THE REPUBLIC OF LIBERIA, by and thru the Minister of Justice and Attorney General, and Prosecuting Attorneys of the City of Monrovia, Liberia, Petitioner, v. THE LEADERSHIP OF THE LIBERIAN NATIONAL BAR ASSOCIATION OF THE REPUBLIC OF LIBERIA, by and thru its President, J. EMMANUEL WUREH, and all Executive Members, Respondents.

PETITION FOR THE ISSUANCE OF THE WRIT OF MANDAMUS.

Heard: October 29, 2001. Decided: December 21, 2001.

1. The Liberian Constitution grants absolute immunity from any government sanctions or interference to lawyers in the performance of legal services and prohibits them being prevented from or punished for providing legal services regardless of the charges against or the guilt of their clients.

2. The Liberian Constitution contemplates that legislative contempt shall be for only those actions which obstruct legislative functions or which obstruct or impede members or officers of the Legislature from discharging their legislative duties.

3. Contempt of the Legislature may be punished by the House concerned by reasonable sanctions after a hearing consistent with due process.

4. No person shall be deprived of life, liberty, security of the person, property, privilege, or any other rights except at the outcome of a hearing and judgment consistent with provisions laid down in the Constitution and in accordance with due process of law.

5. Due process of law is defined as the opportunity to appear before a competent tribunal: notice, actual and constructive; an opportunity to appear and produce evidence; to be heard by counsel, in person, or both; and service of process or otherwise submission to the jurisdiction of the tribunal.

6. The fundamental constitutional right to due process extends to every governmental proceeding which may interfere with personal or property rights.

7. A claim of any violation of the constitution by any person or authority, including the Legislative and Executive Branches of the Government, is justifiable and the Supreme Court is the proper forum for adjudicating and determining whether or not such violation has occurred.

8. When an application for a remedial writ raises any constitutional issue, the Justice presiding in chambers, to whom it is made, shall refer the application to the full bench for consideration and determination.

9. Constitutional issues shall not be drawn into consideration collaterally unless the consideration is necessary to the determination of the point in controversy.

10. The Supreme Court will pass on the issue of unconstitutionality with caution and reluctance.

11. Where there is a lack of the court's involvement in passing upon a constitutional issue, or where the constitutional question is not properly before the court, or where the litigant has abandoned a question involving a constitutional issue, the court will not pass on it.

12. Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty or ministerial functions.

13. The Supreme Court will pass on only those issues which in its opinion are determinative of the controversy and as such need not pass on every issue raised before it.

14. Both prohibition and "In re" proceedings have been employed by the Supreme court to determine the constitutionality of either a law, act or conduct of the Legislative and Executive branches of the government.

15. The Legislature has no power to enact law or conduct itself in a manner that is in violation of the Constitution.

16. The Constitution is supreme to legislative enactments.

17. The Supreme Court's exercise of its inherent power of judicial review and its constitutional power to review and determine the constitutionality of acts and conduct of the other two branches of the government do not infringe on the immunities granted the Legislature and individual legislators by the Constitution.

18. Grievances of the members of the Liberian National Bar Association are clearly justiciable, but the decision to submit the grievances to a court of law is left with the aggrieved parties.

19. As a body corporate, the Liberian National Bar Association can sue and be sued in its own name.

20. The naming of a shareholder, member, director, officer, or employee of a corporation as a party to a suit to represent the corporation is subject to a motion to dismiss if such party is the sole party to sue or defend, or subject to a motion of misjoinder if such party is joined with another party who is a proper party and has been joined only to represent the corporation.

21. The naming of the leadership and executive members of the Liberian National Bar Association as party respondents where the action is against the Liberian National Bar Association is a violation of the cardinal principle of corporation law that officers of a corporation may not he named as party defend-ants/respondents for claims against the corporation, and the law mandates that for such violations the suit is subject to dismissal.

22. Mandamus is a judicial proceeding to coerce the performance of duties devolved by law upon public officials.

23. Where mandamus is sought, the petitioner or relator must have specific legal rights, the enjoyment, protection, or redress of which the discharge of a duty on the part of the respondent is necessary, and the writ of mandamus will not be issued at the instance of one who has no such right.

24. While the writ of mandamus may be issued to compel or enforce private persons or private associations to perform a legal duty owed to another, the petitioner or relator must show that he has a legal right to the enjoyment, protection or redress of which the discharge of a duty by the respondent is necessary.

25. The Republic of Liberia does not have a legally vested right in the legal services and representation that a lawyer gives to his client, the enjoyment, protection, or redress of which the discharge of a duty by the lawyer or the Liberian National Bar Association is necessary.

26. To obtain mandamus the duty to perform an act sought to be performed must be imposed on the respondent by law, and the writ will only issue if there is a clear showing of the existence of such a duty.

27. A lawyer has the right to withdraw from a retainer of a client and a client has the right to terminate the retainer of the lawyer.

28. Mandamus should be resorted to only for the purpose of enforcing the legal duties of a public nature, which arise from a office, station or trust, and are ministerial in character.

29. A ministerial function is one which a person or board performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority without regard to or the exercise of his or their own judgment.

30. The relationship between a lawyer and his client begins with the retainer, which is contractual in nature.

31. Mandamus is not an appropriate remedy for the redress of private contractual rights, and the writ will not he granted to compel a public official, corporation, or other respondent to perform a duty or obligation assumed by contract, as distinguished from one imposed by law.

32. The constitutional provision guaranteeing the protection of contract is designed to prevent the government from interfering with, frustrating, or otherwise impairing private contracts. and not intended for the government to insist that one party performs his side of such private contracts which arc private obligations.

33. The protection and enforcement of contract rights are vested in the judiciary and not in the Executive or Legislative Branches of the Government.

34. Generally, a person must be aggrieved by the conduct of another to be able to bring an action.

35. For every injury there is a relief, but there cannot be a relief where there is no injury.

36. The refusal of lawyers to provide services to their clients does not constitute a violation of the equal protection clause of the Constitution.

37. Equal protection of the law means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property, and in their pursuit of happiness.

38. Equal protection of the law means that no person shall be subjected to any restriction in the acquisition of property. the enjoyment of personal liberty, and the pursuit of happiness which do not generally affect others; that no person shall be liable to others or greater burdens and charges than such as are laid upon others; that no greater or different punishment is enforced against a person for a violation of the law.

Following the verbal exchange of words between the President of the Liberian National Bar Association who in his capacity as a legal practitioner was representing the suspended Speaker of the House of Representative, and the Majority Leader of the House, who was testifying as a witness in proceedings before a House Special Investigative Committee investigating the suspended Speaker, the President of the Liberian National Bar Association was arrested and detained on the charge of contempt of the House. The basis for the contempt charge and the arrest was said to be derogative remarks made by the Liberian National Bar Association President against the House of Representatives.

Thereafter the Montserrado County Local Bar Association and the Liberian National Bar Association, at separate meetings and at different times, resolved that the arrest of the President of the Liberian National Bar Association was arbitrary and without due process of law, and they called for his unconditional release.

The Liberian National Bar Association president was subsequently released, but the President of the Montserrado County Local Bar Association and the Vice President of the Liberian National Bar Association were cited in contempt and instructed to retract the statements issued by their respective organizations and pay a fine of $4,999.99. When the officials refused to comply with the order and were imprisoned as a result thereof, the Liberian National Bar Association resolved that the lawyers boycott the courts and not appear for any case until the officers of the two associations were released from prison.

Growing out of the foregoing the Government of Liberia, acting through the Minister of Justice and Attorney General, filed a petition for a writ of mandamus to compel the Liberian National Bar Association and its officers to call off the boycott and have the members of the Association resume their representation of clients before the courts, contending that the boycott had paralyzed the Judiciary and caused the citizenry to be exposed to insecurity.

The Supreme Court denied the petition, holding that mandamus was not applicable since the duty which the lawyers held to clients was not one imposed by law but by contract, and that the constitutional provision concerning equal protection of the law did not intend to have the state interfere in private contract disputes. The Court opined also that the writ of mandamus was designed to compel the performance of a ministerial function imposed by law and which involved a public function, and that in the instant case the duty of a lawyer to represent a client did not include a ministerial function or a public duty for which the State could seek a performance, the violation of which duty being grounded in damages for breach of contract. The Court opined that it did not regard that the refusal of lawyers to provide legal services to their clients violated the equal protection clause of the constitution.

The Court observed that the State had no vested legal right in the legal services and representation that lawyers give to their clients and therefore had no standing to compel lawyers to perform the duty which such lawyers owed to their clients, noting that lawyers have the right to withdraw from any retainer with their clients the same as the clients had the right to terminate any retainer held with lawyers. The protection and enforcement of contract rights, the Court said, was vested in the judiciary and not in the Executive or Legislative Branches of the Government. Moreover, the Court observed that the Government had failed to show that it had suffered an injury or that it stood to suffer any injury by the boycott action of the lawyers, noting that there cannot be relief where there is no injury.

The Court further held that the officers of the Liberian National Bar Association and the Montserrado County Local Bar Association could not be held for the acts or decisions of those bodies as the associations were corporate bodies which had the right to sue and be sued. The Court added that the naming of the leadership of the associations as parties to the action to compel them to rescind resolutions passed by the members to boycott judicial and quasi-judicial proceedings, and to have lawyers resume their representation of clients was a violation of the cardinal principles of corporation law. Accordingly, the Court held that the petition warranted denial.

The Ministry of Justice, represented by the Solicitor General, A. W. Octavius Obey and the Deputy Minister of Justice for Legal Affairs, Theophilus C. Gould, appeared for the Republic of Liberia, petitioner. H. Varney G. Sherman and Frederick Doe Cherue appeared for the respondents.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

These mandamus proceedings emanate from an investigation that had been conducted at the House of Representatives of the National Legislature by the House of Representatives Special Investigative Committee constituted to probe into the trading and exchange of allegations of corruption and false credentials between the then suspended Speaker of the House of Representatives, the Honourable Nyundueh Monkormana, and the former House Majority Leader, the Honourable Abel Massalley.

At the aforementioned investigation, Counsellor J. Emmanuel Wureh, President of the Liberian National Bar Association (hereafter the LNBA), appeared as legal counsel for Speaker Monkormana, while Honourable Massalley, a student of the Louis Arthur Grimes School of Law, elected to serve as his own counsel. During one of the sittings of the Special House Investigative Committee, Honourable Abel Massalley was called to the stand as a witness. While the examination of the witness was being conducted, there was an exchange of words between Counsellor Wureh, counsel for the Speaker, and Honourable Massalley, as a witness for himself.

On September 24, 2001, the Monday following the exchange of words, when Counsellor Wureh appeared for continuation of the investigation, he was arrested and detained on the charge of contempt of the Honourable House of Representatives for alleged derogatory remarks said to have been made by him.

Article 21(1) of the 1986 Constitution of Liberia provides in its first paragraph that in all trials, hearings, interrogatories, and other proceedings where a person is accused of a criminal offense, the accused shall have the right to legal counsel, and which counsel should be of his own choosing. It is public knowledge that the matter for which Speaker Monkormana was being investigated had criminal tendencies, and therefore was one for which he was entitled to legal counsel of his choice and that indeed that Counsellor Wureh was the legal counsel of the Speaker's choosing.

The second paragraph of the same article 2 1(1) of the 1986 Constitution provides that there shall be absolute immunity from any government sanctions or interference in the performance of legal services as a counselor or advocate, and that no lawyer shall be prevented from, or punished for, providing legal services, regardless of the charges against or the guilt of his client.

The 1986 Constitution further provides in article 44 that legislative contempt shall be for only those actions which obstruct legislative functions or which obstruct or impede members or officers of the Legislature in the discharge of their legislative duties and may be punished by the House concerned by reasonable sanction after a hearing consistent with due process.

In addition, article 20(a) of the 1986 Constitution provides that no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except the outcome of a hearing and judgment consistent with provisions laid down in the Constitution and in accordance with due process of law.

The Supreme Court of Liberia has over the years defined in very clear terms the principle of due process of law, as follows: "There must be a tribunal competent to pass on the subject matter; notice, actual or constructive; an opportunity to appear and produce evidence; to be heard by counsel, in person, or both; and process must be duly served or the person must otherwise submit to the jurisdiction of the tribunal." Wolo v. Wolo, 5 LLR 423 (1937), text at pages 427-426; Ayad v. Dennis, 23 LLR 165 (1974), text at 177; Royal Exchange Assurance v. Barriero. 24 LLR 546 (976); and more recently, in the case The Heirs of the Intestate Estate o/S. B. Nagbe v. The Intestate Estate of S. B. Nagbe, 40 LLR 3 (2001), decided at the March 2001 Term, this Court held that the fundamental constitutional right to due process "extends to every governmental proceedings which may interfere with personal or property rights."

On September 25, 2001, the membership of the Montserrado County Local Bar Association met and determined that the attachment of Counsellor Wureh in contempt of the House of Representatives violated the above constitutional safeguards. They accordingly issued a press statement wherein they stated that due process of law was not given to Counsellor J. Emmanuel Wureh when he appeared before the House of Representatives, and they therefore called on the House to release Counsellor Wureh unconditionally because his detention was arbitrary. The press statement was published in various newspapers on September 26, 2001.

On Thursday, September 27, 2001, the LNBA convened a plenary session during which the Montserrado County Local Bar's press statement was discussed and subsequently unanimously adopted and endorsed as the official position of the LNBA. Eventually, Speaker Monkormana was re-elected to his position and Counsellor Wureh was released from detention. However, the House of Representatives cited Counsellor Marcus R. Jones, Vice President of the LNBA and Counsellor Ishmael P. Campbell, President of the Montserrado County Local Bar Association, to appear before the House and to show cause why they should not be held in contempt for failing to retract the statement issued whilst Counsellor Wureh was in detention.

On Monday, October 1, 2001. the two lawyers appeared before the House and subsequently received separate letters sentencing each of them to a prison term to last until the end of the session of the House of Representatives, i.e. March 31, 2002, when the House was scheduled to take its agricultural break, unless the aforenamed LNBA officers retracted the statement which condemned the detention of Counsellor Wureh and called for his unconditional release, and each of them paid a fine of L$4.999.99. When the two lawyers failed to comply with the orders of the House to retract the statement and to pay the fine, they were arrested and imprisoned, where they still remain even as we are today delivering this opinion and judgment.

It was at that point that members of the LNBA resolved to engage in a passive resistance to what they considered illegal sentences, by boycotting all judicial, quasi-judicial, administrative and other for a until and unless the two detained lawyers were released. Immediately after the publication of the resolution of the LNBA on September 26, 2001, proceedings at all courts came to a complete standstill as all lawyers adhered to the mandates of the two resolutions of the Montserrado County Bar and the LNBA.

During the period of the boycott by the lawyers, the Government of Liberia decided to pursue legal action aimed at getting the lawyers to resume their normal duties as lawyers and to return to court, because the courts had been paralyzed.

Commenting in passing, it is important to note that the lawyers in the instant case, whose profession requires them to employ the "rule of law" and the courts in bringing relief to aggrieved persons, decided to employ social or political means to obtain relief when they themselves claimed to be personally aggrieved. Instead, it was the Government of Liberia that resorted to use the rule of law to try and secure the return of the lawyers to the courts. What an irony!

The lawyers contended that several provisions of the 1986 Constitution had been violated by the House of Representatives when it attached Counsellor J. Emmanuel Wureh in contempt and ordered his imprisonment. But it is well known that a claim of any violation of the Constitution by any person or authority, including the other two branches of the Liberian Government, the Legislative and Executive Branches, is justifiable, and that this body, the Supreme Court of Liberia, is the proper forum for adjudicating and determining whether or not such violation has occurred. Yet, instead of seeking legal redress of their grievances before this Court, the lawyers decided to employ the "social" or "political" action of boycotting all quasi-judicial and judicial proceedings in the apparent hope of bringing pressure to bear on the public authorities to either address their grievances or comply with their demands, or both. Their boycott action was against the courts when the courts had no part to play in the events that led to their action. In hindsight, it is clear that none of the measures employed has yielded the desired result and, instead, those actions have gone unheeded.

On October 16, 2001, the Republic of Liberia, acting thru the Minister of Justice and Attorney General, filed a five count petition for a writ of mandamus to be issued against the leadership of the Liberian National Bar Association, commanding and compelling them to rescind or revoke the boycott order and directing them to proceed to perform those duties for which the Association was established by legislative enactment.

The Chambers Justice, on October 17, 2001, issued a citation for a conference to be held on Thursday, October 1 8, 2001. Following the conference, the Chambers Justice, on October 19, 2001, ordered the issuance of the alternative writ of prohibition, directed the respondents to file their returns on or before October 22, 2001, and ordered them to appear for a hearing on October 23, 2001.

The five-count petition for the writ of mandamus substantially contained the following averments:

1. That the Liberian Government has the constitutional and statutory responsibilities to ensure that all citizens and residents are equally protected before the law:

2. That by virtue of the mandate establishing the Liberian National Bar Association, its constitution and by-laws, and the rules of court, the respondents have a legal duty to perform legal services to both the citizens and residents within Liberia;

3. That where an individual or group of individuals refuses to perform a duty devolved upon him or them by law or their own rules, mandamus is the proper procedure to compel them to perform;

4. That without recourse to available law and in contravention of the laws creating and controlling the Liberian National Bar Association, the Association had ordered the boycott of administrative and judicial proceedings by its members; and

5. That the boycott has paralyzed the functions of the judiciary and has exposed the entire citizenry and residents to legal insecurity.

On the 22nd day of October, 2001, the respondents filed a seventeen count returns, praying for the dismissal of the petition for the writ of mandamus. In addition, the respondents filed a four count motion to dismiss. To this motion to dismiss, a nine count resistance was filed by the Republic of Liberia.

The averments of the returns filed by the respondents are essentially as follows:

1. That the respondents named in the petition are not the proper party respondents; that the proper party respondent should have been the Liberian National Bar Association itself, a body corporate.

2. That the respondents in the motion, who are the petitioners for mandamus, do not have the capacity or authority to compel the individual members of the Liberian National Bar Association to perform legal services and so mandamus would not lie.

3. That the resolution of lawyers not to attend judicial and quasi-judicial proceedings pending the release of their fellow lawyers from prison was not ordered or instructed by the respondents and could not be ordered or instructed by the respondents, who are merely leaders of the Liberian National Bar Association, but rather that the aforesaid decision was made by a vote of the membership of the Liberian National Bar Association at a call meeting. Hence, the respondents have no capacity or authority to revoke or rescind it pursuant to a writ of mandamus.

4. That the aims and objectives of the Liberian National Bar Association, as stated in article II, section 1 of its constitution, do not consist of any official or ministerial duty as would compel performance by it through the writ of mandamus.

5. That the performance of legal services is not a ministerial or official act, for which mandamus would lie; instead, the performance of legal services arises out of private contracts between lawyers and their clients, the breach of which by a lawyer, through a failure or refusal to perform, is remediable by legal proceedings other than by the extraordinary writ of mandamus.

6. That the Republic of Liberia, acting through the Minister of Justice and Attorney General, has no legal standing to compel a lawyer or group of lawyers to perform or undertake to perform the obligations of a private contract to provide legal services to clients.

7. That Counsellor J. Emmanuel Wureh was exercising his right and authority to practice law and to represent his client, the Honourable Speaker of the House of Representatives, pursuant to Article 2 1(1) of the 1986 Constitution, and that attaching him in contempt of the House of Representatives was in violation of his constitutional immunity from sanction or interference while in the course of providing legal services and representation to his client.

8. That the resolutions of the Montserrado County Local Bar Association and the Liberian National Bar Association which were published on September 26. 2001 and September 28, 2001, respectively, were not contemptuous of the House of Representatives, as the said resolutions in no way obstructed any legislative functions or obstructed or impeded the members or officers of the House of Representatives from discharging their legislative duties, as provided by article 44 of the 1986 Constitution.

9. That the sanctions for contempt of the House of Representatives imposed on Counsellor J. Emmanuel Wureh, Counsellor Marcus R. Jones, and Counsellor lshmael P. Campbell were not the result of a hearing consistent with due process as required by article 44 of the 1986 Constitution, as they were all denied the right to be furnished with the nature of the charges and the documents in support thereof and the opportunity to file written responses or defenses to said charges; that the said individuals were denied the right to legal counsel, to a public hearing and to transcription and documentation of the proceedings; and that no hearing was conducted before sanctions were imposed.

10. That the sanctions imposed were unreasonable and excessive, and therefore in violation of articles 21(d)(ii) and 44 of the 1986 Constitution.

11. That it is absurd for the petitioner to speak of "recourse to available laws" when the Legislature enjoys constitutional immunity under article 42 of the 1986 Constitution from arrest, detention, prosecution, or trial, as a result of the opinions expressed or votes cast in the exercise of legislative functions.

As the contents of the motion to dismiss and the resistance thereto are basically part of the petition and returns, the same will not be repeated. What is important is that as both the petition and returns raised constitutional issues, the Chambers Justice, in his wisdom and consistent with the several opinions of this Court passed the mandamus proceedings to the Bench en banc for hearing and disposition. The most recent of such opinions is the case Ayad v. Dennis et al., supra.. in which this Court held that when an application for a remedial writ raises any constitutional issue, the Justice presiding in Chambers, to whom it is made, shall refer the application for the relief sought to the Full Court for consideration and final determination. It is also important to note that at the hearing, all the pleadings were consolidated and a single hearing conducted, as provided by law. Civil Procedure Law, Rev. Code 1:6.3(1).

The pleadings presented and discussed four (4) basic issues. These are as follows:

1. Whether the Republic of Liberia, acting by and thru the Minister of Justice, has legal standing to file for and ob-tain the writ of mandamus to order and compel lawyers to provide legal services to their clients?

2. Whether the respondents (the president, leadership and Executive Council of the Liberian National Bar Association) are the proper party respondents in these mandamus proceedings, and if not, whether this is a sufficient reason to deny and dismiss the petition?

3. Whether the respondents had recourse to available laws as contended by the petitioner, instead of resorting to a boycott of the courts as a means of seeking redress of their grievances growing out of the contempt proceedings at the House of Representatives which sanctioned their colleagues?

4. Whether the contempt proceedings at the House of Representatives and the sanctions imposed on certain officers of the Montserrado County Local Bar Association and the LNBA were in conformity with the Constitution.

The Court shall traverse the above issues in the reverse order, taking into consideration both the pleadings and the arguments.

With regard to the fourth issue, which is whether the contempt proceedings at the House of Representatives and the sanctions on the named lawyers imposed were in conformity with the Constitution, the petitioner contended that the constitutional questions involved in disposing of that issue have been raised collaterally in the returns and therefore should not be considered by this Court. Apparently, in recognition of the validity of this line of argument, counsel for the respondents did not dwell on this fourth issue in their arguments before the Court. In the case Re: The Removal of Associate Justice T. McCants-Stewart, 2 LLR 175 (1915), this Court ruled that constitutional issues shall not be drawn into consideration collaterally, unless the consideration is necessary to the determination of the point in controversy. This cardinal principle of practice involving disposition of constitutional issues by this Court was more recently extended in the case Morris v. Reeves and Morris, 27 LLR 334 (1978), in which this Court held that it will pass on the issue of unconstitutionality with caution and reluctance. This cardinal principle is similar to that which is practiced by appellate courts of the United States, the referenced legal system for Liberia. The general rule of jurisprudence in the United States is that where there is a lack of a court's involvement in passing upon a constitutional issue, or where the constitutional question is not properly before the court, or where the litigant has abandoned a question involving a constitutional issue, the court will not pass on it. 16 AM JUR 2d.. Constitutional Law, § 160, pp. 541-545.

Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty. Civil Procedure Law. Rev. Code 1:16.21(2). The essence of the petition for the writ of mandamus is that the respondents have an official duty to perform legal services and so they should be ordered and commanded to perform their official duties. The determination of whether the performance of legal services by lawyers is an official duty in contemplation of the law on mandamus and can therefore be ordered or compelled, and, the determination of the corollary issue of whether the petitioner has standing to obtain the extraordinary writ of mandamus to order or compel respondents to perform legal services, have no bearing or relationship to the contempt proceedings before the House of Representatives and the constitutionality or unconstitutionality of said contempt proceedings and the sanctions imposed thereunder would not be dispositive of the mandamus. In fact, this Court has not been asked to pass upon the legality of the action of the House of Representatives or the "trial" had by them.

It is clear therefore that the constitutionality of the said contempt proceedings has been raised only collaterally and considering that respondents, by not arguing that issue, abandoned it, this Court finds it unnecessary to pass upon this fourth issue. In addition, this Court has over and again held that it will pass on only those issues which in its opinion are

determinative of the controversy and as such need not pass on every issue raised before it. Lamco J. V. Operating Company v. Verdier. 26 LLR 445 (1977).

Regarding the third issue, which is whether respondents had recourse to available laws as contended by the petitioner, instead of resorting to a boycott of the courts as a means of seeking redress to their grievances, growing out of the contempt proceedings at the House of Representatives which sanctioned their colleagues, this Court rejects respondents' reference to article 42 of the 1986 Constitution which prohibits the arrest, detention, prosecution or trial of a legislator as a result of the opinion expressed or votes cast in the exercise of legislative functions, as their grounds for not seeking judicial redress for their grievances. When questioned as to what legal recourse or redress was available to address the grievances of the respondents, the counsels for respon-dents conceded, and we are in agreement with them, that the respondents could have elected one of two remedies: prohibition proceedings or "in re" proceedings. Both proceed-ings have been employed on various occasions to determine the constitutionality of either a law, act or conduct of the legislative or executive branches of Government. Ayad v. Dennis et al., supra; Scott et al. v. The Job Security Scheme Corporation, Inc., 31 LLR 552 (1983), decided at the October 1983 Term of the Supreme Court; In Re the Constitutionality of Section 12.5 and 12.6 of The Judiciary Law, 24 LLR 37 (1975). The counsels who argued for the respondents and who incidentally are not the same as those who filed the returns, also conceded that a legal recourse for judicial remedy of the respondents' grievances was available to the respondents.

This Court has held that the Legislature has no power to enact law or conduct itself in violation of the Constitution. Kamara v. Republic, 23 LLR 329 (1974). Indeed, as far back as 1893, this Court held that the Constitution is supreme to legislative enactments. Farrow v. Decorsey, 1 LLR 243 (1893). Moreover, in a number of cases since then this Court has struck down every enactment or conduct of the Legislature found to be in violation of the Constitution. The most prominent and best known of those cases is Wolo v. Wolo, 5 LLR 423 (1937), where this Court struck down and set aside a legislative divorce granted by the Legislature pursuant to a law passed by that body.

In most of the cases in which this Court has passed upon and declared acts or conduct of the Legislature unconstitu-tional and has set the same aside, the Legislature was in session and no one ever suggested that by this Court's passing upon those constitutional issues the members of the Legislature were being subjected to arrest, detention, prosecution or trial as a result of the opinion expressed or votes cast in the exercise of their legislative functions in contravention of either article 42 of the 1986 Constitution or its predecessor, article II, section 11, of the 1847 Constitution, as amended through 1975. It is clear that this Court's exercise of its inherent power of judicial review (16 AM JUR 2d., Constitutional Law, §___) and its constitutional power to review and determine the constitutionality of acts and conducts of the other two branches of the Government, the Executive and Legislative Branches, as prescribe by article 66, of the 1986 Constitution. do not in any way infringe on the immunities granted the Legislature and individual legislators under article 42 of the Constitution. To accept the submission of the respondents that their grievances are not justifiable because of the immunities of the Legislature is to suggest that this Court does not have the power of judicial review. Such suggestion is utterly ridiculous, defeats the object of checks and balances provided for in the Constitution as the bulwark of our democratic system of government, and leaves the citizens at the mercy of the two other branches of the government - a recipe for tyranny and impunity. We therefore reiterate a portion of our

Judicial Order issued on November 7, 2001, that grievances of the members of the Liberian National Bar Association are clearly justifiable, but the decision to submit the grievances to a court of law is left with the aggrieved. And we so hold.

As to the second issue, i.e. of whether the respondents named in the petition are the proper party respondents, which issue is raised in both the motion to dismiss and the returns, this Court observes, firstly, that the Liberian National Bar Association was the first professional organization to be chartered by the National Legislature (in 1907). Its first proceedings were conducted in the Chambers of the Liberian Senate. II Huberich, Political and Legislative History of Liberia 1171 (Central Book Company, Inc. 1947). Given the relationship between the LNBA and the Legislature, which caused its first proceedings to be conducted in the Chambers of the Liberian Senate? it is ironic that the underlying facts of these mandamus proceedings relate to a controversy involving the same said Liberian National Bar Association and the House of Representatives.

As a body corporate, the Liberian National Bar Association can sue and be sued in its own name. As it is a not-for-profit organization, it is specifically governed by the Not-For-Profit Corporation Act, which constitutes Part II of the Associations Law. However, section 20.3 of the said Act states that the Business Corporation Act, which constitutes Part I of the Associations Law, is applicable to not-for-profit corporations except as otherwise provided in the said Not-For-Profit Corporation Act. Because there is nothing in the Not-For-Profit Corporation Act governing the effect of incorporation as it relates to naming the officers or leaders of a corporation as party respondents in a matter involving the corporation, we shall, in keeping with the citations of law stated herein, take recourse to the Business Corporation Act for guidance or control.

The Business Corporation Act states that "... the naming of a shareholder, member, director, officer or employee of the corporation as a party to a suit in Liberia to represent the corporation is subject to a motion to dismiss if such party is the sole party to sue or defend, or subject to motion for misjoinder if such party is joined with another party who is a proper party and has been joined only to represent the corporation. Associations Law, Rev. Code 5: 2.5.

In these mandamus proceedings, the petitioner elected to name the "Leadership" of the Liberian National Bar Association, even though the remedy which petitioner sought was to compel and order all lawyers, who are members of the Liberian National Bar Association, to rescind their resolution to boycott judicial and quasi-judicial proceedings, and to resume providing legal representation and services to residents and citizens alike. This Court holds that the naming of the "leadership' of the Liberian National Bar Association, "by and through its President, J. Emmanuel Wureh and all executive members" as the party respondent is a violation of a cardinal principle of corporation law that the officers of a corporation may not be named as party defendant/respondent for claims against the corporation. It is clear that given the averments stated in the mandamus, the petition should have named the membership of the Liberian National Bar Association as the party respondents, acting by and through their President, J. Emmanuel Wureh, and all executive members, if the latter were deemed necessary. Since the law mandates that for such violation the suit is subject to dismissal, this Court has no alternative but to sustain respondents' submission that the petition for the writ of mandamus is a fit subject for dismissal.

As to the first issue, regarding whether the Republic of Liberia, acting by and through the Ministry of Justice and Attorney General, has legal standing to file for and obtain the writ of mandamus to order and compel lawyers to provide legal services to their clients, this Court observed that this issue is also raised in both the motion to dismiss and the returns. This Court has also observed that this issue is one of first instance in this jurisdiction. Our jurisprudence on mandamus shows that it has heretofore been used as a process to compel and order public officials to perform their official or ministerial functions.

Mandamus has been employed on many occasions to compel a judicial officer to perform certain duties. It has been successfully and properly employed to (1) compel a judge to approve an appeal bond (Amierable v. Cole, 13 LLR 17 (1957)); (ii) compel judge to endorse the date of tender of a bill of exceptions (Rottger v. Williams and Summerville, 5 LLR 348 (1937)); (iii) to compel a judge to enter judgment on a verdict (Republic v. Shannon-Walser, 27 LLR 274 (1978)); (iv) to compel a magistrate to grant bail (Giese v. Jallah, 16 LLR 141 (1965)); (iv) to compel the Secretary of State (now Minister of Foreign Affairs) to issue a passport to a Liberian Citizen (Wiles v. Simpson, 8 LLR 365 (1944)); (v) to compel Commissioner of Immigration to grant an exit visa to a foreigner to leave the country (Liberia Air Taxi Inc. and Jones v. Meissner, 18 LLR 40 (1967)); and (vi) to compel the Minister of Finance to refund the value of a cash bond posted as security for custom levies (Bah v. Philips, 27 LLR 210 (1978)).

Our jurisprudence has no decided cases on mandamus where the respondent is a private person or private organization. Thus, consistent with our reception statute, we had recourse to the common law of the United States for guidance and controlling law. General Construction Law, Lib. Code 15:40.

The law is that mandamus is a judicial proceeding to coerce the performance of duties devolved by law upon public officials. The petitioner or relator must have specific legal rights, the enjoyment, protection, or redress of which the discharge of a duty on the part of the respondent is necessary. The writ will not issue at the instance of one who has no such right. 52 AM JUR 2d, Mandamus, §63. In the opinion of this Court, the writ of mandamus may be issued to compel or enforce private persons or private association to perform a legal duty owed to another, but the basis is that the relator or petitioner must show that he has a legal right, the enjoyment, protection or redress of which the discharge of a duty on the part of the respondent is necessary. In these mandamus proceedings, it seems to us that it would be stretching the law a little too far if we were to conclude that the Republic of Liberia has a vested legal right in the legal services and representation that a lawyer gives to his client, the enjoyment, protection or redress of which the discharge of a duty on the part of an individual lawyer or the Liberian National Bar Association, is necessary.

Also, the law is that the duty to perform the act which the mandamus seeks to have performed must be imposed on the respondent by law and that the writ will issue only if there is a clear showing of the existence of such a duty. 52 AM .JUR 2d, Mandamus, §72. Counsels for the petitioner, when confronted with questions from the bench, were not able to show us any law which imposes a duty on a lawyer to provide legal services to a client. In fact, the law is that a lawyer has the right to withdraw from the retainer of a client and a client has a right to terminate the retainer of the lawyer. Further, the law is that mandamus should be resorted to only for the purpose of enforcing the legal duties of a public nature, which arise from an office, station or trust, and are ministerial in character. Ibid. A ministerial function is one which a person or board performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority without regard to or the

exercise of his or their own judgment. BLACK'S LAW DICTIONARY 899 (5th ed.) There is no doubt in the mind of this Court that the time, manner and course of conduct employed by a lawyer in providing legal services and making legal representation on behalf of a client are not ministerial functions. It is therefore extremely difficult to see, and counsel for petitioner have been unable to convince us, that mandamus would lie to compel and order lawyers to provide legal services to their clients.

The law is that the relationship between a lawyer and his client begins with the retainer, which is contractual in its nature 7 AM JUR, Attorneys-At-Law, § 118. The law is also that mandamus is not an appropriate remedy for the redress of private contract rights. The writ will not be granted to compel a public official, corporation, or other respondent to perform a duty or obligation assumed by contract, as distinguished from one imposed by law. 52 AM. JUR 2d, Mandamus, § 75. We are not convinced that the services that a lawyer provides to his client are imposed by law, and as such, we are reluctant to issue the extraordinary writ of mandamus to compel lawyers to provide services to their clients by appearing at judicial and quasi-judicial proceedings.

On the subject of contracts, we note that during the arguments before the bench, counsel for petitioner contended that the Government has the responsibility to guarantee all contracts and that the only thing that the Government was doing in these mandamus proceedings was ensuring that the private contracts between the lawyers and their clients are protected. However, our interpretation of the equal protection clause of the Constitution is that it seeks to prevent the government from interfering with, frustrating or otherwise impairing private contracts. It is not intended that the government would insist that one party performs his side of such contracts as they are private obligations for which there are adequate remedies available to the parties whose rights have been violated by others. Such remedies include but are not limited to damages for breach of contract, specific performance, etc. The protection and enforcement of contract rights is vested in the Judiciary and not in the other two branches of the Government.

Generally, one must be aggrieved by the conduct of another to be able to bring an action. The Government of Liberia did not show what injury it suffered or stood to suffer by the boycott action of the lawyers, for which the government instituted these mandamus proceedings. For every injury, there is a relief, but there cannot be a relief where there is no injury.

Hence, we herewith rule that the Republic of Liberia, acting through the Ministry of Justice & Attorney General, lacks standing to pray for the issuance of the extraordinary writ of mandamus against the Liberian National Bar Association to compel and order its members to rescind their resolution not to attend proceedings at quasi-judicial and judicial proceedings and to compel them to perform legal services for their clients. Also, we are not persuaded by the argument of counsel for the petitioner that the refusal of lawyers to provide services to their clients constitutes a violation of the equal protection clause of the 1986 Constitution. i.e. article 11(c). This provision of the Constitution says that "all persons are equal before the law and are therefore entitled to the equal protection of the law". (Emphasis supplied). However, this principle of law is irrelevant to and has no bearing on these mandamus proceedings.

The concept of equal protection of the law has been a part of the Constitution of this country since its independence in 1847. In the case Fazzah Bros. v. Collins and Central Industries Ltd., 10 LLR 262 (1950), this Court held that the provisions of the bill of rights, which primarily for the protection of citizens, inure also to the benefit of aliens here by permission of the government. Mr Chief Justice Pierre, sitting in Chambers of this Court,

ruled that no person may be discriminated against in the courts of Liberia; for all persons are equal before the laws of the nation. Hassen v. Krakue, 20 LLR 653 (1971). It has also been held in various decisions of the Supreme Court of the United States, whose constitution has a similar provision to that of Liberia that the constitutional guarantee of "equal protection" of the laws means that no person or class of persons within the jurisdiction of the United States shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property, and in their pursuit of happiness. This constitutional clause also means that all courts are opened to any person on the same condition as to any other person with the rules of evidence and modes of procedure for the security of their person and property, the prevention and redress of wrongs, and the enforcement of contracts, all being the same. It means that no person shall be subjected to any restriction in the acquisition of property, the enjoyment of personal liberty, and the pursuit of happiness, which do not generally affect others; that no person shall be liable to others or greater burdens and charges than such as are laid upon others; that no greater or different punishment is enforced against a person for a violation of law. Walters v. City of St. Louis, Mo.. 347 US 231, 98 L. Ed. 660.

There is no doubt in our minds that the facts and circumstances of these mandamus proceedings do not invoke the equal protection clause of the 1986 Constitution, either by way of our own jurisprudence or the jurisprudence of the United States. Accordingly, we rule that the equal protection clause is irrelevant and immaterial to the facts and circumstances under which the petitioner has prayed this Court to issue the extraordinary writ of mandamus.

Notwithstanding what has been said thus far, this Court is not unaware of the gravity of the situation which caused the petitioner to pray for issuance of the extraordinary writ of mandamus. And while mandamus does not lie under the circumstances, there is no doubt that the paralysis of the judiciary by the boycott of all judicial proceedings by lawyers presented an emergency which ought to be expeditiously addressed. This Court says, however, that in exercise of its inherent power to supervise the legal profession and in the exercise of its constitutional powers to regulate the practice of law, it may order and compel lawyers who have resolved not to provide legal services to resume such services so as to ensure that the judiciary remains a fully functioning branch of the Liberian Government. Those powers and authority have already been properly exercised through the issuance of this Court's Judicial Order of November 7, 2001.

Wherefore, and in view of the foregoing facts and circumstances, and the relevant laws applicable thereto, it is the ruling of this Court that the petition for the writ of mandamus is denied, the citation quashed, and these proceedings dismissed. Costs are disallowed.

Petition denied.