

JUNG DAL PARK, Petitioner, *v.* HANIL MARINES PRODUCT CORPORATION, and
The Presiding Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County,
Respondents.

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

Heard: November 30, 1997. Decided: January 21, 1998.

1. Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty.
2. The command of a writ of mandamus is generally issued from a superior court of competent jurisdiction to an inferior one, ordering or commanding the latter to perform a particular act imposed upon it by law.
3. Traditionally, mandamus will not lie to compel an inferior court to perform a discretionary act, but will only lie to compel an inferior court or judicial officer to perform a ministerial act such as the enforcement of the Supreme Court's mandate by an inferior tribunal.
4. The writ of mandamus is not an appropriate remedy for the redress of private contracts rights between party litigants, and as a corollary, the writ will not generally be granted to compel a public officer, corporation, or other respondent to perform a duty or obligation assumed by contract, as distinguished from one imposed by law.
5. Mandates of the Supreme Court should be strictly enforced and executed to their letter by inferior courts.

Petitioner in mandamus filed a petition before the Justice in Chambers of the Supreme Court to compel the trial court judge to enforce a ruling handed down by a previous Justice in Chambers in prohibition proceedings, in which the said Justice had ordered that a certain vessel which the Solicitor General of Liberia had been ordered delivered to the co-respondent in the mandamus proceedings be placed instead in the possession of one Rose of Sharon Fishing Company, presumably representing the petitioner. In ruling on the mandamus, in enforcement of the prohibition mandate, the Chambers Justice in the mandamus proceedings ordered that the vessel held by the co-respondent be delivered to the petitioner as the said vessel, subject of the mandamus proceedings, was the same as that named in the prohibition proceedings and covered by the Chambers Justice's ruling in the prohibition proceedings.

On appeal to the Supreme Court *en banc*, the ruling of the Chambers Justice in the

mandamus proceedings was reversed, with the Court holding that the Justice had erred in determining that the subject vessel of the prohibition proceedings was the same as the vessel in the possession of Co-respondent Hanil Marines Product Corporation. The Court noted that the vessel involved in the prohibition proceedings, the subject of a lease agreement between the disputing parties, and which the Chambers Justice in the prohibition proceedings had ordered released to the petitioner was not, as described in the lease agreement, the vessel in the possession of the co-respondent, since the two vessels carried different names and numbers. The Court noted also that as the dispute over the vessel, contracted under the lease between the parties, was the matter of a private contract, mandamus was not the appropriate remedy to address such contract rights of parties. Mandamus, the Court observed, involved compelling an inferior court judge or judicial officer to perform a legal duty and cannot be used to determine whether a vessel should be in the possession of one party or the other or to give meaning to private contracts.

The Court therefore reversed the ruling of the Justice in Chambers in the mandamus proceedings, denied the petition, and ordered the enforcement of the ruling of the Justice in the prohibition proceedings.

Francis Y. S. Garlanolo appeared for the petitioner. *G. Wiefueh A. Sayeh* of Kemp & Associates appeared for the respondents.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This case is before us on appeal from the ruling of our distinguished colleague, Mr. Justice Wright, granting the petition for and ordering the issuance of the writ of mandamus to enforce a mandate of this Court in a prohibition proceeding. The facts disclosed from the records transmitted to this Court show that on July 27, 1991, Mr. Sue Yang IL, a Korean national presently residing in Korea, executed a joint power of attorney appointing and empowering Mr. Lawrence K. Richards as operations manager and Jung Dal Park as production manager to officially operate and manage his two(2) fishing vessels known and styled Yu Kwang 1011 and IL Yang 107, pending his return to Liberia. Both parties to these proceedings worked together peacefully as production and operations managers respectively, and conducted the affairs of the Hanil Marines Products Corporation, of which Sue Yang IL was President

On the 17th day of August, A. D. 1995, Mr. Sue Yang IL leased a fishing boat named Yu Kwang No. 1101, located at Point Four, Bushrod Island, Monrovia, Liberia, for a period of 30 months. The Solicitor General of Liberia, Counsellor George S. B. Tulay, wrote a letter on September 28, 1996 to the managing director of the National Port Authority instructing him not to allow the Yu Kwang 1011 to leave the Free Port of Monrovia for any destination because he, the Solicitor General, was probing into a matter which involved the said vessel.

Mr. Park, on October 19, 1996, wrote the then Solicitor General of Liberia requesting that the case be taken to court for a speedy trial. Whereupon, the Solicitor General ordered the lifting of the ban on the Yu Kwang 1011 and the release of the said property to the possession of the respondent in the man-damus proceedings. In response thereto, Mr. Jung Dal Park, the petitioner, on October 22, 1996, filed before this Court a four-count petition for a writ of prohibition requesting this Court to restrain the Ministry of Justice from interfering in a civil matter and to order the aforesaid Ministry to return to the petitioner the subject vessel. The prohibition was heard and granted by our distinguished Colleague, Mr. Justice Badio, then Chambers Justice presiding, who ordered that the Yu Kwang 1101 be placed in possession of Rose of Sharon Fishing Company instead of the Hanil Marines Products Corporation to whom it had been released by the Solicitor General. The petitioner then appealed from the ruling of the Chambers Justice, but subsequently withdrew the same without reservation. The trial court was then mandated to enforce the ruling of the Justice in Chambers as confirmed by this Court. We further observed from the records that the mandate of this court was not enforced and that this thereby necessitated the institution of the mandamus proceedings before Mr. Justice Wright on September 11, 1997. Mr. Justice Wright heard the mandamus petition and on November 4, 1997 granted the writ of mandamus, ordering that the Yu Kwang 1011 be placed in the custody and possession of Petitioner Park. The respondents in the mandamus proceedings excepted to the Chambers Justice's ruling and announced an appeal to this court *en banc* for our final review and determination.

Respondents basically argued before this Court that the Chambers Justice erred when he ruled that the Yu Kwang 1011 was the same as, or could be construed to be Yu Kwang 1101, in that the lease agreement entered into and executed between Sue Yang IL and Mr. Park referred to a fishing vessel known as Yu Kwang 1101. Respondent contended that the ruling of Chambers Justice Badio distinguished between the two vessels in that the said ruling, out of which the petition for mandamus grew, had ordered that Yu Kwang 1101 be returned to the custody and possession of the petitioner instead of the Yu Kwang 1011. Respondents also maintained that the Justice of this Honourable Court cannot review or pass upon the act of a colleague. Further, counsel for respondents contended that while mandamus does stimulate an action pursuant to a legal duty, it does not correct such action however erroneous the action taken may be. In other words, respondents argued before this Court that mandamus does not determine contract rights, as in the instant case, but rather that the writ only commands the performance of a duty imposed by law. Moreover, counsel for respondents argued before this Court that the Chambers Justice had no legal authority to further extend the ruling of Mr. Justice Badio, the enforcement of which was sought by the petitioner. He maintained that the lease agreement executed by the parties was plain and

clear as to the description of the fishing vessel ordered to be possessed by the petitioner and that as such, it did not need or require construction by this Court. Respondents therefore requested this Court to set aside the ruling of Mr. Justice Wright and to order the ruling of Mr. Justice Badio enforced.

Counsel for petitioner, for his part, argued before this Court that the numbers Yu Kwang 1011 and 1101 referred to a single fishing vessel which was physically seized from petitioner, and which was the subject of Mr. Badio's ruling. Petitioner also contended that there was only one fishing boat in controversy, irrespective of the numbers, and that the Yu Kwang 1011 was the same as the Yu Kwang 1101. As such, he said, Mr. Justice Wright did not err when he refused to lend aid to a mere technicality which, if entertained, would absolutely defeat the ends of justice. Petitioner further maintained that the ruling of Mr. Justice Wright, to the effect that the Yu Kwang 1011 was the same as 1101 and that both numbers referred to a single fishing vessel, could not be construed as altering the ruling of Mr. Justice Badio, but as giving meaning to the same.

The sole issue which we consider important for the determination of this case is whether or not mandamus is the proper remedy for the redress of private contract rights.

The basic contention of the respondents is that mandamus will lie to enforce Mr. Justice Badio's ruling of December 5, 1996, only as to the fishing boat named Yu Kwang 1101, but not the Yu Kwang 1011, on which Mr. Justice Badio never ruled and which he did not intend be placed in possession of Petitioner Park, as ruled by Mr. Justice Wright in these mandamus proceedings. Respondents argued further that the Chambers Justice did not have the legal authority to give meaning to Mr. Justice Badio's ruling, and that mandamus is not the proper remedy for the redress of private contract rights such as the lease agreement executed between Jung Dal Park, as lessee, and Sue Yang IL. as lessor, for the fishing boat known as Yung Kwang 1101.

A recourse to Mr. Justice Badio's ruling revealed that the Yu Kwang 1101 was ordered returned to the petitioner herein in contemplation of the lease agreement between Mr. Park and Mr. Sue Yan IL, and that the said ruling did not refer to the Yu Kwang 1011, as ruled by our distinguished colleague, Mr. Justice Wright.

Mandamus is defined by our statute as "a special proceeding to obtain a writ requiring the respondent to perform an official duty". Civil Procedure Law, Rev. Code 1: 16.24(2). The extraordinary writ of mandamus has a Latin origin which means "we command". This command is generally issued from a superior court of competent jurisdiction to an inferior one, ordering or commanding the latter to perform a particular act imposed upon it by law. Traditionally, the writ will not lie to order an inferior court to perform a discretionary act, but it will only lie to compel an inferior court or judicial officer to perform a ministerial act such as the enforcement of this Court's mandate by an inferior tribunal. BLACK'S LAW DICTIONARY 961 (6th ed. 1990); *Johnson et al. v. Johnson*, 27 LLR 351 (1978). We observed in these mandamus proceedings that there are private contract rights existing between Mr.

Park, lessee and Mr. Yang Il, lessor, relating to a specific and particular fishing vessel named Yu Kwangho 1101, which vessel Mr. Justice Badio mandated to be placed in the possession of the petitioner. It is universally held that the writ of mandamus is not an appropriate remedy for redress of private contract rights and it follows as a corollary to that rule that the writ will not generally be granted to compel a public officer, corporation or other respondent to perform a duty or obligation assumed by contract as distinguished from one imposed by law". 52 AM JUR 2d., *Mandamus*, § 75. It is hoary with age in our jurisdiction that mandates of this Court should be strictly enforced and executed to their letter by the inferior courts. We are therefore in agreement with the respondents that the Chambers Justice erred when he ruled that the Yu Kwang 1011 was the same as, or could be construed as, the Yu Kwang 1101, whereas the ruling of Mr. Justice Badio ordered that the Yu Kwang 1101 be placed in possession of the petitioner. The essence of these mandamus proceedings is to compel the trial court to enforce the mandate, but it is not intended to give any meaning to the private contract rights between the petitioner and his lessor, Mr. Sue Yang IL. This Court holds that mandamus is not the proper remedy to determine private contract rights between parties litigant, but rather that such remedy is an appeal or a writ of error. This writ commands the performance of an act specified or prescribed therein, but it does not give meaning to a ruling of this Court in enforcing its mandate.

WHEREFORE, and in view of the foregoing, it is the candid opinion of this Court that the ruling of the Chambers Justice should be, and the same is reversed and the ruling of Mr. Justice Badio is hereby ordered enforced. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over the case and give effect to this opinion. Costs are disallowed. And it is hereby so ordered.

Petition denied.