The **National Democratic Party of Liberia (NDPL)** by and thru its Acting Chairman, J. Hodo Merriam and Hon. **Isaac W. Nyenabo, II,** President Pro Tempore of the Honorable Liberian Senate, all of the City of Monrovia, Liberia PETITIONERS VERSUS The Honorable **Liberian Senate**, represented by Senators Abel Momolu Massalay, Lahai Lassana, Jewel Howard Taylor, Gbezohngar Findley, Adolphus Dolo, Prince Y. Johnson, Mabutu Nyenpan, Daniel F. Neetahn and other Senators Acting under their control, the Clerk of Honorable Liberian Senate or his designee of the same address RESPONDENTS

PETITION FOR A WRIT OF PROHIBITION. PETITION GRANTED

HEARD: December 9, 2008 DECIDED: December 18, 2008

MR. JUSTICE KORKPOR, Sr. DELIVERED THE OPINION OF THE COURT

This is a petition for the writ of prohibition filed by the National Democratic Party of Liberia (NDPL), by and thru its Acting Chairman, J. Hodo Merrian, and Honorable Isaac W. Nyenabo II, President Pro Tempore of the Honorable Liberian Senate, against the group of Senators within the Honourable Liberian Senate led by Senator Lahai Lansannah.

The petitioners stated in their petition that co-petitioner Honorable Isaac W. Nyenabo, II was elected Senator of Grand Gedeh County on the ticket of the National Democratic Party of Liberia (NDPL) during the 2005 general elections; that he was later elected by his fellow members of the Senate as President Pro Tempore of the Liberian Senate in keeping with the Constitution of Liberia and Rules of the Liberian Senate, and that co-petitioner Isaac Nyenabo had served in the capacities as Senator of Grand Gedeh County and Senate Pro Tempore of the Liberian Senate from January 2006, up to and including August 5, 2008, when the respondents disrupted his function as President Pro Tempore of the Liberian Senate by suspending him from office.

The petitioners relied on **Article 47 of the Liberian Constitution** (1986), as the basic authority for filing this petition and contended that the suspension of co-petitioner Isaac W. Nyenabo has no support in the law.

They filed this petition for the writ of prohibition, praying this Court to prohibit and restrain the respondents from exercising functions ascribed to the office of President

Pro Tempore of the Liberian Senate and restore co-petitioner Isaac Nyenabo to his position as President Pro Tempore of the Liberian Senate.

Upon the filing of the Petition, our distinguished colleague, Madam Justice Jamesetta Howard-Wolokolie, presiding in Chambers, cited the parties to two conferences, during which she paused' to allow them time to confer and discuss, and try to resolve the matter. It appears that after a period of about one month the parties did not reach any amicable resolution of the matter. The Chambers Justice then ordered the issuance of the alternative writ of prohibition and forwarded the matter to the attention of the Full Bench of the Supreme Court due to the constitutional nature of the issues raised in the petition. In the alternative writ issued, the Justice in Chambers ordered included, an order for the parties to return to status quo ante, that is, for the co-petitioner, Isaac Nyenabo to be reinstated to his position as President Pro Tempore of the Liberian Senate pending the determination of the petition for the writ of prohibition by the Full Bench of this Court.

On September 29, 2009, the petitioners filed a bill of information, bringing to the attention of the Supreme Court that the respondents have failed to reinstate co-petitioner Isaac Nyenabo to his position as Senate Pro Tempore of the Liberian Senate pending the conclusion of the petition for writ of prohibition in keeping with the order contained in the alternative writ of prohibition.

On October 4, 2008, the respondents, through their lawyers, Counselors Theophilus C. Gould, Sr., and Scheaplor R.Dunbar, filed returns to the petition for the writ of prohibition. On the same day, they also filed returns to the bill of information filed by the petitioners.

Counts 9, 10, 12, 13, 15, and 16 of the returns to the petition for the writ of prohibition which we consider relevant for the disposition of this matter are quoted below:

"9. And also because as to count (6) of the Petition, Respondents say that the meeting that led to the suspension of Senator Nyenabo was legitimate and within Constitutional confines and all actions taken including, conformation, the passage of acts and his suspension were legitimate legislative business. Count (6) of the petition should therefore be ignored and the entire petition dismissed and respondents so pray."

"10. Respondents submit that Senator Nyenabo's suspension was not the first time an elected officer of the Senate had been suspended. The Chairperson on Executive, Senator Gloria Scott, The Chairperson on Rules and Order, Senator Clarice Jah among others were suspended during sessions presided over by the suspended Senate Pro Temp, Senator Nyenabo. Your Honors are respectfully requested to take judicial notice of the minutes of those sessions which are hereto attached and marked Exhibit "Rl2 in bulk" to form a cogent part of respondents return.

"12. Further to count (10) above, respondent deny that they have violated any standing rule of the Senate. To the contrary, the respondents have complied not only with the standing rules but the Constitution of the Republic of Liberia. Count (7) of the petition should be ignored and the entire petition dismissed and respondents so pray."

"13. And also because as to count (8), respondents say that while the Constitution of the Republic of Liberia does not provide for suspension of an official of the Senate, the Senate itself by practice and precedence has determined that acts of impropriety committed by its members should at times be punishable by suspension. Respondents maintain counts (9 & 10) above and pray that Your Honor will ignore count (8) of the petition and deny the entire petition."

"15. And also because as to count (9) of the petition, respondents say and maintain that the 1986 Constitution of the Republic of Liberia provides at article (33) that: "A simple majority of each House shall constitute a quorum for the transaction of business, but a lower number may adjourn from day to day and compel the attendance of absent members. Whenever the House of Representatives and the Senate shall meet in joint session, the presiding officer of the House of Representatives shall preside." Accordingly, a simple majority of the members of the Senate transacted and arrived at the suspension of the PRO TEMP of the Senate. The act, therefore, was constitutional for which prohibition will not lie."

"16. Further to count (14) above, respondents say that the Rule of the Senate, section (10.1) provides thus: " A simple majority of the Senate who have been duly seated shall constitute a quorum for the transaction of business and a decision of a two-third (2/3) of said quorum shall be binding." Your Honor, the language is clear to the effect that the said quorum numerically relate to sixteen, (16) Senators and decision of two-thirds ( 2/3) of said quorum is binding. Certainly, (13) is more than two-thirds of sixteen and hence the decision to suspend Co-petitioner is binding. Count (9) of

the petition should be ignored and the entire petition dismissed and respondents so pray."

We quote counts 2, 3, 4, and 5 of the respondents' returns filed to the bill of information.

"2. Also because as to count (2) of the bill of information, respondents contend that the paragraph in the writ: "YOU ARE FURTHER COMMANDED to instruct the Respondents herein to restore the Petitioner, Isaac W. Nyenabo, Senate Pro Tempore, to his position as of the date of the issuance of this Writ and pending the hearing and determination of this matter by the Supreme Court en bane:" is in abrogation of the 1986 Constitution of the Republic of Liberia, specifically article (20); due process. Respondents submit that the within quoted paragraph has the weight of an opinion and at no time had the Honorable Supreme Court heard the matter to determine whether or not the Co-informant, Senator Nyenabo was given due process.

"3. Further to count (2) above, Respondents say that under the doctrine of separation of powers, neither branch can INSTRUCT the other as to what to do within its scope. Respondents submit that the Honorable Supreme Court can interpret laws and determine whether or not any of the other branches has adhered to the principle of "Due Process" and this determination is made after a hearing and not prior to. Respondents say that count (2) of the bill of information should be ignored and the entire bill of information dismissed and respondents so pray."

"4. And also because as to count (2) of the information, Respondents say that when the Writ was served and signed for, the Senate had debated its agenda and was closing thus making it impossible to discuss the issue of reinstating the suspended Pro Temp which was not part of the agenda. Respondents submit that it is only a message from the President or the House of Representatives which may be received at any time. Your Honors are respectfully requested to take judicial notice of Rule 38 of the Rules of the Senate."

5. And also because as to count (3) of the information, respondents say that under the rule of the Senate which acts by resolutions and motions, an issue intended to be discussed shall lie over one day for consideration and in the case of a privilege motion, two-thirds of the Senators present is required. In the instant case neither was a resolution laid for a day nor did the movant obtain the two-thirds for the placing

the issue on the agenda. Your Honors are respectfully requested to take judicial notice of Rules "35 section 6" and "17 section 2."

On October 8, 2008 Counselor Scheaplor Dunbar, one of the lawyers representing the respondents filed a notice with the Chief Clerk of this Court informing us that he has withdrawn his representation of the respondents.

Five days thereafter, that is to say on October 13, 2008, the other lawyer representing the respondents, Counselor Theophilus C. Gould, also filed a notice of withdrawal, terminating his representation of the respondents.

Under our law, a lawyer's withdrawal from a client's matter is done with leave of Court. This means that before Counselor Dunbar or Counselor Gould could be considered as having properly withdrawn representation from the respondents' case, this Court must give approval. The notice of assignment to hear argument in the writ of prohibition slated for November 4, 2008 at 9:00 a. m. was therefore served on the two lawyers. The lawyers appeared in Court at the scheduled time and informed this Court that they had decided not to continue their representation of the respondents because "the case has become political."

Meanwhile, a letter from the Liberian Senate under the signature of Mrs. Jannave V. Massaquoi, Acting Secretary of the Liberian Senate, in connection to this matter was brought to our attention by the Chief Clerk this Court. The letter reads:

"The Liberian Senate
CAPITOL BUILDING, MONROVIA, LIBERIA
WEST AFRICA"

November 4, 2008

The Honourable Supreme Court of Liberia
Justice in Chambers
Capitol Hill
Monrovia, Liberia

Dear Justice Wolokolie:

"I present my compliments and wish to officially inform Your Honor through this medium that the Liberian Senate does not in any way, intend to disobey the

instruction by the Honorable Supreme Court of Liberia through its Justice in Chambers, Justice Wolokollie, since the issuance of the instruction to reinstate Senator Isaaw W. Nyenabo, II, the Liberian Senate has been holding series of consultations as to how it goes about upholding the rule of law without bridging Article 40 of the Liberian Constitution.

More beside, the difficulties in reinstating Sen. Nyenabo at this point in time stands from the fact that no one or one group of senators has the right to sit outside of plenary to reverse a decision that was reached by Plenary of the Liberian Senate during its regular session.

In order to reverse such a decision so as to satisfy the instruction of the Supreme Court through its Chambers Justice, the Plenary of the Liberian Senate will have to legally convene.

Notwithstanding, we also wish to bring to your attention that our lawyers have written us withdrawing from this matter due to reasons best known to themselves.

The Liberian Senate interposes no objection to the withdrawal of these lawyers in keeping with their rights to affiliate or not to. We are however, appealing to the Supreme Court through its Justice in Chambers to afford the Senate the opportunity to obtain the services of new lawyers who will represent its legal interest before the full bench.

Please accept, Justice Wolokolie, the renewed assurances of my highest consideration and esteem.

Kind regards,
Respectfully yours,

Jannave V. Massaquoi (Mrs.)
ACTING SECRETARY, LIBERIAN SENATE"

This Court granted leave for the two lawyers to withdraw their representation of the respondents, especially so since the Honorable Senate indicated that it interposed no objection for the lawyers to withdraw from the case. We also granted the request of the Senate for time to find new lawyers and the matter was re-assigned for November 12, 2008. The Clerk of this Court was instructed to inform the Honorable Liberian Senate accordingly.

At the call of the case on November 12, 2008 at 9:00 a.m., the Chief Clerk of this Court brought to our attention another letter from the Honorable Liberian Senate under the signature of Mrs. Jannave V. Massaquoi, Acting Secretary, Liberian Senate. The letter reads:

since the issuance of the instruction to reinstate Senator Isaaw W. Nyenabo, II, the Liberian Senate has been holding series of consultations as to how it goes about upholding the rule of law without bridging Article 40 of the Liberian Constitution.

More beside, the difficulties in reinstating Sen. Nyenabo at this point in time stands from the fact that no one or one group of senators has the right to sit outside of plenary to reverse a decision that was reached by Plenary of the Liberian Senate during its regular session.

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ACTING SECRETARY, LIBERIAN SENATE"

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objection for the lawyers to withdraw from the case. We also granted the request of the Senate for time to find new lawyers and the matter was re-assigned for November 12, 2008. The Clerk of this Court was instructed to inform the Honorable Liberian Senate accordingly.

At the call of the case on November 12, 2008 at 9:00 a.m., the Chief Clerk of this Court brought to our attention another letter from the Honorable Liberian Senate under the signature of Mrs. Jannave V. Massaquoi, Acting Secretary, Liberian Senate. The letter reads:

"The Liberian Senate C
APITOL BUILDING MONROVIA, LIBERIA
WEST AFRICA"

"November 10, 2008

Justice Jamesetta Howard-Wolokolie
Justice in Chambers
Supreme Court of Liberia
Republic of Liberia
Capitol Hill Monrovia, Liberia

Dear Justice Wolokolie:
I present my compliments and by directive of the Honorable Liberian Senate, write to express thanks to the Honorable Supreme Court of Liberia for granting the request to afford the Liberian Senate the opportunity to obtain the services of new lawyers to represent its legal interest in the case between it and the National Democratic Party of Liberia (NDPL), by and thru its Acting Chairman J. Hodo Merrian and Hon. Isaac W. Nyenabo, II, suspended President Pro-Tempore of the Honorable Liberian Senate.

I write to also acknowledge receipt of your citation dated November 5, 2008 which was received on November 7, 2008 thus reassigning said case for Wednesday, November 12, 2008 at 9:00 a.m.

The Liberian Senate has further instructed me to again appeal to you for further extension of the reassignment of said case to the first Wednesday in December (December 3, 2008) which will afford the Senate the opportunity to retain new

lawyers who will have adequate time to study the case and represent the Senate's legal interest in the case at bar.

Indeed, the Senate respects the Honorable Supreme Court of Liberia and will appear before it as appealed for on December 3, 2008, and the Senate's appreciation is heretofore in advance to the Supreme Court for granting its newest request.

Please accept, Justice Wolokolie, the renewed assurances of my highest consideration and esteem.

Respectfully yours,

Jannave V Massaquoi (Mrs.)
ACTING SECRETARY, LIBERIAN SENATE"

Again, this Court granted the request of the Honorable Liberian Senate for postponement into the hearing of this matter. The Clerk of this Court was instructed to inform the Senate of this Court's decision granting the request for postponement and to further inform the Senate that should its lawyer(s) fail to appear for the hearing of the case on December 3, 2008, the date requested by the Senate, the applicable law(s) made and provided will be applied and the matter proceeded with.

Due to the funeral of Senator Isaac Johnson of River Gee County on December 3, 2008, which funeral was attended by members of the Senate as well as members of the Supreme Court, the matter was re-assigned for December 8, 2008, at 9:00 a.m. The respondents were duly informed of the changed date for the hearing of the matter.

Prior to the hearing date of the case on December 8, 2008 the Senate wrote yet another letter requesting the postponement of this matter to December 19, 2008. Due to our position that the matter will be proceeded with should lawyers for the respondents fail to appear, the Senate wrote another letter which we also quote:

"The Liberian Senate
CAPITOL BUILDING, MONROVIA, LIBERIA
WEST AFRICA

December 8, 2008

The Honorable Supreme Court of Liberia
Capitol Hill
The Republic of Liberia

Your Honors:
I have the honor and by directive of the Honorable Liberian Senate to present compliments to the Honorable Supreme Court of Liberia for the cordial working relationship that continue to subsist between the two branches of government-the Judiciary and the National Legislature.

May it please your honors, to note that since the withdrawal of our lawyers from the case between the Senate and the National Democratic Party of Liberia (N.D.PL.), by and thru its Acting Chairman, J. Hodo Murrain and Senator Isaac W. Nyenabo, II suspended Pro-Tempore, the Liberian Senate has been finding it very difficult to obtain the services of new lawyers to represent its legal interest before the Honorable Supreme Court of Liberia.

Our request to give a period of two weeks which was up to the 19 th of December 2008 would have afforded us the opportunity to hire a qualify lawyer, a request which was turned down by your honors thus assigning the case for the 9 th of December 2008.

In order to be accorded proper representation, the Liberian Senate wishes to request the assistance of the Honorable Supreme Court of Liberia in providing the Liberian Senate with qualify lawyers who will represent the legal interest of the Senate as you re-assign the case for hearing on December 9 th 2008. Please accept the renewed assurances of my highest consideration and esteem.

Kind regards.

Sincerely yours,
Jannave V. Massaquoi (Mrs.)
ACTING SECRETARY LIBERIAN SENATE, R. L."

We did not grant the request of the Honorable Liberian Senate contained in its foregoing letter for this Court to provide the respondents "qualify lawyers" to represent the interest of the respondents because under our law, such request is only cognizable in a criminal matter in a Circuit Court. **Section 2.1 (4), 1LCL Revised, Criminal Procedure Law provides:**

"In all cases where the crimes charged are triable only in the Circuit Court, at any time when an accused advises that he is financially unable to retain legal counsel and that he desires to have legal counsel assigned to represent him, as soon after his request as practicable, he shall be brought before the court then having jurisdiction over him to decide whether the county Defense Counsel shall be assigned to represent him. If the court is satisfied after appropriate inquiry that the accused is financially unable to retain legal counsel, it shall assign the county Defense Counsel to represent him, and the accused shall be allowed reasonable time and opportunity to consult privately with such counsel before any further proceedings are had. Counsel so assigned shall serve without cost to the accused and he shall have free access to the accused, in private, at all reasonable hours while acting as legal counsel for him. The assignment of Defense Counsel shall not deprive the accused of the right to engage other legal counsel in substitution at any stage of the proceedings."

The matter before us is not a criminal matter triable in a circuit court, neither are the respondents in the category of poor and indigent persons in the contemplation of the law. We hold, therefore, that there is no justification for this Court to provide legal counsel to represent the legal interest of the respondents as requested.

We did not grant, also, the request for this Court to continue to postpone this matter as the respondents urged upon us. This is a petition for the writ of prohibition. Our law requires that when a petition for the writ of prohibition comes before the Full Bench of this Court, it "...shall be heard and determined immediately, in or out of term." Reliance: **Section 16.26, 1 LCL Revised, Civil Procedure Law.**

From the facts and circumstances of this case, it is clear that this prohibition matter has already been before this Court for a long period. This is against the intent and spirit of the law quoted above. The co-petitioner, Senator Isaac W. Nyenabo, was suspended from his position as President Pro Tempore on August 5, 2008; the petitioners filed this petition for the writ of prohibition on August 19, 2008 and the Justice in Chambers issued a citation on August 20, 2008 for the parties to appear on September 1, 2008 for a conference. The records show that another conference was had with the parties on September 5, 2008. At the end of the second conference on September 5, 2008, the Chambers Justice decided to withhold action or decision to issue or not to issue the alternative writ of prohibition and allow the parties, with the aid, advice, and guidance of their lawyers, to engage in consultations and negotiations with a view to work out an amicable solution to the problem within the ranks and files of the Senators. When the parties could not arrive at any amicable agreement,

the Chambers Justice ordered the alternative writ of prohibition issued on September 23, 2008, and the case was then transferred to the Full Bench of this Court because of the constitution issues involved.

On taking over this case, the Full Bench of this Court has exercised due diligence and caution to ensure that all parties in this matter involving members of the upper house of the "first branch" of our Government are accorded the deserved accommodation under the law. Frankly, we had wished that this matter was amicably resolved at the conference level before the Justice in Chambers without our intervention. Whenever this Court has had the occasion to decide cases involving members of another branch of government, especially the Legislative Branch, it has always done so cautiously and even reluctantly, against the background of the doctrine of separation of power. But this Court cannot and will not shy away from performing its constitutional responsibility of hearing and deciding such cases if it has to, like as in the case before us.

Article 66 of the Constitution provides: **"**The Supreme Court shall be the final arbiter of constitutional issue and shall exercise final appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies, autonomous agencies or any other authority, both as to law and fact except cases involving ambassadors, ministers, or cases in which a county is a party. The Legislature shall make no law nor create any exceptions as would deprive the Supreme Court of any of the powers granted herein."

So, after several requests for postponements, all at the instance and in favor of the respondents, this Court decided not to grant any further requests for postponements, as to continue to do so would prejudice the right of one party, in this case, the petitioners. Under our rule, as well as the rules of subordinate courts, where a party receives a notice to appear in respect of a matter but fails to do so, the court will proceed with the matter in the interest of justice.

We consolidated the petition for the writ of prohibition and the bill of information. The lawyers representing the petitioner waived oral argument and submitted the case for our ruling. The law requires that the issues in a probation matter be narrowly drawn and only questions that are necessary to a decision may be considered. **Section 84, 63c AMJUR 2d, Scope of hearing; determination of issues by superior court.**

Therefore, the basic issue we will decided in this petition for the writ of prohibition is whether or not the suspension of co-petitioner Isaac W. Nyenabo as President Pro Tempore of the Liberia Senate by the respondents is supported by law. We will address, also, the issue of the failure of the respondents to carry out the mandate of the Chambers Justice to have the co- petitioner, Isaac W. Nyenabo reinstated to his position of President Pro Tempore of the Liberian Senate pending the disposition of the writ of prohibition by the Full Bench of the Supreme Court.

Article 47 of the Liberian Constitution (1986) provides:

"The Senate shall elect once every six years a President Pro Tempore who shall preside in the absence of the President of the Senate, and such other officers as shall ensure the proper functioning of the Senate. The President Pro Tempore and other officers so elected may be removed from office for cause by resolution of a two-thirds majority of the members of the Senate".

The position of the petitioners is that the wording of this constitutional provision quoted above is clear and unambiguous, and as such, that the removal of co-petitioner Isaac W. Nyenabo from his position as President Pro Tempore of the Liberian Senate was contrary to the law cited. The petitioners argued that the removal did not meet the standard set by the Constitution; and the proponents of the removal did not attain the required number of 20 votes to have effected the removal consistent with the law controlling.

The respondents, on the other hand, contended that the act of suspending the President Pro Tempore of the Senate was not a removal. The respondents relied on Article 33 of the Constitution of Liberia (1986) and Rule 10.1 of the Senate Rule as the basis for suspending the co-petitioner, Isaac Nyenabo.

The question that arises is whether a suspension can be equated with removal?

The word **removal** is defined as "the act or process of removing; the fact of being removed. Then, the word **remove** is defined as: 1 (a). "To change the location, position, station, or residence of. (b.) To transfer from one court to another. 2.) To move by lifting, pushing aside, or taking off. 3) To dismiss from office. 4) To get rid of, eliminate, **Merriam-Webster Collegiate Dictionary, Eleventh Edition (2003).**

On the other hand, the word **Suspension** is defined as (1) " the act of suspending; (a) temporary removal ( as from office or privileges); (b) temporary withholding (as of

belief or decision); ( c) temporary abrogation of a law or rule. And the word **Suspend** is defined as (1) to debar temporarily, esp. from a privilege, office, or function. (2) to cause to stop temporarily; (b) to set aside inoperative; (3) to defer to a later time on specified conditions. (4) to hold in an undetermined or undecided state awaiting further information. **Merriam-Webster Collegiate Dictionary, Eleventh Edition (2003).**

We hold that from the definitions of these terms, no matter what the respondents called or referred to their action, the fact of the matter is that the President Pro Tempore was removed from office; he was debarred or deprived from exercising the functions and duties pertaining to his office and it is the denial or deprivation of having access to his office that amounts to removal. Whether one uses the word suspend or dismiss, it matters not, for in suspension and dismissal, there is the element of removal. The only difference is that in the case of suspension, the removal is temporary, while in the case of dismissal, the removal is permanent. We hold that once the constitutional requirement for the removal of the President Pro Tempore was not met, the action of the respondents was without legal basis.

The Constitution does not distinguish between whether the removal should be temporary or permanent; it only forbids removal in the absence of two thirds of the membership of the Senate.

There are thirty Senators within the Liberian Senate and two thirds of 30 Senators is 20 of them. The records before us show that the removal in the instant case was effected by only 13 Senators.

The respondents maintained that the Constitution of Liberia (1986) provides at Article (33) that:

"A simple majority of each House shall constitute a quorum for the transaction of business, but a lower number may adjourn from day to day and compel the attendance of absent members. Whenever the House of Representatives and the Senate shall meet in joint session, the presiding officer of the House of Representatives shall preside."

According to the respondents, a simple majority of the members of the Senate met, transacted and arrived at the decision suspending the President Pro Temp of the Liberian Senate; therefore, the action of the Senate was lawful.

We disagree with the respondents. We hold that the quorum, which consists of a simple majority of the Senate as provided for under Article 33 of the Constitution is intended for the day-to-day operation of that body so that the nonattendance of Senators cannot be a hindrance of the normal workings of the Senate. But when it comes to the question of removing the Senate Pro Tempore from his position, Article 47 of the Constitution provides the proper legal authority.

We do not believe that the intent of the framers of the Constitution was to have less than half of the membership of the Senate, 13 in this case, to pass on the grave matter of removing a President Pro Tempore, when in the process of electing him the required number is higher than that. The last sentence of Article 47 reads: "The President Pro Tempore and other officers so elected may be removed from office for cause by resolution of a two-thirds majority of the members of the Senate". This constitutional provision does not refer to two thirds of any quorum of the Senate.

It is the Standing Rules of procedure adopted by the Senate to ensure the smooth running of the affairs of that august body that has provision for quorum.

On this point we say, first of all, that the Senate Rules are not on par with the Constitution. The Constitution is the organic and supreme law of the land. Whenever and wherever there are differences between provisions of any rule and provisions of the Constitution, the Constitution will always prevail or take precedence. This Court is aware that the Liberian Senate has the right and power to make its own rules of procedure to govern its operations, but those rules cannot be in conflict with the Constitution. Reliance: **Republic of Liberia v. The Leadership of the Liberian National Bar Association,** 40 LLR 635 (2001) text at 650-651.

In the instant case, the Constitution provides for two thirds of the membership of the Senate, that is, not less than twenty (20) votes, to be obtained for the removal of the President Pro Tempore. As stated above the Constitution talks about removal and does not distinguish between temporary removal (suspension) and permanent removal (dismissal), it only says removal. Therefore, any form of removal, or anything that has the semblance and effect of deprivation from functioning in the position and office of the President Pro Tempore must meet the constitutional threshold.

Secondly, we note that the rules which the respondents relied on do not provide anything on suspension. In fact, there is no mention of the word suspension in the entire rules. So even if the respondents had obtained the required number of votes, they still could not rely on their own rules as the basis for the suspension because the

rules do not provide for suspension. We note further, that the rules are also silent on what offenses are punishable by suspension.

In the alternative writ of prohibition ordered issued by the Justice in Chambers, the respondents were ordered to restore the co-petitioner, Isaac Nyenabo, to his position of as President Pro Tempore of the Senate as of the date of the issuance of the writ and pending the determination of the prohibition. They have not reinstated co-petitioner Isaac W. Nyenabo to his position as President Pro Tempore, even up to and including the delivery of this opinion on today.

Due to the refusal of the respondents to carry out the orders from the Chambers Justice, the petitioners filed a bill of information before the Supreme Court bringing to the attention of the Court the disrespect shown by the respondents to the order of the Chambers Justice. The respondents filed their returns to the bill of information.

In their returns, the respondents did not deny the contents or averments in the bill of information, but rather defended their attitude in refusing to obey the orders of the Chambers Justice. In the returns, the respondents challenged the legality of the order issued by the Chambers Justice to have co-petitioner Isaac Nyenabo restored to his position as of the date of the issuance of the writ. The respondents contended in their returns that the said order violated Article 20 of the Constitution as regards due process. The second justification or defense set up by the respondents was that when the writ was received by the Secretary of the Senate, the Plenary had already completed debating its agenda for that day, and as such, the writ was not part of the agenda. The respondents further claimed that under the Senate Rules, for an item to be placed on the agenda, it must have been circulated for at least one day in advance, and since the writ did not meet this requirement, it was not placed on the agenda, and as such, not discussed.

On the issue of due process as regards the procedures before the Justice in Chambers, the statute provides that when an application for a remedial writ is made to the Justice in Chambers, that Justice has the discretion to issue a citation for the parties to appear for a conference, or, if the situation presents an urgency, the Justice may issue the alternative writ without a citation. The decision to issue or not to issue the writ is totally within the discretion of the Chambers Justice, and is not subject to review. Further, the statute provides that the Chambers Justice may require the respondents to do or refrain from doing an act or pursuing a course of conduct until a hearing has been held. **Section 16.22 (1), 1 LCL Revised, Civil Procedure Law.**

The Chambers Justice in this was magnanimous in that she issued first the citation, and entertained the parties in two sessions of a conference; it was only after the parties failed to arrive at a common ground or compromise that she ordered the alternative writ issued. The order contained in the writ for copetitioner Isaac Nyenabo to be restored to his position of President Pro Tempore is consistent with the statute that the Justice can include in the writ an order requiring the respondents to do, or to refrain from doing an act until a hearing is had. We hold that the order does not violate Article 33 of the Liberian Constitution as contended by the respondents.

As stated earlier, the respondents did not deny the averment in the bill of information that they had ignored and refused to comply with the orders of the Chambers Justice. Under our law, that which is not denied is deemed admitted. **Section 9.8 (2)& (3) 1 LCL Revised, Civil Procedure Law. All** admissions operate against the party in favor of his adversary. **Civil Procedure Law Chapter 25 Section 25.8, 1 LCL Revised, Civil Procedure Law.**

The respondents contended in the returns to the **bill** of information that when the writ was taken at the Senate, the Senate had already ended debate for the day. The records show otherwise. The writ was issued on September 23, 2008 and was immediately taken to the Capitol Building. It was presented to the Secretary of the Senate, but the writ was refused. The next day, September 24, 2008, the writ was taken back to the Senate. The Secretary of the Senate sought permission from the respondents whether or not to receive and sign for the writ; after the consultations, it was finally received. At that time, the Senate was still sitting; the Senate did not adjourn until September 25 2008. Therefore, it is only logical to conclude that when the Senate received the writ it had not completed its business for the day or adjourned session.

The respondents contended, also, that co-petitioner Nyenabo's suspension was not the first time an elected officer of the Senate had been suspended. According to the respondents, the Chairperson on Executive, Senator Gloria Scott, the Chairperson on Rules and Order, Senator Clarice Jah among others, were suspended during sessions presided over by Senate Pro Temp, Nyenabo. On this point we say that we are not aware of the facts and circumstances of the suspension of other officers of the Honorable Senate, as said suspension was never challenged before this Court.

We have painstakingly reviewed the records in this case and made the foregoing observations to underscore the point that the preservation of the rule of law in our

country is paramount and is everyone's business, especially those of us in high places in government. The rule of law is sine **qua non** for our emerging democracy.

When a mandate is sent by the Supreme Court, including the mandate of the Justice in Chambers to a party litigant, that mandate must be adhered to and complied with, whether or not that party likes or agrees with such mandate. In keeping with **Section 16.22 (1), 1 LCL Revised, Civil Procedure Law,** an interim order from the Chambers Justice is binding on any and all parties to a remedial process. The order is binding on them individually and collectively. To suggest that on receiving an interim order from the Chambers Justice said order will be placed before a forum other than the Full Bench of this Court to deliberate thereon is to further suggest that the order of the Chambers Justice is subject to some outside review. We hold that an interim order from the Justice presiding in the Chambers of this Court can only be reviewed and passed upon by this Court en banc.

We must now comment on the attitude of Counsellors Theophilus C. Gould, and Scheaplor R. Dunbar, two members of the Supreme Court Bar who counseled, advised, encouraged and filed returns to the bill of information on behalf of the respondents, justifying and defending the willful disrespect for this Court. Before granting him leave to discontinue his legal services to the respondents, Counsellor Gould was asked in open court whether he believed in and stood by the returns filed to the bill of information and he answered in the affirmative.

In count 2 of the bill of information filed by Counselors Gould and Dunbar for the respondents they stated that the paragraph in the alternative writ of prohibition which says: "You are further commanded to instruct" the respondents herein to restore co-petitioner Isaac W. Nyenebo to his position as Senate Pro Tempore as of the date of the issuance of this writ pending the hearing and determination of this matter by the Supreme Court en banc" is in abrogation of Article 20 of the 1986 Constitution of Liberia. This contention, as we have stated is not true.

In Count 3 of the returns to the bill of information filed by Counsellors Gould and Dunbar for the respondents, they stated that under the doctrine of separation of powers, "neither branch can instruct the other as to what to do within its scope". In other words the Counsellors have qualms with the Supreme Court instructing their clients what to do. But this Court does not request, advise or suggest that a party litigant carries out an order; this Court, including the Chambers Justice, acts through orders, instructions and mandates to party litigants.

In count 4 of the returns they filed, it is stated that when the writ was served on the Senate, the Senate had debated its agenda and was closing, thus making it impossible to discuss the issue of reinstating co-appellant Isaac W. Nyenabo as President Pro Tempore of the Liberian Senate. As we have shown above, this is not true.

All of these positions taken on behalf of the respondents by Counselors Gould and Dunbar are untenable both in fact and in law. Under **Rule 1, of the Code of Moral and Ethical Conduct of Lawyers,** "it is unprofessional for any lawyer to advise, initiate or otherwise participate directly or indirectly in any act that tends to undermine or impugn the authority , dignity, and integrity of the courts or judges thereby hindering the effective administration of justice". Lawyers practicing before this Court are required to be honest and candid in advising their clients on legal matters and must at all times maintain respect for this Court. It is no candid advice and respect for this Court for a lawyer to impress his client that an interim order from the Chambers Justice violates Article 20 of the Constitution of Liberia, or that this Court cannot "instruct" party litigants in a remedial process what to do and what not to do. No wonder why the order of the Chambers Justice has not been obeyed. While lawyers have the right, duty and obligation to defend their clients, they, at the same time, are arms and officers of court, and thus have a duty to protect and defend the sanctity of the courts and adherence to the rule of law. Any lawyer who aids and abets his client in disobeying the orders of the Supreme Court shall be adjudged guilty in contempt and appropriately punished.

In view of all we have said above, it is our opinion that by relying on Article 33 of the Liberian Constitution as well as on Rule 10.1 of the Senate Rule in removing co-petitioner Isaac Nyenabo from office, the respondents proceeded by the wrong rules. Where a respondent in a prohibition proceeding proceeds by the wrong rules, prohibition will lie. Kiazolu v. Ash-Thompson, 34 LLR 94 (1986); Kpolleh et al. v. Randall et al., 34 LLR 252 (1986)

WHEREFORE, the alternative writ of prohibition issued is granted and the peremptory writ requested is ordered issued. Co-petitioner Isaac Nyenabo is ordered fully restored to his position as President Pro Tempore of the Liberian Senate with all the emoluments appertaining to the said office retroactive as of the date of his suspension. The Clerk of this Court is ordered to send a mandate to the Honorable Liberian Senate informing that body of the ruling of this Court.

For their role in counseling, advising and encouraging the respondents to disrespect this Court, Counselor Theophilus C. Gould, Sr. and Counselor Scheaplor R. Dunbar

are adjudged guilty of contempt. They are each fined the amount of Three Hundred United States Dollars (US$300.00) to be paid into government revenue within seventy-two hours. Should the Counselors fail to pay this fine and in the time specified, the Clerk of this Court will issue an arrest order along with a commitment and place same in the hands of the Marshall of this Court to have them arrested and imprisoned at the Central Prison until the amount is paid. AND IT IS HEREBY SO ORDERED.