

Liberia Telecommunications Authority, by and thru its Chairman or any of its Commissioners, of the city of Monrovia, Liberia Appellant versus **West Africa Telecommunications, Inc.**, by and thru its Vice President, Dr. Marco Lacadini, also of the city of Monrovia, Liberia Appellee

PETITION FOR JUDICIAL REVIEW

Argued. March 19, 2009. Decided. July 23, 2009.

MR. CHIEF JUSTICE LEWIS delivered the opinion of the Court.

West Africa Telecommunications, Inc., the appellee, is a corporation organized under the laws of the Republic of Liberia. The purpose of the corporation is to engage in businesses in Liberia, among which is the telecommunications business.

On April 22, 2005, the Ministry of Posts and Telecommunications, then the regulatory body of telecommunications in Liberia, issued to West Africa Telecommunications, Inc. a license "for the installation, operation, maintenance and exploitation of a telecommunications system (internet provider, broadband applications, rural telephony, international/national connectivity and access, VOIP)."

On June 14, 2005, the Minister of Posts and Telecommunications, Eugene Lenn Nagbe, addressed the following letter to the appellee.

"I wish to refer to our recent telephone conversation in which you asked for my confirmation that copies of all the documents including license for West Africa Telecommunications, Inc., dated April 22, 2005, have been sent to the International Telecommunications Union (ITU) for your registration with the ITU.

"I wish also to refer to section 10.1.3 of the license and to confirm that the

frequency authorizations within the 3.5 GHz spread spectrum shall be a maximum of 108 MHz, 54 MHz uplink and 54 MHz downlink.

"In engaging the manufacturers of your equipment, you should be advised that this will be the maximum frequencies that will be allocated to West Africa Telecommunications, Inc., as frequencies have to be reserved for other service providers who might want to deploy in the 3.5 GHz spread spectrum.

"I further wish to refer you to section 10.1.4 of the license regarding numbering allocations, and to confirm that your numbering allocations shall be +231 03 and West Africa Telecommunications, Inc. shall use and deploy all the telephone numbers with that prefix.

"As to your request for +231 09, please be advised that '09' is reserved for special allocations, such as [emergency] numbers, and it shall be available to all service providers. Depending on the number of service providers in the sector, the Ministry of Posts and Telecommunications will eventually decide how many telephone numbers will be allocated to each service provider using '09' as a prefix. For now, our technicians believe that no service provider should have more than 100,000 telephone numbers using '09' as prefix."

We quote sections 10.1.3 and 10.1.4 of the license.

"10.1.3 The regulator shall assign to the licensee frequencies in the 3.5 GHz spread spectrum to facilitate the installation and operation of a fixed wireless network as part of the system. The frequencies are:

Note: Actual frequencies in this 3.5 GHz band may be varied by the Ministry prior to licensee deploying its system.

"10.1.4. The prefix +231-nn-X)0000(is hereby assigned to the licensee for use in its numbering allocations for the provision of the service."

On October 19, 2005, "An Act to Amend the Public Authorities Law creating the Liberia Telecommunications Corporation and the Executive Law Creating the Ministry of Posts and Telecommunications, and to Establish an Interim Framework for Telecommunications Regulations" was published. Known as "Act no. 18," the Act established an Interim Regulatory Authority. The Act replaced the Ministry of Posts and Telecommunications as the regulatory body of telecommunications in Liberia, effective October 19, 2005, up to the date when there would be a law replacing and repealing "Act. no. 18." Under "Act no. 18," the membership of the Interim Regulatory Authority was three, and all decisions were by a simple majority. The members appointed to the Interim Regulatory Authority were Dr. Sarr Abdulai Vandi, Chairman, Lamini A. Warity, member, Anthony McCritty, Sr., member.

In August 2006, the appellee informed appellant, the Interim Regulatory Authority (Act no. 18), of appellee's plan to commence its operations, i.e. to roll-out its business, and requested approval for this roll-out to proceed. Appellant did not approve the request, and subsequently raised the issue, with appellee, as to whether appellee had been allocated frequencies for appellee's telecommunications business. Following a series of communications, an internal investigation was conducted by the appellant, the Interim Regulatory Authority, arising out of allegations by the appellee against Dr. Sarr Abdulai Vandi, Chairman of the Interim Regulatory Authority. A report, dated August 28, 2007, was signed by Lamini A . Warity and B. Anthony McCritty, Sr., two members of the Interim Regulatory Authority. We quote the sixth recommendation of the report.

"Meanwhile, since the frequencies WAT is laying claim to are not recognized by the LTA, WAT's roll-out activities should remain suspended until otherwise directed by the new LTA Board."

On August 10, 2007, Liberia Telecommunications Act (2007) was published,

repealing "Act no. 18." While "Act no. 18" was an interim framework for telecommunications regulations, Liberia Telecommunications Act (2007) made permanent the Liberia Telecommunications Authority as the regulatory body of telecommunications in Liberia for the "orderly and efficient management, allocation, assignment and use of radio frequencies, including all civilian, non-civilian and commercial uses of radio frequencies." Under the Act, the President, with the consent of the Senate, has authority to appoint new members to the Board of Directors. New Board members appointed by the President were Albert N. Bropleh, Chairman, Lamini A. Warity, Commissioner, Edwin R. York I, Commissioner, Nathaniel Kevin, Commissioner.

On September 13, 2007, the appellant, through Lamini Warity, representing the Board of the Liberia Telecommunications Authority, addressed the following letter to Mr. Peter S. Coleman, Chief Administrative Officer of West Africa Telecommunications, Inc.

"As the new Board of Commissioners strives to expeditiously bring clarity and closure to the frequency/licensing saga surrounding your entity in the context of the investigation report submitted by the erstwhile [Liberia Telecommunications Authority] Board on the affair, it has become necessary to invite you and your staff to an urgent meeting with the new Board on Friday, September 14, [2007], at the [Liberia Telecommunications Authority's] temporary offices on 12th Street/Tubman Boulevard, at the precise hour of 3.00 p.m.

"Meanwhile, we wish to apologize for extending this invitation to you at short notice. We however do hope you understand the exigencies of our circumstances and the imperative of resolving the ongoing brouhaha over the issue at hand.

"We sincerely look forward to your presence at the requested meeting on Friday."

On September 17, 2007, appellee addressed the following letter to the Chairman, Liberia Telecommunications Authority.

"The management of West Africa Telecommunications, Inc. presents its compliments.

"Please allow us to congratulate you for your preferment as Chairman of the newly constituted Liberia Telecommunications Authority.

"We also would like to commend the Liberia Telecommunications Authority for the transparent manner in which the last meeting was conducted. For the records, we would like to summarize and clarify all of the issues that were discussed at the meeting of September 14, 2007.

"a. [West Africa Telecommunications, Inc.] obtained a license from the Ministry of Posts and Telecommunications in April 2005 to operate a wireless fixed network to provide both voice and data.

"b. In 2005, [West Africa Telecommunications, Inc.] paid a total of US\$45,000.00 to the Government of Liberia (US\$38,000.00 for frequency and US\$7,000.00 to the Ministry of Posts and Telecommunications) during the period of the [National Transitional Government of Liberia]. In 2006, [West Africa Telecommunications, Inc.] paid another US\$45,000.00 to the [Unity Party]-led Government for similar telecommunications activities.

"c. Since July 2006 there have been a total of nine meetings held with the [Liberia Telecommunications Authority]. The first meeting was the only one held with the full [Liberia Telecommunications Authority] after which all other meetings were held only with Dr. Sarr Abdulai Vandi, reasons best known to the former Chairman of the [Liberia Telecommunications Authority].

"d. A copy of [West Africa Telecommunications, Inc.'s] business plan was submitted at the first meeting in September 2006 but had to be resubmitted because the [Liberia Telecommunications Authority] felt it should be more

comprehensive. A more comprehensive business plan was developed and sent to the [Liberia Telecommunications Authority] and the [National Investment Commission] in December 2006.

"e. In November 2006, a formal request for frequency was sent to the [Liberia Telecommunications Authority] and this was followed by multiple interactions with [Liberia Telecommunications Authority] technicians and [West Africa Telecommunications] engineers.

"f. West Africa Telecommunications, Inc. was assigned a frequency in the 3.5 band by Dr. Sarr Abdulai Vandi, the former Chairman of the [Liberia Telecommunications Authority]. This was concluded after multiple interactions sanctioned by Dr. Sarr Abdulai Vandi between technicians of the [Liberia Telecommunications Authority] and engineers of [West Africa Telecommunications, Inc.].

"g. [West Africa Telecommunications, Inc.] was assigned a numbering plan by Dr. Sarr Abdulai Vandi after interactions between technicians of the [Liberia Telecommunications Authority] and engineers of [West Africa Telecommunications, Inc.] was also sanctioned by the former Chairman of the [Liberia Telecommunications Authority].

"h. In March 2007 we sent another communication to the former Chairman of the [Liberia Telecommunications Authority], Dr. Sarr Abdulai Vandi, stressing the urgency of acquiring the frequency and numbering plan.

"i. Mr. Chairman, please find attached the relevant satellite connections of West Africa Telecommunications, Inc. and two additional copies of the business plan. (At the meeting of September 14, 2007, we gave two copies).

"Mr. Chairman, we want to reassure you that [West Africa Telecommunications, Inc.] had followed all of the guidelines set by both the Ministry of Posts and

Telecommunications and the Liberia Telecommunications Authority. We do not understand why we continue to encounter all of these hurdles in our interactions with the relevant authorities.

"Please also find attached copies of our mail delivery registry to confirm that all the above mentioned were delivered and signed for at the [Liberia Telecommunications Authority].

"We also observed a lack of dissemination of information to the members of the former [Liberia Telecommunications Authority] by the former Chairman of the [Liberia Telecommunications Authority].

"[West Africa Telecommunications, Inc.] has already invested eight million dollars in setting up this network and has already employed close to 40 Liberians, and we intend to invest an additional twelve million dollars and employ an additional 150 Liberians, as we expand our network.

"We are prepared to work transparently with the new [Liberia Telecommunications Authority] and follow all of the guidelines stipulated by the Government of Liberia."

On October 3, 2007, appellant addressed the following letter to appellee.

"This acknowledges receipt of your letter dated September 17, 2007 in which you summarized the outcome of our September 11, 2007 meeting held here at the offices of the [Liberia Telecommunications Authority], and the additional documentation you gave the [Liberia Telecommunications Authority]. The discussion with the [Liberia Telecommunications Authority] and your characterization is at variance and appears selective compared to our recollection. You will recall that the [Liberia Telecommunications Authority] was the only party present at the meeting taking notes. My assistant was the exclusive recorder present in the meeting, and a copy of her minutes is attached for your easy

reference.

"The situation regarding the West African Telecommunications, Inc. is very grave and we are still investigating this sorry episode. While our investigation is on-going, the [Liberia Telecommunications Authority] is once again instructing the Management of [West Africa Telecommunications, Inc.] to cease operation without any further delay and with immediate effect.

"We have as far back as a year ago in numerous verbal and written communications warned and instructed [West Africa Telecommunications, Inc.] to cease its [roll-out] activities and regularize its license and frequency status through the [Liberia Telecommunications Authority]. [West Africa Telecommunications, Inc.] has, with impunity, consistently ignored these warnings and instructions.

"This letter represents our sixth and final warning to [West Africa Telecommunications, Inc.] regarding this situation. Should [West Africa Telecommunications, Inc.] fail to adhere to this warning and accordingly govern itself, please do not think it unreasonable if the [Liberia Telecommunications Authority] is left with no other choice but to impose the ultimate penalty under the laws, as well as seek additional remedies given the gravity of the situation to preserve the interest of the State.

"Your civil cooperation and undivided attention to this extremely important matter will be greatly appreciated.

"Thank you."

The appellee did not comply with the directives contained in appellant's letter dated October 3, 2007, and did not cease its roll-out activities.

On November 9, 2007, appellant issued its Enforcement Order no. 001 against the appellee. We quote the Enforcement Order.

"Enforcement Order no. 001

"The Ministry of Justice and all law enforcement agencies of the Republic of Liberia.

"You are hereby commanded to seal the premises of the West Africa Telecommunications, Inc. offices located and situated in Congo Town, Montserrado County, to ensure that all of its equipment are turned off and shut down and that West Africa Telecommunications, Inc. cease and desist from further operation until it has complied with the orders of the LTA.

"This shall empower you in keeping with section 78(2) of the Liberia Telecommunications Act of 2007.

"The Liberia Telecommunications Authority may rely and take steps to enforce an order of the Liberia Telecommunications Authority whether or not the order has been made an order of a court.

"And have you here these our orders.

"Given under our hands and authority this 9th day of November, 2007."

This enforcement order was signed by Albert N. Bropleh, Chairman & CEO, Lamini A. Warity, Commissioner, Edwin R. York I, Commissioner, Nathaniel Kevin, Commissioner.

As a result of the Liberia Telecommunications Authority's Enforcement Order no. 001, the appellee's premises were closed and sealed on November 12, 2007. On the same day, the appellee filed a petition for the writ of prohibition against the appellant before the Justice presiding in Chambers, His Honor Kabineh M. Ja'neh. On November 20, 2007, the appellee filed a notice of withdrawal of its petition, with reservations. On November 30, 2007, the appellee filed a thirty-four count amended petition. In count twenty-five of the amended petition, the petitioner

alleged: "Commissioners of respondent, Liberia Telecommunications Authority, along with police officers, forcibly entered petitioner's business premises, ordered its personnel out of the premises, and locked the premises up."

The petitioner prayed the Honorable Court for the following relief:

"1. To issue the alternative writ of prohibition commanding and directing that respondent cease and desist from its action of closure of petitioner's business premises and the return of all parties to status quo ante before the closure took place on November 12, 2007 (that is, that petitioner continues the use of 21 MHz frequency within the GHz spectrum range) pending disposition of this case.

"2. To cite the respondent to appear at a date convenient to Your Honor, file its returns and to show cause why, if any, the peremptory writ of prohibition should not be issued commanding respondent to forever desist from closing petitioner's business premises without due process of law provided for in the Constitution and the Liberia Telecommunications Law [2007].

"3. To after a hearing, issue the peremptory writ of prohibition commanding and ordering the respondent to forever desist from closing petitioner's business premises or interrupting its operations under the 21 MHz frequency within the 3.5 GHz spectrum range.

"4. To grant unto petitioner any other further relief as in such matters is made and provided by law."

On December 20, 2007, appellant filed the following returns to petitioner's amended petition.

"Respondent, Liberia Telecommunications Authority, responding to the amended petition for the writ of prohibition filed by the petitioner, says:

"1. As to the entire amended petition, respondent says that it is without knowledge and information sufficient to form a belief as to the truthfulness of the allegation contained therein, but respondent admits and hereby informs Your Honor that it made a decision to close down the operation of the petitioner due to the petitioner's repeated refusal to comply with the regulations and order of the respondent growing out of hearings duly had according to law.

"Wherefore and in view of the foregoing, respondent prays this Honorable Court for the following:

"1. That Your Honor will issue an order that the petitioner avails itself of section 81(1)(2) of the Liberia Telecommunications Act (2007) on the right to judicial review, respondent having ruled and decided, since September 2006 and again in July 2007, that the petitioner is operating on frequency not allocated and assigned to it by the respondent in keeping with section 10.1.3 of the petitioner's license and section 25(1) of the Liberia Telecommunications Act (2007) as well.

"2. That Your Honor also set a day from the date of Your Honor's ruling on this petition when the petitioner's sixty days allowed for judicial review under section 81(2) will commence to run.

"3. That Your Honor will grant unto respondent any other further relief as in such matters is made and provided by law."

On December 26, 2007, the Chief Clerk of the Supreme Court, upon the orders of His Honor Justice Kabineh M. Ja'Neh, issued a notice of assignment notifying the parties "that the Honorable Supreme Court of the Republic of Liberia will proceed to hear argument/ruling, *pro et con* . . . on December 31, 2007, at the hour of 11:00 a.m. and that they are cited to be present for same."

On December 28, 2007, the Chief Clerk of the Supreme Court, upon orders of His Honor Justice Ja'Neh, cited Sherman and Sherman, Inc. and the Chairman

and Commissioners of the Liberia Telecommunications Authority to a conference with His Honor Justice Ja'Neh for December 31, 2007, at 11.00 a.m.

On January 7, 2008, whether as a result of argument *pro et con*, ruling or the conference, the Chief Clerk of the Supreme Court addressed the following orders to the Chairman and Commissioners of the Liberia Telecommunications Authority.

"As per the agreement/concession made by the parties the following is hereby ordered as mandate from this Court:

"1. That the respondent Liberia Telecommunications Authority shall and is hereby mandated to stay all and any execution of its decision to close down the offices/operations of the petitioner company.

"2. That the respondent conceded that the appeal announced by the petitioner to the [Liberia Telecommunications Authority's] decision of closure operates as a stay to the enforcement of said decision. Consequently, the [Liberia Telecommunications Authority] is mandated to allow the petitioner to take advantage of this appeal process consistent with the [Liberia Telecommunications Authority] Act [2007].

"3. That the 60-day period in the case at bar shall run beginning December 31, 2007."

Following the filing of the petition for judicial review, and the exchange of pleadings, a trial was held presided over by His Honor Judge Yussif D. Kaba, Assigned Circuit Judge over the Sixth Judicial Circuit, Montserraado County. At the conclusion of the trial, Judge Kaba rendered the following final judgment dated August 14, 2008.

"1. That petitioner has frequency allocation for its telecommunications business in

Liberia and that said frequency allocation is 42 MHz The appellant noted exceptions to the final judgment of Judge Kaba, and frequencies (21 MHz uplink and 21 MHz downlink) within the 3.5 GHz spectrum band, at which petitioner has configured its equipment and machines and started its roll-out activities prior to the closure of its business by respondent in November, 2007.

"2. That notwithstanding this frequency allocation, petitioner, like every other telecommunications service provider, must submit to the standardization process mandated by the [Liberia] Telecommunications Act (2007), and petitioner has thirty days as of the date of this final judgment to submit all necessary papers to respondent for the standardization process. Respondent, on the other hand, must move with dispatch to pass on petitioner's papers so that there would be no undue delay in petitioner conducting its telecommunications business merely because of the outcome of this petition for judicial review.

"3. That respondent, in keeping with the [Liberia] Telecommunications Act (2007), shall carry out the standardization process without any discrimination against petitioner for reason of this petition for judicial review or for any other reason, and shall not give preferential treatment to other telecommunications service providers to the disadvantage of petitioner.

"4. That Enforcement Order no. 001, being unfounded both in law and the facts, and unsupported by the evidence as a whole, is hereby nullified.

"5. All costs are disallowed."

The appellant noted exceptions to the final judgment of Judge Kaba, and announced an appeal to this Court on an eight-count bill of exceptions.

Had the Liberia Telecommunications Authority, as an administrative agency, conducted a hearing, consistent with due process of law, its findings of fact would have been binding on the court.

"Questions of fact involved in a proceeding before an administrative agency are to be determined, at least primarily, by the agency, rather than by a court; and in the absence of fraud, lack of jurisdiction, or arbitrary or capricious action constituting a denial of due process of law, the agency's finding of fact, or decision of a question of fact, is to be accepted as final, binding, and conclusive and may not be reviewed by a court except to the extent that a constitutional or statutory provision makes it reviewable. . . ." *Johnson v. LAMCO J. V. Operating Company*, 31 LLR 735, 745 (1984), citing 73 C.J.S., *Prohibition*, § 216; *Katopas Fishing Company v. Meyers & Orellana*, 37 LLR 850, 854 (1995), citing 73 C.J.S., *Public Administrative Law and Procedure*, § 216.

In the absence of a hearing conducted by the Liberia Telecommunications Authority, consistent with due process of law, and findings of fact which would be binding on the court, we hold that the findings of fact contained in Judge Kaba's final judgment were not in violation of constitutional or statutory provisions, were not in excess of statutory authority, were not made upon unlawful procedure, were not affected by other error of law, were not clearly erroneous in view of the reliable, probative, substantial evidence on the whole record, and were not arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. We, therefore, accept the findings of fact contained in Judge Kaba's final judgment.

One issue determinative of this case is whether section 78.2 of the Liberia Telecommunications Act (2007) which provides that the Liberia Telecommunications Authority may rely on and take steps to enforce any order of the Liberia Telecommunications Act (2007) whether or not the order has been made an order of court violates the due process clause of the Liberian Constitution (1986). We hold that section 78.2 of the Liberia Telecommunications Act (2007) which provides that the Liberia Telecommunications Authority may enforce any order without an order of court violates the due process clause of the Liberian Constitution (1986), and is unconstitutional.

Article 20(a) of the Liberian Constitution (1986) 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).

This Court in *Snowe, Jr. v. Some Members of the House of Representatives*, decided January 29, 2007, in an opinion by Mr. Chief Justice Lewis, reviewed "due process of law," by citing the landmark case in this jurisdiction. In *Wolo v. Wolo*, 5 LLR 423, 427-429 (1937), Mr. Chief Justice Grimes, speaking for this Court, held *inter alia*:

"American law writers commenting on the constitutional provision, which, in ours, would seem to be stronger because, as aforesaid, of the inclusion of the word "privilege," have agreed on the following as far as our examination of sundry authors goes:

"The term 'due process of law' is synonymous with law of the land.' The constitution contains no description of those processes which it was intended to allow or forbid, and it does not even declare what principles are to be applied to ascertain whether it be due process. But clearly it is not left to the legislative power to enact any process which might be devised. 'Due process of law' does not mean the general body of the law, common and statute, as it was at the time the constitution took effect. It means certain fundamental rights, which our system of jurisprudence has always recognized. *The constitutional provisions that no person shall be deprived of life, liberty, or property without due process of law extend to every governmental proceeding which may interfere with personal or property rights, whether the proceeding be legislative, judicial, administrative, or executive, and relate to that class of rights the protection of which is peculiarly within the province of the judicial branch of the government. . . .*

"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.' Somewhat 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 it means, 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" (emphasis supplied).

In accord: *Howard v. Republic*, 8 LLR 135, 138 (1943); *Mulba v. Dennis*, 22 LLR 46, 49-50; *IBM v. Tulay*, 33 LLR 105, 112 (1985); *Wilson v. Firestone*, 34 LLR 134, 1434 (1986); *The Middle East Trading Company v. Chase Manhattan Bank*, 34 LLR 419, 429-430 (1986); *Express Printing House, Inc. v. Reeves*, 35 LLR 455, 464 (1988); *Heirs of the Intestate Estate of S. B. Nagbe, Jr. v. The Intestate Estate of S. B. Nagbe, Sr.*, opinion of the Supreme Court, March Term, 2001; *Dweh v. The National Transitional Legislative Assembly*, opinion of the Supreme Court, decided August 2, 2005.

The respondent/appellant, in its bill of exceptions, in its brief and argument before this Court, has relied on several sections of the Liberia Telecommunications Act (2007) and the Administrative Procedure Act. Among the sections of the Liberia Telecommunications Act (2007) is section 78.2. We have already declared this section, in so far as it authorizes the Liberia Telecommunications Authority to enforce its order without a court order, unconstitutional.

The respondent/appellant has relied, also, on section 20(1) of the Liberia Telecommunications Act (2007). The section provides:

"The [Liberia Telecommunications Authority] may amend, modify, suspend or revoke a license (a license 'change') if

"a. the change has been requested or agreed to by the licensee;

"b. the licensee has been in breach of a material license condition, this Act, a regulation, rule or order;

"c. changes to international treaties, commitments, recommendations, standards of the laws of Liberia require the change; or

"d. The [Liberia Telecommunications Authority] decides that the change is required to implement this Act in a manner consistent with the objectives listed in section 3."

Section 3 of the Liberia Telecommunications Act (2007) provides:

"If the [Liberia Telecommunications authority] implements a license change pursuant to this section, it shall provide the licensee with sufficient time to implement any other changes needed to comply with the license change."

The respondent/appellant may not rely on this provision of the Liberia Telecommunications Act (2007) because the Liberia Telecommunications Authority's Enforcement Order no. 001 did not "amend, modify, suspend or revoke" a license which had been granted to the petitioner/appellee; rather, the Authority's Enforcement Order no. 001 commanded the Ministry of Justice and all law enforcement agencies of the Republic of Liberia "to seal the premises of the West Africa Telecommunication, Inc. Offices located and situated in Congo Town, Montserrado County, to ensure that all of its equipment are turned off and shut down and that the West Africa Telecommunications cease and desist from further operation until it has complied with the orders of the [Liberia Telecommunications Authority]."

The respondent/appellant has relied, also, on section 82.10(1) & (2) of the Administrative Procedure Act. Section 82.10(1) & (2) of the Act provides.

"1. Scope of application. Subject to the limitations contained in paragraph 2 of this section, all contested matters shall be conducted in conformity with this chapter *except as otherwise expressly provided by statute or regulation applicable to a particular agency*.

"2. Application to subsequent proceedings. Subject to the limitations contained in paragraph 1 of this section, this chapter shall apply to all agency proceeding not expressly exempted, which are hereafter commenced, and to all further proceedings in pending cases, except to the extent that the agency determines that application in a particular case would not be feasible or would work injustice, in which event the former procedure applies" (emphasis supplied).

We take judicial notice of section 82.10(1) & (2) of the Administrative Procedure Act. We hold, however, that the clause "except as otherwise expressly provided by statute or regulation applicable to a particular agency" must be consistent with "due process of law." Any legislation which does not accord an aggrieved party the constitutional right of "due process of law" is unconstitutional, and any act by an administrative agency, including the Liberia Telecommunications Authority, which does not guarantee this constitutional right is illegal.

"It is reasonable . . . to presume that the Legislature . . . when it . . . grants powers in a statute . . . intends them to be exercised properly and not in such a manner as to flout due process." *Ayad v. Dennis*, 23 LLR 165, 180 (1974).

The respondent/appellant has relied, also, on section 82.7.3 of the Administrative Procedure Act. The section provides.

"Procedure prior to withdrawal, suspension, revocation or annulment. No

revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, summary suspension of a license may be ordered pending proceedings for revocation or other action. *These proceedings shall be promptly instituted and determined*" (*emphasis supplied*).

We have emphasized the last sentence of this section: "These proceedings shall be promptly instituted and determined." In order for the respondent/appellant to benefit from section 82.7.3 of the Administrative Procedure Act, the respondent/appellant was under a duty to have "promptly instituted" proceedings. This was not done, and the only reason is that the respondent/appellant, having issued its Enforcement Order no. 001, determined it was under no legal duty to comply with the provision of section 82.7.2 of the Administrative Procedure Act.

As we held, in relation to section 20(10) of the Liberia Telecommunications Act (2007), we hold that the respondent/appellant may not rely upon this provision of the Administrative Procedure Act for the section provides for the "procedure prior to withdrawal, suspension, revocation or annulment of any license." The respondent/appellant has neither "withdrawn, suspended, revoked nor annulled" any license granted by the respondent/appellant to West Africa Telecommunications, Inc.; for the respondent/appellant has maintained throughout this appeal that the Liberia Telecommunications Authority has not granted a license to the petitioner/appellee.

Before concluding this opinion, we refer to section 81 of the Liberia Telecommunications Act (2007) on judicial review. The section provides:

"Any party dissatisfied with any decision, order or other exercise of authority by the [Liberia Telecommunications Act (2007)] pursuant to the Act may take an

appeal by filing a petition for review in the Circuit Court.

"Any petition for judicial review shall be brought within sixty (60) days as the date of the [Liberia Telecommunications Act's] decision, order or other exercise of authority that give rise to the petition.

"A petition for judicial review, once filed, shall stay all further proceedings and/or actions in the matter until a final determination thereof is made."

We hold that this provision, consistent with due process of law, mandates that the aggrieved party will be afforded the opportunity to be heard at a hearing, and that following the hearing and a decision, order or other exercise of the authority of authority by the Liberia Telecommunications Authority, the aggrieved party may take advantage of the provision of this section. In the absence of a hearing, the petitioner/appellee was justified in filing a petition for the writ of prohibition, and Justice Ja'Neh, presiding in Chambers, was justified in ordering that the petitioner/appellee be allowed to file a petition for judicial before the Civil Law Court.

In view of the foregoing, the judgment of the Civil Law Court is hereby affirmed. Costs are ruled against the respondent/appellant. The Clerk of this Court is ordered to send a mandate to the Civil Law Court for Montserrado County commanding the judge presiding therein to resume jurisdiction over this matter, and to give effect to this decision. It is so ordered.

Judgment affirmed.

G. Wiefueh Alfred Sayeh, General Counsel, in association with Henry Reed Cooper of Cooper & Togbah Law Offices for appellant. H. Varney G. Sherman and Betty Lamin-Blamo of Sherman & Sherman, Inc. for appellee.