

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2022

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

The Ministry of Information Culture Affairs)
& Tourism by and thru its Minister, Lenn)
Eugene Nagbe of the City of Monrovia)
..... Appellant)
)
Versus)
) Appeal

One Media Incorporated (Punch FM) by)
and thru its Manager, Mr. Patrick Honnah)
Of Montserrado County, Republic of Liberia))
.....Appellee)
)

GROWING OUT OF THE CASE:)
)

One Media Incorporated (Punch FM) by)
and thru its Manager, Mr. Patrick Honnah)
Of Montserrado County, Republic of Liberia))
.....Petitioner)
)
Versus) Petition for
) Declaratory Judgment

The Ministry of Information Culture Affairs)
& Tourism by and thru its Minister, Lenn)
Eugene Nagbe of the City of Monrovia)
..... Respondent)

Heard: April 7, 2022

Decided: September 26, 2022

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

On November 9, 2017, One Media Incorporated (PUNCH FM) the appellee herein, applied to the Liberia Telecommunications Authority for a radio and television frequency. The appellee's applications were granted and the Liberia Telecommunications Authority issued an annual license for frequency 106.3MHz for the period January 1, 2018 - December 31, 2018. Thereafter the appellee applied to the Ministry of Information, Culture & Tourism, the appellant herein, for a permit to operate its radio and television stations and same was granted and approved by the Minister of Information, Culture & Tourism, Hon. Eugene Lenn Nagbe.

On June 18, 2018, the appellant issued a press release announcing the suspension of all new radio and-television licenses/permit issued between January 1, 2018, - June

18, 2018, to allow the appellant conduct a review of the regulatory regime, administrative anomalies, and the duplication of frequencies to radio and television operators. The press release issued on June 18, 2018, suspending the appellee's license reads as follows:

"PRESS RELEASE

FOR IMMEDIATE RELEASE

MONROVIA, JUNE 18, 2018: - The Government of Liberia announces the suspension of all new operating licenses and authorization issued to media operators from January 1, to June 18, 2018.

The government says it is reviewing the regulatory regime due to technical and administrative anomalies including duplication of frequencies to radio and television operators, uncorrected designations and submissions.

The review process which will begin Wednesday June 20, 2018 will not affect a media entity which has been in existence prior to January 2018.

Following the review process, new and appropriate frequencies, including operating authorizations will be issued to media operators by the Ministry of Information and the Liberia Telecommunications Authority (LTA) within the period designated for the review in keeping with the standards required.

According to a MICAT Release, the Government has mandated all sector actors, including the LTA and the Ministry of Information Cultural Affairs and Tourism (MICAT) to expeditiously initiate the exercise so that it does not unfairly affect media operators that are compliant. The Government assures that it values the relationship with the free press and support freedom of speech.

Media pluralism and new media are crucial in the democratization of any nation.

The Government is also calling on all other Media institutions and owners to continue to carry out their activities unhindered and unfettered.

Signed: _____
Eugene Lenn Nagbe
Minister"

The appellee alleged that thereafter it made frantic efforts to engage the appellant to have the suspension of its operating license and permit lifted but to no avail; that the appellee then retained the legal services of the Central Law Offices, Inc., which transmitted a communication to the appellant on October 4, 2019, requesting audience to resolve the stalemate relating to its suspended license and permit. The October 4, 2019 letter from the appellee's lawyer reads thus:

"October 4, 2019

Hon. Lenn Eugene Nagbe
Minister
Ministry of Information Culture Affairs and Tourism
Capitol Hill, Monrovia
Republic of Liberia

Dear Hon. Nagbe:

We present compliments and wish to inform you that we present the legal interest of One Media Incorporated, owner of Punch FM 106.7 by and thru its Owner, Patrick Honnah who had informed us that on the 18th of June 2018, the Government of Liberia through the Ministry of Information, Culture Affairs and Tourism suspended operational license obtained by media operators between the period January 1 to June 18, 2018, on ground that the said government is reviewing the license process. However, this decision of the government has affected the operation of Punch FM 106.7, and that since the aforementioned date of the suspension which has been over a year, the Management of said media institution has been awaiting the review process, but nothing same to be working.

Wherefore and in view of the aforesaid, we request to have an audience with your office on Wednesday, October 9, 2019, to discuss issue(s) relative to this action of the government that is affecting the operation of PUNCH FM 106.7. Furthermore, we will appreciate were you to contact us through the contact numbers found in our address or our client through these numbers: (231)-776-590-714/(231)-886-561-446 of your consent to our request. Additionally, we will appreciate your leisure time on the mentioned date. We anticipate your favorable consideration in the premises.

Very truly yours,

Jimmy Saah Bombo (Cllr.)
Chief Executive Officer

CC: Client"

There is nowhere in the records showing that the appellant transmitted a reply to the above quoted letter, or honored the appellee lawyer's request, or attempted to restore the appellee's suspended licenses.

As a result of this non-responsive posture of the appellant, the appellee on October 15, 2019, filed a petition for declaratory judgment before the Sixth Judicial Circuit, Civil Law Court, Montserrado County, against the appellant, wherein it complained that its freedom of expression is being violated by the appellant and then prayed the trial court to declare its right to have its licenses restored in order to operate a radio

and television stations. We quote herein below counts 1-10 of the appellee's 13 count petition which reads thus:

"PETITIONER PETITION"

Petitioner in the above entitled cause of action, most respectfully prays Your Honor and this Honorable Court to grant unto Petitioner a Declaratory Judgment in accordance with laws for the following factual and legal reasons as showeth to wit:

1. Petitioner says that it is an established and registered institution in keeping with the laws of the Republic of Liberia. Attached hereto and marked as **Exhibit "P/1"** in bulk is copy of its business registration certificate and Liberia Revenue Authority receipt to form a cogent part of this proceeding.
2. Petitioner says that it has authorized its Manager through a Board Resolution to have proper legal action(s) file against the Respondent in a competent court to have Petitioner rights declared. Attached hereto and marked as **Exhibit "P/2"** is copy of the Board Resolution to form a cogent part of this proceeding.
3. Petitioner says, upon obtaining a business registration certificate in keeping with the law to operate a radio and television institution in Liberia, the Petitioner on November 9, 2017, applied to the Liberia Telecommunication Authority by and thru its Commissioner for Engineering and Technology, Henry W. Benson for radio and television frequency. Attached hereto and marked as **Exhibit "P/3"** is a copy of Petitioner's application for frequency to form a cogent part of this proceeding.
4. Petitioner says further as to count three (3) hereinabove, Petitioner application for frequency was granted by the Liberia Telecommunication Authority (LTA) and the said authority made or cause Petitioner to pay the amount of US\$100.00 as application fee for Commercial FM Station in Montserrado County (106.3 MHz) and US\$2,800.00 as Annual License Regulatory Fee for Commercial FM Station (106.3MHz) Service for the period January 1, 2018 to December 31, 2018. Attached hereto and marked as **Exhibit "P/4"** are copies of the Invoices and Payment receipt of the total amount of US\$2,900.00 to form a cogent part of this proceeding.
5. Petitioner says upon satisfying the requirements with the LTA, Respondent applied through an application form at the Ministry of Information, Culture & Tourism for a period permit to operate radio and television frequency. Predicated upon the said application, Petitioner on January 10, 2018 request for permit was granted by the Director of National Communications Bureau, Madam Agatha T. Thompson of the Ministry of Information, Culture & Tourism, and same was approved by the Minister of Information, Culture & Tourism, Hon. Eugene Lenn Nagbe. The permit reads "...this permit to One Media Incorporated to operate a Commercial Radio Station (PUNCH FM) in the Republic of Liberia. Attached hereto and marked as **Exhibit "P/5"** is a copy of the said communication to form a cogent part of this proceeding.

6. Petitioner says, subsequent to the permit received from the Director of National Communications Bureau of the Ministry of Information Culture & Tourism, the LTA through its Acting Chairperson, Madam Maria G. Harrison on February 13, 2018 wrote and authorized Petitioner to operate a commercial FM radio station in Montserrado County. Attached hereto and marked as **Exhibit "P/6"** is a copy of the communication to form a cogent part of this proceeding.
7. Petitioner further says, after receiving the two permits to operate radio and television frequency, Petitioner imported and begun the installation of its equipment. At that juncture, the Respondent on June 18, 2018 published a Press Release which says "the Government of Liberia announces the suspension of all new operating licenses and authorizations issued to media operators from January 1, to June 18, 2018". In addition, the suspension which was executed and took effect as of Wednesday, January 20, 2018 was indeed "to review the regulatory regime due to technical and administrative anomalies including duplication of frequencies to radio and television operators, and incorrect designations and submissions." Attached hereto and marked as **Exhibit "P/7"** is copy of the Press Release to form a cogent part of this proceeding.
8. Further as to count seven (7) hereinabove, Petitioner says that it has been over a period of one year after Petitioner had registered with the Respondent to operate radio and television station that the said Respondent has failed, refused and neglected to allow Petitioner operates under a cloud of reviewing "regulatory regime."
9. Petitioner says that since the Press Release was issued, a radio station, Spoon FM that was affected like the Petitioner has been allowed to operate while the Petitioner being denied by the Respondent. Every effort has been made by the Petitioner to know the status of the purported review process, but the Respondent has failed and refused to say a word to the Petitioner. Further, Petitioner says that in recent a communication was written to the Respondent by Petitioner lawyer to have a conference with Respondent, but same was not considered by the Respondent. Attached hereto and marked as **Exhibit "P/8"** is copy of the communication to form a cogent part of this proceeding.
10. Petitioner says that the Civil Procedure Law, Section 43.1 provides that "Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that declaratory judgment is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment. The power granted to the court under this section is discretionary."

On October 18, 2019, and upon receipt of the trial court's precepts, the appellant filed returns to the petition stating *inter alia* that declaratory judgment is inapplicable; that the appellant submitted misinformation during its application

process; that the appellant failed to submit its articles of incorporation during the application process; that the appellee is not engaged in journalism by virtue of its articles of incorporation; and that the appellant had the statutory authority to suspend the appellee's license for deficiency in the appellee's application form. Like the petition, we quote count 1-10 of the appellant's returns¹⁴ count returns to wit:

"RESPONDENT'S RETURNS

Come now the Respondent in the above entitled cause of action and most respectfully prays court and Your Honor to deny and dismiss the purported Petition for Declaratory Judgment which has been filed by the Petitioner for reasons as showeth to wit:

1. Respondent submits that for a court of law to declare a right pursuant to Chapter 43 Section 43.1 of Title 1 Liberian Code of Laws Revised-Civil Procedure Law, the party seeking such declaration must have a right, status, or other legal relation to that for which the Petition is being filed. Further, Respondent says the determination of a right in favor of a party is not absolute but rather discretionary especially so where such Declaratory Judgment if rendered would not terminate the uncertainty or controversy giving rise to the proceeding. See Chapter 43, Section 43.5 titled: "Declaratory Judgment to Terminate Controversy."

2. Further, Respondent submits that for any media institution to claim that it has duly registered and has complied with all of the registration procedures of the Ministry of Information, it must have Articles of Incorporation clearly and precisely defining the scope and objectives of its operations. Respondent says Articles of Incorporation and business registration documents must be attached to any application filed out by an applicant seeking permit from the Ministry of Information and the information contained therein must be factual so as not to create any doubt on the mind of the Ministry in granting such permit.

3. Respondent says the entire Application form filled in and filed by the Petitioner was defective and contained a horde of misinformation apparently hatched to mislead the Ministry of Information for reasons best known to the Petitioner.

4. Further to count 3 above, Respondent says the Petitioner's Application Form filled in and filed with the Ministry of Information is dated December 29, 2017, but was never approved by Director Agatha Thompson as evidence by Petitioner's **Exhibit "P/5"** attached to its petition. Respondent says also that the Articles of Incorporation proffered to its Petition which has been filed before this Honorable Court is dated January 5^t 2018, and is also said to have been filed with the Liberian Business Registry on the same January 5th, 2018, which means Petitioner did not have Article of Incorporation at the time it applied for permit from the Ministry of Information. Respondent hereto attach a copy of Petitioner's Articles of Incorporation as Exhibit "R/1" and prays court and Your Honor to take judicial notice of Petitioner's Exhibit "P/5".

5. Respondent says the purported Application filed with the Ministry of Information which formed the basis of this Petition for Declaratory Judgment is a product of deception and misrepresentation and did not meet the legal requirements to obtain a permit because it was filed at the time the Petitioner was not a body corporate but yet purported to be so. Your Honor is most respectfully requested to take judicial notice Petitioner's Exhibit P/5.

6. Further, Respondent submits that the so-called media institution form relied upon by the Petitioner as a basis of its Petition is also misleading and fall short of the requirements to be considered for a permit on grounds that the space provided for "Recommendations" is not filled in, and the space for the "Signature of the Person Recommending Action" is left unsigned, which clearly shows that the petitioner's application is totally incomplete. Attached hereto and marked as Exhibit R/2 is the copy of the Media Institution Inspection Form.

7. Respondent submits that the Articles of Incorporation attached to the Petitioner's Petition which also forms the basis of its Petition contains no evidence to prove that the Petitioner's line of business deals with operating or owning a radio station, let alone a radio frequency; instead, it is stated that the Petitioner will engage in journalism works within the Republic of Liberia, operate journalism schools within the Republic of Liberia and other lawful business or activities. There is no showing or any provision in the Articles of Incorporation where it is stated that the Petitioner can operate a radio frequency. Your Honor is requested to take judicial notice of the Exhibit R/1, the copy of the Articles of Incorporation.

8. Respondent says and avers that as government agency responsible to grant permit and regulate the activities of all media institutions, it reserves the rights to review, analyse and set aside, overrule or deny the granting of permit to any media institution where it is established that during the period of application the applicant either engaged in deception, misrepresentation or provided misleading information about the true nature of its corporate existence or use the filing of its application form as a publicity stunt to discredit, defame and impugn the character of well-meaning people or the professional responsibility of the Ministry of Information for either personal or political gains. Respondent submits that the Petitioner does not have any valid permit issued in its favor as supported by the application form proffered as Exhibit "P/12" by the Petitioner himself and that any permit granted thereto is void and is of no force and effect.

9. Respondent submits that based on the deception and the irregularities in the dates of the document filed by the Petitioner, there is no application before the Ministry of Information, and therefore there are no rights that accrued to the Petitioner to warrant the granting of a Petition for a Declaratory Judgment by this Honorable Court. Your Honor is most respectfully requested to take judicial notice of Respondent's Exhibits 1, 2& 3 attached to this returns.

10. That as to counts 1, 2, 3 and 4 of the purported petition, Respondent incorporates 4, 5 and 6 of its returns and pray court to deny and dismiss counts 1 thru 4 of the Petitioner's Petition."

On January 7, 2020, the presiding Judge of the Civil Law Court, His Honor Peter W. Gbeneweleh, after listening to oral arguments, rendered final ruling wherein he granted the appellee's petition. Judge Gbeneweleh ruled that the appellant was under obligation to acknowledge the appellee's October 4, 2019 communication and provide reasons for the suspension of the appellant's license; and that the appellant failed to show the misinformation/defect in the appellee's application process. We quote excerpts of Judge Gbeneweleh's final ruling to wit:

"COURT'S RULING ON LAW ISSUES

... The records further show that the petitioner applied for permit for frequency and was granted said permit by the Liberia Telecommunication Authority (LTA) which made the petitioner to pay the amount of One Hundred United States Dollars (US\$100.00), as application fee for commercial FM station in Montserrado County (106.3MHz) and Two Thousand Eight Hundred United States Dollars (US\$2,800.00), as annual license regulatory fee for commercial FM station 106.3MHz service for the period of one (1) year commencing from January 1, 2018, up to and including December 31, 2018, as evidence by copies of invoices and payment receipts for sum of Two Thousand Nine Hundred United States Dollars (US\$2,900.00).

On June 18, 2018, the Government of Liberia issued a press release for the immediate release...

This court observes that the Respondent did not allow the Petitioner to operate following the reviewing regulatory regime since June 2018. This court also takes judicial notice of Petitioner's counsel communication dated October 4, 2019, requesting an audience with the respondent on Wednesday, October 9, 2019, regarding the action of the government which affected the operation of the petitioner. This court says that there is no record to show that the respondent acknowledged receipt of petitioner's communication and granted the petitioner an audience to discuss the issue surrounding the suspension of petitioner's license. This court says that the respondent should have informed the petitioner following the reviewing regulatory regime, stating the reason or reasons therein why the respondent could not have granted the petitioner new license and authorization as per the press release.

This court takes judicial notice on section 43.1 of our Civil Procedure Law which provides that "Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on ground that a declaratory judgment is prayed for. The declaration may be either affirmative or negative in form and effect; and such declaration shall have the force and effect of a final judgment. The power granted to the court under this section is discretionary".

This petition for Declaratory Judgment is to declare rights, or status of the Petitioner's regarding the permit issued the petitioner by the respondent on

January 10, 2018. In the case *Gbartoe et al v. Washington*, 41LLR 117 (2002), the Supreme Court of Liberia held that "The sole object of a Declaratory Judgment is to declare rights, status, and other legal relation, whether or not further relief is or could be claimed".

The court says that the application of the petitioner dated December 29, 2017, was not approved by the director of National Communication Bureau because petitioner's article of incorporation was not annexed. The petitioner later obtained its article of incorporation on January 5, 2018, and the respondent granted the permit to the petitioner on January 10, 2018. The court perceives no deception and misrepresentation under the fact and circumstances in this case, and that the permit granted the petitioner on January 10, 2018, is valid.

Wherefore and in view of the foregoing, it is the ruling of this Honorable Court that the Petitioner's Petition for Declaratory Judgment is hereby granted and the resistance thereto is denied. The Petitioner is entitled to its permit as a matter of law. AND IT IS HEREBY SO ORDERED."

The appellant noted exceptions to the trial court's final ruling, announced an appeal, and on January 14, 2020, filed a 10 count bill of exceptions alleging that the trial judge overlooked the fact that the case contains overwhelming factual issues that needed to be determined by a jury since the appellee's used deception to obtain its permit; that the trial court committed a reversible error to terminate this case on law issues; and that declaratory judgment is inapplicable.

The contentions presented in this case raise two issues which are: Whether or not declaratory judgment is applicable given the facts and circumstances of this case, and Whether or not the trial judge erred in granting the declaratory judgment in favor of the appellee.

The law provides that courts of records has the authority to declare rights, status and other legal relations whether or not further relief is or could be claimed. Civil Procedure Law Rev Code 1:43.1.

The Supreme Court in litany of Opinions has held as follows:

"any person interested under a deed, will, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder; and that courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment. The power granted to the court under this section is discretionary." *Jawhary v. Watts*, 42 LLR 474 (2005); *Hussan v. Butler*, Supreme Court Opinion, October Term, 2014; *Coalition for Democratic Change v. Dan Morias*, Supreme Court Opinion, October Term, 2020.

Accordingly, the trial court properly assumed jurisdiction over the petition for declaratory judgment and same is applicable to declare the rights of the appellee to the license granted it by the appellant albeit subsequently suspended.

As regards the second issue, the records reveal that the appellant granted the appellee a license but subsequently suspended the licenses of operators who were issued licenses between January 1, 2018, - June 18, 2018 which affected the appellee. The reason as aforesaid for this suspension was to allow the appellant conduct a review of the regulatory regime, administrative anomalies, and the duplication of frequencies to radio and television operators. However, in its returns before the trial court and its brief filed before this Court, the appellant has now come to raise issues that were never the basis of the press release suspending licenses of the appellee. The appellant should have confronted the appellee with these issues at the time the appellee presented its application for the issuance of a license to operate its radio and television stations. This, the appellant failed to do. The mere fact that the appellant issued the appellee a license, establishes that the appellee complied that with all the requisite requirements for the issuance of a license. And we so hold.

Further, we see that the appellant pursuant to its regulatory authority issued the press release, suspended the licenses of the appellee and other similarly situated but has failed to accord them due process or lift the suspension. The records are void of evidence that the appellant ever conducted a review process to ascertain which radio and television operators were affected by the said notice contained in the press release during the period mentioned in said press release; or that affected operators were accorded due process, that is, records to show that the appellant cited the operators for an investigation at a date, time and place designated by the appellant. What the records do show is that from the date of the suspension, the appellee's license remains suspended without any information from the appellant as to the reason for the continued suspension of the appellee's license. The appellant has not established by evidence that the appellee's entity was one of those involved in these alleged administrative anomalies, or frequency duplication as stated in the appellant's press release.

This Court says that while it acknowledges the authority granted the appellant to serve as the administrative regulator for the Fourth Estate pursuant to the applicable provision of the Executive Law, this statutory authority so granted the appellant cannot be used to violate the rights of persons or institutions they are to regulate as has been meted against the appellee in the instant case.

Article 20 of the Constitution unequivocally and emphatically declares that "no person shall be deprived of life, liberty, security, of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law".

The Supreme Court as far back as 1937 defined due process of law as "a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial. *Wolo v. Wolo* 5 LLR 423, 428- 429 (1937). The Court speaking through Mr. Justice Grimes espoused that "it is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard". *Id.* Restated, due process implies that the person whose rights are affected be present

before the tribunal pronounces decision concerning his right, and to have the right of controverting by proof every material fact which bears on the question of his interest in the matter involved. *Kruah et al v. Weah* 42 LLR 148, 155-156 (2004); *Republic v. Bernice Trading Inc.*, Supreme Court Opinion, October Term, A.D. 2014. Simply stated, "*it is the right of a person to a fair hearing or trial before he suffers any penalty*". *Id.*

We hold that whilst the Executive Law Rev. Code 12:31 grants the appellant the authority to regulate the Fourth Estate, however, in the present case, the appellant violated the appellee's constitutional right to due process when it suspended the appellee's license without conducting a hearing.

We also hold that the continued closure of the appellee's premises without any justifiable reason violates the appellee's rights in many respects.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the Civil Law Court is hereby affirmed for reasons detailed in this Opinion. The appellant's appeal is denied. The Clerk of this Court is hereby ordered to send a mandate to the Sixth Judicial Circuit, Civil Law Court, Montserrado County, commanding the Judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are disallowed. AND IT IS HEREBY SO ORDERED.

Appeal denied

When this case was called for hearing, Counsellors Sayma Syrenius Cepphus, Solicitor General, Republic of Liberia and David A.B. Wilson appeared for the appellant. Counsellor Jimmy Saah Bomba appeared for the appellee.