

Western Steel and Allied Industries Liberia, Inc. by and thru its authorized Officer, **Ebenezer Antwi** of the City of Monrovia, Republic of Liberia, PETITIONER Versus **Nimba County**, represented by its **Superintendent** and the **Nimba County Procurement Committee for the Scrap Metal tender**, 1ST RESPONDENT And **The Public Procurement & Concession Commission and its Complaints, Appeals & Review Penal**, represented by its authorized officials, also of the City of Monrovia, Republic aforesaid, 2ND RESPONDENT And **North Star Industries, Inc.**, represented by its authorized officials, also of the City of Monrovia, Republic, aforesaid 3RD RESPONDENT AND **The Ministry of Justice**, 4TH RESPONDENT

LRSC 36

APPEAL

Heard: June 25, 2015 Decided: August 13, 2015

MR. JUSTICE JA'NEH delivered the Opinion of the Court.

One pivotal question is dispositive of the appeal now before this High Court: "whether the issuance of the remedial writ of prohibition is warranted under the facts of this case to safeguard petitioner's due process rights?"

To aid our consideration of this question and for the benefit of this Opinion, it is appropriate to state that the appeal before the Supreme Court en banc emanates from a ruling entered on February 12, A.D. 2015, by our Esteemed Colleague, Mr. Justice Philip A. Z. Banks, III. It is therefore critically essential that we undertake a careful review of Mr. Justice Banks' Ruling, aforementioned, and his conclusion reached therein dismissing the provisional/alternative writ. Prior to undertaking this exercise, it is befitting for the Court to provide a synopsis of the facts and circumstances provoking the filing of Petitioner Western Steel and Allied Industries Liberia, Inc.'s petition praying the Court to issue the writ of prohibition.

Inspection of the certified records shows that with the approval of the Government of Liberia, Nimba County local government concluded an agreement with Arcelor Mittal Liberia. By this agreement, the iron ore company consented to transfer to Nimba County administration the rights to all unused structures and scrap located in its concession area. Thereupon, and at the instance of Nimba County, an invitation to bid was caused to be published on November 18, 2013, in the Daily Observer Newspapers. The publication invited interested parties with the requisite qualifications to tender bid for the purchase, removal and disposal of all old unused structures and scrap metals located within the Arcelor Mittal Liberia Concession area in Yekepa, Nimba County. Through its Procurement Committee and in further preparation for this exercise, Nimba County established a Bid Evaluation Panel.

On February 12, A.D. 2014, following its receipt and evaluation of all the bids, and for the primary reason of the bid tendered by Petitioner Western Steel & Allied Industries Liberia, Inc. being "most responsive", Nimba County Procurement Committee declared Petitioner as the winner. A communication signed by Nimba County Superintendent and Chairman of the Procurement Committee, Christiana D. Dagadou, dated February 12, A.D. 2014, was addressed to the petitioner. It states in substance:

"Dear GP Capt. Forjoe (RTD):

We present sincere compliments and wish to thank you for participating in the tender process for the sale of all old unused structures and scrap metals situated at the Arcelor Mittal Liberia's concession area in Yekepa, Nimba County.

In accordance with the Public Procurement and Concession Act of 2005 (section 30 (1) page 36, amended, restated and approved on September 16, 2010) a Bid Evaluation Panel (BEP) was constituted with the responsibility to evaluate bids solicited by Nimba County, the procuring entity, in line with the predetermined and published evaluation criteria as outlined to bidders, and submit reports and recommendations for contract award for consideration of the Procurement Committee.

Predicated upon the reports and recommendations of the BEP, the Procurement Committee of Nimba County hereby declares your entity, Western Steel and Allied Industries Liberia, Inc.' as the most responsive bidder and therefore winner of the bid.

Congratulations and we hope that negotiations for practical actions will begin as soon as possible.

Thank you very much.

Sincerely,

Christiana D. Dagadou

(Nimba County) Superintendent and Chairman of the Procurement."

Discontented with the Nimba County Procurement Committee's decision, North Star Industries, Inc., named in Petitioner's Petition as Third Respondent, on February 20, A.D.2014, formally protested challenging the propriety of the award. The Third Respondent North Star Industries, Inc. cited members of the Nimba County Procurement Committee applying different scoring standards for the same item as the key reason for mounting its challenge. The Third Respondent attacked the alleged inconsistent application of standards as being only the reason for Petitioner Western Steel being declared as the winner but described such conduct as a conspiracy. We deem it appropriate to quote verbatim the letter of protest written by the Third Respondent:

"20th February, 2014

Hon. Nimba County Superintendent and Chairman of Nimba County

Procurement Committee

Sanniquellie, Nimba County, Republic of Liberia

Re: Nimba County Scrap Metal Tender

Hon. Superintendent:

In keeping with Article 125, Section (2), page 112 of the Public Procurement Act of 2005 (Section 30), pages 36 amended, restated and approved on September 16, 2010, we, the Management of North Star Industries, Inc., hereby protest your Nimba Procurement Committee decision to denounce our bid as "not responsive", vis-a-vis our participation in the above subject tender.

We have reliably learned that the report from the Nimba Bid Evaluation Panel, submitted to you and your Nimba Procurement Committee, dated 4th February, 2014, was unsigned by the Panel's Chairman and a second descending panelist, due to scoring patterns, by the other three panelists, that were grossly inconsistent with facts and observations clearly stated in the Panel Chairman's due diligence findings.

Just in case it was an oversight on your part, we ask that you investigate this highly irregular act, on the part of three panelists.

Their action borders on a conspiracy to deny us a fair chance at winning the aforementioned tender.

Thank you,

Eric Aikins

General Manager

cc: Executive Director Public Procurement and Concession
Commission, The Complaints, Appeals and Review Panel"

According to the records before us, and this we desire to emphasize, copy of the protest letter, aforementioned, addressed to Nimba County Superintendent and Chairman of the County Procurement Committee, was forwarded to The Complaints, Appeals and Review Panel through the Executive Director of Public Procurement and Concession Commission (PPCC). The said entity, acronym, PPCC, is named in Petitioner's Petition as Second Respondent. It is also important here to reference, at least in passing, the observation made by our distinguished Colleague in regard to the February 20, A.D. 2014 letter, quoted herein above. This is absolutely important in the face of Petitioner Western Steel's contention that said communication failed to meet the statutory requirements of a complaint and therefore should not have been entertained as a matter of law.

In his Ruling dealing with this issue, and with which position of Mr. Justice Banks we are in full agreement, he stated thus:

"A reading of the complaint letter shows that it did indeed satisfy the requirements of Section 125(3) (c) of the PPCC Act. The letter needed to firstly state with acceptable clarity the circumstances upon which the third respondent sought to establish the existence of a violation of the Act. In the second paragraph, the third respondent clearly describes the allegation of wrongdoing. It explains the improprieties that occurred during the bid evaluation stage, and specifically the inconsistent scoring patterns by three panelists, which it considered so appalling that the remaining two panelists, including the panel chairman, refused to sign the Nimba County Bid Evaluation Report. This depiction of the events is not a mere general allegation of wrongdoing; it is very specific with regard to the number of panelists involved in the alleged misconduct and the reaction of the other panelists. Moreover, and also in accordance with the requirements of the subsection mentioned above, the complaint further refers to the provision of the Act that was allegedly violated. In the communication, the third respondents indicated to the Chairman of the Nimba County Procurement Committee, who was also the Superintendent of Nimba County, that the complaint was based on Section 30 of the Act, which includes the responsibilities and duties of the Bid Evaluation Panels. Section 30(c) states: "A Bid Evaluation Panel shall be responsible for the evaluation of bids in accordance with the predetermined and published evaluation criteria as outlined to bidders in the bid documents in accordance with this Act. " By alleging that the scoring patterns were erratic and showed inconsistencies in the criteria across bidders, the clear implication was that the Bid Evaluation Panel did not fulfill its statutory obligation, under Section 30(c), to evaluate all of the bids "in accordance with the predetermined and published evaluation criteria as outlined to bidders". Furthermore, the statute's provisions must be interpreted within the context of the intent of the Legislature in passing the Act, which were all listed in Part I, under the section titled,

“Objectives of the Law”.

Therein are enumerated goals of the Public Procurement and Concessions Commission Act, as follows:

- (a) Maximize economy and efficiency in procurement and Concessions, and obtain best value for public expenditures;
- (b) Promote economic development of Liberia;
- (c) Build capacity of officials and institutions in public procurement;
- (d) Promote competition and foster participation in procurement proceedings and Concession agreements by qualified suppliers, contractors and consultants;
- (e) Provide equal access without discrimination to all eligible and qualified providers of goods, works and services and fair and equitable treatment of all bidders;
- (f) Promote integrity, fairness, accountability and public confidence in the procurement process;
- (g) Achieve transparency in the procedures, processes and decisions relating to procurement and Concession agreements :
- (h) Decentralize public procurement to procuring entities;
- (i) Promote the growth of an indigenous Liberian Private sector;
- (j) Harness private sector financial, human and technical resources through Concession agreements; and
- (k) Eradicate monopolies and promote competitiveness in the Concession Procurement process.

In performing its duty as outlined in Section 30, the Bid Evaluation Panel had the obligation to carry out its functions in a manner that would achieve the above listed statutory goals, especially the emphasized portions, stated in Part of the Act. It was clearly the violations of the underlined portions that the complaint letter had reference to. Indeed, the complaint letter, in addition to containing precise accusations against the Panel, also drew specific attention to the segment of the Act that relates to the responsibilities of the Bid Evaluation Panel.

By doing so, the third respondent was essentially informing the first respondent that the Bid Evaluation Panel further violated Section 30(1), which calls for Bid Evaluation Panels to "to evaluate bids solicited by the Procuring Entity". Because such evaluations are obligated to be done in a form that conforms to the objectives of the Act, the scoring of the bids irregularly not only did not promote the listed goals of the Act but were in clear violation of the Act. Given that as the complaint letter referenced Section 30 of the Act, the third respondent is deemed to have abided by Section 125(3)(c)'s requirement that a complainant shall state the exact provision of the Act that is said to have been violated. Accordingly, the contents of the complaint was sufficient to bestow the procuring entity, and subsequently, CARP, with the jurisdiction to investigate the third respondent's claim of malfeasance by the Nimba Procurement Committee's Bid Evaluation Panel."

It might be of interest to note that the chronology of events occurring does not appear to be clear following the lodging of a formal protest by Third Respondent. That protest letter of

February 20, A.D. 2014 addressed to Nimba County Superintendent was sent to the Complaints, Appeals & Review Panel (CARP). For instance, the seemingly lack of clarity of date and time is manifest as follows:

(1) We see a letter dated May 13, A.D. 2014, addressed to Honourable Fang G. Zuagele by Counsellor Beyan D. Howard, Chairman, Complaints, Appeals and Review Panel, Public Procurement and Concessions Commission. This letter substantially stated thus:

“We note with interest in your communication to the Panel, that the county leadership was in transition and this impeded the ability to the county procurement committee to investigate said complaint. Therefore, it is the decision of the Panel to allow you an opportunity in keeping with the PPCC Act as well as international best practices to carry out the investigation, within the period of fourteen (14) days upon receipt of this communication. Also, that the outcome of said investigation be communicated to North Star Inc., and a copy forwarded to the panel, through the Chief Executive Officer of the Public Procurement and Concession Commission. We wish to reiterate the Commission’s mandate that you hold on to all processes leading to the award of contract and/or any activity in connection with this process in anticipation of the conclusion of said investigation”.

(2) We see minutes of "Procurement Committee" meeting of Friday, May 30 and Monday, June 2, A.D. 2014, chaired by Honourable Fang G. Zuagele, Superintendent and Chairman Procurement Committee, of Nimba County. These minutes show that two meetings were duly convened by the Procurement Committee of Nimba County:

“to investigate complaint filed against the BED by North Star Industry Inc., one of the competitive bidders for Sale of all Old Unused Structures and Scrap Materials/Metals presently located in Arcelor Mittal Liberia's Concession area in Yekepa, Nimba County.”

These meetings, according to the minutes, were held under the chairmanship of Nimba County Superintendent on May 30th and June 2nd, 2014, respectively. It was resolved at these gatherings thus: "Therefore, the Nimba County Procurement Committee after two-days of intensive deliberations on the complaint of North Star, one of the competitors of the Nimba County Scraps against the BED; analysis and ratifications of the BEP'S report, amending the result of the tallied scores to 90% for North Star Industry, Inc. and 95% in favour of Western Steel & Allied Industries Liberia, Inc., unanimously agreed that the said company, Western Steel & Allied Industries Liberia Inc., (WSAIL) has emerged as the winner; thereby making (WSAIL) more responsive bidder and to be recommended for entering into contract with the Nimba County Administration in buying the scraps.

(3) We here also observe that this decision, reflected in the minutes, dated Monday, June 2nd, A.D. 2014, was signed by all the Nimba County Procurement Committee members and duly approved by the County Superintendent.

(4) There is however a great deal of uncertainty as to which complaint was entertained by the Nimba County Procurement committee in the June 2, A.D. 2014 Resolution. For long after the June 2, A.D. 2014 Resolution was passed, we find also a communication by the PPCC addressed to Nimba county Superintendent, dated July 18, A.D. 2014. The referenced communication was signed by the PPCC's Interim Chief Executive Officer, Commissioner Charles E. Collins. It can therefore be assumed that there must have been a complaint previous to the one ordered investigated by the PPCC in the July 18, A.D. 2014 letter.

(5) This possibility is further buttressed by our discovery of some instruments in the records captioned: "Republic of Liberia, Complaints, Appeals & Review Panel (CARP) Public Procurement & Concessions Commission, Executive Mansion Grounds, Capitol Hill, Monrovia, Liberia. OPINION." That CARP "Opinion", dated July 4, A.D. 2014, was signed by its Chairman, Counselor Beyan D. Howard, and the other four members. CARP therein ordered the Nimba County Procurement Committee to conduct an "evaluation of all bids de novo and present a report to the parties not later than fifteen (15) days as of the receipt of this ruling. AND IT IS HEREBY SO ORDERED." The July 18, A.D. 2014 communication to the Chairman of the Nimba County Procurement Committee forwarding CARP's decision, states thus:

"Dear Hon. Chairman:

Subject: Opinion of the Complaints, Appeals and Review Panel in the Case North Star Industries Inc. Vs. Nimba County Administration.

It is an honour to present to you my compliments and forward to you the opinion of the Complaints, Appeals and Review Panel (CARP) in the case North Star Industries Inc. VS. Nimba County Administration in keeping with PART VIII, Section 128 (2) of the PPCC Act, 2010.

We look forward to a continuous collaboration as we strive to attain equality, transparency, fairness and accountability in the public procurement and Concession Processes."

Also, the records reveal that the declaration of Petitioner Western Steel as the "most responsive" and thereupon as the winner of the bid was subsequently annulled. From the new evaluation exercise reportedly conducted, Third Respondent North Star was designated as the "most responsive". But by a letter dated August 14, A.D. 2014, Petitioner Western Steel challenged the new result and declaration made pursuant thereto. In this appeal, there is a great need to fill the gaps in the narrations made by the parties of all that were said to have transpired. Therefore, it is most appropriate in order to fully grasp a true picture of the events as they actually occurred, to reproduce hereunder the nineteen count petition filed by Petitioner Western Steel seeking the issuance of a writ of prohibition.

Hence, the narrative of Petitioner Western Steel and Allied Industries Liberia, Inc. as set forth in its petition:

"AND NOW COMES Petitioner in the above-entitled proceedings, and most respectfully prays Your Honor for the issuance of a Writ of Prohibition against the above-named Respondents, to

prohibit, restrain and enjoin said Respondents from illegally removing Petitioner as Bid winner, for the following legal and factual reasons to wit:

1. That petitioner is a corporation existing under the laws of the Republic of Liberia, and engaged in the iron, steel, and scrap industries. Attached hereto, as EXHIBIT "P/1", is a copy of petitioner's most recent Business Registration Certificate.

2. That the 1st Respondent placed an invitation to bid, dated November 18, 2013, in the Monday November 18, 2013, edition of the Daily Observer Newspaper, soliciting bids for the purchase, removal, and disposal of old unused structures and scrap metals, located in Nimba County. A copy of the newspaper publication is attached as EXHIBIT "P/2". In response to the referenced invitation to bid, Petitioner presented a bid to the Nimba County Procurement Committee on 31st December 2013, in accordance with the terms and conditions of the invitation. On 31st December 2013, Petitioner, along with the 3rd Respondent, attended the opening of the bids, which took place in the Conference Room, Nimba County Administration Building, Sanniquelli, Nimba County.

3. On February 12, 2014, Petitioner received a letter from the 1st Respondent which informed Petitioner that after an evaluation of the bids submitted, Petitioner's bid was declared as the 'most responsive bid' and Petitioner was accordingly declared the winner of the process. A copy of the referenced letter is attached hereto as EXHIBIT "P/3". Further, pursuant to a letter dated February 21, 2014 the 1st Respondent invited the Petitioner, as winner of the bid, for discussion and negotiation leading to the signing of a contract. Copy of said letter is attached hereto as EXHIBIT "P/4".

4. Further to Count Three (3) above, negotiations were held and agreement reached between the Petitioner and the 1st Respondent, after which a Final Contract was signed and presented to the Ministry of Justice for attestation. To date, this contract is still with the Ministry of Justice. A copy of the minutes of meeting held on March 7, 2014, and the contract is attached hereto as EXHIBITS "P/5" and "P/6", respectively. While in the process of obtaining the attestation of the Ministry of Justice, Petitioner learned that the 3rd Respondent, who was also a bidder, had filed a protest against the 1st Respondent's decision to declare Petitioner as winner of the bid. In the said protest letter, the 3rd Respondent alleges that it had reliably learned that the report from the Bid Evaluation Panel to the Procurement Committee was unsigned by its Chairman and a second person due to scoring patterns. A copy of 3rd Respondent's letter dated February 21, 2014, is attached hereto as EXHIBIT "P/7".

5. That based upon the 3rd Respondent's letter of February 21, 2014, the 2nd Respondent referred the matter to its Complaints, Appeals & Review Panel (CARP), which further re-directed the matter to the 1st Respondent for investigation. The CARP, in a letter dated May 13, 2014, mandated the new Superintendent of the 1st Respondent to conduct an investigation within fourteen days and to communicate the outcome of said investigation to the 3rd Respondent with a copy to CARP. A copy of CARP's letter is attached hereto as EXHIBIT "P/8".

6. In compliance with the CARP's mandate, the 1st Respondent conducted its investigation and in a letter dated May 29, 2014, informed the 3rd Respondent of its decision to confirm the Petitioner as the winner of the Bid. In its decision to the 3rd Respondent, the 1st Respondent averred that the 3rd Respondent had failed to state which provisions of the Public Procurement & Concessions Act (The Act) had been violated by the Bid Evaluation Panel. The 1st Respondent also wondered how the 3rd Respondent had come to know how the scoring was carried out when that information was confidential under the Act. The 1st Respondent confirmed that the bid of the 3rd Respondent was non-responsive and confirmed Petitioner as the winner of the bid. A copy of the referenced letter of the 1st Respondent is attached hereto as EXHIBIT "P/9".

7. That notwithstanding the decision of the 1st Respondent contained in Exhibit P/9, the CARP, in contravention of Section 126 of the Amendment and Restatement of the Public Procurement and Concessions Act of 2005 (the "Act"), conducted another investigation even though no appeal had been taken from the 1st Respondent's investigation in the matter. By a report dated July 4, 2014, which was sent to the 1st Respondent on July 18, 2014, the CARP ruled that it "invalidates the decision of the Bid Evaluation Panel against the 3rd Respondent". CARP ordered that a new bid Panel be constituted to conduct another evaluation of all bids de novo. In reaching its decision, CARP relied solely on the issue of irregular scoring patterns, and not on any violation of the Act, as would be expected. A copy of CARP's ruling is attached hereto as EXHIBIT "P/10".

8. That by a letter dated July 30, 2014, the 1st Respondent informed the Petitioner that based upon the ruling of the CARP, the 1st Respondent appointed a new evaluation panel which now found that Petitioner's bid was 'non-responsive' and that the 3rd Respondent was now the winner of the Bid. Also, by a letter dated the selfsame July 30, 2014, the 1st Respondent requested the Public Procurement and Concessions Commission (PPCC) for a "NO-OBJECTION" to enter into contract with the 3rd Respondent. Attached hereto as EXHIBIT "P/11" and EXHIBIT "P/12", respectively, are copies of the referenced letters of July 30, 2014.

9. That on August 14, 2014, pursuant to communication, Petitioner informed the 1st Respondent of its protest to the 1st Respondent's decision to, at that stage, declare its bid as non-responsive. Copies of the Petitioner's letter of August 14, 2014 were sent to the Ministry of Justice, the 2nd Respondent, and the Nimba Legislative Caucus. A copy of said letter is attached hereto as EXHIBIT "P/13". In response to Petitioner's letter, the 1st Respondent, via a letter dated September 19, 2014, and attached hereto as EXHIBIT "P/14", informed the Petitioner that it rejected its Complaint and intimated that said 1st Respondent was acting consistent with the ruling of the CARP. To date, the Petitioner has not received a response to its communication from the 2nd and 4th Respondents. Petitioner has learned that the 2nd Respondent has requested from the 1st Respondent the draft contract which it intends to enter into with the 3rd Respondent. Petitioner submits that to allow the Respondents to proceed with this process would substantially affect and prejudice Petitioner's rights in violation of the applicable laws. And

for this reason Prohibition is the only remedy available to undo the illegal acts of the Respondents.

10. Petitioner says that Section 125 (3) of the Act provides, inter alia, that for a complaint to be considered and entertained, it must state with reasonable clarity the circumstances relied upon by the Complainant to establish the existence of a violation of this Act or its regulations (including identification of the provisions of the Act or regulations relied upon to establish the occurrence of such violation).... Petitioner submits that in its letter of protest (Complaint), the 3rd Defendant failed to state which provision of the Act or any regulations had been violated by the evaluation panel. The said letter also failed to state the circumstances relied upon by the 3rd Respondent to establish a violation. The question is, is it a requirement of the Act that each member of the bid evaluation panel award the same scores to bidders? The answer is no. Accordingly, the 3rd Respondent having failed to state the provision of the Act or regulations violated by the bid evaluation panel, its letter did not meet the requirement of Section 125 (3) and should not have been given any credence by the 2nd Respondent.

11. That further to Count Ten (10) above, Section 63 of the Act provides that information regarding the evaluation process is confidential and shall not be disclosed to bidders or other persons not involved in the process. Accordingly, Petitioner wonders how and from whom did 3rd Respondent obtain the information on the scoring patterns of the panel. 3rd Respondent's admission that it obtained information regarding the evaluation process, being in violation of the Act, is good and sufficient reason to disqualify 3rd Respondent from the entire process. And Petitioner so prays.

12. That further to Counts Ten (10) and Eleven (11) above, 3rd Respondent's letter was forwarded to CARP who mandated an investigation to be conducted by the 1st Respondent, consistent with Section 125 of the Act. The 1st Respondent conducted its investigation and communicated its outcome to the 3rd Respondent consistent with Section 125 (6) (b) of the Act. Petitioner submits that no appeal was taken by the 3rd Respondent from the decision of the 1st Respondent. However, the CARP proceeded to conduct its own investigation into the matter. Section 126 (2) of the Act provides that a Complainant may (i) request that the CARP decide the complaint if the relevant entity does not issue a decision within fifteen days of the filing of the complaint or (ii) file with the CARP an appeal of a decision of the relevant entity. Petitioner submits that given this provision of the law, the investigation conducted by CARP has no legal validity as CARP had no jurisdiction in the matter.

13. That further to Count Twelve (12) above, Petitioner says that the so-called hearing/investigation conducted by CARP violated and contravened Section 126(8) of the Act. At no time did the 2nd Respondent notify the Petitioner of a Protest, appeal and/or a hearing into any matter such as would provide Petitioner the opportunity to be heard. The referenced section further provides that the CARP must give at least seven days written notice of a hearing and after the hearing is conducted, an additional seven days to afford the parties the opportunity to present additional evidence or legal support in writing. None of these legal

requirements were followed by CARP and hence, its investigation and decision are not consistent with the Act and are accordingly void. Petitioner says that it is upon this void decision of CARP that the 1st Respondent subsequently overturned its two earlier rulings, which confirmed the Petitioner as winner of the bid, and declared that 3rd Respondent was instead the winner of the bid.

14. Petitioner says that as a result of these illegal actions, the 1st Respondent and the 3rd Respondent are in the process of signing a contract or have signed said contract, with the approbation of the 2nd Respondent. Petitioner says that a Writ of Prohibition is necessary to restrain, enjoin, and prohibit the Respondents from acting in an illegal manner adverse to the rights of the Petitioner. Petitioner also says that even if a contract has been signed, because said the process leading to said contract was in violation of law and because said contract would deprive Petitioner of its rights as the winner of the bid, Prohibition would lie to set aside and undo such void contract as there is no other readily available, speedy and adequate recourse or relief for Petitioner.

15. Petitioner says that when this contract is entered into between the 1st and 3rd Respondents, with the approval of the 2nd Respondent, same is or would be presented to the Ministry of Justice for attestation. Petitioner says that the Ministry of Justice is made a party herein for the purpose of restraining, enjoining and prohibiting it from attesting to any contract between the 1st and 3rd Respondents for the subject scrap materials.

16. Petitioner says that the Respondents have not conducted themselves in keeping with law and the rules which should be observed at all times in such matters. Petitioner says that prohibition will lie where an administrative agency acts without jurisdiction, or if it has jurisdiction, it has proceeded beyond its jurisdiction, or it has attempted to proceed by rules different from rules which should be observed at all times. *Meredien BIAO Bank Liberia Limited versus Andrews et al.*, 40 LLR 111; *Garlawolu et al. versus the Elections Commissions et al.*, 41 LLR 337.

17. Petitioner says that the writ of prohibition may be issued against an administrative agency if the agency or an officer thereof is exercising power or authority not vested in the agency or officer by law. *Kaba and McCromsy versus Township of Gardnersville et al.*, 39 LLR 549. The Supreme Court has also held that Prohibition will lie not only to halt whatever remains to be done by the court against which it is issued, but to also give further relief by undoing what has been unlawfully done. *Kiazolu et al. versus her Honor Luvenia Ash-Thompson et al.*, 34 LLR 96, *Togba versus Republic*, 35 LLR 389.

18. Petitioner submits that as at the filing of this Petition, there is no other remedy which is plain, speedy and adequate to protect and secure petitioner's rights from being violated by the respondents. Liberian law is clear that prohibition will lie where the act complained off will result in injury and there is no other adequate remedy. *Togba versus Republic*, 35 LLR 389; *Waggy versus Pearson et al.*, 31 LLR 451.

19. Petitioner says that this Petition had not been filed out of vexation or for the purpose of delay in compliance with any legitimate obligation under the law, or in order to make ineffective an otherwise valid order of either of the respondents. To the contrary, the petition has been filed because petitioner is exposed to injury and a violation of its rights without any justification and due process.

WHEREFORE AND IN VIEW OF THE FOREGOING, petitioner prays Your Honor for the issuance of the alternative writ of prohibition, which commands the respondents to appear on a date and time convenient to Your Honor, to show cause, if any, why the peremptory writ of prohibition should not be issued against them; to, after a hearing, issue the peremptory Writ of prohibition which prohibits, restrains and enjoins the respondents from illegally nullifying petitioner as winner of the Bid; issue a stay order commanding the respondents from taking any action in the matter pending the outcome of these proceedings, and grant unto petitioner all other and further relief which Your Honor may deem just, legal and equitable in the premises."

As can be seen, petitioner's contentions are rooted in one basic principle. It is Petitioner's key contention that notwithstanding the decision made by the First Respondent Nimba County, represented by its Superintendent and the Nimba County Procurement Committee for the Scrap Metal Tender, declaring the petitioner, Western Steel as "Most Responsive" in the public bidding competition, and from which decision no appeal was proffered, CARP, in violation of Section 126 of the Amendment and Restatement of the Public Procurement and Concessions Act of 2005 (the "Act"), invalidated the Bid Evaluation Panel's decision, made in favour of Petitioner Western Steel; that by its letter dated July 30, 2014, First Respondent Nimba County informed the Petitioner that as a result of a ruling by the CARP, a new evaluation panel was constituted; that the said new panel found Petitioner's bid 'non-responsive' and also declared Third Respondent North Star Industries, Inc. as the winner of the Bid. Petitioner has informed the Court that just at the time its petition was filed, First Respondent Nimba County was requesting a communication from the Public Procurement and Concessions Commission (PPCC) for a "NO- OBJECTION" in order to permit it to forthwith enter into contract with the Third Respondent. To allow First Respondent Nimba County to proceed as requested, petitioner Western Steel has contended, would substantially affect and prejudice Petitioner's rights in violation of the law of the land. The Petitioner has argued that at no time did Second Respondent notify the Petitioner of a protest, or a challenge as would provide Petitioner the opportunity to be heard. Petitioner referred to a further violation of the PPCC Act which requires that the CARP gives at least seven days written notice of a hearing and thereafter, an additional seven days to afford the parties the opportunity to present additional evidence or legal support in writing. These not having been observed by the Respondents, the investigation said to have been conducted as well as the decision thereon entered is accordingly void as a matter of law. Petitioner has therefore maintained that a writ of prohibition is the appropriate available remedy to undo the "illegal acts" being committed against Petitioner Western Steel.

To the grave allegations contained in Petitioner's Petition, Third Respondent, North Star Industries, Inc., filed a thirty-five count returns as reproduced hereunder to wit:

(1) Because as to the entire Petition, same is without any legal and factual basis and is therefore a fit subject for denial and dismissal for the reasons that (i) none of the Respondents has done anything in violation of the Amendment and Restatement of the Public Procurement and Concession Act, 2000 (the "Procurement Act" and (ii) the Petitioner has not exhausted the administrative procedures provided for in such cases and matters. In the case Republic of Liberia v. Bernice Trading Center, decided during this present October 2014 Term of Court, the Honorable Supreme Court reaffirmed the long-standing requirement for exhaustion of administrative and procedural remedies and 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 always the settled law in this Jurisdiction that 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." The Management of Catholic Relief Services v. Natt, 39 LLR 415,426 (1999).

2. Further to Count One (1) hereinabove, the 3rd Respondent says that the following chronology of correspondences including written notice, protest, complaint, decision, and appeal clearly show that the Respondents faithfully followed and observed the procedures and requirements of the Procurement Act while the Petitioner herein miserably failed to show its compliance with the Procurement Act and/or how any of the Respondents violated said Act:

i. Initial Complaint: On the 20th day of February, 2014, the 3rd Respondent filed a written protest to the 1st Respondent in response to the said 1st Respondent's February 12, 2014 Notice declaring the 3rd Respondent's bid as "not responsive" and awarding the contract to the Petitioner. A copy of the protest letter was sent to the Complaints, Appeals and Review Panel of the Public Procurement and Concession Commission;

ii. Appeal/Complaint to PPCC: On the 20th day of March, 2014, the 3rd Respondent filed a formal complaint with the 2nd Respondent wherein it alleged, inter alia, that (a) in keeping with Article VIII, Section 125 to 129, pages 112 to 120 of the Procurement Act, it protested the decision of the Nimba County Procurement Committee to declare its Bid "not responsive" in a letter dated the 20th day of February, 2014; (b) that the Nimba County Superintendent and Chairman of the Procurement Committee did not reply to its protest letter of 20th February, 2014, and the time (15 days) provided by the PPCA Regulation for a response to any such protest had elapsed; and (c) that the Chairman and a dissenting panelist of the Nimba County Bid Evaluation Panel did not sign the report submitted by the Co-Chairman of the BEP because they sensed collusion and prejudice in the scores delivered by the other three panelists and, more importantly that the scoring by the three panelists patently contradicted the facts and observations that were clearly stated in the panel Chairman's due diligence finding, and that these acts suggested "a conspiracy to deny us a fair chance of winning the aforementioned bid".

iii. PPCC Request 1st Respondent to supply information:

Subsequently, the 2nd Respondent "requested the current Superintendent Fong Gami Zuagele to submit dossiers pertaining to the bidding process to the panel"

iv. 1st Respondent's admission of failure to investigate Initial Complaint: On the 5th day of May, 2014, the 1st Respondent by and thru its current Superintendent, Mr. Fong Zuagelee wrote the 2nd Respondent explaining the change in administration of Nimba County and how this caused their inability to investigate the Protest of 3rd Respondent within the statutory time;

v. PPCC's request for 1st Respondent's side of the story:_ On the 13th day of May, 2014, the Chairman of the Complaints. Appeals and Review Panel (CARP) responded to the May 5, 2014 communication from the 1st Respondent and advised the said 1st Respondent to investigate the Complaint/protest of the 3rd Respondent and communicate the outcome to the 3rd Respondent with a copy to CARPO.

vi. 1st Respondent's Investigation Report: On the 29th day of May, 2014, the 1st Respondent informed the 3rd Respondent that upon its investigation of the 3rd Respondent's Complaint/protest, it determined that the bid of the 3rd Respondent was indeed Non responsive, thus leaving it with no alternative but to reaffirm the earlier decision against 3rd Respondent;

vii. Further Appeal to PPCC: On the 4th day of June, 2014, the 3rd Respondent addressed a communication to the 2nd Respondent wherein it objected to the findings of the 1st Respondent and reminded the 2nd Respondent of its earlier Complaint against the 1st Respondent and requested a review of the decision of the said 1st Respondent;

viii. 2nd Respondent's Investigation Report: On the 4th day of July, 2014, CARP, the 2nd Respondent concluded its investigation into the Appeal/Complaint filed with it by the 3rd Respondent from the decision of the 1st Respondent, ruling that the Bid Evaluation Panel of Nimba County violated the Procurement Act and therefore ordered that a new Bid Evaluation Panel be constituted, which would conduct a fresh evaluation of the bids; and

ix. 1st Respondent's Notice of award to 3rd Respondent: On the 30th day of July, 2014, following the constitution of a new Nimba County Bid Evaluation Panel and the fresh re-evaluation of the bids, the 2nd Respondent served written notice to each of the two bidders- i.e., the Petitioner and 3rd Respondent-that the bid of the Petitioner had been found non-responsive while the bid of the 3rd Respondent had been determined as the responsive and successful bid.

A copy of each of the above-mentioned letters are attached hereto and marked as 3rd Respondent's Exhibit 3rd R/1-in bulk and incorporated herein by reference to constitute an integral part of these Returns.

(3) Still further to Counts 1 and 2 hereinabove, 3rd Respondent says that it properly followed the relevant provisions of the Procurement Act by first filing a complaint with the 1st Respondent and, when the 1st Respondent failed to investigate its complaint and make a decision on same within statutory time, taking its complaint on appeal to the 2nd Respondent pursuant to the Complaint and Review Process provided for in the Act. Part VIII, Section 126 (4), of the Procurement Act states as follows: "The Complaints, Appeals and Review Panel may not act on a request for decision or an appeal unless it first determines that an initial complaint was properly filed with the head of the relevant Procuring or Concessions Entity and that either (a) the response period provided for in subsection (6)(b) of Section 125 has expired without a decision of the relevant Entity OR (b) that such a decision was rendered." 3rd Respondent submits that its appeal to the 2nd Respondent was properly filed and accepted because it had earlier filed the requisite initial complaint with the 1st Respondent on February 20, 2014.

(4) Third Respondent says and submits that it having complied with all procedures and requirements of the Procurement Act, and the 2nd and 4th Respondents not having violated any provision of the Procurement Act, there is no basis for the issuance of a Writ of Prohibition, especially where the Petitioner failed to pursue its August 14, 2014 complaint up to taking an appeal to the 2nd Respondent and thereafter seeking judicial review, if necessary. Section 127 (7) of the Procurement Act expressly provides that "the decisions of a designated complaint and appeal panel of the Complaint, Appeals and Review Panel are final and binding upon all parties, subject only to review by a court of competent jurisdiction." 3rd Respondent says and submits that the Petitioner having failed to follow the Procurement Act and/or the Administrative Procedures Act, Prohibition cannot lie as a matter of statute and the decisions of this Honorable Court in the recent opinion of this Honorable Court in the case Republic of Liberia v. Bernice Trading Center, decided during this present October 2014 Term of Court as well as a long line of cases such as Garlawolu et al. v. The Elections Commission 41 LLR 377, 393 (2003), Fazzah v. National Economy Committee, 8 LLR 91 (1943); Chariff Pharmacy v. the Pharmacy Board of Liberia, 37 LLR 135, 145 (1993); Henriess v. Fahnbulleh 42 LLR 459, 466 (2005). 3rd Respondent therefore prays Your Honor to deny and dismiss the Petitioner's Petition.

(5) That as to Count One (1) of the Petitioner's Petition, 3rd Respondent says it is without information sufficient to deny or concede the facts alleged, except that in any case the allegations contained therein are not relevant to whether or not the Writ of Prohibition may or should be issued.

(6) That Count Two (2) of the Petitioner's Petition presents no traversable issue.

(7) That as to Count Three (3) of the Petitioner's Petition, 3rd Respondent denies that the Petitioner was lawfully invited or could have been lawfully invited to contract negotiations by virtue of the February 21, 2014 letter attached to the Petition as Petitioner's Exhibit "P/4" when it is obvious the said letter is/was a legal nullity given that it was signed by Christiana Oagadu at the time when she had ceased to be Superintendent of Nimba County and had been replaced by Mr. Fong Zuagelee. Your Honor is respectfully requested to take judicial notice

that Mrs. Dugadu was removed from office as Superintendent of Nimba county by the President of Liberia on February 13, 2014.

(8) As to Count Four (4) of the Petitioner's Petition, 3rd Respondent categorically denies that the Petitioner and the 1st Respondent lawfully had or could have lawfully had contract negotiations on March 7, 2014 and thereafter signed or could have lawfully signed 'a final contract' on or after the indicated date of March 8, 2014 when:

i. Mrs. Dagadu who purportedly signed the so-called Contract as the Superintendent for Nimba County had long left office and had been succeeded by Fong Gami Zuagele and the said Dagadu was therefore without any authority as a matter of fact and law to act on behalf of Nimba County;

ii. The said Mrs. Dagadu or the 1st Respondent had not complied with the statutory procedure and 14-day period established for entering into contracts, as expressly provided for in Section 31 of the Procurement Act; and

iii. The bid process out of which the purported contract arose had been a subject of a protest that the said Mrs. Dagadu had supposedly not had time to act on as required by law (although she appeared to have had enough time to pursue contract negotiations).

(9) That as to Count Five (5) of the Petitioner's Petition, the 3rd Respondent denies the false allegations contained therein. 3rd Respondent specifically says that the assertion of the Petitioner that 2nd Respondent was acting "upon the 3rd Respondent's letter of February 21, 2014" is erroneous or a deliberate espy so of the fact. Further, 3rd Respondent reaffirms and restates Count Two (2) of these Returns, and specifically says that its initial complaint of February 20, 2014 (not February 21, 2014) was addressed solely to the 1st Respondent, and so the 2nd Respondent did not act on it and could not have acted on it. What the 2nd Respondent acted upon was the 3rd Respondent's formal appeal/complaint of March 20, 2014, which was addressed directly to the 2nd Respondent and expressly referenced the 3rd Respondent's initial complaint filed with the 1st Respondent unanswered complaint of February 20, 2014.

(10) Further to Count Nine (9) hereinabove and further traversing Count Five (5) of the Petitioner's Petitioner, 3rd Respondent says that what the 2nd Respondent did by way of its May 13, 2014 letter was not necessarily to abscond its statutory duty of investigating the complaint lawfully made before it by 3rd Respondent following the failure of 1st Respondent to act on its initial complaint, but to get the side of the 1st Respondent given the fact that there had been no decision in the initial complaint and therefore nothing in the records as to the position of the 1st Respondent relative to the complaint of the 3rd Respondent. Your Honor is respectfully requested to take judicial notice of the May 13, 2014 letter from the 2nd Respondent to the 1st Respondent which states as follows"

"Dear Hon. Zuagelee,

We present our compliments and acknowledge receipt of your Communications dated May 5,

2014 and accompanying documents which provided information requested by this Panel. However, consistent with the Restated and Amended Act of 2010. Part VIII, Section 2, "Any Complaint must first be lodge (sic) with the Head of the procuring and Concession Entity." That which was observed by the Complainant-North Star Industries Inc.

We note with interest in your communication to the Panel, that the county leadership was in transition and this impeded the ability of the County Procurement Committee to investigate said complaint. Therefore, it is the decision of the panel to allow you an opportunity in keeping with the PPCC Act as well as international best practices to carry out the investigation, within the period of fourteen (14) days upon the receipt of this communication. Also, that the outcome of said investigation be communicated to North Star Inc., and a copy forwarded to the panel".

(11) Further to Count ten (10) hereinabove and further traversing Count (5) of the Petitioner's Petition, 3rd Respondent says and submits that the language of the May 13, 2014 letter from 2nd Respondent to the 1st Respondent clearly shows that the 2nd Respondent accepted and began exercising jurisdiction over the Complaint not based on the 3rd Respondent's February 21, 2014 initial Complaint. 3rd Respondent says the failure or refusal of the Petitioner to recognize this fact is evidently central to the false assertion of the Petitioner that the investigation requested of 1st Respondent by the 2nd Respondent's May 13, 2014 letter amounted to a decision by the 2nd Respondent for the 1st Respondent to investigate the 3rd Respondent's appeal from a lack of decision by the self-same 1st Respondent on 3rd Respondent's initial complaint. What an implausible contention!

(12) That as to Count Six (6) of the Petition, 3rd Respondent restates the averments of Counts 9-11 of these Returns, and specifically denies the false, misleading and untenable suggestion of the Petitioner that the so-called investigation and findings covered by 1st Respondent's May 29, 2014, letter constituted the investigation and decision that the said 1st Respondent should have conducted in the 3rd Respondent's initial complaint dated February 20, 2014, when in fact the matter had already been advanced to CARP of 2nd Respondent on appeal by way of a March 20, 2014, letter to the 2nd Respondent. Even assuming without admitting that the May 29, 2014 investigation report constituted a decision on 3rd Respondent initial Complaint, the 3rd Respondent says that its June 4, 2014 appeal/complaint whereby it objected to the May 29, 2014 investigation report of the 1st Respondent constituted a valid appeal to the 2nd Respondent, thereby giving jurisdiction to the 2nd Respondent for hearing and making its decision of July 4, 2014.

(13) Further to Count Twelve (12) hereinabove, 3rd Respondent also denies that it failed to state a violation of the Concession Act. 3rd Respondent says it expressly spoke, inter alia, of violation of the principle of competition, fairness, integrity and transparency, which are stated as the key objectives of the Procurement Act and the violation of which constitutes a violation of the said Act. 3rd Respondent also denies that its use of information that was obtained as a result of the protected act of a whistleblower undermines its complaint or should be a basis for denying its complaint. The fact of the matter is that the Chairman of the Nimba County Bid

Evaluation Panel along with another member did not sign the report based on issue with illegal scoring. This fact has never been denied, but was in fact admitted by 1st Respondent through its communications to 2nd Respondent that are part of the case file.

(14) That as to Count Seven (7) of the Petitioners Petition, 3rd Respondent categorically denies the false allegation and legally baseless position stated by the Petitioner that the 2nd Respondent was without authority to hear the complaint of 3rd Respondent and therefore its decision of July 4, 2014 ordering the reconstitution of a new Bid Evaluation Panel was illegal and without legal force. 3rd Respondent restates Counts 9-13 of these Returns, and says that as at the time the CARP of the PPCC asked the Superintendent of Nimba County to investigate the complaint of 3rd Respondent, the said Nimba County had already lost jurisdiction to make a binding decision in the case because not only that the statutory time had expired but also because the 3rd Respondent had filed its Appeal to the CARP, meaning that the sole authority having jurisdiction over the matter was CARP. 3rd Respondent further says and submits that it is certainly not a decline or abandonment of jurisdiction when:

(i) CARP asked Nimba County for information surrounding the Complaint, which the Superintendent of Nimba County supplied by way of his May 5, 2014 letter to CARP; or

(ii) When the same CARP asked Nimba County for an investigation of the complaint in order to provide the CARP the considered position side of Nimba County relative to the protest that was before CARP. In fact, the May 13, 2014 protest letter by which the 1st Respondent-Nimba County-was asked to conduct its investigation of 3rd Respondent Complaint expressly indicated that North Star had filed the complaint with CARP after satisfying the requirement of first filing same with the procuring entity, and that what CARP was doing was "to allow you an opportunity" in investigating the complaint supposedly to arrive its position relative to the complaint.

(15) Further to Count Fourteen (14) hereof and in further traversal of Count Seven (7) of the Petition, 3rd Respondent says that the CARP of 2nd Respondent properly assumed jurisdiction of the case because upon the failure of 1st Respondent to investigate the initial complaint of 3rd Respondent within the statutory period of fourteen (14) days as of the receipt of the Complaint, the 3rd Respondent was entitled to appeal to 2nd Respondent and in fact did appeal to the 2nd Respondent by way of a March 20, 2014 letter which is annexed hereto as 3RD RESPONDENT'S EXHIBIT "3RD R/1 ". Further, 3rd Respondent says that in any case its further appeal/complaint of June 4, 2014 whereby it objected to the May 29, 2014 investigation report of 1st Respondent satisfies the requirement of an appeal to give 2nd Respondent jurisdiction to have investigated the matter subsequent to the May 29, 2014 report.

(16) Still further to Counts Fourteen (14) and Fifteen (15) hereof and in further denial of Count Seven (7) of the Complaint 3rd Respondent says that its March 20, 2014 complaint to 2nd Respondent clearly spelled out the provisions of the law it relied on and the circumstances constituting the violations of the Concession Act. The 2nd Respondent also properly proceeded to conduct an investigation, and its decision of July 4, 2014 (which is attached hereto

as Petitioner's Exhibit "P/10") is legally sound and well-reasoned, and a due affirmation of the express objectives of the Public Procurement Act which Part I-Preliminary of the Act names as including "efficiency in procurement"; "fair and equitable treatment of all bidders", "promotion of competition ... in procurement proceedings" ; and "equal access without discrimination to all eligible and qualified providers of goods, works and services. "

(17) That as to Count Eight (8) of the Petitioner's Petition, 3rd Respondent says that the allegation contained therein presents no traversable issue.

(18) That as to Count Nine (9) of the Petitioner's Petition, 3rd Respondent says that while it is without enough information to confirm or deny the veracity of the allegations contained therein, the fact remains that the averments therein failed to show that the Petitioner took an appeal from the alleged September 19, 2014's decision of the 1st Respondent rejecting its complaint to the said 1st Respondent's July 30, 2014, decision awarding the bid to 3rd Respondent respectfully requested to take judicial notice of the admission of the Petitioner that "on August 14, 2014, pursuant to communication, Petitioner informed the 1st Respondent of its protest to the 1st Respondent's decision to, at that stage, declare its bid as non-responsive" and that in response to the said protest of the Petitioner, "the 1st Respondent, via a letter dated September 19, 2014, and attached hereto as EXHIBIT "P/14", informed the Petitioner that it rejected its Complaint. " 3rd Respondent submits that having properly filed protest in the first instance with the 1st Respondent as the Procuring Entity, the Petitioner had the right and was in fact obliged to file an appeal/complaint with the 2nd Respondent for a review of the decision of the 1st Respondent, following which the Petitioner would have then be entitled t seek judicial remedy by way of a judicial review or otherwise. See for reliance Sections 125 (Right to Review) and Section 126 (Further Review by the Complaints, Appeals and Review Panel) of the Procurement Act. The 3'd Respondent says that the failure of the Petitioner to have pursued the statutory procedure established in the Procurement Act and the Administrative Procedures Act of Liberia coupled with no showing of illegality on the part of any of the Respondents, renders the Petition of the Petitioner baseless, improper and "prematurely filed" under the rule of *Garlawulo et al. v. The Elections Commission* 41 LLR 377, 393 (2003) and the recent case of *Republic of Liberia v. Bernice Trading Center*, decided during this present October 2014 Term of Court, Hence, 3rd Respondent prays Your Honor to deny and dismiss the said Petitioner's Petition for a Writ of Prohibition with utmost prejudice as it is grossly contrary to our rules and practice.

(19) Further to Count Eighteen (18) hereof and further traversing Count Nine (9) of the Petitioner's Petition, 3'd Respondent says that the Petitioner's claim in Count (9) of the Petition that it served copies of its August 14, 2014 protest on 2nd Respondent and 4th Respondent is of no significance because it is (i) nothing more than a compliance with Section 125 (2) of the Procurement Act which requires that a copy of a complaint filed with a Procuring Entity be served on the 2nd Respondent; and (ii) not of any cure to the fatal effect of the failure of Petitioner to have sought "further review" of the decision of 1st Respondent. Also unavailing is the claim of the Petitioner that it "learned that the 2nd Respondent had requested from the 1st Respondent the draft contract which it intends (sic) to enter into with the 3rd Respondent. "

Assuming without admitting that the information of a request for contract negotiation is true, it does not in itself constitute an illegal conduct on the part of either of the Respondents, especially where the adverse decision of the 1st Respondent against Petitioner had not been a subject of any pending administrative or judicial review.

(20) That as to Count Ten (10) of the Petition, 3rd Respondent denies the allegations and arguments asserted therein by the Petitioner. Third Respondent specifically says that it acknowledges and complies with the requirement of Section 125 (3) of the Procurement Act that "A Complaint shall not be entertained unless the complaint reasonably complies with the following requirements", which include (i) the complaint being in writing; (ii) the complaint containing the particulars and means of reaching the complainant, and (iii) the complaint stating "with reasonable clarity the circumstances relied upon by the complainant to establish the existence of a violation of this Act or its regulation (including identification of the provisions of this Act or the regulations relied upon to establish the occurrence of such violation of this Act or its regulation) and, where applicable, the part of the procurement or concession process from which the complaint arose."

(21) Further to Count Twenty (20) hereinabove, and in further traversal of Count Ten (10) of the Petition, 3rd Respondent submits that in the term "reasonable" is one with a well-known flexible nature in the Anglo-American Common law, and that a requirement for a complaint to state with "reasonable clarity" therefore does not mean statement of specificity of the actual or legal basis of a complaint. Further, 3rd Respondent says that in its Complaint of February 20, 2014:

- i. it made express non-exhaustive reference to some provisions of the Procurement Act, including "Article 125, Sections (2), page 122 of the Public Procurement Act of 2005 Section (30), page 36.
- ii. it cited problem of gross inconsistent scoring patterns as "the circumstances relied upon by the complainant to establish the existence of a violation of this Act"; and
- iii. it indicated that the acts complained of constituted a "conspiracy to deny us a fair chance at winning the aforementioned Tender", which conclusion of the complaint alleged a violation of one of the cardinal objectives of the Procurement Act-"equal access without discrimination to all eligible and qualified providers of goods, works and services and fair and equitable treatment of all bidders" (see Part I-Preliminary, Page 6 of the Procurement Act.

(22) Still further to Counts Twenty (20) and Twenty-One (21) hereof and in continuing traversal of Count Ten (10) of the Petition, 3rd Respondent says that assuming without admitting that its complaint had any defect (which certainly was not the case), the defect is waived because it was never challenged or raised by any party or the 1st Respondent during the time provided by law for hearing and disposing of Complaints. Obviously, if the 1st Respondent had used it as a basis for denying the 3rd Respondent Complaint, the question of whether or not such defect existed and was legally material would have naturally formed a basis of the 3rd Respondent's appeal/Complaint to the 2nd Respondent. The matter of the defect not having been raised by

any party in keeping with law, and the 2nd Respondent also not finding any defect in the appeal of 2nd Respondent, the matter of the alleged defect is irrelevant and immaterial, especially at this time and in these proceedings.

"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." Republic of Liberia v. Bernice Trading Center, decided during this present October 2014 Term of the Honorable Supreme Court.

(23) That as to Count Eleven (11) of the Petitioner's Petition, 3rd Respondent denies the legal and factual sufficiency of the allegations contained therein. 3rd Respondent says that Section 63 of the Procurement Act prohibits disclosure of information relating to evaluation details. "except as permitted under this Act." Section 43 of the Procurement Act then provides, inter alia, that "a summary of the evaluation of bids, if the bids were not evaluated solely on the basis of prices" is public records, which may "be made available to any person after the bid, proposal, offer or quotation has been accepted". (See Section 45 (2)(e) and Section 45 (5) of the Procurement Act.)

(24) Further to Count 23 hereof, 3rd Respondent says that the prohibition of Section 63 of the Act is directed to public officials involved in procurement activities, and not to a private bidder or person such as 3rd Respondent. Moreover, the law extant in Liberia provides protection for whistleblower who discloses suspected violation of law such as was the case of the gross inconsistent scoring of bids as confirmed by the records of the previous Evaluation Report forming part of the records of this case. Your Honor is respectfully requested to take judicial notice of the Evaluation Report of the first Bid Evaluation Panel, which gave superior points to Petitioner over 3rd Respondent for a requirement such as "legal existence" although the only evidence submitted by both bidders was their respective "Articles of Incorporation and Business Registration Certificate". Your Honor is also respectfully requested to take judicial notice of the same Bid Evaluation Report where although Petitioner submitted "no Valid Performance Bond" but was still awarded 15/20 points for the criteria while 3rd Respondent which submitted same got only 19/20.

(25) That as to Count Twelve (12) of the Petitioner's Petition, 3rd Respondent denies the averments stated therein, and restates Counts 1 through 20 of these Returns. 3rd Respondent maintains that in keeping with its March 20, 2014 appeal submitted to the CARP of 2nd Respondent (following the failure of 1st Respondent to hear and decide the said 3rd Respondent's initial complaint of February 20, 2014), the 2nd Respondent lawfully acquired and exercised jurisdiction over the matter and its decision of July 4, 2014, was therefore legal, valid and binding on the parties to the extent that any unsatisfied party failed to seek judicial review of said July 4, 2014, decision.

(26) That as to Count Thirteen (13) of the Petitioner's Petition, 3rd Respondent denies the legal and factual sufficiency of the allegations contained therein. 3rd Respondent maintains that the

evidence of the deliberate and grossly inconsistent scoring of bids was so patent and evident on the face of the records that there arose no need for a hearing. 3rd Respondent says that what the 2nd Respondent ruled was simply that a new Bid Evaluation Panel be constituted to reevaluate the bids since the previous evaluation was admittedly and evidently illegal, bias, inconsistent and erroneous. Even assuming without admitting that it was erroneous for the 2nd Respondent to have decided the matter without notice to Petitioner, such error is a proper subject of judicial review, not prohibition.

"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." Republic of Liberia v. Bernice Trading Center decided during this present October 2014 Term of the Honorable Supreme Court.

(27) Further to Count Twenty-Six (26) hereof and in further traversal of Count Thirteen (13) of the Petition, 3rd Respondent says that assuming without admitting that the 2nd Respondent's conduct and July 4, 2014 decision in this matter was affected by any procedural defects, the defect is not material and in any case is waived by the failure of the Petitioner to have sought judicial review of same in keeping with Section 126 (7) of the Procurement Act. Your Honor is respectfully requested to take judicial notice of Section 126 (8), which states that "the decision of a designated complaint and appeal panel made of the Complaints, Appeals and Review Panel are final and binding upon all parties, subject only to review by a "court of competent jurisdiction." Obviously, where the Jul 4 decision was not appealed, and the 1st Respondent took subsequent action that was the subject of an adverse decision excepted to by Petitioner, the only course available to Petitioner is to pursue the matter through appeal to the 2nd Respondent and from there to the Circuit Court up to the Supreme Court.

(28) That as to Count Fourteen (14) of the Petition, 3rd Respondent denies the factual and legal sufficiency of the allegations contained therein. 3rd Respondent maintains that the Petitioner has shown no basis in fact and law for the issuance of the extraordinary Writ of Prohibition, especially when none of the 1st and 2nd Respondents lacked jurisdiction or exceeded their jurisdiction or otherwise acted illegally in respect of the procurement process in question.

(29) That as to Count Fifteen (15) of the Petitioners Petition, 3rd Respondent says and submits that there is absolutely no legal and/or factual basis for the inclusion of the Ministry of Justice in these proceedings for the Ministry is not a party to these proceedings and assuming it is, it is not in the process of exercising any power or authority not expressly vested in it as a matter of law. 3rd Respondent further submits that the Ministry's attestation to any contract entered into by any agency of government is required by law and the facts and circumstances of this case do not in any way require or necessitate the issuance of a Writ of Prohibition against the Ministry; therefore, the Petition should be denied and dismissed for all the reasons stated herein.

(30) 3rd Respondent categorically denies and refutes the allegations contained in Counts Sixteen (16) and Seventeen (17) of the Petitioner's Petition and maintains that it and the other

Respondents conducted themselves in keeping with the laws controlling such matters and the rules and procedures provided for in such cases evidence by the above mentioned detailed description of the chronology of events that characterized these proceedings in Count Two (2) of this Returns. Respondent acknowledges the law cited in Count 16 of the Petition but contends that the law cited is not applicable in the instant case; therefore Prohibition will not lie because the administrative agencies subject of these proceedings conducted themselves within the scope of their respective authorities and within the ambit of their respective enabling statutes.

(31) Further to Count Thirty-one (31) of this Returns and still in traversal of Counts 16 and 17 of the Petitioner's Petition, 3rd Respondent submits that at no time did any of the administrative agencies that are subject of these proceedings act beyond or attempted to proceed beyond their jurisdiction in the exercise of their respective statutory functions to warrant the issuance of the Writ of Prohibition.

(32) That as to Counts Eighteen (18) and Nineteen (19) of the Petitioner's Petition, 3rd Respondent denies the averments contained therein and asserts that there are other remedies available to the Petitioner, which it has miserably failed and/ or deliberately refused to follow or avail itself of, and that is, protest the decision of the 1st Respondent awarding the contract to the 3rd Respondent and declaring its (Petitioner) bid "non- responsive" to the 2nd Respondent in keeping with Article VIII, Section 125 to 129, pages 112 to 120 of the Procurement Act.

(33) Furthermore, Respondent submits that the failure and/or deliberate refusal of the Petitioner to take advantage of the plain and adequate remedy provided for by the Procurement Act and available to it at the time, in such matters renders the Petition defective and dismissible as a matter of law; hence, prohibition will not lie. This Court has opined in the case Republic of Liberia v . Bernice Trading Center, decided during this present October 2014 Term of the Honorable Supreme Court 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."

(34) Respondent further submits that the Petitioner's Petition is vexatious, and purposely intended to unnecessarily delay and frustrate the ends of justice for which the Petition should be denied and dismissed.

(35) 3rd Respondent further denies all and singular the allegations of facts and law contained in the petition, which are not the subject of specific traverse in these Returns.

WHEREFORE AND IN VIEW OF THE FOREGOING FACTS AND CIRCUMSTANCES, 3rd Respondent prays Your Honor to:

- A. Deny and dismissed the Petitioner's Petition with utmost prejudice;
- B. Rule the cost of these proceedings against the Petitioner; and
- C. Grant unto the Respondents all that Your Honor may deem just and equitable under the

circumstances. "

For all intents and purposes, the returns filed by the other Co- respondents are almost identical in general contents. Hence, we see no useful purpose in reproducing their individual returns in this Opinion.

As Mr. Justice Banks' Chambers Ruling is the subject of this appeal, let us consider two of the three issues the Justice painstakingly traversed in the said Ruling: (1) Did CARP comply with the provisions of the PPCC Act requiring PPCC to notify petitioner of any complaint regarding the petitioner's bid as the most responsive?; and (2) Given the facts and circumstances of the case, will prohibition lie?

We have determined that two of the three issues addressed by our Esteemed Colleague may be consolidated into one adequately dispositive question. At the onset of this Opinion, we identified the sole question to be whether the issuance of the remedial writ of prohibition is warranted given the facts and circumstances of this case to safeguard petitioner's due process rights. The core of this question is due process of law.

In his Ruling on this key issue, Our Esteemed Colleague observed substantially as set hereunder to wit:

"Having determined that it was possessed with legal authority to act, the question now becomes whether or not CARP abided by the dictates of the Constitution and the PPCC Act in carrying out its functions as the appellate body. Article 20(a) of the Constitution proclaims: "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 essential elements of due process of law are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case." The principle of due process is dear to the heart of the laws of this jurisdiction, considered one of the most sacred of the jurisprudential principle governing the nation's justice system and framework. The indispensable due process right is an entitlement owed to every person, to be enjoyed by every person, whether legal or natural, in Liberia, and it can never be subordinated to any act of convenience. Speaking of the principle, this Court has said of it that it is of no consequence if the matter involved concerns, relates to or is in the nature of a criminal, civil or administrative proceeding.

In like manner, the Supreme Court has said that the notice element of due process is vital to any and every person because it provides the individual or entity with knowledge that there is an impending proceeding and thereby gives an opportunity to the person to determine how to approach the case. Being cognizant of this constitutional right, the Legislature, in constructing the PPCC Act, mandated that when the CARP obtains authority to preside over a grievance, whether due to the procuring entity's failure to rule within 15 days of its receipt of a complaint or whether on appeal from the entity's ruling, a notification should be sent to all of the parties who are a part of the process and who may have any interest in the outcome of the probe.

[In the current case],[t]he Petitioner alleges that the necessary notice, as dictated by the Act and required by the due process clause of the Constitution, was not accorded it since it was not informed of the various complaints/appeals filed with CARP by the third respondent until after their bid was downgraded from responsive to non-responsive by the first respondent. In the face of this allegation, one would have thought that the CARP via PPCC, as the second respondent, would have made available documentation indicating that the petitioner was indeed made aware of the third respondent's complaint/appeals. But no record of the notice was found in the file. In fact, the second respondent, in its returns, did not even deny the accusation made by the petitioner that it was not notified of the complaint/appeals filed by the third respondent with the CARP.

The expectation is that where an allegation is made that requires a response or rebuttal and the party against whom the allegation is made does not rebut, traverse, refute or deny the allegations made, the lack of any of such response to the allegation is deemed an admission that the allegation is true. We maintain that position herein as a matter of an unshakable and binding principle. It is worth noting nevertheless that while the second respondent did not deny the assertion made by the petitioner, and that the lack of denial constitutes an admission as to the truthfulness of the allegation, it argued that the failure is immaterial to the merits of this case in light of all of the circumstances of the case. This Court disagrees with the contention that the circumstances of the case excuses the respondent's lack of denial of the allegations levied by the petitioner; notice is a fundamental principle of law, recognized as a basis for the promotion of due process and the associated principle of equity, fairness and justice; and it is a principle of law that must be compulsorily followed as part of the adversarial system of this jurisdiction, ensuring the opportunity for defense of allegations made against a party. If a party of interest in a proceeding is not made aware of documents filed, procedurally or substantively, that act could inimically affect their rights, even to the extent of amounting to a constitutional violation, which could serve as a basis for the granting of the writ of prohibition, especially if the absence of such notice results in prejudice or injustice to the party."

We are in full agreement with our Esteemed Colleague that where denial of the right to due process to the prejudice of a party of interest has been established, the extra-ordinary remedial writ of prohibition shall issue. As was detailed in his Chambers Ruling, we too have diligently searched the records in this case but found no scintilla of the evidence to establish that a notice was issued and served on Petitioner Western Steel for the purpose of conducting a hearing. This conduct constituted a violation of the law. And because the Complaints, Appeals and Review Panel (CARP) proceeded by wrong rules, tantamount to denial of Appellant/Petitioner's right to due process, there is sufficient compelling basis, both in law and in fact, to issue the writ of prohibition.

It is the rule hoary with time in this jurisdiction that in every 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 and shall issue. *Gittens & Davies v. Yanfor et al.*, 10 LLR 176, 180 (1949). Also in the case, *Liberia*

Agricultural Company versus Elias T. Hage et al., the Supreme Court held 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." 38 LLR 259 (1995). [Emphasis Supplied].

In other words, unless there was a demonstrated showing, and in the instant case we hold there was not, that an administrative agency, as the First, Second and Fourth Respondents in the instant proceedings, in exercise of their powers and authority, accorded a party its right to due process of law, the conduct is deemed ultra vires. Their conduct would amount to an oppression of a party's vested right and can never be upheld as an appropriate exercise of administrative powers in any body politic where justice is fairly administered.

Under the facts and detailed circumstances of this case, the other piece of the consolidated question is whether prohibition will lie. There is absolutely no doubt that the Liberian Constitution (1986) guarantees every person, natural or juridical, certain basic rights, amongst which is the right to "Due Process". See: Article 20 (a) of the Liberian Constitution. It commands 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." This provision seems to me the foundation upon which every legal proceeding stands and without which all legal proceeding falls. The most cardinal element of this principle, as articulated by Mr. Chief Justice Louis Arthur Grimes in the famous case *Wolo v Wolo*, 5LLR 423, 428- 429(1.937), is notice.

In our jurisdiction, nothing legal can be properly done to bind a person without first issuing a notice and service thereof on a party involved in a dispute. In the instant case, there is no showing of a single notice and service thereof on the Petitioner. The Chambers Justice certainly recognized in his ruling of February 12, 2015, that no such notice was issued and served on Petitioner Western Steel to said Petitioner's material prejudice and in flagrant disregard of the law of the land, and that for this breach, the writ of prohibition shall properly issue.

However, our Distinguished Colleague determined that Petitioner Western Steel did not exhaust available administrative remedies; hence, he ordered the provisional writ of prohibition quashed and refused to order the peremptory writ issued. Our Colleague appeared to have agreed with the Respondents' general argument that the petitioner should have pursued and first exhausted the administrative remedies.

This is the Justice's position as articulated in his Ruling on appeal.

"Thus, assuming that notice was not given to the petitioner, and we have seen nothing in the records to draw the contrary conclusion, leading to the assumption that that the second respondent violated the rights of the petitioner under both Section 126(8) and even the Constitution, the question then is, given the facts and circumstances of this case, is there a legal basis for granting the writ as prayed for by the petitioner? Stated in the alternative, are there adequate remedies available to the petitioner to warrant denial of the writ?

The Supreme Court has held that the writ of prohibition will lie in three instances: (i) where the presiding officer in a judicial or quasi-judicial proceeding has asserted jurisdiction over a matter in which he or she is not empowered to officiate; (ii) having jurisdiction he or she has exceeded the tribunal's jurisdictional limits as established by law or (iii) in the exercise of its lawful jurisdiction, the judicial or quasi-judicial proceeding is advancing under the wrong rules. *Holder et al. v. Sirleaf-Hage et al.*, decided on January 24, 2014; See also *Garlawolu et al. v. Election Commission*, 41 LLR 377 (2003). This is how the Supreme Court has in the alternative framed the elements of the requirements for the writ of prohibition: "In general, three things are necessary to justify the issuance of a writ of prohibition. The court, officer or person against whom it is directed has or is about to exercise judicial or quasi-judicial power; that the exercise of such power by such court, officer, or person is unauthorized by law; and that it will result in injury for which there is no other adequate remedy." *Doe et al. v. Ash- Thompson and The Proposed Liberia Action Party*, 33 LLR 251, 269-70 (1985). See also *Broh v. Hon. House of Rep. et al.*, decided on January 24, 2014.

The petitioner contends that it has fulfilled the conditions stated above to warrant the granting of the writ of prohibition. It advances the argument that since the second respondent did not accord it any notice, as required by law, prior to ordering the first respondent to re-evaluate the bids, this Court should grant the petition for prohibition. Ordinarily, we would agree with and sustained the position of the petitioner and grant the writ. However, as argued by the respondents, there are factors in the instant case that militate against such a course, especially, as argued by the respondents, there are other remedies available to the petitioner provided by law and which the petitioner had already begun to pursue. Hence, the respondents have prayed that the writ not be issued. The thrust of the argument of the respondents, we are informed, is that the petitioner is estopped from seeking the writ of prohibition since in fact and indeed it had already opted to pursue the administrative appeal course from the decision of which it complained it was not provided notice; and that under the said appeal, the appeal forum will have the opportunity of inquiring into whether in fact notice was not provided and what the ramifications of such claim should be.

The argument is made that the petitioner, having become aware of that the second respondent had directed the first respondent to reassess the bids, which occurred on July 30, 2014, via a letter from the first respondent that informed the petitioner that, in compliance with CARP's order, all of the bids had been re-evaluated and their bid had been reduced from responsive to non-responsive, the petitioner, claiming that the action was unlawful, had on August 14, 2014, elected to pursue the complaints and review process outlined in Part VIII of the PPCC Act, and that not awaiting a hearing of the appeal which it had opted for and without demonstrating that it would not get a fair hearing of the appeal, had proceeded to seek the issuance of the writ of prohibition from the Honourable Supreme Court. The Court is asked to take cognizance of the petitioner's August 14th letter to the first respondent, wherein the petitioner wrote, "In keeping with Article 125 Section (1) (a), of the Public Procurement Act of 2005 (Section 30) 36 amended, restated and approved on September 16, 2010, we the Management of Western Steel

& Allied Industries Liberia Inc. hereby protest the Nimba County Procurement Committee decision to denounce our bid as Non-Responsive after a Third Successive Review with respect to our participation in the above International Competitive Tender over a period spanning seven calendar months."

We are further informed that it was only after the first respondent rejected its appeal that the petitioner decided to seek the issuance of the writ of prohibition, when in fact the law provides for further pursuit of the administrative remedy from such decision of the 1st respondent.

We are in agreement with the respondents that while had the petitioner First sought the writ of prohibition, we Court would have been more disposed to looking favorably on the petition, the petitioner having chosen to pursue the administrative course, it should continue to pursue that course and not seek to interrupt that process or circumvent same by seeking prohibition. We are of the opinion that the decision by the petitioner to first pursue the PPCC's remedial process, provided for under the PPCC Act, is fatal to this petition. In the case *Minister of Lands, Mines and Energy v. Liberty Gold and Diamond Company et al.*, decided on January 10, 2014, this Court adopted the common law principle of estoppel by election, which is defined as "the intentional exercise of a choice between inconsistent alternatives that bars the person making the choice from the benefits of the one not selected." This Honorable Court accepted that rule because "the conscience of the Court is repelled by the assertion of rights inconsistent with a litigant's past conduct ... [t]his principle operates to preclude one who prevents a thing from being done from availing himself to the nonperformance which he himself has occasioned." *Id.* When the petitioner was made aware of the second respondent's decision to order the first respondent to review the bids afresh, a decision that effectively rescinded the awarding of the bid to the petitioner, the petitioner had two routes from which it could choose to follow; it could either have filed a petition for the writ of prohibition under the theory of "the wrong rules" that were implemented by the second petitioner or it could file an appeal and pursue the matter administratively. The petitioner opted for the latter. By making that selection, the petitioner pledged itself to the administrative process and cannot now seek the benefits of prohibition or circumvent that administrative course statutorily provided for. The administrative steps outlined in the PPCC Act allow a complainant to file a protest with the procuring entity (which the petitioner has done) and if the procuring entity denies the protest, the petitioner is accorded the right to appeal to CARP. If CARP's decision is also unsatisfactory, the complainant can request a court of competent jurisdiction to review CARP's conclusions, which has the potential to result in a ruling by this Honorable Supreme Court. Having begun to remedy the alleged wrongs which the petitioner insist were committed against it by the various respondents through the available administrative means, the petitioner is obligated and duty bound to exhaust that route prior to seeking any judicial review or intervention by any court of law.

This is what the Supreme Court said in the case *LMPC v. National Seamen's Port & General Workers' Union of Liberia*: "where a remedy before an administrative agency is provided, relief must be sought by exhausting the remedy before the court will act". *LMPC v National Seamen's Port & General Workers' Union of Liberia*, 33 LLR 132 (1985). See also *Garlawolu et al. v.*

Election Commission, 41 LLR 377 (2003).

Since the petitioner's appeal was rejected by the first respondent, if this Court were to grant the peremptory writ, then the writ would, in essence, serve as an appeal of the first respondent's decision, which would be a breach of the legal principle embraced by this Court that "The writ of prohibition cannot be used in place of an appeal; for, the writ of prohibition has a clearly defined role. The writ is used to stop a [judicial or quasi-judicial act] from proceeding when and where it has no jurisdiction or if it has jurisdiction, it can still be stopped when it proceeds by wrong rule." *Broh v. Hon. House of Rep. et al.*, decided on January 24, 2014. See also *In re Ibrahim et al. v. Paye et al.*, decided August 18, 2006. We refrain from subscribing to the theory, which we deem to be inconsistent with the law, that the writ of prohibition can or should serve as a substitute for the appeal process already being pursued by the petitioner.

Consequently, in light of all we have said, the circumstances attending the case, the laws reviewed, and the analysis made herein, this Court does not believe that the writ of prohibition will lie or that it should be granted. Accordingly, the petition for the writ of prohibition is denied, the alternative writ is quashed, and the peremptory writ denied. Costs are adjudged against the petitioner. AND IT IS HEREBY SO ORDERED."

In *Sayan et al. v. Jangaba et al.*, 40 LLR 464, 471 (2001), this Court held that though a writ of prohibition will not be granted as a matter of right when another complete and adequate remedy is available, the grant or refusal thereof rests within the sound discretion of the Court dictated by the facts and circumstances of a particular case. With this in mind, we agree with our Distinguished Colleague in his narrative of the facts and the numerous principles of law cited and referenced in his Ruling of February 12, A.D. 2015, now before us on appeal.

The detailed survey undertaken by the Chambers Justice of the facts in this case and the circumstances attending, compel reaching only one conclusion: that the Appellees/Respondents, unarguably conducted themselves in blatant and conspicuous contravention of Appellant/Petitioner's due process rights. It is the sacred duty of the Supreme Court of Liberia, a duty imposed by the Liberian Constitution, to protect, safeguard and preserve at all times, the right of due process. Any violation of that constitutionally protected right must be curtailed by this High court without day.

The circumstances described in the Ruling of the Justice Presiding in Chambers seem to indicate that the Respondents have embarked on a process bound to lead to entering a contract for the removal of used scrap metals awarded twice to the Petitioner, Western Steel and Allied Industries Liberia, Inc., in competitive open public bidding processes. It is not disputed that having been declared as the "most responsive" and the winner in those processes, respondents, individually and collectively, sought to set aside these awards as a consequence of investigations respondents claimed to have conducted into complaints proffered by Third Respondent North Star Industries Inc. Assuming Respondents' assertion to be true that they in fact conducted a hearing into Third Respondent's complaints, the absence of showing any evidence of the issuance of notice and service thereof on the Petitioner as a party of real vested and protectable interest, as we have

found Petitioner Western Steel to be situated in the case at bar, is indeed most troubling.

As earlier noted in this Opinion, and here we must re-emphasize, at the time Petitioner Western Steel and Allied Industries Liberia Inc. fled to the Chambers Justice praying for the issuance of the extraordinary remedial writ of prohibition, First Respondent Nimba County local government authority had requested the Second Respondent Public Procurement and Concession Commission (PPCC), through its Complaints, Appeals and Review Panel (CARP) to issue a "No-Objection" notice. This notice, if issued, would have permitted First Respondent Nimba County administration to commence negotiations leading to the execution of a contract for items Petitioner Western Steel had twice been declared as winner. Under these compelling circumstances, it would appear that unless this Court orders the writ of prohibition issued forthwith, appellant/petitioner, Western Steel and Allied Industries Liberia Inc., risked suffering irreparable injuries to its rights. Therefore, and in keeping with a litany of Opinions of this Court, a petition for a writ of prohibition shall issue to avert looming affliction of injuries, as in the instant case, to the rights of due process constitutionally protected in this jurisdiction.

Therefore, we have here amended the Ruling of our Esteemed Colleague, then presiding in the Chambers of the Supreme Court, by granting the peremptory writ of prohibition.

Consequently, First, Second, Third and Fourth appellees/respondents are hereby returned to status quo. By this, we mean that the appellant/petitioner is reinstated to the status of winner of the public bidding for the purchase, removal and disposal of old, unused structures and scrap metals within the Arcelor Mittal concession area in Nimba County, Republic of Liberia.

Following the reinstatement of the appellant/petitioner, Western Steel and Allied Industries Liberia Inc., a hearing shall be conducted consistent with law of the land into the complaint lodged by co-appellee/third respondent, North Star Industries, Inc.

WHEREFORE and in the light of all we have said in this Opinion, as well as the laws cited and relied upon, we have determined that Petitioner's Petition be, and the same is hereby granted and the peremptory writ of prohibition ordered issued. The Clerk of this Court shall issue a mandate to give effect to this judgment. AND IT IS SO ORDERED.

Counsellors Albert S. Sims and Golda A. Bonah-Elliott of Sherman and Sherman Inc., appeared for the appellant. Counsellor Hector W. Quoigoah, County Attorney for Nimba County, Ministry of Justice, appeared for Nimba County. Counsellor Beyan D. Howard appeared for Public Procurement and Concession Commission (PPCC), appeared for the Commission. Counsellor Farmere G. Stubblefield appeared for North Star Industries Inc.