WEASUA AIR TRANSPORT COMPANY LTD., represented by its Deputy Manager Director, KAMAL E. GBANEM, Petitioner, v. THE MINISTRY OF LABOUR, represented by JUKONTEE T. WOEWIYU, Minister of Labour, Respondent.

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

Weasua Air Transport v Woewiyu [2000] LRSC 25; 40 LLR 225 (2000)

Heard: October 30, 2000. Decided: December 21, 2000.

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. The controlling factor in all prohibition proceedings is that the act of the respondent complained of must be a judicial action of a judicial proceeding. If the action complained of is not of a judicial nature, prohibition will not lie.

3. Judicial action is defined as an adjudication upon rights of the parties who in general appear or are brought before a tribunal by notice or process, and upon whose claim some decision or judgment is rendered.

4. Except as otherwise provided by the labor law, no employer shall employ an individual who is not a Liberian citizen unless such alien employee is in possession of a permit issued by the Ministry of Labour authorizing his employment in the capacity in which he is to be employed.

5. A person found employed without a work permit in favor of that employer shall be fined US$500.00 and the employer fined US$1,000.00 for the first offense, US$2000.00 for the second offense, and expulsion for the third offense.

6. The essence of due process is for the law to take its course; one which hears before it condemns.

7. Prohibition is a remedial process which seeks to prevent further action, not anticipated actions not yet executed; it is not proactive.

8. The Labor Laws of Liberia authorize the Ministry of Labour to impose fines for violation of laws which it has been designated to administer and implement.

9. Where the labor law specifically provides a penalty clause, it is not error for the Ministry of Labour to seek enforcement of or compliance therewith.

10. The Liberian system of justice is an adversarial system of justice.

11. A statute will not be struck down as being unconstitutional if only implied or merely tangentially mentioned in passing; it must be positively attacked.

12. Where the statute authorizes the Ministry of Labour to impose fines and exact fees, the Ministry is within its scope to do as authorized, and its actions pursuant thereto will not be

declared illegal without the law being specifically challenged and declared unconstitutional by the Supreme Court.

13. Parties will not be allowed to escape the jurisdiction of Liberian law and evade taxes under the guise or sanctity of alleged contractual obligation.

14. No agreement can by its terms, whether expressed or implied, violate or defeat positive or national law, irrespective of the parties to it.

15. A private agreement between parties is not and cannot be binding on the government when the government is not a party to it, and where the government is the victim of the effect and terms of such agreement.

16. Persons who are not parties to a agreement cannot be bound by such agreement and its terms.

17. Parties to an agreement will not be permitted to abrogate and repudiate their own acts, and the parties to such agreement will be bound by its terms.

18. The enforcement of the labor laws is not subject to, dependent upon, or a condition subsequent to the enforcement of the Aliens and Nationality Law.

19. A party cannot seek to observe and enforce a part or certain provisions of an agreement and at the same time disavow another part of the said agreement.

Petitioner Weasua Air Transport Company Ltd. sought from the Chambers Justice of the Supreme court a writ of prohibition against the respondent Ministry of Justice to prevent it from enforcing its imposition of fines and penalties imposed on the petitioner because of its refusal to obtain work permits for the alien crew of aircrafts chartered by it from a Russian company to fly routes between Liberia and Sierra Leone and Liberia and the Ivory Coast. The Ministry had informed the petitioner that under the Liberian Labor Law, it was required to obtain work permits for the alien crew of the aircrafts, but the petitioner rejected the Ministry's view, stating that the crew members of its chartered aircrafts were employed with and paid by the Russian company, that they were not permanent residents of Liberia, having been granted only temporary permits and waivers by the Bureau of Immigration, and that they resided in Liberia for only three-month periods, being changed every three months. The Ministry disagreed, and ordered that penalties be paid by the petitioner and the crew of the aircrafts for petitioner's refusal to adhere to the Ministry's orders, noting that if the petitioner failed to comply with the orders the law will be allowed to take its course. The petitioner therefore, by its petition for a writ of prohibition, sought to have the Supreme Court prohibit the respondent Ministry of Labor from enforcing its orders.

The Justice in Chambers granted the writ, but on appeal the Supreme Court reversed the Justice's ruling. The Court noted that the Labor Law required that aliens obtain work permits before they can work in Liberia, that the Ministry of Labour had been given the authority to administer and enforce the law, as well as to impose penalties for violation thereof, and that in the absence of any challenge to and declaration of un-constitutionality of the said law, the respondent ministry cannot be prevented from acting thereunder. The Court observed that there was nothing unlawful in the respondent ministry informing the petitioner of the law and

of the consequences of disobedience. It opined that in providing the petitioner with the said information, it had not deprived the petitioner of any protected due process right.

The Court ruled that the alien crew were in fact working in Liberia and that the engagement of their services and payment of their salaries by the Russian company were only schemes designed by the petitioner to defraud the Liberian government of fees and taxes due the Government, especially since it knew that the Russian company had no assets or business, in or connection with, Liberia and that enforcement against the Russian company would therefore be impossible. The Court noted that the petitioner was fully aware of the requirements of the Labor Law regarding work permits, and that these could not be altered by any contract concluded between the petitioner and the Russian company. The Court opined further that as the Liberian Government was not a party to the contract between the petitioner and the Russian company, the government could not be bound by such contract or any of the terms thereunder.

The Court observed, however, that in any event, the petitioner had undertaken in the contract to independently obtain all the necessary permissions and visa documents for the alien crew, and therefore was contractually bound to obtain the work permits for the crew. The petitioner, the Court said, could not determine to accept a part of the contract and abrogate other portions thereof.

Finally, the Court held that if the petitioner felt that the Russian company was responsible for the payment of work permit fees for the alien crew, then it should seek reimbursement from the Russian company after the petitioner had made payment to the government. The Court noted that the obligation to obtain work permits for the crew could not be escaped by the petitioner since the crew did not fall within the exemption stated by the statute for alien crew members working in Liberia.

J. Emmanuel Wureh of the Dunbar and Dunbar Law Firm appeared for the petitioner. Joseph N. Nagbe of the Freeman Legal Consultancy appeared for the respondent.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

This Court en banc has been called upon to review on appeal the ruling of the Chambers Justice granting prohibition in favor of Petitioner Weasua Air Transport Company Ltd. ("WEASUA"), restraining the Respondent Ministry of Labour from requiring petitioner to obtain work permit for some alien Russians in Liberia, and also to refrain from imposing fines on petitioners for its failure to do so.

The petition contains fourteen (14) counts. It states that WEASUA is authorized by the laws of Liberia to operate and provide commercial air services between Monrovia and Abid-jan and Monrovia and Freetown, transporting passengers and cargo; that it does not own any aircraft and, hence, in order to provide air transport services, it has had to charter several air-crafts from a Russian company, Novgorodskoe Aviapedpred-priiate Lenoga, which aircrafts are registered in the Russian Federation.

Petitioner further averred that under its charter agreement, entered into in 1992 with the Russian company, the said company, as owner of the aircrafts, has the exclusive responsibility to operate and maintain the chartered aircrafts, and is solely responsible for

hiring, employing, dismissing, and paying the salaries and other benefits of the Russian pilots, engineers, and mechanics who fly and maintain the chartered aircrafts.

Petitioner complained that by letters dated August 23, 1994 and October 31, 1994, the Respondent Ministry of Labour accused Petitioner WEASUA of having employed alien pilots, engineers and mechanics without first obtaining work permits from the Ministry of Labour for them. The Ministry had also threatened to impose fines on petitioner and the said aliens, and to close down petitioner's business if petitioner failed to obtain the required work permits.

In response to the respondent's letters, referred to above, Petitioner wrote letters dated August 30, 1994 and November 11, 1994 to respondent explaining that the alien pilots, engineers and mechanics in question were not employees of Petitioner WEASUA, but rather that they were employees of the Russian company from whom petitioner was leasing the aircrafts. Petitioner claimed that in the absence of an employer-employee relationship between petitioner and the alien pilots, engineers and mechanics, petitioner could not be held responsible for obtaining work permits for them.

The petitioner further contended that the alien pilots, engineers, and mechanics were replaced on a quarterly basis by their employer, the Russian company, and that not being permanent residents in the country, did not have residence permits but that the Bureau of Immigration and Naturalization had granted each of them temporary periods of stay in Liberia not to exceed three months.

The petitioner complained that notwithstanding the explanations provided by it, the respondent had proceeded to close down petitioner's business on March 31, 1995, asserting as the reason a violation by the petitioner of the respondent notice. The petitioner stated further that after a meeting was held between the parties, the petitioner's business was reopened, but that shortly thereafter, on April 5, 1995, the respondent imposed a fine of US$9,000.00 on the petitioner and another fine of US$4,500.00 on the Russian pilots, engineers and mechanics, with the threat to close down petitioner's business if the fines were not paid within ten (10) days.

The petitioner submitted also that the imposition of a fine was a judicial function and therefore it was unconstitutional for the respondent to act as it had threatened to do. Further, that it was arbitrary, irregular, and contrary to the due process of law principle of this jurisdiction for the respondent to unilaterally and without a hearing impose fines on the petitioner. Finally, petitioner submitted that under the Revenue and Finance Law of Liberia, owners of chartered aircrafts fall within the category of "non-resident persons" who are exempt from paying income tax on revenue derived from the chartered aircrafts. The petitioner therefore contended that since the Revenue and Finance Law states and intends that the income earned by foreign non-resident owners of chartered aircrafts, such as the Russian company in the instant case, were exempt from taxation, it followed that the pilots, engineers, and mechanics, employees of the Russian company, should likewise fall in the category of aliens exempt from obtaining work permits under the Labor Practices Law.

These were the bases upon which Petitioner Weasua fled to the Chambers of the Supreme Court Justice, praying that the Court restrains and prohibits the Respondent Ministry of Labour from (a) assuming jurisdiction in the matter over which the Ministry had no jurisdiction (i.e. imposing fines which was a judicial function), (b) exceeding its jurisdiction

in a matter over which it had jurisdiction, and (c) proceeding by rules other than those which should be observed at all times, i.e. imposing fines without having accorded petitioner the opportunity to first present the issues at a hearing.

On the orders of the Chambers Justice, the alternative writ or prohibition was issued. In response to the petition and the service of the writ, the respondent filed returns containing 14 counts raising several defenses in support of its action, and praying the Court to deny the petition and dismiss the proceedings. Basically, the respondent contended that the Labor Laws of Liberia require that all aliens desiring to work within the Republic of Liberia and their prospective employers must obtain work permits and pay work permit fees as a precondition to being authorized to work in Liberia, unless such aliens fall within the categories of aliens specifically exempted by the statute from obtaining work permits. The alien employees in the instant case, the respondent averred, did not fall within the categories of aliens exempted under the Revenue and Finance Law of Liberia.

The respondent further contended that the charter agreement relied upon by petitioner was violative of the Liberian Labor Laws and should therefore not be given credence. The agreement, the respondent alleged, was only a fraudulent scheme purposely designed by the petitioner to evade the requirements of the Laws of Liberia. Also, it said, should the agreement be given validity and credence, it could serve as a precedence whereby other employers would simply enter into such agreements and claim that aliens working for them are not their employees, thereby evading the payment of legitimate government fees and taxes and undermining the economy of Liberia.

The respondent maintained that the aliens in the instant case were actually employees of petitioner since they were physical-ly performing work for petitioner in Liberia, and that since the work they were doing in Liberia was for the petitioner, the petitioner should be obligated to pay for them. The respondent dismissed the petitioner's claim that the aliens were exempted from paying work permit fees because their employer, the Russian company, was not in Liberia or subject to the jurisdiction of the laws of Liberia. In addition, the respondent argued that since the Russian company claimed to be the employer of the aliens was not in Liberia, and the aliens were in Liberia working for the petitioner, the petitioner should be held responsible to pay their work permit fees.

The respondent also contended that it merely acted in keeping with existing statutory laws, i.e., the Revenue and Finance Law and the Labor Practices Law; that it was only informing the petitioner that it (i.e. the petitioner) was engaging in conduct which was in violation of the Liberian Labor Law and stating the punishment for such violation. The respondent denied that its actions usurped any judicial functions, noting that it was only doing what by law it was authorized to do. It argued that to inform violators of the governing law of the country over which respondent had been given authority to administer was not a usurpation of judicial function. It asserted that it did have jurisdiction over the matter of a violation of the Liberian Labor Law, and advanced the argument that even if it had assumed or usurped a judicial function, which was not the case, the writ of prohibition was not the proper remedy.

The Chambers Justice decided the case on the issue of the existence of an employer-employee relationship between the petitioner and the alien crew of the chartered aircrafts. He ruled that there was no employer-employee relationship and that because of the lack of such relationship the petitioner could not be required to obtain work permits for the alien crew of the chartered aircrafts. The Chambers Justice also ruled that the petitioner, not being the

employer of the mentioned aliens, and hence not responsible to obtain work permits for them, the Respondent Ministry was without authority to impose the fines on the petitioner and the aliens.

This Court, however, does not see the issue so much as in the context of the existence of an employer-employee relationship between the petitioner and the aliens crew, even though that is important and we shall also pass on it; but rather more importantly, the issue for resolution is whether the relevant sections of the Revenue and Finance Law and the Liberian Labor Practices Law violate the constitutional doctrine of separation of powers.

A second issue of importance for the determination of the Court is whether or not the respondent assumed a function not ascribed to it by the relevant laws, or whether it exceeded the authority given to it, or violated the due process provision of the Constitution of Liberia.

A final issue is whether or not prohibition is the proper remedy to pursue under the circumstances of the instant case? In addition, however, we shall also discuss whether or not there existed an employer-employee relationship between the petitioner and the alien crew who operated and maintained the chartered aircrafts for the petitioner, to the extent that the petitioner would be required to obtain work permits for them. Also, we shall ascertain whether or not the alien crew members fell within the categories of aliens specifically exempted from obtaining work permits prior to performing work in Liberia.

We shall begin our analysis by examining the question of whether prohibition is the proper remedy to pursue under the circumstances of this case, and whether, as such, it will lie in the instant case. "Prohibition is a special proceedings to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein." Civil Procedure Law, Rev. Code 1:16.21 (a), 1 LCLR146 (1973). From a careful reading of this statute, it is clear that the controlling factor in all prohibition proceedings is that the act of the respondent complained of must be a judicial action or a judicial proceeding. The reverse then is also true, that is, if the act or action complained of is not of a judicial nature, then prohibition will not lie.

"Judicial Action" is defined as "[a]n adjudication upon rights of parties who in general appear or are brought before a tribunal by notice or process, and upon whose claims some decision or judgment is rendered. Action of a court upon a cause, by hearing it and determining what shall be adjudged or decreed between the parties, and with which is the right of the case." BLACK'S LAW DICTIONARY 847 (6th ed. 1990).

From the foregoing definition, can it be said that the action taken by the Respondent Ministry of Labour amounted to a judicial act or action? To answer this question, we must examine exactly what the Ministry really did.

Recourse to the records certified to this Court revealed that on August 13, 1994, the Ministry of Labour wrote Petitioner Weasua, informing the latter that the Ministry's records indicated that Weasua had employed nine (9) aliens, including two engineers and four pilots, none of whom was in possession of a work permit authorizing him to engage in gainful employment in Liberia. The petitioner was reminded that as "a very old Liberian company [it was] aware of the Labor Laws of the land, which stipulates that no alien may work without first obtaining a work permit, and that no company should employ an alien who does not possess a work permit. Your company has been notified on several occasions, including a written notice

concerning its deliberate disregard of the law. In view of the above, take note that the failure of your company to regularize the work permit of any alien in its employ on or before August 31, 1994 will result in action by this Ministry to enforce the law, which shall include, but is no limited to the arrest and prosecution of the aliens involved, a fine imposed on both the aliens and the employer, and the eventual closure of the business and other necessary actions within the law." (Emphasis supplied)

On August 30, 1994, Petitioner Weasua replied the Res-pondent Ministry's letter, indicating therein that the nine aliens referred to by the Ministry were not employees of the petitioner but rather part of the aircraft leased from the Russian company, and that as part of the lease or charter contract, the aliens were not required to obtain permits to work in Liberia.

Then, on October 31, 1994 the Ministry wrote Petitioner Weasua another letter, wherein it stated that "The Liberian Labor Law categorically states in Section 11.1 that no employer shall employ an alien unless such alien is in possession of an employment permit issued by the Ministry of Labour. This proviso exempts only diplomats and United Nations Missions in Liberia. Quite clearly, leased pilots and engineers do not fall in this category." The Ministry reiterated its former position that the aliens were employees of Weasua and that as such Weasua should regularize their status or the Ministry "will let the law take its course." (Emphasis supplied).

In response to this second letter, Petitioner Weasua, on November 11, 1994, repeated its earlier position that the nine aliens were not its employees and that in the absence of any employee-employer relationship there was no requirement for work permits to be secured by the petitioner for the subject aliens.

Petitioner Weasua stated further that the aliens crew were employees of the Russian company from whom petitioner had leased or chartered the aircrafts, that the crew were replaced every three months, and that they did not have residence permits because they were not permanent residents of Liberia. When Weasua remained intransigent, the Ministry, on March 31, 1995, issued a violation notice, relying on and acting pursuant to section 1507(4) chapter 1, title 19-A of the Labor Practices Law of Liberia, which states: "Except as thereinafter provided, no employer shall employ an employee not a Liberian citizen unless such alien employee is in possession of a permit issued by the Ministry of Labour authorizing his . . . employment in the capacity in which he is to be employed."

The penalty thereof states that "any person found employed without a work permit in favor of that employer shall be fined US$500.00 and the employer shall he fined US$1000.00 for the employee for the first offense, US$ 2,000.00 for the second offense, and for the third offense, expulsion from the country." Acting under the foregoing authority, the Ministry fined Petitioner Weasua US$1,000 far each illegal alien employed by it. In addition, each of the aliens was fined $500.00. Further, in that same violation notice, the Ministry informed Weasua of the suspension of its privilege to work or do business in Liberia until the fines were paid and the statuses of the aliens to work were regularized.

Petitioner Weasua remained undaunted and unchanged in its stance. It did not just fail, but it flatly refused to comply with the March 31, 1995 violation notice, which caused the Ministry to write Weasua another letter on April 5, 1995 maintaining that as the nine aliens were gainfully employed in Liberia by a Liberian company, they and their employer were subject to the Liberian Labor Laws with respect to the company first obtaining work permit

clearances before employing the alien workers. The Ministry reminded Weasua it had been given several notices concerning the matter but that there had been no compliance therewith, and that therefore the Ministry was applying section 1507(4) of the Labor Laws. Also, the Ministry, relying on section 34.2(a), chapter 34, of the Executive Law, fined Weasua the amount of US $1,000.00 for each of the illegal alien workers, and each alien was fined US$500.00. Petitioner Weasua was given ten (10) days, i.e., up to April 15,1995 to pay the fines or face the full weight of the law. (Emphases Supplied).

Upon receiving the April 5, 1995 letter, Petitioner Weasua, on May 30, 1995, filed its petition for prohibition to restrain the Ministry of Labour "and all other persons and agencies interested in the acts complained of" from enforcing the respondent's alleged illegal and arbitrary decision to impose the fines on Weasua and the alien crew of the chartered aircrafts, and to close down Weasua's business. (Emphasis Supplied)

With the above factual background, we now revert to the definition of "prohibition", as quoted from the Civil Procedure Law, supra, to determine what action of the Ministry of Labour amounted to a judicial action? The Court observes that in all of the Ministry's letters to Petitioner Weasua, the Ministry always quoted the laws upon which it relied to take the action contemplated by it. Moreover, the Ministry also always informed Petitioner Weasua that if it failed to comply with the Ministry's letters, the law would be allowed to take its course. Is there any element of illegality in the Ministry asserting that the law will take its course? The Court sees none. In fact, for the Ministry to assert that the law will take its course is the essence of due process. Our law is one which hears before it condemns. Wolo v. Wolo, [1937] LRSC 12; 5 LLR 423, Syl 2 (1937).

More importantly, we note that when Weasua filed its petition, it prayed the Chambers Justice to restrain not only the Ministry of Labour, but also "all other persons and agencies interested in the acts complained of." (Emphasis supplied). The Chambers Justice issued the writ as prayed for by the petitioner. We are of the opinion that the issuance of the writ evidenced a contradiction of Weasua's contention that it was not given a hearing. In other words, assuming arguendo, as Weasua was apparently able to convince the Chambers Justice that the Ministry of Labour could not impose the fines and close down Weasua offices itself but should have resorted to a court hearing, the question is, how was such a court going to be able to entertain a suit by the Ministry when the writ was issued ordering both the Ministry and "all other persons and agencies" from taking action tending to enforce the Ministry's decision? Wouldn't such a forum (or person) have been guilty of contempt of the Chambers Justice's order in the writ? (Emphasis supplied).

It must be noted that the action of the Ministry complained of is its letter of April 5, 1995. But it is worthy to note also that the letter was written April 5th and that the ten days deadline to comply therewith ended on April 15th. Yet, even up to May 30th, when the petition was filed, the Ministry had not arrested any of the aliens or stopped them from working, or closed down Petitioner Weasua's offices, or stopped the planes from flying. The question then is, what judicial action had the Ministry taken or was taking for which prohibition was resorted to or would lie to deter or prevent? We have seen none and therefore declare that prohibition cannot lie. The restraint imposed is accordingly declared void and illegal, especially since the petitioner had not suffered and did not suffer any harm or injury. Prohibition is a remedial process which seeks to prevent further action, not anticipated actions not yet executed; it is not proactive.

One other point is that the Ministry of Labour cited and relied on both section 1507(4) of the Liberian Labor Law and section 34.2(a) of the Executive Law as the basis for its action. Recourse to these laws clearly reveal that they specifically authorize the Ministry of Labour to impose fines for violation of laws which it has been designated by statute to administer and implement. Can it be said then that while a law is valid and remains unrepealed that to enforce and administer the same is illegal? We think not, and we hold that it is not illegal that such a law is enforced. While the method of its enforcement could be subject to question, the act of its enforcement cannot be made the subject of such questioning.

Hence, since the Liberian Labor Law specifically provides a penalty clause, we find no error in the Ministry of Labour, which is the department of the Executive Branch of the government specifically authorized and designated to administer the said law, enforcing or seeking compliance therewith. The petitioner has not challenged the Labor Law or the Executive Law as being unconstitutional. But even if such a challenge was raised to the constitutionality of statutes, the challenge would have to be squarely raised by one affected by its effect. Ours is the adversary system of justice. A statute will not be struck down as being unconstitutional if only implied or merely tangentially mentioned in passing; it must be positively attacked.

Therefore, if the statute authorizes the Ministry of Labour to impose fines or exact fees, the Ministry is within its scope to do as authorized, and its action pursuant thereto will not be declared illegal without that law being specifically challenged and declared unconstitutional by the Supreme Court.

The petitioner also advanced the argument that there did not exist any employer-employee relationship between it and the alien crew. The petitioner said the alien crew were employees of the Russian company. We note that this Russian company is not registered under the laws of Liberia, has no assets in Liberia, and has never been to Liberia or done business in Liberia. As such, it has no agent in Liberia, if for no other purpose than for the service of process. Yet, the petitioner claimed that the crew members were employees of the Russian company, and that because of the said position of the alien crew, the Russian company should be the proper person to be required to pay for the work permits for its crew to enable them to work for petitioner in Liberia. The Court wonders how the Ministry of Labour, or even our courts, could assume jurisdiction and exercise authority over such foreign company? The Court sees no way or manner in which such jurisdiction could be exercised.

The respondent, for its part, argued that the crew members were employees of the petitioner since they were in Liberia at the petitioner's instance, and that whatever work they were engaged in, or services they rendered, were for the benefit of the petitioner. The respondent contended that petitioner had cunningly brought about the charter agreement to evade the payment of legitimate fees and taxes to the Government of Liberia. The respondent also asserted that should this Court give credence and validity to the said agreement, it would open a floodgate and thus provide a haven whereby business people would enter similar contracts and claim no employer-employee relationship in order to evade the payment of fees and taxes.

The Court observes that everything relating to the alien crew is connected to and would directly impact upon the petitioner's business. But even using the charter agreement relied on by the petitioner, the question is, why would a Liberian company enter into an agreement with a foreigner which has the effect of evading and undermining positive Liberian Law? The Court finds that the petitioner clearly and cleverly sought to defraud the Liberian Government

of legitimate taxes and revenues by entering into the charter agreement, knowing that the Russian company had no assets in or business connection with Liberia. Moreover, the petitioner seeks to have this Court order that the Ministry of Labour should go and locate the foreign company in the Russian Federation. Parties will not be allowed to escape the jurisdiction of Liberian law and evade the payment of taxes and fees under the guise or sanctity of alleged contractual obligations. No contract can violate and defeat national laws, irrespective of the parties to it.

The Court says that such private agreement between the parties is not, and cannot be, binding on the government when the government is not a party to it, and especially where the government is the actual victim of the effect and terms of such agreement. An agreement cannot, by its terms, whether expressed or implied, violate positive law. Our laws are square on the point that persons who are not parties to an agreement cannot be bound by such agreement and its terms. See 17 AM JUR.2d, Contracts, § 294, at p. 710.

Having dealt with the law, we shall now proceed to take a closer look at the agreement itself. It is observed at article 3, section 3.5, page 2 of the charter agreement, that the charterer, Weasua, was obligated to independently obtain all the necessary national permissions and visa documents for the chartered aircraft crew for its normal operation and for conducting international flights. The Russian company, the owner, and indeed Weasua, knew or had reason to suspect that Liberia must have had laws governing the ability and right of aliens (the Russian crew) to be able to perform work in Liberia, and that that was why the provision of section 2.5 was inserted. But instead of Weasua living up to its voluntary undertaking, stated in clear and unambiguous language in the charter agreement, Weasua sought to mislead the Court. We find that it was error for the Chambers Justice to ignore article 3, section 3.5, of the charter agreement and to discharge Weasua of the obligation it voluntarily and knowingly undertook to perform. This error is fundamental and must be reversed.

This Court has held that parties will not be permitted to abrogate and repudiate their own acts, and that parties to a contract will be bound by its terms. Wilson v. Dennis, [1974] LRSC 52; 23 LLR 263, Syl. 9 (1974). Hence, even if it was true that the crew members of the chartered aircrafts were not employees of Weasua, it is nevertheless also true that WEASUA, as the charterer, being a Liberian company, and as such au courant with the legal requirements in Liberia, undertook a positive, unconditional obligation to "independently obtain all the necessary national permissions..." for the crew members. Moreover, even if there was no employer-employee relation-ship in the classical sense of the phrase, there was a definite obligation on the part of Petitioner Weasua to obtain the necessary national permissions, one of which was securing work permits for the crew to enable them to work in Liberia. Accordingly, the issue of employer-employee relationship is totally irrelevant.

Petitioner Weasua argued that the members of the crew are not permanent residents of Liberia, and that the Bureau of Immigration had waived the requirements for them to obtain residence permits, and that therefore the Labour Ministry could not in turn require them to obtain work permits. The Court wonders whether the enforcement of the Labour Laws is subject to, dependent upon, or a condition subsequent to the enforcement of the Aliens and Nationality Law? We think not. Additionally, because the law does not specify the kind of work being done by the alien, the Court interprets this to mean the actual engaging in conduct which yields an income to the actor or doer.

We hold therefore that Weasua should pay for the work permits of the alien crew of the chartered aircrafts, and that if it wants to it can thereafter seek reimbursement from the Russian company, its business associates. Since the agreement upon which Weasua relied also required that Weasua obtains all national permissions, including work permits, Weasua became contractually obligated to and should perform such obligation. Weasua cannot seek to observe and enforce a part or certain provisions of the agreement and at the same time seek to disavow other portions of the said agreement. Weasua tried to confuse the Court into believing that the agreement in question was invalid and violative of Liberian Law as to the existence or non-existence of an employer-employee relationship. But article 3, section 3.5, of the said agreement clearly removed the agreement out of the realm of an employee-employer relationship and placed a definite obligation on Weasua.

Finally, a related question was whether or not the Russian crew members were to be included among the categories of aliens exempted from obtaining work permit. The respondent cited and relied on the Revenue and Finance Law which specifically excludes diplomats and United Nations personnel and, it therefore argued that not only do the crew of the chartered aircrafts not fall within the exempted categories, but also that such crew members are required to obtain work permits before they can legally work in Liberia. The Liberian Labor Laws provide for a penalty which includes a clause for the expulsion from the Republic of Liberia of aliens who violate the law on work permit. Hence, if Weasua failed to obtain work permits for the Russian crew, they can, and indeed should, be expelled. However, even if they were finally expelled, Weasua would still be subject to a fine for having brought the nine Russians into Liberia or caused them to come to Liberia to perform work for Weasua for the period they were here in Liberia, without first obtaining for them or causing them to obtain work permits. We hold that the act of the Ministry was legal and did not exceed its authority, and that the Ministry did not assume authority which was not delegated to it.

Wherefore, in view of all that has been said, it is our holding that prohibition does not lie, and that because of this holding, the ruling of the Chambers Justice is reversed, set aside, and declared void and contrary to law. The peremptory writ is accordingly refused, the alternative writ quashed, the petition denied, and these proceedings dismissed for being unmeritorious.

The Clerk of this Court is hereby ordered to send a mandate to the Ministry of Labour ordering it to resume jurisdiction over the matter and enforce its decision pursuant to the Executive and Labor Laws relied upon, and that Weasua should obtain the required work permits for the alien Russian crew for the period of their stay in Liberia, in keeping with chapter 3, section 3.5, of the charter agreement. And it is hereby so ordered.

Petition denied.