

aB. S. Tamba of Old Road Sinkor, **Philip Tweh** of Airfield Sinkor, **Justice Brooks** of Gobachop, Red Light, **George Toe** of Clara Town, all of the City of Monrovia, Liberia APPELLANTS VERSUS The **Government of Liberia**, by and thru the Minister of Justice and Attorney General, Solicitor General and all Prosecuting Attorneys under the Authority of the Ministry of Justice APPELLEES

APPEAL. RULING CONFIRMED

HEARD: August 15, 2005 DECIDED: September 16, 2005

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

On April 12, 2005, the Ministry of Justice (Petitioner) filed a Petition for issuance of the Writ of Quo Warranto before the Justice in Chambers against B. S. Tamba, Philip Tweh and George Toe, (Respondents). Petitioner alleged that the County Respondents were functioning as Justices of the Peace in Montserrado without any legitimate commission or legal authority, contrary to law.

Petitioner maintained that the deliberate acts of Respondents violate Article 55 of the 1986 Constitution of Liberia, Sections 8.2 and 8.5 of the New Judiciary Law, Section 16.31 of the Liberian Code of Laws Revised and Section 12.35 of the New Penal Law of Liberia relating to the authority and functions of Justices of Peace within the Republic of Liberia. Petitioner therefore requested the Chambers Justice that Respondents be made to submit if any, their authority to function as Justices of the Peace within the Republic of Liberia, absent which Section 16.34 of 1 LCLR, page 52, should be applied and Respondents ordered ousted. Finally,

Petitioner prayed the Chambers Justice to grant Petitioner's Petition for the issuance and service of the Writ of Quo Warranto on the Respondents.

The records show that only B. S. Tamba, one of the Co-Respondents in the case, filed Returns to the Petition for the Writ of Quo Warranto. Co-Respondent B. S. Tamba contended that he was operating as a Justice of the Peace based on a letter of appointment he received from former President Charles Taylor dated March 28, 2003. He further claimed that the Writ of Quo Warranto should be denied on ground that the Ministry of Justice had earlier accorded him full recognition by assigning two City Solicitors to his Court and benefited greatly from his office as Justice of the Peace. As a result of this recognition, according to Co-Respondent Tamba, the Government cannot now challenge the authority of his Court.

Co-Respondent B. S. Tamba further claimed that the National Transitional Government of Liberia (NTGL) being an Ad Hoc Government, cannot review and reverse an act done by a constitutionally elected Government. Co-Respondent Tamba reasoned that he received his commission from the elected Government of former President Charles Taylor, therefore this interim Government, which is not an elected government cannot legally undo what was done by a constitutionally elected government.

Co-Respondent Tamba also contended that although the tenure of office of a Justice of the Peace is for two years, this time period "cannot be legally properly applied and adhered to at this point in time in Liberia because these are abnormal times". The Co-Respondent also further contended that, "during normal times, City Mayors, Clan Chiefs and Paramount Chiefs are elected by their people, but from 1990 to the present, City Mayors and chiefs were appointed by the President and or Chairman of the NTGL. In all of these instances, Petitioner has not filed a Writ of Quo Warranto against any of these Public Officers".

After listening to arguments pro et con, the Justice in Chambers, His Honour 2005, granting the Ishmael P. Campbell handed down his judgment on July 19, Pre-emptory Writ of Quo Warranto and he ordered the Respondents ousted and prohibited from functioning as Justices of Peace within the Republic of Liberia.

The Chambers Justice noted that Co-Respondents Philip Tweh of Airfield, Sinkor, Justice Brooks of Gobachop, Red Light and George Toe of Clara Town have no letters of appointment to function as Justices of the Peace within Montserrado County. With respect to B.S. Tamba on the Old Road, the Chambers Justice observed that his appointment expired on March 29, 2005, and there is no evidence to show that he was re-appointed by any Chief Executive up to the filing of this petition. The Chambers Justice therefore granted the Preemptory Writ or Quo Warranto and ordered Co-Respondent B.S. Tamba also ousted and prohibited from functioning as Justice of the Peace in the Republic of Liberia.

From this ruling, the lawyer representing the Respondents, Counsellor George S. B. Tulay, excepted and appealed to the Full Bench of this Court even though the records clearly show that the appeal was announced for and on behalf of all the Respondents, we observe that the brief filed by the Respondents' lawyer only makes reference to Co-Respondent B. S. Tamba. When confronted on this point, Counsellor Tulay responded that the other Co-Respondents had abandoned the cause; hence, he was now only representing Co-Respondent B. S. Tamba.

The lone issue for our determination in this case is:

Whether or not the Writ of Quo Warranto will lie under the facts and circumstances of this case?

Quo Warranto is a common law remedy. In a broad sense, it is a writ of inquiry seeking reason for doing the acts for which a complaint is made. "It is the remedy or proceeding by which the sovereign or state determines the legality of a claim which a party asserts to the use or exercise of an office or franchise and ousts the holder from its enjoyment, if the claim is not well founded, or if the right to enjoy the privilege has being forfeited or lost." 65 Am Jur 2d, Definition, Section 1, page 230.

Under our statute, Quo Warranto may issue against a person who usurps, intrudes into or unlawfully holds or exercises within the Republic a franchise or a public office or an office in a domestic corporation. 1 LCL Revised, Section 16.3(1)(a), caga 150.

".... Where the Respondent in a Quo Warranto proceeding is adjudged guilty of usurping or intruding into or unlawfully holding or exercising an office, franchise, or privilege, a final judgment in favor of the Petitioner shall order that the Respondent be ousted and excluded therefrom." Ibid, Section 16.36(1). As early as 1926, this Court held that "Quo Warranto is the proper writ to test the validity of any franchise, commission, or office which is held under direct usurpation." King vs. Whitefield, 2 LLR 542 (1926).

It is clear from the foregoing definitions of Quo Warranto that the purposes for which the writ is generally invoked are to test the right or title to office and to remedy usurpation or abuse of franchises. It follows therefore that where it is established that the Respondent is occupying an office in this Republic without the proper legal authority, he/she will be removed, using the remedy of the extraordinary writ of Quo Warranto.

In the case before us, the Ministry of Justice, Petitioner, wants B. S. Tamba ousted and removed from office as Justice of the Peace because he has no records that former legitimate authority to function in that office. We note from the President Charles Taylor appointed B. S. Tamba as Justice of the Peace on March 28, 2003. Our Constitution provides that:

"The President shall nominate and, with the advice and consent peace of the Senate, appoint and commission all justices of the peace. A justice of the peace shall hold office for a term of two years from the date of his commission and shall be eligible for reappointment, but he may be removed from office prior to the expiration of his term of office for cause or at the pleasure of the President." New Judiciary Law, Section 8.5, pate 101.

There is no indication that the appointment of Co-Respondent B. S. Tamba was even done with the advice and consent of the Senate as required by law. Be that as it may, what is clear is that his term of office expired on March 29, 2005 and that his continuous occupation and functioning in the office and capacity as Justice of the Peace is illegal and without any color of authority. In fact, B. S. Tamba himself does not deny that the period for which he was appointed had expired and that he holds no subsequent appointment from any Chief Executive as required by law.

His basic contention, however, is that he, having been appointed by an elected Government; only an elected Government can remove him and not an interim government. We disagree with this contention and line of reasoning.

The present Interim Government, like all other interim governments in this country during the war years, have functioned as legitimate authorities, with powers in the three branches — Legislative, Executive and Judiciary been fully exercised. All decisions taken by these interim governments have remained binding not only on all citizens and residents, but also on successive governments, be it another interim government or elected government. We therefore hold that this present Interim Government has and enjoys all rights, powers, privileges and authority of a legitimate government and the Chairman has the authority if he so wished, to have removed any Justice of the Peace "for cause or at the pleasure of the President" as provided for under Section 8.5 of the New Judiciary herein quoted above.

But the issue, as we see it, is not whether or not this Government wants to remove an appointee from office. The issue at hand is that-the tenure of office of an appointee, by operation of law, has expired and absent reappointment of the same appointee, he is without authority to act. In this case, the two-year period for which B. S. Tamba was appointed as Justice of the Peace having expired, and there being no evidence that he has been re-appointed, he no longer has authority to serve in that office and must therefore cease functioning.

Co-Respondent B. S. Tamba also contended that by the Ministry of Justice assigning City Solicitors to his office, this Government has accorded him due recognition and benefited from his office, therefore the Government can not now challenge his authority. We do not agree. The City Solicitors, if they were indeed assigned by this Government or even by the past Government, were in effect assigned to the office of the Justice of the Peace and not to B. S. Tamba as an individual. Under the law, "a proceeding in Quo Warranto against a public officer is for the purpose of determining whether he is entitled to hold the office discharge its functions. Thus, the writ is directed to the person holding the office and exercising its functions rather than to the office as such, and the judgment therein binds the respondent personally..." 65 Am Jur 2d Remedy As Against Officer Rather Than The Officer, Section 19 Page 243.

Finally, Co-Respondent B. S. Tamba contended that the Quo Warrant() proceedings filed by the Petitioner does not meet legal requirements in that the Petition is not "accompanied by a statement based on information of the Attorney General or information given by any person or relator". But this contention of the Co-Respondent is not supported by the records before us. We see from the records before us a letter under the signature of the Minister of Justice/Attorney General which we quote as follows:

"March 21, 2005

Theophilus C. Gould
Solicitor General of the Republic of Liberia.

Hon. Solicitor General:

I received complaints from various citizens as to what they termed Miscarriage of Justice on the Part of B. S. Tamba, Philip Tweh, Brook, et al. who have presented themselves as Justices of the Peace.

Accordingly and realizing that it is my duty by law to ensure that justice is done to all, I have been holding meetings with the individuals concerned and to my greatest surprise these gentlemen are found to be without a Presidential Commission as required by law.

In view of the above, you are directed to take the appropriate legal action to stop these individuals from operating in the Capacity of Justices of the Peace.

Your prompt action in the premises is anticipated, and this constitutes your sufficient legal authority.

Professionally yours,
Kabineh M. Ja'neh
COUNSELLOR-AT-LAW
MINISTER OF JUSTICE/ATTORNEY GENERAL."

The law requires that a Petition for Writ of Quo Warranto shall "be accompanied by a statement based on information of the Attorney General or on information given by another person (hereinafter called the "relator") which information shall state facts justifying the issuance of the Writ

We are satisfied that the requirement of an accompanying statement was met by the foregoing letter written by the Minister of Justice/Attorney General himself to the Solicitor General directing him to take legal action against the Respondents, based on complaints he received from citizens concerning certain acts of alleged miscarriage of justice by the Respondents.

WHEREFORE and in view of the foregoing, the Ruling of the Chambers Justice is hereby confirmed and affirmed. The Preemptory Writ of Quo Warranto is hereby ordered issued and Respondents are hereby ordered ousted and further prohibited from functioning as Justices of the Peace within the Republic. Costs ruled against the Respondents. AND IT IS HEREBY SO ORDERED.