prohibition before the Supreme Court of Liberia. The only requirement being that the issue must be squarely and fairly raised, which petitioners/deponents had done. Counts eight and nine should therefore be dismissed. Petitioners/ deponents say that in the case of *David F. Roberts and Cora Roberts, executors of the estate of the late Sandy S. Roberts, Appellants, v. Annie M Roberts, Appellee*, this Court held that: 'Ordinarily where the law-making power distinctly states its design, no place is left for construction.' 36 Cyc., *Statutes, 110-111* (1910); *Roberts and Roberts v. Roberts*, 7 LLR 358 (1942), text at 359-

361. Therefore, to divest the Magistrate of Elections of counting and declaring results of the votes cast in his county/district by members of the Elections Commission is in excess of jurisdiction, usurpation and abuse of power conferred by the Elections Statute approved on September 29, 1986. Petitioners/ deponents therefore pray Your Honours to grant the alternative writ of prohibition and, by it, absolutely declare section 6.8 of the Elections Law unconstitutional to all intents and purposes, and dismiss co-respondents amended returns with cost ruled against respondents."

Having received this petition, the acting Clerk of the Supreme Court was instructed to issue the alternative writ of prohibition to be served on co-respondent Elections Commission et. al. The co-respondent Elections Commission, as well as co-respondent Worjloh, filed their respective returns.

From a perusal of the records, as well as the legal citations that were made by both the petitioners and co-respondents, there is but one salient issue which is germane to decide the entire case: whether or not prohibition will lie to restrain co-respondent Elections Commission and Minister Edward K. Sackor, Minister of Internal Affairs from inducting into office co-respondents J. Nyandeh, co-respondent and George Worjloh as City Mayor of Barclayville and Sasstown, respectively, since petitioners have filed a letter of protest when the election results were announced in keeping with statute, but failed to wait for the expiration date for the hearing of their protest ?

The first thing that comes to mind is the jurisdictional capacity of the Elections Commission. Accordingly, the Court (tribunal) obtains jurisdictional facts described by law. From this we gather that it is a settled principle of law that statutory requirements are mandatory and therefore must be conformed to. "The Supreme Court has no authority to extrapolate the intent of the Legislature beyond the specific wording of a statute; and this limitation is all the more mandatory where the statute in question specifies the only manner in which an act may be done." *George v. Republic*, 14 LLR 158 (1960).

The records reveal that petitioners filed their protest but the elections law requires that the protest be heard within a period of 30 days after filing. "The results of the elections shall be declared by the Elections Commission not later than fifteen days after the casting of ballots. Any party or candidate who complains about the manner in which the elections were conducted or who challenges the results thereof shall have the right to file a complaint with the Elections Commission. Such complaint must be filed not later than seven days after the announcement of the results of the elections." Constitution of Liberia, Article 83(c). "Time schedule. The Commission

upon receipt of the complaint of the contestant shall within thirty (30) days cite the parties conduct an impartial investigation, and render a determination as provided for in paragraph 2 of this section. The determination shall be accompanied by a summary of the investigation and the reason for it. Elections Law, Rev. Code 11:6.2 (1).

We noticed that the 30-day period had not expired when petitioners filed their petition requesting us to restrain respondents from inducting into office the elected mayors, basing their petition on allegation of facts. They have alleged in substance that co-respondents, J. Nyandeh and George Worjloh, had been certificated by the Ministry of Foreign Affairs upon directive of the Elections Commission. They also alleged that co-respondent Sackor was about to induct into office co-respondents Nyandeh and Worjloh. No letter or document was shown from the Elections Commission requesting the Ministry of Internal Affairs to have the elected mayors inducted into office. Concluding, they have further alleged that they wrote co-respondent Elections Commission to assign their protest for hearing. Again, they failed to proffer a copy of said letter to co-respondent Elections Commission. Not only that, petitioners also flatly failed to even proffer a copy of the ballot to show that their names were included on the ballots for the position of mayor during the bi-election in Barclayville and Sasstown, respectively. According to our statute "the burden of proof rests on the party who alleges a fact..." Civil Procedure Law, Rev. Code 1: 25.5(i). We do not see our way clear for the issuance of the writ of prohibition.

"If the inferior court or tribunal has jurisdiction of both the subject matter and the person, prohibition will not lie to correct errors of law or fact for which there is an adequate remedy by appeal or otherwise, whether such errors are merely apprehended or have been actually committed". *Fazṣah v. National Economic Committee et al.*, 8 LLR 85 (1943), text at 90; 22 R. C. L., at 23 & 24. It is not the province of courts to add or subtract from a legislation where the meaning is plain. *Roberts and Roberts v. Roberts*, 7 LLR 358 (1942), and *George v. Republic*, 14 LLR 158 (1960). This Court has also held that "...[W]here the legislature has made no exception to the positive terms of a statute, the presumption is that it intended to make none, and it is not the province of a court to introduce an exception by construction..." *Roberts and Roberts v. Roberts*, 7 LLR 358 (1942), text at 368

In view of the foregoing facts and law controlling, we are of the opinion that prohibition will not lie in the instant case. The alternative writ is therefore quashed and the petition denied with costs against petitioners. And it is so ordered.

Petition denied.