PETER GONSAHN et al., Petitioners, v. **DAVID VINTON**, **BYRON TARR**, **NATIONAL BANK OF LIBERIA**, **et al.**, Respondents.

MOTION TO DISMISS A PETITION FOR ISSUANCE OF A WRIT OF PROHIBITION.

Heard: April, 1992. Decided: September 4, 1992.

1. The Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases, whether emanating from courts of records, courts not of record, administrative agencies, autonomous agencies, or any other authority, both as to law and fact, except cases involving ambassadors, ministers, or cases in which a county is a party. In all such cases, the Supreme Court shall exercise original jurisdiction.

2. Except as provided by statute, the power to issue remedial or extraordinary writs in exercise or aid of the appellate jurisdiction of the Supreme Court and to otherwise issue writs of mandamus, prohibition, quo warrants and other remedial or extraordinary writs and processes, shall reside exclusively in the Justice presiding in Chambers. Judiciary Law, Rev. Code 17: 2.9.

3. A judge should first dispose of factual issues in a case before certifying the constitutional issue involved and transferring it to the Supreme Court since the Supreme Court cannot take evidence.

4. An appellate court shall examine a case upon the record only and shall hear no additional evidence.

5. Article 66 of the Constitution directs that the Supreme Court "shall exercise final appellate jurisdiction in all cases".

6. Persons wishing to contest, on constitutional grounds, the validity of legislation must be able to show not only that the legislation is invalid but also that they have sustained, or are in immediate danger of sustaining, some direct injury as a result of its enforcement, and not merely that they suffer in some indefinite way in common, with people generally... A plaintiff in a court must show a logical nexus between the status asserted and the claim sought to be adjudicated, such inquiries being essential to insure that he is a proper and appropriate party to invoke the .... judicial power.

Co-respondent, National Bank of Liberia, introduced a new five dollar Liberian note in 1991, called the "Liberty", to replace the then five dollar note called the "JJ",

named after the late Joseph Jenkins Roberts, first President of the Republic of Liberia. Consequently, the Government of Liberia, through the National Bank of Liberia, determined that the "JJ" was no longer legal tender in Liberia.

The petitioners herein applied to the full bench of the Supreme Court for a writ of prohibition to restrain the government from circulating the note, contending that introducing the note was unconstitutional. Here, the Supreme Court concerned itself only with the jurisdictional and procedural issues raised, that is, whether an issue, such as presented, can or should be addressed to the full bench, designating it a forum of first instance, or should the matter have begun with the Justice in Chambers? Also, the Court had to determine whether the petitioners had standing to institute the proceedings. The Court decided that in keeping with section 2.9 of the New Judiciary Law, Rev. Code 17, the power to issue remedial writs resides exclusively with the Justice presiding in Chambers. With respect to the standing of the petitioners, the Court held that "persons wishing to contest, on constitutional grounds, the validity of legislation must be able to show not only that the legislation is invalid but also that they have sustained, or are in immediate danger of sustaining, some direct injury as a result of its enforcement, and not merely that they will suffer in some indefinite way in common with people generally." Accordingly, the Court denied the petition for prohibition and granted the motion to dismiss.

*Francis Garlowolu*and *J Laveli Supuwood* appeared for the petitioners. *Isaac E. Wonasue, Joseph P. IL Findley* and the *Ministry of Justice* appeared for the respondents.

MR. JUSTICE HNE delivered the opinion of the Court.

In December, 1991, Co-respondent National Bank of Liberia, under the Interim Government of National Unity (IGNU), introduced a new five dollar bank note with the seal of the Republic of Liberia super inscribed on its face, as legal tender in Liberia to discharge public and private obligations in the country. This new bank note, now commonly referred to as the "Liberty" five dollar note, replaced the five dollars bank note introduced in 1989 by the said Co-respondent National Bank with the image of the late "J.J." Roberts, first President of the Republic of Liberia, inscribed on its face. The latter note, now commonly referred to as the "J.J." five dollar note, has been declared null and void by the Co-respondent National Bank. According to the National Bank, the "JJ" notes are no longer legal tender in Liberia and therefore should not be given any effect or accorded any recognition for the discharge of public and private obligations in the country, since the "Liberty" five dollar note is now the legal tender in its stead for such purposes.

The petitioners in this case have come to the Supreme Court *en banc* seeking a writ of prohibition to restrain and prohibit the respondents from "maintaining" circulation and using the "liberty" five dollar note in Monrovia and other parts of Liberia, contending that doing so violates their constitutional rights. They contend that the Act establishing the National Bank of Liberia, which is the basis upon which the "Liberty" five dollar note was engraved, violates Article 34(d) of the Constitution and, thus, is unconstitutional.

Since the petition was directed to the full bench instead of the Justice in Chambers, an alternative writ was ordered issued by the Chief Justice.

Returns were filed by Co-respondents David Vinton, Byron Tarr and the National Bank. The co-respondents commercial banks filed joint returns. The Ministry of Justice also filed returns for and on behalf of the Minister of Finance.

In addition to their returns, Co-respondents David Vinton, Byron Tarr, and the National Bank of Liberia filed a motion to dismiss these proceedings. Similarly, the Ministry of Justice filed a motion to dismiss for Co-respondent Minister of Finance. The motion of the Minister of Finance was later withdrawn and an amended motion filed in its stead. Resistance and amended resistance were also filed by the petitioners.

It is incumbent upon us to hear and determine the jurisdictional issues raised in the motion to dismiss and the resistance thereto before proceeding to hear the merits of the case as laid in the petition, the returns, and the answering affidavit of the petitioners and the respondents.

The hearing of the motion to dismiss took place and was concluded on April 6, 1992 and the matter suspended and ruling reserved on that day.

Subsequent to the conclusion of the hearing and reservation of ruling on the motion to dismiss on April 6, 1992, a motion to intervene was filed by the National Patriotic Reconstruction Assembly Government (NPRAG) on May 26, 1992. In addition, on the same day, May 26, 1992, the NPRAG also filed a submission. On the 27th day of May, 1992, the NPRAG filed another submission. On May 29, 1992, the NPRAG filed a resistance to respondents (Ministry of Finance and National Bank of Liberia) motions to dismiss. The respondents filed resistance to the aforesaid papers filed by the NPRAG.

As stated hereinabove, the jurisdictional issues raised in the motions to dismiss as

well as the resistance thereto must first be disposed of. Also, as mentioned before, hearing of the motions to dismiss had been concluded and ruling reserved on April 6, 1992 prior to the filing by the NPRAG of the papers mentioned above. We could not therefore go into the motion to intervene and the submission filed by the NPRAG without opening the records and going into the merits of the case. The motion to intervene shall be heard at such time as we determine that the case be heard on the on the merits, should the case be ruled to a hearing on the merits.

This case is one of first impression in the history of our jurisprudence. Heretofore, we had used the currencies of other countries as legal tender in Liberia. First, there was the pound sterling of Great Britain, and then the dollar of the United States of America, the latter of which is up to the present used along side the Liberian dollar as legal tender for the discharge of our public and private obligations. The former, the pound sterling, has long ceased to be accorded such a status in our monetary and financial transaction in Liberia.

The object of this opinion is to decide only the jurisdictional and procedural issues raised in the motions to dismiss and each resistance thereto. Hence, we do not now concern ourselves with the merits and substantive issues laid in the petition and the returns thereto, and indeed we cannot, for to do so would tend to open the records as they relate to the merits of the case when they have not been heard.

As we have said earlier, the petitioners came to the full bench with their application for a writ of prohibition, instead of directing it to the Justice in Chambers. By so doing, they have designated the Court *en banc as* a forum of first instance. Can they do so? Let us therefore consider the reasons for which the respondents have advanced for the dismissal of these prohibition proceedings.

Co-respondents David Vinton, Byron Tarr, and the National Bank of Liberia have asked us to dismiss the petition on various grounds, two of which we consider salient in disposing of the motion. They are as follows:

1. That under Liberian Law, a petition for a writ of prohibition is properly venued before the Chambers Justice of the Supreme Court and not the full bench; and that it is the prerogative of the Chambers Justice to transfer the petition to the full bench if the petition raises a constitutional issue.

2. That the Supreme Court of Liberia has held that the 1986 Constitution is different from the 1847 Constitution on the procedure for the determination of the

constitutionality of a law by the Supreme Court. The law in Liberia now, they, aver, is that the Supreme Court is the "final arbiter" of constitutional issues and this presupposes that constitution issues must be first raised in a Court of first instance, for example, the Civil Law Court for the Sixth Judicial Circuit

For their part, the petitioners/respondents resisted this motion to dismiss in a five-count resistance, the salient ones of the being as follows:

1. That both case laws and the Constitution of Liberia provide that only the Full Bench has the exclusive jurisdiction t dispose of constitutional issues. They cite Article 11(2) o the Constitution in support of this contention. They say, on this account, that the Chambers Justice by law could not dispose of constitutional issues, and that they therefore ' properly filed their petition before the full bench.

2. That several constitutional issues have heretofore been directly raised before the Court *en banc* without having originated before the Chambers Justice. They cite as precedent the case *"In re the Constitutionality of Sections 12.2 and 12.6 of the Judiciary Law"* as reported in 24 LLR 37 (1975).

3. That the averment in count two of the co-respondents' motion that the case should have been instituted in the court below is untenable because the authority to hear and conclusively decide constitutional issues is vested in the Supreme Court of Liberia. They contend that the Supreme Court takes immediate original jurisdiction over cases that are brought before it specifically seeking the declaration of any act or law unconstitutional, in contradistinction to cases that are brought before the Supreme Court from the lower court for appellate jurisdiction and review.

The foregoing are the salient points raised in the six-count resistance of the petitioners to the motion to dismiss filed by corespondents David Vinton, Byron Tarr and the National Bank of Liberia.

We now turn our attention to the amended motion of Corespondent Minister of Finance filed by the Ministry of Justice, urging the dismissal of the petition and the reasons advanced therefor. In the five-count amended motion, it is contended:

1. That under the Civil Procedure Law of Liberia, Title 1, Liberian Code of Law Revised, and the opinions of the Supreme Court of Liberia, a petition for a writ of prohibition is required to be venued before a Justice in Chambers of the Supreme Court rather than before the Bench *en banc* and that this requirement is mandatory

and not discretionary.

2. That the matter of the venue of a petition for a writ of prohibition is not within the discretion of the petitioners, they being required to venue the same before the Justice in Chambers rather than before the Court *en banc,* for it is only the Justice in Chambers who is legally vested with the prerogative of deciding, if he determines that a constitutional issue has been raised by the petition, whether to have the case transferred to the Court *en banc.* Also, that under the new Constitution of Liberia which became effective in 1986, the Supreme Court is made the "final arbiter" of all constitutional issues, unlike the 1847 Constitution which was silent on the matter.

3. That the Supreme Court has determined that as a matter of procedure this provision of the Constitution presupposes that all constitutional issues must first be raised in a court of first instance, and that in the instant case such court was the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, Republic of Liberia, where the petitioners would have had the opportunity to seek a temporary restraining order or preliminary injunction to prevent the commission of the acts complained of by the petitioners, that is, circulation of the five dollar note as newly designed by the National Bank of Liberia.

4. That petitioners have failed to show that they had any standing to institute or maintain the current action, a condition which is a prerequisite to the institution or maintenance of any suit. To have standing, the co-respondent maintains, petitioners must show by evidence that they have actually been affected by the acts or actions they have complained of. The mere assertion or allegation, without more, that the petitioners are law-abiding citizens who have traded with the "J.J." five dollar note as newly designed by the National Bank, and that said note has been refused by the NPFL or the INPFL, are in and of themselves insufficient in law to maintain the instant action; and that for such assertion, standing alone is no more than a conjecture and speculation upon which no court can base its decision. Further, in order to institute and maintain the present proceedings, the petitioners must show by concrete evidence that they have been adversely affected, that the affect is real, that they have consequently suffered as a result of the foregoing; and finally, that the Supreme Court cannot take evidence in such circumstances.

5. That the fact that one or more insurgent groups in the country refuses to accept a currency authorized by law merely because they dislike the design of the currency, or that the National Bank which ordered the new design is in an area controlled by the legitimate Government of Liberia, cannot form any basis in law for the institution or

maintenance of a petition for a writ of prohibition as in the instant case.

Countering the averments stated in the amended motion, the petitioners filed an amended resistance containing five counts. This amended resistance of the petitioners, for the most part, reiterates the position taken in their first resistance, except for counts three and five thereof in which they contend:

1. That the venue of their petition before the full bench is in consonance with Article 66 of the Constitution because the Minister of Finance of the Ministry of Finance of IGNU is a party and thus places their petition within cases where original jurisdiction is exercisable by the Supreme Court.

2. That they have legal standing to institute and maintain the present action in that:

a. Petitioners are citizens and residents of the Republic of Liberia;

b. The co-existence of two currencies in Liberia affects the interest of not only the petitioners, but every citizen and resident of Liberia;

c. The minting of the new currency economically divides Liberia, thus making it very difficult for petitioners to freely travel and transact business from "Greater Liberia" to Monrovia, as they are not allowed to use the "J.J." note in Monrovia and vice versa the "Liberty" note in Greater Liberia."

The sum of the positions taken by the opposing parties presents three issues. They are:

1. Whether the present proceedings fall within the cases in which the Supreme Court can exercise original jurisdiction?

2. Whether the petitioners' petition for a writ of prohibition is properly venued before the full bench?

3. Whether the petitioners have standing to institute and maintain the present action? We shall dwell on three issues in the order presented above.

In Article 66 of our Constitution, it is provided: "The Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of records, courts not of record, administrative

agencies, autonomous agencies or any other authority, both as to law and fact, except cases involving ambassadors, ministers, or cases in which a county is a party. In all such cases, the Supreme Court shall exercise original jurisdiction. The Legislature shall make no law nor create any exceptions as would deprive the Supreme Court of the powers granted herein." LIB. CONST., Art. 66, ch. VII (1986).

The petitioners have contended in count three of their amended resistance that because the Minister of Finance of IGNU is a party to the proceedings, original jurisdiction is exercisable by the Supreme Court *en banc*. The important point here is that the petitioners have come seeking a writ of prohibition from the full bench. The question of course is whether the full bench can issue this extraordinary writ. We shall come to this later in this opinion.

As to whether the petitioners properly venued their petition for a writ of prohibition before the Court *en banc,* let us take recourse to our Judiciary Law to see if they are correct. Our Judiciary Law, Rev. Code 17: 2.9, provides the following:

"1. Power to issue limited to Justice presiding in Chambers.

"Except as provided in paragraph 2 and as may be otherwise provided by statute, the power to issue remedial or extraordinary writs in exercise or aid of the appellate jurisdiction ofthe Supreme Court and to otherwise issue writs of mandamus, prohibition, quo warranto and other remedial or extraordinary writs and processes, shall reside *exclusively in the Justice presiding in Chambers".* (Emphasis ours). Judiciary Law, Rev. Code 17: 2.9.

Paragraph two relates to the writ of habeas corpus which that paragraph prohibits the Supreme Court or any Justice thereof, including the Justice presiding in Chambers, from issuing.

The statute just quoted makes it clear, unequivocal and mandatory that only the Justice presiding in Chambers has the power to issue a writ of prohibition and other remedial or extraordinary writs. The venue by the petitioners of their petition *for a writ of prohibition* before the Court *en banc* is therefore misdirected and contrary to the law controlling.

In their argument before this Court, the petitioners attempted to impress upon us that there is precedent in our case law for their action in venuing their petition before the full bench since a constitutional issue is involved. They rely on Article 66 of the

Constitution just quoted hereinabove in respect of the Supreme Court being the "final arbiter" of constitutional issues and cite us to the case *In re The Petition of Benjamin J Cox,* 36 LLR 837 (1989), decided by this Court in its October Term, 1989.

What is incongruous with their argument is that the "final arbiter" of constitutional issues presupposes that constitutional issues must first be raised before a lower court at the first instance. Hence, the language of the Constitution does not impute exclusive adjudication of constitutional issues to the Supreme Court as they contend in their resistance. Their position in this respect is also fallacious in that in the case *In re The Petition of Benjamin J. Cox, supra,* the petitioner in that case commenced his action by filing a petition for declaratory judgment in the Civil Law Court, Sixth Judicial Circuit, Montserrado County. Upon his application to the presiding judge of that court to certify the constitutional issue and transfer the case to the Supreme Court, the judge granted his application, certified the constitutional issue involved and forwarded the case to the Supreme Court. In the said case, the Supreme Court held that the judge first should have disposed of the factual issues involved before transferring the case to the Supreme Court *because the Supreme Court cannot take evidence.* (Emphasis ours). *In re The Petition of Benjamin J. Cox,* 36 LLR 837 (1989), *supra.* Still further, the petitioners argued that their petition finds precedent in the prohibition filed by the Ministry of Justice in 1986 against the Grand Coalition, a group of political parties which styled themselves as the Grand Coalition. Here again, the citation of the petitioners does not support their position because a reading of that case reveals that the prohibition proceedings commenced before the Justice in Chambers. *Republic v. The Grand Coalition,* 34 LLR 70 (1986), Opinions of the Supreme Court, March Term, A. D. 1986. Also, see *In re The Grand Coalition of Political Parties,* 34 LLR 262 (1986), Opinions of the Supreme Court, October Term, A. D. 1986. The opinion of the October Term, 1986 is a contempt proceedings which is a sequel to the case of the March Term, 1986.

The petitioners, further pursuing their thrust regarding precedent for the venue of their petition before the full bench, relied on the *case In re The Constitutionality of Sections 12.5 and 12.6 of the Judiciary Law Approved May 10, 1972,* 24 LLR 37 (1975). Their reliance is also faulty as the case cited was based upon a consultative meeting held by the Supreme Court with the officers and members of the National Bar Association. Thus, that setting is dissimilar to the current proceedings.

That action by the Supreme Court finds precedent in the *case In re the Constitutionality of the Act of the Legislature of Liberia approved January 20, 1914,*2 LLR 157 (1914). In the 1914 case, the Supreme Court adopted a like procedure by holding a consultative

meeting with the members of the National Bar Association and upon submissions presented by the *amicus curiae* appointed by the Court, the said Act of the Legislature was declared unconstitutional by the Supreme Court. Thus, the petitioners' reliance here again does not support the procedure they adopted in venuing their petition for prohibition before the full bench. Consequently, the answer to the second issue as to whether the petitioners properly venued their petition for a writ of prohibition before the Court *en banc* is in the negative. This determination must also run to the first issue as the law does not distinguish between parties when it comes to the mandate that the issuance of the extraordinary writ of prohibition exclusively resides in the Justice presiding in Chambers.

We now focus our attention on the consideration of the third and last issue, i.e. whether the petitioners have standing to institute and maintain the present action.

In the amended motion to dismiss, filed by the Ministry of Justice on behalf of Co-respondent Minister of Finance, it is contended that to have standing to bring this action, the petitioners must show by concrete evidence that they have been adversely affected, that the affect is real, and that they have suffered as a result of the said circumstances. The petitioners have alleged in their petition that they are law abiding citizens, that they traded with the "J.J." five dollar note or the "Liberty" five dollar note which have been refused acceptance by the NPFL and the INPFL. These, among other allegations made by them, raise factual issues which must be substantiated by concrete evidence. In the Civil Procedure Law, Rev. Code 1: 51.15(2), it is provided that:

"An appellate court shall examine a case upon the record only and shall hear no additional evidence." Moreover, article 66 of the Constitution directs that the Supreme Court "shall exercise final appellate jurisdiction in all cases."

The Supreme Court, in deciding the case *In re The Petition of Benjamin J. Cox,* and in dwelling on the principle of standing, relied on 16 AM JUR 2d., *Constitutional Law, §* 120, pp. 313315, which provides as follows:

"Persons wishing to contest, on constitutional grounds, the validity of legislation must be able to show not only that the legislation is valid but also that they have sustained, or are in immediate danger of sustaining, some direct injury as a result of its enforcement, and not merely that they suffer in some indefinite way in common with people generally. It is also established that one cannot invoke, in order to defeat a law, an apprehension of what might be done under it and which, if done, might not

receive judicial approval. Similarly, the power of courts to pass upon the constitutionality of statutes arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference; a hypothetical threat against them is not enough. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute on the ground that it deprives him of his constitutional rights, has the burden of proving that his rights have been invaded by the actual or threatened application of the challenged law... A plaintiff in a court must show a logical nexus between the status asserted and the claim sought to be adjudicated, such enquiries being essential to insure that he is a proper and appropriate party to invoke the ... judicial power. 16 AM JUR 2d, § 120, pp.313-315". 36 LLR 837 (1989).

The allegations of facts made by the petitioners to show that they have standing requires the taking of evidence. As an appellate court, we cannot take evidence but must be governed by the records before us. It follows then that the petitioners must prove by evidence in a forum other than the Supreme Court, that is, a subordinate court such as the Civil Law Court, Sixth Judicial Circuit, that they have standing to institute and maintain this action.

In view of all that we have said hereinabove and the laws controlling, we hold that the petition of the petitioners for a writ of prohibition cannot be maintained at first instance before the Court *en banc*. The motions filed by the respondents to dismiss the petition are therefore hereby granted without prejudice. Costs of these proceedings are disallowed. And it is hereby so ordered.

Motion to dismiss granted; petition denied.