

GOODMAN SHIPPING AND STEVEDORING CORPORATION
(GOSSCROP), by and thru its Liberian Owners and Managing Director, EUGENE
D. M. FREEMAN, Petitioner, v. **NATIONAL PORT AUTHORITY**, by and thru
its Managing Director, A. LAMI KROMAH, Respondent.

MANDAMUS PROCEEDINGS.

Heard: May 18, 1994. Decided: September 22, 1994.

1. The prime object in the construction of laws creating and empowering administrative agencies is to ascertain and carry out the intent of the legislature.
2. Courts have no power to legislate, and may not amend an act directly or indirectly by construction, or interpret that which has no need of interpretation. It is for the court to ascertain, but neither to add nor subtract, delete or distort.
3. It is the judicial function to apply statutes on the basis of what the legislature has written, not what the legislature might have written.
4. A statute must speak for itself and be construed according to its own terms except where uncertainty and ambiguity appear, in which case the history and purpose of the legislation, and other relevant considerations, as well as its terms, may determine the meaning of a statutory provision. When once ascertained, the intention of the legislature will be given effect, even though it may not be consistent with the strict letter of the statute.
5. In construing the terms of a statute bestowing powers on an administrative agency which statute is open to different possible construction, the courts must select and apply the one that best comports with the genius of our institutions and is therefore most likely to have been the construction intended by the law-making power.
6. The Act creating the National Port Authority did not authorize the NPA to limit the number of stevedoring companies in Liberia.
7. Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty.
8. Mandamus is a summary and extraordinary writ issued in the sound discretion of the court. Owing to the drastic character of the writ, the law has properly created safeguards around it and regard should be had for the urgency which calls for the exercise of discretion, the interests of the public and of a third person, the nature and

extent of the wrong or injury which would follow upon a refusal of the writ, and the promotion of substantial justice.

9. A single Justice cannot determine constitutional issues.

10. Mandamus is one of five remedial writs which a Justice in Chambers may order issued; it commands performance of a legitimate duty imposed by law, performance of which must have being neglected or refused by a public officer responsible for such performance.

11. Mandamus is an action of judicial proceeding of a civil nature, extraordinary in the sense that it can be maintained only when there is no other adequate remedy.

12. Where denial of a license or permit is based on a ground which infringes upon the appellant's constitutional rights, mandamus will lie to compel the authorities to grant it.

13. Where all the requirements of law preliminary to acquiring a license to conduct a business have been complied with, the issuance of such license, if refused, may be compelled by mandamus, since such duty is merely ministerial

14. Where a licensing authority has refused a license to one whose application meets all requirements, the burden of showing that the licensing authority has not abused its discretion rests upon the licensing authority.

Petitioner in these proceedings is a shipping and stevedoring corporation 100% owned by Liberian nationals and duly existing under the Laws of the Republic of Liberia by virtue of the filing of its articles of incorporation with the Ministry of Foreign Affairs, registration with the Ministry of Commerce, and certification by the Ministry of Transport. According to the records, petitioner applied to the Management of NPA for a license to operate stevedoring services at the ports of Liberia, but the Management of NPA refused to grant the petitioner the license on grounds that the number of stevedoring companies authorized to operate at the port is fixed at 7. Petitioner, contending that the refusal of the NPA to grant it a license is a violation of its constitutional right to equal opportunity in the economic life of Liberia, applied to the Justice in Chambers of the Supreme Court for a writ of mandamus to compel NPA to grant it the license.

The respondent admitted that it refused to grant petitioner the license as alleged in the petition, but respectfully requested the Court to take judicial notice of the Act of Legislature creating the National Port Authority which grants the NPA the power not only to operate all ports of Liberia, but also to exercise all of the functions and responsibilities of all Government's Departments and Ministries and Agencies concerning the operation and supervision of the ports of Liberia; and towards this end, respondent has been given the power to and must exercise vast amount of discretion in carrying out the official duty. Respondent further contended that in as much as its Board of Directors has to exercise its discretion and judgment in order to prepare, plan, manage, operate and maintain the Ports of Liberia, mandamus will not lie for our Courts have always held that mandamus is not the proper writ to compel someone to exercise its discretion.

The Supreme Court, upon review of the Acts creating the NPA, as well as the amendments thereto, observed that no where in the law was it found that the NPA had the authority to limit stevedoring companies operating in Liberia to only seven (7). The Court held that the Legislature never intended to give to the National Port Authority in the Act creating the NPA the power to limit the number of stevedoring companies that may be recognized and granted license to do stevedoring business in Liberia, reasoning that to do so would be to legislate which power belongs to the National Legislature of Liberia.

With respect to the issue that the action of the Management of NPA violated the Constitution of Liberia, the Supreme Court held that since the Act creating the National Port Authority did not limit the number of stevedoring companies in Liberia, and the Constitution of Liberia ensures the participation of Liberian citizens in the economy of the nation under conditions of equality, the action of the respondent in denying the petitioner recognition and a license to conduct stevedoring business in Liberia, violates Article 7 of the Constitution of Liberia(1986). With respect to whether or not mandamus would lie in the instant case to compel the Management of the National Port Authority to recognize and grant license to the petitioner to conduct stevedoring business in the ports of the Republic of Liberia, the Supreme Court held that where denial of a license or permit is based on a ground which infringes upon the appellant's constitutional rights, mandamus will lie to compel the authorities to grant it. The Court also held that where all the requirements of law preliminary to acquiring a license to conduct a business have been complied with, the issuance of such license, if refused, may be compelled by mandamus, since such duty is merely ministerial, and that the burden of showing that the licensing authority has not abused its discretion in refusing a license to one whose application

meets all requirements, rests upon the respondent. Accordingly, the petition for mandamus was granted, the peremptory writ ordered issued, and the respondent NPA ordered to grant recognition and license to the petitioner to conduct stevedoring business in the Republic of Liberia.

Eugene D. M Freeman, appeared for petitioner. *James H R. Cooper, Jr.* appeared for respondent.

MR. JUSTICE SMALLWOOD delivered the opinion of the Court.

This petition for a writ of mandamus, filed in the Chambers of Mr. Justice Hne, the Justice presiding in Chambers, was subsequently forwarded it to this Court *en banc* since the petition raised constitutional issues which, under our law, a single Justice cannot determine. *Fazzah v. National Economy Committee*, 8 LLR 85 (1943).

The petitioner in these mandamus proceedings filed an eight-count petition and for the benefit of this opinion, we shall consider those counts we deem necessary for the final determination of these proceedings, which are:

1. Because your petitioner says that she is a shipping and stevedoring corporation 100% owned by Liberian Nationals and duly existing under the Laws of the Republic of Liberia by filing of articles of incorporation with the Ministry of Foreign Affairs on January 14, 1994. Attached as exhibit P/1 is copy of said articles of incorporation.
2. That subsequent to the filing of the articles of incorporation, your petitioner Goodman Shipping and Stevedoring Corporation, was duly registered with the Ministry of Commerce having been screened by the Ministry of Transport. Attached and marked in bulk as exhibit P/2 are copies of petitioner's certificate of registration issued by the Ministry of Commerce dated January 19 , 1994, authorizing petitioner to engage in shipping and stevedoring business in Monrovia, Grand Bassa, Sinoe and Maryland counties, respectively, as well as a letter from the Shipping Director Ministry of Transport to the Port Manager informing him that your petitioner is duly registered with said Ministry, and, as such, should be accorded recognition by the Management of National Port Authority.
3. That your petitioner also wrote a letter to the port manager at the Freeport of Monrovia., transmitting copies of petitioner's articles of incorporation and certificates of registration for the perusal of respondent management. A letter from the respondent under the signature of Mr. Sam Lynch, port manager dated January 25,

1994 was accordingly written to petitioner's managing director, Mr. Eugene D. M. Freeman informing him that the NPA only recognizes your petitioner as a shipping agency. Attached and marked exhibit P/3 is the letter from Mr. Sam K. Lynch referred to herein.

4. That upon receiving the respondent's letter of January 25, 1994 your petitioner, through its managing director, Mr. Eugene D. M. Freeman, on the same day communicated with the management of NPA, through the port manager, Mr. Sam K. Lynch, informing him that your petitioner was interested in performing stevedoring services and as such requested the respondent to furnish petitioner a list of the requirements for obtaining stevedoring license, since indeed stevedoring is a business restricted only to Liberian participation and your petitioner is a 100% Liberian owned company and consequently eligible, like any other Liberian stevedoring company, to perform stevedoring services at the Freeport of Monrovia or at any other seaports in the Republic of Liberia. Unfortunately, up to and including the date of the filing of this petition, the respondent has not replied petitioners said letter, neither has the requirement for obtaining stevedoring license, as requested, been furnished the petitioner. Attached for your Honours perusal is copy of petitioner's letter of January 25, 1994, referred to supra, and marked Exhibit P/4.

5. Your petitioner says that she has been contracted by a major shipping agency by the name of Getma Liberia Limited to perform stevedoring services on all vessels under the Agency of Getma. Attached and marked in bulk as exhibit P/5 are copies of a letter from Getma Liberia Limited, under the signature of Mr. Jean-Louis Peyre, Managing Director of Getma Liberia Limited, dated January 19, 1994 informing respondent that petitioner is responsible for its stevedoring services, and respondent response thereto.

6. That because of the refusal and failure of the management of National Port Authority to issue stevedoring license to your humble petitioner, it has not been able to perform stevedoring services for Getma Liberia Limited. Instead, whenever a vessel calls at the Port under the agency of Getma, petitioner is constrained to sub-contract the performance of stevedoring services on the vessel to another stevedoring company which, in essence, causes loss of income to petitioner. A case in point is the Vessel "Corpus Christi" on which petitioner could not directly perform stevedoring services and had to contract same to McLasa. Presently, another vessel, "Marie Cecelia", is expected at the Port of Monrovia under the Agency of Getma, but because the respondent has not recognized petitioner as a stevedoring company, it has contacted another company to perform the stevedoring on the Vessel". Attached

is a letter from Belco Liberia Company, dated March 16, 1994, accepting to perform stevedoring services for and on behalf of your humble petitioner. This again represents a loss of income to your petitioner, marked exhibit P/6.

7. That stevedoring being a business exclusively reserved for Liberians and GOSSCROP being a 100% owed Liberian stevedoring company, it should not be deprived of performing stevedoring services at the Freeport of Monrovia. The petitioner is duly recognized by both Ministry of Commerce and the Ministry of Transport which are the legal agencies of Government responsible for registration of business of this nature. That in keeping with the Act of the National Legislature dated and approved August 25, 1987 establishing the Ministry of Transport, the Ministry of Transport is the only agency authorized to regulate shipping and maritime activities in the Republic of Liberia and that said Transport Ministry has not come out with any regulation limiting the number of stevedoring companies that can operate in the Republic of Liberia and so any decision taken by the National Port Authority and its Board of Directors is *void ab initio* and of no effect. Attached for the case of reference is exhibit P/7, copy of the said Act for your Honour's perusal, section 37.3(1) of which states:

"To regulate the use of ports and harbors, domestic airports and vehicle parking lots as they affect shipping, civil aviation, and motor and rail transport".

The Management of NPA, as well as its Board of Directors, have no authority whatsoever to debar or deprive a duly registered and certificated stevedoring company from operating in the Republic of Liberia or at any seaport for that matter. The unjustified refusal of the respondent management to allow the petitioner to operate as a stevedoring company is a grand scheme concocted by some unscrupulous and selfish shipping and stevedoring entities who believe that they alone should monopolize the stevedoring business in Liberia, in clear defiance of government's policy of a free enterprise system, and as such are doing everything possible, through the Management of NPA and its Board of Directors, to frustrate any potential stevedoring corporation from participating in this line of business. But it must be clearly stated and understood that Liberia is a free enterprise country and any Liberian, whether great or small, has a constitutional right to lawfully engage in any and every aspect of the commerce and economy of the Republic of Liberia, and wherefore the National Port Authority has no right to stop your petitioner from engaging in the stevedoring business. Chapter II Articles 4,7 and 8 of the Constitution of Liberia provides equal opportunities for every Liberian citizen in economic life of Liberia. These provisions have been violated by respondent.

The respondent, for its part, filed a thirteen-count returns and we shall consider those counts necessary for the determination of these proceedings and they are:

1. That as to count 1 of the petition, respondent does not deny that petitioner is a corporation duly formed under the Liberian Business Corporation Act of 1977. In this respect, respondent submits that all Liberian Corporations are merely artificial persons who are duty bound to operate according to the laws of Liberia. Further in this respect, Section 2.1 of the Business Corporation Act provides that a corporation may engage in "lawful business" only. Section 2.2 of the same Act provides that every Liberian Corporation shall act, "subject to any limitation provided in this Act or any other statutes of Liberia.

2. Further to count 1 of the petition, respondent brings to the attention of the court that since mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty Civil Procedure Law, Rev. Code 1:16.21, petitioner by praying for issuance of this writ has admitted to Court that respondent is the proper and official agency of government responsible and charged under law, to undertake the official duty of operating all Ports of Liberia, including the regulation of stevedoring at such ports.

3. Further to count 1 of the petition, respondent respectfully requests Court to take judicial notice of the Act of Legislature creating the National Port Authority, entitled "An Act Repealing and Adopting Chapter Six of the Public Authorities Law" and that amendment thereto, copy of which is attached hereto marked exhibit R/1 and R/2 respectively, particularly Section 53 thereof quoted below:

53. PURPOSE AND OBJECTIVE: The National Port Authority is hereby established and created to plan, design, construct and shall engage in the development, maintenance and operation of all public ports within Liberia subject to the article and principles enumerated herein and such other and further powers as may be vested in it. To carry out its function, the NPA is also given the greatest degree of financial and administrative autonomy. It shall manage, operate, maintain, develop and construct all ports within the Republic, and all funds for service which NPA renders and provides shall be under its sole and complete control. In addition the NPA shall assume responsibilities and functions of the various government departments with respect to the operation and supervision of ports in the Republic of Liberia.

Respondent submits that pursuant to the provisions above mentioned, including the power enumerated in section 54 of the Act of Legislature creating the NPA, respondent has the power, not only to operate all ports of Liberia, but also to exercise all of the functions and responsibilities of all departments, ministries and agencies of government concerning the operation and supervision of the ports of Liberia; and towards this end, the Ministers of Commerce Industry and Transportation, of Finance, and of Planning and Economic Affairs are permanent ex-officio members of the board of directors of respondent.

5. Responding to Count 3 of the petition, respondent admits that it denied granting to petitioner license or recognition to operate in the Port of Monrovia by offering and undertaking stevedoring services.

8. With regards to Count 7 of the petition, respondent says that petitioner having admitted in its petition that respondent is the agency of government responsible to carry out the official duty of ports of Liberia, and this by its very prayer for mandamus to be issued against respondent, petitioner cannot herein at the same time challenge the authority of respondent to license stevedoring companies in the ports and petitioner should be estopped from so doing; and this count 7 of the petition in so far as it attempts to challenge the authority of respondent in this respect should therefore be disregarded by Court. Petitioner must have overlooked the fact that respondent has been given the power to and must exercise vast amount of discretion in carrying out the official duty.

9. Further to count 7 of the petition, respondent submits that pursuant to a statutory authority and in confirmation of the same authority that previously had been exercised by the Monrovia Port Management Company and the Freeport of Monrovia, as well as in keeping with Government Policy and mandate, the Board of Directors of respondent, after the formation of respondent, issued and authorized the issuance of Administrative Circular No. 13, dated 6/19/75, "Criteria for Stevedoring in the Ports, dated December 1973, and Rules Promulgated by NPA" dated 1976, all of which are attached hereto and marked as exhibits R/4, R/5 and R/6, by which promulgations issued pursuant to its authority and with the agreement of Government to number stevedoring companies permitted to operate in the Ports is limited, subject to approval of the Board of Directors of the National Port Authority. Respondent in this respect brings to attention of the Court that as late as 1991 the Board of Directors of the National Port Authority and the Interim Government of National Unity recognized and confirmed these rules when dealing with a company that desired to engage in stevedoring activities in the ports of Liberia.

11. That in as much as respondent's Board of Directors has to exercise its discretion and judgment in order to prepare, plan, manage, operate and maintain the ports of Liberia, mandamus will not lie, for our courts have always held that mandamus is not the proper writ to compel someone to exercise its discretion.

What we are called upon to decide in these mandamus proceedings is to determine whether or not the refusal of the management of the National Port Authority to grant a permit or license to the petitioner, Goodman Shipping and Stevedoring Corporation to engage in stevedoring business in the Republic of Liberia violates any portion of the Constitution of Liberia? And whether or not mandamus would lie in the instant case?

The petitioner alleges in counts 1 and 2 of the petition that it is a shipping and stevedoring corporation, 100% owned by Liberian nationals, and duly existing under the laws of the Republic of Liberia by the filing of articles of incorporation with the Ministry of Foreign Affairs on January 14, 1994. That subsequent to the filing of the articles of incorporation, the petitioner, Goodman Shipping and Stevedoring Corporation, was duly registered with the Ministry of Commerce, having been screened by the Ministry of Transport. Copies of the certificate of Registration issued by the Ministry of Commerce and Industry, dated January 19, 1994, authorizing the petitioner to engage in shipping and stevedoring business in Monrovia, Grand Bassa, Sinoe and Maryland Counties and a letter from the Shipping Director Ministry of Transport to the port manager informing him that the petitioner is duly registered with the Ministry and as such recognition should be accorded the petitioner by the Management of the National Port Authority, were proferted.

The respondent traversed count 1 of the petition in its counts 1, 2, and 3. In count 1 of the returns respondent says that it does not deny that the petitioner is a corporation duly formed under the Liberian Business Corporation Act of 1977 but contends that all Liberian corporations are merely artificial persons who are bound to operate according to the laws of Liberia. Respondent further contends that the Act also provides that every Liberian corporation shall act "subject to any limitation provided in this Act or any other statutes of Liberia". In count 2 of the returns, respondent alleges that because petitioner prays for the issuance of the writ of mandamus petitioner has thereby admitted that the respondent is the proper official agency of Government responsible and charged under the law to undertake the operation of all ports in Liberia. In count 3 of the returns, the respondent asked the court to take judicial notice of the Act creating the National Port Authority with

special reference to section 53. In count 4, respondent recognizes and admits that the petitioner has been formed and duly registered as the law directs but contends that the same laws limit its activities by other laws of Liberia.

The petition alleges in count 3 that the petitioner wrote to respondent transmitting copies of the articles of incorporation and certificate of registration, and in response the port manager wrote informing petitioner that the National Port Authority only recognizes petitioner as a shipping agency. Respondent in its count 5 of the returns admitted refusing to grant license and recognition to petitioner to undertake stevedoring services within Liberia.

On the 25th day of January A. D. 1994, the managing director of Goodman Shipping & Stevedoring Corporation wrote the following letter to the port manager:

"January 25, 1994
Mr. Sam Karmoh Lynch
Port Manager
National Port Authority
Monrovia, Liberia

Dear Mr. Lynch:

We hereby acknowledge with thanks your letter confirming the recognition by the National Port Authority of Goodman Shipping and Stevedoring Corporation as a Shipping Agency in Liberia.

As we are also interested in performing stevedoring services, we would be grateful were you to kindly provide us with the requirement for obtaining Stevedoring license.

Your usual kind cooperation is always appreciated.

Cordial regards,

Very truly yours,

Sgd: Eugene D. M. Freeman

(t) Eugene D. M. Freeman

The port manager replied as follows:

"8-P .M.-42/017/' 946 January 31, 1994

Mr. Eugene D. M. Freeman

Managing Director

Goodman Shipping & Stevedoring Corp.
P.O. Box 9079
Monrovia, Liberia

Dear Mr. Freeman:

Acknowledgment is made of your January 25, 1994 letter in which you have acknowledged with thanks our letter confirming our recognition of Goodman Shipping & Stevedoring Corporation in Liberia, and requesting that we kindly provide you with the requirements for obtaining a Stevedoring license.

We wish to inform you that in keeping with the rules promulgated by the National Port Authority to govern Stevedoring activities in ports of the National Port Authority, the number of stevedoring companies have been limited to seven (7); Intraco being dropped due to its inability to cope with requirements; and Belco serving only relief, ECOMOG and ECOMOG related vessels.

We have verbally informed established shipping agencies who have applied for stevedoring licenses from NPA to operate under the license of a licensed stevedoring agency over a period of six (6) months to a year. After which, an assessment of their operational activities, (i.e. number of vessels, tonnages handled, efficiency of operation, etc.) would be made to the Board of Directors through management for possible consideration if a vacancy exists and if such agency would have demonstrated that a license would be extended it by the policy making body of the National Port Authority.

Kind regards.

Very truly yours,

NATIONAL PORT AUTHORITY

Sgd: S. K. Lynch

(t) S. K. Lynch

PORT MANAGER

The below letter is also found in the case file.

"8-P.M./SL-19/024/'946 March 18, 1994

Mr. H.C. Browne

General Manager

Belco - Liberia Co.

Monrovia, Liberia

Dear Mr. Browne:

Re: Stevedoring of M/V "Marie Cecelia" ETA-22nd -23rd 1994.

Acknowledgment is made of your letter of the 16th Belco/ADM/842/' 94 relative to stevedoring services on the M/V "Marie Cecelia" ETA Monrovia 22nd – 23rd March.

You have indicated Belco will supervise the unloading of the barge. We expect Belco to perform the stevedoring services on said vessel, not to only supervise. Who will you be supervising? Please clarify your position on this vessel. Remember, Belco may service relief, ECOMOG and ECOMOG related vessels.

Goodman Shipping & Stevedoring Corporation is a shipping agency as GETMA is, and as such is not authorized to perform stevedoring services on vessels at the Freeport. It is my understanding that Belco would carry out the stevedoring services of the expected M/V "Marie Cecelia".

Kind regards.

Very truly yours,

NATIONAL PORT AUTHORITY

Sgd: S. K. Lynch

(t) S. K. Lynch

PORT MANAGER

S. K. L.:rl

cc: Operations Manager

Harbor Master

GETMA Shipping Agency

Goodman Shipping & Stevedoring

On the 27th day of December 1973, the National Port Authority issued its first regulation governing the activities of stevedoring based on a resolution of the Board of Directors in a meeting held July 19, 1973 which resolution reads as follows: "It was resolved that NPA informs government that stevedoring services at the various ports should be provided on a competitive bases; and that the NPA would have the sole right to determine which companies would be permitted to provide such service after evaluation based upon certain objective standards"

The regulation which developed out of this resolution as the criteria for stevedoring at NPA Ports, reads as follows:

- 1) The stevedoring must be registered with the Ministry of Commerce, Industry and Transportation and possess a government license in accordance with the Revenue and Finance Laws of the Republic of Liberia, and obtain a permit from the NPA.
- 2) The stevedore must possess skill and experienced knowhow for stevedoring. The NPA shall determine the extent of required knowhow.
- 3) The stevedore must have a regular business headquarters in Liberia to facilitate easy contact.
- 4) The stevedore is to take out with a recognized insurance company in Liberia third-party coverage considered adequate by the NPA, of not less than \$100,000.
- 5) The stevedore shall show evidence of available working capital to cover three (3) months operation or a minimum of \$50,000, whichever of the two is the greater.
- 6) The stevedore must provide adequate security aboard its vessels to guard against pilferage, smuggling, etc.
- 7) The stevedore is to ensure that his activities will in no way interfere with the normal operations of the ports. In the event of such impending interference or act that may lead to labor unrest or other unwarranted situations, the NPA will have the right to intervene since such activities would have a direct bearing on the smooth, efficient and orderly operations at the port.
- 8) The stevedore must adhere strictly to the rules and regulations of the NPA.
- 9) The stevedore shall, effective 6, enter into an agreement with the NPA and shall pay to the NPA a contractual fee to be specified in the agreement. The initial term of agreement shall be for five (5) years with the right of extension, appropriate by the NPA.
- 10) The stevedore must undertake to perform stevedoring services at any port as required and directed by the National Port Authority".

This regulation is signed by George E. Tubman as managing director of NPA. Again in the year 1975 the Port issued Administrative Circular No. 3 - Criteria for Stevedoring at NPA ports. For the benefit of this opinion we shall quote certain of the paragraphs as follows:

"The stevedore must be registered with the Ministry of Commerce, Industry & Transportation, possess a Government license in keeping with the Revenue and Finance Laws of the Republic of Liberia, and have a regular place of business to facilitate easy contact.

"The stevedore must adhere strictly to the rules, regulations and tariffs of the NPA and must ensure that his activities in no way interfere with the normal operations of the Port(s). In the event of impending or actual interference or act that may lead to labor unrest or other unwarranted situations, the NPA shall have the right to intervene since such situation(s) would have a direct bearing upon the smooth, efficient and orderly operation at the Port(s).

Pursuant to the directives of Government that stevedoring in all Liberian Ports be Liberianized and in keeping with the resolution of the board of directors setting forth policy measures for implementation of these directives, the following is hereby instituted to regulate the conduct of stevedoring in all Liberian seaports and the implementation of the Liberianization policy of government in the stevedoring industry.

- a) Total Liberianization be accomplished in five (5) years from July 1, 1974.
- b) All new firms must show evidence of 100% Liberian ownership to qualify as licensed stevedore. The existing expatriate firms doing stevedoring must spin off their stevedoring operation from their other business activities and must have Liberian licensed stevedore participate in their stevedoring operation as per the schedule set out in _____.
- c) As of January 1 , 1979, licenses will be granted only to Liberian Firms which must at that time show evidence that the voting shares or other forms of control are held by Liberian one hundred (100%) per cent.
- d) That a ceiling of five (5) companies is hereby established for the conduct of stevedoring, to take effect from January 1, 1979.

"Upon fulfillment of the above criteria, the stevedore shall enter into a formal contract with the NPA for the conduct of stevedoring at NPA Port(s).

This document is also signed by George E. Tubman, managing director.

Under the managing directorship of Mr. Moses P. Harris, Jr. he too, on the 6th of August, A. D. 1976, promulgated yet another set of rules for the governance of stevedoring activities in the ports of the National Port Authority. There are ten (10) rules but we deem it necessary to include only 8, 9 and 10 in this opinion and they are:

8. Stevedoring companies must be equipped and prepared to render stevedoring services in the various ports of the NPA where stevedoring services may be required, either at the request of the NPA or upon the initiative of the stevedoring companies.

9. Stevedoring companies must meet all licensing and registration requirements of the Government of Liberia before being licensed by NPA to operate in NPA's ports.

10. NPA reserves the right, as a matter of policy, to limit the overall number of stevedoring companies which may operate in NPA's ports. Consequently, the fulfillment of the requisite organizational and governmental licensing requirements by a stevedoring company will not automatically entitle it to a license from the NPA to operate in NPA's ports.

We have read all of the rules and administrative circular which outline the criteria for stevedoring at the ports of the National Port Authority (NPA) submitted by counsel of the National Port Authority and we have been unable to find any which places a limit of 7 stevedoring companies to be established in the Republic of Liberia except that of 1975 promulgated during the administration of Mr. George E. Tubman, as managing director of NPA, which places a ceiling of 5 stevedoring companies to conduct business at the NPA.

We have also read through the Act creating the NPA as well as the amendments thereto. None of the powers given the NPA under those Acts can be interpreted as placing a ceiling of seven (7) stevedoring companies to be established within the Republic of Liberia to conduct stevedoring business at seaports of NPA. The only document found which places a maximum of seven (7) stevedoring companies that may be granted licenses to conduct stevedoring business at the NPA at any one time is the letter of January 31, 1994 written to the managing director of the petitioner, Mr. Eugene D. M. Freeman, signed by the port manager, as well as the letter of March 22, 1994, addressed to Mr. Jean-Louis Peyre, which lists only 6 stevedoring companies which are presently recognized by the NPA. This letter is also signed by the port manager, Mr. S. Karmoh Lynch. Mr. Lynch's letter of March 22, 1994 lists six (6)

stevedoring companies which he said are the only ones recognized by the NPA and they are with the opening sentence:

Stevedoring services on the above mentioned vessel may be done only by one of the following six(6) recognized stevedoring companies;

- 1.Stevor - Denco Shipping Lines
- 2.National Stevedoring & Marine Corp. (UMARCO)
- 3.Liberia Maritime & Stevedoring Co. (SCANSHIP)
- 4.Camer Stevedoring Corp. (CAMER)
- 5.MCLASA Stevedoring & Associates, Inc. (MCLASA)
- 6.Liberia Shipping & Stevedoring Co. (MSG)

The above letter is in response to one written to the port manager, dated March 17, 1994, and signed by Jean-Louis Peyre, managing director of GETMA Liberia Limited, in which he said:

"Our Company GETMA Liberia Limited recognized as a Shipping Agency in the Freeport of Monrovia wish to confirm that Messrs Goodman Shipping and Stevedoring Company will perform stevedoring services on board of all vessels under our agency at all Liberian ports.

Messrs Goodman Shipping & Stevedoring Company having yet obtained a stevedoring license, will negotiate with recognized stevedoring companies listed in your letter of March 8, 1994 with reference 8-PM/SM-19023-'94. Goodman Shipping having already proven their ability, honesty, and professionalism during the wonderful good turn around of the M. V. "CORPUS CHRISTI" which discharged 10,016 metric tonnes of rice under their future license account. GETMA is expecting on March 23, 1994 a barge, the M. V. 'MARIE CECELIA" to discharge 13,050 metric tonnes (rice/comsoya/vet. Oil) and that barge will be performed by Messrs Goodman Shipping & Stevedoring Company, under Belco Liberia Company stevedoring license (please find herewith attached Belco' s letters). GETMA as an officially recognized agent of vessels guaranteed the payments of all NPA invoices as regard to ... (marine charge, NPA overtime and stevedoring levy)".

Despite the respondent's letter of January 31, 1994, which places a limit of seven (7) stevedoring companies that may be recognized and licensed at any one time to conduct stevedoring business in the Republic of Liberia and which letter also stated that one of the seven (7), INTRACO, had been dropped due to its inability to cope with the requirements, and respondent's letter of March 22, 1994 that listed only six (6) recognized stevedoring companies now conducting stevedoring business in Liberia, the respondent still refused to recognize and grant license to the petitioner, Goodman Shipping and Stevedoring Corporation, even though the petitioner had been so highly recommended.

During the argument of the mandamus proceedings before this court, the respondent's counsel was asked a question from the Bench as to why it had placed limitation on the number of stevedoring to be recognized and licensed at any one time? His answer was to prevent over crowdedness at the Port. When asked how many ships can berth at the pier at any one time? His answer was only three (3) ships because ECOMOG is occupying a portion of the pier. That means that only three (3) of the stevedoring companies would have stevedores working on the three ships at any one time and not seven (7). It was made clear that the stevedoring companies do not have their offices located within the area of the Port. It was also stated by the petitioner and not denied by respondent that the stevedore when assigned to work on a ship are issued badges and are taken away at the end of their service on the ship and so they have no further business to be within the area of the Port.

Respondent's counsel argued strongly and emphasized that the Act creating the National Port Authority gave it the power to regulate, maintain and control all of the ports of Liberia and it is in the exercise of these powers that gave the management of the NPA the power to limit the number of stevedoring companies that may be recognized and licensed to conduct business at any one time in the ports of Liberia.

The powers granted the NPA under the Act creating the NPA, as well as amendment thereto are:

Section 53: "PURPOSE AND OBJECTIVE: - The National Port Authority is hereby established and created to plan, design, construct and shall engage in the development, maintenance and operation of all public ports within Liberia subject to the articles and principles enumerated herein and such other and further powers as may be vested in it. To carry out its function, the NPA is also given the greatest degree of financial and administrative autonomy. It shall manage, operate, maintain,

develop and construct all ports within the Republic and all funds for services which NPA renders and provides, shall be under its complete control. In addition the NPA shall assume the responsibilities and functions of the various Government Departments with respect to the operation and supervision of Ports in the Republic of Liberia.

Section 54: "POWERS OF THE NPA: - In addition to and not in limitation of the powers conferred upon public authority by Chapter 1 of this Title, the National Port Authority shall have the following powers:

1) To institute a comprehensive system of tariffs and charges for the services and facilities it provides which shall be reasonably related to the cost of providing such services and facilities.

a) NPA shall levy and collect said tariffs and charges without granting any exemption therefrom or reduction thereto to any person, or department or agency of the government

b) NPA shall ensure that the rates fixed for said tariffs and charges are adequate to provide sufficient revenue to cover operating expenses, including adequate maintenance and depreciation, interest payments on borrowing if any; and to provide cash funds for debt amortization to such borrowing; and to provide adequate working capital and to set aside reasonable reserve for contingencies and for financing a reasonable part of the cost for future expansion including replacement of assets.

2) To enter into contracts, sue and be sued, and to assign the provision of port services and the use of facilities.

3a) To acquire any property or any interest therein or any easement over any immovable property, whether by way of purchase, lease, exchange or otherwise, for the purpose of NPA.

b) Where any immovable property, not being government owned, is needed for the purpose of NPA and cannot be acquired by agreement, NPA may request, and the government may, if it thinks fit, direct the acquisition of such property and in such case, such property may be acquired in accordance with the provisions of any written law relating to the acquisition of land for a public purpose and any declaration under any such written law that such land is so needed may be notwithstanding that com-

pensation is to be paid out of the funds of NPA, such declaration shall have effect as if it were a declaration that such land is needed for a public purpose made in accordance with such written law.

c) NPA shall not, without the prior approval of the government, sell, exchange or otherwise dispose of any of its lands or other immovables or any interest therein.

4) To initiate new services or discontinue existing services as might be required in the exercise of its function.

5) Reclamation, remove wrecks, operate its own security force which will have adequate police powers to enforce compliance with its regulations and by-laws.

6) To have its own Harbor Master at each Port who shall direct and regulate the movement of vessels within said port.

7) To have its own by-laws and regulations.

8) To apply for, purchase, or other means acquire, hold, sell, assign, lease, mortgage, or otherwise dispose of and protect, prolong and renew whether in the Republic of Liberia or elsewhere any and all patents, patent rights, licenses, protections, concessions, trade marks and trade names to use and turn to account and to manufacture under grant license experimenting upon and testing and improving or seeking to improve any patents, inventions, or rights which the NPA may acquire or propose to acquire.

As in the case of any other law, the prime object in the construction of laws creating and empowering administrative agencies is to ascertain and carry out the intent of the legislature. The Courts themselves have no power to legislate, and may not amend an act directly or indirectly by construction, or interpret that which has no need of interpretation. It is for the court to ascertain neither to add nor subtract, delete or distort.

It is the judicial function to apply statutes on the basis of what the legislature has written, not what the legislature might have written. A statute must speak for itself and be construed according to its own terms except where uncertainty and ambiguity appear, in which case the history and purpose of the legislation, and other relevant considerations, as well as its terms, may determine the meaning of a statutory

provision. When once ascertained, the intention of the legislature will be given effect, even though it may not be consistent with the strict letter of the statute.

In construing the terms of a statute bestowing powers on an administrative agency, which statute is open to different possible construction, the courts must select and apply the one best comports with the genius of our institutions and is therefore most likely to have been the construction intended by the law-making power. 1 AM. JUR.2d, *Administrative Law*, § 37 pp. 839 -840.

Rules and regulations of administrative agencies are of different classes. Otherwise stated, administrative agencies have various kinds of rule-making powers and, for one purpose or another, these may be viewed under different aspects, such as the source of the authority to make the rules, the purpose of the rules, the process involved in making the rules, the extent of discretion involved, and the legal effect given the rules. *Id.*, § 94 pp. 892.

It is therefore our opinion that the Legislature never intended to give to the National Port Authority in the Act creating the NPA the power to limit the number of stevedoring companies that may be recognized and granted license to do stevedoring business in Liberia. We hold that to do so would be to legislate, which power belongs to the National Legislature of Liberia. There is nothing in any of the Acts that can be so interpreted.

Let us now consider the issue raised in count seven (7) of the petition that the action of the management of NPA violates the Constitution of Liberia.

Article 7 of the Constitution provides:

"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." LIB. CONST. Art.7 (1986).

It is the opinion of this court that the Act creating the National Port Authority did not limit the number of stevedoring companies in Liberia and the Constitution of Liberia ensures the participation of Liberian citizens under conditions of equality so as to advance the general welfare of the Liberian people and the economic

development of Liberia. Therefore the action of the respondent in denying the petitioner recognition and a license to conduct stevedoring business in Liberia violates Article 7 of the Constitution of Liberia.

Let us now turn our attention to the issue as to whether or not mandamus would lie in the instant case to compel the management of the National Port Authority to recognize and grant license to the petitioner to conduct stevedoring business in the ports of the Republic of Liberia?

Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty. Civil Procedure Law, Rev. Code 1:16.21(2).

Mandamus is a summary and extraordinary writ issued in the sound discretion of the court. Owing to the drastic character of the writ, the law has properly created safeguards around it and regard should be had for the urgency which calls for the exercise of the discretion, the interests of the public and of third person, the nature and extent of the wrong or injury which would follow upon a refusal of the writ, and the promotion of substantial justice. 52 AM. JUR 2d., *Mandamus*, §31.

A writ of mandamus will issue where a ministerial act is to be imposed upon a public officer in consequence of his official duty. *The Liberian Air Taxi, Inc v. Meissner*, 18 LLR 40 (1967).

Mr. Chief Justice Pierre, speaking for the Court in the case *Edgar Mitchell & Sons Distillery v. Nelson*, 22 LLR 67, 69 (1973), said: "Mandamus is one of five remedial writs which a Justice in Chambers may order issued; it commands performance of a legitimate duty imposed by law, performance of which must have been neglected or refused by a public officer responsible for such performance".

Mr. Chief Justice Pierre, again speaking for the Court in the case *Bar v. Philips*, 27 LLR 210,233 (1978), and quoting from 26 CYC 139 (1907), said:

"Mandamus is an action of judicial proceeding of a civil nature, extraordinary in the sense that it can be maintained only when there is no other adequate remedy, prerogative in its character to the extent that final command is discretionary, to enforce only clear legal rights, and to compel courts to take jurisdiction or proceed in the exercise of their jurisdiction, or to compel corporations, public and private, to exercise their jurisdiction or discretion and to perform ministerial duties, which duties

result from an office, trust, or station, and are clearly and peremptorily enjoined by law as absolute and official."

Where denial of a license or permit is based on a ground which infringes upon the appellant's constitutional rights, mandamus will lie to compel the authorities to grant it.

As a general rule, where all the requirements of law preliminary to acquiring a license to conduct a business have been complied with, the issuance of such license, if refused, may be compelled by mandamus, since such duty is merely ministerial. The burden of showing that the licensing authority has not abused its discretion in refusing a license to one whose application meets all requirements rests upon the respondent. 52 AM. JUR. 2d. *Mandamus*, § 209.

In view of the facts recited above and the laws cited, it is the opinion of this Court that mandamus will lie in the instant case and therefore the petition for mandamus be and the same is hereby granted, the peremptory writ ordered issued; and the respondent ordered to grant recognition and license to the petitioner, Goodman Shipping & Stevedoring Corporation, to conduct stevedoring business in the Republic of Liberia.

The Clerk of this Court is hereby ordered to send a mandate to the Management of the National Port Authority commanding it to comply with the judgment of this Honourable Court. Costs are ruled against the respondent. And it is hereby so ordered.

Petition granted