

The Republic of Liberia by & thru the Ministry of Commerce and Industry, represented by and thru its Minister, Deputies & Assistant Ministers Also of the City of Monrovia, Republic of Liberia, APPELLANT Versus **Bernice Trading Center** by and thru its General Manager **Bernice Beh** and Chief Executive Officer, **Lovelin Beh** of the City of Monrovia, Republic of Liberia, APPELLEE

APPEAL

HEARD: March 24, 2014 DECIDED: November 5, 2014

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

These prohibition proceedings are before us on appeal from the ruling of our distinguished Colleague, Mr. Justice Kabineh M. Ja'neh, presiding in Chambers during the March Term, A.D. 2013 of this Honorable Court.

According to the certified records, Bernice Trading Center, the appellee herein imported into Liberia a beverage named and styled "Pussy Natural Energy Drink" to be commercialized on the Liberian market. The appellee claimed that after complying with the Ministry of Commerce, (the appellant herein) financial and regulatory requirements, the appellant in two separate letters dated April 1, 2013, under the signatures of the Assistant Minister for Industry and the Assistant Minister for Commerce and Trade, respectively, ordered the appellee to refrain from introducing its beverage into the commerce of Liberia on grounds that the government had not approved the entry thereof into Liberia and that the name of the appellee's beverage is lewd. Because the appellant's letters are relevant to the issues on appeal, the Court has decided to quote them below.

" April 1, 2013

The Management Bernice Trading Inc.

Monrovia, Liberia

Dear Management:

The Ministry of Commerce & Industry is in possession of an advertisement for a product bearing the name "Pussy Energy Drink " published in one of the local dailies. Under the ad is the name and address of your entity.

As clearly shown, the name of the product is insulting, demeaning and down grading of womanhood and as such, the Ministry does not accept or allow the commodity to be sold on the Liberian market with that name.

Consequently, the Ministry of Commerce and Industry mandates that the Manager stops the importation of the commodity or if already imported, remove the entire commodity from the

Liberian market immediately and report to the Ministry for further discussion. We urged the management to furnish us with all relevant information about the product including but not limited to quantity available, sold and in inventory.

Finally, the Ministry of Commerce and Industry reserves the right to institute further actions upon failure to adhere to its mandates.

Sincerely Yours,

Sei W Gahn

Assistant Minister for Industry"

The appellant's second communication addressed to the appellee reads as follow to wit:

“April 1, 2013

The Management Bernice Trading Inc.

Benson & Mechlin Streets

Monrovia, Liberia

Dear Management:

Our attention has been drawn to your attempt to import into the commerce of Liberia, a drink known as "Pussy Drink". This is a brand new product which has not been approved by the Government of Liberia for entry into the Country. Furthermore, the commodity should have been processed through the Ministry's trade facilitation (IPD) process.

Hence, you are informed to refrain from any attempt to bring this product on the market or clear it through the Freeport of Monrovia. Furthermore, we have notice that you are already advertising the product and attempting to clear a container load from the Freeport of Monrovia. Please stop the advertisements, as they do undermine the current efforts of reviewing the matter. Also please be informed that a full and swift investigation is underway and a decision will be communicated in a timely manner.

Sincerely Yours,

Steve Marvie

Assistant Minister for Commerce and Trade.

This was the action of the appellant, the Ministry of Commerce & Industry that prompted the appellee to flee to the Chambers of this Honorable Court via a Writ of Prohibition on April 16, 2013. The appellee's seven (7) count petition reads as follow:

1) That petitioner is a duly registered business entity in the Republic of Liberia known and operating under the name and styled, "Bernice Trading, Inc." located at the corner of Benson and Mechlin Streets in Monrovia. Hereto attached and marked as petitioner 's Exhibit P-1, in bulk are

copies of the Articles of Incorporation of Bernice Trading Inc. and the business registration receipts and certificate.

2) That petitioner is also the importer of the natural energy drink "Pussy Natural Energy Drink" manufactured by Pussy Drinks International Ltd. of Great Britain, the United Kingdom.

3) That the petitioner first presented to the appropriate authorities of the Ministry of Commerce and Industry, a Proforma invoice from Pussy Drinks International Ltd. and addressed to Bernice Trading Inc. for the shipment of 1,584 (One Thousand Five Hundred and Eighty Four) trays of Pussy Natural Energy Drink, which Proforma invoice was acted on by the relevant and/or appropriate authorities of the Ministry of Commerce and forwarded to BIVAC INTERNATIONAL-LIBERIA for a Request for inspection, which request form was prepared and issued in December 2012 with Reference No. 2218912, the inspection fee paid and the requested inspection carried out. Hereto attached and marked as petitioner Exhibit P-2 in bulk are copies of the Proforma invoice forwarded to BIVAC INTERNATIONAL before and after it was acted upon by Commerce Ministry authorities, the Request for Inspection Form prepared by BIVAC INTERNATIONAL before and after it was acted upon by BIVAC and other relevant government institutions, as well as a copy of the Manager 's check for the duty payment.

4) That petitioner says that the said documentations having being processed as enumerated above, as well as the publication

and printing of advertisement, they then proceeded to the Freeport of Monrovia to process the payment of the required APM Terminal fees which would have facilitated the clearing of their goods and their subsequent taking delivery of same, when they were intercepted by Custom Inspectors who confiscated their goods upon the orders of Commerce Ministry officials, specifically Hon. Sie W. Gahn and Hon. Steve Marvie, Assistant Minister for Industry, and Commerce & Trade respectively, as contained in the communications addressed to the Management of Bernice Trading, Inc. Hereto attached and marked as Petitioner's Exhibit P-3, in bulk are copies of the communications from the two Assistant Ministers and the advert printed into hand bills and/or posters for advertisement purposes, to form a cogent part of the records in these proceedings.

5) That petitioner says that the conduct of the respondents to have resulted to the confiscation of the petitioner's goods after they the respondent had received petitioner's proforma invoice and acted upon same without raising any question as to the name of the commodity and its apparent negative impact on womanhood in Liberia, and after said proforma invoice was forwarded to BIVAC International for inspection request, which request was made and also acted upon, and the said inspection conducted by BIVAC after the payment of the required fees, without any question or opposition being raised as to the name of the goods or commodity that was being

imported into the country by petitioner, and after the payment of the required duty against the said good/commodity to be imported by petitioner without any question or opposition to the importation of the said goods into the County (Liberia), owing to the name of the said goods; instead, they, that is to say respondent, allowed the Petitioner to go through the headache, pain and financial burden of importing the said goods into the Country, only to stop them from clearing same from the Freeport of Monrovia, which had already been imported into the Country by petitioner with the knowledge consent and/or acquiescence and approval of respondent; the payment of the required related fees and duty, the payment of advertisement cost, both in the print and electronic media, as well as in hand bills and/or posters. This stop order or action on the part of the Customs Officers at the Freeport of Monrovia was necessitated by the fact that it just then became apparent to the respondents that the name of the good or commodity "Pussy Natural Energy Drink" was in the words of the respondent "insulting, demeaning and down grading of womanhood, and as such cannot or should not be allowed to be sold on the Liberian market bearing such a brand name. This action was not only belated, but illegal, and as such, the respondent is estopped from asserting same, owing to its conduct in the approval of the entry of the said goods into Liberia, and for sale on the Liberian market as enumerated earlier.

6) That the petitioner submits that no individual or entity can be deprived of its right, security or property without due process of law. Respondents having approved all the instruments relating to the importation of the commodity, which is the subject of these proceedings, into Liberia, and having received the necessary customs duty for the importation of the commodity into Liberia, it was illegal and unconstitutional for the two Assistant Ministers to have personally or by directive through their operatives, stop the petitioner from clearing its commodity without due process. petitioner submits that the point at which it (the petitioner) had reached in the process of clearing its commodity, only a court of competent jurisdiction could or can stop the petitioner; hence respondent proceeded by the wrong rule or route in stopping the petitioner from clearing its commodity from the Freeport of Monrovia. Prohibition will therefore lie in the instant case.

7) That petitioner submits and maintains that prohibition will and should lie, because the conduct of respondent (Sie W Gahn and Steve Marvie) and other functionaries of the Ministry of Commerce and Industry are illegal and ultra vires; hence Prohibition will lie to undo what was illegally done, and to stop them from doing further harm to petitioner.

WHEREOFRE AND IN VIEW of the foregoing facts and circumstances, petitioners most respectfully prays Your Honour and the Honourable the Supreme Court of Liberia as follows:

I. To Prohibit Respondents, the Republic of Liberia by the Ministry of Commerce and Industry from further acting in keeping with whatever communication and/or instruction they have and/or have been issued;

II. To order Respondent to immediately order the appropriate authorities at the Freeport of

Monrovia/National Port Authority to clear Petitioner's goods and order that the Petitioner takes delivery of its goods; and

Ill. To also further grant unto the Petitioners any and all other relief Your Honour and the Honourable the Supreme Court of Liberia will deem legal, just and equitable in the premises.

On April 30, 2013, the Chambers Justice issued the alternative writ, ordering the appellant to file its official returns on or before May 10, 2013. In obedience to the Justice's mandate, the appellant filed its returns on May 10, 2013 in which the appellant among other things denied violating the appellee's right to due process. We herein quote the appellant's sixteen count (16) count returns.

1) "As to the entire petition, respondents says that same should be denied and dismissed as the petition is prematurely filed, since the petitioners have failed to exhaust the administrative and/or other remedies made available to them.

2) Further to count one {1} above, respondents says on April 1, 2013, both the Assistant Ministers for Commerce and Trade and Industry respectively, in persons of Steve Marvie and Sei W. Gahn, wrote the petitioner, inviting the said petitioner to proceed to the Ministry of Commerce for discussion and further informing the petitioner that a swift investigation was to be conducted in the matter which is now the subject of the Prohibition. Instead of submitting to the said investigation, petitioner fled to the Supreme Court with the instant petition. Your Honour is requested to take judicial notice of petitioner's Exhibit P/3 in bulk attached to petitioner's petition.

3) Respondent says that prohibition will not lie to control administrative or ministerial acts unless an administrative or executive board or tribunal is acting in a quasi-judicial capacity and is acting without justification or in excess of its jurisdiction. The Supreme Court of Liberia held in the Case: Liberia Agricultural Company v. Elias T. Hage et al., 38 LLR 259, Syl. 11 that "prohibition will be granted when the trial court is without, or exceeds jurisdiction, or proceeds contrary to rules which ought to be observed at all times, or where a party litigant is not afforded due process of law ". Further, the Supreme Court of Liberia held in the case: Senators Francis Y.S. Garlawolo et al. v. The Elections Commission, March Term A.D. 2003, that prohibition will lie where the tribunal has assumed jurisdiction not prescribed by law, or has exceeded its designated jurisdiction, or in the exercise of its lawful jurisdiction is proceeding by wrong rules other than those which should be observed at all times. In the instant case, the respondent is the proper regulatory agency clothed with the authority to determine which commodities should enter the commerce of Liberia. Secondly, respondent acted within its authority when it notified petitioner to halt the distribution of the "Pussy Natural Energy Drink" on the Liberian market and stop the advertisement pending the outcome of an investigation, since to continue to advertise would undermine on-going efforts of reviewing the matter.

Hence, respondent submits that prohibition will not lie in the instant case since it had jurisdictional authority and proceeded by rules which are observed in such instances.

4) That as to count one (1) of the petition, respondent says same presents no traversable issue.

5) That as to count two (2) of the petition, respondent denies that the current petitioner is the importer of the energy drink "Pussy Natural Energy Drink", as the pro-forma invoice which initiated the transaction predates the coming into existence of the petitioner; that is to say, the petitioner did not exist at the time the pro-forma invoice was issued. Your Honour is requested to take Judicial Notice of petitioner's Exhibit P/1 attached to the petitioner's petition.

6) Further to count five (5) above and further traversing count two (2) of the petition, respondent says that the petitioner does not have the capacity to represent the purported Bernice Trading Center on whose pro-forma invoice the entire transaction which is the subject of the current proceedings was initiated. The pro-forma invoice, on which the respondent is alleged to have acted, is dated November 29, 2012, in the name of Bernice Trading Center. On that date, the now petitioner was neither a de facto, nor a de jure corporation, as the petitioner came into existence on December 17, 2013, which date is reflected on its Articles of Incorporation, Business Registration Certificate, and business registration receipt. Your Honour is requested to take Judicial Notice of petitioner's Exhibit P/1 attached to the Petitioner's Petition.

7) That as to count three (3) of the petition, respondent says that petitioner did not present to the appropriate authorities/respondent any proforma invoice from Pussy Drinks International Ltd. For "the shipment of 1,584 (One Thousand Five Hundred and Eighty Four) trays of Pussy Natural Energy Drink, which proforma invoice was acted on by the relevant and/or appropriate authorities of the Ministry of Commerce and forwarded to BIVAC INTERNATIONAL-LIBERIA". Respondent says that the issue of the presentation of the referenced pro-forma invoice to the respondent and the purported signature of a former employee of the Respondent on the invoice is a subject of investigation; the former employee has alleged that the signature which appears on the said document is not his and that he never signed the said document. That is why the petitioner should have submitted to the investigation so that these and other issues could be addressed, instead of prematurely filing the instant petition before the Supreme Court which cannot take evidence or serve as the finder of facts.

8) Further to count seven (7) above and further traversing count three (3) of the petition, respondent says that assuming arguendo that the pro-forma invoice was submitted to the respondent, there is no indication of the name of the drink, on the face of the said invoice as is alleged by the petition. Respondent says that on the face of the pro-forma invoice where it is inscribed "Description", the importer intentionally did not insert the name/description of the drink but rather described the drink as "Tray of 24 X 250ml cans UK Label". Also, on the face of the BIVAC issued Request For Inspection Form where it is inscribed "Description of Goods and Technical Name(s) ", the importer again did not describe the goods or indicate the technical name(s) of the drink so as to give the respondent adequate notice of what it was importing, but rather inserted "1 X 20' Container STC. Tray of 24 X 250ml cans UK label".

9) Further to count (8) above, and further traversing count three (3) of the petition, respondent

says that the conducts of the importer and the petitioner are tainted with fraud. Respondent says that the importer and the petitioner fraudulently concealed the name and description of the commodity/drink as they were aware of the obscene nature of the name inscribed on the can of the drink. The Supreme Court of the Liberia has held in the case: James Davies Vs. Republic. 14 LLR 249, (1960) text at pages 255-256 that "fraud is a false representation of the fact, made with the knowledge of its falsehood, or recklessly, without belief in its truth, with the intention that it should be acted upon by the complaining party, and actually inducing him to act upon it to his damage. The rule that non-disclosure of facts does not constitute fraud does not apply where there is active concealment of facts. By an active concealment is meant either (1) a representation good as far as it goes, but accompanied with such a suppression of facts as makes it convey a misleading impression, or (2) an attempt by one party to draw the other's attention from a fact or cover it from view. " Clearly, the importer and petitioner did all they could to draw respondent's attention away from the name of drink and cover it from view. Fraud vitiates all transaction; and assuming without admitting that the initial signature was obtained from the respondent approving the pro-forma, the said signature was obtained by fraud because the importer knowingly concealed the name of the drink because of its obscene nature.

10) That as to Count Four (4) of the petition, respondent says that the proceeding of all the documents related to the importation of the Pussy Natural Energy Drink was done through fraudulent and irregular means. For example, by Administrative Notice MCI/No. 005/06/2012 dated June 26, 2012, the Ministry of Commerce categorized certain commodities that were subject to processing through the Import Permit Declaration (IPD). One of such category of commodities was "Other perishable foodstuffs and food and beverages requiring refrigeration or other environmental control. The Pussy Natural Energy Drink falls within this category and should have been processed through an Import Permit Declaration. Notwithstanding, the importer and the petitioner obtained the purported authorization for processing of the necessary documents through the Request for inspection process commonly called IRF, instead of processing through the /PD. Attached hereto as respondent's Exhibit R/1 is a copy of the referenced Administrative Notice.

11) Further to Count Ten (10) above, and in further traversing Count Four (4) of the petition, respondent says that what is not legally done is not done at all. Therefore, the fact that the importer and petitioner had processed documents through fraudulent and irregular means does not in any way serve to prohibit the legitimate action of respondent upon the discovery of the illegal conduct of the petitioner.

12) That as to Count Five (5) of the petition, respondent confirms and affirm Count Nine (9) of these returns, and says further that the alleged approval granted to the importer and petitioner, assuming that to be true, and the failure of the respondent to object to the importation of the commodity and payment of fees into Government's revenue account, was on account of the fact

that the importer and the petitioner had fraudulently concealed the name of the commodity and had attempted to disseminate obscene materials into the commerce of the Republic of Liberia, contrary to Chapter 18, Section 18.7 of the Penal Law of Liberia. Respondent says that "a Material is obscene if taken as a whole, it: (a) has as its exclusive theme an appeal to prurient interest in sex of the average person or, in the case of material designed for or disseminated to special groups, to the prurient interest in sex of the members of that group; and (b) is utterly without social value to the persons to whom the dissemination is addressed Chapter 18, Section 18.7 (a) (b) of the Penal Law of Liberia.

13) Further to count twelve (12) above, respondent says that judging the material as a whole, the obscenity test provides that in determining obscenity, the trier of fact must find that the average person, applying contemporary community standards would find the work taken as a whole appealing to prurient interest in sex. Am Jur 2d, Lewdness, indecency, etc, Section 7, In the instant case, the work "PUSSY", inscribed across the can of the drink, sought to be circulated on the Liberian market, is obscene if taken as a whole, it appeals to prurient interest in sex of the average Liberian person. We are all aware that in Liberia the word "PUSSY" is associated with the female sex organ and as such, associated with prurient interest in sex. Therefore, the respondent/Government of the Republic of Liberia cannot be seen as facilitating anyone attempting to violate the Penal Laws of Liberia.

14) Black's Law Dictionary. Abridge Ninth Edition, 2010, defines obscene as extremely offensive under contemporary community standards of morality and decency; grossly repugnant to the generally accepted notions of what is appropriate. Respondent says that by every definition, given the mentality of the average person in Liberia and the contemporary community standards of morality and decency in Liberia, the inscription "PUSSY" on any material or commodity for circulation of dissemination in Liberia is [obscene].

15) Respondent submits and says that research has shown that even in the United Kingdom from whence the commodity was exported, and which is considered a developed nation without the kinds of deep rooted cultural and traditional values that exist in our society, there was public outcry against the advertisement of the "PUSSY" drink, which led to the ad being banned. Respondent says that it is with this knowledge that the importers and the petitioner connived to conceal the description and name of the drink upon their alleged submission of the proforma invoice of the respondent. Attached hereto as respondent's Exhibit R/2 is a copy of an article, from the Wednesday, 24 April 2013 edition of the Guardian, United Kingdom, which speaks to the banning of the ad in respect of the "Pussy" drink in the United Kingdom.

16) That as to Counts Six (6) and Seven (7) of the petition, respondent confirms and affirms Counts Two (2) and Three (3) of these returns, and says further that Due Process was accorded to the petitioner through the respondent's invitation to the petitioner to submit to an investigation.

Petitioner submits that the respondent does have authority to regulate commodities that enter the stream of commerce and to monitor those commodities even after they are placed on the market. Hence the petitioner assertion that the petitioner had reached a point in the process of clearing its commodity that only a court of competent jurisdiction could stop the petitioner is erroneous".

On May 27, 2013, the Chambers Justice entertained legal arguments and on July 24, 2013, he granted the peremptory writ of prohibition. In granting the petition the Chambers Justice firstly acknowledged the statutory authority of the appellant to regulate trade and commerce, and referred to the requisite provisions of the Executive Law, Rev. Code 12:29.2 which state that, "the Minister of Commerce and Industry shall be responsible for the promotion, development, regulation, control operation and expansion of commercial and industrial enterprises and the activities in the Republic. In performing the functions of the Ministry, the Minister shall exercise broad powers with respect to protection of the public interest and the achievement of national goals through the establishment and enforcement of standards for commodities and for trade; and provide such services as are required by the public and Government agencies in pursuit of these objectives. The duties of the Minister shall include:

- a) Establish and regulate commodity and trade standards;
- b) Collect, evaluate, and publish data pertaining to commerce and industry;
- c) Establish and enforce standards of business practices;
- d) Promote the sound development of foreign and domestic commerce;
- e) Develop plans for the movements of goods and people within and without the Republic;
- f) Conduct the registration of business enterprises; and
- g) Perform such other duties as may be assigned from time to time by the President".

Although the Chambers Justice acknowledged the appellant's statutory authority to regulate trade and commerce in Liberia, he however ruled that the records were void of any showing that the Petitioner, Bernice Trading Center Inc., were ever cited to any administrative investigation or provided an opportunity to be heard, and described the appellant's two letters of April 1 2013 as "mere information to petitioner Bernice Trading Inc., formally announcing a verdict concluded by the respondent Ministry affecting the petitioner vested property interest". The Chambers Justice further ruled that "the respondent in these proceedings disregarded the due process rights of Bernice Trading Center Inc., and by its unlawful action subjected the said petitioner to undue hardship without legal justification [and that} in every such case where a tribunal or administrative agency, though having jurisdiction but proceeded by rules different from those to be observed at all times, a petition for writ of prohibition is properly authorized" He concluded that "unless there was a demonstrated showing...that an administrative agency, as the respondent Ministry in the instant proceedings, in exercise of its powers and authority, accorded a party its due process of law, the agency 's conduct is deemed ultra vires". It is from this ruling of our esteemed colleague that the

appellant excepted to and announced an appeal to this Court en banc for review and final determination.

From a review of the records, briefs and arguments of both parties, we have determined that there is only one cardinal issue for a judicious determination of this matter, and that is, whether or not prohibition will lie given the facts and circumstances numerated supra.

Our Civil Procedure Law Rev. Code 1:61.21(3) states that "prohibition is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein." Our case laws are replete with opinions of the Supreme Court detailing the scope of the office of prohibition, few of which this Court has elected to cite hereafter in light of the issue raised in the present case. In the case *Kpolleh et al. v. Randall* 34 LLR 252, 258-259 (1986), the Court held that "the writ of prohibition will be issued where the respondent named therein has assumed authority that is not properly his own, or having that authority, he had proceeded by the wrong rules." In the case *Meridien BIAO Bank Limited v. Andrews et al.*, 40LLR 111, 126 (2000), the Court held that "prohibition is the proper remedial process to restrain an inferior court or administrative tribunal from taking action in case over which it does not have jurisdiction, or where it acts beyond its jurisdiction, or attempts to proceed by rules different from those which ought to be observed at all times." Prohibition has been granted to perfect the administration of justice and to also prevent arbitrariness, usurpation, and some great outrage upon settled principles of law and procedures. *Togba v. Republic* 35 LLR 389,400 (1988). This has been the law and it is still the law which is a light unto this Court's path. But be that as it may, the parties in answering the issue raised supra have responded divergently as to whether or not the writ of prohibition will lie in these proceedings.

The appellant in answering the issue as to whether prohibition will lie has responded in the negative and argued that it did not exceed its administrative jurisdiction or proceeded by wrong rules when it ordered the appellee in its two separate letters of April 1, 2013, to refrain from commercializing its product and submit to an investigation at the Ministry of Commerce. It is the argument of the appellant that the appellee had engaged in fraud and misrepresentation by deliberately concealing the name of its product imported into the commerce of Liberia. The appellant further contended that the appellee's product is conspicuously lewd and a violation of the Penal Law Rev. Code 26:18.7(a)(b) which states that "a material is obscene if taken as a whole, it: (a) has as its exclusive theme an appeal to prurient interest in sex of the average person or, in the case of material designed for or disseminated to special groups, to the prurient interest in sex of the members of that group; and (b) is utterly without social value to the persons to whom the dissemination is addressed." Based upon these reasons appellant concluded that the writ of prohibition should not lie.

The appellee for its part disagreed with the appellant and has argued that the writ of prohibition should be granted on grounds that the appellant proceeded by wrong rules when the appellant confiscated its goods after it, (the appellee) had complied with all the appellant's financial

requirements and regulations. The appellee further argued that the appellant violated its Constitutional rights to due process by confiscating its goods without even affording it an opportunity to a hearing.

The Constitution unequivocally and emphatically declares that no person shall be deprived of life, liberty, security, of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law". The Liberian Constitution Article 20, 1986. The Supreme Court as far back as 1937 defined due process of law as "a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial. *Wolo v. Wolo* 5 LLR 423, 428- 429 (1937). The Court speaking through Mr. Justice Grimes espoused that "it is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard". *Id.* Restated, due process implies that the person whose rights are affected be present before the tribunal pronounces decision concerning his right, and to have the right of controverting by proof every material fact which bears on the question of his interest in the matter involved. *Kruah et al v Weah* 42 LLR 148, 155-156 (2004). Simply stated, "it is the right of a person to a fair hearing or trial before he suffers any penalty". *Id.*

In response to whether the appellee was accorded due process, the appellant argued in its brief filed before this Court that the two letters of April 1, 2013 under the signatures of the two Assistant Ministers of Commerce gave the appellee sufficient notice of the appellant's intent to investigate, thus the element of notice under due process was satisfied. Appellant also argued with great eloquence that had the appellee subjected itself to the investigation of the Ministry it would have been afforded the opportunity to confront the allegations of the Ministry.

We have already quoted the two letters under the signature of appellant's two Assistant Ministers, a review of which reveal the absence of a date on which the appellee should have appeared for the investigation, time of appearance and the venue or forum within the Ministry the appellee should have appeared before for the investigation. The Administrative Procedure Act § 82.4 provides that "a person entitled by law to a hearing before an agency determination becomes final shall be given reasonable notice thereof". Such notice shall include:

- a) A statement of the time, place and nature of the hearing;
- b) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c) A reference to the particular sections of the statutes and rules involved;
- d) A short and plain statement of the matter asserted ". Executive Law, Rev. Code, 12:82.4

Absent these requirements stated supra this Court disagrees with appellant's argument that the two letters of April 1, 2013, were sufficient notice to the appellee. In the case *Kruah et al. v Weah* 42 LLR 148, 154-156 (2004) the Court speaking through Mr. Justice Korkpor defined notice as "information, advice or written warning, in more or less formal shape intended to appraise a person

of some fact which it is his right to know and the duty of the notifying party to communicate." In keeping with § 82.4 of the Administrative Procedure Act quoted supra and the Kruah case, we hold that the appellant's two letters of April 1, 2013 did not satisfy the element of notice in that the two letters of April 1, 2013 did not inform the appellee about a date, time and venue of a hearing. We further hold that the appellant erred by neglecting to accord the appellee sufficient notice to appear and confront the allegations against it. However, it should be quickly noted that this holding stated herein does not indicate that the lone issue raised in this opinion has been resolved or that the writ of prohibition will lie because the appellant neglected to notify the appellee to appear for a hearing rather, we take the position that the appellee was entitled to notice in keeping with § 82.4 of the Administrative Procedure Act and the principles enounced in the Kruah case.

Having said this, the Court view the act of the appellant's Assistant Ministers as one which the appellee had remedy under the law within the Ministry of Commerce given the fact that there are higher ranking officials of the Ministry that is, Deputy Minister(s) and the Minister proper, who could review and correct the acts and decisions of the two assistant Ministers by administrative appeal. Said relief could have been in the nature of the filing of an official complaint against the two Assistant Ministers, to the office of the Deputy Minister(s) or the Minister proper. After exhausting all the administrative processes the appellee still had the option of filing a petition for judicial review in the appropriate trial court if the Minister's decision or findings were unfavorable to the appellee's interest or if the appellee considered the act of the two Assistant Ministers as final in respect of the Ministry of Commerce and Industry, the appellee was still entitled to seek judicial review. Statute provides that "a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final judgment determination in a contested matter is entitled to judicial review under this chapter. For contested matters in which the right to review provided by this section affords an adequate remedy, no other means of review, redress or relief shall be available." [Our Emphasis]. The Executive Law, Rev. Code 12:82.2.

In the case, *Garlawolo et al. v The Election Commission* 41 LLR 377, 393 (2003), the Honorable Supreme Court held that a petition for the issuance of the writ of prohibition will be considered to be prematurely filed, and consequently denied, where the petitioner had failed to exhaust all the administrative and procedural remedies before resorting to filing the petition. It is the law hoary with age that prohibition may not be used as a process for the review and correction of errors committed in the trial of a cause for which other remedies are available. *The Management of Catholic Relief Services v. Natt* 39 LLR 415, 426 (1999). This case further states, "If the inferior court or tribunal has jurisdiction of both the subject matter and of the person, prohibition will not lie to correct errors of law or facts for which there is an adequate remedy by appeal or otherwise." *Id.* Applying these principles of law to the case before us, we take judicial notice of the Executive Law, Rev. Code 12:29.2, which authorize the Ministry of Commerce, the appellant herein to regulate

and control commercial and industrial enterprises in the interest of the public hence, the Ministry was within its jurisdiction to investigate the appellee concerning the product the appellee intended to introduce on the Liberia market. This Court as previously stated in this opinion has acknowledged that the appellant's two Assistant Ministers violated the appellee's constitutional right to due process by neglecting to adequately notify the appellee of a hearing in consonance with the provisions of the Administrative Procedure Act quoted *supra*. However, the appellee still had other administrative and procedural remedies available to it by operation of law. Therefore, in view of this we hold that the filing of the petition for prohibition was premature since there were other remedies available to the appellee. *Fazzah v. National Economy Committee*, 8 LLR 85, 91 (1943); *Chariff Pharmacy v. The Pharmacy Board of Liberia* 37 LLR 135, 145 (1993); *Henries v. Fahnbulleh* 42 LLR 459, 466 (2005).

As stated earlier in this opinion our esteemed Colleague who presided over this matter in Chambers, acknowledged the appellant, Ministry of Commerce statutory authority to regulate trade and commerce in Liberia but he however concluded his ruling by prohibiting the appellant from what he referred to as "taking any further action negative in this matter to the appellee's property interest". He further ruled and instructed the appellant to allow the appellee clear and take delivery of its goods and that the appellant pay the appellee all verified expenses imposed on the appellee consequential of the appellant's conduct. While we can appreciate the concerns which the Justice in Chambers had for the manner in which these prohibition proceedings grew, the unique circumstances presented by this case constrains us to disincline from his ruling. This case emanated from an administrative forum, which we have concluded did not conduct any administrative hearing for the taking of evidence and for said evidence to be passed on. We believe that the appellant disregard for the rule of law may have prompted the Justice to pursue this course of action in his Ruling, which he deemed befitting to correct and address the ill. Nevertheless, in addressing the ill, we believe that the Justice acted in excess of the law by granting the writ of prohibition and giving the specific instructions mentioned, thereby being tantamount to adjudicating the case on its merits without firstly allowing the appellant to conduct a hearing and passing on the evidence. By issuing the peremptory writ of prohibition, the Chambers Justice adjudicated the case on its merits without firstly allowing the evidence of the case to pass and sift through the various judicial channels before reaching the Supreme Court. An example of the evidence that should have sifted through the judicial channels is the appellee's invoice attached to the petition which had conjured allegations and counter-allegations bearing on the factual issues of misrepresentation, concealment and fraud. The appellant argued strenuously that the appellee had engaged in misrepresentation, concealment and fraud to import its beverage into the commerce of Liberia by concealing the actual name of the beverage on its proforma invoice. Appellant further argued that the appellee's pro- forma invoice which failed to indicate the name of the beverage was fraudulently approved by an employee of the Ministry who was being investigated. The authenticity of these allegations can only be determined

by the court below and then subsequently reviewed by the Supreme Court. Absent such, the Supreme Court cannot pass on them because it is trite law that this Court is estopped from passing on evidence in cases over which it lacks original jurisdiction; that is, in as much as the Court is eager to administer substantive justice, the Court by law cannot pass on evidence for the first time. We therefore hold that the Chambers Justice instructions that the appellee be allowed to commercialize its product without the appellant conducting a hearing in keeping with its statutory mandate is ultra vires because the law mandates the appellant to promote, develop, regulate, control and expand commercial and industrial enterprises in the interest of the public. This goes without saying that absent any evidence before us to establish whether or not the appellee's beverage "Pussy Natural Energy Drink" is in the interest of the public which would have been confirmed as an outcome of an administrative hearing this Court cannot agree with the Chambers Justice Ruling.

It is therefore, the Opinion of the Court that the ruling of the Chambers Justice is hereby reversed, the alternative writ is quashed and the preemptory writ of prohibition denied. These proceedings are remanded to the Ministry of Commerce and Industry with instructions that a hearing be conducted in compliance with the Administrative Procedure Act, thus satisfying the appellee's right to a hearing. The final determination thereof shall then govern future action(s) of either party. It is mandated, that given the timeframe in which this matter has been pending, the Ministry conduct and conclude the hearing within one month upon rendition of this opinion to afford the aggrieved party its right to judicial review, if it so desires.

In view of the foregoing citations of law and the facts and the circumstances herein before stated, the petition for prohibition is denied and this case is hereby remanded to the Ministry of Commerce and Industry for full investigation in keeping with this Opinion.

Ruling Reverse, Petition denied.

The Ministry of Justice by and thru Counsellor Betty Lamin Blamo, Solicitor General of Liberia and Counsellor Augustine C. Fayiah, Assistant Minister for Legal Affairs Ministry of Justice represented the appellant. Counsellor Peter Howard of the Legal Consultants, Inc. represented the appellee.

