Judge Ware et al v Republic of Liberia [2012] LRSC 10 (6 July 2012)

His Honor William K. Ware, Sr., Assigned Circuit Judge for the November Term of Court, First Judicial Circuit, Criminal Court " C" and **Dr. Lawrence K .Bropleh** of the City of Monrovia , Liberia, APPELLANT Versus **Republic of Liberia,**

PETITION FOR A WRIT OF PROHIBITION

Heard: March 13, 2012 Decided: July 6, 2012

MR. JUSTICE BANKS DELIVERED THE OPINION OF THE COURT.

The Constitution of Liberia, the highest and most sacred law of the land, outlines, and at times in the most comprehensive and extensive manner, sets of principles to protect persons charged with the commission of crimes as well as the rights of the State in the prosecution of crimes. It also sets out an independent court system with designed perimeters within which the courts, in protecting the rights of citizens and residents of the country, should operate.

The Constitution, by its own wording and the interpretation which this Court has accorded that document, is the fundamental and supreme law of the Republic. Its provisions, many of which are core to the democratic existence of the nation, cannot be contravened by any other laws, statutory or otherwise, or any actions of the three Branches of the Government, established by that sacred instrument; and it vests in the Judicial Branch of the Government, under the principle of an independent Judiciary, the authority to declare as unconstitutional any laws or actions done in contravention of the provisions of its sacred directives.

Yet, even that most sacred document recognizes that it is incapable of crystallizing all of the rights which it seeks to protect and which it guarantees. It has therefore vested in one of the Branches created for the governance of the Republic, that is, the Legislative Branch, the power to make and to pass laws, including laws creating the subordinate courts of the land, as well as laws that bestow upon the Supreme Court procedural powers and authority anticipated by the framers but not expressly stated in the Constitution. Such laws, the framers intended, would be in

furtherance of the Constitution, give greater clarity to its provisions, and expand on the rights and on the processes for securing and protecting those rights. It is in this rubric of the law and the processes and mechanisms established by them that we find the bedrock of our democracy and the democratic legal and orderly governance processes.

Because the Constitution, in vesting the right in the Legislature to create these courts, has also granted it the authority to set the perimeters, the powers, and the jurisdictional authority of the courts and the processes and procedures which they are to pursue in the exercise of that authority, the Legislature, in creating the circuit courts, as couched in the Judiciary Law, Title 17, Liberian Code of Laws Revised, has set out in very concise terms the jurisdictional authority of the courts, the perimeters within which they are allowed to operate, and the procedures which they are to follow in the disposition of cases over which they have been granted jurisdictional authority.

In the Civil Procedure Law and the Criminal Procedure Law also, it has laid out certain procedures which the courts, in conducting criminal trials, should follow, both in the exercise of their jurisdiction and in the disposition of cases brought before them. No court can act contrary to that mandate, and if any actions by any court runs contrary to the procedures specified in the mentioned Acts, the actions of the lower court may be challenged before this Court, which is the final arbiter of justice in this jurisdiction. If the challenge is found to have legal merits, the actions will be declared illegal, and even unconstitutional, if they transgress rights guaranteed by the Constitution. The core of the matter before us presents one such challenge to actions taken by the lower court and involves our examination of those laws, the procedures adopted by the lower court, and the process pursued by the State in bringing the matter to our attention and seeking the intervention of and redress from this Court.

The case finds its genesis in an Indictment brought on January 29, 2010 by a Special Grand Jury for Montserrado County, against Dr .Lawrence K. Bropleh, a former Minister of Information, Culture and Tourism. The Indictment, venued before Criminal Court C, First Judicial Circuit, Montserrado County, charged the defendant and two other defendants, with the crimes of theft of property, forgery, and criminal facilitation. The Indictment outlined the offenses charged as follows:

The Special Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Dr. Lawrence K. Bropleh, Joseph Z. Nyamunue, Sr., and Josiah B. S. Gwagee, committed Theft of Property, Forgery And Criminal Facilitation, as follows, to wit:

That between the period from November 2006 up to and including September 2009, the above named defendants, of the City of Monrovia, County and Republic aforesaid, without any color of right and the fear of God, and in violation of the statutory laws of Liberia made and provided, and with criminal and wicked intent to deprive the Government of Liberia ("GOL") did knowingly, feloniously, purposely, criminally, maliciously and intentionally steal, pilfer, take and carry away, and convert sundry amounts from various accounts of the GOL, under various schemes, did connive, conspire, and acting in concert, did place on the GOL payroll names of foreign service personnel who are not legitimate employees of the Ministry of Information; did forge the signatures of some legitimate foreign service personnel as well as the fictitious persons ;did sign for and receive the salary checks totaling Two Hundred Eighty Three Thousand Four Hundred Seven Dollars and One Cent United States Dollars (USD$283,407.01), and converted same into their personal use and benefit at the disadvantage of the plaintiff, Republic of Liberia, and further did commit ,using the funds of the GOL for such acts, and thereby committed the felony crimes of Theft of Property, Forgery and Criminal Facilitation in violation of§ 15.51,§ 15.70 and § 10.2 of the Penal Laws of the Republic of Liberia, which laws state:

§ 15.51- Theft of Property

A person is guilty of theft if he:

(a) Knowingly takes, misappropriates, converts, or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with the purpose of depriving the owner thereof;

(b) Knowingly obtains the property of another by deception or by threat with the purpose of depriving he owner thereof or purposely deprives another of his property by deception or by threat; or

(c) Knowingly receives the property of another which has been stolen, with the purpose of depriving the owner thereof.

§ 15.70. FORGERY OR COUNTERFEITING

1. Definition. A person has committed forgery or counterfeiting if, with the purpose of deceiving or harming the government or another person, or with knowledge that he is facilitating such deception or harm by another person, he

a) Knowingly and falsely makes, completes or alters any writing or subject; or

b) Knowingly utters a forged or counterfeited writing or object.

§ 10.2. CRIMINAL FACILITATION:

1. Offense. A person is guilty of criminal facilitation who, believing it probable that he is rendering aid to a person who intends to commit a crime, engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit a felony. This section does not apply to a person who is either expressly or by implication made not accountable by the statute defining the felony facilitated or related statute.

2. Defense precluded. It is no defense to a prosecution under this section that the persons whose conduct the defendant facilitated has been acquitted, has not been prosecuted or convicted ,has been convicted of a different offense, is immune from prosecution, or for some other reason cannot be brought to justice.

The General Allegations Applicable to all Counts

1. At all times relevant to this Indictment, the Ministry of Information was an administrative agency within the Executive Branch of the Government of Liberia, whose principal office was on Capitol Hill, Monrovia, Liberia.

2. At all times relevant to this Indictment, the defendant, Dr. Lawrence K. Bropleh (Bropleh), was the Minister of Information, Culture and Tourism of the Government of Liberia.

3. At all times relevant to this Indictment, the defendant, Joseph Z. Nyamunue (Nyamunue), was the Comptroller of the Ministry of Information.

4. At all times relevant to this Indictment, the defendant, Josiah B. S. Gwagee (Gwagee), was the Chief Accountant at the Ministry of Information.

5. At all times relevant to this Indictment, the Government of Liberia (GOL) maintained its general accounts with the Central Bank of Liberia (CBL).During times relevant to this Indictment, sGOL also maintained its general regulator and depository with the Ministry of Finance (MOF). All funds deposited into these accounts were exclusively the property of GOL and were intended to be the exclusive property of GOL.

6. All offenses alleged herein were committed within the Republic of Liberia and in the County of Montserrado.

7. All amounts of money relevant herein are stated in United States Dollars (USD).

Count 1

The Special Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that Co-Defendants, Joseph Z. Nyamunue, Sr., and Josiah B. S. Gwagee, committed Theft of Property, a felony of the third degree to wit:

1.1 That the defendants, Joseph Z. Nyamunue, Sr. and Josiah B.S. Gwagee, while serving as Comptroller and Chief Accountant, respectively, at the Ministry of Information, did place on the (GOL) payroll names of foreign service personnel who are not legitimate employees of the Ministry of Information; did forge the signatures of some legitimate foreign service personnel; did sign for and receive the salary checks totaling (USD$186,462.00), and converted same into their personal use and benefit at the disadvantage of the Plaintiff, Republic of Liberia.

1.2 That co-defendant, Dr. Lawrence K. Bropleh, as Minister of Information, was aware and in knowledge of the fact that Mr. Julu Swen and Mr. Christopher Sele, both personal acquaintances of his (Bropleh),are not in the employ of the Ministry of Information, but he consistently approved of payment vouchers prepared for and on their behalf by co-defendants, Joseph Z. Nyamunue and Josiah Gwagee, for a period of thirteen (13) months; that the said payments made to them (Swen and Sele) were never received by them. No comprehensive action was ever instituted to the effect by the then Minister, to remedy the situation, because he was a party to the scheme to defraud Government.

1.3 That the co-defendants, Joseph Z. Nyamunue and Josiah B. S. Gwagee Sr., respectively, did do, during the period October 16, 2007, thru 2008 and including 2009, knowingly and with persistent criminal intent to defraud the Government

of Liberia, did prepare bogus payrolls and include names of persons who are and/or were not legitimate employees of the Ministry of Information Foreign Service Mission; receives and encashed checks, and converted into their personal use and benefits, monies realized from said encashment to the tune of (US$96,945.01) Ninety Six Thousand Nine Hundred Forty-Five United States dollars and one cent, thus obligating the Government of Liberia (GOL) to pay out said amount to themselves.

1.4 The co-defendant, Dr. Lawrence K. Bropleh, on June 18,2009 did instruct and/or write Mrs. D. Sheba Brown, Domestic Manager, (CBL) recommending co-defendant Josiah B. S. Gwagee, Chief Accountant and Joseph Z. Nyamunue, Comptroller, to encash the following persons' checks :Julu Swen, Christopher Sele, Joan George and Bernard A. Warity. And that checks in favor of the herein named persons were fraudulently prepared, signed, and issued; and that during the process of encashment, the names and signatures of said persons were forged by said herein named co-defendants, Nyamunue and Gwagee.

1.5 That co-defendant, Dr. Lawrence K. Bropleh, did order and approve the payment vouchers to persons who are not legitimate personnel of the Ministry of Information Foreign Service, in the tune of (USD$96,945.01), which amount the purported payees never received, but that said amount was signed for and received by co-defendants, Nyamunue and Gwagee. Of this amount, co-defendant Joseph Nyamunue, then Comptroller (MOl), prepared and encashed eighteen (18) ghost checks totaling the amount of (US$55,074.48), while co-defendant Josiah Gwagee, then Chief Accountant of the Ministry of Information, forged and encashed fifteen (15) ghost checks totaling the amount of (USD$41,870.53).

1.6 That the defendants, Dr. Lawrence K. Bropleh, Joseph Z. Nyamunue and Josiah B.S. Gwagee, have no affirmative defense.

1.7 In relation to PROPERTY and services, OBTAINED means to bring about a transfer or purported transfer of an interest in the property, whether to the Defendant or another and secure performance thereof.

1.8 PROPERTY of another means property in which a person other than the actor has an interest which the actor is not privileged to infringe without consent regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction

or was subject to forfeiture as contraband. Property in the possession of the actor shall not be deemed property of another who has a security interest therein, even if illegal title is in the creditor pursuant to a conditional sales contract or other security agreement.

1.9 Owner means any person or government with an interest in property such that it is property of another as far as the defendant is concerned.

1.10 A person engages in the conduct purposely if, when he engages in the conduct, it is his conscious objective to engage in conduct of that nature or to cause the result of that conduct.

1.11 DEPRIVE means to withhold property or cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit has in fact been appropriated, and withhold property or cause it to be withheld with the intent to restore it only for payment of a reward or other compensation and dispose of property or use it or transfer any interest in it under circumstances that make its restoration impossible.

1.12 And that the value of property stolen was $50.000 or over and the property was acquired or retained to commit a first or second degree felony crime.

That the act of the defendants is contrary to: 4 LCLR, Title 26, Section 15.51(a), and 4 LCLR, Title 26, Section 2.2(a) and (b), and 4 LCLR, Title 26, Section 15.6(a), (b), (e), (g), and (k), 4 LCLR, Title 26, Section 15.54, of the statutory laws of the Republic of Liberia and the peace and dignity of the Republic of Liberia.

Count 2

The Special Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants ,Joseph Z. Nyamunue and Josiah B. S. Gwagee, did do and commit the crime of FORGERY, a felony in the first degree, to wit:

2.1 That the co-defendants, Joseph Z. Nyamunue and Josiah B.S. Gwagee, Sr., respectively, did, during the period October 16, A. D. 2007, thru out 2008, up to and including 2009, knowingly and with persistent criminal intent to defraud the Government of the Republic of Liberia, did prepare forged

payrolls, and did include ghost names of persons who are not and have never been legitimate employees of the Ministry of Information Cultural and Tourism Foreign Service; did receive and encash checks and convert the proceeds there from into their personal use and benefit, thus obligating the Government of the Republic of Liberia to pay out to themselves the total amount of (US0$96,945.01), with the acquiescence and facilitation of the then Minister, now co- defendant, Dr. Lawrence K. Bropleh.

2.2 That co-defendant, or Lawrence K. Bropleh, on June 18, A. D. 2009, did instruct and/ or write Mrs. D. Sheba Brown, Domestic manager of Central Bank of Liberia (CBL),recommending co-defendants, Josiah B. S. Gwagee, then Chief Accountant, and Joseph Z. Nyamunue, Sr., Comptroller, all of the Ministry of Information, to encash checks in favor of the following named persons: Julu Swen, Christopher Sele, Joan George and Bernard A. Warity. And that the checks in favor of the herein named persons were fraudulently prepared, signed and issued; and that during the process of encashment, the names and signatures of the above named persons were forged by said co- defendants Gwagee and Nyamunue.

2.3 That the co-defendants, Joseph Nyamunue and Josiah Gwagee, in further perpetuating their criminal design or scheme, forged and encashed a total of thirty (33) checks amounting to (USD$96,945.01) Ninety Six Thousand Nine Hundred Forty-Five United States dollars one cent, covering ghost names who are not legitimate employees and personnel of the Ministry of Information Foreign Service, with the acquiescence and facilitation of the then Minister, now co-defendant, Dr. Lawrence K. Bropleh.

2.4 That the defendants, Dr. Lawrence K. Bropleh, Joseph Nyamunue, Sr. and Josiah Gwagee, have no affirmative defense.

2.5 A person engages in conduct purposely if, when he engages in the conduct, it is his conscious objective to engage in the conduct of that nature or to cause the result of the said conduct.

2.6 A person engages in conduct purposely if, when he engages in conduct, he knows or has a firm belief unaccompanied by substantial doubt that he is doing so, whether or not it is his purpose to do so.

2.7 To forge or counterfeit writing means to falsely make, complete, or alter the writing, and a forged or counterfeit writing is a writing which has been falsely

made, completed or altered. The term forgery and counterfeiting and their variants are intended to be synonymous in legaleffect.

2.8 That the act of the defendants is contrary to: 4 LCLR, Title 26, Section15.70 of the statutory laws of the Republic of Liberia, and the peace and dignity of the Republic of Liberia.

Count 3

The Special Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendants, Joseph Z. Nyamunue, Sr. and Josiah B. S. Gwagee committed the crime of Theft of Property, a felony of the third degree, to wit:

3.1. That the hereinabove named defendants, with criminal intent, did do and develop a criminal scheme to defraud the Government of Liberia of monies purposely intended for its (GOL) legitimate foreign service personnel.

3.2. That the total amount of (USD$283,407.01) was fraudulently withdrawn from the Government's coffer by the said defendants and converted said amount into their personal use and benefits, thereby causing the Government of Liberia and enormous economic loss in its budgetary allotment.

3.3. That the defendants have no affirmative defense.

3.4. That the defendants herein named did carry out the scheme by creating fictitious and/or ghost names; preparing ghost payrolls, forging signatures of legitimate foreign service personnel of the Ministry of Information, and receiving there from monies totaling (US$283,407.01), which they, the defendants, converted into their personal use and benefits at the disadvantage of plaintiff, the Republic of Liberia; thereby jointly committing the crimes of Theft of Property, Forgery and Criminal facilitation against the interest of the State in violation of or contrary to the statutory laws of the Republic of Liberia and the peace and dignity of the Republic of Liberia.

Count4

The Special Grand Jurors for Montserrado County, Republic of Liberia, upon their oath do hereby find, more probably than not, that the defendant, Dr. Lawrence K. Bropleh, committed the crime of Criminal Facilitation, a felony in the third degree, to wit:

4.0 That co-defendant, Dr. Lawrence K. Bropleh, as Minister of Information, did do and commit the crime of Criminal Facilitation in that he was aware and in full knowledge of the fact that Mr. Julu Swen and Mr. Christopher Sele, both personal acquaintances of his (Bropleh) are not in the employ of the Ministry of Information, but he consistently approved of payment vouchers prepared for and on their behalf by co-defendants Joseph Z. Nyamunue and Josiah Gwagee for a period of thirteen (13) months; and that said payments made to them (Swen and Sele), were never received by them. No comprehensive action was ever instituted to the effect by the then Minister to remedy the situation, even after it was brought to his attention by the Ministry of Finance, because he was a party to the scheme to defraud Government.

4.1. That the defendants hereinabove named did do and commit the crime of Criminal Facilitation (Bropleh) in addition to Theft of Property and Forgery (Nyamunue and Gwagee), when they (defendants) there and then, with criminal intent, did endorse salary checks of individuals (Julu Swen and Christopher Sele),just to name a few) knowing fully well that said individuals are not officially legitimate employees or personnel of the Ministry of Information (MOl) Foreign Mission; specifically, co-defendant, Dr. Lawrence K. Bropleh's June 28th, 2009 communication addressed to Madam D. Sheba Brown, Domestic Manager, central Bank of Liberia thus, defrauding the Government of Liberia of Thousands of United States Dollars.

4.2 That the co-defendant, Rev. Dr. Lawrence K. Bropleh, did do and create an opportunity and/or did omit to do that which was germane to disallow defrauding the Government of Liberia by the other co-defendants, Nyamunue and Gwagee, acting in concert, in furtherance of their criminal design/scheme, as a consequence of which, the Government of Liberia was defrauded of monies in the Thousands of United States dollars.

4.3 That the defendants have no affirmative defense.

4.4 That the act of the defendant, Dr. Lawrence K. Bropleh, is contrary to Chapter 10,Section 10.2 of the New Penal Law of the Republic of Liberia and the peace and dignity of the Republic aforesaid.

This was the Indictment under which the defendants, named above, were charged with the crimes of theft of property, forgery and criminal facilitation, and specifically, in the case of co-appellant Lawrence K. Bropleh, the crime of criminal facilitation. We have set out the entire Indictment, the same as we intend to do

regarding the processes that were pursued in this case, as cumbersome as these are, because of the manner in which we intend to address the issues that the parties have raised and the view we hold on the manner in which the matter was dealt with by the prosecution, the defense, and the trial court.

Upon the Indictment being served and his arrest having been effected, co- defendant Bropleh, believing that his defenses were incompatible with those of the other defendants, filed a motion before the First Judicial Circuit Court, Criminal Assizes "C", praying the court to grant him a separate trial from the other co-defendants. The motion was resisted by the prosecution and denied by the trial judge. From this denial of the motion co-defendant Bropleh filed a petition for a writ of certiorari before His Honour Justice Kabineh Ja'neh, then presiding in Chambers, praying the reversal of the trial court's ruling. The counsels for the parties, having agreed at the conference called by the Chambers Justice that a separate trial could be had for co-defendant Bropleh, an order was sent down to the trial court directing that the motion for a separate trial be granted.

Following the trial court's resumption of jurisdiction over the case, and the granting of co-appellant Bropleh's motion for a separate trial, as per the mandate of the Chambers Justice, a notice of assignment was prayed for and issued by the trial court for trial of the case on December 6, 2010. When the case was called for trial on December 6, 2010, co-appellant Bropleh, through his counsel, made application to the court waiving trial by jury. The application was resisted, heard by the court, and granted by the trial judge. The Indictment was then read to defendant Bropleh who, in response to the charges levied in the Indictment, entered a plea off not guilty.

The records further show that His Honour William K. Ware, Sr., the judge presiding over the proceedings, allowed the defendant to sit at the table with his counsel rather than the defendant's dock. The State, not being satisfied with the decision of the judge in that regard, and believing that the judge was demonstrating bias towards the State and manifested interest in the case, made a motion on the minutes of the court requesting the judge to recuse himself. The motion was resisted and denied and the case was ordered reassigned on the minutes of the court for the following day, December 7, 2010, at 10:00 a.m.

Our further review of the records reveal that when the case was called for hearing on December 7,2010,as scheduled, none of counsels for the State, that is, the prosecution, were in appearance for the hearing of the case. Counsel for the

defendant, therefore, after announcing representation, made a motion for the dismissal of the case against the defendant, with prejudice. In so doing, the counsel invoked Chapter 18, section 18.2, of the Criminal Procedure Law, Title 2, Liberian Code of Laws Revised. The court, after noting the absence of the entire prosecution team, proceeded to rule as follows:

The court says it has closely inspected the submission of counsel for the defendant and has equally reviewed the Indictment in its entirety and concludes that the submission or the application must be granted in the interest of justice.

Wherefore and in view of the facts and circumstances and a close look at the submission made by counsel for the defendant, the application is granted and the defendant, Dr. Lawrence K. Bropleh, is hereby entirely released from answering further for the cause that has been laid in the Indictment that brought him under the jurisdiction of this court. The court further [says] that all of his rights and liberty are hereby ordered restored in keeping with the law of this land. The clerk is hereby ordered that whatever bond was filed for and on behalf of the defendant in these proceedings be returned to him since the State has failed, refused and neglected to proceed against him to have him convicted. And it is hereby so ordered.

We also note from the records that although counsel for the prosecution were not present in court at the time the submission for dismissal of the case was made, and when the trial judge thereafter commenced his ruling on the submission, one of counsel for the prosecution did arrive in court during the course of the ruling, and immediately following the ruling excepted thereto and announced an appeal therefrom. The minutes reflect the following in that regard:

Prosecution who is being represented by Cllr. J. Daku Mulbah, County Attorney for Montserrado County, who is in open court excepts to Your Honor's ruling and hereby announces an appeal to the Honourable Supreme Court, sitting in its October Term, A. D. 2010. And respectfully submits.

The trial judge responded to the prosecution's announcement of an appeal to the Supreme Court in the following words: The court says it is very strange for a state prosecuting attorney who was not present in court and/or who just entered in court when a ruling has been made. However, the court says exceptions being a matter of right is noted, and granted. And so ordered.

Matter suspended. The prosecution then made the further response to the failure of the court's ruling in not specifically granting the appeal, as follows: Prosecution excepts. And submits. The announcement of exceptions by counsel for the prosecution growing out of the failure of the court to grant the appeal prayed for by the prosecution by a further reaction by counsel for the defendant in these words: Defense excepts to the granting of the prosecution exceptions. And submits. In response to the announcement of this new exception by counsel for defendant, the court made the following comments: The court says exception by one of counsels for the defendant is hereby noted and granted, especially so where exception is a matter of right. And so ordered. Matter suspended.

This Court deems it important to make a few comments on the conduct of the proceedings in the trial court, as appears in the records before us. Firstly, we are concerned with the unusual haste adopted by the defendant's counsel in seeking to have the court dismiss the Indictment and the case against the defendant, especially since the case had not remained idled on the trial court's docket following the arrest, subsequent indictment and arraignment of the defendants. We did not see that any unusually long period had lapsed between the arrest and the indictment and the arraignment as warranted the application or submission to dismiss the indictment. The State had accused the defendants in the indictment of squandering the nation's resources, desperately needed, according to the State, to attend to the many critical social and development needs of the nation and of its people. It had accused him of facilitating that process. This was a very serious crime. The defendant, following his indictment on January 29, 2010, had filed a criminal appearance bond which had allowed him to regain his freedom pending the trial of the case against him.

The records show that the major part of whatever time had lapsed was due primarily to the defendant requesting separation of his trial from that of the other defendants named in the indictment and his seeking certiorari when the trial judge then presiding denied the application for separate trial. The records show also that only one day had actually lapse between the trial court's resumption of jurisdiction of the case, upon same being returned from the Justice in Chambers, and the submission made by counsel for defendant for the dismissal of the indictment and the entire case. We do not believe that any harm would have been caused to the defendant to await another hour or thereabout for the prosecution to produce its witnesses, as the prosecution had contended it was proceeding to do with the knowledge of the trial court judge.

We should add also that while we are of the view that no case should be allowed to linger for any unusually long period on the docket of the courts, especially where the freedom of the defendant is at stake or at risk, we are at a lost, in the instant case, at understanding why counsel for the defendant was intolerant of the State in the circumstances explained by the prosecution. Even had those circumstances not existed, we would still be of the view that there was unusual haste in seeking to secure a judgment without a trial. We believe therefore that the trial judge should not have proceeded as he did.

Our second concern about the proceedings in the trial court, as revealed by the records, is the vagueness of the trial judge's ruling. We note that while counsel for the defendant had prayed for the dismissal of the case against the defendant with prejudice, nowhere in the judge's ruling did he make mention of the phrase with prejudice. Instead, he left it to the parties to determine that from the wordings of his ruling, wherein he stated that the submission of the application must be granted in the interest of justice, he intended to convey that the dismissal was with prejudice. Indeed, the judge seemed to have been of the belief that by simply stating the phrase that the submission or the application must be granted in the interest of justice, those words would have conveyed the intent that the dismissal was with prejudice. He seemed to believe also that by buttressing the reference phrase with thee further phrase Wherefore and in view of the facts and circumstances and a close look at the submission made by counsel for the defendant, the application is granted and the defendant, Dr. Lawrence K. Bropleh, is hereby entirely released from answering further for the cause that has been laid in the Indictment that brought him under the jurisdiction of this court', the logical conclusion was that the case was dismissed with prejudice.

There was also further vagueness in the judge's response to the prosecution's exceptions, taken to the ruling dismissing the indictment and the case, presumably with prejudice, and the announcement of an appeal from the said ruling. At the very least, the judge was under a legal obligation to state in clear and unambiguous terms whether the appeal taken by the prosecution was granted or denied. Instead, a first glance at the trial judge's response to the prosecution exception taken to his judge's ruling leaves one wondering whether the judge intended to deny the appeal, whether it was a clerical error, or whether by the phrase exceptions noted and granted, he intended that the appeal was granted. What is clear is that there was absolutely no reference made by the

judge to the appeal announced by the prosecution and nothing was said directly as to whether the appeal was granted or denied.

In their arguments before this Court, the prosecution asserted that the action of the judge was disingenuous because the State, being present in court, sought and was granted permission by the trial judge to leave the court for a brief moment to secure the State's witnesses who were at the Headquarters of the Liberian National Police (LNP); that the trial judge then used the opportunity to allow the defense counsel to put his submission on the minutes of the court; that the judge had immediately thereafter commenced ruling on the submission and granting the prayers of the defendant; and that appearing in court while the judge was making his ruling, counsel for the State had, at the end of the ruling noted exceptions thereto and appeal therefrom. We believe that it is reasonable to conclude however, from a careful perusal of the structure of the sentence, as used by the judge, that the impression is given that the judge did not intend to grant the appeal but rather that he intended granting the exceptions taken to the ruling by the prosecution. [See 25th day's Jury Session, November 7, 2010, sheet five.]

The action of the judge was unfortunate, for by his action he exposed the court records to a comedy of errors made by the court and the parties. It is in the face of the errors made by the court, and for the clarity of our lower courts, we must state thee view that exceptions taken to actions of a trial judge are not granted by the court; they are noted by the court. In addition, we must note that it is not within the purview of the trial court to decide whether to note, grant or deny the notation of exceptions taken by a party to any action (ruling or otherwise) of the court. The notation of exceptions taken by a party to any act of the court is a mandatory obligation imposed on the court, once requested by a party, and no judge is vested with the authority or the power to deny a party access to that right, or to decide whether or not the exceptions should be noted. Indeed, the notation of such exceptions is crucial to the Supreme Court's review of the acts and actions by a trial court. Any refusal by the trial court to note such exceptions does not only deprive the party to the right to have his particular grievances heard by this Court but also deprives this Court of the right and the duty to ensure that the trial judge acted legally and properly in the course of the proceedings.

This Court has said on numerous occasions that unless a party takes exceptions to the actions and rulings of the trial court, the party cannot seek a

review by the Supreme Court of the trial court's action or ruling. Insurance Company of Africa v. Fantastic Store, 32 LLR 366 (1984); Vincent-Harding v. Harding, 32 LLR 582 (1985);Gemayal v. Cooper and Cooper, 38 LLR 518 (1998); Inter-Con Security Systems, Inc. v. Miah and Yarkpawolo, 38 LLR 633 (1998).

We cannot help but also note a third concern, revealed by the records. We note that the prosecution took exceptions to the judge's ruling on the earlier exceptions taken to the ruling and the failure of the judge to state that the appeal announced by the prosecution was granted. The judge then noted and granted the prosecution's exceptions. Exceptions were then taken by counsel for the defendant to the noting and granting by the judge of the exceptions taken by the prosecution. What, we ask, was the essence of or the motive behind counsel for defendant excepting to the judge's notation or granting of the exceptions taken by the prosecution growing out of the judge's failure to grant the appeal announced by the prosecution from the dismissal of the indictment and the case and the freeing of the defendant from further answering the charges brought against him? While, as pointed out, a party has the right to except to any action by the trial judge, we are troubled and disturbed about the adoption of the kind of procedure in the instant case and the trial judge's inability to point this out to counsel, even if just for the record.

Referencing the same records, the prosecution contends that the records in the case reveal a deliberate denial by the judge of the appeal announced by the State, and that, as we have indicated, may very well have been the intent of the trial judge. But assuming that to have been the case, the records are devoid of any real challenge by the prosecution to the action of the judge, except for the notation on the records that Prosecution excepts. And submits. Why was no further records made by the prosecution that the judge's ruling was tantamount to a denial of the appeal announced by the State and that the State would avail itself of the law? Although the exceptions may have provided a basis for seeking remedial process and a review by this Court, a more direct and clear challenge would not only have shown the seriousness of the prosecution's challenge but also would have avoided us having to seek out really may have intended by the vagueness of his ruling.

Further, the prosecution, rather than pursuing the course of mandamus, and doing so expeditiously, given the seriousness of the denial of the right of appeal to the State, determined instead to opt for prohibition, and even then to do so

belatedly. The records reveal that one week following the judge's ruling, that is, on December 15, 2010, a petition for a writ of prohibition, under the signatures of the Assistant Minister of Justice for Litigation and the County Attorney for Montserrado County, was filed with the Clerk of the Supreme Court, seeking from the Justice in Chambers the alternative writ of prohibition.

But the records do not indicate what happened between December 15, 2010, when the petition was filed, and January 6, 2011, when a second petition was filed. Indeed, the records are devoid of any indications as to whether the Chambers Justice acted on the petition of December 15, 2010 or whether the petitioner withdrew the petition with reservation to file an amended petition, or that the State withdrew the petition without reservation. What the records do show is that on January 6, 2011, three weeks after the filing of the initial petition for the writ of prohibition, and four weeks following the judge's ruling, a new petition, not an amended petition, for the writ of prohibition, was filed with the Clerk of the Supreme Court.

Also of vital concern to us is that nothing in the records show that the filing of the petition was done with leave of the Court, given that the first petition remained on the records of the Court undisturbed and not acted upon. How a new petition was filed without a withdrawal of the original or initial petition or without reference to the fact that the initial petition still remained officially and active on the file of the Supreme Court. Further, we have seen no writs issued as a result of the first petition filed and no returns to that petition can be found in the case file. This was clearly a departure from the law and negligence of an unacceptable level. But we shall not dwell further on the issue.

Instead, we proceed to the contents of the new petition for the writ of prohibition, filed on January 6, 2011. Because it was this new petition, containing six counts, that the Justice in Chambers acted upon, we deem it proper to reflect the exact contents of the petition, and we therefore herewith quote the said petition verbatim:

1. Petitioner says it is plaintiff in a criminal case involving the defendant, Dr. Lawrence K. Bropleh and two others, who were jointly indicted for the crimes of THEFT OF PROPERTY FORGERY, and CRIMINAL FACILITATION, while they served as officials of the Ministry of Information, Culture, and Tourism (Minister, Comptroller and Chief Accountant, respectively). Petitioner attaches

copy of the Indictment hereby marked Petitioner's Exhibit PT/1 to form a cogent part of this petition.

2. And also because petitioner says co-defendant, Dr. Lawrence K. Bropleh, requested and was granted severance from the other two defendants, over the objection of the plaintiff/petitioner.

3. Petitioner complains and says that when the case was called for trial on December 6, 2010, the defendant's counsel moved the court for the dismissal of the Indictment based on Section 18.2 of the Criminal Procedure Law. The court granted defendant's application and proceeded to order the dismissal of the case/Indictment WITH PREJUDICE to the State. The term WITH PREJUDICE is defined as follows: with loss of all rights; in a way that finally disposes of a party's claim and bars any future action on that claim. Black's Law Dictionary, Eighth Edition, page 1633. On the other hand, the term WITHOUT PREJUDICE is defined as follows: without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party. Ibid page 1632. Petitioner attaches hereto copy of the Minutes of the Court, showing the defendant's application and the court's ruling thereon, hereby marked petitioner's Exhibit PT/2 to form a cogent part of this petition.

4. Petitioner complains and says that it was an error of law for the Respondent Judge to have dismissed the Indictment not on the merits of the case and, yet at the same time, indicate that the dismissal was with prejudice to the State. As stated above, petitioner contends that the conduct of the judge unduly and unjustifiably prejudiced the interest of the State, in that when a case is dismissed with prejudice, the said case is removed from the court's docket in such a way that the plaintiff is foreclosed from filing a suit again on the same claim (s); whereas, when the case is dismissed WITHOUT prejudice, it is removed from the court's docket in such a way that the plaintiff may re-file the same suit on the same claims. Black's Law Dictionary, Eighth Edition, supra, page 503. Petitioner says the ruling of the judge clearly violated this cited legal authority, as well as Section 18.2 of the Criminal Procedure Law, which was the basis of the request by the defendant's counsel. See petitioner's Exhibit PT/2, supra. Petitioner vehemently contends and insists that a dismissal granted on the basis of either Sections 18.1 and/or 18.2, is without prejudice to the State. In fact, Section 18.3 is clear and unambiguous when it declares the following:

Section 18.3 Effect of dismissal.

Dismissal of an indictment or complaint under section 18.1or 18.2 at any time before the jury is empanelled and sworn or, if the case is to be tried by the court, before the court has begun to hear evidence, shall not constitute a bar under the provisions of section 3.1 to a subsequent prosecution. Criminal Procedure Law, Chapter 18, Section 18.3, 1LCLR 373.

5. Petitioner says nothing is clearer than this language, which even a first year law student would understand. It is for this error and abuse of discretion by the respondent judge that the petitioner seeks the aid of this Honorable Court, in that the petitioner does not necessarily contest the legality of the dismissal of the Indictment but that the dismissal is WITH prejudice to the State, and it is this error by the judge that the petitioner respectfully prays Your Honor to reverse., and allow the State to proceed on this matter as it desires, in keeping with law.

6. Petitioner says prohibition is the proper remedy to prohibit and restrain a lower court from proceeding by wrong rules, or exceeding its jurisdiction, or from assuming jurisdiction not ascribed to it by law. This Supreme Court has held that prohibition will not only prohibit what is to be done, but will also undo that which has already been done illegally. Petitioner now seeks to have this Honorable Court reverse and set aside the erroneous ruling handed down by the respondent judge dismissing the Indictment with prejudice to the State. Ali Ayad versus William E. Dennis, 23 LLR 165 {1974) syl. 9 text at 181;Liberia Agricultural Company versus Elias T. Hage, et al., 38 LLR 259 {1995) syl.ll, text at 270;His Honor John H. Mathis and Fima Capital Corporation versus Alpha International Investment, Ltd.,40 LLR 561(2001),syl. 22,23,24 text at 572.

WHERERFORE, and in view of the foregoing, petitioner most respectfully prays Your Honor to grant this petition and order the reversal of the judgment or ruling of the respondent judge and hold that the dismissal of the Indictment is and should be WITHOUT Prejudice to the State to have the case tried on its merits, and to grant unto the Petitioner any and all other and further relief as would be just, legal, and equitable in the premises.

The records disclose that on the same day of the filing of this new petition, the Justice in Chambers ordered the Clerk of the Supreme Court to cite the parties to a conference for the following day, January 7, 2011. The Justice, being satisfied that a sufficient basis had been stated to warrant a review of the ruling made by the co-respondent trial judge, ordered the issuance of the alternative writ.

1. Upon receipt of the alternative writ and in response to the allegations set out in the petition, the respondents filed a nine-countreturns. For the same reason stated before and which warranted our quoting verbatim the petition, we herewith also quote verbatim counts two through eight of the returns, the said counts bearing relevance to the determination of the case:

2. Also because as to count {3) of the petition, Respondents say that truly, the matter was assigned on the 6th day of December,2010 at which time the State among other things requested His Honor Judge Ware to recuse himself and upon denying said application, the case was reassigned on the minutes of court for the 7th day of December, 2010. Your Honor is respectfully take judicial notice of the records in these proceedings hereto attached and marked Exhibit R/1in hulk to form a cogent part of respondents' returns.

3. And also because further to count (2) above, respondents say that it was on the 7th day of December, 2010 when the prosecution failed to appear and one of counsels for the defendant applied to the court for the dismissal of the case with prejudice which was granted and thereafter the prosecution which arrived late excepted and announced an appeal which was noted and granted. Again, Your Honor is respectfully requested to take judicial notice of the records of the trial Court hereto attached and marked Exhibit R/2 in bulk also to form a cogent part of respondents returns.

4. And also because further to count (3) above Respondents say that the State has the right to announce an appeal where there is an order granting a motion to dismiss the indictment which was the case in point. Your Honor is respectfully requested to take judicial notice of the Criminal Procedure Law, volume 1, chapter 24, section 24.3.

5. And also because further to count (4) above, following the announcement of the appeal, the prosecution failed and neglected to take any jurisdictional steps as provided by the Criminal procedure Law volume I chapter 24,section 24.7.

6. And also because respondents say that petitioner having, failed to comply with the statute, prohibition is not the substitute for an appeal for which the entire petition should be ignored, denied and dismissed and respondents so pray.

7. And also because as to counts (4-6) of the petition, Respondents say that they constitute recitals which are not grounds for a prohibition after the announcement of an appeal and the failure to take the steps as required by law. Said counts should he ignored and the entire petition dismissed and respondents so pray.

8. And also because as to the entire petition, assuming without admitting that His Honor Ware made an error in his ruling, prohibition is not the proper writ as said writ does not concern itself with the correction of rulings/judgments. Your Honor, the Honorable Supreme has held in the case: Resident Circuit Judge Wynston O. Henries and Boima Sando Dagbeh of the City of Monrovia, County of Montserrado, Republic of Liberia, Respondents/Appellants versus Jartu Fahnbulleh, Elvis Wolo, Mamie Lawrence, Konah Maimah, James Yata, Martha Divine, Doris Tar, Varney Fahnbulleh, et al., of Dagbeh Town, Sinkor, Monrovia, Liberia, Petitioner/Appellees, decided October Term, 2004, delivered by His Honour Justice Korkpor. Respondents say further that in delivering this opinion, Justice Korkpor relied upon several opinions including the opinion of Former Justice Wright in the case: The Management of Catholic Relief Services vs. Natt et al., 39LLR 415 (1999),in which the Honorable Supreme Court again held that the erroneous decision of a jurisdictional question is not a ground for the issuance of the writ of prohibition, if the court has jurisdiction of the general class to which the particular case belongs, since there is an adequate remedy by appeal. Also, the Honorable Court said that if the inferior court or tribunal has jurisdiction of both the subject matter and of the person of the defendant, prohibition will not lie to correct errors of laws or facts, for which there is adequate remedy by appeal or otherwise, whether such errors are merely apprehended or have been actually committed.

The Chambers Justice thereafter, on February 16, 2011, listened to arguments by the parties, and on June 9, 2011, ruled on the matter. In his ruling, the Justice held that the trial judge was in error in granting the submission made by counsel for the defendant and in dismissing the State's case with prejudice. The Justice also held that under the circumstances presented in the case, prohibition will lie to correct the error.

We are in agreement with the analysis articulated by the Justice regarding the submission made in the trial court by counsel for the defendant and the ruling handed down by the trial judge. Indeed, we subscribe to and concur with the

Justice's determination, and the rationale in support of that determination, that the trial judge was in serious error in granting the submission, in what seemingly was a deliberate violation of the statute which he had sworn to uphold. We believe additionally that the trial judge's ruling demonstrated either a serious lack of knowledge of the law or a deliberate exhibition of a design aimed clearly at misinterpreting, ignoring or abusing the law.

We believe that the Justice in Chambers eloquently addressed the issue of the ruling made by the co-respondent judge, and we therefore herewith quote and incorporate that quoted segment of the Justice's ruling to constitute a part of the holding of this Court. The Justice, after reciting the facts, already stated above, wrote:

The trial judge relied on section 18.2 of the Criminal Procedure Law to dismiss the case with prejudice; that section provides:

Unless good cause is shown, a court shall dismiss a complaint against a defendant who is not indicted by the end of the next succeeding term after his arrest for an indictable offense or his appearance in court in response to a summons or notice to appear charging him with such an offense. Unless good cause is shown; a court shall dismiss an indictment if the defendant is not tried during the next succeeding term after the finding of the indictment. A court shall dismiss a complaint charging a defendant with an offense triable by a magistrate or justice of the peace if trial is not commenced within fifteen days after the arrest of the defendant or his appearance in court in response to a summons or notice to appear.

As I see it, the above quoted section of the Criminal Procedure Law is intended to provide safeguard against prolong delay in the trial of an accused person who is charged by a court. It is invoked to dismiss a complaint against a defendant who, having been charged by a court with an indictable offense, is not indicted by the end of the next succeeding term of court, unless good cause is shown. Where a defendant has already been indicted, the indictment shall be dismissed if he or she is not tried at the end of the next succeeding term, unless good cause is shown. And where the defendant is charged with the commission of a crime triable in a magistrate or justice of the peace court, the complaint shall be dismissed if trial is not commenced in 15 days; again, unless good cause is shown.

From the language of the statute, it is clear that one who seeks remedy there under must do so through the tiling of a pre-trial motion. If the defendant is not indicted, or not tried, absence the show of good cause, then the section shall operate to

dismiss the case against the defendant. It was never intended to apply to set free a defendant who has been indicted and trial of the case has commenced, as in the instant case. I therefore fully agree with the lawyers representing the state that if the defendant had wanted to be in the ambit of, and enjoy the protection of section 18.2 of the Criminal Procedure Law, he should have filed his motion to dismiss for failure to proceed before trial in the case against him commenced. It is my opinion that once he was arraigned, pleaded to the indictment, and waived his right to trial by jury, trial had commenced; therefore, section 18.2 of the Criminal Procedure Law could no longer be invoked.

The defendant was jointly charged with others on January 29, 2010. The writ of arrest against them was issued on February 10, 2010 and defendant Dr. Bropleh filed a criminal appearance bond on February 15, 2010 which was approved by the trial court the same day. He subsequently filed a motion for separate trial. On March 30, 2010 the then trial judge, Judge James Gilayeneh ruled denying the motion for separate trial. On April 1, 2010 the lawyers representing defendant Dr. Bropleh filed a petition for a writ of prohibition with Justice Kabineh Ja'neh, then presiding in Chambers; the Justice ordered a stay order which mandated the lower court to stop all proceedings in the case. After conducting conference with the parties, Justice Ja'neh on September 24, 2010 sent a mandate to the trial court to resume jurisdiction over the case and proceed with trial. Upon resumption of the matter on September 27, 2010, Judge William Ware was then presiding; he heard and granted the motion for separate trial.

I have given the foregoing brief chronology of events gleaned from the records to accentuate the point that the defendant in this case was indicted before the end of the next succeeding term of court, after his arrest; and trial against him commenced before the end of the next succeeding term in line with section 18.2 of the Criminal Procedure Law. Whatever delay that occurred in his trial was caused by the remedial process the defendant, through his lawyers, filed with the Justice in Chambers which cannot be attributable to the state.

Moreover, once trial in a matter has commenced in court, delay occasioned by legitimate processes of court such as the making of motions, filing of remedial writs or the announcement of appeals cannot be construed as failure to proceed to be remedied by section 18.2 of the Criminal Procedure Law. So, it was an error for Judge Ware to have ruled that the

indictment in this case was filed January 29,2010,and that up to and including the commencement of the trial, in the November Term, 2010 it was over three terms, and therefore, the state had failed to proceed against the defendant.

But even if the trial judge was within the pale of the law by dismissing the case against the defendant under the facts and circumstances as stated herein, he still could not dismiss the case with prejudice. By dismissing the case with prejudice to the state, the trial judge had foreclosed and prohibited the state from bringing any future action against the defendant on the same claim. Section 18.3 of the Criminal Procedure Law provides:

Dismissal of an indictment or complaint under section 18.1or 18.2 at any time before the jury is impaneled and sworn or, if the case is to be tried by the court, before the court has begun to hear evidence, shall not constitute a bar under the provisions of section 3.1 to a subsequent prosecution.

Two things are made unequivocally clear by the foregoing provision. Firstly, the granting of an application dismissing a case under section 18.2 of the Criminal Procedure Law is not a bar to subsequent prosecution of the same defendant for the same crime.

Secondly, the provision validates the position that one who seeks the aid of section 18.2 of the Criminal Procedure Law must do so through the filing of a pretrial motion before the defendant is arraigned, has entered a plea and before a jury is sworn to try the case. But where trial had commenced a day before, as in the instant case, the failure of lawyers representing the state to attend trial the next day cannot be construed as failure to proceed in the contemplation of section 18.2 of the Criminal Procedure Law.

In my view, the judge had several options at his disposal to deal with the state lawyers who did not attend trial. He could have held them in contempt and fined them, or incarcerated them, or both. And if their action continued, thereby causing the trial to be aborted, halted or terminated without good cause, the defendant would enjoy the benefit of double jeopardy, in the event the state attempts to try him again. The law provides that [no] person shall be subject to double jeopardy. This means the defendant could not be placed on trial for the same offense or any degree thereof for the second time. See Article 21 (h) of the Constitution of Liberia (1986). See, also, Chapter 3 (1) (2), 1 LCL

Revised Criminal Procedure Law. These laws are safeguards to protect the rights of the defendant during and after trial. But clearly, it was an error for the trial judge to have dismissed the case on the second day of trial on account of the first absence of the state lawyers.

We fully concur with our colleague, both with regard to his determination of the errors made by the judge and his interpretation of the statute, as it relates to the factual circumstances narrated in the case. However, our colleague went on to make the further determination as to whether prohibition was the proper remedy or course to pursue in seeking to correct the errors made by the trial judge. In that regard, the Justice wrote:

The next issue is whether or not prohibition can provide remedy for the wrongful act of the trial judge in dismissing the case with prejudice to the state? Ihold that prohibition can provide such remedy.

Prohibition is a special proceeding to obtain a writ ordering the respondent torefrain from further pursuing a judicial action or proceeding specified therein. Section 16.21, 1LCL Revised, Civil Procedure Law. This Court has held that prohibition is the proper remedial process to restrain an inferior court or administrative tribunal from taking action in a case over which it has no jurisdiction or where it acts beyond its jurisdiction or attempts to proceed by rules different from those which would be observed at all times [Emphasis supplied]. Meridian Biao Bank Liberia Limited vs. Andrews et al., 40 LLR 111(2000).

It is my view that the trial judge, though having jurisdiction in the case proceeded by rules different from those which should be observed at all times when he granted an application from the defendant's counsel dismissing the case for failure to proceed when trial had commenced. And to make matter worse, he dismissed the case with prejudice, contrary to the provision of section 18.3 of the Criminal Procedure Law in such cases.

The counsel representing the defendant has relied on the principle of law in the case Henries v. Fahnbulleh, decided during the October, 2004 term of this Court, and argued that prohibition is not the proper remedial writ through which the state should seek redress under the facts and circumstances of this case because prohibition does not concern itself with the correction of rulings or judgments.

I hold that the facts in the Henries case are not analogous to the facts in the instant case. In the Henries case, the appellees applied for a writ of prohibition contending that a) the trial court should have refused jurisdiction in an action of summary proceedings to recover possession of real property because title was involved; (b) that even though they appeared in the trial court and stayed two hours before leaving on the scheduled date for trial, the trial judge arrived two hours late and proceeded to hear the case, thereby denying them their day in court; (c) that the trial court judge failed to appoint a deputy attorney to take ruling in the case thereby denying them their right to appeal; d) that when law issues in the case were argued, ruling was reserved but that an assignment for the ruling was served on a lawyer other than the counsel of records in the case; e) that the trial judge's ruling on law issues was dated April 14, 1998, four days before argument on the law issues were actually held and; that the writ of possession evicting the appellees from the premises was irregularly obtained. This Court held that the contentions of the appellees comprised alleged irregularities said to have been committed by the trial judge that cannot be corrected by a writ of prohibition since other adequate and available remedies such as certiorari, error or regular appeal were available to the appellees.

In the case before me, the trial judge proceeded contrary to rules which ought to be observed at all times when he granted a motion made by the counsel representing the defendant and dismissed the case with prejudice to the state. There is no doubt that the proper redress where a trial court proceeds by the wrong rules lies in the writ of prohibition. I therefore affirm the principle of law in the Henries case but hold that it is not applicable in this case.

The counsel representing the defendant has also argued that the state announced an appeal from the ruling of the trial judge but did not pursue the appeal; that if the contention of the state is that the trial judge did not grant its appeal the state should have proceeded by the writ of mandamus to compel the judge to grant the appeal; and that prohibition is not a substitute for an appeal. The counsel for the state, counter- argued that the trial judge did not grant the appeal announced by the state; that since the judge only noted and granted the exception taken by the state; the state chose to proceed by prohibition.

I have thoroughly reviewed the records in order to settle these contentions. I observed that t h e state announced an appeal to the Supreme Court from the

ruling of the trial court dismissing the case, but there is no showing that the trial judge granted the appeal.

As I stated above, it appears that while the trial judge was entering ruling on the defendant's motion to dismiss, the County Attorney for Montserrado County, one of counsel for the state, appeared in Court. He is on record as having said the following: Prosecution who is being represented by Counsellor J. Daku Mulbah, County Attorney for Montserrado County who is in open court excepts to your Honor's ruling and hereby announces an appeal to the Honourable Supreme Court sitting in its October Term, A.D. 2010." And this is what the court said: "The Court says it is very strange for a state prosecuting attorney who was [not] present in court and who has just entered in court when the ruling has been made. However, the court says exception being a matter of right is noted and granted. And so ordered. Matter suspended. {See sheet five, 25th day's jury sitting, December 7,2010.)

In my view, the trial judge was under obligation to have granted the appeal announced by the state. And Iagree with the contention of the counsel for the defendant that the state should have compelled the trial judge, by filing a writ of mandamus, to grant the appeal announced in open court.

But I agree, also, that under the circumstance where a trial judge fails or refuses to grant an appeal announced, but only notes and grant an exception taken, as done in this case, the party noting exception has an option, and is not precluded from proceeding by the speedy and adequate remedy of prohibition. This Court has held that [T]hough a writ of prohibition should be providently issued, since it is an extraordinary remedy, nonetheless the mere existence of another remedy is not, in itself, necessarily sufficient to deny issuance of the writ, for such other remedy must be plain, speedy, and adequate in the circumstances of the particular case. McCarthy vs. Gray et al., 23 LLR 142 (1974). In my view, the remedy that the writ of mandamus provides is not plain, speedy and adequate in the circumstances of this case. Mandamus only compels the performance of an official duty, while prohibition prevents the doing of an illegal act. Prohibition can also undo what has not been lawfully done.

It is important to re-emphasize that we are in full agreement with our learned colleague that the trial judge committed very serious, and even reversible errors; that he acted without the pale of the law in granting the submission made by counsel for the defendant; that he effectively desecrated the law in going further to

rule in effect that the case was being dismissed "with prejudice"; and that he was in violation of a legal duty to grant the prosecution the appeal announced by the State. However, notwithstanding the foregoing, we do not share our colleague's conclusion that prohibition is the proper or appropriate remedy to correct the errors narrated by him and with which we have indicated our concurrence, when the law clearly sets out the province of the vital and proper remedy in such a situation as we have in the instant case. We advance the following as the basis for our difficulty in concurring with the conclusion reached by our colleague relative to the applicability of the writ of prohibition in this case.

The Liberian Constitution, at Chapter 1,Article 3,divides the Government into three Branches: The Legislative, which under Article 34, is given the prerogative and the authority to enact the laws of the country; the Executive, which under Articles 50 et seq. is vested with the power to execute the laws of the country; and the Judiciary, which, under Articles 65 and 66, is vested with the power to interpret the laws and to handle justiciable matters. [LIB. CONST. ARTS. 65 & 67 (1986)] One Branch of the Government is prohibited from infringing on the prerogatives, powers or authority of any of the other branches of the Government.[LIB.CONST.,ART.2 (1986)].

It is pursuant to the authority vested in it by the Constitution that the Legislature has passed the various laws for the governance of the country, including the laws for the establishment of circuit courts, the procedures for the operations of those courts, and the conduct of proceedings before them. It is also pursuant to the legislative authority granted by the Constitution that the Legislature has prescribed conducts which constitutes crimes, the penalties therefor, and the processes and mechanisms by which such matters are to be adjudicated.

This Court has on many occasions stated its respect for and adherence to the constitutional command regarding the legislative authority to enact laws and the courts limited authority to interpret those laws. This Court has in the process made it clear that it does not have the authority to make laws and that it is not within its purview to extrapolate the intent of the Legislature regarding any laws passed by the Legislature. George v. Republic, 14 LLR 158 (1960). We reaffirm that position. Although one may make the argument that justice, true justice, would be served by deviating from those principles, we hold that we are constrained to uphold the laws of the land and to refrain from departing there- from, for to do

so would not only infringe on the constitutional prerogatives of the Legislature but would be in and of itself unconstitutional. In Kontoe and Williams v. Inter-Con Security Systems, Inc., 38 LLR 414 (1997), this Court, speaking through Mr. Justice Morris, and quoting from the earlier case of Roberts v. Roberts, 7 LLR 358 (1942), said: the courts have no legislative powers and in the interpretation and construction of statutes, their sole function is to determine, and within the constitutional limits of the legislative power, to give effect to the intention of the Legislature. They cannot read into a statute something that is not within the manifest intention of the Legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. ld., at 423-424. In Firestone Plantations Company v. Paye and Barbar and Sons, 41 LLR 12 (2002), this Court said also that the Supreme Court acts ultra vires if it usurps functions of the legislature, no matter how it feels about any given issue.

Indeed, it is giving respect to the authority conferred upon the Legislature by the Constitution regarding the passage of laws that we have stated, for the records, our agreement with the Justice's conclusion that the acts and conduct of the trial judge in the proceedings in the lower court, out of which the remedial writ was sought by the prosecution, in granting the submission of the defense, and in not granting the appeal announced by the prosecution, were in violation of the statute. It was not the prerogative of the trial judge to make the law; his authority and functions were limited to interpreting the law.

The Criminal Procedure Law, an act passed by the Legislature clearly sets out, at Chapter 18, Section 18.2, the conditions under which an indictment or a criminal case may be dismissed. Those conditions did not exist in the instant case for the trial judge to dismiss the State's Indictment or the case against the defendant. The judge's action, we believe, as did our colleague, added a new condition which was strictly and only for the Legislature to do. His action, we conclude clearly demonstrated disobedience to or a gross misapplication of the true intent and meaning of the statute. In the case Lamin et al. v. Save The Children Fund (UK), 40 LLR 96 (2000), this Court said: Circuit courts are statutory courts which derive their being and scope of powers from the statutes creating them, and hence, they cannot jurisdiction beyond that which the statutes confer. The Court added: Jurisdictional limits imposed by acts of the Legislature upon courts established by legislative enactment are mandatory and permit of no deviation for any case. Id., at 102. This Court also held in Scanship (Liberia) lnc./LMCS v. Flomo,

41 LLR 181 (2002) that the subject matter jurisdiction of a court is vested in the court by the statute creating the court and that anything exercised outside of what is vested is void ab initio.

Further, as our learned colleague pointed out in his ruling, even had the judge acted within the purview of the law in granting the submission, under what vested authority, statutory or otherwise, did he act in dismissing the case with prejudice, when the statute clearly stated that such dismissal was to be without prejudice. His actions, under the facts of the case, were clearly tantamount to attempting to legislate and to vest in himself authority not granted him by law. He could not, either given the circumstances narrated and the law cited immediately above, dismiss the indictment or the case with prejudice. In Ghandour et al. v. The Solicitor General of the Republic of Liberia, decided by this Court at its October 2005 Term, the Court said: "The quashing of an indictment is not equivalent to any acquittal, and the same defendant may be re-indicted and retried for the offense charged in the quashed indictment", adding that "the dismissal of an indictment does not go to the merit of the case [and therefore] the dismissal of an indictment is not a bar to further prosecution If an indictment is dismissed before a jury is selected, sworn and empanelled or where a case is triable by a judge without a jury, before the court begins to hear evidence. Speaking more pointedly to Sections 18.1 and 18.2, the Court said: Dismissal of an indictment of complaint under section 18.1 or 18.2 of the Criminal Procedure Law at any time before the jury is empanelled and sworn or, if the case is to be tried by the court, before the court has begun to hear evidence, shall not constitute a bar under the provisions of section 3.1 of the Civil Procedure Law to a subsequent prosecution. Id.

The trial judge could therefore not have ruled or even inferred that the dismissal was with prejudice. And having made such an erroneous ruling, firstly in dismissing the indictment, and secondly in dismissing the indictment with prejudice, he could not further rule or infer from the latter ruling that an appeal by the State from said ruling was not granted. We state in no uncertain terms that the trial judge was under a legal duty to expressly grant to the State the appeal announced from his ruling. [Criminal Procedure Law, Rev. Code 2:24.3.] The judge was without the discretion to decide whether or not to grant the appeal. The granting of the appeal in such situation is mandatorily prescribed by law.

Indeed, the Criminal Procedure Law states very clearly, at Section 24.3, that: An appeal may be taken as of right by the Republic from: (a) An order granting a motion by the defendant to dismiss the indictment; or (b) an order granting a motion for judgment of acquittal. Nowhere in the quoted law is the trial judge given the right to decide whether to grant the State's appeal from his ruling dismissing the indictment; and we reiterate that for the judge to assume that he had such power was to attempt to usurp powers not granted him by law.

We must therefore sound the warning that this Court will not condone such display of a lack of knowledge of or appreciation for the law, or an utter disregard for the law, and that we will henceforth pursue every corrective measure deemed necessary by this Court for any gross affront to the law by judges charged with the responsibility to administer the law.

Yet, notwithstanding the flagrant abuse of the statute by the trial judge, we must acknowledge that our statute similarly prescribes the processes, the procedures, and the mechanisms by which redress of the violations and the abuses committed by the trial judge can and should be addressed.

The prosecution asserts that the appeal announced by the State was denied by the trial judge. We give the prosecution the benefit of the doubt, and agree that the structure and wording of the trial judge's ruling on the prosecution's exceptions and announcement of an appeal was tantamount to a denial of the appeal or a designed failure to not grant the appeal. The question however is whether prohibition is the proper remedy to correct the wrongs we have outlined above? In answering this question, we have kept foremost in our mind that as much as we believe that justice be served under the law, we equally hold that the law must always prevail and that no attempt at seeking to achieve justice should be done at the expense of the law.

We now revert specifically to the issue of the province of the writs of mandamus and prohibition. The Legislature, in furtherance of its constitutional mandate, in 1973 enacted the Civil Procedure Law, Title 1, Liberian Code of Laws Revised. Section 16.21 sets out the various remedial processes available to parties who believe that the lower courts have, in some form or manner, transgressed their rights, have acted improperly or illegally, have gone wrong in the administration of justice, or have or are seeking to exercise authority not legally vested in them by the statutory laws of the nation. At section 16.21(2), the statute sets out one of such remedial processes as being the writ of mandamus. The sections states:

mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty.

In the instant case, where a final ruling or judgment had been rendered by the trial court and an appeal had been announced and not granted by the trial judge, the statute clearly sets out that mandamus is the appropriate remedy to compel the judge to grant the appeal, and thereby allow this Court to review the proceedings and take such corrective measures as deemed fit in the premises. So why did the prosecution elect to file a petition for a writ of prohibition rather than a petition for a writ of mandamus, given that, as stated in the section quoted above, it is the writ of mandamus that is available to compel a judicial officer to do an act which he or she is legally bound to do.

This Court has said in many opinions, consistent with the clear wording of Section 16.21,also applicable to criminal matters, that because the granting or refusing of an appeal is not left with the discretion of the trial judge, the writ of mandamus will lie to compel him to perform such duty. Caine et al v. Yancy et al., 30 LLR 8S8 (1982); Park v. Hanil Marines Product Corporation, 38 LLR SOS (1998). This position was reiterated in the case Jones v. Hilton et al., wherein Mr. Justice Kpomakpor, speaking for the Court in addressing the issue of the purpose and scope of the writ of mandamus, said pointedly: Mandamus is a special proceedings to obtain a writ requiring the respondent to perform an official duty and will lie to compel an inferior judge to grant an appeal nunc pro tunc. 36 LLR 191 (1989). Mr. Justice Kpomakpor expanded further on the province of mandamus. He said: "It is a command generally from a superior tribunal to an inferior one, ordering the latter to perform a particular act imposed upon it by law. *ld.,* at 194.

In his ruling, quoted above, our esteemed colleague acknowledged that the proper remedy to compel a public official, including a judge of a lower court, to perform a duty legally imposed upon him, as in the instant case, is a petition for a writ of mandamus. He points out however that the mere existence of that remedy is not necessarily sufficient to deny issuance of the writ[of prohibition],for such other remedy must be plain, speedy, and adequate in the circumstances of the particular case." We do not disagree that in some circumstances, the availability of one remedy may not necessarily preclude resort to another remedy, especially where the statute allows the operation of the two to achieve a particular objective. In the instant case, however, we do not share the view of our colleague that this one such instance where another remedy can or should

be resorted in preference to the remedy directly and pointedly provided for by the law, particularly especially given the reason advanced by the State for seeking to have this Court depart from the clear dictate and wording of the statute.

Concerned about the use of the writ of prohibition as a substitute for the writ of mandamus, we had enquired of the prosecution why it had chosen not to pursue the course of mandamus. The answer was that by pursuing prohibition, the case would have a shorter time span than if mandamus was pursued. If the State had sought the writ of mandamus, we are informed, the mandamus would have to first be disposed of, ordering the trial judge to grant the appeal, which he would then have done; and it would only be thereafter that we would have the opportunity to hear the appeal announced and prayed for by the prosecution. We are not convinced that because the State desired a shorter or speedier route in having the case heard or disposed by us, a sufficient basis is provided for this Court to deviate from the clear remedy provided by law. To deviate from that prescribed would be tantamount to creating a new process and thereby making new law, which this Court does not have the authority to do.

In addition, we believe that such an option as advocated by the prosecution would open up a floodgate for parties to deliberately ignore the remedy provided tor by law and render the said remedy meaningless and not worth pursuing. We must take cognizant of the fact that the Legislature, in its best judgment, has determined that this is the remedy best suited to cure the grievance which the prosecution has complained of. This Court has said repeatedly that as much as it might feel the need to address an injustice perpetrated against a party by a judge, in the instant case the Republic, it cannot substitute its view for that of the Legislature, especially if doing so will result in sacrificing, violating or rendering meaningless a law passed by the Legislature, unless that law is challenged or shown to be unconstitutional.

In George v. Republic, Mr. Justice Pierre, speaking for the Court, held: This Court has no authority to extrapolate the intent of the legislature beyond the specific wording of the statute. This limitation is all the more mandatory where the statute in question specifies the only manner in which an act is to be performed. Our law does not give us the authority either to add to or to take from what the legislature has commanded unless said command breaches provisions of the

Constitution; and in such case the constitutional issue must be raised squarely. 14 LLR 158 (1960), text at 159. In articulating the view quoted, in regard to the facts in that , case, the Court reasoned that: The 1956 Code, quoted supra, makes no exceptions and admits of no ambiguity as to the specific grounds upon [which] an appeal in a criminal case may be dismissed. ld., at 160.

The view espoused in the *George* case followed the holding in the Koffah v. Republic, 13 LLR 232 (1958), previously decided by the Supreme Court, in which Mr. Justice Pierre, speaking for the Court, said:

In interpreting statutes, this Court is only empowered to pass upon the specific wording of a statute and place a legal interpretation upon the text. Our power to construe and interpret does not extend to adding words or phrases to the text of a statute. That power belongs solely to the Legislature. It is their constitutional right to amend statutes, and not this Court's.

We can only interpret what has been legislated. So, whilst some may contend that it is within the province of this Court to ascertain the intention of the Legislature in passing a statute, we are of the opinion that this Court's power of interpreting said intentions must be confined to what is written in the statute. Beyond that, this Court is without constitutional authority to go; we cannot add or subtract words or phrases from the text of the statute. ld., at 244. The Justice then quotes extensively from R.C.L., a part of which quotation we herein quote: In the interpretation and construction of statutes, the primary rule is to ascertain and give effect to the intention of the Legislature. As has frequently been stated in effect, the intention of the legislature constitutes the law Even in penal laws, which it is said should be strictly construed, ought not to be so construed as to defeat the obvious intention of the legislature.

The intention and meaning of the Legislature must primarily be deter- mined from the language of the statute itself, and not from conjectures aliunde. When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning. This principle is to be adhered to notwithstanding the fact that the court may be convinced by extraneous circumstances that the legislature intended to enact something very different from that which it did enact.

No motive, purpose, or intent can be imputed to the legislature in the enactment of a law other than such as are apparent upon the face and to be gathered from the terms of the law itself . Seeking hidden meanings at variance with the language used is a perilous undertaking which is quite as apt to lead to an amendment of a law by judicial construction as it is to arrive at the actual thought in the legislative mind The courts have no legislative powers, and in the interpretation and construction of statutes their sole function is to determine, and within the constitutional limits of the legislative power to give effect to, the intention of the Legislature.

They cannot read into a statute something that is not within the manifest intention of the legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. If the true construction will be followed by harsh consequences, it cannot influence the courts in administering the law. The responsibility for the justice or wisdom of legislation rests with the legislature, and it is the province of the courts to construe, not to make the laws. 25 R.C.L., 960-64, Statutes §§ 216-218.... The intention of the legislature must primarily be determined from the language employed, and ordinarily the courts have no right to insert words and phrases so as to incorporate in a statute a new and distinct provision.

The courts cannot by construction supply a casus omissus by giving force and effect to the language of the statute when applied to a subject about which nothing whatever is said, and which, to all appearances, was not in the minds of the legislature at the time of the enactment of the law. No mere omission, no mere failure to provide for contingencies, which it may seem wise to have provided for specifically, justify any judicial addition to the language of the statute. It is not for the court to say, where the language of the statute is clear, that it shall be so construed is to embrace cases because good reason can be assigned why they were excluded from its provisions The courts have frequently adverted to the fact that if the legislature had intended to accomplish a particular end it would have been a very simple matter for it to have employed appropriate language to express its intention 25 R.C.L. 973 Statutes § 225.

Those words, quoted by Justice Pierre from R.C.L. continue to remain profound in the jurisprudence of the judicial system of this Republic. In Kasaykro Corporation v. Stewart and Winter Reisner and Company,

decided in 1982 by this Court, Mr. Justice Smith, speaking for the Court, quoting from and agreeing with the decision in the George case, reiterated that standing principle in the following words: This Court can only construe a statute to find the legislative intent; and, unless a statute is contrary to the Constitution and the constitutional question is squarely raised, the Supreme Court is without power and authority to declare such a statute inoperative. 30 LLR 164 (1982), text at 172.

Since the rendition of those opinions, this Court has re-echoed the view in numerous other opinions and in a number of ways. In the case the Management of BAD v. Mulbah and Sikeley, decided in 1989, this Court, speaking through Mr. Justice Kpomakpor, said: Where the statute specifies the only manner in which an act is to be performed, no court, including the Supreme Court, has the authority to extrapolate the intent of the legislature beyond the specific wording of the statute. 36 LLR 404 (1989), text at 410. The Court then added: When a statute is clear and unambiguous, as in the instant case, the Court can do nothing but enforce it, unless it is unconstitutional. ld., at 410-411. While we acknowledge that the cited case had a different set of facts and was not of a criminal nature, the basic principle, held by this Court for generations, holds in the instant case the same as it did in the Management of BAO case.

Indeed, this Court, both in the period before the Management of BAD case and in the period thereafter, has continued to uphold the principle espoused above. See Ganta Sawmill v. Tulay and Housing Builders, 31LLR 358 (1983); Cooper and Gleonder v. Bailey and Lansana, 31 LLR 366 (1983); The Original African Hebrew Israelite v. Lewis, 32 LLR 3 (1984);Lamco J. V. Operating Company and the Board of General Appeals v. Doe-Kpar, 32 LLR 458 (1984); Kennedy and Johnson-Whisnant v. Goodridge and Hilton, 33 LLR 398 (1985); The International Trust Company of Liberia v. Doumouyan, 36 LLR 358 (1989); Kortoe v. Williams and Inter-Con Security Systems, Inc., 38 LLR 414 (1997); The Middle East trading Company and Hykal v. Chase Manhattan Bank, N.A., 34 LLR 419 (1987); Mensah et al. v. Wilson, 34 LLR 100 (1986); Wilson v. Firestone Plantations Company and the Board of General Appeals, 34 LLR 134 (1986); Firestone Plantations Company and the Board of General Appeals v. Wilson, 34 LLR 385 (1987).

More recently, in 2004, this Court was very vocal in stating that the Supreme Court acts ultra virus if it usurps functions of the Legislature, no matter how it feels about any given issue. Firestone Plantations Company v. Paye and Barbar and Sons, 41LLR 12 (2001).

We do not see how, in the instant case, taking the route provided by the law, i.e., pursuing mandamus to compel the trial judge to grant the appeal announced or prayed for, would have resulted in any injustice to the State. At the most, it would only have meant a slightly longer process, not a perpetration of injustice.

Additionally, we have difficulty comprehending any basis for fear by the prosecution that mandamus would not have set the stage for expeditiously curing the errors made by the judge in denying or not granting the appeal? What is even more surprising is that it is normally the defendant, not the State, that cries for a speedy trial and an expeditious disposition of a matter in which he or she is charged with the commission of a crime. This is not to say that the State should not exert every effort to see that a speedy trial is always sought. We make the point however that, as we had indicated before, the State could not be accused in the instant case of being responsible for any delays in the trial of the case on the merits. How quickly such a case is disposed of is dependent matter.

If the intent of the prosecution was that prohibition, as opposed to mandamus, would prevent this Court having to hear the case more than once, we do not believe that such intent provides a sufficient justification for not following the remedy provided for by the statute or a sufficient basis for circumventing the statute. While it is true that mandamus is not a preventive remedy but merely prospective, its purpose being to command performance and not resistance (Brisco et al. v. Smith and Denco Shipping Lines, 33 LLR 145 (1985), and that it cannot be used to cause a respondent to undo what has already been done, or to correct or review such action, however erroneous it may be (Id.), it is intended and is the statutory course provided for to compel a performance, as in the instant case the granting of the appeal announced by the prosecution, which would enable this Court, after ordering the granting of the appeal, to review and correct the errors complained of by the prosecution.

But we have a further difficulty understanding how the prosecution, on December 15, 2010, seven days after the ruling filed a petition with the

Supreme Court for the issuance of a writ of prohibition and thereafter, on January 6, 2011, one month following the trial judge's ruling, filed a second petition for a writ of prohibition, without any reference to the previous petition filed or a withdrawal of the said petition before the filing of the new petition. Which of the petitions was this Court expected to take cognizance of and why was the procedure laid down by our statute and the rules of this Court not followed? Equally important is the query why did it take the prosecution such a long time to seek redress from this Court for such an important matter?

We note that the trial judge entered a final ruling on December 7, 2010, to which the prosecution excepted and announced an appeal, which the judge failed or refused to grant. In the same ruling, the trial judge ordered that all of the rights of the defendant be restored to him. We believe that those rights would have been restored to the defendant within the immediate few days of the ruling of the judge, especially given that he had not granted the appeal announced by the prosecution as would have stayed any implementation of the court's ruling or judgment. Yet, it took the prosecution thirty days after the judgment to seek remedial remedy.

One would had hoped that within not later than twenty-four hours of the judge's ruling, the prosecution would have sought to secure a remedial remedy, knowing that with the passage of time, judge's order or mandate would have been completely enforced or completed. Assuming even that the prosecution had pursued the appropriate remedy of mandamus, and while we do not here make judgment on the issue, we believe that it is important to note that this Court has said that a petitioner in mandamus must act within the time specified by statute to compel judicial official where the failure to perform is adverse to the petitioner. This opinion of the Court was espoused in the case Gweh et al. v. Liberia Operations Inc., 37 LLR 282 (1993). In that case mandamus was sought to compel the clerk of the lower court to serve the notice of completion of appeal after the period for the service of such notice and for the completion of the appeal process had expired. The Court said: "The application for a writ of mandamus to compel the clerk of court to serve notice of completion of appeal will not be granted where the application is made after the time required by statute for completion of appeal. Id., 285-286. Earlier, in Coleman v. Cooper, recorded in 12 LLR 226 (1955), this Court held that the untimely application for a remedial writ is deemed a waiver of the right to apply for the writ.

If we applied the principle of the Gweh and Coleman cases to the instant case, we would think that the prosecution would have sought a remedial process within twenty-four hours of the refusal or failure of the judge to grant the appeal, but definitely not later than ten days after the ruling since it is within that time that the prosecution would have had to follow through with the appeal process by the filing of a bill of exceptions or forfeit the right of appeal. In that respect, we do not believe that the prosecution acted in the required prudent manner to secure the interest of the State; and while we do not address the issue of the delay by the prosecution, it is worth noting that that this Court has held that a remedial writ, and specifically prohibition, will not be issued merely to correct a party's neglect to act in his own interest. Liberia Agricultural Company v. Hage et al., 38 LLR 259 (1995). In the Liberia Agricultural Company case, the Court said: it is the duty of litigants, for their own interest, to surround their causes with the safeguards of the law to secure them against any serious miscarriage of justice and thereby pave the way to secure the great benefits which they seek to obtain under the law. Taking a similar approach like in the instant case, the Court in the Liberian Agricultural Company case opined: Prohibition cannot revoke a bill of sale from an execution sale where the petitioner failed to file either a motion to set aside the bill of sale or a complaint for the recovery of the property so sold. ld., at 270. See also Wilson v. Wordsworth et al., 28 LLR 248(1979).

We note further that given what we have said about how the prosecution viewed the trial judge and the manner in which he was conducting the trial, we are surprised that the prosecution did not seek a review by certiorari of the judge's ruling refusing to recuse himself or even recorded no further notice to the judge, on the minutes of the court, that in the face what it believed was a denial of the State's right of appeal, the prosecution intended to avail itself of the law, meaning that it will resort to a remedial writ to have the judge grant the appeal. Instead, it took the prosecution an entire month to make a determination that the matter was worth pursuing.

We cannot and do not here determine whether the defendant committed the act with which he was charged by the State. Because the trial judge dismissed the Indictment and the case without allowing the opportunity for the introduction of evidence by the State and rebuttal by the defendant, we are precluded from a determination of the guilt or innocence of the defendant. What we do state

is our agreement with our colleague, Mr. Justice Korkpor, that the trial judge was in total error in not granting the appeal prayed for by the State. Had the appeal been granted, this Court would then have heard and disposed of the question as to whether the judge acted properly in granting the submission or application for the dismissal of the Indictment. One the lower court had failed or refused to grant the appeal, the state was clothed with the right to force the court to grant the appeal. That right, however, could only have been exercised by way of a writ of mandamus.

It is true, as the prosecution argued, that the process would have caused the case to travel twice to the Supreme Court before a determination is made as to the correctness of the trial judge's action in dismissing the indictment. Prohibition, on the other hand, we are told, would have short-circuited the process and immediately review the act of the trial judge in dismissing the case. But the fact that prohibition would have shortened the process could never provide a legal or legitimate justification for disregarding the process and the avenue established by the Legislature, stipulated in our Civil Procedure Law, and applicable also to criminal matters. The statute clearly states that mandamus is the remedy to force a judicial officer, in the instant case, the trial judge to grant the appeal announced by the State. No other procedure can substitute for that statutory remedy.

We are told also that in any event, prohibition is designed to provide a remedy where the trial judge, although having jurisdiction over a matter, has proceeded by wrong rules rather than rules which should be observed at all times. We are told that the trial judge had proceeded by wrong rules. We do not dispute that the trial judge erred in his ruling, but we also do not believe that the error was one that warranted a resort to prohibition, as opposed to mandamus, the remedy specified by the statute. If we adopted the course advocated by the prosecution, every error made by a judge in the course of a proceeding would be cured by prohibition rather than by a regular appeal, as provided for by law. Adopting such a course would render the appeal process meaningless. We do not believe that this was the intent of the Legislature when they provided for the various mechanisms for the redress of grievances.

The one remaining issue for this Court, therefore, having determined that mandamus was the appropriate and proper remedy to pursue under

the circumstances of this case, is whether prohibition could be used as an alternative remedy to mandamus. We do not believe that, under the circumstances of this case, that prohibition will lie.

Prohibition, the Civil Procedure Law states, is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein. Civil Procedure Law, Rev. Code 1:16.21(3}. It is not the proceeding to compel a trial judge to grant a party an appeal announced or prayed for by the party. Prohibition cannot be used as a substitute for mandamus, as the statute sets out the two as providing completely different remedies. Thus, even granted that the trial judge committed errors in dismissing the indictment and the criminal case brought against the defendant, the proper and appropriate course, under our law, is an appeal for the review of the judge's action, not prohibition. Fazzah v. Nat'l Economy Committee, 8 LLR 85 (1943); Dolo and Freeman v. Koroma and Hatem, 30 LLR 816 (1982); Liberia Trading and Development Bank v. Mathis and Brasilia Travel Agency, 39 LLR 272 (1998). The judgment was final and an appeal had been announced. Hence, where the judge denied or failed to grant the party the appeal prayed for to enable the Supreme Court to review his action, as was done in the instant case, the proper remedy, this Court has said consistently, is mandamus, not prohibition.

The writ of prohibition cannot and should not be used as a substitute for the writ of mandamus, especially where mandamus is available. If party litigants were allowed to pursue such a course, prohibition could end up displacing mandamus and the legislative intent in providing for mandamus could be thwarted. We do not believe that this was never intended to be within the purview of prohibition. The province of prohibition extends to prohibiting a trial judge or other public official from exercising jurisdiction over a matter which he or she has no jurisdiction or restraining such judge or official from proceedings further by rules contrary to those which should be observed at all times, not providing an alternative remedy where a trial judge has, against the law, refused to grant an appeal to a party aggrieved by his final ruling in a matter where the statute provides for such appeal. Liberia Agricultural Company v. Hage et al., 38 LLR 259 (1995). See also Raymond International (Liberia) Ltd. v. Dennis, 25 LLR 131(1976); Lamco J. V. Operating Company (LAMCO) v. Flomo, 27 LLR 52 (1978); Boye v. Nelson, 27 LLR 174 (1978);

Lone Star Insurance Company v. Cooper and Abi-Jaoudi and Azar Trading Corporation, 40 LLR 553 (2000).

Further, while we are in accord with our colleague that prohibition, where applicable to a situation, will not only prevent what has been done but also undo what has not legally been done, prohibition will not lie where the act complained of had been fully completed and there remains nothing more to be done. See Coleman v. Cooper, 12 LLR 226 (1955); Dolo and Freeman v. Koroma and Hatem, 30 LLR 816 (1982);Sinoe v. Nimley, 16 LLR 152 (1965); Sodatonou v. Bank of Liberia, Inc., 20 LLR 512 (1971); Mathies and Fima Capital Corporation, Ltd. v. Alpha International Investment, Ltd., 40 LLR 565 (2000). In addition, we hold as true, as our colleague, that the mere availability of another remedy is not in itself sufficient to warrant denial of the writ of prohibition, but this Court has said that prohibition will not issue where such other remedy is plain, speedy and adequate in the circumstances. Waggay v. Pearson et al., 31LLR 451(1983)

While we share the view of our colleague that prohibition will lie to prevent the doing of a wrongful or illegal act and to undo and correct what has already been done, we hold that the province of prohibition is limited preventing the doing of certain acts and to undoing acts which have been done but which have yet to be fully completed. Scott et al. v. The Job Security Scheme Corporation, 31 LLR 552 (1983). Prohibition cannot lie where there remains absolutely nothing to be done. Dolo and Freeman v. Koroma and Hatem, 30 LLR 816 (1982); Kiazolu and Kiadii v. Ash-Thompson et al., 34 LLR 94 (1986),wherein this Court said: A writ of prohibition not only halts whatever remains to be done by the court against which it is issued, but also gives further relief by undoing what has been done. It, however, does not obtain where the act complained of has been completed. ld., at 99.It is clear therefore that in order for prohibition to obtain, the act complained of must not have been fully completed. See Doe et al. v. Randolph, 35 LLR 724 (1988). To hold otherwise, as the prosecution has advocated, would open up a Pandora's box and practically every act done and completed could be subject to being undone by the writ of prohibition. This would be going beyond the province of the writ of prohibition and the intent of the framers of the law, especially, as in the instant case, where it was the delay of the prosecution that had caused the full completion of the act of the trial judge which they now seek to restrain and undo.

We are fully aware that this Court has decided in a few cases that it will deviate from this position where the acts complained of were illegally and blatantly done (Yonkon et al. v. Tulay et al., 33 LLR 227 (1985). We do not believe however that prohibition provides the basis for such departure as it would create a dangerous and unhealthy precedence in this jurisdiction. We indicated before that the remedy expressly provided for by the statute was available to the prosecution, but counsel determined to unduly delay taking advantage of that statutory remedy and to thereby cause the act to be completed.

We are not oblivious, however, of the authority of this Court, as the circumstances warrant, to enter such judgment and render such decision as the trial court should have entered or rendered where the act committed by the lower court is so outrageous that our justice system and laws could be placed in the balance. This case presents one such situation. Hence, while the conduct of the prosecution after the ruling of the trial judge, the undue delay in seeking legal redress, the choice of the wrong legal recourse and the lack of any records to support the prosecution claim that the State had obtained the permission of the trial judge to be absent from the court when the case as called, given the fact that the court is one of record, leave the impression that the trial judge had sufficient justification to dismiss the indictment and free the defendant, none of those provided a sufficient basis for the judge to exceed the authority provided by the law. The excessive use of that authority, conferred by the criminal procedure statute, that is, the dismissal of the case with prejudice rendered that latter part of the ruling, the with prejudice part, illegal and void ab initio. Hence, it is only the dismissed portion without the impact of with prejudice that is legal and valid; and it is therefore only that portion that we herein sustain. Accordingly, we hold that as per the law, upheld continuously by this Court, the invalidity of the latter part of the trial court's ruling still leaves the State with the right to bring a new indictment against the defendant if it deems such a course to be prudent or feels that it has sufficient evidence to pursue such a course. That is a decision for the State, not this Court or any other court.

Wherefore, and in view of the factual circumstances narrated herein and the laws cited and relied upon, it is the holding of this court that the ruling of the Chambers Justice granting the writ of prohibition be reversed, that the petition is denied, and that the peremptory writ is quashed and vacated. We hereby so order.

However, in view of what we have said of the action by the trial judge and the grossness of the error made by him, as well as in the interest of justice, we hold that the dismissal of the indictment, having departed from the prescription of the law, be modified to conform to the law, which is, that the dismissal does not prejudice the right of the State to re-institute new criminal proceedings against the defendant, as it may determine or deem necessary. The statute clearly vests that right in the State and no judge has the authority to deprive the State of the enjoyment thereof. Thus, the modification made herein to the ruling of the trial judge, consistent with our law and under authority vested in this Court to do such thing as the trial court should have done, and promotive of transparent justice to all, including the State, will ensure that our justice system remains firm. Hence, the petition or the writ of prohibition is denied, the dismissal of the indictment is sustained, but with the modification that, as per the Criminal Procedure Law, the right is preserved to the State to determine upon any further prosecution.

The Clerk of this Court Is ordered to send a mandate to the lower court ordering it to resume jurisdiction over the case and act in accordance with this Court's decision. Costs are disallowed. And it is hereby so ordered.

Petition denied.

Counsellors Sayma Julius Syrenius Cephus and Theophilus C. Gould of the Kemp and Associates Legal and Consultancy Chambers appeared for the appellants/respondents. Counsellors Augustine C. Fayiah, Assistant Minister of Justice for Litigation, and J. Daku Mulbah, County Attorney for Montserrado County, appeared for the appellee/petitioner.