LAMCO J.V. OPERATING COMPANY, Petitioner, v. ALFRED B. FLOMO, Presiding Circuit Judge, Sixth Judicial Circuit, Montserrado County, and BARCLAY WOLLIE, Respondents.

APPEAL FROM RULING OF JUSTICE DENYING ISSUANCE OF A WRIT OF PROHIBITION.

Argued April 11, 1978. Decided April 28, 1978.

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

This case arose out of a complaint by an employee of Lamco J.V. Operating Company that he had been wrongfully dismissed. The Board of General Appeals of the Ministry of Labor, Youth and Sports rendered a decision in favor of the employee and ordered his reinstatement or compensation in lieu thereof. Some months later, on information of the Ministry of Labor, Youth and Sports to the presiding judge of the Sixth Judicial Circuit that LAMCO had refused to comply with the order of the Board of General Appeals, the judge caused to be served on LAMCO a notice to appear at an appointed hour, and on appearance of LAMCO's counsel, without a hearing, ordered the employee's reinstatement. LAMCO then petitioned the Justice in chambers for a writ of prohibition to restrain the judge of the Circuit Court from exercising further jurisdiction in the case and enforcing the order of reinstatement. The writ was denied by the Justice in chambers, and this was an appeal from that ruling.

The Supreme Court held that a writ of prohibition will issue only to prevent an abuse of jurisdiction and cannot be allowed as a substitute for an appeal or other forms of review to correct errors in the tribunal below. The *judgment* of the Justice in chambers was *affirmed.*

Moses K. Yangbe for petitioner. *Stephen Dunbar* for respondent.

MRS. JUSTICE BROOKS-RANDOLPH delivered the opinion of the Court.

During the March 1977 Term, the following petition was filed before the Justice in chambers, Mr. Justice Azango

"Petitioner on the above entitled cause respectfully petitions this Honorable Court to issue a writ of prohibition against the respondents and shows therefore the following reasons :

"1. That co-respondent, Barclay Wollie, was dismissed by Petitioner Company, and as a result, he filed a complaint against the petitioner before the Labor Court in the Ministry of Labor, Youth and Sports. The case came before the Board of General Appeals of the aforesaid Ministry, which after the hearing rendered a decision on the 21st of September, 1973, a copy of which is hereto attached and marked as exhibit 'A' forming a part hereof.

"2. That on the **21st** of February, 1974, the Ministry of Labor, Youth and Sports addressed a letter to the respondent judge informing him that petitioner had refused on more than one occasion to comply with the decision of the Board of General Appeals, and therefore requested an order for enforcement of said decision, as will more fully appear from copy of the letter herewith filed and marked exhibit 'B' to also form a part of this petition.

"3. That upon receipt of the aforesaid letter the respondent judge ordered a notice of assignment to be issued and served on petitioner to appear before him on the 27th of March, 1974, at the hour of 10:00 O'clock in the morning for hearing. Counsel for petitioner

appeared before the respondent judge in obedience to the notice of assignment, but to the surprise of counsel for petitioner, the respondent judge, without ascertaining and hearing from petitioner why the ruling of the Board of General Appeals had not been complied with, verbally ordered the clerk to address a letter to petitioner ordering petitioner to reinstate co-respondent, Barclay Wollie, 'as though he has never been dismissed,' as will more fully appear from copy of letter herewith filed and marked exhibit 'C' to also form a part of this petition, which act of respondent judge is prejudicial and contrary to due process of law.

"4. Petitioner submits that its counsel protested and observed to the court : (a) the absence of writ of summons served on petitioner whereby the respondent judge could have acquired legal jurisdiction over the person of the petitioner; (b) the absence of exception and announcement of appeal from the decision of the Board of General Appeals by either party; (c) the absence of a petition filed by aggrieved party within 10 days from the date of the decision of the Board of General Appeals served on petitioner, as the Minister of Labor, Youth and Sports is not an aggrieved party as contemplated by statute; (d) that the mere letter of the Minister of Labor, Youth and Sports is not a petition in keeping with the law, practice, and procedure. Counsel for petitioner contended also that since the Circuit Court is a court of record according to statute, the respondent judge should have ordered the clerk of the court to record in the minutes of March 27, 1974, their legal contentions and the respondent judge's ruling thereon ; but contrary to express statutory provision and well-established practice, the respondent judge deliberately and prejudicially refused to allow the clerk to record in the minutes of court the cogent legal contentions of counsel for petitioner and his ruling thereon against due process of law.

If the Supreme Court should neglect to uphold the fundamental law of the nation and thereby deprive parties of rights guaranteed there under, be they citizens or expatriates, it will reflect discredit on the Government of Liberia, and with respect to the rise at bar, discourage investors in a country where they are not sure that a written contract means truly what it says.

Because neither of the parties to the dispute has proffered a copy of its concession agreement with the Government, this Court will not pass upon the question of indemnity bond raised by the appellant in connection with its agreement.

In view of the foregoing, the judgment of the lower court, Seventh Judicial Circuit, Grand Gedeh County, is set aside or reversed.

Co-appellee is entitled to $30,000 as offered by appellant for its contribution to the construction of the road which appellant corporation began to assist in building. The appellant's request for $221,040 representing the net profit from the sale of timber felled from its private property is hereby granted, and co-appellee is hereby ordered to satisfy this judgment within ten days after its rendition, with costs against the appellee corporation. And it is ordered.

Judgment reversed.

"Respectfully submitted,

"Henries Law Firm;

Counsel for Petitioner.

"[Sgd.] (illegible),

"[Sgd.] (illegible),

Counsellor at law."

"Dated at Monrovia this i5th day of April, 1974. [14] 25¢ Revenue Stamp affixed." In his ruling the Justice in chambers considered of particular importance count 1 of the return to the petition, which reads as follows : "1. Because respondent says that if petitioner feels that they are entitled to any relief, they have proceeded by the wrong form of action, for prohibition extends only to restraining a trial tribunal from usurpation and

> cannot be used to substitute for an appeal, writ of error, or certiorari. In the instant case respondent contends that the Circuit Court is the proper forum in such cases made and provided, in that under the statute the enforcement of any decision made by the Board of General Appeals, Ministry of Labor, if an appeal was not perfected in keeping with law, is legal and cannot be interpreted as exceeding its jurisdiction. Respondent contends that if they felt the respondent judge was proceeding in a way contrary and strange to set rules and procedures, they should have moved by a writ of certiorari, as a means of curing any errors or irregularities which might have been committed. *Francis* V. *Pynches,* 15 LLR 224 (1963)."

Mr. Justice Azango in ruling on the petition stated that "from our point of view, 'prohibition will only be issued where the trial court was without, or in excess of jurisdiction, or where its handling of the case evidenced a procedure unknown to the practice in our courts. In every instance where this cannot be shown, an application for the writ will be refused.' *Francis v. Pynches, supra,* at 226."

Mr. Justice Azango considered further that the question was whether the court had proceeded improperly or, having jurisdiction, exceeded that jurisdiction, setting forth the return of respondents as follows:

> Because respondents say as can be seen from the minutes taken at the investigation held by

the Board of General Appeals, dated January 28, 1974, the Board spelled out, in unequivocal terms what is meant by reinstatement; and although LAMCO, the respondent hereinabove, requests at least a week to study what is meant by reinstatement, up to the present they have refused to comply with the decision of said Board, thereby defying the authority of government. See proffer marked Exhibit 'A.'

"2. And also because respondents say further that growing out of petitioner's deliberate refusal to

comply with the decision of the Board of General Appeals, upon request of respondent, the Minister of Labor and Youth addressed a letter to the presiding Judge, Alfred B. Flomo, of the Sixth Judicial Circuit, Montserrado County, requesting him to enforce the said decision, based upon which His Honor Alfred B. Flomo ordered the issuance of a notice of assignment to the parties concerned to appear for said purpose. Respondents respectfully contend that it was not within the province of the respondent judge to reopen said matter for any argument, but only for the sole purpose of implementing the decision of the Board of Appeals.

"3. And because respondents say also that they deny that respondents did not take exceptions and announce an appeal from the decision of the Board of General Appeals; but to the contrary they failed and neglected to perfect their said appeal within statutory time; hence as the law provides respondent Wollie informed the Minister of Labor and requested him to seek enforcement of said decision. Respondents contend that there is no provision of the statute where it is required that they had to file a petition within ten days from the date of decision and serve a copy on petitioner.

"4. And because respondents also say that in further perpetration of petitioners' disregard for the Board of General Appeals of the Ministry of Labor, Youth and Sports despite the fact that the statute gives the Circuit Court the right to enforce any decision of said Ministry from which a defendant has failed to perfect an appeal taken, they have up to the filing of this return wantonly disregarded the mandate of the respondent judge by failing to place respondent Wollie in his former position as though he had never been dismissed or pay him in lieu thereof, in keeping with the statute." This Court agrees with Mr. Justice Azango in holding that it is an established principle of law that prohibition will not be granted to correct a party's neglect to act in his own interest. *Francis v. Pynches, supra.* In *Fazzah v. National Economy Committee,* 8 LLR 85, 89 ('943), Mr. Justice Tubman in delivering the opinion for this Court held as follows : "The writ of prohibition is a process which does not concern itself with, nor can it give or interfere with, irregularities and errors committed in the trials of causes. This is the function of appeals, or writs of error, and of certiorari, but not of this high prerogative writ; for it busies itself with preventing inferior courts or tribunals from assuming jurisdiction which is not legally vested in them, and it is a purely negative and not an affirmative remedy."

In support of his position, Mr. Justice Tubman then quoted the following, pp. 89, 90: "It is well established that a writ of prohibition may not ordinarily be used as a process for the review and correction of errors committed by inferior tribunals. Mere error, irregularity, or mistake in the proceedings of a court having jurisdiction does not justify a resort to the extraordinary remedy by prohibition, both because there has been no usurpation or abuse of power, and because there exist other adequate remedies. Whatever power is conferred may be exercised, and, if it be exercised injudiciously or irregularly, it amounts to an error merely, and not to a usurpation or excess of jurisdiction. A fortiori, if a court is entitled to exercise discretion in the matter before it, a writ of prohibition cannot control such exercise or prevent its being made in any manner within the jurisdiction of the court. And it does not affect the jurisdiction that the error irregularity is palpable or gross. It is nevertheless merely error and not usurpation of power. It may sometimes seem like usurpation when a court permits or authorizes some act in the course of a proceeding which is clearly and manifestly erroneous, but all such acts amount only to an erroneous exercise of

jurisdiction, and not to an excess of it, as the term "excess" is understood and applied by both courts and lawyers. Even the erroneous decision of a jurisdictional question is not ground for issuing a writ of prohibition, if the court has jurisdiction of the general class of cases to which the particular case belongs, since there is an adequate remedy by appeal.' 22 R.C.L., *Prohibition,* § 22 (1918)."

" 'If the inferior court or tribunal has jurisdiction of both the subject matter and of the person, prohibition will not lie to correct errors of law or fact, for which there is an adequate remedy by appeal or otherwise, whether such errors are merely apprehended or have been actually committed' 32 CYC, *Prohibition,* 617 (1909)."

In view of the foregoing facts and law controlling, we are of the opinion that prohibition will not lie in the instant case. The alternative writ is therefore quashed and the petition denied.

In the interest of justice the petitioner, LAMCO, is hereby ordered to compensate the respondent in accordance with the labor law governing wrongful dismissal in addition to the amount accrued in arrears; with costs against the petitioner. And it is so ordered.

Petition denied.