

BEFORE THE HONORABLE SUPREME COURT OF REPUBLIC OF LIBERIA SITTING IN ITS
OCTOBER TERM, A.D. 2018

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR..... CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH ASSOCIATE JUSTICE
BEFORE HER HONOR: JOSEPH N. NAGBE ASSOCIATE JUSTICE
BEFORE HIS HONOR : J. BOIMA KONTOTIE AD HOC ASSOCIATE JUSTICE

His Honor Kabineh M. Ja'neh, Associate Justice of the)	
Supreme Court of the Republic of Liberia.....)	Petitioner
VERSUS)	PETITION FOR A WRIT
The House of Representatives of the National Legislature,)	OF PROHIBITION
By and thru Its Speaker, Honorable Bhofal Chambers.....)	Respondent)

Heard: November 9, 2018

Decided: November 30, 2018 MR.

Key words: Writs of Prohibition in Impeachment Cases

CHIEF JUSTICE KORKPOR delivered the opinion of the Court.

On July 17, 2018, two members of the House of Representatives, Honorable Thomas P. Fallah, Representative, District #5, Montserrado County, and Honorable Acarous M. Gray, Representative, District #8, Montserrado County, addressed a letter to the Speaker of the House of Representatives, Honorable Dr. Bhofal Chambers. Attached to the letter addressed to the Speaker was an instrument entitled: "Petition for the Impeachment of His Honor Kabineh Mohammed Ja'neh, Associate Justice of the Supreme Court of Liberia..."

The petition submitted by the two lawmakers called on the Plenary of the House of Representatives to impeach His Honor Kabineh Mohammed Ja'neh for alleged misconduct, abuse of public office, wanton abuse of judicial discretion, fraud, misuse of power and corruption. We have deemed it necessary to quote below the letter written to the Speaker and the accompanying petition for impeachment, which gave rise to this petition for the writ of prohibition now before us.

"THE HONORABLE HOUSE OF REPRESENTATIVES

Capitol Hill Building
P.O Box 9005 Monrovia,
Liberia

Website: www.legislature.gov.lr

July 17, 2018

Honorable Dr. Bhofal Chambers
Capitol Building, Capitol Hill Monrovia, Liberia

“Petition for the impeachment of His Honor Kabineh Mohammed Ja’neh, Associate Justice of the Supreme Court of Liberia for proved misconduct, abused of public office, wanton abuse of judicial discretion, fraud, misuse of power and corruption”.

Dear Hon. Speaker:

We present our profound compliment and have the honour to forward herewith the attached Bill of Impeachment Petition against His Honour Kabineh Mohammed Ja’neh, an Associate Justice of the Honourable Supreme Court of Liberia for the litany of factual and legal reasons contained therein.

It is our sincere hope and prayer that this Honourable Body will give this petition its utmost consideration in order to rid our judicial system of some of the most treacherous and fraudulent activities, most of which are perpetrated by, and credited to the likes of His Honour Justice Kabineh Mohammed Ja’neh.

Finally, we trust that your timely action in this matter will arrest the deterioration of the credibility of our judicial system, protect unsuspecting victims who have been constantly robbed and denied justice, and ultimately save the Liberian Judiciary from massive corruption, misuse of public office and abuse of power and discretion.

Thanks Colleagues for your kind consideration. Sincerely Yours,

Thomas P. Fallah

Representative, District #5, Montserrado County

Honorable Acarous M. Gray

Representative, District #8, Montserrado County”

“PETITION FOR IMPEACHMENT

Petition for impeachment for proved misconduct, abuse of public office, wanton abuse of judicial discretion, fraud, misuse of power and corruption.

by

Representatives Thomas P. Fallah of District No. 5, and Acarous M. Gray of District No. 8, Montserrado County

1. Petitioners submit that they are elected representatives of Districts No.5 & 8 respectively [of Montserrado County] and members of the 54th Legislature of the Republic of Liberia, representing and speaking for hundreds and thousands of Liberians residing in these electoral districts on all critical issues of national concern. Petitioners submit that they were duly re-elected during the last October, 2017 general and presidential elections, and subsequently sworn in to perform such task, and as representatives of their respective districts, they do have the legal capacity or legal standing to raise any critical issue whether on the floor of the Honourable House of Representatives or in the public domain, openly challenge or demand the

prosecution or impeachment, removal or dismissal of any elected or appointed public official for official misconduct, abuse of public office, misuse or abuse of power, and corruption on behalf of the people of Liberia in order to safe guard the stability and sanctity of the Liberian State.

2. Further to count one (1) above, and because Article 71 of the 1986 Constitution expressly lays out the fundamental grounds upon which a judge or justice may be impeached, petitioners submit that Justice Kabinch Mohammed Ja'neh unmindful of his judicial power and authority and the danger of debasing the respect ascribed therein, has committed a serious official misconduct by engaging in the wanton and unsavory exercise of his purported judicial discretion far exceeding the bounds of elementary judicial interpretation of issues simply to satisfy his personal ego and perhaps vested interest as it was in controversial code of conduct debate just to unduly hurt, shamefully impede and grossly frustrate the administration of justice and even though his colleagues have moved away from, or parted with such controversial judicial bluster for the sake of sanity, Justice Ja'neh continues to behave as if he were a law unto himself to the detriment of others.
3. Article 71 of the 1986 Constitution states: "The Chief Justice and Associate Justices of the Supreme Court and Judges of subordinate courts of record shall hold office during good behavior. They may be removed upon impeachment and conviction by the Legislature based on proved misconduct, gross breach of duty, inability to perform the functions of their office, or conviction in a court of law for treason, bribery or other infamous crimes".
4. Petitioners say the constitutional guarantee of immunity to judges and justices under Article 71 of the 1986 Constitution is not absolutely free. However, the immunity becomes constitutionally sacrosanct when judges and justices express views or opinions or render judgments or rulings on matters of law by applying both statutory and customary laws in accordance with the standards enacted by the legislature (Article 65 of the 1986 Constitution). However, Petitioners say the immunity of judges or justices becomes a subject of public scrutiny and debate or a ground for removal or impeachment if they engage in official misconduct or proved misconduct by engaging in the abuse of office, power corruption and other forms of social vices that will their offices, their stature in society and relations with people. This August body of Honorable lawmakers [is] requested to take legislative notice of the role of judges and justices in our society.
5. Petitioners say some time ago, Mr. Austin Clark, a private Liberian citizen and businessman (now deceased) took a loan from ECOBANK Liberia Limited and records available to the Civil Law Court showed that MR. Clark paid his loan portfolio and was no longer indebted to ECOBANK Liberia. However, due to poor records keeping on the part of the ECOBANK, Mr. Clark was arrested and treated like a common criminal and then taken to court. But after presenting a number of documents in the form of evidence, it was established that Mr. Clark was no longer indebted to ECOBANK and was therefore released.
6. Further to count 5 above, Mr. Clark, not being satisfied with the way he was treated, filed an action of damages lawsuit against ECOBANK Liberia for defamation, claiming over US\$1M. The records showed that a trial jury was empanelled and a full trial was conducted, and at the end of the trial, the jury returned a verdict in favor of

Mr. Clark in the amount of over US\$1M in damages. However, the lawyers for ECOBANK as required by law, excepted to the jury verdict, and thereafter filed a motion for new trial, the motion was assigned and thereafter denied.

7. The records also showed that following the denial of the motion, His Honor, J. Boima Kontoe confirmed the jury verdict and rendered his final judgment in favor of MR. Clark, awarding him (Clark) over US\$1M; and to this final judgment ECOBANK lawyers excepted and announced an appeal to the Honorable Supreme Court of Liberia.
8. Further to count 7 above, petitioners say instead of perfecting the appeal process by filing their bill of exceptions within ten (10) days, as required by law, the lawyers representing ECOBANK sat on their rights and did nothing, however, at the expiration of the ten (10) days, Mr. Clark's lawyers applied for a clerk's certificate to the effect that defendant ECOBANK's lawyers did not follow the appeal process and the request was granted. Thereafter, a motion to dismiss the appeal was filed before His Honor J. Boima Kontoe, and the motion was served and returned served on the defendant.
9. Petitioners say that the motion to dismiss the appeal was assigned, duly argued pro et con, and the end, judge Kontoe ordered dismissed the appeal as in keeping with law and subsequently ordered the enforcement of the judgment against ECOBANK[Liberia].
10. Petitioners submit that when an appeal is dismissed in the court below according to Liberian trial procedures, there is no more remedy at law available to the defendant except a post-trial motion for newly discovered evidence before the same court, and there is no way that the matter can be taken before the Supreme Court except during the pendency of the post-trial motion or a ruling therefrom. Petitioners submit that when Judge Kontoe ruled in favor of Mr. Clark and awarded over US\$1M based on the following Supreme Court opinions in
 - a. "Cavalla Rubber Corporation v. Liberian Trading and Development Bank (TRADEVCO), 38 LLR 316 (1996), syl. 1: the statute governing appeal shall be strictly construed; and when a party fails or neglects to comply with any of the mandates of the statutes, appeal shall be dismissed;" and
 - b. First United American Bank v. Ali Saksouk Textile Center, 38 LLR 327 (1997), syl. 1. That: "The failure to timely file an approved bill of exceptions, post an appeal bond or to timely serve a notice of the completion of appeal are grounds for the dismissal of an appeal", the defendant (ECOBANK) did not file any post-trial motion for newly discovered evidence and so the judgment brought the matter completely to an end."
11. However, say the following the granting of the motion to dismiss appeal which brought the entire matter to finality, Justice Kabinah Mohammed Ja'neh fully knowledgeable of the law and the trial procedures and practices governing the appeal process, but determined to grossly abuse his judicial discretion, misuse his power, and take for granted the frailties of the powers of the Plaintiff and his legal counsel, as has been the case over the years, which had led to many cases

remaining on court's docket for decades unresolved, decided to instigate or surreptitiously instigate the opening up of the case before the Supreme Court of Liberia by means of a petition for the writ of certiorari when he was justice presiding in chambers by assignment. Petitioners submit that the principle of law governing certiorari dictates that an upper court can only entertain a bill of certiorari to review the ruling of the lower court if the matter is still pending or an interlocutory ruling is made in the court below. Though Justice Ja'neh is fully aware of this, yet, in the instant case, he chose to illegally entertain a bill of certiorari (a writ of review) when there was no matter pending before the lower court, and so by proceeding to issue the alternative writ of certiorari, Justice Ja'neh unduly halted the enforcement of the judgment, grossly abused his judicial discretion by hijacking the administration of justice for reasons best known to him and his conduct is not supported by both statutory and customary laws in accordance with the standards enacted by the Legislature (Article 65 of the 1986 Constitution).

12. Petitioners say Article 65 of the 1986 Constitution instructs that justices and judges must apply both statutory and customary laws in accordance with the standards enacted by the Legislature. By being illegally seized of a matter already decided and concluded in the court below, Justice Ja'neh hijacked the administration of justice for his own personal gains and prevented the parties from initiating discussions or from having a negotiated settlement, and therefore his conduct reduced the integrity of the Supreme Court to the whims and caprices of the defendant which is a proved misconduct, gross breach of duty, inability to perform the functions of the office by allowing justice to be served where it belongs no matter the status of the party affected.
13. Petitioners say Justice Ja'neh has engaged in proved misconduct, gross breach of duty, inability to perform his function beyond reproach and has surreptitiously connived with the late J. Neyma Constance Jr., to legally acquire a piece of property located in Sinkor, Monrovia which is owned by Madam Annie Yancy, surviving wife of the late J. Nyema Constance Sr.
14. Petitioners say the purported purchase of the subject property is further evidence of the perpetration of fraud, and theft of property and this is a further testament of proved misconduct, gross breach of duty, inability to delineate between right and wrong and a graphic demonstration of the lack of respect for the rights of others on grounds that the purported court's degree of sale which Justice Ja'neh allegedly relied upon states in one of the paragraphs as follow: "...And petitioner says further and prays court that he is the administrator of the intestate estate of the late J. Nyema Constance, Sr. by virtue of the issuance of Letters of Administration granted by this Honorable Court in May 1960 under the gavel of His Honor Jehu Striker, the Judge, Monthly and Probate Court for Montserrado County, Republic of Liberia to administer the said estate. See attached a copy of the purported letters of administration marked as "A-1".
15. Petitioners say that the purported letters of administration is fraudulent and speaks volumes of the shady conduct in which the purported purchase was made because of court's degree of legitimization and the petition attached to this petition filed by the late J. Nyema Constance Sr. in 1960, show that J. Nyema Constance, Jr. from whom Justice Ja'neh purportedly bought the property in question was born on August 2, 1956 and legitimized on May 23, 1960 and therefore, he (J. Nyema Constance, Jr.)

could not have been granted Letters of Administration in May 1960 when he (Constance Jr.) was just four years old, hence the entire sale is fraudulent and Justice Ja'neh knew or had reason to know of the falsity of the transaction, yet, he proceeded to acquire the property by the use of his office and position to the detriment of Madam Annie Yancy and her children. Attached hereto are copies of petition for legitimization and Court's degree of sale marked as "A-2 in Bulk".

16. Petitioners say by engaging in the fraudulent purchase of land, and using the authority of the Court to confirm and justify such fraudulent purchase, Justice Ja'neh has reduced and exposed the judicial sanctity of the Supreme Court and his office to public ridicule and mockery by demonstrating in clear terms that justice is no longer blind but belongs to those who can afford it either by the use of their powers or authority and for this reason, he must be investigated, impeached and removed from office. Petitioners give notice to this august body that they will prove these allegations.
17. Petitioners say Madam Yancy's property rights have been abused by a powerful and influential Associate Justice who has become both a player and a referee in a land dispute in which no lawyer dare take on him because he is an Associate Justice of the Supreme Court of Liberia and enjoys the luxurious trappings associated with such office and is hiding behind his office and status to sport with the rights of innocent Liberians.
18. That Petitioners say the entire transaction is a complete mockery and demonstrates how Justice Ja'neh has lowered the stature and character of the Supreme Court and his office to the extent that he wants people to believe that J. Nyema Constance Jr. born in 1956 and legitimized in 1960 was granted Letters of Administration to administer the property of his father and mother who legitimized him while they were still alive. Petitioners say J. Nyema Constance Sr. was presumed dead after he went missing and has not been found since 1983 but Madam Annie Yancy is still alive and therefore the purported sale is nothing but a fraudulent transaction carried out by Justice Ja'neh for which he must be impeached.

Wherefore, it is the prayer of the petitioner as follows:

1. That this Honorable august body will order an immediate investigation into the activities stated inter alia of Justice Kabineh M. Ja'neh consistent with the evidence provided, cause a full hearing of the matter to afford him due process and thereafter seek the appropriate motion, and order the casting of the necessary votes to have Justice Ja'neh duly ousted, ejected and impeached as in keeping with the rules and procedures of impeachment;
2. That this august body will adopt the appropriate rules and procedures if not already in existence, deal with what has become a slur on the image of our court system due to the horrific conduct of Justice Ja'neh;
3. That the entire transaction regarding the acquisition of Madam Yancy's property be declared null and void as if it has never happened before.
4. That this august body will communicate with the full bench of the Honorable Supreme Court of Liberia to issue the appropriate orders consistent with its finality power under Article 65 of the 1986 Constitution by insuring that the court below carry out its orders based on the judgment rendered in the case against ECOBANK.

5. That this august body will grant unto petitioners all and any further relief that this body may deem just and appropriate as in keeping with the rules and procedures of impeachment.

Respectfully Submitted

Petitioners:

Representative Acarous M. Gray

Representative Thomas P. Fallah”

When the above quoted letter and petition for impeachment *were* introduced on the floor of the House of Representatives, the Speaker of the House of Representatives constituted an ad hoc committee comprising seven Members of the House of Representatives to review the petition and submit a report to Plenary in three (3) weeks. Those appointed are: Honorable Cllr. Kanie A. Wesso, Honorable Edward W. Karfiah, Honorable Dixon Seboe, Honorable Jeremiah Koon, Honorable Isaac B. Roland, Honorable Clarence Gahr and Honorable Rustonlyn Suacoco Denise.

On August 6, 2018, the Petitioner, Associate Justice Kabineh Mohammed Ja'neh, filed a petition for the writ of prohibition with the Justice presiding in Chambers, Her Honor Jamesetta Howard Wolokolie against the Respondents, the House of Representatives, by and thru its Speaker, Honorable Dr. Bhofal Chambers. The petition prayed for the issuance of the alternative writ of prohibition and requested the Chambers Justice to order the Respondents to stay all proceedings pending the hearing and determination of the petition for prohibition. The petition for the writ of prohibition also requested the Chambers Justice to forward the matter to the Full Bench of the Supreme Court for hearing and determination because the petition for writ of prohibition raised constitutional issues which cannot be decided by a single Justice. We quote the petition for prohibition:

“PETITIONER'S PETITION

AND NOW COMES His Honor, Kabineh M. Ja'neh, Petitioner in these proceedings, praying Your Honor to issue the Alternative Writ of Prohibition against the Respondent House of Representatives, for the following legal and factual reasons, to wit:-

1. On July 17, 2018, Honorable Thomas P. Fallah, Representative of District #5, Montserrado County, and Honorable Acarous M. Gray, Representative of District #8, Montserrado County, submitted a Petition to the Honorable House of Representatives by and through the Speaker of the House of Representatives, Honorable Bhofal Chambers, for the impeachment of the Petitioner, His Honor Kabineh M. Ja'neh, Associate Justice of the Supreme Court of Liberia. The Petition alleges "Proved Misconduct, Abuse of Public Office, Wanton Abuse of Judicial Discretion, Fraud, Misused of Power and Corruption" as the bases for the

impeachment of the Petitioner. Copy of the Impeachment Petition and the accompany exhibits are hereto attached in bulk as Petitioner's Exhibit "A".

2. The Impeachment Petition alleges the following as the purported constitutional grounds for the impeachment of the Petitioner:
 - i. The Petitioner misinterpreted and misapplied the Code of Conduct. See Count 2 of the Impeachment Petition.
 - ii. The Petitioner exercised his judicial discretion while presiding in Chambers by issuing a remedial writ in the case: Ecobank Liberia Limited versus Austin Clarke. See Counts 5 to 11 of the Impeachment Petition.
 - iii. The Petitioner's purchase of a parcel of land in 1996 from J. Nyema Constance, Jr. See Counts 13 to 18 of the Impeachment Petition.
3. Upon receipt of the Impeachment Petition, the Speaker forwarded the Petition to a Special Ad Hoc Committee which he constituted to review the Petition and submit a report to the Plenary within three (3) weeks. See the Minutes of the 46th Day Sitting of the 54th Legislature of the 1st Session of the Honorable House of Representatives, Tuesday, July 17, 2018, hereto attached as Exhibit "B".
4. Petitioner says that it is a settled and well-established principle of law in this jurisdiction that a Writ of Prohibition will lie, not only to prevent the doing of an illegal act, but to also undo that which has been illegally done. For reliance: Honorable Jenkins K. Z. B. Scott, Minister of Justice versus The Job Security Scheme Corporation, Inc., 31 LLR 552, Syl. 1.
5. Petitioner says although the Liberian Constitution confers jurisdiction on the Respondent House of Representatives to initiate impeachment proceedings, however the same Constitution also requires that in the exercise of this authority the House of Representatives must not be in violation of any of the applicable and relevant constitutional provisions, with specific and particular references to Articles 20(a), 71 and 73 of the Constitution.
6. Petitioner submits that a Petition for Prohibition will lie in this case to restrain and prohibit the Respondent House of Representatives from further proceeding with the impeachment of the Petitioner for the following reasons:
 - (i). The Speaker violated Section 57.3 of the Rules and Procedures of the House of Representatives by constituting a Special Ad Hoc Committee and forwarding the Impeachment Petition to the Special Ad Hoc Committee. The aforesaid Section 57.3 confers exclusive jurisdiction on the House Committee on the Judiciary to hear, among other things, all matters relating to judicial proceedings, civil and criminal. It does not vest any authority in the Speaker to remove arbitrarily and unilaterally transfer same to a Special Ad Hoc Committee was done in the instant case by the Speaker. Petitioner submits that a Writ of Prohibition will therefore lie to restrain and prohibit the Respondent House of Representatives from proceeding by rules different from or at variance with the aforesaid Section 57.3.
 - (ii). Article 73 of the 1986 Constitution provides that: "No judicial official shall be summoned, arrested, detained, prosecuted or tried civilly or criminally by or at the instance of any person or authority on account of judicial opinions rendered or expressed, judicial statements made and judicial acts done in the course of a

trial in open court or in chambers, except for treason or other felonies, misdemeanor or breach of the peace. Statements made and acts done by such officials in the course of a judicial proceeding shall be privileged and subject to the above qualification, no such statement made or acts done shall be admissible into evidence against them at any trial or proceeding." [Emphasis added]. Accordingly, the attempt by the Respondent to impeach Petitioner based upon Petitioner's interpretation and application of the Code of Conduct is in gross violation of Article 73 of the 1886 Constitution of Liberia. Therefore a Writ of Prohibition will lie to prohibit the Respondent House of Representatives from proceeding with the impeachment of Petitioner.

(iii). Article 71 of the 1986 Constitution of the Republic of Liberia provides that: "The Chief Justice and Associate Justices of the Supreme Court and judges of the subordinate courts of records shall hold office during good behavior. They may be removed upon impeachment and conviction by the Legislature based on proved misconduct, gross breach of duty, inability to perform the functions of their office, or conviction in a court or law for treason, bribery or other infamous crimes."

(iv). Article 20(a) of the 1986 Constitution of Liberia provides that: "No person shall be deprived of life, liberty, security of the person, property, privilege, or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution in accordance with due process of law."

7. Petitioner submits that the Liberian Constitution requires that an impeachment of a Justice of the Supreme Court or a Judge of a Subordinate Court of Record must be based on one or more of the following four (4) grounds required in Article 71 of the Constitution:
 - (i). Proved misconduct; (ii). Gross breach of duty;
 - (iii). Inability to perform the functions of their office; or,
 - (iv). Conviction in a court of law for treason, bribery or other infamous crimes."
8. Petitioner further submits that a valid and proper application of any of these grounds must strictly comply with the Due Process requirements of Article 20(a) of the Liberian Constitution. Petitioner says that in the instant case, on its face, the allegations of the Impeachment Petition clearly have not met any of the four (4) grounds stated in Article 71. These are required to constitute prima facie and valid constitutional grounds for the impeachment of a Supreme Court Justice. Petitioner further says the Impeachment Petition also violates the provisions of Articles 20(a) and 73 of the Constitution.
9. Article 3 of the 1986 Liberian Constitution provides that: "...The form of government is Republican with three separate and coordinate branches: the Legislative, the Executive and the Judiciary. Consistent with the principles of separation of powers and checks and balances, no person holding office in one of these branches shall hold office in or exercise any of the powers assigned to either of the other two branches except as otherwise provided in this Constitution..." (Emphasis added). In clear and obvious violation of the aforesaid Article 3, the Impeachment Petition unconstitutionally requests the Respondent House of Representatives to invalidate a Supreme Court judgment by declaring that the property awarded to the Petitioner in a Supreme Court Judgment be declared

null and void.

10. Further to Count 9 above, Petitioner submits that this is clearly an illegal attempt by the Respondent House of Representatives to usurp the functions, power, jurisdiction and authority of the Judicial Branch of the government mandated by the aforesaid Article 3, and is an unconstitutional attempt to exercise the power and authority which the Constitution has conferred exclusively on the Judicial Branch. Since the Impeachment Petition does not state or rely on any of the four (4) constitutional grounds required for the impeachment of a Justice of the Supreme Court, a Writ of Prohibition will properly lie to prohibit and restrain the Respondent House of Representatives from proceeding with the impeachment proceeding against the Petitioner.
11. Article 65 of the Constitution provides that: "The Judicial Power of the Republic shall be vested in a Supreme Court and such subordinate courts as the Legislature may from time to time establish. The courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature. Judgments of the Supreme Court shall be final and binding and shall not be subject to appeal or review by any other branch of Government." (Emphasis added). However, and notwithstanding the provisions of the said Article 65, the Impeachment Petition unconstitutionally requests the Respondent House of Representatives to determine that "...the entire transaction regarding the acquisition of Madame Yancy's property be declared null and void as if it has never happened before." Petitioner submits that the Respondent House of Representatives lacks the constitutional authority to declare rulings and actions of the Supreme Court null and void. And Petitioner submits that a Writ of Prohibition will prohibit the Respondent House of Representatives from doing so.
12. Count 4 of the prayer of the Impeachment Petition states: "That this august body will communicate with the full bench of the Honorable Supreme Court of Liberia to issue the appropriate orders consistent with its finality powers under Article 65 of the 1986 Constitution by ensuring that the court below carry out its orders based on the judgment rendered in the case against ECOBANK." Petitioner submits that this request is another violation of the doctrine of Separation of Powers mandated in Article 65, and if implemented, will constitute an unconstitutional interference with the functions, duties and independence, not only of the Supreme Court, but of the entire Judicial Branch of government. If not prohibited, the Impeachment Petition will destroy the constitutionally mandated Separation of Powers which presently exists between the three branches of government and will establish an unconstitutional precedent for the Legislature to have veto power over judicial decisions and implementation of same.
13. Unlike the former 1847 Constitution which provided for the arbitrary removal of judges and justices by Joint Resolution of the Legislature, Petitioner says the specific inclusion by the framers of Articles 20(a), 71 and 73 in the 1986 Constitution was to ensure the total and complete independence of the Judiciary from threats, intimidation and unwarranted interference from the other branches of government. Under these provisions of the 1986 Constitution, removal of a Supreme Justice must be for the specific and defined cause or causes listed in Article 71, the commission of which must be clearly established in accordance with the Due Process requirements of Article 20(a).
14. Our Republican form of government is based on the doctrine of the Separation of Powers of the three branches of government. The Legislature enacts the laws; the Executive enforces and implements the laws, and the Judiciary interprets the laws.

Under the well-established constitutional principle of Judicial Review, the Judiciary is vested with the authority to declare actions of both the Legislature and the Executive Branches illegal and/or unconstitutional. Therefore Petitioner submits that it is within the authority of the Supreme Court to prohibit any further proceeding on the Impeachment Petition because of its inherent unconstitutionality and failure to observe and adhere to the Rules and Procedures of the Respondent House of Representatives.

WHEREFORE, and in view of the foregoing, Petitioner prays Your Honor as follows:

(i). To issue the Alternative Writ of Prohibition and have same forwarded to the full Bench of the Supreme Court for a hearing and determination because the Petition for Prohibition squarely raises Constitutional issues which can only be heard and determined by the Court en banc.

(ii). To ensure that the Petition for Prohibition is not a legal nullity by issuing a Stay Order promptly and without delay directed to the Speaker of the Respondent House of Representatives to stay all further proceedings pending the determination of the Petitioner's Petition for a Writ of Prohibition by the full Bench of the Supreme Court.

(iii) To cite the Respondent to file its Returns to the Petition at a time to be designated by Your Honor to show cause, if any, why the Peremptory Writ of Prohibition should not be issued.

(iv) To grant Petitioner such other and further relief as Your Honor may deem just and legal.

On August 8, 2018, Her Honor Associate Justice Sie-A-Nyene G. Yuoh, who succeeded Her Honor Associate Justice Jamesetta Howard Wolokolie as Justice in Chambers, ordered the issuance of the alternative writ of prohibition; stayed all proceedings; directed that the matter be transferred to the Full Bench of the Supreme Court for hearing and determination; that the Respondents House of Representatives file returns to the petition of prohibition; and returned the parties to *status quo ante* pending the determination of the writ of prohibition, as requested by the petitioner. The writ was and served on the House of Representatives.

On August 18, 2018, the Plenary of the House of Representatives, in response to the alternative writ of prohibition, directed the Chief Clerk of the House of Representatives, Mildred N. Sayon, to write a letter to Her Honor Associate Justice Sie-A-Nyene G. Yuoh. We quote the letter:

“THE HONORABLE HOUSE OF REPRESENTATIVES

Capitol Building

P.O Box 9005 Monrovia,

Liberia

Website: www.legislature.gov.lr

August 18, 2018

Her Honor

Justice in Chambers Sie-A-

Nyene G. Yuoh

Supreme Court of Liberia Temple
of Justice Capitol Hill
Monrovia, Liberia

RE: PURPORTED WRIT

Your Honor:

I present compliments and by directive of the Plenary of the Honorable House of Representatives of the 54th Legislature (IN SESSION) have the honor, to inform you that it is in possession of a paper served on it entitled, Writ of Prohibition, by Your Honor Justice in Chambers Sie-A-Nyene G. Yuoh. The Plenary of the House of Representative has instructed me to inform you for reasons set out below, that the House of Representatives does not intend to honor the terms or conditions of the writ.

The House thinks that the writ violates Article 3, separation of powers clause, Article 42 immunities clause, Article 43 impeachment powers and a long line of cases and precedents in this jurisdiction and its progeny.

You are therefore advised in the interest of our constitutional democracy and consistent with the separation of powers and checks and balances to vacate this writ and avoid embarrassment to the sacred institution of the Supreme Court.

Kind regards.

Sincerely Mildred N.
Sayon Chief Clerk”.

The letter from the House of Representatives refusing to “honor the terms and conditions of the writ” ordered issued by the Justice in Chambers, notwithstanding, this Court proceeded to take the necessary actions preparatory to the hearing and determination of the writ of prohibition. Later in this opinion, we shall say more on the quoted letter and its content.

The Court instructed the Clerk of the Supreme Court to inform the Minister of Justice/Attorney General of Liberia of the filing of the petition for writ of prohibition and mandated the Minister of Justice/Attorney General to file a brief and appear to argue in support of the law.

On August 22, 2018, when the case was called for the hearing of arguments, one of counsels for the petitioner, Counsellor James E. Pierre, made an application on the Minutes of Court requesting for time to file brief in the case; the Solicitor General, representing the Ministry of Justice, also requested for time to file brief. The Court, while frowning on the counsels, particularly the counsel for the petitioner who ought to be ready at all times for not timely filing their briefs, however granted the applications and ordered that the briefs be filed in one week. The matter was postponed subject to call. The petitioner subsequently filed a brief; the Ministry of Justice also filed a brief which it withdrew and amended.

When the case was next called for hearing on October 18, 2018, one of counsels for the petitioner, Counsellor Arthur T. Johnson, made a submission on the Minutes of Court praying for Mr. Justice Joseph N. Nagbe, the new member of the Supreme who had been appointed by the President of Liberia to recuse himself from the case. The counsel contended

that since Justice Nagbe was a member of the House of Senate when the petition for the writ of prohibition was issued out of the Supreme Court to the House of Representatives, and since the members of the House of Representatives and the House of Senate are colleagues and Justice Nagbe was a member of the “whole” (the National Legislature of the Republic of Liberia) at the time the stay order was issued by the Supreme Court, ...”[the] petitioner reasonably believes by logic and inference...and it is reasonable to assume and logically conclude that His Honor Justice Nagbe may have participated in discussions and participated in the impeachment proceedings while serving in the House of Senate...” (*See Minutes of the Supreme Court, Monday, October 22, 2018, 5th Day's Session*).

On October 22, 2018, this Court entered a ruling denying the request for recusal. The Court held that for a Justice to recuse himself/herself from the hearing and determination of a case, there must be a showing that the Justice will not be fair and impartial due to vested interest in the case, or an act done or a position taken that will work prejudice to a party. For example, a Justice who, while a practicing lawyer had handled or participated in a case is required to recuse himself/herself when that case is brought before the Supreme Court. Or, a Justice is required to recuse himself/herself from a case in which his relative is involved, or where the Justice is on record to have taken a position with respect to a particular case. The Court noted that the request made by the petitioner’s counsel for Justice Nagbe to recuse himself was based purely on assumptions and presumptions and therefore speculative, as there was no showing that the Justice wrote or made any statement or otherwise took a position with respect to the matter of impeachment of the petitioner to show that he will not exercise fair judgment in the case as a justice of the Supreme Court. The Court also noted that Justice Nagbe was a member of the House of Senate and not the House of Representative, and that the matter of the impeachment of the petitioner was not before the House of Senate at the time Justice Nagbe was a member of that august body.

After denying the application for Justice Nagbe to recuse himself, the matter was ordered proceeded with. The petitioner, through his counsels, presented argument before this Court. Essentially, the petitioner contended that although *Article 43* of the Constitution of Liberia (1986) vests in the House of Representatives the power to initiate a bill of impeachment against the petitioner, in the exercise of this constitutional authority, a writ of prohibition willie to prohibit the House of Representatives from acting illegally or unconstitutionally. The petitioner contended that the House of Representatives acted illegally and/or unconstitutionally when the Speaker of the House of Representatives established an ad hoc committee to study the petition for impeachment presented by Representatives Thomas P. Fallah and Acarous M. Gray instead of referring the said petition to the House Committee on Judiciary in derogation of Article 57.3 of the Rules and Procedures of the House of Representatives.

The petitioner also contended that Article 43 of the Constitution of Liberia mandates the Legislature to prescribe the rules and procedure for impeachment proceedings, but the Legislature has failed to do so; and since the Legislature has not prescribed rules and procedure for impeachment prior to the commencement of the impeachment proceedings against the petitioner, the entire exercise is null and void with no effect.

The petitioner argued that the attempt to impeach him is on account of his alleged misinterpretation and misapplication of the law and his alleged abuse of discretion while presiding in Chambers as a Justice of the Supreme Court of Liberia; that assuming, without admitting that these allegations are true the attempt to impeach him would still be without legal basis because he is shielded by the Constitution. He relied on Article 73 of the Constitution, which provides that “No judicial official shall be summoned, arrested detained, prosecuted or tried civilly or criminally by or at the instance of any person or authority on account of judicial opinions rendered or expressed, judicial statements made and judicial acts done in the course of a trial in open court or in chambers, except for treason or other felonies, misdemeanor or

breach of the peace.”

The petitioner asserted that the Liberian Constitution, at Article 71, requires that for a Justice or Judge to be impeached, it must be based on proved misconduct, gross breach of duty, inability to perform, or conviction in a court of law for treason, bribery or other infamous crimes; that in the instant case, on its face, none of the allegations of the impeachment petition meets any of the four (4) grounds stated in the Constitution, therefore prohibition will lie to restrain the House of Representatives from acting unconstitutionally. During argument before this Court, the counsels for the petitioner particularly stressed the point that in order to establish proved misconduct by a justice or judge as contemplated by the Constitution, the Judicial Inquiry Commission of the Supreme must first investigate the justice or judge and find him or her guilty as a precondition before that judge or justice can be said to have committed prove misconduct in order to face impeachment.

The Ministry of Justice, in its amended brief, contended that even though it was not aware of the petition for the writ of prohibition as the Ministry was not made a party to the petition for prohibition by the petitioner and it was only upon the mandate of this Court for the Ministry of Justice to appear and file a brief on the side of the law that it became aware, now that it is in the case, the Ministry was on the side of the law as well as representing the House of Representatives in its capacity as the agency of the Government designated by statute to receive precepts for and on behalf of the Republic of Liberia as provided for under *Section 3.38 (7), 1LCL Revised Civil Procedure Law*. The Ministry of Justice also relied on *Section 22.1(a) of the Executive Law* which provides that “It shall be the duty of the Minister of Justice to procure the proper evidence for, and conduct, prosecute or defend all suits and proceedings in the courts in which the Republic of Liberia or any officer thereof, as to such officer is a party or may be interested.”

On the issue of impeachment, the Ministry of Justice contended that to initiate impeachment is within the constitutional purview of the House of Representatives; that the House of Representatives was merely exercising an authority and power vested in it by the Constitution; that this petition for prohibition is nothing short of instigating unnecessary confrontation between the Judiciary and the House of Representatives because the petition seeks to have the Supreme Court intervene in a matter which is wholly and solely within the jurisdiction of the House of Representatives. The Ministry of Justice also contended that the only restriction the Constitution imposes on the Legislature regarding impeachment is that impeachment proceedings “shall be in conformity with the requirements of due process of law”; that it is clear that the petitioner's right to due process was not abridged by the mere setting up of a committee to consider the petition submitted by Honorable Thomas P. Fallah and Honorable Acarous M. Gray for the impeachment of the petitioner and report to the Plenary of the House of Representatives; that all that the House of Representatives was doing at that time was determining whether or not the petition submitted by the two law makers has merit to warrant proceeding with impeachment against the petitioner; and that the House of Representatives did nothing wrong to deprive the petitioner of his "due process rights".

After arguments on all sides were concluded, the Court reserved ruling and suspended the matter pending delivery of the opinion. The four Justices who sat on the case (since Associate Justice Kabineh M. Ja'neh who is the petitioner could not sit) were evenly divided in a 2-2 vote; hence, no decision could be reached. In such a case the Constitution provides that a circuit court judge in the order of seniority shall sit as an ad hoc justice of the Supreme Court. (*Article 67 of the Constitution of Liberia*). Accordingly, the President of the Republic of Liberia appointed His Honor J. Boima Kontoe, the most senior circuit court judge as an ad hoc justice to sit on the case. In order that Ad Hoc Justice Kontoe would have the benefit of listening to argument in the case, the matter was reassigned for hearing on November 9, 2018.

At the call of the case on November 9, 2018, one of counsels for the petitioner brought to the attention of this Court that the petitioner had filed a written motion objecting to the representation of the Ministry of Justice in the case. In the motion, the petitioner contended that the Supreme Court mandated the Ministry of Justice to file a legal brief in the instant case and appear to argue on the side of the law; that the Ministry of Justice, complying with the mandate of this Court filed a legal brief; that the Ministry of Justice withdrew its legal brief and filed an amended brief in which the Ministry of Justice contended that it was representing the Respondent House of Representatives; that *Section 22.1 of the New Executive Law* limits the Ministry of Justice to prosecute or defend proceedings to which the Republic of Liberia or any of its officer thereof is a named party; that the House of Representatives, a part of the Legislature, one of the three branches of Government, cannot be said to be the Republic of Liberia within the meaning and intent of the statute which requires representation by the Ministry of Justice; that *Section 22.2(c) of the New Executive Law* requires the Ministry of Justice, as an officer of the Executive Branch of Government, to provide and render legal services to the President and other agencies of Government.; that the statute does not require the Ministry of Justice to represent the House of Representatives. The petitioner further contended that the Ministry of Justice has raised and argued issues in its amended brief which are not of the Supreme Court's mandate, that is, to file a legal brief and present argument in support of the law; that since the Ministry of Justice exceeded the mandate and instruction of the Supreme Court, the Ministry of Justice should be prohibited from representing the House of Representatives and the amended brief filed by the Ministry of Justice should be stricken.

The Ministry of Justice filed a written resistance contending that in keeping with the mandate of the Supreme Court to the Minister of Justice/Attorney General to file a legal brief in support of the law in the case and appear to argue, the Ministry filed its legal brief and served same on the petitioner through its counsels and there was no objection from the petitioner; that the Ministry of Justice withdrew its brief and filed an amended brief which was served on the petitioner through his counsels without objection; and that when the case was assigned for argument on October 22, 2018, the Ministry of Justice appeared, announced representation and argued its amended brief without any motion from the petitioner for the Ministry of Justice not to represent the House of Representatives or to have the amended brief filed by the Ministry of Justice stricken. The Ministry of Justice therefore contended that the motion objecting to its representation of the House of Representatives is belated.

The Ministry of Justice also contended that in representing the House of Representatives, the Ministry was performing its statutory responsibility; that *Section 22.2 (a) of the New Executive Law* provides that "It shall be the duty of the Minister of Justice to prosecute, or defend all suits and proceedings in the courts in which the Republic of Liberia or any officer thereof, as to such officer, is a party or may be interested; and that the Speaker and Members of the House of Representatives are officers of the Republic within the meaning of the quoted law, hence the Ministry of Justice has the obligation to defend the instant suit in which they are now involved.

The Court heard the motion objecting to the representation of the House of Representatives by the Ministry of Justice. The Court thereafter ordered that argument in the main case, the petition for the writ of prohibition be proceeded with to give Ad Hoc Justice Kontoe the benefit of a hearing.

After carefully perusing the entire case file comprising the petition for the writ of prohibition, all motions and resistances, the briefs filed by the counsels representing the petitioner and the Ministry of Justice and listened to oral arguments presented before us, we have determined the following as the relevant issues for the determination of this case: They are:

1. Whether or not the House of Representatives was obligated to honor the writ of prohibition ordered issued by the Justice in Chambers and file formal returns to the writ of prohibition?
2. Whether or not the Ministry of Justice can legally represent the House of Representatives in this case?
3. Whether or not prohibition will lie against the House of Representatives in this case?

We shall discuss the issues in the order as presented, beginning with the first issue, whether or not the House of Representatives was obligated to honor the writ of prohibition ordered issued by the Justice in Chambers and file formal returns to the writ of prohibition? From the onset, let us say that the House of Representatives is amenable and answerable to judicial process, especially a process initiated at the Supreme Court. Article 66 of the Constitution of Liberia (1986) gives the Supreme Court the authority to exercise judicial authority over the House of Representatives. Article 66 of the Constitution of Liberia provides:

“The Supreme Court shall be the final arbiter of all 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 any of the powers granted herein.” [Emphasis provided].

Literally, there is countless number of cases in which the Supreme Court has exercised jurisdiction over the House of Representatives. In accord: *Kpaan v. Honorable House of Representatives* [2016] LRSC 15 (5, February 2016); *Broh v. Honorable House of Representatives et al* 2014 LRSC (24, January 2014); *Morlu II v. House of Senate*, 2008 LRSC 19 (28, June 2008); *NDPL v. House of Senate* [2008] LRSC 27 (18, December 2008); *Honorable George Dweh et al. v. NTGL*, decided March Term, 2005 (June 13, 2005); *RL v. The Leadership of the LNBA et al.* [2001] LRSC 26; 40 LLR 635 (2001).

From these decisional laws, the issue whether the House of Representatives can honor precepts from the Supreme Court is settled. Furthermore, the law provides that when a petition for a writ of prohibition is filed before a Justice in Chambers, that Justice shall issue or cause the Clerk of the Supreme Court to issue a citation to the parties named as respondents. If the urgency of the situation warrants, the Justice may issue or cause to be issued in lieu of a citation, an alternative writ requiring the respondents a) to do an act or refrain from pursuing a judicial action or proceeding specified therein until a hearing has been held on the writ, and b) to show cause, on the date fixed therein, why a peremptory writ should not issue. *Section 16.22, 1LCL Revised, Civil Procedure Law*. The question whether there is an urgency to warrant the issuance of a writ in lieu of a citation is discretionary with the Justice in Chambers and the determination of whether or not that discretion was abused can only be made by this Court.

So, when our Colleague, Associate Justice Sie-A-Nyene G. Yuoh ordered issued the alternative writ of prohibition in the instant case and directed the House of Representatives to refrain from certain specified actions pending the hearing and disposition of this petition for writ of prohibition, and to file formal returns to the petition for the writ of prohibition, the Respondent House of Representatives was legally obligated to obey and file formal returns setting forth whatever defenses it has to the writ of prohibition, such as the issue of separation of power of the Branches of the Liberian Government in Article 3 of the Constitution; the immunity provision for Legislators in Article 42 of the Constitution; and the authority of the House of Representatives to initiate impeachment proceedings in Article 43 of the Constitution which the House of

Representatives raised in the letter quoted herein above. These positions should have been formally raised in Court constituting the House of Representatives' response to the petition for the writ of prohibition so that this Court can pass on them.

In the case: Honorable George Dweh et al v. N'TLA, decided March Term, June 13, 2005, this Court, speaking through Mr. Chief Justice Henry Reed Cooper held as follows:

“...any determination of whether a complaint involves non-justiciable matter or political question requires the making of an inquiry into the precise facts and posture of the complaint, since such inquiry cannot be made in a vacuum. The court must first assume jurisdiction and when it is disposing of the matter on its merits it will then be able to determine whether the matter is non-justiciable, political in nature, or relates to the internal affairs of the Legislature and judge accordingly.”

In this jurisdiction, and we dare say in all jurisdictions, defenses are properly raised in a responsive pleading in a court of law. It is highly improper and irregular for a party to an action in court to refuse to file a formal response to the complaint set forth against that party when required by the court to do so. And the party in reference in this case is not just an ordinary party; the party in reference is the lower House of the National Legislature, the first Branch of Government responsible for making laws. It is said that to whom much is given, much is expected. This means that when it comes to compliance with the rule of law, those in high places are especially held to higher standards in order to set good examples and give direction to the general public. Though it is clear that the House of Representatives did not agree with the exercise of discretion of our Colleague in Chambers in ordering the issuance of the writ of prohibition, nevertheless, it was incumbent on that august body to show restraint and meticulously follow the law by filing its defense(s) in court. In so doing the House of Representatives, a part of the Legislative Branch of Government, would not only be obeying the law, it would also be according respect to the Judiciary, a coequal Branch of Government to the Legislative Branch of Government. It behooves the Branches of the Government to show outmost respect for the authority of the other, especially regarding adherence to rule of law. It is respect for rule of law that balances and strengthens our democracy, creates an enabling environment for peaceful coexistence and provides comfort and assurance for local as well as foreign investments.

But the insolent content of the letter written by the House of Representatives did not show respect for the rule of law, neither did it show respect for the Judiciary Branch of Government. Because the House of Representatives believed that it did nothing wrong to warrant the issuance of the writ of prohibition by the Chambers Justice, the House of Representatives refused to “honor the conditions of the writ” and to file its responsive pleadings to the petition for writ of prohibition. This is indeed a bad example set by those who make our laws; the laws they make require compliance by all. The laws require parties to seek redress in court; and if a party is sued, that party must file defense(s) in court. But if the example set by the House of Representatives is anything to go by, then a party defendant in a lawsuit who believes that he/she/it is not in error will no longer file defense(s) in court. That party is justified, by the example set by the House of Representatives, to inform the presiding judge through a letter that he/she/it will not abide by any order of the court and refuse to file responsive pleadings. This is utterly wrong and not the right path for a democratic society under the rule of law.

We take due note of our records that growing out of the same impeachment proceeding, some Senators have filed an in re petition with this Court claiming that certain of their colleagues have, or are proceeding wrongly in the amendments

of the Senate Rules regarding impeachment. On receiving the case, this Court ordered those Senators designated as respondents to file returns and file brief. The records show that the Respondent Senators, through their counsels, filed returns and brief joining issues with those of their colleagues who filed the action. The matter was heard and it is pending decision by this Court. We take consolation in the fact that the upper House of the National Legislature recognizes that one must file his/her/its defense(s) in court adhere to the rule of law.

Now, the law extant is that when a court issues a writ of summons together with the complaint and it is duly served on a party but that party fails, neglects or refuses to file responsive pleadings, that party is relegated to a general denial of the facts alleged in the complaint. The failure of a party, upon service of process, to appear, file or proceed to trial, is a ground for a default judgment against the defaulting party. *Chapter 42, section 42.1, 1LCL Revised, Civil Procedure Law*. This is the practice in the lower courts.

But this Court has said that the granting of a default judgment does not necessarily end the matter; it does not entitle the complainant to relief without proof of the allegations set forth in his pleading and a final judgment cannot be rendered on a default judgment without proof of the allegations in the pleading. *The Management of Forestry Development Authority v. Walters*, 34 LLR, 777. This Court has also held that "A default judgment is an imperfect judgment that must be made perfect by the production of sufficient evidence by the plaintiff in substantiation of his claim". *Salala Rubber Corp. v. Gariawolu*, 39 LLR 609.

At the level of the Supreme Court, Section IV (c) of the Supreme Court Rule allows this Court to proceed to hear the argument of the appearing party after due notice has been given to the non-appearing party who has failed to appear and attend upon the cause. Thus, notwithstanding the fact that the House of Representatives did not file formal returns to the petition for prohibition even though it was duly informed, the Supreme Court proceeded, and legally so, to hear the petition for prohibition and make decision as to whether the petition has presented legal ground(s) reason(s) to warrant the issuance of the peremptory writ of prohibition.

We address, next, the issue whether or not the Ministry of Justice can legally represent the House of Representatives in this case?

On November 9, 2018, when this case was called for hearing one of counsels for the petitioner brought to the attention of Court that the petitioner had filed a written motion objecting to the representation of the Ministry of Justice in the case. The petitioner contended in the motion that the Supreme Court mandated the Ministry of Justice to file a legal brief in the case and appear to argue on the side of the law; that the Ministry of Justice, complying with the mandate of this Court filed a legal brief; that the Ministry of Justice subsequently withdrew its brief and filed an amended brief in which amended brief the Ministry of Justice contended that it was representing the Respondent House of Representatives; that *Section 22.1 of the New Executive Law* limits the Ministry of Justice to prosecute or defend proceedings to which the Republic of Liberia or any of its officer thereof is a named party; that the House of Representatives, a part of the Legislature, one of the three Branches of the Government, cannot be said to be the Republic of Liberia within the meaning and intent of the statute which requires representation by the Ministry of Justice; that *Section 22.2(c) of the New Executive Law* requires the Ministry of Justice, as an officer of the Executive Branch of Government, to provide and render legal services to the President and other agencies of the Executive Branch Government.; and that the statute does not require the Ministry of Justice to represent the House of Representatives. The petitioner further contended that the Ministry of Justice has raised and argued issues in its amended brief which are not of the Supreme Court's mandate, that is, to file a

legal brief and present argument in support of the law; that since the Ministry of Justice exceeded the mandate and instruction of the Supreme Court, the Ministry of Justice should be prohibited from representing the House of Representatives and the amended brief filed by the Ministry of Justice should be stricken.

The Ministry of Justice filed a written resistance in which it contended that in keeping with the mandate of the Supreme Court to the Minister of Justice/Attorney General to file a legal brief in support of the law in the case and appear to argue, the Ministry filed its legal brief and served same on the petitioner through his counsels and there was no objection from the petitioner; that the Ministry of Justice withdrew its brief and filed an amended brief which was again served on the petitioner through his counsels also without objection; and that when the case was assigned for argument on October 22, 2018, the Ministry of Justice appeared, announced representation and argued its amended brief without any motion from the petitioner for the Ministry of Justice not to represent the House of Representatives or to have the amended brief filed by the Ministry of Justice stricken. The Ministry of Justice therefore contended that the motion objecting to its representation of the House of Representatives was belated and should therefore be denied and dismissed.

The Ministry of Justice also contended that in representing the House of Representatives, the Ministry was performing its statutory responsibility; that *Section 22.2 (a) of the New Executive Law* provides that “It shall be the duty of the Minister of Justice to prosecute, or defend all suits and proceedings in the courts in which the Republic of Liberia or any officer thereof, as to such officer, is a party or may be interested; and that the Speaker and Members of the House of Representatives are officers of the Republic within the meaning of the quote law, hence the Ministry of Justice has the obligation to defend the instant suit in which they are now involved.

In addressing this issue, we say that Section 22.2 of the New Executive Law provides:

“It shall be the duty of the Minister of Justice to:

- a) Procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the court in which the Republic of Liberia or any officer thereof, as to such officer, is a party or may be interested;
- b) Institute all legal proceedings necessary for law enforcement;
- c) Furnish opinion as to legal matters and render services requiring legal skill to the President and other agencies of the executive branch of the Government...”

From the listing of the duties and functions of the Minister of Justice/Attorney General as seen above, it is clear that the Minister of Justice/Attorney General is authorized under the New Executive Law, to procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the court in which the Republic of Liberia or any officer thereof, as to such officer, is a party or may be interested. The question is whether the Speaker and Members of the House of Representatives are officers of the Republic of Liberia within the contemplation of the New Executive Law to warrant representation by the Ministry of Justice. The petitioner says no, and the Ministry of Justice says yes.

But this issue was decided by this Court in the case: *Grace Kpan v. the House of Representatives (Supreme Court Opinion, October Term, February 5, 2016)*. This opinion concluded that members of the Legislature are officers of the Republic of Liberia within the meaning of Section 22.2 (a) of the New Executive Law and that the Ministry of Justice is therefore duty bound to represent them. Speaking for this Court in a unanimous decision, Mr. Justice Kabineh M. Ja'neh said as follows:

“...Where an officer of the Republic requires legal assistance to prosecute /and or defend an interest in the

execution of his/her duty authorized under the law, as to that interest, the Justice Ministry is duty bound to represent that officer...Its mandate is not confined to representation of the Executive Branch of Government. Its mandate extends to representation of the entire Government as a unit... In our jurisdiction, the traditional scheme of things has been to have the Ministry of Justice act as legal counsel only for the Executive Branch of the Government, and not the other two branches. But it cannot be a subject of any rational debate that part of the primary function of the Ministry of Justice is to defend all branches of the Government, including the Legislature. That is precisely why the Ministry of Justice is granted the right, as well as an imposed duty, expressly provided under Section 5.64, Civil Procedure Law (1973), to intervene in support of the constitutionality of the statute...”

In the Grace Kpan case the Court went on to say that where an officer of the Republic is in a lawsuit involving another officer of the Republic, the Ministry of Justice’s representation is on the side of the law, and not to represent one officer of the Republic against another officer. In this regard, we take due note that although the petitioner is an Associate Justice of the Supreme Court of Liberia, he did not file the petition for prohibition in the name of the Supreme Court and he did not “require legal assistance” from the Ministry of Justice to prosecute his interest. So, the issue of whether the Ministry of Justice is representing two officers of the Republic cannot apply.

In addition to its obligation to represent officers of the Republic as provided for under Section 22.2 (a) of the New Executive Law, the Ministry of Justice is also required, under Section 5.64, 1LCL Revised, Civil Procedure Law, to represent the Republic and the officers of the Republic in constitutional matters. That section provides:

“When the constitutionality of an act of the Legislature affecting the public interest is drawn into question in any action to which the Republic of Liberia or an officer, agency, or political subdivision thereof is not a party, the Court shall notify the Attorney General, who shall have the right to intervene in support of the constitutionality of the statute. “

We therefore hold that the Minister of Justice/ Attorney General performing his statutory mandate, has the right to represent the House of Representatives in this case and that in such a case, the express approval or consent of the House of Representatives is not required.

We address, last, the issue - whether or not prohibition will lie against the House of Representatives in this case? We hold that the writ of prohibition will not lie against the House of Representatives under the facts and circumstance of this case.

The settled law in this jurisdiction is that the writ of prohibition will not lie “where the act complained of is not wrong or illegal, and is within the scope of authority of the person or office complained against.” *Komai v. The Ministers of Justice and Public Works*. [1989] LRSC 40; 36 LLR 518, 522 (1989). *This Court has also held that the writ of prohibition will not lie or will be disallowed where it is shown that it is intended to prevent, prohibit or obstruct an administrative agency of government from exercising its lawful and administrative duties and responsibilities.* *Wesseh v. Tubman* [1979] LRSC 1; 28 LLR 3, 12 (1979).

Applying these accepted and longstanding principles of law to the case at hand, we see, from the records attached to the petition for prohibition, that two members of the House of Representatives, Honorable Thomas P. Fallah and Honorable Acarous M. Gray, requested the Plenary of the House of Representatives to impeach Associate Justice Kabineh M. Ja’neh.

They formalized their request through a letter they wrote to the Speaker of the House of Representatives, Honorable Dr. Bhofal Chambers. Attached to the letter written to the Speaker was a petition for impeachment signed by the two lawmakers; the petition claimed that Associate Justice Ja'neh had committed "proved misconduct, abuse of public office, wanton abuse of judicial discretion, fraud, misuse of power and corruption". It is revealed that on receiving the petition, the Speaker of the House of Representatives constituted an ad hoc committee to which he forwarded the petition for perusal with instruction that the ad hoc committee makes a report to the Plenary of the House of Representatives within three weeks. About two weeks thereafter, and before the ad hoc committee could report to the Plenary, the petitioner filed this petition for the writ of prohibition against the House of Representatives by and through its Speaker.

We should recall that in 2017, an attempt was made by some members of the House of Senate and the House of Representatives to impeach three members of this Supreme Court Bench, His Honor Kabineh M. Ja'neh, Her Honor Jamesetta Howard Wolokie and His Honor Philip A.Z. Banks. Records show that the petition of the Legislators who wanted to impeach the Justices was placed on the floor of the House of Representatives, submitted to the House Judiciary Committee who, after perusing the petition, recommended to the Plenary of the House of Representatives to proceed with the impeachment. The Plenary of the House of Representatives endorsed the recommendation and thereafter, a bill of impeachment was prepared against the three Associate Justices; a writ of summons was issued under the signature of Mildred N. Sayon, Chief Clerk of the House of Representatives and placed in the hands of the Sergeant-at-Arms, House of Representatives and the writ of summons, together with the bill of impeachment, was duly served on each of the three Associate Justices.

On receiving the writ of summons and the accompanying bill of impeachment which totally lacked any ground for the impeachment of a Justice of the Supreme Court, the Full Bench of this Court on its own, and legally so, instituted an in re proceeding against the House of Representatives directing it to appear before the Supreme Court to answer to the action instituted against it.

We recall, also, that Justice & Public Interest Consortium Africa (JUPICA) and Honorable Counsellor Edwin K. Martin filed a petition for the writ of prohibition before the Justice in Chambers alleging that the conduct of the House of Representatives was in violation of several provisions of the Constitution of Liberia. Growing out of the in re action and the petition for the writ of prohibition, this Court issued the alternative writ of prohibition and ordered the House of Representatives to stay all proceedings and return to *status quo ante* pending the hearing and disposition of the matters before the Court. This Court ordered the issuance of the alternative writ of prohibition in 2017 against the House of Representatives first of all, because that body accepted and endorsed the recommendation of its Judicial Committee to impeach members of this Court purely on grounds that the Justices were in error in their judicial opinions. Under Article 73 of the Constitution of Liberia, no judge or justice can be held to answer on account of judicial opinions rendered or expressed. So, clearly the House of Representatives, though having the constitutional power to initiate impeachment proceedings against justices of the Supreme Court they were, at the time, proceeding by the wrong rule and the extraordinary writ of prohibition will certainly apply in such a case.

Secondly, this Court ordered the issuance of the writ of prohibition and the stay order in 2017 because the House of Representatives acted; the House took concrete and definitive actions when the Plenary of the House of Representatives endorsed the recommendation of its Judicial Committee to proceed with impeachment; when a bill of impeachment was prepared against the three Associate Justices; and when a writ of summons was issued under the signature of Mildred N. Sayon, Chief Clerk of the House of Representatives and placed in the hands of the Sergeant-at-Arms, House of Representatives and the writ of summons, together with the bill of impeachment, was duly served on each of the three Associate Justices. This was when this Court took the position it took in 2017.

But what happened in 2017 did not happen in this case before us. As stated earlier, in the case before us, two members of the House of Representatives presented a petition for the impeachment of the petitioner; in our view, this was a mere proposal which was in the purview of the two lawmakers to make, since under Article 43 of the Constitution, impeachment proceeding may be commenced in the House of Representatives. The petition was forwarded to an ad hoc committee with instruction to study same and report to the Plenary of the House of Representatives. The ad hoc committee could have opted against the petition while perusing it in the committee room. Or, if the ad hoc committee were to even recommend the impeachment of the petitioner, the Plenary of the House of Representatives could have voted against carrying out the impeachment. This means that until the Plenary of the House of Representatives acted, no official position was taken on the petition. In other words, and as we see it, an impeachment proceeding commences at the House of Representative when the Plenary has voted endorsing a request or proposal, or call it a petition to carry out the process of impeachment. In the instant case no decision was taken by the Plenary of the House of Representatives to impeach the petitioner as the matter was still with the ad hoc committee set up by the Speaker of the House of Representatives when this writ of prohibition was filed. The question is, what did the House of Representatives do as a body to warrant the issuance of the alternative writ of prohibition against that body? We see no wrong act on the part of the House of Representative to warrant the issuance of the extraordinary writ of prohibition.

Other than the instrument submitted by Honorable Thomas P. Fallah and Honorable Acarous M. Gray which, in our view, constitutes a mere proposal no endorsement was made by the House of Representatives, no bill of impeachment was prepared against the petitioner by the House of Representatives; no writ of summons was issued under the signature of the Chief Clerk of the House of Representatives and the Sergeant-at-Arms of House of Representatives did not serve any writ on the petitioner as was done in 2017. The petition for the impeachment of petitioner was still being perused by the ad hoc committee set by the Speaker of the House of Representatives when the petitioner fled to this Court for the writ of prohibition. Under the circumstance, we hold that the writ of prohibition was prematurely filed and that the alternative writ should not have been ordered issued.

The petitioner has argued that by forwarding the petition for his impeachment submitted by Honorable Thomas P. Fallah and Honorable Acarous M. Gray to an ad hoc committee instead of the House Committee on Judiciary, the Speaker of the House of Representatives committed an error for which prohibition will lie. We do not agree. We hold that the decision to submit the petition to an ad hoc committee was an internal, administrative act which cannot be sanctioned by the Judiciary, especially so since no member of the House Committee on Judiciary has raised issue. In such a case, the only test is whether by such administrative act, the due process right of the petitioner was violated. And in this case, the petitioner did not say that his right to due process was in anyway violated by merely setting up a different committee other the usual committee to peruse the petition. The law is that the judiciary should cautiously abstain from any invasion or usurpation of the powers which are properly exercisable by other departments of the government, and should refrain from nullifying their acts except where they are plainly and clearly in conflict with the constitution. (*16 Am Jur 2d, Constitutional Law, Section 311.*)

The petitioner has also argued that the Legislature has not promulgated any rule for impeachment. On this point we say that Article 43 of the Liberian Constitution provides, *inter alia*, that “...the Legislature shall prescribe the procedure for impeachment proceedings which shall be in conformity with the requirement of due process of law.” We say further that it was premature for the petitioner to query the existence of a rule for a procedure or process which had legally not commenced.

The petitioner has further argued that since the Constitution of Liberia provides, amongst other grounds, that a justice of the Supreme Court may be removed from office for proved misconduct, in order to establish proved misconduct, the justice must first be investigated by the Judicial Inquiry Commission of the Supreme Court and found guilty as a precondition for impeachment. We also do not agree. In our view the proved misconduct referred to in Article 71 of the Constitution takes place at the Liberian Senate. It is at the Senate that impeachment trial is conducted. When the Senators, who sit as jurors in an impeachment proceeding vote and find a person guilty of the charge(s) of misconduct, that person is said to have been proven guilty of misconduct.

Based on what we have said, we hold that the extraordinary writ of prohibition will not lie in this case; the writ will not lie where the act complained of is not wrong or illegal and is within the scope of the authority of the person or office complained against; the writ will not lie, also, where it is shown that it is intended to prevent, prohibit or obstruct an administrative agency of government from exercising its lawful duties. The House of Representatives is empowered by the Constitution of Liberia to initiate impeachment proceedings; we hold that the mere act of receiving a petition from two members of the House of Representatives and referring said petition to an ad hoc committee to review and report to the House of Representatives does not, in our view, constitute a ground for the granting of the writ of prohibition. We further hold that as at the time of the filing of this writ of prohibition, the House of Representatives had done nothing in violation of the due process right of the petitioner to warrant the granting of the writ of prohibition.

WHEREFORE AND IN VIEW of the foregoing, the alternative writ of prohibition issued is quashed and vacated and the peremptory writ of prohibition prayed denied. The Clerk of this Court is hereby ordered to inform the parties of the decision of this Court. IT IS SO ORDERED.

Counsellors James E. Pierre, J. Laveli Supuwood, Arthur T. Johnson, J. Johnny Momoh, Emmanuel B. James, L. Kobo Johnson, and Amara M. Sheriff appeared for the Petitioner.

Counsellor J. Daku Mulbah, Solicitor General, appeared for the Minister of Justice/ Attorney General, Republic of Liberia on mandate of the Supreme Court.

Petition denied.