GABRIEL KPOLLEH of the Liberian Unification Party, **JACKSON DOE** of the Liberian Action Party, **DR. EDWARD KESSELLY** of the Unity Party, and **WESLEY JOHNSON** of the United People's Party, Petitioners, v. **ISAAC RANDALL**, Chairman of the Elections Commission, and other members and officials of the Elections Commission, Respondents.

PETITION FOR A WRIT OF PROHIBITION AGAINST THE SPECIAL ELECTIONS COMMISSION.

Heard: June 16, 1986. Decided: August 1, 1986.

1 Prohibition is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein.

2 Parties or organizations that retain, organize, train, or equip any person or group of persons for the use or display of physical force or coercion in promoting any political objective or interest, or arouse reasonable apprehension that they are so organized, trained or equipped, shall be denied registration, or if registered, shall have their registration revoked.

3 By virtue of its constitutional power to revoke the registration of any cantankerous and dangerous political party, the Elections Commission also has an inherent right to warn political parties of its intent to use that power against political party or parties exhibiting the wrong tendencies. And the Elections Commission is clothed with the constitutional discretion to decide whether or not a particular behavior constitutes a violation of the elections laws that would necessarily warrant justification for a revocation of a political party's registration certificate.

4 A writ of prohibition will issue where the respondent named therein has assumed authority that is not properly his own, or having that authority, he had proceeded by the wrong rules in the exercise of said authority.

5 The writ of prohibition does not issue to prevent an injury that is speculative, but to prevent an injury from being further inflicted, that is, an injury that has already begun or is actually about to begin, and not one that is simply anticipated.

6 Before the peremptory writ of prohibition can be granted, the rights of the petitioner must be adversely affected. It has also been held that there must be a manifest necessity for granting the writ.

Petitioners petitioned the Chambers Justice for a writ of prohibition against the respondents on the ground that respondents were in the process of formulating a scheme to illegally ban their parties from all political activities by revoking their certificates of authority. Given the constitutional issues raised in the petition, the Chambers Justice forwarded the matter to the full bench for its determination. Along with its returns to the petition, the respondents filed a motion to dismiss the petition. Upon hearing of the motion, the Supreme Court granted the motion, denied the peremptory writ of prohibition, and quashed the alternative writ.

J. Edward Koenig, J. Laveli Supuwood and *Francis Y S. Garlawolu* appeared for petitioners. *Frank W. Smith* appeared for respondents.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This motion to dismiss grew out of a petition for a writ of prohibition filed before the Chambers Justice by respondents to restrain and forever prohibit the Elections Commission from revoking the certificates of registration of their various political parties, as the story will fully follow herein. Movants filed returns through its chairman, followed by this motion to dismiss the petition for prohibition.

Considering the usual inhibitions involving constitutional questions before a Chambers Justice, the latter accordingly forwarded the entire proceedings to the full bench of the Supreme Court for its consideration; hence this opinion.

The facts of the case are that Gabriel Kpolleh of the Liberian Unification Party, Jackson Doe of the Liberian Action Party, Dr. Edward B. Kesselly of the Unity Party, and Wesley Johnson of the United People's Party, all jointly filed a petition for a writ of prohibition before the Chambers Justice on April 4, 1986, praying for issuance of the aforementioned peremptory writ to restrain the Elections Commission of Liberia and its Chairman "from revoking certificates of authority as political parties from petitioners or any act or conduct on the part of respondents that may have any adverse effect on their legal status and function as political parties and to grant any further relief that your Honour may deem just and equitable."

The salient allegations of the petition for prohibition are that petitioners are officials and representatives of legally recognized political parties in Liberia; that pursuant to their right to operate as political parties and to promote national democracy they formed a coalition; that notwithstanding their legitimate objectives they "have been reliably informed that respondents are in the process of formulating a scheme to illegally ban their parties from all political activities by revoking their certificates of authority. Petitioners further submit that the first step taken in this direction was the press release issued by the Chairman of the Elections Commission, Isaac Randall, on April 3, 1986, that petitioners have constitutional rights of freedom of association, expression and assembly which respondents have a duty to recognize, that the respondents' threat of revocation is imminent and that without our intervention, petitioners may suffer irreparable harm to their constitutional rights; that the National Democratic Party of Liberia (N.D.P.L.) has recruited thugs to harass the populace contrary to Article 80 (b) of the 1986 Constitution, and that in spite of the fact that respondents are aware of that fact, they have ignored it and have rather elected to harass and intimidate petitioners for the sole unconstitutional purpose of creating a one-party state contrary to Article 77(a) of the Constitution."

Respondents filed their returns on April 28, 1986, maintaining that while they recognize the legal existence of the other petitioning political parties, they did not recognize Mr. Wesley Johnson and the so-called United People's Party, a proposed party hitherto banned by the Interim National Assembly (INA). The respondents

further maintained that since the ban had not been lifted, the so-called coalition was illegal for allowing a banned party to join and register with the coalition. The Commission admitted to holding the press conference referred to by petitioners where it declared as follows:

"....That the coalition of Up, LAP and LUP is not a political party. Any attempt by any individual or group of individuals to hold a political rally or seek political support in the name of the coalition in continuous defiance of our authority would be construed as subversive and an attempt to create political unrest in the society. If that should obtain, we, in keeping with chapter VIII, Article 80 of the Constitution, will be compelled to revoke the certificate of the parties involved...."

The Commissioner at said press conference further explained that the warning was conditional:

"meaning in the event that a political rally is held by a group or an association, whatever name it is called, that is not recognized as a political party or parties simply to seek political support and create unrest in the society, by subversive means, their certificates will be revoked."

The Commission further maintained that it is a creature of the 1986 Constitution, "vested with the power to administer the Elections Law, conduct elections of all elective officers of the Republic, register and certify all political parties and independent candidates and their organizations who meet the minimum registration requirements, and monitor their activities as provided under the Constitution. Therefore, the Commission is in a better position to know the registered political parties in the Republic under the multiparty system, she having no intention or any proceeding before it to revoke the certificate of any political party acting within the pale of the law." The Commission charged that the Grand Coalition is illegal since it is unregistered and therefore without authority or standing to restrain the Commission from performing its legal functions under the Constitution based on mere hearsay. It concluded that the N.D.P.L. is a legal entity with the right to sue and

be sued and, consequently, legal action can be brought against it, instead of being wrongly brought into a case in which she is not a party.

Two days after filing its returns, on April 30, 1986, the Elections Commission also filed a motion to dismiss the petition for prohibition on the following grounds:

Firstly, that petitioners have no standing to sue in their own names for parties whose registration certificates have been threatened with revocation since said parties should have sued in their own names, by and through their legal representatives; and that co-petitioner Wesley Johnson cannot rightly sue in this matter, since his banned party cannot be threatened by revocation of its certificate of registration.

Secondly, that the petition for prohibition has no basis in law and therefore should be dismissed because it fails to establish that the commission has no jurisdiction to revoke party registration certificates, or that having said jurisdiction, it had proceeded by the wrong rules.

Movant maintained that under our law, a corporation or an unincorporated association sues and is sued on its own, by and through its director, manager or agent, while petitioners for prohibition do not exhibit that authority to sue in the name of their various political parties.

The following relevant issues are presented for our consideration:

1 Whether or not prohibition can issue to restrain a public official from taking a future uncertain cause of action under a duty that he is legally empowered to perform under certain conditions.

2 Whether or not the threatened cancellation of the certificates of registration of the various parties whom petitioners claim to represent adversely affects the rights of said petitioners or their parties and therefore the granting of the writ is a manifest necessity.

We are convinced that these are the only issues deserving our attention here. All other issues raised are for one reason or the other to be merely treated together before proceeding with our main issues.

The issue of the legality of the existence of the Grand Coalition raised here has already been resolved by our advance opinion this term, in which we held against its total existence. *See Republic v. The Grand Coalition,* 34 LLR 70 (1986), delivered at the March Term, A. D. 1986. The other issue of standing to sue raised against petitioners in prohibition can be resolved by our own judicial notice. We understand that the UPP has no standing to sue since it was banned by the defunct Interim National Assembly (INA) whose acts we are powerless to review and, consequently, until that ban is lifted this Court knows. no United People's Party (UPP). Hence Mr. Wesley Johnson has no standing to sue in this matter. On the question of Gabriel Kpolleh, Jackson Doe and Edward B. Kesselly suing on behalf of the parties allegedly threatened with revocation of their registration certificates, we take judicial notice of the fact that Mr. Gabriel Kpolleh heads and represents the Liberian Unification Party (LUP); Mr. Jackson Doe heads and represents the Liberian Action Party (LAP); and Dr. Edward B. Kesselly heads and represents the Unity Party (UP); hence each has standing to sue on behalf of his respective party, until otherwise replaced in that capacity.

This brings us to the first main issue: whether or not the court can issue prohibition against some public official to preempt his future legal cause of action against petitioner. We are of the unanimous opinion that this is an impossibility. It will amount to putting the cart before the horse or, rather, deciding the matter on a mere anticipation or speculation before it actually arises for adjudication. To do so will amount to completely deviating from the purpose of the writ of prohibition.

The law on the writ of prohibition defines it as:

. . . . a special proceeding to obtain a writ ordering the respondent to refrain from

further pursuing a judicial action or proceeding specified therein." (emphasis).

Petitioners came before this court praying, as we earlier said, for issuance of the writ of prohibition against the Elections Commission on the grounds that they "have been reliably informed that respondents are in the process of formulating a scheme to illegally ban their parties from all political activities by revoking their certificates of authority." It further alleged that "petitioners further submit that the first step taken in this direction was the press release issued by the chairman of the Elections Commission, Isaac Randall on April 3, 1986." Petitioners did not reveal the contents of that press release but the Commission in its returns included the press release and its explanation which we cited earlier in this opinion. It amounted to a warning that a political party or parties unregistered, which dared to hold a political rally for the sole purpose of disrupting the smooth flow and trend of peaceful national life will have their certificates of registration revoked or cancelled.

To seek an injunction against the Commission to prevent it from revoking a party's certificate of registration merely because the Commission issued a warning is to suggest that the Commission had no right to issue the warming or having the right, it had proceeded by strange rules in issuing it at all. We do not bring ourselves to agree with that suggestion in any way. The Elections Commission has power under the 1986 Constitution, or the Constitution of the Second Republic, to revoke the registration of any political party or independent candidate in Liberia verging on violence and the use of force. The relevant provision states:

"Parties or organizations which retain, organize, train or equip any person or group of persons for the use or display of physical force or coercion in promoting any political objective or interest, or arouse reasonable apprehension that they are so organized, trained or equipped, shall be denied registration, or if registered, shall have their registration revoked." LIB. CONST. (1986), art. 80(b).

This provision does not say who shall perform the revocation, but since under the "Arrangement of Articles" or index of the Constitution it refers to the "Power of

Elections Commission to Revoke Registration of Political Party or Independent Candidate", under chapter VIII, Political Parties and Elections, we believe the Constitution intends the Commission to exercise it. It is therefore our view that the Elections Commission, having a constitutional duty to revoke the registration of any cantankerous and dangerous political party also has an inherent right to warn political parties of its intent to use that power against political parties exhibiting the wrong tendencies. The Elections Commission is clothed with the sole constitutional discretion to decide on what behavior or outlook constitutes a violation of Article 80(b) of our Constitution that would necessarily warrant justification for a revocation of a political party's registration certificate. Therefore, we do not see that the Elections Commission had proceeded by the wrong rules, by use of a press conference on April 3, 1986, to warn potential violators.

We have abundant authority in this jurisdiction to the effect that the writ of prohibition issues where the respondent named therein had assumed authority that is not properly his own, or having that authority, he had proceeded in exercising it by using the wrong rules. *Richards v. Parker et al., 11* LLR 396 (1954); *Bryant v. Morris and Darby,* 12 LLR 198 (1954); *Caranda v. Fiske,* 12 LLR 245 (1956). We do not see that in this case, but rather, as we held supra, the Elections Commission has authority to revoke party registration certificates, and that therefore it necessarily has authority to warn political parties of its possible use of that power in the event that they violate the law. It is noteworthy that making the decision for revocation, the Commission uses its absolute discretion even though we do not deny the right to challenge that discretion in our courts of law.

When petitioners relied on the strength of the Elections Commission's warning of April 3, 1986, to pray us to restrain them by the writ of prohibition, they were in effect asking us to restrain a public authority from performing its legitimate duty the right way in the future even though reason makes the performance necessary.

The warning issued by the Chairman referred to political parties which endeavor to form illegal associations for destructive purposes in the future. That is, if, with

emphasis on "if', any political party dares degenerate to such illegality in the future, its certificate or their certificates of registration will be revoked. Petitioners have not only caused reasonable people to believe that they intend violating the law and therefore qualify for revocation of their certificates under the warning issued by the Chairman, but what is most absurd, they wish to make the court act in FUTURO, or in the future. That is to say, they want to see this Court issue the writ of prohibition to restrain an anticipated injury or rather to make a ruling now that will prevent them from liability in the future when they would have qualified for revocation of their certificates of registration for acting contrary to Article 80(b) of the current Constitution, and thereby prevent the Elections Commission from exercising its legitimate constitutional functions in future when the need arises. The intended harm is a mere speculation for which the writ of prohibition will not lie.

According to our Civil Procedure Law, cited earlier, the writ of prohibition only issues to order "respondent to refrain from further pursuing a judicial action or proceeding specified therein." (emphasis ours). *Ibid.* We have underlined and emphasized the phrase "further pursuing" in order to show that the writ issues in order to prevent an injury that has already begun or is just about to begin. The writ does not issue to prevent an injury that is merely based on speculation or mere fancy but, as the statute states, to prevent an injury from being further inflicted; that is, an injury which has already begun or is actually about to begin, and not one merely anticipated out of wishful thinking.

Finally, we consider the last issue: whether or not the threatened cancellation of registration certificates of parties represented by petitioners adversely affects them in any way, and whether or not as a result, the granting of the writ is a necessity. We do not believe that petitioners or their respective parties have been in any way adversely affected by the act they wish to prohibit, and therefore we do not see the necessity for granting their prayer for prohibition.

This court has held in the past that before the peremptory writ can be granted, the rights of the petitioner must be adversely affected. *Dweh v. Findley et al.,* 15 LLR 638

(1964). It has also held that there must be a manifest necessity before the writ can be granted. *Dennis v. Republic,* 7 LLR 212 (1941).

Petitioners speak of violations of their constitutional rights of assembly, association and expression in their allegations, but we see none of those violations in this matter. The mere press conference warning issued by the chairman of the Elections Commission on April 3, 1986 did not in any way adversely affect the rights of petitioners to exist as political parties at all. It rather merely stated that if they ever violate Article 80(b) of our Constitution then and only then, will their certificates of registration be revoked by law. That statement in no way denied petitioners of any right to a lawful assembly, association or expression. In fact, it is a warning directed only against those political parties bent on illegality and mischief.

Consequently, unless petitioners wish to give us the impression that they intend to violate or are already violating Article 80(b) of our Constitution, they need not concern themselves with the Chairman's statement. It is only those parties that are bent on trouble that have concerned themselves with the press conference warning of the Chairman.

Therefore, we do not see the manifest necessity for granting the writ as prayed for by petitioners. The granting of the writ in this circumstance will not be proper because if granted, it will achieve nothing that is not violative of our Constitution and of precedent in the granting of the writ of prohibition in this jurisdiction.

Wherefore, in view of the foregoing, we do hereby deny the writ of prohibition to petitioners, quash the alternative writ against respondent, and hereby grant movant/respondent's motion to dismiss the petition. Costs ruled against petitioners. And it is hereby so ordered.

Petition denied.