

**NATIONAL PORT AUTHORITY**, represented by its Acting Managing Director,  
THOMAS K. GLEPLAY, Petitioner/Appellant, v. **HIS HONOUR H. SOE BAILEY**,  
Presiding Judge, National Labour Court, and **NADIA CHOUKAIR**,  
Respondents/Appellees.

APPEAL FROM THE CHAMBERS JUSTICE DENIAL OF THE PETITION FOR A  
WRIT OF PROHIBITION.

Heard: April 20, 1989. Decided: July 14, 1989.

1. Prohibition may not be used as a process for the review of a final judgment and correction of errors committed in the trial of a cause for which other remedies are available: it may be invoked only to prevent an inferior court or tribunal from assuming jurisdiction which is not legally vested in it.

Nadia Choukair, co-respondent herein, filed an action against the Petitioner National Port Authority because of its failure to pay for time lost growing out of the wrongful dismissal of corespondent by petitioner. The National Labour Court ruled in favor of Co-respondent Nadia Choukair. Although no appeal was taken from this ruling, the petitioner, National Port Authority, filed a petition for a writ of prohibition against the enforcement of said ruling. The Justice presiding in Chambers denied the petition for the writ of prohibition on the ground that a writ of prohibition cannot be used to review the errors, irregularities and final ruling of a trial judge. An appeal from this ruling of the Justice was heard by the Supreme Court *en bane* and confirmed, the Court being in full agreement with the reasons for the denial of the writ.

*John T. Teewia* of the Carlor, Gordon, Hne & Teewia Law Offices appeared for petitioner.  
*Momolu V. Sackor Sirleaf* appeared for respondents.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

This case has its genesis in an action filed by Co-respondent Nadia Choukai of Monrovia against the National Port Authority (NPA) for failure by the NPA to pay for time lost, growing out of her wrongful dismissal by the NPA. The co-respondent received judgment in her favor at the National Labour Court, from which no appeal was announced. Instead, petitioner filed a petition for the writ of prohibition against the enforcement of the judgment. The petition contained six counts, while the returns to the petition contained ten counts. The Justice in Chambers heard the petition and denied the same on the ground that prohibition could not be used to review errors, irregularities and the final ruling of a trial judge. It is from this ruling of the Chambers Justice that an appeal was announced to the Court *en bane*. Thus, the primary issue before us for the final determination of the case at bar is whether a writ of prohibition can be used to review errors, irregularities and the final ruling of a trial judge? We have also been asked to answer the issues raised by petitioner as to

whether or not the various counts in the petition were treated in the ruling of the Justice in Chambers.

Petitioner alleged in his brief before us that only two counts of his petition were treated by the ruling of the Justice. They are:

1. That the trial judge failed to issue and serve notice of assignment on Petitioner National Port Authority for the hearing of the case on the 8<sup>th</sup> of November 1988;
2. That the trial judge failed to designate an attorney to receive the ruling on behalf of Appellant National Port Authority:

Before examining the petition and the returns, it is befitting that we quote hereunder the ruling of the Justice in Chambers: "The petitioner in the above entitled cause of action applied to the Honourable Supreme Court of Liberia for a writ of prohibition on a six (6) count amended petition, the relevant portions of which we have summarized hereunder for the benefit of this opinion.

The petitioner contends in count two (2) of its amended petition that on the 4<sup>th</sup> day of November, 1988, the respondent judge issued a notice of assignment for the hearing of the case on the 7<sup>th</sup> of November, 1988. The case was however not heard on that day. Without any further notice of assignment, the respondent judge proceeded to hear the case on the 8<sup>th</sup> day of November, 1988 by the application of Rule 7 of the Circuit Court Rules, thereby proceeding contrary to rules which should be observed at all times.

In countering the above contention, the respondents argued that the co-respondent judge was correct in applying Rule 7 of the Circuit Court. They further contended that the judge, in addition to Rule 7, also applied the Civil Procedure Law, Rev. Code 1: 51.16 on dismissal of appeal for failure of the appellant to proceed.

From the contentions raised by both the petitioner and respondents in the case at bar, this Court having reviewed the records of the case before it, has observed that the contention of petitioner that the case was assigned for the 7<sup>th</sup> day of November, 1988, but was heard on the 8<sup>th</sup> day of November, 1988 instead. This finding is based on the notice of assignment which reads: 'You are hereby commanded to notify counsels/ parties in the above entitled cause of action to appear before the National Labour Court of Liberia at the Temple of Justice Building, in the City of Monrovia sitting in its November Term, A. D. 1988, on the 7<sup>th</sup> day of November, A. D. 1988, for hearing at the hour of 2 o'clock post meridian.' Additionally, we have observed that the trial judge in his ruling made no records as to why the case was never heard on the 7<sup>th</sup> day of November, 1988, and the reasons for adjudging the petitioner liable based on Rule 7 of the Circuit Court Rules. Based upon the foregoing, we herewith conclude that the action of the judge was a reversible error.

As to count three (3) of the amended petition which submits that the trial judge proceeded to enter ruling immediately on the same day, November 8, 1988 without any notice of assignment for ruling and without designating any counsel to receive the ruling for petitioner thereby further proceeding contrary to rule that should be observed at all times, the respondents contend that the lower court had issued several notices of assignments and re-assignments, some of which petitioner flatly refused to sign and the judge had personally pleaded with petitioner's counsel to appear for the hearing but the judge's efforts were futile. Respondents also contended that on November 7, 1988 and the day of the hearing, November 8, 1988 Counsellor Gordon was present at the court, but when he was told to come in for the hearing, he refused because of some alleged misunderstanding with his client.

This contention of the respondents sounds good, we do not accept it because all of the notices of assignment marked 'R2', 'R3' and 'R4' that were issued, but which petitioner's counsel allegedly refused to sign for, contain no evidence to support that contention; that is, the sheriff's returns does not show that petitioner really refused to sign for the said notices of assignment. Therefore, we are again of the opinion that the action of the trial judge in proceeding in the absence of a notice of assignment and giving a ruling without appointing a counsel to take the ruling for petitioner's counsel was erroneous, and thus reversible.

After carefully analyzing these issues as contained in the petition and returns, we have observed that the most leading issue before us for the final determination of the case at bar is, whether a writ of prohibition can review the errors, irregularities and final ruling of a trial judge? Our answer is no. According to Section 16.21 of the Civil Procedure Law, Rev. Code 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.

Moreover, it is provided in 50 C. J. S., *Prohibition*, § 18, that prohibition is a preventive rather than a corrective remedy and issues to prevent the commission of a further act rather than to undo an act which is already performed. It will not be granted when the act sought to be prevented has already been done even where such act has been done pending the application for the writ. But when the act sought to be prohibited is not a full, complete and accomplished judicial act, the writ will lie, and any further proceeding may be afforded by undoing what has been done.

In the instant case, we have observed that the trial judge committed many reversible errors, yet the counsel for petitioner failed to apply for a remedial process until the said trial judge gave his final ruling. We view this act of petitioner's counsel as gross negligence on his part. We have further observed that the counsel for petitioner having been in full knowledge that a writ of prohibition cannot review the final ruling of a trial judge, instead of applying for

other remedial process, elected to come before this Honourable Court on a writ of prohibition, an act we again view as gross negligence.

However, since we are under the constitutional duty to interpret the laws, and since this Court has held that the court cannot do for a party that which the party should have done for himself, we are constrained to conclude that a writ of prohibition cannot lie.

The Clerk of this Court is hereby mandated to inform the court below of this judgment with costs against appellant. And it is hereby so ordered.

GIVEN UNDER MY HAND AND  
SEAL OF THIS HONOURABLE COURT  
THIS 24<sup>TH</sup> DAY OF JANUARY  
A. D. 1989.

Sgd. Robert G. W. Azango

ASSOCIATE JUSTICE PRESIDING IN CHAMBERS"

Before the Full Bench of this Court, appellant contended that the writ of prohibition would lie because the Chambers Justice misconstrued the common law and the statute on prohibition which he, the Chambers Justice, cited. Appellant contended that the procedure has been and still is that prohibition will lie: (i) after judgment where same was taken by default; (ii) that the availability of another extraordinary remedy is not a bar; and (iii) that acts remaining to be done and those illegally done may be restrained and undone.

Firstly, our statute defines prohibition as follows: . . . a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding as specified therein." Civil Procedure Law, Rev. Code 1: 16.21(3).

Further, our statute defines error thus:

". . . a writ by which the Supreme Court calls up for review a judgment of an inferior court from which an appeal was not announced on rendition of judgment. Civil Procedure Law, Rev. Code 1: 16.21(4). From this, and the perusal of our records, there are two questions to be answered:

1. Whether prohibition can review alleged errors, irregularities and final determination of a case?
2. Whether the alleged errors and irregularities were induced by the behavior of the party (counsel) applying for the writ?

The ruling of the Justice in Chambers, quoted *supra*, is quite clear and provides the answer to both questions. Prohibition will not and cannot lie in this case. The Chambers Justice

properly ruled that prohibition will not lie from a final judgment, especially when the remedy of an appeal was available to the petitioner. As such, his ruling should not be disturbed.

In view of the foregoing, the ruling of the Chambers Justice is hereby confirmed and affirmed and the petition is hereby denied. And it is hereby so ordered.

*Petition denied.*