

Inter Burgo Industrial Co., represented by its General Manager Hixenbaugh K. Darbeh of the City of Monrovia, Republic of Liberia PETITIONER VERSUS The **Ministry of Agriculture** represented by Hon. Dr. Chris Toe Minister of the City of Monrovia, Republic of Liberia 1ST RESPONDENT AND **Ministry of National Defense** represented by its Minister, also of the City of Monrovia, Liberia, 2ND RESPONDENT AND The **Ministry of Finance** represented by, its Honourable Minister, of the City of Monrovia, Liberia 3RD RESPONDENT

PETITION FOR A WRIT OF PROHIBITION. PETITION GRANTED

ARGUED: Jan. 12, 2009 DECIDED: Jan. 28, 2009

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT

On February 26, 2008, the petitioner Inter Burgo Industrial Company, filed and subsequently an amended petition containing nine counts. The petition states:

"1. That petitioner is an entity engaged in fishing activities and the sale of fish in the Republic of Liberia. In order to fully carry out the purposes for which it was organized, Petitioner hired several fishing vessels including F/V SETA #70. Hereto attached and marked Exhibit P/1 is a copy of petitioner's Articles of Incorporation."

"2. That further as to count 1 above, petitioner says that F/V SETA #70 has been fishing for petitioner in Liberian territorial waters and international waters for more than three (3) years without any problem until February 21, 2008 when it was illegally impounded upon the orders of some authorities of the Ministries of Defense, Finance and Agriculture while returning to Liberia from the Republic of Sierra Leone. Hereto attached and marked Exhibit P/2 in bulk are a copy of license issued by the Republic of Sierra Leone authorizing F/V SETA to fish in Sierra Leone territorial waters and copies of instruments including but not limited to licenses, tax payment receipts issued by the Government of Liberia authorizing petitioner to engage in fishing activities within the Republic of Liberia."

"3. That further as to count 2 above, petitioner says that when F/V SETA#70 arrived in Liberia territorial waters it was informed not to enter the National Port Authority due to the visit of President Bush to Liberia. While waiting for President Bush to leave Liberia, the vessel was ordered arrested and impounded by some authorities of the Ministries herein named above without due process of law or any court's order."

"4. That also on February 23, 2008 without any hearing by a court of competent jurisdiction,

Petitioner received a letter dated February 23, 2008 from the Ministry of Agriculture requesting it to pay fines in the total amount of US\$327,000.00 (Three Hundred Twenty Seven Thousand United States Dollars) within 48 hours. Petitioner submits that the imposing of the fines by the Ministry of Agriculture was a gross violation of Article 20 (a) of the Constitution which states that "No person shall be deprived of life, Liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment..." Hereto attached and marked Exhibit P/3 is a copy of the letter of February 23, 2008."

"5. Further as to count 4 above, petitioner says that on the 26 day of February 2008 it received two letters from the Ministry of Finance one under the signature of the Commissioner of Customs and the other under the signature of the Deputy Minister of Revenue increasing the fines from US\$327,000.00 to US\$387,000.00. Hereto attached and marked Exhibit P/4 in bulk are copies of the said letters."

"6. That further as to count 5 above, petitioner says that the arrest, impoundment and the subsequent fining of it by the Government of Liberia through the Ministries Agriculture and Finance is also gross violation of Article 21 (dii) which among other things prohibits the imposing of excessive fines. The fines are not only excessive but they were imposed without a hearing, so petitioner did not have the opportunity to appear to this Honourable Court for review. A hearing was required in order for petitioner to appeal to this Honourable Court for review. In the instant case, the Executive Branch was the complainant and the judge."

"7. That further as to the entire petition, petitioner says the illegal arrest and impoundment of the vessel which contains large quantities of perishable goods (fish) is making petitioner to spend enormous amount of money daily to keep the generator running 24 (twenty four) hours a day, feeding and lodging the Captain and his entire crew, hence there is a compelling need for the vessel to be ordered released to petitioner pending the hearing of this case."

"8. That further as to the entire petition, petitioner submits that in the vol. 15, No. 038 for February 25, 2008 edition of the New Democrat Newspaper co-respondent the Ministry of Finance has threatened to illegally auction all the products on the impounded vessel. Hereto attached and marked Exhibit P/5 is a copy of the February 25, 2008 edition of the New Democrat Newspaper. Petitioner submits that prohibition will lie to restrain an individual or entity from pursuing a judicial action."

In the instant case, petitioner submits that the arrest and impoundment of the vessel and the subsequent imposition of the fine are functions to be exercised or carried out by the judicial branch of Government. The action of the Executive Branch of Government is therefore a usurpation of the Judicial Branch of Government."

"9. That in the letter of February 23, 2008 co-respondent, the Ministry of Agriculture, alleged that FN SETA #70 does not have a valid fishing license. This is totally untrue in that the president of petitioner, Mr. Park, has already paid the amount of US2,000.00 (two thousand United States dollars) representing part payment for license fees for all the vessels including F/V SETA for 2008. Hereto attached and marked Exhibit P/6 is a copy of said receipt."

"WHEREFORE AND INVIEW OF THE FOREGOING, petitioner prays this Honourable Court to order the issuance of an alternative writ requiring the respondents to release the vessel which was illegally arrested and impounded on February 21, 2008 to petitioner, since it contains perishable goods (fish); to refrain from pursuing a judicial action by auctioning the products on the vessel as Threatened by corespondent, the Ministry of Finance; to order the respondent not to enforce the illegal and unconstitutional ruling imposing the fine; order the respondents to stay further proceedings pending the hearing and determination of this case and grant unto petitioner all other relief (s), justice and equity demand in the premises."

On order of our distinguished colleague, Her Honour Jamesetta H. Wolokolie, Associate Justice presiding in chambers, the Clerk of the Supreme Court, Martha G. Bryant, on February 27, 2008, cited the parties to a conference scheduled on Tuesday, March 4, 2008, and mandated especially the respondent Ministers of Agriculture, Dr. Chris Toe, of National Defense and Finance, to stay all further proceedings in this matter pending the outcome of the conference.

Following the conference, Justice Wolokolie ordered, and the alternative writ was issued on March 5, 2008. The writ commanded the respondent Ministers to file their returns, not later than March 19, 2008 and in the interim to also have the goods on the vessel auctioned under the direction of the Marshal of the Supreme Court. The Justice further ordered that the proceeds be kept in escrow by the Marshal pending the outcome of these proceedings, and that the respondents release petitioner's vessel.

On March 13, 2008, by and through the Ministry of Justice, the respondents filed and subsequently an amended returns containing twenty-seven counts. We have quoted the following counts:

"(2) That as to count two of the petition, respondents do not deny that the FV/SETA #70 was ordered impounded but deny that such order was illegal because same was done in the exercise of their statutory obligations and consistent with government's inherent authority to exercise police power in the public interest."

"(3) That also as to count two of the petition, respondents say that at the time that the F/V SETA#70 was impounded, it was not licensed to conduct fishing in Liberian territorial waters; hence, its conduct was illegal and respondents acted properly when they caused the said vessel to be impounded and to prevent it from further conducting illegal fishing in Liberian territorial waters."

"(4) That further to count two of the petition, respondents say that petitioner's exhibit P/2 in bulk contains no license or authorization from respondents or any other competent authority of the Government of Liberia permitting the F/V SETA#70 to fish in Liberian territorial waters in the year 2008. The only license contained in exhibit P/2 in bulk in favour of FN SETA#70 is that issued by the authorities of Sierra Leone on January 17, 2008 for another company, the Atlantis fisheries S.L. of 22 Newton Lane, Tengheh Town, Freetown to operate the SETA #70 within the waters of Sierra Leone for the purpose of taking fish for the period January 17, 2008 to February 16, 2008; hence, when the FN Seta #70 was impounded in Liberia, even its license issued in Sierra Leone had expired. Therefore, by all logical reasoning the FN SETA had no authority to fish in both the territorial waters of Liberia and Sierra Leone. Prohibition will not lie against statutory agencies of government from carrying out their legal duties of protecting the territorial integrity of Liberia."

"(7) Also as to count three of the petition, respondents say that where a crime is being committed in the presence of a law enforcer, due process is not a pre-condition for the arrest and detention of violator of the law. By the reasoning of the petitioner, it would be unlawful, for example, for a police officer to stop a driver driving under the influence of alcohol from driving his vehicle and to tow same away without an order of court or meeting all the requirements of due process. Prohibition will not lie against agencies of government from carrying out their statutory responsibilities of enforcing the law. The exercise of police power does not require due process."

"(8) That as to count four of the petition, respondents say that notifying petitioner that it had violated the law and informing it of the fine for said violation showing the time period within which to pay the fine for the said violation is not a violation of article 20(a) of the Constitution of Liberia as the action of respondent was consistent with statutory duties and their authority to exercise police power."

"(10) Also as to count four of the petition, respondents says that constitutional limitations such as due process are appropriate when an action taken by a statutory

agency is for levying a tax and not when police power is exercised. "Broadly speaking the distinction is that the taxing power is exercised for the purpose of raising revenue and is subject to certain designated constitutional limitations, while the police power is exercised for the promotion of the public welfare by means of the regulations of dangerous, or potentially dangerous business, occupations, or activities, and is not subject to constitutional restrictions applicable to the taxing power even if it incidentally produces revenue" 16 Am 2nd Constitutional Law Sec. 318. Prohibition will not lie against statutory agencies in the exercise of their police power. Also, it is a well-settled principle of law that "police power is an indispensable and essential attribute of sovereignty. It is a general principle of constitutional law that the state cannot surrender, abdicate or abridge its police power."

"(16) That as to count eight of the petition, respondents maintained that the notice to sell the products on the ship was consistent with law and reasonable action in the exercise of their police powers, given that the goods (fish) on the vessel were perishable goods."

"(17) Also as to count eight of the petition, respondents say that it is untrue that the imposition of a fine is always a judicial action as fines can be imposed by an administrative agency based on its statutory authority and its authority to exercise police power. Hence, prohibition will not lie against a statutory agency for imposing fines within the context of performing its statutory duties for exercising police power."

"WHEREFORE AND INVIEW OF THE FOREGOING, respondents pray this Honourable Court to quash the alternative writ, deny issuance of the peremptory writ, restore respondents to status quo ante by reversing the order of the Chambers Justice releasing the F/V SETA#70, ordering petitioner to pay the fine, with the provision that the F/V SETA#70 be seized and kept by respondents until the fines imposed are paid, ordering the proceed from the judicial sale of the goods on the F/V SETA#70 returned to the respondents and grant unto respondents such further relief as your Honours consider just and legal under the circumstance of this case."

Instruments attached to petitioner's petition included the following:

1. A letter from the Ministry of Agriculture dated February 23, 2008 under the signature of the Coordinator of the Bureau of National Fisheries, Yevewuo Z. Subah, addressed to the President of Inter Burgo, Point Four, Bushrod Island, which reads:

"Dear Sir:

Re: CHARGES FOR VIOLATIONS COMMITTED BY SETA 70

F/V SETA 70 operating under Inter Burgo was arrested on 22 February 2008 for being in violation of the Fisheries Laws of Liberia. Based on preliminary evaluation of the evidence brought forth by the arresting party, and from inspection of the vessel and its documentation by the Monitoring, Control and Surveillance Committee, the captain and crew are hereby charged with the following offences:

- 1. Fishing without a valid fishing license,*
- 2. Fishing within the Inshore Exclusive Zone (3 miles zone)*
- 3. Fishing without a Fisheries Inspector*
- 4. Conducting fishing activities without a log book onboard the vessel.*

These violations are finable under our Laws. Therefore based on the admission of guilt by the captain and your agent to these charges, you are hereby advised to proceed to the Ministry of Finance to pay the fines specified in the attached invoice within 48 hours.

Thank you for your cooperation.

[SIGNATURE] Yevenuo Z. Subah Coordinator, BNFMOA"

Attached hereto was this instrument.

"In view of the violations committed under the Fisheries Laws of Liberia, you are fined as follows:

<i>i. Fishing without a valid fishing license in Liberian waters</i>	<i>US\$200,000.00</i>
<i>ii. Fishing within the prohibited Inshore Exclusion Zone</i>	<i>US\$50,000.00</i>
<i>iii. Fishing without a [fisheries] inspector on board</i>	<i>US\$25,000.00</i>
<i>iv. Fishing without a log book as prescribed by law T</i>	<i>US\$40,000.00</i>
<i>v. Cost of fitting an international tracking device for 12 months</i>	<i>US\$12,000.00</i>
<i>Total:</i>	<i>US\$327,000.00</i>

The following fines are to be paid within 48 hours or other actions will be recommended."

This attachment was also signed by Coordinator Subah of Bureau of National Fisheries, Ministry of Agriculture.

2. Ministry of Finance's letter of February 25, 2008 signed by Elfreda Stewart Tamba, Deputy Minister for Revenue, addressed to the captain of SETA 70 stating as follows:

"Dear Captain:

RE: NOTICE OF SEIZURE FOR ILLEGAL FISHING:

In consonance with Section 1614 of the Revenue Code of Liberia, Act of 2000, you are hereby notified about the seizure of 1000 cartoons of fish on board your vessel, (M/V SETA 70) arrested for illegally fishing in Liberia's territorial waters.

Said consignment will be auctioned to the public in keeping with the Customs Revenue Code of Liberia, Act of 2000 on Thursday, 28 February 2008.

Professionally yours,

[SIGNATURE]

Elfreda Stewart Tamba

DEPUTY MINISTER FOR REVENUE"

3. A communication from the Commissioner of Customs, G. Alphonso Gaye, dated February 26, 2008 is quoted:

"GOL/MF/GAG/C-1/asgd/578/'08

26 February 2008

The Captain SETA 70 Care Of: The Managing Director Inter Burgo Liberia Ltd. Point Four, Bushrod Island MONROVIA

Dear Captain:

RE: NOTIFICATION OF FINES AND RELATED FEES FOR ILLEGAL FISHING IN LIBERIA'S TERRITORIAL WATERS:

I am herewith forwarding to you for your information, the attached bill representing fines and related fees for illegal fishing in Liberia's territorial waters. All fines emanating from the Ministries of Agriculture and Finance in the amount of U.S. \$377,000.00 (three hundred seventy-seven thousand United States dollars) should be deposited into a special account

"FISHERIES MONITORING CONTROL AND SURVEILLANCE" at the Central Bank of Liberia.

Fines imposed by the Bureau of Maritime Affairs in the amount of U.S. \$10,000.00 (ten thousand United States dollars) should be deposited in their bank account, while fees for National Port Authority will be determined and paid to the National Port Authority's (NPA) designated

bank.

You are hereby required to remit the total amount of U.S.\$387,000.00 (three hundred eighty-seven United States dollars) mentioned in the attached bill into the requisite accounts and exhibit payment receipts as proof of payment to warrant the release of your vessel (MN SETA 70)

Please ensure full compliance.

Sincerely yours,

(SIGNATURE]

G. Alphonso Gaye

COMMISSIONER OF CUSTOMS & EXCISE

CC: THE MINISTER OF FINANCE THE DEPUTY MINISTER FOR REVENUE"

Justice Howard-Wolokolie, having determined that constitutional questions had been raised, on March 7, 2008 forwarded the matter to the Supreme Court *en banc* for determination.

The following issues are dispositive of this case:

1. Whether the warrant-less arrest and seizure of petitioner's vessel by respondent agencies constituted proper exercise of police powers?
2. Whether an administrative agency acts within the law of the land, when it imposes fines for violation of statutes and seeks to enforce said fines without recourse to a court of law?
3. Whether, under the obtaining circumstances of this case, prohibition will lie?

We shall endeavor to answer these questions in the order presented.

On the issue whether an administrative agency may, without warrant, arrest or seize a vessel in proper exercise of its police powers, the petitioner both in its petition and during argument before this Court, has accused the respondents of arresting and seizing its vessel FN SETA 70, for allegedly fishing within the prohibited inshore exclusive zone, for fishing without fisheries inspector on board its vessel, for fishing without a log book and also fishing in Liberian territorial water without a valid fishing license. Petitioner wondered on what basis respondent agencies properly determined these reported violations of Liberian laws when petitioner was never summoned for hearing by any of the respondents either prior or subsequent to the seizure and

imposition of fines. Petitioner has maintained that the conduct of respondent agencies to seize its vessel, impose a fine and seeking to enforce said fines without hearing, violates petitioner's fundamental rights of due process of law. Petition has cited article 20 (a) of the 1986 Constitution to support its argument.

Petitioner further said that when respondents refused, as required by law, to cite petitioner to a hearing before and after the arrest and seizure of petitioner's vessel, and proceeded to impose fines for alleged fishing in Liberian territorial waters, respondent agencies, in the absence of investigation and hearing, were simply being presumptuous that petitioner was in violation of Liberian laws. Respondents having flouted and trampled the laws of the land, and exceeded the authority granted them by law, petitioner says, prohibition will lie as a matter of law, to restrain said respondents from proceeding any further; and petitioner so urged this Court. But in their returns and during their argument before this Court, respondent agencies strongly denied the legal and factual basis of the petitioner's petition and urged this Court to treat it as a fit subject for dismissal. Respondents contended that their acts to arrest and seize petitioner's vessel which was illegally fishing in Liberia's territorial waters and operating without a license or permit, are within the scope of the exercise of police powers granted to respondent agencies. Respondents have urged this Court to apply a common law constitutional principle found in 16 Am Jur 2nd Constitutional Law Section 318. Said principle holds that: *"police power is an indispensable and essential attribute of sovereignty. It is a general principle of constitutional law that the state cannot surrender, abdicate or abridge its police power. An act is within the state's police power if it is reasonably related to a legitimate governmental interest. In any case, it is a necessary attribute of every civilized government."* Ibid at 313.

Respondents have further argued that while taxing power is exercised for the purpose of raising revenue and is therefore subject to certain designated constitutional limitations, such is distinct from exercise of police power. Broadly speaking, according to respondents, police power is exercised for the promotion of the public welfare by means of regulating dangerous or potentially dangerous businesses, occupations, or activities and is not, and should not be subjected to constitutional restrictions, normally applicable to the use of taxing power.

Respondents arguing further said that while a search warrant may be required to search and seize goods on which duties have not been paid, section 1611 of the Revenue Code (2000) nevertheless expressly provides: *"...no such warrant shall be required for search of any warehouse, vessel, aircraft, or vehicle or any place situated within the limits of a port of entry or of any person found in any vessel, aircraft or vehicle or any such aforesaid*

place." [Emphasis supplied].

This Court is in full agreement with the respondents' argument that where a party is found in violation of Liberian laws, as reported in the case at bar, by fishing in prohibited territorial waters of the Republic, and operating within the Republic without permit, the respondent administrative agency properly exercises police powers to arrest said party without warrant.

As alleged, petitioner was found fishing in the three miles exclusive zone regulated by government for small water crafts, as canoes, and while in said act, was arrested by respondent administrative agency without warrant. This Court holds that said arrest constitutes proper exercise of police power; the arrest of a violator in the commission of crime, does not, *ipso facto*, violate due process of law, as said arrest is consistent with article 21 (b) of the Liberian Constitution.

Article 21 (b) of the Constitution provides, inter alias: "*...that a search or seizure shall be permissible without a search warrant where the arresting authorities act during the commission of a crime or in hot pursuit of a person who has committed a crime.*"

The word seizure under the plain and practical meaning of the Liberian Constitution appears to be interchangeable with "arrest". The definition assigned by Black's Law Dictionary (Eighth Edition) to "seize" is "*to forcibly take possession (of a person or property)...*" and seizure as: "*the act or an instance of taking possession of a person or property by legal right or process;... a confiscation or arrest that may interfere with a person's reasonable expectation or privacy.*" P.3189.

It is important to indicate that this Court validated the principle of law recognizing police authority to arrest suspected criminals, and to hold them in custody as a preliminary step to accumulating evidence. The Supreme Court pronounced said arrest in *Gio et al. V. Republic*, 17 LLR 681, 690 (1966), as a proper exercise in investigation and connecting the accused with crime.

In further recognition of this important police function, Mr. Chief Justice Wilson, speaking for this Court in the case cited *supra*, stated as follows:

"Crime detection and the apprehension of criminals fall within the authority of the police and law enforcement agencies; and in this they justly deserve the cooperation of the courts and the public for the safety of the state; and on them the protection of the life and limb of the individual primarily rests."

We affirm this long standing principle and hold that in protecting vital state interest, an administrative agency acts properly and within its authority if it effects arrest, without warrant, where the violation is being committed. Said arrest and seizure without warrant is not inconsistent with article 21 (b) of the Liberian Constitution.

To the mind of this Court therefore, there is absolutely no question as to the authority of the relevant agency to exercise police powers and seize a vessel for violation of our laws, as it appears to be the case at bar. To so act, is a proper exercise by an agency of its authority.

We now address the second issue as to whether an administrative agency acts within the law of the land when it imposes fines for violation as provided by statute and seeks to enforce same. It is petitioner's contention that the imposition of fines by the respondents in the amount of 387,000 USD for the alleged illegal fishing, as well as operating unlawfully in Liberian territorial waters and threatening to auction petitioner's consignment of fish to the public in keeping with Customs Revenue Code of Liberia Act of 2000, clearly demonstrated respondent's flagrant violation of petitioner's right guaranteed under due process of law.

According to petitioner, respondents presumed without any regard to petitioner's right to due process that petitioner was fishing without a license when, as a matter of records, said petitioner had made part-payment of US\$2,000.00 of the license fees and obtained therefore a receipt duly issued by an official of co-respondent Ministry of Agriculture.

Petitioner arguing further, pointed out that these administrative agencies, the Ministries of Agriculture and Finance, having proceeded by wrong rules by attempting to also enforce those fines, without hearing, unarguably exceeded the authority granted them by law of the land. In this case, prohibition will lie against the respondent, and petitioner so prayed.

The respondent agencies dismissed petitioner's contention and maintained that respondents were vested with statutory authority to take the actions they took against the petitioner for not being licensed. Respondents contended that they strictly acted within the statutory laws of Liberia and cited sections 1601, 1611, 1614 and 1617 of the "Revenue Code of Liberia (2000), approved December 15, 2000 and published August, 2000.

Section 1601 of the Reform Tax Code, under the heading "Seizure of Vessels, Aircraft or Vehicles for Breach of Customs, provides:

"If upon examination of any vessel, aircraft or vehicle it shall appear that a breach of the customs laws of the Republic of Liberia is being or has been committed so as to render such vessel, aircraft or vehicle, or the goods or any part thereof, on board of or brought into Liberia by such vessel, aircraft or vehicle, liable to forfeiture, the same shall be seized and held in accordance with law."

On seizure and forfeiture, respondents maintain that they acted within their statutory mandates as section 1614 of the Revenue Code provides, inter alias:

"(a) Notice of seizure of any goods as liable to forfeiture and of the grounds thereof shall be given in accordance with the following provision of this section: (b) Notice of seizure may be given orally by the Officer or other person seizing the goods if the seizure is made in the presence of — (1) the owner or any of the owners of the goods seized; or (2) the person whose offence or suspected offence occasioned the seizure; or (3) in the case of goods seized in any ship or aircraft, the master or commander thereof respectively..."

On whether respondent agencies have authority to auction seized property as they threatened to do in their various communications addressed to the petitioner, respondents have relied upon and cited section 1617 of the Code. Said section under the heading "Perishable Goods Subject to Summary Sale or Disposal", provides:

"When it appears to the Minister that any goods seized under the customs law are liable to perish or waste or to be greatly reduced in value by keeping them in the regular course, or that the expense of so keeping them is disproportionate to the value thereof, the Minister within twenty-four hours after the receipt by him of the appraiser's report, shall proceed forthwith to advertise and sell or otherwise dispose of the goods under regulations to be prescribed by him..."

Also, respondents have maintained that they are vested with enforcement authority of fines, both by the Revenue Code, as well as decisional laws of this jurisdiction and cited *Weasua Air Transport Company v. The Ministry of Labor* as reliance. According to the respondents, their actions were not "judicial in nature" and therefore cannot be properly prohibited as the petitioner sought to do.

The respondents have therefore questioned how prohibition will lie against an administrative agency where its actions are consistent with existing statutes; for to do so, according to respondents, will amount to obstructing said agency from exercising its lawful administrative duties and responsibilities.

A review of the records indicates that respondents have largely argued relying on the Revenue Code of Liberia (2000) as their authority. It is important therefore that we review the said Revenue Code in order to properly determine and pass on this issue.

But from the very beginning, it is important to state that section 5 subsection 3 (g) of the Revenue Code states:

"If any clause of this transitional rule is determined to be invalid under the constitutional law of Liberia, international agreements to which Liberia is a party, and concession agreements entered into by Liberia and duly approved by the Legislature that clause (or portion thereof) is severable from the other clauses of this rule."

So by the wordings of the very Revenue Code relied upon by respondent agencies, it is clearly recognized that any provision found inconsistent with the Liberian Constitution, to the effect of its inconsistency, has no legal effect. Also, the positive intent of section 5, subsection 3 (g) heretofore quoted, is in harmony with article 2, paragraph 2 of the Liberian Constitution vesting in the Supreme Court the power of judicial review and to declare any inconsistent laws, statutes, treaties or regulations, unconstitutional.

It is also important to indicate that while this Court agrees that seizure/arrest of a property/party violating our statutes constitutes a proper exercise of police power, we nevertheless disagree and therefore hold that any acts by an administrative agency to impose fines for "*violation*", are legal only when the agency's findings and actions are the outcome of a hearing consistent with the principles of due process of law.

The most famous and often quoted opinion of this Court on this subject is the 1937 case, *Wolo v. Wolo* 5 LLR 423 (1937). Our distinguished Chief Justice and blessed to his memory, Mr. Chief Justice Grimes, inter alia stated:

"The essential elements of due process of law are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case. In fact one of the most famous and perhaps the most often quoted definition of due process of law is that of Daniel Webster in his argument in the Dartmouth College case, in which he declared that by due process of law was meant 'a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial.' Somehow similar is the statement that it is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and

opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression and can never be upheld where justice is fairly administered." [Our emphasis]. Ibid pp 428, 429.

On inspection of the records, and the ferocious arguments by the Ministry of Justice notwithstanding, there is no showing that the petitioner was ever cited to appear and answer allegations of violating Liberian laws, following arrest and seizure of petitioner's vessel by the respondents' agencies. There is nothing in the records before this Court tending to show that the respondent agencies cited and afforded the petitioner its constitutional rights to be heard, produce witnesses in its own behalf and to cross-examine witnesses against it. Where justice is fairly administered, as it is expected to be in this jurisdiction, and under this government, any judgment, according to Mr. Chief Justice Grimes, without such citation and opportunity, is not only wanting in all the attributes of a judicial determination, but also a judicial usurpation. Such action can never be upheld by this Court.

But equally important to point out is that the Revenue Code which the respondents claimed to rely on, provides for mandatory hearing of aggrieved matters, consistent with the Administrative Procedure Act (Chapter 82 of the Executive Law), quoted later in this opinion.

The Revenue Code mandates the setting up of a Board composed of seven members for the purpose of hearing consistent with the Administrative Procedure Act and the requirements of due process of law.

Section 60 of the Code indicates:

"(a) Board of Tax Appeals: The Board of Tax Appeals, a 7-member deliberative body, hears taxpayer appeals from determinations by the Minister and emergency protests of the Minister's actions. The Board is independent of the Ministry and is administered under the authority of the Ministry. Its administrative officers are to be lodged in a place, and its hearings are to be held in a location designated by the Ministry. It has the authority to approve, modify, or reverse a determination of the Minister. The Minister or the taxpayer may appeal an unfavourable decision to the Liberia Tax Court, provided that the appeal is lodged within thirty days and is in conformity with the rules of that court."

"(b) Hearings: The Board is authorized to hold regular and emergency hearings.

1. A person who objects to a determination by the Minister with respect to any tax under this code,

including the amount of tax withheld in accordance with any withholding provisions of this Code, or who objects to the seizure or confiscation of goods or accounts carried out in tax collection process may appeal to the Board of Tax Appeals for a review of the Minister's decision in a regular hearing. The Board may schedule regular hearings at its discretion, subject to the limitations of subsection (c)."

2. A person whose property has been seized by the Minister for non-payment of tax, a person whose business premises had been closed by the Minister, or a person who can show a likelihood of any other immediate harm that will be caused by an action or determination of the Minister is entitled to request an emergency hearing which is to be held within the time period and subject to the conditions set out in Section 61."

"(c) Time Limits for Regular Hearings: A regular hearing is to be held within six months of the date the taxpayer files a written protest of the Minister's determination. The Board shall give adequate notice of the time, date, and place of the hearing, taking into account the taxpayer's domicile and place of business when setting the hearing date and giving notice. In no event is the Board permitted to schedule a hearing without providing at least 15 days' notice to the taxpayer and the Minister, unless all the parties consent to the hearing date."

"(d) Rules For Conduct Of Hearings. The Board shall establish rules consistent with justice, equity, and due process of law, but its rules are not required to follow the rules of evidence that apply in a court proceeding and may be informal when informality is consistent with fair process. The Board shall publish its hearing rules so that they are readily available, and shall provide a tax payer with a copy on request."

"(e) Composition of Board. The members of the Board are to be appointed by the President with the concurrence of the Senate for a term of five years, for no more than two consecutive terms. Members must meet the following minimum qualifications:

(1) The member must have been awarded a university degree;

(2) The member shall not be a current member of the board of directors or officer of any Liberian legal person; be related (within the definition of Section 208) to an employee of the Ministry; or be related (within the definition of Section 208) to a Liberian legal person.

(3) The member must have experience or training in at least one of the following areas: law, accounting, banking, business administration, finance, or economics.

(4) At least 3 Board members out of 7 must be lawyers.

"(f) Quorum. A majority of the Board members not recused constitutes a quorum at any hearing. No hearing shall be held without a quorum. If the Board members constituting a quorum present at a hearing decide that absent members should be present to hear the case, the Board may order a re-hearing of the case at a time when all Board members not recused can be present, but in any event within three months of the initial hearing date.

"(g) Decision. The Board is to render its decision in writing within the period for decision, which is 60 days after the date the hearing is concluded. A party dissatisfied with the decision may appeal to a court of competent jurisdiction provided that the appeal is made within 30 days of the date the Board's decision has been served on the party. The Board's decision is not final until the 30-day period for appeal has ended or, if the Board's decision is appealed, at the time the decision of the court becomes final. All decisions of the Board are to be available as public records as soon as practicable after the Board's written decisions has been entered by the Board's clerk, and not later than 10 working days after the decision is entered. A decision must be entered within the period for decision.

"(h) Recusal. Any Board member having a relationship with a party to the case or a representative of a party to the case is to recuse himself or herself if a reasonable person would consider the relationship, if disclosed, to give the appearance of impropriety. This rule applies regardless of whether the member discloses the relationship.

"(i) Compensation. Board members are to be compensated for time spent attending to Board duties. Compensation shall be at a rate equivalent to the rate of pay for trial court judges."

Both regular and emergency hearings are provided for under Section 61 of the Code.

Section 61. Procedure For Taxpayer Protest and Appeal

(a) Regular hearing. A regular hearing shall be granted by the Board of Tax Appeals at the Board's convenience, but in all cases within six months of the date of the taxpayer's request for hearing:

(1) The taxpayer must submit a written request for a regular hearing to appeal a determination of the Minister, stating briefly in the request the basis for appeal from the Minister's determination.

(2) The taxpayer must, within 30 days of the date of the request for hearing, also submit a written protest containing an explanation of the issues to be heard.

(b) Emergency Hearing. If a seizure of property has taken place and no more than 10 days have

elapsed; if the taxpayer's place of business has been closed under Section 1042 (d) and no more than 3 days have elapsed; or if the Minister has acted or given notice of an intent to act in a way likely to cause immediate harm if the action is not reversed or prevented, the taxpayer has a right to an emergency hearing with 5 days of the taxpayer's protest and request for hearing in the case of a seizure of property under Section 65, within 2 days in the case of a closing of the taxpayer's place of business under Section 1042(d), and within 3 days in any other case unless the taxpayer agrees to a longer period, which in any event shall not exceed 10 days.

(1) An emergency hearing shall be granted if:

(A) The taxpayer makes a written protest and request for hearing within the relevant period stated in this subsection;

(B) With respect to property seized under Section 65, the taxpayer attaches a certified copy of evidence that the correct amount of tax has been paid;

(C) With respect to a closure of business under Section 1042(d), the taxpayer attaches a certified copy of evidence establishing that the taxpayer has registered to pay the sales tax, has filed any returns due, and has kept the records required to be kept each year for the preceding three years or, for a shorter period in the case of a taxpayer who has been required to register for less than three years; or

(D) Evidence establishing that the Minister has made an error as to the identity of a taxpayer, the owner of the property seized, or the operator of the business premises that were closed...."

(2) d. Determination of the Board. If the Board of Tax Appeals determines that the Minister's seizure of goods or closure of business premises constitutes an abuse of discretion within the meaning of Section 56(c), the Board may make an order permitted under that section.

e. The taxpayer shall have the burden proving the Minister's determination incorrect, except in the case of a jeopardy assessment or a determination of fraud, when the Minister shall have the burden of proof..."

Review of the Code also shows that under sections 51(a) and (b), section 52(b), (c), (d) and (e), and sections 53(b), and 55(e) the Ministry of Finance is authorized to impose penalties for various violations. We hold however that while an administrative agency may impose fine consistent with due process, enforcement of those fines shall also be consistent with section 82.9 of the Administrative Procedure Act. Under the heading "Enforcement of Agency Order", section 82.9 provides inter alias:

"1. Instituting proceedings; powers of court. Any final order by an agency or a hearing officer or hearing officers of such agency which is made to carry out a determination may, in the absence of any timely request for judicial review by the person against whom the order is directed, be enforced by a proceeding in the Circuit Court of the county in which the person resides against whom the order was issued, or in the county in which such person is regularly employed or has his regular place of business. A proceeding to enforce such an order shall be commenced when the head of the agency or authorized officer thereof files a petition for enforcement in the Circuit Court together with the certified record in the matter, or such portion thereof as the parties may stipulate. Such a stipulation may provide in an appropriate case that no record need be filed in the Circuit Court. The petition to enforce the order shall be filed within ten days after non-compliance with the order has occurred. Upon the filing of the petition to enforce, the court shall cause notice thereof to be served upon persons against whom the order is directed and thereupon shall have jurisdiction of the proceeding and shall have power to grant such temporary relief or restraining order as it deems just and proper. The court shall grant or refuse enforcement on the basis of the record or such part thereof as was filed with the court or on the basis of oral argument on issues within the allowable scope of the proceedings, as stated in paragraph 2 of this section.

2. Scope of proceedings. The court shall enter a decree enforcing the final order of the agency unless the court finds that such order was void or invalid for fraud or that compliance has occurred. The findings which were made by the agency with respect to questions of fact shall be conclusive on the court.

3. Enforcement of administrative order for payment of money. In a proceeding under this section to enforce a final order for a payment of money, the judge of the Circuit Court, if enforcement is granted, shall direct the clerk of his court to enter judgment for the amount of money to be paid. Such judgment shall have the same effect, and be enforceable through the same proceedings, as though rendered in a civil action before the Circuit Court, except that no appeal may be taken therefrom.

In further examination of petitioner's argument that it was not accorded hearing and its due process rights violated by respondent agencies, we have taken judicial notice of Democrat Newspaper of the volume 15, # 038 published on February 25, 2008, carrying a story titled: Chinese Fish Pirates Arrested. The story reads as follows:-

"A Korean fishing vessel has been arrested, with an estimated 1000 cartons of fish seized by Liberian authorities. Agriculture Minister Dr. Chris Toe told reporters Saturday that the vessel was captured while fishing illegally in prohibited zones within the country's territorial waters about 3 nautical miles zone set aside only for local fishermen.

The vessel was arrested by MP Rockfish, a vessel owned by the Marine Protection and Rescue Services Ltd; a group currently helping the government to protect its territorial waters.

The Korean vessel, fishery experts say, has the potential of sweeping away from the Liberian ocean the quantity of fish that can be consumed yearly by the country's population within an hour.

Agriculture Minister Toe said the vessel was actively fishing on Liberia's territorial waters without maritime license and that their act was punishable under the Liberian laws. Illegal fishing activities here grossly affect the country's revenue with an estimated US\$12million loss annually. Finance and Agriculture Ministries officials have said: "We want to announce today....based on our mandate and authority, we fined the vessel for the violation that they have committed and that all products on board will be auctioned and proceeds deposited in government's revenue." Dr. Doe said.

Deputy Finance Minister for Revenue Mrs. Elfrieda Steward Tamba also speaking at the Finance Ministry on Saturday said "the vessel has been in the neighbourhood but actual figure will come from evidence gathered from our service guard on the vessel the total loss of revenue were on the country's water."

These utterances by respondent officials, as reported, which also have not been denied, appeared to be strict orders, as a case where the respondents are the accuser, the jury and the judge. But more than that, can the respondent agencies properly exercise enforcement powers as their public pronouncements tend to impress? We hold that these respondents have no such authority under the law of the land.

Counsel for respondents, the Ministry of Justice, has cited *Weasua Air Transport Company v. The Ministry of Labor*, 40 LLR 225 (2000) as one authority they relied upon to impose fines and seek to enforce them.

We are unimpressed by this argument. Not only are the facts in the *Weasua* case not analogous to the facts obtaining in this case, but in *Weasua* case, the due process principles of notice and provision to the accused an opportunity to be heard, were essentially satisfied by the Ministry of Labour.

Also in *Weasua*, there was exchange of communications between the parties during which the Ministry of Labour informed the petitioner to regularize the work permit of aliens in its employ and that its failure will result in enforcement of the labour law against said petitioner. In one exchange, petitioner *Weasua* contended that the aliens referred to by the Ministry of Labor were part of an aircraft crew leased from a Russian company.

Clearly, petitioner Weasua had an opportunity to be notified as to the violation said petitioner was said to have committed; petitioner was also afforded an opportunity to defend itself. To the mind of this Court therefore, the Weasua case is not similar to this case where there was a deliberate disregard for due process of law.

But more importantly, the respondent agencies seem to suggest that the Weasua case enunciated a principle which allows an administrative agency to enforce fines without recourse to a court of law. This Court disagrees. Clearly, the Weasua case does not lend any support this argument.

In the Weasua case, the Supreme Court reviewed both sections 1507 (4) and 34.2 (a) of the Liberian Labour Law and the Executive Law respectively, which the Ministry of Labour had relied upon to impose fines for violation of laws which the statutes had designated the Ministry to administer and implement. The Supreme Court then asked the question "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 hold that it is not illegal that such a law is enforced." Ibid 237.

But by the Supreme Court's pronouncement quoted above, the respondents seem to suggest that an executive agency may enforce fines and perhaps its administrative findings determining rights of parties, without court's intervention. But in the same case, this Court cautioned: "While the method of its [Ministry of Labour's] enforcement [of fines] could be subject to question, the act of its enforcement cannot be made the subject of such questioning." Ibid 237.

This Court holds that article 20 (a) of the Liberian Constitution is controlling in all similarly situated instances where rights of individuals are to be determined. The provision mandatory in its pronouncement provides: "*No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law.*" [emphasis supplied].

Mr. Justice Henries writing for this Court in *Ayad V. Dennis* 23 LLR 165, 177 (1974) provided a guiding principle in this respect:

"In Wolo V. Wolo, 5 LLR 423 (1937), this Court declared succinctly that due process of law means that there must be a tribunal competent to pass on the subject matter, notice, actual or constructive, an opportunity to appear and produce evidence, to be heard in person or by counsel, or

both, having been duly served with process or having otherwise submitted to the jurisdiction of the tribunal."

With further emphasis, Mr. Justice Henries pointed out:

"These fundamental constitutional rights extend to every governmental proceeding which may interfere with personal or property rights, whether the proceeding be legislative, judicial, administrative or executive. In essence, due process embraces the fundamental conception of a fair trial, with an opportunity to be heard. It is a standard for judgment in the progress evolution of institutions of a free society. The right of a person to be given a fair hearing, before he suffers a penalty, is a vital principle which both protects the individual's interest and improves the quality of administration."

The Supreme Court then held, and we here re-affirm as the guiding principle of this jurisdiction that :

"Any act which tends to deprive any person, whether he be a citizen or an alien, of his property or other rights without employing these constitutional safeguards is unconstitutional, and will be declared as such upon proper application to the Courts, for the protection of these fundamental rights fall peculiarly within the province of the judicial branch of government."

Also, on the question whether administrative agencies are authorized to enforce their imposed fines, the case Bah v. Philips, decided by this Court little over thirty years ago, is worth reviewing.

In Bah v. Philips, 27 LLR 210 (1978), the Minister of Finance, James T. Philips, refused to return the value of a cash bond to the petitioner, Aliou Bah. Petitioner Bah had earlier issued a manager's check in the amount of \$33,750.00 in favour of the Finance Ministry with the expressed understanding between the parties that the amount will serve as a bond to cover a number of transshipments of cigarettes. At the deposit of the check, the parties understood and agreed that the amount was intended solely as a bond to guarantee that cigarettes received by petitioner Bah will be sent out of Liberia and that the petitioner will show evidence of *"landing certificate issued by the customs officials of the country of destination."*

On request for return of the cash, the Minister refused and declared the amount forfeited

"Because, [the] transactions involving the transit of cigarettes from Liberia to Guinea had been confirmed illegal by the Guinean Ministry of Finance..."

Dissatisfied, petitioner Bah complained the Minister of Finance to the Pierre bench where he had to answer in a petition for a writ of mandamus, to return the bond and terming his action as ultra vires. Just as in this case today, Minister Philips also argued that his action was founded on the law. In support thereof, he cited the Act adopting a new Revenue and Finance Law (approved May 1977). The Minister argued that said Act empowered him to protect the revenue of the country and in doing so, *"he [Minister] may authorize the taking of bonds, or money deposits in lieu of bonds, and cancellation of any bonds in the event of the breach of any condition for which the check bond was tendered."*

But the Supreme Court disagreed with the Finance Minister. The Court held that even in the face of such statutory authority, it did not mean he [the Minister] *"may confiscate the bonds by himself, as this law conforms to the law on forfeiture of bonds and chattel mortgages which requires the intervention of a court of justice. When done outside of a court of justice, it contravenes the constitutional provision: "No person shall be deprived of his liberty, property or privilege but by judgment of his peers or the law of the land."*

Mr. Chief Justice Pierre, speaking for this bench further held:

"For two reasons this law cannot protect what the Minister did in forfeiting Mr. Bab's cash bond. In the first place, this statute does not authorize him [the Minister] to forfeit bonds as he did, because this is a judicial function and he is an executive official; the statute only empowered him to authorize this to be done. His act was therefore clearly in violation of the 14 th Section of Article I of the Constitution quoted earlier."

Mr. Chief Justice Pierre further said:

"This Court has in several instances in the past opined that cabinet ministers cannot perform judicial acts without abrogating the constitution which they swore to protect upon taking office...But had this statute [even] given such powers to the Minister of Finance - and we say it has not done so - the Act would have had to be declared unconstitutional. When the Act states that the "Minister may authorize the cancellation of any bond...in the event of a breach of any condition of the bond," Rev. Code 36: 55.29 (5), it is quite clear that legislative intent was that this should only be done by due process of law, in keeping with the letter, spirit, and intent of the Constitution..."

The second point addressed by the Chief Justice was one where legitimate grounds for forfeiture of the bond had obtained. To this question, Chief Justice Pierre, affirming the principle enunciated in *Kanawaty v. King* 14 LLR 241, 248 (1960) said:

"If there were legitimate grounds to forfeit the bond, there must have been a showing that a statute extant at the time of the filing of the bond authorized such forfeiture; but even in that case the proceedings to do so would have had to be by due process of law, allowing Mr. Bah his day in court. If the conditions of the bond had not been met...petitioner should have been given his day in court by due process of law to show why his bond should not be forfeited. This was not done in this case, thereby depriving petitioner of his constitutional right of due process." [Emphasis supplied]. 27 LLR, 210, 226, 228, 229 (1978).

In our review of this case, our attention was drawn to Section 1042 of the Revenue Code under the heading "Offences And Penalties". Because it is important that we comment on the same, we quote the entire section.

"(a) Offences Relating to Registration. Any person who fails to do one of the following is guilty of civil offense and is liable to pay a fine not exceeding \$100,000.00. If the failure is deliberate, or due to wilful or gross neglect, then that person is guilty of a criminal offense and on conviction is liable to pay a fine not exceeding \$400,000.00 or to imprisonment for a term not exceeding 5 years, or both.

(1) To apply for registration as required under this Part,

(2) To notify the Minister of a change in circumstances as required in Section 1006 or 1026

(3) To notify the Minister that the person ceases to make taxable supplies or supplies of taxable services as required in Section 1006 or 1026."

"(b) Offenses Relating To Returns. Any person who fails to furnish any return as required under this Part is subject to the penalties provided in Section 51 and Section 52.

"(c) Offenses Relating To Records. Any person registered in accordance with Section 1006 or Section 1026 is subject to the requirements of Section 55.

"(d) Temporary Closure Of Business. Where a registered manufacturer or registered services provider commits two or more offenses under this Section, the Minister may lock and seal the person's place of business relating to the making of taxable supplies or supplies of taxable services, as the case may be, and to keep it closed for not more than 7 days for the purposes of examination of taxpayer records, audit, and provision of advice to the taxpayer concerning compliance with tax obligations, subject to the procedure for taxpayer objection under Section 61(b).

Section 1043. Procedure For Taxpayer Protest and Appeal

"If a taxpayer objects to the Minister's seizure or sale of goods under Section 1009 or to the Minister's temporary closure of taxpayer's business under Section 1042(d), or to any other determination of the Minister under this Part, the taxpayer may appeal to the Board of Tax Appeals as provided in Section 60, subject to the rules of Section 61."

This exercise is important especially where there appears to be an attempt by an administrative agency to pass on issues relating to offence under Liberian laws, if the letter of February 23, 2008 under the signature of Coordinator of the Bureau of National Fisheries, Yevewuo Z. Subah, is anything to consider.

In the said letter, Director Subah of the Agriculture Ministry said *"... based on the admission of guilt by the captain and your gent to these charges, you are hereby advised to proceed to the Ministry of Finance to pay the fines specified in the attached within 48 hours."*

Black's Law Dictionary (Eighth Edition) defines offense in the following words:

"The terms "crime", "offense" and "criminal offense" are all said to be synonymous, and ordinarily used interchangeably. "Offense" may comprehend every crime and misdemeanour, or maybe used in a specific sense as synonymous with "felony" or with "misdemeanour" as the case may be, or as signifying a crime of lesser grade, or an act not indictable, but punishable summarily or by the forfeiture of a penalty." Page 1110.

As already detailed in this opinion, crimes are cognizable and maybe properly passed upon only by the judiciary. The fact that these provisions are contained in the Revenue Code does not, *ipso facto*, vest the administering agency of a statute any authority to conduct itself as the respondents sought to do in this case.

It follows from all we have said that the respondents in these proceedings disregarded the due process rights of the petitioner herein. Prohibition will therefore lie. Petitioner's petition is hereby granted and the Clerk of this Court ordered to issue the peremptory writ prohibiting the respondents from enforcing their unlawful fines, and the proceeds from auction of petitioner's fish returned to the petitioner without day. AND IT IS HEREBY SO ORDERED.

When this case was call for argument, Dlr. Beyan Howard of the Legal Consultants, Inc. appeared for the petitioner while CIIr. Tiawan S. Gongloe, Solicitor General, Ministry of Justice, Republic of Liberia appeared for the respondents.