

TROPICAL INVESTMENT CORPORATION, by and thru its authorized representative, KEIKURA B. KPOTO, Petitioner, *v.* **THE MINISTRY OF JUSTICE**, by and thru the Minister, COUNSELLOR KABINEH M. JA'NEH, THE LIBERIA NATIONAL POLICE, by and thru its Director, CHRISTIAN MASSAQUOI, and all persons acting under their authority, 1st Respondents, and C. Y. K. INC., by and thru its General Manager, MR. H. IRENE MARAB, 2nd Respondent.

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

Heard: April 8, 2004. Decided: August 16, 2004.

1. A trial judge cannot, on the basis of a mere letter by one who is not a party to a suit order the repossession of a parcel of land to such party.
2. Sheriffs and deputy sheriffs are ministerial officers of court and are to carry out orders, judgments and decrees of court, including service of processes and making of returns thereto.
3. The Ministry of Justice, which is an administrative agency, lacks the power to evict or repossess.
4. An administrative agency has only such powers as have been conferred upon it by law and it must act within the granted authority for an authorized purpose.
5. A writ of prohibition will be directed to an administrative agency or officer that is usurping jurisdiction where the agency or officer exercises power not granted by law.
6. Allegations well pleaded and not denied are deemed admitted.
7. The Ministry of Justice and Liberia National Police act illegally in evicting a person at night in contravention of the statute requiring a writ of possession in such cases.
8. Although the Ministry of justice may be authorized to assist the court in evicting a party, the time of eviction must not run contrary to the law, and any such action taken at such time is illegal and unwarranted.
9. Where the procedure adopted is illegal and unwarranted in the execution of a function, prohibition will lie.
10. Prohibition will lie to undo an act completed under a judgment.
11. Where the judgment has been enforced but was done illegally, prohibition will lie not only to prevent whatever remains to be done but also will give complete relief by undoing what has been illegally done.
12. The mere existence and availability of another remedy is not, in itself, necessarily sufficient to warrant denial of the writ of prohibition; and such other remedy must be plain, speedy and adequate in the circumstances of the particular case.

The petitioner/appellee filed a petition for a writ of prohibition seeking to restrain the respondents from interfering with the execution of a lease agreement executed between the petitioner and the Government of Liberia. The petitioner alleged that the respondents, acting by co-respondents Ministry of Justice and Liberia National Police, under the pretext of assisting in the enforcement of an order of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, had around ten o'clock p.m. gone unto the premises of the petitioner, leased from the Government of Liberia, through the Ministry of Agriculture, and using force and violence by some two dozen armed personnel, had broken the locks and doors and thereafter prevented the petitioner from entering the said premises.

Responding to the petition, the respondents challenged the legality of lease agreement concluded between the petitioner and the Government of Liberia, noting that the agreement was not signed by the Minister of Finance and attested to by the Minister of Justice; that the agreement was executed at a time when there was an existing agreement between co-respondent C.Y.K., INC. and the Government of Liberia for the same premises; that a previous agreement between Liberia Investment Incorporated and the Government of Liberia having been cancelled by the circuit court and Liberia Investment Incorporated evicted from the premises, its owner, now acting through Tropical Investment Corporation had illegally evicted co-respondent C.Y.K., Inc. from the property and put Tropical Investment Corporation into possession thereof; and that it was on the basis of this action that Co-respondent C.Y.K., Inc. had appealed to the circuit court for its intervention and formed the basis upon which the clerk of said court had sent a letter to the co-respondents Ministry of Justice and Liberian National Police for their assistance in the enforcement of its decision in the cancellation proceedings and upon which the said co-respondents had acted. The respondents also contended that prohibition would not lie since the matter of enforcement was an executive act granted by statute rather than a judicial act.

On appeal to the full bench, the Supreme Court affirmed the ruling of the Justice in Chambers granting the petition. The Court noted that as the petitioner was not a party to the cancellation proceedings and the original eviction that had occurred, no eviction could be pursued against it based on the said suit. The Court noted that the trial court could not legally act in the manner it did based on a mere letter from co-respondent C.Y.K., INC. which, like the petitioner, was not a party to the cancellation proceedings.

The Court opined further that even had the petitioner been a party to the said suit, the respondents had acted illegally and against the provisions of the law in proceedings to evict the petitioner from the premises and to repossess the co-respondent of the same at the hour of ten o'clock p. m. The act, the Court said, rendered the action void, noting that a court hearing should have been held and a proper judicial action taken.

The Court disagreed with the respondents that the enforcement of any court's decision was an executive function, noting that the law clearly provides for ministerial officers

(including sheriffs and deputy sheriffs) to carry out the orders, judgment and decrees of the courts, and that in the assistance of the Liberia National Police was needed, the court officers should have been present with the police and make returns as to how the orders were carried out. This, the Court noted, was not done.

Finally, the Court held that prohibition will lie because an administrative agency, such as the Ministry of Justice, had usurped jurisdiction it did not have or acted without authority in evicting a party from property in dispute and repossessing another party of the same. Prohibition, the Court concluded, will lie even where the act has been completed, not only to prevent further action but also to undo what has been done illegally. Accordingly, the Court granted the petition and ordered the peremptory writ of prohibition issued against the respondents.

Gloria M. Musu Scott of Scott and Associates appeared for the petitioner. *Theophilus C. Gould* of the Ministry of Justice appeared for the 1st respondents, and *Beyan Howard* of the Legal Consultants, Inc. appeared for the 2nd respondent.

MADAM JUSTICE COLEMAN delivered the opinion of the Court.

This case is before us on appeal from the ruling of our distinguished colleague, Mr. Justice Francis S. Korkpor, Sr., presiding in Chambers during the current Term of this Honourable Court, granting a petition for a writ of prohibition.

The petitioner, now appellee before us, filed a petition for a writ of prohibition seeking to prohibit and restrain the respondents from interfering with the execution of a lease agreement petitioner has with the Government of Liberia. In a three-count petition, the petitioner stated: That on May 1, 2003, it entered into a lease agreement with the Government of Liberia, by and thru the Ministry of Agriculture, to lease the Monrovia Slaughter House, situated and lying on Somalia Drive, Monrovia, Liberia; that the succeeding Minister of Agriculture, Honorable George Karmee, confirmed and affirmed the said lease agreement; that during the weekend of January 10-12, 1st Respondents Ministry of Justice and the Liberia National Police took more than two dozens armed police officers along with UNMIL military personnel, at about 10:00 p. m. at night on petitioner's premises, and with the use of force and violence broke open the locks and doors, entered the premises and have since then prevented the petitioner from entering the said premises.

The 1st respondent, the Ministry of Justice, filed an eight-count returns denying any legal basis for granting of the petition for a writ of prohibition, and substantially contending that the lease agreement between the petitioner and the Government was not signed by the Minister of Finance and attested to by the Minister of Justice; that the said lease agreement was not valid because an agreement cannot be executed within an effective period of another agreement for the same subject matter to have force and effect in the same period; that there

was a previous agreement between the Government of Liberia and Liberia Investment Incorporation (LIBINCO), represented by the Late Kerkura B. Kpoto, Sr., for the same premises, which agreement was cancelled in court, a writ of possession ordered issued and served in favor of the Government, and thereafter a lease agreement executed with 2nd respondent, C.Y.K., Inc.; and that the Sixth Judicial Circuit, Civil Law Court ordered 1st Respondent Ministry of Justice to assist in the enforcement of the judgment of that court. The 1st respondent, Ministry of Justice, therefore contended that prohibition will not lie against it for performing a duty which was directed by the court.

The 2nd respondent, C. Y. K, Inc., contended in its returns, along the same lines as 1st respondent Ministry of Justice, that in 1992 the Civil Law Court granted the petition for the cancellation of the lease agreement entered into between the Government of Liberia and LIBINCO, represented by its Managing Director, Kerkura B. Kpoto, Sr.; that as a result of a writ of possession issued by the said Civil Law Court, LIBINCO was evicted on January 20, 1994 and a new lease agreement was signed between the Government of Liberia and C. Y. K., Inc. on January 20, 1994, for a period of ten (10) years, ending on December 31, 2004; that C.Y.K., Inc. occupied the Slaughter House, subject of these proceedings, from 1994 to 1998 when the police, acting upon orders of Kerkura B. Kpoto, Sr., illegally evicted C.Y.K., Inc and put petitioner Tropical Investment Corporation in possession; and that following its illegal eviction by Hon. Kerkura B. Kpoto, Sr., 2nd respondent wrote a letter to the Civil Law Court requesting said the court to repossess it of the premises; that the clerk of the Civil Law Court then addressed a letter to the Ministry of Justice requesting the Ministry to assist the court in enforcing its judgment; that the enforcement of a judgment, being a statutory duty which can only be performed by the Executive Branch of Government, is not a judicial act, and hence, prohibition will not lie

The issues for the determination of the case by this Court are:

1. Whether the act of evicting the petitioner was carried out on order from the Civil Law Court for the 2nd respondent, the Ministry of Justice, to assist that court in evicting the petitioner?
2. Whether prohibition will lie under the fact and circumstances of this case?

In disposing of the first issue, it must be noted that the respondents in these proceedings do not deny evicting the petitioner from the premises of the Slaughter House during the weekend of January 10-12, 2004, through the use of police force. The 1st respondent's main argument, however, is that the action was based on an order sent to them by the Civil Law Court for the Ministry of Justice to assist the court and enforce the court's ruling by evicting the petitioner from the premises.

To support the contention that the petitioner was evicted in compliance with an order received from the Civil Law Court, Co-respondents Ministry of Justice and C. Y. K., Inc. annexed to their respective returns filed with this court two instruments. The first is a letter dated July 19, 1999, addressed to His Honour Yussif D. Kaba, Assigned Judge, Civil Law

Court, under the signature of Frank N. Hodge, General Manager of C. Y. K., Inc. In that letter, Mr. Hodge informed Judge Kaba that Hon. Kerkura B. Kpoto illegally evicted them from the Slaughter House in violation of the lease agreement between the Government of Liberia and C.Y.K., Inc., and requested the judge to intervene so that C.Y.K., Inc. can be put in possession of the premises. The second instrument, supposedly based on the foregoing letter to the Civil Law Court Judge, His Honour Yussif D. Kaba, the judge is said to have instructed the then Clerk of the Civil Law Court, Samuel A. Paasewe, to order the Ministry of Justice to assist the court to evict the petitioner. The purported written order of the judge, under the signature of Samuel A. Paasewe, dated July 19, 1999 is quoted hereunder verbatim.

REPUBLIC OF LIBERIA) IN THE CIVIL LAW COURT, MONTSERRADO
COUNTY) SIXTH JUDICIAL CIRCUIT COURT

SITTING IN ITS JUNE TERM, A.D.1999.

BEFORE HIS HONOUR: YUSSIF O. KABA..ASSIGNED CIRCUIT JUDGE

Republic of Liberia, by and thru)

The Minister of Justice)

..... PETITIONER)

Versus) PETITION FOR CANCELLATION

) OF LEASE AGREEMENT

Liberia Investment Corporation)

(LIBINCO), by and thru)

Its Managing Director, Kerkura)

B. Kpoto..... RESPONDENT)

The Honorable

The Minister of Justice

The Ministry of Justice

By directive of His Honour Yussif D. Kaba, Assigned Circuit Judge, you are hereby ordered to assist the sheriff of this court in enforcing the judgment of this court against Liberian Investment Corporation (LIBINCO), represented by its Managing Director, Kerkura B. Kpoto.

GIVEN UNDER MY HAND AND SEAL OF THIS

COURT THIS 27TH DAY OF JULY, A.D. 1999

Samuel A. Paasewe

CLERK OF COURT

COURT'S SEAL"

The certified records of the Sixth Judicial Circuit, Civil Law Court, Montserrado County, revealed that on August 4, 1992, the Civil Law Court, then presided over by His Honour Alexander C. Zoe, granted the petition for cancellation of a lease agreement filed by the Republic of Liberia against LIBINCO. The records from the court below further show that

LIBINCO was evicted and the Republic of Liberia was placed in possession of the premises (The Slaughter House) on the 17th day of August 1992, in keeping with the sheriff's returns to the writ of possession issued. Thereafter, the Republic of Liberia, in 1994, entered into a lease agreement with the 2nd respondent, C. Y. K. Inc. The 2nd respondent, C. Y. K. Inc., is said to have occupied the premises until 1998 when the police, allegedly acting on the order of Kerkura B. Kpoto, evicted it from the premises.

In his ruling on the writ of prohibition filed before him, the Chambers Justice ruled as follows:

“This Court observes that co-respondent C. Y. K. Inc. was not a party to the petition for cancellation proceedings filed in 1992 by the Republic of Liberia, neither was Tropical Investment Corporation a party to said action. Furthermore, with the execution of the writ of possession placing the Republic of Liberia in possession of the Slaughter House in 1992, the matter of the cancellation was concluded with noting pending before the Civil Law Court. So we wonder what judgment was there to be enforced. Even if there were a judgment pending, could it be legally enforced against LIBINCO who was not a party to the 1992 cancellation suit? Certainly not. Therefore, we find it highly irregular that Judge Kaba could have, on the strength of a mere letter written to him by one who was not and is not a party to a suit before the Civil Law Court, ordered the eviction of a third party who was also not and is not a party to a suit before the said court. This Court has held that “no one can be concluded by a judgment rendered in a suit to which he was not a party...” *Boye v. Nelson*, 27 LLR 174, Syl.1 Further, it is universally held that a judgment rendered against one person or entity cannot or may not be enforced against another who was not a party to the action. 30 AM JUR 2nd, *Judgments*, § 3.”

We fully agree with the ruling of the Chambers Justice because, as seen from the records before us, the judgment of the Civil Law Court entered in the cancellation petition on August 17, 1992 had been fully executed, and as such, there was no judgment involving the Slaughter House pending before the Civil Law Court at the time C. Y. K., Inc. requested said court to repossess the 2nd respondent, C. Y. K., Inc., of the premises on the 18th day of July 1999.

It is our view that no instruction was given by the Judge to the assistant clerk of court, Samuel A. Paasewe, to write a letter requesting the Ministry of Justice to repossess C. Y. K., Inc. This is because, firstly, C. Y. K., Inc. was not a party to the petition for cancellation proceedings filed in 1992 by the Republic of Liberia and Tropical Investment Corporation was not also a party to said action. Therefore, Judge Kaba could not have, based on a mere letter allegedly written to him by one who was not a party to a suit before the Civil Law Court, ordered the repossession of the land by a third party who was also not a party to the said suit.

Secondly, we hold that had the judge given such instruction to the Clerk to request the Ministry of Justice to assist the 2nd respondent, C. Y. K., Inc., in repossessing the property, the judge would have written on the face of the purported letter of request sent to the court by C. Y. K., Inc., or such order would have been recorded on the minutes of court. Thirdly, we see no returns on the records of the trial court as to the manner of service of the writ of possession which, if the alleged order of evicting the petitioner had been directed by the court, would have been issued and served on petitioner before the eviction was effected. But no returns were made simply because the act of the Ministry of Justice was not sanctioned by the court. And as such, no writ of possession was issued by the court and no sheriff was present during the alleged repossession of the 2nd respondent to make returns to the writ of possession.

Our law provides that the sheriffs and deputy sheriffs shall be ministerial officers of court and they shall carry out the orders, judgments and decrees of court and they shall serve all processes and make returns thereto. Judiciary Law, Rev. Code 17:15.12. If indeed the statement of the respondents were true, that the Civil Law Court requested the 1st respondent, the Ministry of Justice, to assist the Civil Law Court in repossessing 2nd respondent C. Y. K., Inc. of the property, then it means that the sheriff of the court, whose function it is to serve and return precepts in such a case, would have been present along with police officers from the Ministry of Justice. But this was not the case and it explains the reason why no returns were made to the alleged repossession order of the Civil Law Court Judge. Therefore, the repossession of 2nd respondent in the property by 1st respondent was illegal and wrongful.

Regarding the issue as to whether or not prohibition will lie in this case, this Court says that the Ministry of Justice, which is an administrative agency of Government, lacks power to evict or repossess. In the case *Kaba and McCromsy v. Township of Gardnersville*, 39 LLR 549 (1999) Syl. 1, the Supreme Court held that an administrative agency has only such power as have been conferred upon it by law and must act within the granted authority for an authorized purpose. The Supreme Court also held in the same case that a writ of prohibition will be directed to an administrative agency or officer that is usurping jurisdiction where the agency or officer exercises the power not granted by law.

Clearly, in the case before us, the Ministry of Justice was not authorized by statute to evict or repossess and neither was such authority conferred upon it by the Civil Law Court, as we have stated earlier. But even assuming, without admitting, that the Ministry of Justice was authorized by the Civil Law Court to repossess the 2nd respondent, C. Y. K., Inc., in the property, there is evidence (which 1st Respondent Ministry of Justice did not deny) that the so-called eviction and repossession of 2nd Respondent C. Y. K., Inc. in the property took place at about 10:00 p.m. in the night. This serious allegation in the petitioner's petition for a writ of prohibition, filed before the Chambers Justice, was never denied. Our law provides that allegations well pleaded and not denied are deemed admitted. *Horton v. Horton*, 14 LLR

57 (1960); *Alpha v. Tucker*, 15 LLR 561 (1964). We therefore conclude that 1st respondents Ministry of Justice and the Liberia National Police illegally and forcibly evicted petitioner at night, which action is in clear contravention to our statute which requires a writ of possession in such cases to be executed between the hours of sunrise and sunset. Civil Procedure Law, Rev. Code 1: 62.23.

We hold therefore that even if the 1st respondent, Ministry of Justice, was authorized to assist the court in evicting the petitioner, as claimed by the said 1st respondent Ministry of Justice, the time of eviction was quite contrary to our law, which rendered the action illegal and unwarranted. The Supreme Court has held in numerous cases that where the procedure adopted is illegal and unwarranted, prohibition will lie.

The 2nd respondent, in its brief and argument before us, contended that prohibition cannot lie to do an act already completed, in that the judgment of 1992 in the cancellation of the lease agreement entered into by the Government of Liberia and Liberia Investment Corporation (LIBINCO), had been fully enforced. The court says that LIBINCO, represented by its Managing Director, Kerkura B. Kpoto, Sr. and Tropical Investment Corporation, represented by its Managing Director, Kerkura B. Kpoto, Jr., are separate and distinct legal entities and persons. Thus, the judgment of 1992 rendered and enforced against LIBINCO, by and thru its Managing Director, Kerkura B. Kpoto, Sr., cannot under our law be concluded and enforced against the Tropical Investment Corporation represented by its Managing Director Kerkura B. Kpoto, Jr., who was never a party to the cancellation proceedings that ousted and evicted LIBINCO in 1992. In fact, Tropical Investment Corporation was not in existence in 1992 when the cancellation proceedings were instituted.

The argument of the 2nd respondent that prohibition will not lie to undo the act completed in the judgment of 1992 is not legally tenable, as neither 2nd respondent, C.Y.K., Inc., nor Tropical Investment Corporation was a party to the 1992 cancellation proceedings. And even if the parties were involved and the judgment had been enforceable but was done illegally, this Court has held in a long line of cases that prohibition will lie not only to prevent whatever remains to be done, but gives complete relief by undoing what has been illegally done. See *Ayad v. Dennis et al.*, 23 LLR 165 (1974); *JITCO v. Jabateh et al.*, 36 LLR 695, Syl. 8 (1990); *Boye v. Nelson*, 27 LLR 174 (1978), Syl. 3; *Fazqah Bros. v. Collins*, 10 LLR 261 (1950), Syl. 1; *Scott v. The Job Security Corporation*, 31 LLR 552 (1983), Syls. 1 & 2.

The 2nd respondent also argued that prohibition cannot be resorted to when adequate and ordinary remedies are available and suggested that petitioner should have filed an action in a trial court which will determine, after a hearing, which of the lease agreement should prevail in the instant case.

Our questions to 2nd respondent are: Why did 2nd respondent not bring an action against Kerkura Kpoto, Sr. when he allegedly illegally evicted the 2nd respondent, C. Y. K., Inc., in 1998 and put Petitioner Tropical Investment Corporation in possession of the Slaughter House? And why did the 2nd respondent not bring an action against the

petitioner, Tropical Investment Corporation, to determine which of the lease agreement was valid? The 2nd respondent itself did not resort to court action but rather used the strong arms of 1st respondents, using questionable documents allegedly sent from the court to evict and oust the petitioner. The next question is what adequate remedy under the facts and circumstances did petitioner have other than prohibition? The answer is prohibition was the adequate and speedy remedy available to petitioner giving the facts and circumstances enumerated in this matter. In the case *Nasser et al. v. Minister of Justice, Commissioner of Immigration*, 25 LLR 382 (1976), test at 392, Mr. Justice Pierre, speaking for the Court on prohibition, said: “There is no general rule of universal application by which the adequacy or inadequacy of a remedy can be ascertained, but the question is one to be determined on the facts of each particular case, and rests, in large part, in the discretion of the court.” Justice Pierre further opined that “the mere existence and availability of another remedy is not, in itself, necessarily sufficient to warrant denial of the writ of prohibition; such other remedy must be plain, speedy and adequate in the circumstances of the particular case. The question for determination is not whether the other remedy is adequate generally, but whether, in view of the precise circumstances in which the petitioner for prohibition finds himself, the other remedy is adequate in the particular instance. 63 AM JUR 2nd, *Prohibition*, § 9 (1992).”

During argument before us the 1st respondent Ministry of Justice strenuously argued that the lease agreement between the petitioner and the Ministry of Agriculture is not valid because said agreement was not signed by the Minister of Finance and attested to by the Minister of Justice, and also because there was another agreement already in force and effect for the same premises. This Court says that if the petitioner’s lease agreement with the Ministry of Agriculture is not valid for any reason, and 1st respondent Ministry of Justice wants to nullify said lease agreement, 1st respondent Ministry of Justice has a remedy available at law. But such remedy does not lie in the illegal, unwarranted, unilateral, and arbitrary eviction of the petitioner without authorization of the Court. Therefore, prohibition will lie to restrain the 1st respondent Ministry of Justice from performing a judicial function without authority to do so and will also undo what has been illegally done. And we so hold.

Wherefore, and in view of the foregoing facts and the laws controlling in the instant case, it is the ruling of this Court that the petition for a writ of prohibition be and same is hereby granted and the peremptory writ ordered issued. The Clerk of this Court is hereby ordered to issue an order and place same in the hand of the Marshall of this Court to repossess the petitioner who was illegally ousted by the 1st respondents Ministry of Justice and the Liberia National Police. Costs are ruled against 2nd Respondent C. Y. K., Inc. And it is hereby so ordered.

Petition granted.