

JENKINS K. Z. B. SCOTT, MINISTER OF JUSTICE, REPUBLIC OF LIBERIA et al., Appellants/Respondents, v. **THE JOB SECURITY SCHEME CORPORATION, INC.,** represented by its Managing Director, **J. ALIEU SWARAY,** and **D. MICHAEL YEAH,** Appellee/Petitioner.

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

Heard: November 9, 1983. Decided: December 21, 1983.

1. Although it is generally recognized that a writ of prohibition will not undo what has already been done, but this principle does not apply to acts done and not completed. It does not also apply to acts done without legal authority and without due process of law.
2. Where the procedure and method adopted is illegal and unwarranted, prohibition would lie to prevent what remains to be done as well as to undo what has already been done.
3. The Minister of Justice may not arbitrarily infringe upon the private rights of an insurance corporation by ordering its accounts frozen without his statutory authority and duty to do so and without due process of law.
4. Under the relevant statute, where an applicant's application or the instrument entitled "articles of incorporation" to engage in insurance business does not fulfill the legal requirements provided for, upon examination, the Justice Minister's only duty is to advise the Commissioner of Insurance to that effect.

Petitioner Job Security Scheme Corporation, Inc. sought a writ of prohibition against the respondents who had frozen petitioner's bank accounts because of an alleged noncompliance with provisions and requirements of the Insurance Law. The co respondent Minister of Justice had stated as the basis for his action that the petitioner was portraying itself as an insurance company when in fact it had not met the requirements of the Insurance Law to qualify as an insurance company. The Chambers Justice granted the petition on grounds that the respondents' action was not in keeping with the relevant insurance law. On appeal to the Full Bench, the judgment was affirmed.

The Court noted that while it was true that the petitioner had not complied with all of the provisions of the Insurance Law, it had been issued a certificate by the Commissioner of Insurance and had in fact stated a willingness to comply with the statute. The Court, holding that under the circumstances, there was substantial compliance with the statute, ordered that the petitioner be given a period specified by the Court to allow the petitioner to full comply with the statute.

The Court opined further that the Minister of Justice had no authority to infringe upon the private rights of an insurance company by ordering the freezing of its accounts without

according to due process of law. The Court observed that the only duty of the Minister of Justice in respect of whether a corporation had complied with the statute to be certified as an insurance company was to advise the Commissioner of Insurance. In the instant case, the Insurance Commissioner who was statutorily vested with the authority to take action against the appellee company had issued a certificate of authority to the appellee. Only the Commissioner, the Court said, could revoke the authorization granted

Further, the Court held the respondents in contempt for not complying with the previous order of the Chambers Justice.

Jenkins K. Z. B. Scott, Minister of Justice, Republic of Liberia, Momolu Kiawu of the Ministry of Justice, and Abraham Koroma, County Attorney for Montserrado County, in association with the Steele & Steele Law Firm, appeared for the appellants/respondents. Robert G. W. Azango, in association with S. Edward Carlorand McDonald M. Perry appeared for the appellee/petitioner.

MR. JUSTICE SMITH delivered the opinion of the Court.

The records on appeal before us from the Chambers of this Court in the prohibition proceedings, disclosed the following facts as constituting the grounds of contention which we are asked to review.

Job Security Scheme Corporation, Inc., a corporation organized and operating under the Associations Law of Liberia, represented by its managing director, J. Alieu Swaray, P. O. Box 4049, and D. Michael Yeah, P.O. Box 3720, corner of Carey and Warren Streets, Monrovia, Liberia, filed a petition in the Chambers of Mr. Justice Koroma praying for the issuance of an alternative writ of prohibition against Jenkins K. Z. B. Scott, Minister of Justice, Republic of Liberia; A. Octavius Wallace Obey, Solicitor General, Republic of Liberia, and all other prosecuting officers of the State, Republic of Liberia, and the National Bank of Liberia, represented by its Governor, Thomas Hansen, and Ignatius N. Clay as respondents, alleging in substance that while the petitioner as a corporation duly organized was peacefully operating under the laws of Liberia, without any petition or complaint made against it either by the Commissioner of Insurance or by any other person whomsoever; or without notice to the said petitioner corporation of a violation of any of the laws of Liberia or the Associations Law governing petitioner's operations; or without any decree or judgment of a court of competent jurisdiction canceling its certificate of authorization to engage in the insurance business and its certificate of business registration, and without the abolition of any and all of the laws under which the corporation was organized and operating, the Minister of Justice, Counsellor Jenkins K. Z. B. Scott, undertook to arbitrarily order the National Bank of Liberia to freeze the accounts of the petitioner corporation and further directed said Bank not to honour any check or checks issued by the petitioner corporation. The petitioner further averred, in substance, that the freezing of the corporation's accounts as ordered by

the respondents did not only adversely affect the operation of the corporation, but also the public at large; and because of the exigency of the matter, petitioner prayed the Court to issue an order unfreezing its accounts and to command the respondents to appear and show cause, if any they had, why the alternative writ should not be made absolute.

In support of the allegations contained in the six-count petition, the petitioner corporation attached thereto the following documents; (1) A copy of its articles of incorporation executed on June 11, 1982; (2) a copy of certificate of authorization from the office of the Commissioner of Insurance, Republic of Liberia, dated June 16, 1982 (3) a copy of Fidelity Bond of \$50,000.00, executed on June 14, 1982 and approved by the Commissioner of Insurance, Republic of Liberia; (4) two business registration certificates for 1982 and 1983, respectively, indicating the payment of \$400.00 fee for each year to government.

For the benefit of this opinion, we quote a relevant portion of the certificate of authorization issued to the petitioner corporation under the official signature of the Commissioner of Insurance, Republic of Liberia; it reads thus:

"This is to certify that pursuant to Chapter 4 of title 16, the Insurance Law, approved March 7, 1973, and published by authority October 8, 1978, that Job Security Scheme Corporation has completed all the requirements to carry on insurance business in the Republic of Liberia and has accordingly been granted this certificate of authorization to engage in the said insurance business."

Having been served, the respondents, on the 9th day of September, 1983, filed a five-count of what they termed "information" instead of returns in keeping with practice and procedure and as directed by the alternative writ. As the information had no standing before the Court, it was not entertained. However, on the 12th day of September, 1983, within the time required of the respondents to appear and show cause why said writ should not be made absolute, the respondents filed a nine-count returns alleging, substantially, that the Minister of Justice did order the National Bank of Liberia to freeze the accounts of the petitioner because: (1) the articles of incorporation of the petitioner corporation were vague and violated the Associations Law as well as the Banking and Insurance Laws of Liberia; (2) that the petitioner corporation had not met all the requirements of the Insurance Law of Liberia; (3) that the permit or license obtained from the Ministry of Finance by the petitioner was obtained by tricks and artifice; (4) that the petitioner corporation had violated the Insurance Law by its failure to maintain "capital and surplus", and that for such violation the remedial writ of prohibition would not lie; (5) that under the circumstances, the petitioner corporation was operating illegally and, hence, the Ministry of Justice took the measures of freezing the corporation's accounts to secure the rights of innocent persons who had invested in the organization and to ensure that a judgement entered in favour of the respondents would be enforced in favour of those innocent persons who were entitled to their just money.

In refuting the averments of the petition, respondents substantially contended in their returns and argued that: (1) There is no law requiring the Commissioner of Insurance to file petition or complaint against an insurance company operating illegally as prerequisite to the Ministry of Justice taking an action in the premises; (2) that the act of the Minister of Justice and the Governor of the National Bank of Liberia not being a judicial act, but one which lies solely within their power to enforce the Banking and Insurance laws of the Republic, prohibition will not lie to restrain such power, and (3) that the order to freeze the petitioner's accounts having already been given and carried out, there remains nothing more to prohibit, and that prohibition will not lie to undo what had already been done.

As aforesaid, the alternative writ commanded the respondents to unfreeze the accounts of the petitioner corporation because of the exigency of the matter, and required the respondents to appear before the Chambers of this Court to show cause, if any, why the peremptory writ should not be issued. Respondents filed their returns but refused to unfreeze the petitioner's accounts as commanded, holding that if the order to unfreeze the accounts was complied with, the insured might have been the losers.

Because of the refusal of the respondents to obey the order of Court and unfreeze the accounts, petitioner filed a bill of information praying the Court to hold the said respondents in contempt for disobeying the order of the Court. The respondents filed resistance to the bill of information and contended therein, in substance, that they did not unfreeze the accounts because doing so would have been a financial loss to those persons who have subscribed and obtained policies from the informant corporation, and that such a loss would have been an irreparable one.

Our distinguished colleague, Mr. Justice Koroma, heard arguments in Chambers and ruled granting the petition and ordered a peremptory writ of prohibition issued, thereby making the order to unfreeze the petitioner's accounts absolute. In the contempt proceedings, the respondents, that is, the Minister of Justice, the Solicitor General, the Governor of the National Bank of Liberia and Ignatius N. Clay, were adjudged guilty of contempt of the People's Supreme Court and fined in the sum of \$400.00 to be paid in the government revenue not later than the 27th day of September, 1983. To this ruling, the respondents excepted and appealed to this Court en banc.

The main issues which the respondents/appellants have presented for our consideration, as gathered from their brief and argument, are:

(1) that the petitioner's accounts having already been ordered frozen, prohibition, being a preventive action, will not undo what had already been done;

(2) that the Chambers Justice misconstrued the matter of freezing the petitioner's accounts as being exigent and urgent to have ordered the unfreezing of the accounts before hearing, when indeed there was no such exigency and urgency;

(3) that the freezing of petitioner's accounts as ordered by the Minister of Justice was in exercise of the Minister's "police power" and not a judicial action subject to prohibition, and therefore, a noncompliance with the order of court to unfreeze the accounts does not constitute contempt of court for which the fine should have been imposed.

Before proceeding to consider the issues and argument, as presented by the respondents/appellants, we should like to observe here that the reasons given by the Minister of Justice for ordering the freezing of petitioner's accounts are: (1) because the petitioner corporation was operating illegally, in that, its articles of incorporation are vague and violate the Banking and Insurance Laws of Liberia; (2) that petitioner did not meet the requirements of the Insurance Laws of Liberia; (3) that the permit or license under which petitioner operates was obtained by tricks and artifice; (4) that petitioner did not comply with the provision of the law which requires the maintenance of capital and surplus. Other than these reasons outlined above, which in substance have only charged the petitioner corporation with operating illegally by its failure to complete the requirements to engage in insurance business, no other reason had been given as affecting the security of the State which would suggest the taking of such action in freezing the petitioner's accounts. Courts of justice only decide issues that are presented to them for adjudication; they are not magicians or prophets, for that matter, to know what has happened or what is to happen in the future, or what is in the mind of party litigants to form the basis for their decisions and judgements. A party coming before our courts, whether it be the Government or private individual, must present his case supported by evidence and not rely on confidentiality as a defense or proof.

We quoted earlier, for the benefit of this opinion, the certificate of authorization granted the petitioner corporation to engage in insurance business; there is no evidence that this certificate has been canceled for any violation of the Insurance and Banking Laws. According to the Insurance Law, Rev. Code

16: 4.6, a certificate of authority to do insurance business once issued shall remain in full force and effect without the necessity of annual renewal, subject only to cancellation as provided in said chapter and the payment of annual license fees. There is evidence that business registration fees for 1982 and 1983 were paid by the corporation; but granting, and not conceding, that the petitioner corporation was operating illegally by its failure to complete the requirements to engage in insurance business, or has violated any provision of the association law, the freezing of its account is the penalty or procedure provided by the very law which the Minister of Justice intended to enforce, and if he proceeded by rules

other than those which must be observed at all times, and by his such acts infringed upon the property and corporate rights of the petitioner, and even if the Minister did proceed by regular rules but without jurisdiction given to him by law to do so, prohibition will lie to prevent irreparable injury that could arise from his such unauthorized act.

With respect to violation of the Insurance Law, we are of the opinion that such issue is not properly before us for adjudication, and therefore, we have refrained from commenting as to whether or not the petitioner corporation was operating illegally or had violated the Insurance Law of the country. However, our statute law states, with regards to non-compliance with the Insurance Law, as found in Rev. Code 16:4.7, under the caption cancellation of authorization: grounds, that:

"An insurer's certificate of authority shall be subjected to cancellation if the insurer does any of the following:

"(a) fails to maintain unimpaired the minimum capital and minimum surplus required of it; or

(b) fails to maintain the margin of solvency applicable to it; or

(c) fails to retain in Liberia at least ten percent of its gross annual premiums derived from policies pertaining to risks or undertakings in Liberia; or

(d) fails to maintain the security given by it as protection for creditors; or

(e) fails to submit an annual report, record or document required by this title to the Commissioner within the prescribed time, or within a reasonable time thereafter not to exceed thirty days; or

(f) fails to comply with any other procedural or operating requirement under this title after first being notified of such failure by the Commissioner and thereafter failing to remedy the defect within the prescribed time; or

(g) ceases to carry on business in this country; or

(h) requests that its certificate be canceled; or

(i) fails to satisfy a final judgement obtained against it in any Liberian court of competent jurisdiction within thirty days after such judgement is entered."

Also, section 4.8, chapter 4, of the same law states, with respect to the procedure in cancellation of authorization, as follows: "The following procedure shall govern proceedings to cancel an insurer's certificate of authority

"(a) if the Commissioner finds that an authorized insurer has subjected itself to cancellation of its certificate of authority on any of the grounds set forth in section 4.7, he shall convey

such finding with supporting evidence to the Minister of Justice with recommendation that the insurer's certificate of authority be canceled. If the Minister of justice concurs in the Commissioner's findings and recommendation, the Commissioner shall immediately notify the insurer in writing of his intention to cancel its certificate of authority;

(b) upon receipt of such notice, the insurer shall have thirty days to request an informal administrative hearing before the Commissioner at which it may introduce any evidence which is relevant and material without regard to formal rules of evidence. The Commissioner, acting on advice of the Minister of Justice, shall consider the evidence so presented and issue a final decision within thirty days, either affirming or rescinding the proposed cancellation and assigning written reasons in support thereof;

(c) if the Commissioner should reaffirm his decision to cancel the certificate, the insurer shall have the right of judicial review in a court of competent jurisdiction in accordance with established procedures;

(d) during the period of such review, the insurer shall be prohibited from soliciting new contracts or policies of insurance, but nevertheless is required to process all claims and other normal business in connection with existing contracts or policies."

As to the effect of a final decision of cancellation, at section 4.9 of the same chapter, it is provided:

"When the Commissioner's decision to cancel the certificate of authority of an insurer becomes final, the insurer shall cease doing business in Liberia and further shall thereafter be subjected to forfeiture of the security deposited under section 4.4(e) and of its other assets in Liberia to satisfy creditors and claims for policyholders in accordance with the liquidation procedure set forth in this title. Any unused assets shall be returned to the insurer involved."

From this legal citation, it is quite clear that the interest of the policyholders in the company and its creditors had already been sufficiently secured by law, and hence, there could have been no irreparable loss to the insured or to the government if the proper procedure provided by law to deal with the petitioner corporation for any violation of the law had been followed, rather than infringing upon the property and corporate rights of petitioner by the freezing of its accounts without due process of law. Up to the time of freezing the petitioner's account, the said corporation had a valid and enforceable contract with the Government of Liberia by reason of the certificate of authorization, the terms and conditions of which the Government was bound on its part to perform.

One of the issues presented in the respondents' brief and strenuously argued by their counsel is that, prohibition will not undo what has already been done, and therefore petitioner's accounts having been ordered frozen, the order contained in the alternative writ to unfreeze the accounts was contrary to law.

Whilst it is true, as argued by counsel for respondents, that prohibition will not undo what has already been done, yet, this principle does not apply to acts done and not completed. It does not also apply to acts done without legal authority and without due process of law. In the case under review, the Minister of Justice arbitrarily infringed upon the private rights of the corporation by ordering its accounts frozen without his statutory authority and duty to do so and without due process of law. Under the relevant statute, where an applicant's application or the instrument entitled "articles of incorporation" to engage in insurance business does not fulfill the legal requirements provided for, upon examination, the Justice Minister's only duty is to advise the Commissioner of Insurance to that effect. The Commissioner of Insurance, acting upon the advice of the Minister of Justice, may refuse to issue to the applicant the certificate of authorization upon thirty days' notice. See Insurance Law, Rev. Code 16: 4.5. On the other hand, where an insurer's certificate is subject to cancellation on any of the grounds set forth in section 4.7 of the Insurance Law, cited supra, the Commissioner of Insurance is authorized to convey his findings, with supporting evidence and recommendation, to the Minister of Justice only for his legal advice in the premises. This is consistent with the statute creating the office of the Minister of Justice. By this advice of the Minister of Justice, the Commissioner will know whether or not there is legal justification enough to cancel the insurer's authority to do insurance business.

The Commissioner acting upon the advice of the Minister of Justice, shall notify the insurer of his intention to cancel its authority and the insurer may request an informal administrative hearing within thirty days at which hearing it may introduce evidence. If the Commissioner finds that there is sufficient and justifiable reason to cancel the insurer's certificate of authorization, he may do so and the insurer has the right of a judicial review of the administrative decision of the Commissioner. This is the procedure; but if the Minister of Justice transcended his bounds and infringed upon the private rights of the insurer without following this process, by freezing its accounts, as in the instant case, the acts of the Minister will be restrained and ordered undone. Where the procedure and method adopted are illegal and unwarranted, prohibition will lie to prevent what remains to be done as well as to undo what has already been done. *Fazzah Bros. v. Collins and Central Industries, Ltd.*, 10 LLR 261 (1950).

The Minister of Justice argued that the measures in freezing the petitioner's accounts were taken by him as a temporary step to protect the interest of the insured as a cancellation proceeding had already been filed and was pending. By this argument, it is true that the action intended by the Minister to be taken was not completed, because the Commissioner had not in fact canceled the authority of the insurer. Under the circumstances, especially where the private rights of the insurer had been infringed upon without due process, prohibition will give complete relief not only by preventing what remains to be done but by undoing what has been illegally done. For reliance, see 22 RCL, Prohibition, § 7 (1918). It is

our considered opinion, therefore, that under the circumstances, prohibition will lie in this case to unfreeze the account of the petitioner which was ordered frozen without legal authority to do so and without due process of law.

The second issue argued by respondents is that, the Chambers Justice misconstrued the whole matter when he ordered to unfreeze the accounts under the impression of exigency and urgency.

We disagree with the argument of the respondents that the matter was not urgent to justify the unfreezing of the petitioner's account. In our opinion, the freezing of the petitioner's account, indefinitely under the pretext of securing the financial interest of the policyholders was more detrimental and injurious to the insurer, the insured, the working public, and even the Government.

For instance, here is an insurer who employs a number of skilled and unskilled workers and who contracts with a huge number of policyholders and whose operation is not closed down, but who is being prohibited or disallowed from withdrawing his own money from the bank to facilitate the smooth operation of the business. How is he expected to meet his financial obligation to the Government? How is he expected to pay his workers? How is he expected to meet other operational expenses? And how can the insured be assured that the prime purpose of his obtaining the insurance policy will be materialized? Was the Minister of Justice sure that the money of the insurer in the bank is enough to pay the policyholders the amount insured for? Or was he sure that policyholders, in view of the crisis, will continue to pay their respective premiums when indeed the property rights of the insurer had been infringed upon without due process of law? These are the circumstances and situation which warranted the position taken by the Chambers Justice when he ordered the issuance of the alternative writ and therein ordered unfrozen of the petitioner's accounts pending hearing of the petition.

Furthermore, it is provided by our statute that if the urgency of the situation warrants, the Justice may order issued, in lieu of citation an alternative writ requiring the respondents (a) to do an act or to refrain from pursuing a judicial action or proceeding specified therein until a hearing is held on the writ, and (b) to show cause, on the date fixed therein, why a peremptory writ should not issued. Civil Procedure Law, Rev. Code 1: 16.2(1).

In view of this statutory provision and the situation attending this case, it is our considered opinion that the learned Justice was legally in place to have ordered the issuance of the alternative writ instead of a citation and to have commanded therein that the petitioner's accounts be unfrozen pending hearing of the petition. The contention of the respondents in this respect cannot therefore be sustained.

The last issue which the respondents strenuously argued is the exercise of "police power" by the Minister of Justice, which question respondents did not raise before the Justice in Chambers to have been traversed, argued and passed upon by the Chambers Justice. This is a violation of the fundamental principle of notice in pleadings, and this Court has often held that it will not pass upon issues which are raised on appeal before it for the first time. *Flood v. Alpha*, 15 LLR 331 (1963). The invocation of police power is not a constitutional issue nor is it a jurisdictional issue which could be raised before this Court for the first time. If we are asked to review the ruling of the Chambers Justice, then it is logical to review and pass upon what he heard and ruled upon to the dissatisfaction of the respondents. Be as it may, we shall touch on the issue of "police power" which the Minister argued he exercised in the interest of the insured, simply in passing.

As defined by Black's Law Dictionary, police power is that inherent and plenary power in a state over persons and property which enables the police to prohibit all things inimical to the comfort, safety, health, and welfare of society. It is the power vested in a state to establish laws and ordinances for the regulation and enforcement of its police. The power is vested in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances either with penalties or without penalties, not repugnant to the constitution. Whatever affects the peace, good order, morals and health of the community comes within its scope; and everyone must use and enjoy his property subject to the restrictions which such legislation imposes. This is the definition given by Black's to the term "police power". BLACK'S LAW DICTIONARY 1317 (4th ed.).

From this definition, the question which comes to mind is, whether the Legislature had given the Minister of Justice any such power to exercise judicial function as to order the freezing of an account of a corporation duly organized and operating under the laws of the country without due process of law under the garb of police power? The other question which comes to mind also is whether the exercise of this power by the Minister of Justice was reasonable when he froze the accounts of the insurance company without due process of law under the pretext that it was operating illegally in the absence of any evidence. Our answers to the two questions are in the negative.

While it is generally recognized that it is very difficult and practically impossible to give an exact definition of police power, Blackstone, quoted in 16 AM. JUR. 2d, Constitutional Law, § 262, defines police power as:

"The due regulation and domestic order of the kingdom, whereby the individuals of the state, like members of a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighborhood, and good manners, and to be decent, industrious, and in offensive in their respective stations."

Police power is that power in government which restrains individuals from transgressing the rights of others and restrains them in their conduct so far as is necessary to protect the rights of all. *Ibid*, at 515.

The fixed rule and basic standard by which the validity of all exercise of the police power is tested is that, the police power of the state extends only to such measures as are reasonable and that all police regulations must be reasonable under all circumstances. Indeed, it has been said that the only limitation upon the exercise of the police power is that such exercise must be reasonable. 16 AM. JUR. 2d, Constitutional Law, § 277. In our research, we were unable to find any statutory provision, nor were the appellants and their counsel able to show us any statute law, conferring upon the Ministry of Justice the right to order frozen the accounts of any corporate entity for alleged violation of the Insurance Law without due process of law, neither does the Insurance Law delegate any power of the Commissioner of Insurance to the Minister of Justice nor was the so-called police power exercised with such reasonableness as is required by the law.

The Minister of Justice argued for the respondents that the noncompliance with the order contained in the alternative writ to unfreeze the petitioner's accounts pending hearing of the petition does not constitute contempt of court for which the fine of \$500.00 was imposed on the respondents.

It is regrettable that the Chief Prosecuting Officer of the State before this Court would hold and argue that to disobey the legitimate orders of this Court does not constitute contempt. If the Government's prosecuting authority before our courts of justice and the Governor of the National Bank of Liberia, which regulates banking institutions in the country, can out rightly and openly disobey the order of the highest Court of the land, then we are left at sea to know how is it expected for the people of this country to respect the rule of law which our political institution is committed to respect. How do the prosecuting arm of government and the governor of the banking institutions of the country expect to enforce the laws of the country and protect vested interest before our courts? The argument was interesting indeed, but we are of the firm opinion that the respondents should have obeyed the order of the Court and should have appeared as directed in the writ to show cause why, if any, a peremptory writ should not be issued.

In view of the foregoing and the legal citations made herein above, it is our considered opinion that the ruling of the Justice in Chambers should not be disturbed, but rather should be, and the same is hereby, affirmed and confirmed. The fine imposed on the respondents for contempt is ordered paid by them within forty-eight (48) hours and an official receipt exhibited to the Marshal of this Court, who must immediately thereafter inform the Chief Justice or the Justice in Chambers to that effect. Costs disallowed. And it is hereby so ordered.

Ruling affirmed.