ERNEST KRUAH, Acting Managing Director of NHA, all Principal Deputies and those working under his control, and NATHANIEL SOLO, Appellants, *v.* **CECELIA T. WEAH**, Appellee.

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

Heard: April 27, 2004. Decided: August 16, 2004.

1. Waiver is the voluntary and intentional relinquishment of a known right.
2. Waiver operates to preclude a subsequent assertion of the right waived or any claims based thereon.
3. Waiver implies election by a person to knowingly dispense with something of value or to forego some right or advantage which he might, at his option, have demanded or insisted upon.
4. Notice is defined as information, advice or written warning, in more or less formal shape, intended to apprise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know ad the duty of the notifying party to communicate.
5. Where a statute requires notice to be given, it is the general rule that actual personal notice is required, and notice must be personally served on the person to be notified.
6. 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 the constitution and in accordance with due process of law.
7. Due process means there must be a tribunal competent to pass on the subject matter, notice actual or constructive be given, an opportunity to appear and be heard in person or by counsel, or both, having been duly served with process or having submitted to the jurisdiction of the tribunal.
8. Due process of law implies that the person whose rights are affected be present before the tribunal pronounces decision concerning his right, and to have the right of controverting by proof every material fact which bears on the question of his interest in the matter involved.
9. Due process of law means the right of a person to a fair hearing or trial before he suffers any penalty.
10. The due process right must be accorded everyone, whether before the court or an administrative agency; and any act which deprives a person of his property or other rights without according him these fundamental and constitutional rights is violative of our Constitution and will be declared as such by the Court.

11. While prohibition will not ordinarily lie to control administrative or ministerial acts, nevertheless when an administrative or executive board or tribunal is acting in a judicial or quasi-judicial capacity, prohibition will lie where it is acting without jurisdiction or in excess of its jurisdiction.
12. The NHA, as an administrative agency, in setting aside a tenancy agreement signed with a tenant and in disposing the tenant of the house without due process of law, performs thereby a judicial function which it is not authorized to perform.
13. A writ of prohibition will issue where the respondent named therein has assumed authority that is not properly his own, or having that authority, he proceeded by the wrong rules in the exercise of said authority.
14. Prohibition will be directed to an administrative agency or officer that is usurping jurisdiction where the agency or officer is attempting to exercise a power or function that is not provided by law.
15. Where the procedure adopted is illegal and unwarranted, prohibition will lie to prevent what remains to be done as well as to give complete relief by undoing what has illegally done.
16. Where title to property is in an administrative agency and therefore title to the property is not in dispute, the act is against or adverse to the lessee, and the lessee cannot thereby prevail in ejectment, prohibition is the proper remedy.
17. Recalcitrant intruders on the property rights of others are not entitled to be compensated as this would make them more adamant in their intrusion.

Appellee, Cecelia T. Weah, a tenant of the National Housing Authority (NHA), occupying Unit G-2, was forced to leave the premises due to the war. In her absence, and while the tenancy agreement was still in force and communication sent by the appellee to the NHA that she desired and intended to retain her unit, the NHA still proceeded to assign the Unit to Co-appellant Nathaniel Solo. Notwithstanding a complaint having been filed with the Ministry of Justice against Appellee Solo for trespassing, the appellee continued construction work on the premises. As a result thereof, the appellee filed a petition before the Justice in Chambers for the issuance of a writ of prohibition, which petition was heard and granted by the Chambers Justice, with the proviso that the petitioner/ appellee compensates Co-appellant Solo for improvements made to the property so as to avoid any unjust enrichment.

On appeal to the Supreme Court en banc, the ruling of the Justice in Chambers granting the petition was upheld, except for the portion requiring the appellee to compensate the co-appellee for improvements made on the premises.

The appellants had contended that prohibition will not lie because the NHA was not an inferior court pursuing judicial action or proceedings in violation of any established rules or procedures; that the appellee, claiming ownership to the house should have proceeded by

ejectment, not prohibition; that the NHA had the statutory mandate to enter into managements agreements and that having acted properly, prohibition could not be maintained; that since the property had already been given to Co-appellant Solo, the acts complained of had therefore already been completed and hence prohibition would not lie.

The Supreme Court disagreed and rejected all of the appellants' contentions. The Court, noting that the appellee had not waived her right to the Unit by not responding to the radio or newspaper announcement put out by the NHA for tenants to regularize their payments, held that notice should have been specifically and personally given to the appellee for such notice to be valid and binding. The Court opined that the appellee should have been given the opportunity to be heard (due process) before attempts were made to deprive her of her property right, as provided for by Article 20(a) of the Liberian Constitution and under Liberia case law.

The Court held further that whilst ordinarily prohibition would not lie to control administrative or ministerial acts, it would lie in cases when an executive, administrative, or executive board acts in a judicial or quasi-judicial capacity and acts in matters in which it has jurisdiction, or having jurisdiction acts in excess of such jurisdiction. The Court stated that in the instant case the act by the NHA in setting aside the agreement was a judicial act which the NHA did not have the authority to perform. Hence, it said, prohibition will lie, not only to correct the act but also to reverse acts illegally taken and already completed.

The Court noted, however, that in affirming the ruling of the Chambers Justice, it disagreed with him that the co-appellant should be compensated by the appellee for improvements made by him on the premises, noting that such acts would encourage recalcitrant intruders on the property rights of others to be even more adamant since they would feel that in the end they would be compensated. If there was any compensation to be made, the Court said, it should be made by the NHA which had acted illegally in giving the appellee's premises to the co-appellant. The petition was therefore granted.

Marcus R. Jones of Jones & Associates Legal Consultants appeared for the appellant. *Nyenati Tuan* of Tuan Wreh Law Firm appeared for the appellee.

MR. JUSTICE KORKPOR, SR., delivered the opinion of the Court

The co-appellant in these proceedings, National Housing Authority (NHA), entered into a tenancy agreement with the appellee, Cecelia T. Weah, in 1978. Under the tenancy agreement, Unit G-2 in the E. Jonathan Goodridge Estate was leased to the appellee who lived in the premises from 1978 until 1992, during the time of the infamous "Operation Octopus" fighting in Monrovia. As a result of the fighting, many units in the E. Jonathan Goodridge Housing Estate were destroyed, including Unit G-2, thereby forcing appellee to relocate herself while the tenancy agreement between Co-appellant NHA and appellee was

still in force and effect. In 1999, NHA assigned Unit G-2 to Mr. Nathaniel T. Solo. The appellee then filed a complaint against Mr. Solo with the Ministry of Justice, alleging that he was trespassing on her premises.

While the complaint was pending before the Ministry of Justice, appellee alleged that Mr. Solo was carrying on con-struction works on her premises, Unit G-2. Consequently, the appellee filed a petition for a writ of prohibition against NHA and Mr. Solo to stop the construction works at her place. The then Chambers Justice, Mr. Justice M. Wilkins Wright, heard the matter and made ruling granting the peremptory writ of prohibition. This case is on appeal before us from the ruling of Mr. Justice Wright.

During argument before this Court, the appellants conten-ded that the writ of prohibition will not lie because appellants, NHA and Nathaniel T. Solo, are not inferior courts or tribunals who were pursuing judicial actions or proceedings in violation of established rules or procedures for which prohibition would lie against them to restrain and prevent further illegal proceedings or undo illegal acts. The appellants maintained that if the appellee claims ownership to the house in question, she should have filed an action of ejectment and not prohibition.

The appellants further argued that they are not answerable to prohibition because in keeping with the act establishing NHA, the corporation is authorized by law to enter into any management contract, agreement or undertaking with any per-son (corporate or natural), firm, associations or partnerships for the efficient extension of its housing program, and that having acted properly in assigning Unit G-2 to Co-appellant Nathaniel T. Solo, prohibition will not lie.

The appellants also contended that prohibition will not lie to undo completed acts, in that NHA had already re-assigned the unit to Co-appellant Nathaniel T. Solo since November 15, 1999, while the petition for writ of prohibition was filed on January 25, 2000.

Finally, the appellants contended that when Cecelia T. Weah, the appellee in this case sat supinely and did not contact NHA to declare her continued interest in Unit G-2 in the face of several radio announcements to all tenants of NHA to do so, she waived her rights.

The appellee, on the other hand, argued that prohibition will lie to restrain the Co-appellant NHA from assigning her house to Co-appellant Nathaniel T. Solo or to any other person, and since the house had already been illegally assigned, prohibition can undo what was illegally done. The appellee further argued that by setting aside the tenancy agreement she signed with NHA and dispossessing her of her house without due process, and assigning the house to Co-appellant Nathaniel T. Solo, NHA was performing a judicial function which it is not authorized to perform. For these reasons, the appellee argued that prohibition would lie.

Having listened to all the arguments and the positions of the parties in this case, the issues for our determination are:

(1) Whether the appellee, Cecelia T. Weah was duly informed to declare her continued interest in Unit G-2 but failed to do so and therefore waived her rights; and

(2) Whether prohibition will lie in this case.

Concerning the first issue as to whether or not the appellee was informed to declare her interest in Unit G-2 but failed to do so and therefore waived her rights, this Court says that waiver is the voluntary and intentional relinquishment of a known right. *Freeman v. Firestone Plantations Company*, 23 LLR 276 (1974), syl. 1. Waiver operates to preclude a subsequent assertion of the right waived or any claims based thereon. *Ezzedine v. Saif,* 33 LLR 21 (1985), syl. 2.

According to 29 AM JUR 2d., *Estoppel and Waiver*, §204, waiver ... implies a choice election by a person to knowingly dispense with something of value or to forego some right or advantage which he might, at his option, have demanded and insisted upon. The important question here is, did the appellee in this case knowingly and intentionally relinquish her right to her house? We hold no.

The appellee contended that she wrote to NHA expressing her desire and intent to retain her unit, but that NHA ignored her letter and proceeded to re-assign her unit to co-appellant Nathaniel T. Solo. She complained that without notice to her, and while the tenancy agreement she signed with NHA was still in force and effect, NHA re-assigned her house. Co-appellant NHA, on the other hand, counter argued that it published announcements on the radio to all tenants whose units were damaged to contact NHA and indicate whether they were still interested in said damaged structures to have them re-constructed or renovated. But the appellee denied hearing the radio announcements and said that no notice was served on her.

We do see in the records of this case, two copies of separate announcements annexed to the appellants' returns filed when this case was still before the Chambers Justice. One of the announcements, i.e. "notices", carries no date, making it impossible to determine on its face when it was written. That announcement mainly advised tenants to regularize their mortgage payments.

The other copy of the announcement dated February 18, 1992, called on tenants in the various housing estates whose units were burned or damaged as a result of the civil conflict to meet with the Management of NHA on Friday, February 21, 1992, at 11:00 a.m. That announcement does not state the purpose of the meeting or the repercussion for failure of any tenant to meet the Management of NHA. The appellee says that she did not hear these purported announcements on radio, if they were made. On the other hand, no receipt from any radio station was annexed to the appellants' returns filed with the Chambers Justice evidencing that indeed the announce-ments were read on radio as a means of providing notice to the appellee and others.

This Court agrees with Mr. Justice Wright when he opined that newspaper publications are more reliable and more substantive than radio announcements. The records in this case

reveal that the appellee relocated herself when her house was destroyed due to fighting in 1992. It is not stated where she went, maybe she found accommodation elsewhere in or outside of Monrovia, or even outside of Liberia. This was the normal trend of population movement during the civil war.

Thus, as we see it, the question of whether the appellee actually heard the radio announcements as claimed by appel-lants, depends on where she was when the announcements were aired; that is, if they were aired. It also depends on which radio station carried the announcements. It should be noted that during the war years, radio stations in this country, like other institutions, faced problems. There were frequent breakdowns and almost all of the ones that were operating could not be heard beyond Kakata, a distance of about thirty to forty-five miles radius. Under the circumstance, we are not convinced that the appellee received notice via radio announcements to declare her continued interest in Unit G-2, but failed to do so; thereby waiving her rights.

Notice is defined as "information, an advice, or written warning, in more or less formal shape, intended to apprise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know and the duty of the notifying party to communicate." BLACK'S LAW DICTIONARY 957 (5th ed.)

Under section 82.4, Administrative Procedure Act, it is provided that:

> "A person entitled by law to a hearing before an agency determination becomes final shall be given reasonable notice thereof."

And where a statute requires notice to be given, it is the general rule of law that actual personal notice is required, and the notice must be personally served on the person to be notified. 58 AM JUR 2d, §22.

NHA has separate tenancy agreements with each and every tenant. Therefore, if NHA wanted to contact appellee, Cecelia T. Weah, concerning a matter affecting her unit, NHA should have personally served notice on the appellee. Even if NHA included her name amongst others who were in similar category with her, a separate copy of such categorized names should have personally been served on the appellee to consti-tute notice to her. In the absence of this, this Court concludes that notice was not given to the appellee and therefore any decision taken affecting her interest was not taken in keeping with the due process requirement provided under our law.

Article 20(a) of the 1986 Constitution of Liberia 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...." The meaning of due process, as upheld by this Court in many decisions, including the land mark case *Wolo v. Wolo*, 5 LLR 423 (1937), is that there must be a tribunal competent to pass on the subject matter, notice actual or constructive be given, an opportunity to appear and be heard in person or by counsel, or both, having been duly served with process or having submitted to the jurisdiction of the

tribunal. Due process of law implies that the right of the person affected be present before the tribunal pronounces a decision concerning his right, and to have the right of controverting by proof, every material fact which bears on the question of his interest in the matter involved. To put it simply, due process of law means the right of a person to fair hearing or trial before he suffers any penalty. This right must be accorded everyone, whether before the court or administra-tive agency. Any act which deprives a person of his property or other rights without according him these fundamental and constitutional rights is violative of our constitution and will be declared as such by this Court.

The other issue for our determination is whether or not prohibition will lie in this case. The appellants contend-ed that because they are not inferior courts or tribunal who were pursuing judicial actions or proceedings in violation of established rules, prohibition will not lie against them. According to Section 1 of An Act to Create the National Housing Authority (1960), NHA is "a specialized autonomous development agency of the Government." This means that NHA is an administrative agency. An administrative agency is "a governmental body charged with administering and implementing a particular legislation". The term agency includes any department, commission, administration, authority, board or bureau. . . ." BLACK'S LAW DICTIONARY 42 (5th ed.) This Court says that in the case *Monrovia Breweries v. Karpeh*, 37 LLR 288 (1993), syl. 4, text at 301, the rule was enunciated that while a writ of prohibition will not ordinarily lie to control administrative or ministerial acts, nevertheless, when an administrative or executive board or tribunal is acting in a judicial or quasi-judicial capacity, prohibition will lie where it is acting without jurisdiction or in excess of its jurisdiction. We agree with the appellee that by setting aside the tenancy agreement she signed with NHA and dispossessing her of her house without due process of law, NHA was performing a judicial function which it is not authorized to perform.

The Supreme Court has held that a writ of prohibition will issue where the respondent named therein has assumed authority that is not properly his own, or having that authority, he proceeded by the wrong rules in the exercise of said authority. *Kpolleh et al. v. Randall et al.*, 34 LLR 252 (1986), syl. 4. This Court has also held that prohibition will be directed to an administrative agency or officer that is usurping jurisdiction where the agency or officer is attempting to exercise a power or function that is not provided by law. *Kaba and McCromsy v. Township of Gardnersville et al.*, 39 LLR 549 (1999). The tenancy agreement between appellee and NHA is a valid contract and the legal way to abrogate and nullify a contract is to seek judicial cancellation through court. NHA is not authorized by law to cancel, abrogate, nullify and set aside a contract. It was therefore illegal for the NHA to have unilaterally set aside the tenancy agreement between NHA and the appellee without court proceedings and reassign the appellee's house to co-appellant Nathaniel T. Solo.

While NHA is authorized by statute to enter into manage-ment contract with tenants, NHA cannot go about doing this in a wrong manner, that is, while a tenancy agreement with one tenant is still in force and effect regarding a specific unit, NHA cannot enter into

agreement with another tenant covering the very same unit which has been leased, without first canceling the original agreement in court. The Supreme Court has held that where the procedure adopted is illegal and unwarranted; prohibition will lie to prevent what remains to be done as well as to give complete relief by undoing what has been illegally done. *Scott v. The Job Security Scheme Corporation*, 31 LLR 552 (1983), syl. 2.

The appellants further contended that if appellee claims ownership to the house in question, she should have filed an action of ejectment and not prohibition. To this contention we say that in an action of ejectment, the plaintiff must not only have good title, but his title must be superior to that of the defendant if plaintiff must prevail. In the case before us, the appellee could not have prevailed in an action of ejectment because neither the appellee nor Co-appellant Nathaniel T. Solo has title. Title to the property in question is in NHA, so title is not in dispute. Moreover, in ejectment, the lessor is normally joined with the lessee, but the position adopted by the NHA as stated, is adverse to the interest of the appellee. For these reasons, the appellee could not have prevailed in ejectment. Prohibition is therefore the proper remedy to the appellee under the circumstance.

We note that Mr. Justice Wright, from whose ruling in Chambers this case is before us on appeal, opined that it would be unfair to allow the appellee to resume possession of her unit in an improved state from what it was without paying for such improvement. He therefore ordered that "to avoid petitioner benefitting by unjust enrichment", the renovation works carried out by Co-appellant Nathaniel T. Solo be reassessed at the fair market value and a bill submitted to the appellee for reimbursement. We do not agree with this portion of Justice Wright's ruling. Were this Court to uphold this position, it would encourage recalcitrant intruders on the property right of others to be even more adamant, knowing that in the end they would be compensated. Under the tenancy agreement between NHA and appellee, NHA is responsible "to make all major maintenance and repairs on the premises..." This means that NHA should have repaired and/or renovated the damaged premises as a matter of obligation under the tenancy agreement. Since the repairs/ renovation were carried out by Co-appellant, Nathaniel T. Solo, relying on the false notion that NHA had conveyed good title to him, he should have recourse, if any, against NHA for funds expended in such repair/renovation works.

Wherefore, and in view of the foregoing, we hold that the ruling of the Chambers Justice granting the peremptory writ of prohibition is hereby confirmed and affirmed with the modification that whatever amount Co-appellant Nathaniel T. Solo may have expended in repairing/renovating Unit G-2 should be reimbursed by the NHA and not the appellee. The Clerk of this Court is hereby ordered to send a mandate to the NHA to give effect to this judgment. Costs are assessed against the appellants. And it is hereby so ordered.

Petition granted.