

THE NATIONAL BANK OF LIBERIA (NBL), Petitioner/Appellee, v. **HIS HONOUR SEBRON J. HALL**, Assigned Circuit Judge, and **THE MONROVIA BANKING CORPORATION, ROVIABANK**, Respondent/Appellant.

APPEAL FROM A RULING OF THE CHAMBERS JUSTICE GRANTING THE
PETITION FOR A WRIT OF CERTIORARI.

Heard: July 10, 1995. Decided: July 27, 1995.

1. Special proceedings to lift the seizure of a financial institution, as provided for by the Financial Institutions Act, serves the same purpose as would the granting of a motion for a preliminary injunction. Hence, a court cannot entertain a motion for preliminary injunction while a petition to lift seizure is still pending undetermined.
2. The court cannot order the re-opening of a financial institution during the pendency of a special proceeding filed before it to lift the seizure of said institution.
3. The regulations contained in the Financial Institutions Act are specific and must be followed to the letter so that the objective intended by it may be achieved. Hence the National Bank should exercise the powers under the Act in a manner so as not to defeat the intended purpose of the Act.
4. Courts have no right to permit any other remedy to take precedence over that which the Financial Institution Act provides.

Appellee, the National Bank of Liberia, pursuant to its powers under the Financial Institutions Act, suspended the license of the Monrovia Banking Corporation, Roviabank, and seized the Bank. Roviabank filed a petition to lift the seizure in the Civil Law Court for the Sixth Judicial Circuit. While the petition was pending, appellant filed a motion for preliminary injunction against the National Bank on the grounds that the National Bank was attempting to liquidate the assets of Roviabank, contrary to the provisions of the Financial Institutions Act. The trial court granted the motion and ordered the National Bank to obey the stay order. Two days later, Appellant Roviabank filed a bill of information informing the court that the Appellee National Bank of Liberia has disobeyed the stay order. Upon a hearing, appellee was adjudged in criminal contempt, from which ruling the National Bank of Liberia noted its exceptions and applied to the Justice in Chambers for a writ of certiorari.

The Supreme Court held that the special proceedings to lift the seizure of a financial institution, as provided for by the Financial Institutions Act, serves the same purpose as would the granting of a motion for a preliminary injunction; hence, a court before which a petition to lift the seizure is pending, cannot entertain a motion for preliminary injunction while the petition to lift seizure is still pending undetermined. The Court also held that the action taken by the trial judge below in overlooking the special proceedings filed by Roviabank and entertaining a motion for a preliminary injunction and a bill of information were indeed prejudicial to the petitioner National Bank of Liberia. Accordingly, the Supreme Court *affirmed* the ruling of the Chambers Justice.

Isaac E. Wonasue for petitioner/appellee. *James E. Pierre* for respondents/appellants.

MR. CHIEF JUSTICE BULL delivered this opinion of the Court.

This appeal is before the Supreme Court *en banc* for review of a ruling made in Chambers by our colleague, Mr. Justice Frank W. Smith, on a petition for a writ of certiorari filed before the said Justice by the National Bank of Liberia (NBL). We shall begin with a brief statement of the facts that gave rise to the proceeding in certiorari being instituted before the Justice in Chambers.

The National Bank of Liberia alleged that pursuant to its regulatory powers under the provisions of the Financial Institutions Act of 1974, the National Bank of Liberia, on February 21, 1995, suspended the license of and seized the Monrovia Banking Corporation, Roviabank. This seizure, which is permitted under the 1974 Act, was said to be necessary to protect Roviabank's depositors and other creditors. Following the seizure, Roviabank filed a petition entitled "special proceedings to lift seizure", against the National Bank before the Sixth Judicial Circuit Court for Montserrado County.

During the pendency of the special proceedings to lift seizure, Roviabank, on April 4, 1995, filed a motion for preliminary injunction against the National Bank of Liberia. It was alleged that the National Bank of Liberia was attempting to liquidate the assets of Roviabank, contrary to the procedure provided for liquidation under the Financial Institutions Act. On the same day the said motion was filed, the National Bank of Liberia was served a stay order ordering it to cease the process of liquidating Roviabank, and to permit the said Roviabank to continue its regular course of business using its own staff but under the supervision of the National Bank of Liberia. The order further authorized Roviabank to continue operating until a decision was

made by the court to liquidate the said Roviabank as provided for under the Financial Institutions Act.

Two days later, that is April 6, 1995, respondent Roviabank filed a bill of information before the court below alleging that Petitioner National Bank of Liberia disobeyed the order to cease liquidation of its Bank and prayed that the said National Bank be adjudged in criminal contempt for its refusal to comply with the stay order issued out of the Civil Law Court.

Petitioner National Bank filed a combined resistance to the bill of information and the motion for preliminary injunction. In its resistance to the motion and bill of information, the National Bank categorically denied that it ever began the process of liquidating Roviabank after the seizure. Instead, after said seizure, the National Bank said it proceeded to pay Roviabank's demand obligations in accordance with the process of seizure. The facts in these proceedings further show that the judge in the court below cited the parties for the hearing of the bill of information, and in ruling thereon, concluded that the National Bank had disobeyed the stay order. Thereupon the judge granted the bill of information before ordering the Governor of the National Bank to appear to show cause why he should not be held in criminal contempt. The judge below further ordered that the National Bank should obey the stay order served upon it on April 4, 1995.

The above mentioned facts present an interesting sequence of events which our colleague, Mr. Justice Smith, correctly observed. This Court, for example, cannot understand why the judge in the court below would even grant a preliminary injunction when a special proceeding to lift the seizure was already pending before him undetermined. It appears to this Court that the special proceedings to lift the seizure, as provided for by the Financial Institutions Act, serves the same purpose as would the granting of a motion for a preliminary injunction. It would have been proper had the judge below first heard the special proceeding to lift the seizure. This would have enabled him to decide either to sustain the seizure or to lift same. Furthermore, the Court also observes that the trial judge, in granting the motion for a preliminary injunction and issuing a stay order, also ordered the re-opening of Roviabank to operate in the regular course of business. We wonder also, why the trial judge ordered the re-opening of Roviabank during the pendency of the special proceeding filed before him to lift the seizure of said bank? What further disposition would the judge make regarding the petition to lift the seizure which Roviabank had filed before the court.

The Financial Institutions Act is a very important regulatory statute governing the operation of every financial institution within the Republic of Liberia. Its primary objective is to foster and control the operations of banking institutions so that they may function in the best interest of their depositors and the economy of this Republic. The regulations contained in this Act are specific and must be followed to the letter, so that the objective intended by it may be achieved. Also, the National Bank should be able to exercise the powers granted to it under the Financial Institutions Act, in a manner so as not to defeat the intended purpose of the Act. It therefore behoves every judge before whom this Act is brought, to read same very carefully before attempting to draw any conclusions regarding its application.

We agree with our colleague, Mr. Justice Smith, that there was no basis for the issuance of a preliminary injunction or the issuance of a temporary restraining order against the National Bank of Liberia, or to entertain a bill of information alleging disobedience of injunctive order. As a matter of fact, after the proceeding to lift the seizure was filed by Roviabank, the National Bank of Liberia resisted this special proceeding by filing its returns. The proper action which the court should have taken was to hear the special proceeding to determine whether or not the bank's seizure was proper under the Financial Institutions Act. The Financial Institutions Act permits seizure and provides for the proceedings after seizure under the provisions of Sections 43 through 46 inclusive. Section 46 of the Act permits the financial institution seized to commence proceedings to lift the seizure. The Justice in Chambers observed that as far as the National Bank is concerned, it had observed all of the requirements under the provisions of the Act relating to seizure of a financial institution. This Court concurs in that observation.

Our review of the records of this certiorari, compels us to agree with the ruling of our colleague in Chambers, to the effect that it was mandatory to first hear the special proceedings to lift the seizure, as filed by Roviabank. The Financial Institutions Act fully empowers the National Bank to suspend the license of any financial institution, and to supervise and control its operations, as directed by the provisions of the sections of the Act mentioned above. Upon seizure of a bank, the National Bank shall post a notice on the premises of the seized bank announcing its action pursuant to the Financial Institutions Act, and the time when such possessions shall take effect. A copy of the notice shall be filed in the circuit court. The institution so seized has the right to institute proceedings in the circuit court to have the seizure lifted. This right shall be exercised anytime within 30 days after the seizure takes effect. The court below had no right to permit any other remedy to take precedence over that which the Financial Institution Act provided for.

The action taken by the trial judge below in overlooking the special proceedings filed by Roviabank and entertaining a motion for a preliminary injunction and bill of information were indeed prejudicial to the Petitioner National Bank of Liberia.

In view of the foregoing, the ruling of the Chambers Justice is hereby affirmed. Costs against the respondents. And it is hereby so ordered.

Ruling affirmed