

JACOB G. W. NAGBE, Acting President, **MARK HINNEH**, Acting Secretary-General, et al., all of the **BONG WORKERS UNION**, Petitioners, v. **WILLIAM K. SHERMAN et al.** and **THE MINISTER OF LABOUR**, Ministry of Labour, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING
THE WRIT OF MANDAMUS.

Heard: June 25, 1986. Decided: July 31, 1986.

1. A contract is an assent of two or more minds to do or not to do a certain act, which courts of justice will enforce, but not make for parties.
2. The legal effect of public policy as to the enforcement of a contract is the restriction or inhibition of the enforcement of a contract for the welfare of the community.
3. A writ of prohibition will not be issued to restrain where there remains nothing to be done, as prohibition will not lie to prohibit acts already completed.

The appellants/respondents petitioned the Chambers Justice for a writ of mandamus to compel the Ministry of Labor to convene its members and supervise the holding of elections. Following the elections, the appellees/petitioners petitioned the Chambers Justice for a writ of prohibition against the elections. After conducting a hearing, the Chambers Justice issued the peremptory writ. Upon appeal to the full bench, the Supreme Court determined that the elections were completed and there was nothing left to be done, therefore the writ of prohibition will not lie. Accordingly, the ruling of the Chambers Justice was reversed and the peremptory writ quashed.

Robert G. W. Azango appeared for the Ministry of Labour and The Bong Workers Union, petitioners. *The Koenig, Cassell, Supuwood, Garlawolo Law Offices* appeared for the respondents.

MR. JUSTICE DENNIS delivered the opinion of the Court.

Petitioners are officials of the Bong Mines Workers Union of the Bong Mining Company, who in October last year was accused by its members of misappropriation of Union funds.

An investigation was held and the petitioners were exonerated and accordingly reinstated.

In accordance with the Union's constitution and by-laws, when elected officials are charged with an offense, suspended, and thereafter acquitted, they shall be allowed to complete their term of service as well as serve for lost time. Despite this constitutional provision and the fact that the period of time for the election had not matured, the respondents, in contravention of their constitution and by-laws, decided to conduct an election.

Accordingly, co-respondents (shop stewards) filed a writ of mandamus in October, 1983 to compel to Ministry of Labor to supervise and conduct an election of new officials. On November 18, 1983, co-respondents conducted the election. Two days later, November 21, 1983, the appellees applied to the Chambers Justice for a writ of prohibition to prevent the election from being conducted.

In response to the contents of the said petition, respondents submit for the favorable consideration of this Court, that although there is a binding contract on the members of the Union predicated upon the constitution, by-laws, rules and regulations for the governance of the members of the union, a court of justice is not obliged to enforce the same if public policy would be defeated thereby. Moreover, respondents contended that the holding of the election will serve to prevent untold unrest and public disturbance, especially since there was dissension among union members.

Respondents prayed that the Court will dismiss the petition for prohibition, quash the alternative writ, as well as deny the peremptory writ with cost against the petitioners.

After a hearing of this matter on the 22nd day of May, 1984, the Chambers Justice granted the issuance of the peremptory writ of prohibition, to which the respondents excepted and announced an appeal to this Court *en bane*.

At one time, in October 1983 to be specific, co-respondents shop stewards prayed for a mandamus to compel the Ministry of Labor to conduct an election, claiming that it was due. Then on the 21st day of November 1983, prohibition was prayed for to stop the said election. What an anomaly, if not a total inconsistency.

There are two pertinent issues to be analyzed: one refers to whether public policy supersedes a contract entered into between parties after having subscribed thereto; and the other refers to the scope and function of the writ of prohibition.

A contract is an assent of two or more minds to do or not to do a certain act, which courts of justice do not make for parties; but enforce it. Vide: BLACK'S LAW DICTIONARY 659; *Collins v. Elias Bros.*, 11 LLR 258 (1952).

The legal connotation of public policy is the restriction or inhibition of contract for the welfare of the community, which is not the circumstance in this case. BLACK'S LAW DICTIONARY 1317 (4th ed. 1951).

Our statutes are very replete as to the scope and functions of prohibition, making it absolutely unnecessary to extend our research to the common law of England or America. The weight and overriding opinions of legal authorities firmly hold that "prohibition will not lie to a court in an action wherein nothing remains to be done." Vide: *Sinoe v. Nimley and Judge Weeks*, 16 LLR 152 (1965).

Based upon the circumstances and the facts culled from the records in this case, and the numerous opinions of this Court defining prohibition, it is clear that the Bong Mines workers have already conducted the election and there is nothing else left to be done. Consequently, there is no action for which the writ of prohibition will issue. It

is the decision of this Court that the officers so elected remain in office until the expiration of their term.

In view of the foregoing, the judgment of the Chambers Justice granting the said prohibition is hereby reversed and prohibition denied. As reported in *Coleman et al. v. Cooper et al.*, 12 LLR 226 (1955), "A writ of prohibition will not lie to prohibit acts already completed", such as the holding of the election.

In conclusion, it is well to point out that while the courts are limited to certain matters, it is not limited to municipal elections nor the franchise of public corporations, etc. Vide: *Green v. Brumskine*, 2 LLR 202(1915).

Petition for prohibition denied