

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM A. D. 2024

BEFORE HER HONOR: SIE-A-NYENE G. YUOHCHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

Hon./Atty. Garrison Doldeh Yealue, Jr., Chairman Governance)
Commission, Republic of Liberia.....Petitioner)
AND)
Hon. Andrew Peters, Executive Director, National Identification)
Registry, Allison Street, Congo Town, Behind YMCA Compound)
Montserrado County, Republic of Liberia.....Petitioner)
AND)
Edwina Crump Zackpah, Chairperson, Israel Akinsanya, James) Petition for the Writ
Gbarwea, Zatonon Titus, and Osborn Diggs, Commissioners,) of Prohibition
Liberia Telecommunications Authority, Republic of Liberia.....)
.....Petitioners)
AND)
Hon. Reginald Kpan Nagbe, Director General, Liberia National)
Lottery Authority, Republic of Liberia.....Petitioner)
Versus)
The Executive Branch of Government of the Republic of Liberia)
represented by and thru the Minister of Justice, Attorney General)
of the Republic of Liberia, Solicitor General, County Attorneys,)
and all Prosecuting Attorneys of the Ministry of Justice, Republic)
of Liberia.....Respondent)

Heard: March 26, 2024

Decided: April 24, 2024

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

On February 22, 26, and 27, 2024, respectively, petitioners Atty./Hon. Garrison Doldeh Yealue Jr. of the Governance Commission, Hon. Andrew Peters of the National Identification Registry, Hon. Edwina Crump Zackpah et. al of the Liberia Telecommunications Authority and Hon. Reginald Nagbe, of the Liberia National Lottery Authority, filed separate petitions praying for the writ of prohibition to be issued against the Executive Branch of Government, the respondent herein.

We note that although the Executive Branch of Government is the principal respondent, however, in the case of the petition filed by Edwina Crump Zackpah, et. al of the Liberia Telecommunications Authority, they named, as co-respondents, Adullah Kamara, Patrick Honnah, Clarence Kortu Massaquoi, Ben Fofana and Angela Bush Cassell, nominees to their positions; while petitioner Andrew Peters of the National Identification Registry named as co-respondent, Dr. Edward Liberty, nominee to his position. The Court says that although so named as “Co-

Respondents”, these persons are nominal parties; the acts being complained of are against the Executive Government; hence, as the writ of prohibition cannot be applied against them, we will not burden this Opinion by quoting their returns herein, if any was filed.

We shall proceed to review the respective petitions, to wit:

On February 22, 2024, Petitioner Garrison Doldeh Yealue Jr. of the Governance Commission filed an eleven-count petition alleging that on January 27, 2023, he was nominated by former President George Manneh Weah, confirmed by the Senate and thereafter appointed and commissioned to serve as Chairman of the Governance Commission for a term of four (4) years, commencing February 23, 2023 up to and including February 23, 2027; that contrary to the clear language of sub-section 5.4.1 of the Act creating the Governance Commission (2007), regarding his tenure of four years, yet unexpired, the President of the Republic of Liberia His Excellency Joseph N. Boakai proceeded to nominate Professor Alaric Tokpa as Chairman of the Governance Commission; that the nomination of Professor Tokpa as Chairman of the Governance Commission is tantamount to an automatic dismissal of the petitioner from his tenure position; that it also violates the petitioner’s contractual rights under Article 25 of the Constitution (1986); that the nomination violates his right to due process as he was never informed of the cause for his removal, nor cited to appear for an administrative hearing to be confronted with allegation of misconduct inconsistent with his duties and functions as Chairman of the Governance Commission; and that for all these acts by the Executive Government which run contrary to the Act creating the Governance Commission, prohibition will lie to restrain and undo the nomination of Professor Alaric Tokpa.

We quote below counts 2, 4, and 6 of the petition, which capture the key contentions of the petitioner to wit:

2. Petitioner Hon. /Atty. Garrison Doldeh Yealue, Jr. was nominated by the President of the Republic of Liberia, His Excellency George Manneh Weah, on the 27th day of January A.D. 2023 to serve as Chairman of Governance Commission, which nomination was published on the website of the Executive Mansion for subsequent confirmation by the Liberian Senate as provided for by the 1986 Constitution of the Republic of Liberia. Petitioner further says that based on his nomination by the President, he was invited by the Liberian Senate for confirmation hearing which was held according to law and thereafter confirmed by the Senate, appointed and commissioned by the President to serve in the said capacity as Chairman of the Commission for a period of four (4) years commencing February 23, 2023, to February 23, 2027...”

4. Petitioner says and avers that the nomination of Professor Alaric Tokpa as Chairman of the Governance Commission was done in the

absence of any showing that the due process requirement (a law that hears before it denies) was followed by the respondent the Executive Branch of Government. Article 20(a) of the Liberian Constitution states *“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 in accordance with due process of law...”* This constitutional provision has been breached by the respondents for which prohibition will lie against them.

6. Petitioner further says and avers that Article 25 of the 1986 Constitution guarantees the sanctity of contracts which cannot be breached or disturbed except as a result of due process. In the present case at bar the petitioner has a contract with the Government of Liberia to serve as Chairman of the Governance Commission for the period of four (4) years as provided for under subsection 5.4.1 of the Act that created the Governance Commission and can only be removed for cause; which cause must be glaring and must be in line with due process. Petitioner says that the act of the respondent by nominating Professor Alaric Tokpa while the current Chairman is exercising his duties and functions has not been removed as provided for by the Constitution, said act is in gross violation of the organic law of the Republic of Liberia for which petitioner says prohibition will lie.

On February 26, 2024, petitioner Andrew Peters of the National Identification Registry filed a thirteen-count petition alleging that pursuant to the provisions of Part IV, sections 4.1, and 4.6 and Part V, sections 5.2 and 5.3, respectively of the Act creating the National Identification Registry (2011), former President George Manneh Weah submitted his name to the Board of Registrars for possible appointment by the Board and been examined, was subsequently appointed by the Board of Registrars to serve as Executive Director for a term of four (4) years commencing June 22, 2023, up to and including June 21, 2027; that contrary to section 5.3 of the National Identification Registry Act, regarding his tenure of four years, yet unexpired, the President of the Republic of Liberia His Excellency Joseph N. Boakai proceeded to nominate Dr. Edward Liberty as Executive Director of the National Identification Registry and submitted his name to the Senate for confirmation; that according to the Act, the appointment of an Executive Director of the Registry lies squarely within the authority of the Board of Registrars and not the President of Liberia; hence, the President had assume authority not granted him by law; that the nomination of Dr. Edward Liberty as Executive Director of the National Identification Registry is tantamount to an automatic dismissal of the petitioner from his tenure position; that it also violates the petitioner’s contractual rights under Article 25 of the Constitution (1986); that the nomination violates his right to due process as he was never informed of the reason for his dismissal, or of any conduct inconsistent with his duties and functions as Executive Director of the National

Identification Registry; and that for all these acts by the Executive Government which run contrary to the Act creating the National Identification Registry, prohibition will lie to restrain and undo the nomination of Dr. Edward Liberty. We quote below counts 2, 4, 7, 9, and 11 which contain the main contentions of the petitioner to wit:

PETITIONER'S PETITION

2. That Petitioner's name was submitted by the President of the Republic of Liberia, His Excellency George Manneh Weah, to the Board of Registrars for consideration; which petitioner was vetted by the Board of Registrars of the National Identification Registry and subsequently Petitioner was issued an appointment letter. Hereto marked as Petitioner Exhibit "Ap-2" copy of Petitioner's appointment letter from the Board of Registrars of the National Identification Registry forming a cogent part of this petition.

4. That Co-Respondent, Dr. Edward Liberty of the City of Monrovia has been nominated by the President of the Republic of Liberia as Executive Director of the National Identification Registry, while Petitioner is still in office as sitting Executive Director who is required to enjoy his four (4) years tenure as provided for by the statute; and Co-Respondent name has been forward to the Liberian Senate for confirmation, which is completely contrary to the statute creating the entity, as can be more fully seen from a copy of the Executive Mansion website hereto attached and marked as Petitioner Exhibit "AP-3" to form part of this petition.

7. Petitioner says that having been appointed by the Board of Registrars, and having taken office and entered unto his duties, his appointment and rights to the Office of Executive Director constitutes a property right within the contemplation of Chapter Three of the Constitution which petitioner must enjoy consistent with laws and of which petitioner cannot be deprived without due process of law. Considering that the statutory duration of the Office of the Executive Director under the Act being four (4) years, and the petitioner having been appointed on June 22, 2023, he has the rights to the Office of the Executive Director of the National Identification Registry up to and including June 21, 2027, except for cause duly established through due process of law.

9. That upon filing of this petition, petitioner has not been informed of the reasons or the cause of his removal or has not been cited to appear before any administrative forum consistent with due process for any conduct inconsistent with his duties and responsibilities as Executive Director of the National Identification Registry.

11. Petitioner says the President having signed the Act and having exercised rights granted under the Act, the President cannot legally refuse to respect the tenure clause. He has no right to pick and choose the provision of the Act he wants to comply with; doing this is tantamount to having law and legal reasoning stand on its head. Consequently, the President's appointment of Dr. Edward Liberty with

total disregard of the tenure right of the Petitioner is a gross violation of the Act creating the National Identification Registry and a misrepresentation of the President's power.

On February 26, 2024, the Commissioners of the Liberia Telecommunications Authority (LTA) to include Edwina Zackpah, Chairman, Isreal Akinsanya, James Gbarwea, Zotawon Titus and Osborne Diggs, Commissioners, respectively, filed a sixteen-count petition alleging that they each hold tenure positions for terms of four (4) years, to expire in 2026; that contrary to the express provisions of the Telecommunications Act (2007) regarding their tenures, the President of the Republic of Liberia His Excellency Jospheh N. Boakai, on February 20, 2024, proceeded to nominate Abdullah Kamara, Chairperson; Patrick Honnah, Commissioner; Clarence Kortu Massaquoi, Commissioner; Ben A. Fofana, Commissioner; and Angela Bush Cassel, Commissioner, respectively, while the petitioners' tenures are unexpired; that by virtue of those nominations, the petitioners' contractual rights were violated, and cause an automatic dismissal of the petitioners from their tenure positions and also violate their rights to due process for which prohibition will lie to restrain and undo the nominations of Abdullah Kamara, Patrick Honnah, Clarence Kortu Massaquoi, Ben A. Fofana and Angela Bush Cassel.

The records show that on February 27, 2024, Commissioners Osborne K. Diggs and James Gbarwea filed a joint notice withdrawing from the subject petition for what they termed as "personal reasons" and stated that they already communicated the withdrawal of their names to the remaining petitioners.

We quote counts 3, 4, 13, and 15 which capture the petitioners' basic contentions:

PETITIONERS' PETITION

3. That Co-Respondents, Abdullah Kamara, Patrick Honnah, Clarence Kortu Massaquoi, Ben A. Fofanna, and Angela Bush Cassel were nominated on 20th February, 2024 while petitioners are still in their respective offices, and the names of the co-respondents as nominees have been forwarded to the Senate for confirmation contrary to the Statute creating the entity as can be more fully seen from a copy of the publicized print and electronic media including the Executive Mansion Website..."

4. That the Telecommunications Act of 2007, which created the Liberia Telecommunications Authority (LTA) in part III, Paragraph 9 subsections 1 and 2 provide that (1) *The President shall appoint a Commission consisting of five (5) Commissioners to oversee the operation of the LTA and to exercise the functions and powers of the LTA. The appointment of Commissioners pursuant to this Section 9 (1) shall be subject to Senate confirmation. (2)The President shall designate one of the five appointed Commissioners to be Chairman of the Commission.*

13. The Constitution of the Republic of Liberia provides that any person injured by the Act of Government shall have remedy therefor by due process of law or by due course of law. Article 26 of the 1986 Constitution provides that: *Where any person or any association alleges that any of the rights granted under this Constitution or any legislation or directives are constitutionally contravened, that person or association may invoke the privilege and benefit of court direction, order or writ, including a judgment of unconstitutionally; and anyone injured by an act of the Government or any person acting under its authority, whether in property, contract, tort or otherwise, shall have the right to bring suit for appropriate redress...*”
15. That under the law extant, tenured positions in government are contractual and every democratic government is under obligation to respect and uphold tenured positions. Also, the 1986 Constitution at article 25 states: “Obligation of contract shall be guaranteed by the Republic and no laws shall be passed which might impair this right.” By this constitutional provision, it goes without saying that the Respondents’ action aimed at removing Petitioners from their tenured positions and replacing them with the Co-Respondents Nominees speak loudly to the glaring violation of the Constitution, as the steps taken by Respondents against Petitioners without cause amounts to impairing the rights and obligations of contracting parties. Hence, Prohibition will lie to prevent the intended action of Respondents that run counter to good governance...”

On February 27, 2024, Petitioner Reginald Nagbe of the National Lottery Authority filed a ten-count petition alleging that on June 15, 2021, he was nominated by former President George Manneh Weah, confirmed by the Senate and subsequently appointed and commissioned to serve as Director General of the National Lottery Authority commencing July 15, 2021 to July 15, 2025; that contrary to the clear language of Section 8.1(b) of the Act creating the National Lottery Act (2014) regarding his tenure of four years, yet unexpired, the President of the Republic of Liberia His Excellency Joseph N. Boakai proceeded to nominate Ciapha Saah Gbollie as Director General of the National Lottery Authority; that the nomination of Ciapha Saah Gbollie is tantamount to an automatic dismissal of the petitioner from his tenure position; that it also violates the petitioner’s contractual rights under Article 25 of the Constitution (1986); that the nomination further violates his right to due process as he was never informed of the cause for his removal, nor cited to appear for an administrative hearing to be confronted with allegation of conduct inconsistent with his duties and functions as Director General of the National Lottery Authority; and that for all these acts by the Executive Government which run contrary to the Act creating the National Lottery Authority, prohibition will lie to

restrain and undo the nomination of Ciapha S. Gbollie. We quote herein below counts 1, 3, 4, and 5 which capture the main contentions of the petitioner, to wit:

“1. Petitioner Reginald Kpan Nagbe says and avers that Prohibition will lie against the Respondents where they went contrary to the Act that established the National Lottery Authority which is clear that the Director General shall serve for a period of four (4) consecutive years as contained in section 18.1 captioned “Tenure”, subsection 18.1 of the 2014 National Lottery Act which states “All non-statutory members of the Board shall hold office; (a) for an initial term of four (4) years but may be reappointed for a second term of four (4) years and no more; and be such terms and conditions that may be specified in his/her letter of appointment.” Attached hereto is the copy of the Act that established the National Lottery Authority marked as “Exhibit P/1” to form a cogent and integral part of this prohibition.

3. That further to count two (2), Petitioner says and avers that the Act that created the National Lottery Authority gives Petitioner the legal capacity to serve for the period to four (4) years without interference with his duties and functions. Petitioner says that the said Act as enshrined in section 18.1 captioned “Tenure”, subsection 18.1 of the 2014, National Lottery Act which states “All non-statutory members of the Board shall hold office; (a) for an initial term of four (4) years but may be reappointed for a second term of four years and no more; and be such terms and conditions that may be specified in his/her letter of appointment. Your Honor is requested to take judicial notice of the Act that created the National Lottery Authority. Notwithstanding, contrary to the Act that created the National Lottery Authority, the President of the Republic of Liberia, His Excellency Joseph N. Boakai nominated Ciapha Gbollie as Director General of the National Lottery Authority thereby automatically removing the Petitioner whose tenure is still active and in effect. The Respondent’s action is in gross violation of the law.

4. Petitioner says and avers that the nomination of Ciapha Saah Gbollie in the absence of any showing that the due process requirement (a law that hears before it condemns) was followed by the respondents. Article 20 (a) of the Liberian Constitution states “No person shall be deprived of life, liberty, security of the person, property, privilege or any other rights 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 constitutional provision has been breached by the respondents for which prohibition will lie.

5. Petitioner further says and avers that Article 25 of the 1986 Constitution guarantees the sanctity of contract which cannot be

breached except as a result of due process. In the present case at bar, the petitioner has a contract with the Government of Liberia to serve as Director General of the National Lottery Act, relying on Section 18.1 of the Act creating the National Lottery Act and can only be removed for cause; which cause must be glaring and must be in line with due process.”

Upon receipt of the respective petitions, the Justice presiding in Chambers Mr. Justice Yussif D. Kaba on diverse dates convened conferences with the respective petitioners and the respondent the Executive Branch of Government represented by and thru the Ministry of Justice. It is common knowledge that a Justice in Chambers has the prerogative to convene a conference between the parties to review the issues with the intent of expeditiously disposing of a matter. It is also the law that the Ministry of Justice is authorized to represent any of the three Branches of the Government, as in the present case. However, where one officer of the Republic is in a lawsuit against another officer of the Republic, or in the case of “in re” proceedings, the Ministry appears only on the side of the law and not for any party or Branch of the Government. *Grace Kpan v. The House of Representatives*, Supreme Court Opinion, October Term, 2015. The records reveal that following the conferences, on March 12, 2024 the Justice in Chambers ordered the Clerk of the Supreme Court to issue alternative writs of prohibition in each of the respective petitions and to command the respondent the Executive Branch by and thru the Ministry of Justice to file its returns on or before March 22, 2024 at 4:00pm. The Justice in Chambers having determined that the petitions and the returns thereto raised constitutional issues also ordered the Clerk to forward the petitions and returns to the Full Bench of the Supreme Court for hearing and determination.

On March 25, 2024, the respondent the Executive Government, by and thru the Ministry of Justice first filed returns to three of the petitions, that is, the petition of Andrew Peters of the National Identification Registry; the petition of Atty./Hon. Garrison Doldeh Yealue Jr. of the Governance Commission; and the petition of Reginald Nagbe of the National Lottery Authority. As regards the petition of Commissioners Edwina Zackpah et. al, the respondent the Executive Government by and thru the Ministry of Justice, filed returns on March 26, 2024.

On March 26, 2024, as per notices of assignments, the petitions and returns thereto were called for hearing and upon the conclusion thereof the Court ordered the consolidation of the four petitions and informed the parties that a comprehensive Opinion will be rendered in due course. The Court’s decision is in consonance with the law and entrenched in a litany of Opinions of the Supreme Court which provides that:

“...1. Court order of consolidation. When actions involving a common question of law or fact are pending before a court of record, the court, upon motion of any party or *sua sponte*, may order a joint trial of any or all the matters in issue or the consolidation of the actions; and it may make such other orders concerning proceedings therein as may tend to

avoid unnecessary costs or delay.” *Civil Procedure Law*, Revised Code 1: 6.3; *Siah Tandapolie et.al v. NEC*, Supreme Court Opinion, October Term 2023. *The National Port Authority v. The Executive Committee of the Six Consolidated Groups of Retirees and Compulsory Employees of the National Port Authority*, 39 LLR 244, 256 (1998); *National Milling Company of Liberia v. Pupo and Miatta Family Center*, 34 LLR 467, 469 (1985).

In view of the fact that the Government filed similar returns to all of the petitions we quote verbatim one of the returns as follows, to wit:

“RESPONDENT’S RETURNS

Respondent in the above entitled action most respectfully prays Your Honor to deny and dismiss the Petition for a Writ of Prohibition, for the following legal and factual reasons, to wit:

1. Respondent prays Your Honor to take judicial notice that Article 3 of the Constitution provides that **“Liberia is a unitary sovereign state divided into counties for administrative purposes. The form of government is Republican with three (3) separate, coordinate branches: the Legislative, the Executive and the Judiciary. Consistent with the principles of separation of powers and checks and balances, no person holding office in one (1) of these branches shall hold office in or exercise any of the powers assigned to either of the other two branches except as otherwise provided in this Constitution; and no person holding office in one of the said branches shall serve on any autonomous public agency.”** (Emphasis ours). The Supreme Court of Liberia has strongly upheld this provision of the Constitution. See *In Re: Judiciary Inquiry Commission’s Report on His Honor Logan Broderick*, 40 LLR 263.
2. Respondent also prays Your Honor to take judicial notice that Article 89 of the Constitution provides as follows: **“The following autonomous Public Commissions are hereby established: A. Civil Service Commission; B. Elections Commission; and C. General Auditing Commission. The Legislature shall enact laws for the governance of these Commissions and create other agencies as may be necessary for the effective operation of the Government.”** (Emphasis ours). Every other instrumentality of the Liberian Government is either a part of the Legislative, Executive or Judicial Branches. And since the Governance Commission is not and cannot be an instrumentality of the Legislature or the Judicial Branches of the Government of Liberia, then it is obviously an instrumentality of the Executive Branch. And Respondent prays Your Honor to so opine, declare and rule.
3. Respondent further prays Your Honor to take judicial notice that in interpreting who constitute the three branches of the Liberian Government, as provided for in Article 3 of the Constitution, the Honorable Supreme Court held that the President of Liberia alone constitutes the Executive Branch of the Liberian Government and that everybody who serves in the Executive Branch of the Liberian Government serves at the will and pleasure of the President of Liberia. *Sartori v. Scott*, 33 LLR 295. This holding of the Supreme Court finds its source in Article 56 of the Constitution, which provides among other things, that **“all cabinet ministers, deputy and assistant cabinet ministers, ambassadors, ministers and consuls, superintendents of counties and other government officials, both military and civilian appointed by the President pursuant to this**

Constitution shall hold their offices at the pleasure of the President.”
(Emphasis ours).

4. Respondent further prays Your Honor to take judicial notice that the Supreme Court has held that the opportunity to hold public office is a privilege and not a constitutional right. See: In re the Constitutionality of Sections 16.1 and 16.2... Supreme Court Opinion, October Term, 2022.
5. Respondent submits that on the basis of counts one (1) through four (4) hereinabove, the National Lottery Authority is not an autonomous commission provided by the Constitution, and it is obviously not of the Judicial Branch or Legislative Branch of Government of Liberia, then it is clear that the National Lottery Authority is part of the Executive Branch of the Liberian Government. Therefore, Your Honor should properly find and opine that the Petitioner is a member of the Executive Branch of the Government of Liberia and therefore serves at the will and pleasure of the President of Liberia. And Respondent prays Your Honor to so opine, declare and rule.
6. That specifically traversing count one (1) of the Petition, Respondent denies that Prohibition will lie against the Respondent, as the Respondent has not contravened the Act establishing the National Lottery Authority. Moreover, said count one (1) is mere verbatim quotation of Subsection of 18.1 of the Act establishing the National Lottery Authority. Hence, Respondent prays that count one (1) of the Petition be overruled and dismissed.
7. That as to count two (2) of the Petition, Respondent submits that same presents no traversable issue, so Respondent prays that count two (2) of the Petition be overruled and dismissed.
8. That as to count three (3) of the Petition, Respondent denies that the mere nomination – through an announcement – of Ciapha Saah Gbollie as Director General of the National Lottery Authority, without any further action, was an automatic dismissal of the Petition and a violation of the Act that established the National Lottery Authority.
9. Further to count eight (8) above, Respondent submits that the Petition is premature as nothing has been done by the Executive Branch of Government other than an announcement of the name of Ciapha Saah Gbollie as Chairman of the National Lottery Authority. The Petitioner was too hasty in filing the Petition for a writ of Prohibition. The Petitioner has suffered absolutely no harm, injury or embarrassment. He is still performing his duties and responsibilities. He has not been removed; no one has appeared to take over his office. The Petition is based on future events that may not occur as predicted or at all. The Petitioner is still occupying his office and enjoying all the associated benefits of his office. Hence, prohibition will not lie. See Garlawolu et. al v. The National Elections Commission et. al., 41 LLR 377 (2003).
10. Further to count nine (9) above, Respondent says that the Honorable Supreme Court of Liberia has held that prohibition cannot commence on the basis of presumption of threats of possible action, but must be based on clearly taken decisions or actions. Lone Star Insurance v. Cooper and Abi-Jaoudi and Azar Trading Corporation, 40 LLR 549 (2001).
11. That as to count four (4) of the Petition, Respondent says that Petitioner reliance on Article 20 (a) of the Constitution (the Due Process Clause) is misplaced and erroneous. Respondent maintains that as no action has been taken by the Executive Branch of Government to implement the announcement of the nomination of Ciapha Saah Gbollie as Director General of the National Lottery Authority, due process has not been breached and the rights of Petitioner has not been violated. Hence, said count should be overruled and dismissed and Respondent so prays.
12. That as to count five (5) of the Petition, Respondent acknowledges that Article 25 of the Constitution guarantees that sanctity of contracts. Respondent

says that as the Petitioner has admitted that he has a contract with the Government of Liberia, then he is also admitting that he has proceeded by the wrong rule. If he maintains that he was automatically dismissed by the mere nomination of Ciapha Saah Gbollie, as he alluded to in count three (3) of his Petition, then he should have filed an action in the Circuit Courts for breach of contract and not a petition for a writ of prohibition with the Supreme Court. Hence, Respondent prays that the petition be overruled and dismissed.

13. That as to count six (6) of the Petition, Respondent submits that same presents no traversable issue as it is verbatim quotation of Article 89 of the Constitution. Hence, said count should be overruled and dismissed and Respondent so prays.
14. That as to count seven (7) of the Petition, Respondent denies that the Executive Branch of Government has not breached any constitutional provision by merely nominating Ciapha Saah Gbollie. Respondent confirms counts one (1) through four (4) of this Returns.
15. That as to count eight (8) of the Petition, Respondent maintains that holding public office is a privilege and not a right. Moreover, contrary to the allegations in said count eight (8) of the Petition, Petitioner has not been removed from office or denied the right to enter his office. Hence, said count and the entire Petition should be dismissed and Respondent so prays.
16. That as to count nine (9), Respondent submits that the Petitioner reliance on the case Martin Sallie Kollie v. the Executive Branch of the Republic of Liberia, Supreme Court Opinion March Term A.D. 2019 is misplaced and erroneous.
17. Further to count sixteen (16) above, Respondent says that the facts and circumstances of the Kollie's case are not analogous to the facts and circumstances of the case at bar. In the Kollie case, Martin Sallie Kollie sued the Executive Branch of Government of Liberia because the then President of Liberia, Mr. George Manneh Weah, nominated the Petitioner (Mr. Reginal K. Nagbe) as Director General of the National Lottery Authority (NLA) and submitted his name to the Liberian Senate for confirmation. In the case at bar, though the President, His Excellency Joseph Nyuma Boakai, has nominated Ciapha Saah Gbollie as Director General of the National Lottery Authority, the President has not submitted his name to the Liberian Senate for confirmation or removed the Petitioner from office or taken any other action. The Petitioner is still performing his duties and responsibilities. He has not been removed, no one has appeared to take over his office. The Petition is based on future events that may not occur as predicted or at all. The Petitioner is still occupying his office and enjoying all the associated benefits of his office. Hence, the Petition should be overruled and dismissed and Respondent so prays.
18. That as to count ten (10) of the Petition, Respondent submits that prohibition will not lie in the instant case, as the Petition is premature. Nothing has been done by the Executive Branch of Government other than an announcement of the name of Ciapha Saah Gbollie as Director General of the National Lottery Authority. The Petitioner was too hasty in filing the Petition for a writ of prohibition. The Petitioner has suffered absolutely no harm, injury or embarrassment. He is still performing his duties and responsibilities. He has not been removed, no one has appeared to take over his office. The Petition is based on future events that may not occur as predicted or at all. The Petitioner is still occupying his office and enjoying all the associated benefits of his office. Hence, prohibition will not lie. See Garlawou et. al v. The National Elections Commission et. al., 41 LLR 377 (2003). Hence, the Petition should be denied and dismissed, and Respondent so prays.

19. Further to count eighteen (18) above, Respondent maintains that the Executive Branch has not exceeded its jurisdiction or is proceeding by wrong rules. Hence, prohibition will not lie.
20. That the Respondent denies all the allegations of law and facts contained in the Petition and not made a subject of special traverse herein in these Returns.

WHEREFORE AND IN VIEW OF THE FOREGOING, Respondent prays that Your Honor will deny and dismiss the Petition in accordance with the mandatory statutory and decisional laws of our jurisdiction, will quash the alternative writ of prohibition, deny the peremptory writ of prohibition, rule cost of these proceedings against the Petitioner, and grant unto Respondent all other relief that is just, legal and equitable in the premises.”

We pause at this juncture to address an issue which this Court being the Court of *denier* resort cannot overlook. As mentioned herein above, on March 12, 2024, the Justice in Chambers in a writ mandated that the respondent the Executive Branch by and thru the Ministry of Justice to file its returns on or before March 22, 2024 at 4:00pm. The Ministry of Justice however elected to file its returns on March 25 and 26, 2024 respectively, outside of the date mandated by the Justice in Chambers. This Court reviewed the records before the date of hearing on the petitions and the returns and found no excuse filed by the Ministry of Justice requesting this Court for enlargement of time in consonance with the laws and procedures in this jurisdiction. Even upon announcing its representation on the date of hearing, the Minister of Justice did not deem it necessary or important to address the issue of the late filing of the respondent’s returns but instead proceeded with its argument. In numerous Opinions similar actions by the Government through the Ministry of Justice were addressed and the Government sanctioned for its deliberate failure to comply with the order of the Supreme Court in the filing of its returns. In one of such cases the Supreme Court held that “parties before this Court are required to proceed in strict compliance with the orders of the Court. Lawyers for the Government know or ought to know that the proper thing they should do is to file returns as directed by the Justice in Chambers and within the time designated so as not to be in breach of the orders of the Justice in Chambers.....petitions and returns before the Chambers of this Court are pleadings and our law provides that when a party files a pleading outside of statutory time that pleading will be stricken. Normally, before the Supreme Court, when a party fails to file a brief, the rules of the Supreme Court provides that that party will be fined but in the instant case this is not a brief; this is returns which the Justice in Chambers ordered to be filed in a designated period but that order was not carried out in time. This Court will not permit party litigants through their counsels to flout its orders with impunity as non-compliance with orders hamper the work of this Court.” *Justice and Public Interest Consortium Africa (JUPICA) et. al v. National Elections Commission et. al*, Supreme Court Opinion, October Term 2014. In that case, the Supreme Court ordered the returns filed by the Government stricken as if the Government had filed no returns to the petition before it and on the basis that the Supreme Court must be even-handed in dealing with all parties appearing before it. We uphold the decision espoused in the

referenced case and herewith order the returns by the Executive Government stricken as if the Government had filed no returns before this Court.

We return to the four petitions and the issues raised therein which we have determined are two-fold and similar, hence, their consolidation. This Court has said that it will not pass on all issues raised in pleadings except those that are relevant to the disposition of the case. Hence, the court has determined that there are two issues, to wit: 1) that the petitioners rights had been allegedly violated by the nominations of other persons to their respective positions by the Executive Government while their tenures had not yet expired and that the creation by the Legislature of the Agencies manned by the petitioners and providing tenure positions, are not unconstitutional 2) The alleged violation of the petitioners due process rights under the Constitution in that the Executive Government had proceeded to nominate other persons to their respective offices which is tantamount to their removal without stating a cause as provided for by law. From the foregoing, the primary contention by the petitioners is the protection of their respective tenure rights.

It is the law that the Supreme Court has the inherent constitutional right and authority to interpret laws and once the Supreme Court, which is the Court of last resort, interprets any law or statute, that interpretation stands as a guide or principle or rule for deciding similar issues arising thereafter until otherwise recalled. The decision of the Supreme Court is absolute and final on all issues brought before it. The Opinion of the Supreme Court has full force of law and is binding on all parties and subordinate courts.” *Powell v Deputie et al*, 30 LLR 311, 313 (1982). This is what legal parlance refers to as precedent. The Black’s Law Dictionary, Ninth Edition defines precedent as the making of law by a court in applying and recognizing new rules while administering justice. It also refers to decided case that furnishes the basis for determining later cases involving similar facts or issues.

Suffice it to say, the Supreme Court has already passed upon and set precedents on the two (2) germane issues raised in the present petitions, which the Court has outlined herein above. These precedents on tenure are vividly espoused in the case, *Martin Sallie Kollie v. Executive Branch of Government and Reginald K. Nagbe*, Supreme Court Opinion, March Term 2019; and *In Re the Constitutionality of Section 16.1 and 16.2 of the Act to Amend & Restate an Act to Establish the LACC*, Supreme Court Opinion, October Term, A.D. 2022.

The first issue, regarding the nominations of other persons to the respective positions of the petitioners by the Executive Government while their tenures had not yet expired and that the creation by the Legislature of the Agencies manned by the petitioners and providing tenure positions, are not unconstitutional and does not violate the appointing power of the President of Liberia; and the alleged violation of the petitioners’ due process rights under the Constitution in that the Executive Government had proceeded to nominate other persons to their respective offices which is tantamount to their removal without stating a cause.

The precedent espoused on these two issues is found in the *Kollie Case*. In that case, the Supreme Court lengthily addressed the issue of tenureship in Government of the petitioner, Martin Sallie Kollie, then similarly situated as the present petitioners; the Supreme Court also meticulously addressed the issues in the returns filed by the Executive Government by and through the Ministry of Justice, that the creation by the Legislature of such additional autonomous agencies as the ones manned by the present petitioners is not unconstitutional in violation of Article 89 of the Constitution, and also did not violate the appointing power of the President of Liberia pursuant to Article 56(a) of the Constitution.

The facts in the *Kollie* case are that on October 19, 2015, President Ellen Johnson Sirleaf nominated Hon. Martin Sallie Kollie as Director General, Liberia National Lottery Authority pursuant to Section 8 (b) of the Act creating the said Authority. The referenced section provides: “i) the Director General shall hold office for an initial term of four (4) years and may be reappointed for a term of another four years and no more ii) Notwithstanding the provisions of subsection (b) of this section, the Director General may i) resign his/her appointment by notice in writing, addressed to the President through the Board ii) be removed by the President for inability to discharge the functions of his/her office whether arising from infirmity of mind or any cause or for proved misconduct.” On March 1, 2016, the Senate confirmed Hon. Martin Sallie Kollie’s nomination; and subsequently on July 7, 2016, President Sirleaf appointed him as Director General, Liberia National Lottery Authority for a term of four years. Thereafter, President George M. Weah having succeeded President Ellen Johnson Sirleaf, nominated Mr. Reginald K. Nagbe as Director General, Liberia National Lottery Authority while Hon. Martin Sallie Kollie’s tenure remained unexpired. Hon. Kollie in response to the nomination of Mr. Reginald K. Nagbe filed a petition for the writ of prohibition before the Justice in Chambers of the Supreme Court praying for the writ of prohibition to be issued against the Executive Branch of Government to restrain and undo the nomination of Mr. Reginald K. Nagbe on grounds that his tenure as Director General of the National Lottery Authority had not yet expired and that the nomination of Mr. Reginald K. Nagbe to the Office of Director General violates Section 8 of the Act creating the National Lottery Authority.

As was done with the present petitions, the Justice presiding in Chambers at the time of the filing of the petition by Hon. Martin Kollie, the Clerk of the Supreme Court was ordered to issue the alternative writ mandating the Executive Branch of Government thru the Ministry of Justice to file returns and show cause why the peremptory writ of prohibition should not be granted. Upon receipt of the Court’s precepts, the Executive Government thru the Ministry of Justice filed returns wherein it prayed the Chambers Justice to deny the writ alleging that the President of Liberia pursuant to Article 56(a) of the Constitution has the authority to appoint all officials of the Executive Branch of Government; that under this Constitutional provision all officers of the Executive Branch of Government including the Director General of the National Lottery Authority serve at the will and pleasure of the President and can be removed at any time by the President; that Section 8 of the Act

Creating the National Lottery Authority providing tenure for the Director General violates Article 56(a) of the Constitution by preventing the President's appointment and removal powers; and that the Supreme Court should declare Section 8 of the Act Creating the National Lottery Authority unconstitutional as the Legislature cannot make any law which contravenes Article 56(a) of the Constitution.

Given the constitutional issues presented in the *Kollie case*, and as was done in the present petitions, the Justice in Chambers in the *Kollie case* forwarded the case to the Supreme Court *en banc* who listened to oral arguments *pro et con*, and rendered its Opinion on the petition and the returns thereto. The Supreme Court granted the peremptory writ of prohibition against the Executive Government and opined that Section 8 of the Act Creating the National Lottery Authority did not violate Article 56(a) of the Constitution. The below is how the Supreme Court addressed this issue, to wit:

“That although Article 89 of the Constitution of Liberia specifically created three (3) autonomous public commissions, that same Article authorizes the Legislature to create other agencies as may be necessary for the effective operation of Government and enact laws for their governance; that even though the nomenclature does not so expressly depict, the National Lottery Authority enjoys all attributes of an autonomous public commission, therefore, the Legislature acted within the scope of its authority in enacting laws for its governance, including the provision of tenure for its Director General...that an Act passed by the Legislature is presumed to be constitutional unless the contrary is clearly shown; that the Legislature is presumed to have acted constitutionally in passing a statute and that courts must start out with the presumption that the statute is constitutional and valid and that every intendment is in favor of the validity of the Statute; in addition to the conferred constitutional power to enact laws for the governance of the autonomous commissions named under the Constitution, the Legislature was given the additional power to create other agencies as may be necessary for the effective operation of Government. At the time of establishing the three autonomous commissions in 1986, the framers of the Constitution did not and could not have thought of all the relevant autonomous commissions for the effective operation of Government so they empowered the Legislature to act when the need arises to create additional autonomous commissions. Over the years, as the need for establishing other appropriate commissions or agencies for the effective operation of Government became necessary, the Legislature consistent with the power granted it by Article 89 of the Constitution, established all of the agencies from which the petitioner was removed under the Executive Branch of Government and provided tenures for each of the said agencies. In doing so, the Legislature acted within the scope of its authority...That there is no showing that the Act passed by the Legislature providing tenure for the Director General of the National Lottery Authority is in violation of the power granted the President of the Republic of Liberia under Article 56(a) of the Constitution to appoint and dismiss at

his pleasure, officials of government appointed by him, therefore, this Court sees no reason to declare the said Act unconstitutional as the Minister of Justice/Attorney General has urged us to do.” This principle of law so enounced was reiterated in the case *Atty. Jackson v. LMA and the Executive Branch of Government*, Supreme Court Opinion, March Term A.D. 2020 wherein the Supreme Court held: “the creation of tenure positions by the National Legislature is not in violation of the power granted the President of Liberia under Article 56(a) of the Constitution...”

The Supreme court went on to opine that “section 8.1 (b) of the Act establishing the National Lottery Authority provides that the Director General of the National Lottery Authority shall hold office for an initial period of four (4) years but may be reappointed for another four (4) years and no more; notwithstanding, the Director General may resign his post by notice in writing addressed to the President for inability to discharge the functions of his office whether arising from infirmity of mind or any cause or for proved misconduct; **that there being no showing that any of the conditions under which the Director General of the National Lottery may be removed from office by the President of Liberia before the expiry of his tenure had occurred, his removal was not within the pale of the law.**” [Note our Emphasis]

In the present petitions, the Executive Government did not state any constitutional or statutory conditions or cause by which the petitioners were being removed from their respective tenure positions. We are also taken aback by the argument of the Minister of Justice that the Executive Government’s action was only at the nomination stage and only created a “scare” to the petitioners; that the petitioners suffered no harm, injury or embarrassment as they are still performing the duties and responsibilities associated with their respective offices and enjoying all of the benefits associated with the said offices; and that the petitions are based on future events which may not happen, meaning that the petitions were pre-maturely filed. This is preposterous! Firstly, the petitioners are still in their respective positions only because a stay order was imposed by the Justice in Chambers and not by any magnanimous gesture by the Executive Government. Further, we ask the question as to why the Executive Government would proceed to nominate individuals to positions that are not available only to create a “scare” to the individuals already occupying the said positions when there are provisions of the law which clearly set forth procedures for the removal from office of officials of government as the petitioners.

Accordingly, we uphold the principles of law espoused in the referenced cases and herein hold that there being no showing that any of the conditions under which the present petitioners may be removed from office to warrant the nominations of other persons to their positions by the President of Liberia before the expiry of their respective tenures, the act by the President is not within the pale of the law. Also, this Court says that having decided the issue of tenure, the Court expects that the

Executive Branch of Government will take cognizance of the Opinions rendered by the Court regarding this issue and henceforth act accordingly.

As regards the issue of the violation of their due process rights as enshrined in Article 20(a) of the Constitution (1986), this Court must first state, as in numerous opinions that the mandatory components of due process include a competent tribunal to pass on the subject matter; notice actual or constructive; an opportunity to appear and produce evidence; to be heard in person or by counsel; and if the subject-matter involves the determination of the personal liability of an accused, he must be brought within the jurisdiction by service of process within the state, or by his voluntary appearance; and there must be a course of legal proceedings according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights. *Wiles v Mwah et al*, Supreme Court Opinion, March Term 2007; *Broh v Hon. House of Rep. et al*, Supreme Court Opinion, October Term 2014; *Chambers v NEC et al.*, Supreme Court Opinion, March Term 2015.

In the instant petitions, the Executive Government proceeded to nominate other individuals to the respective positions of the petitioners in disregard of their tenures and without notice (actual or constructive) to the petitioners and/or the opportunity to be heard in persons or by counsel. Tenures as provided for under the law should be respected. Hence, the petitioners' due process rights were violated, and we so hold.

The question we now ask is whether or not given the facts and circumstances of the present cases, probation will lie. We say an emphatic yes! In a plethora of cases, and in the *Kollie case* herein referenced, the Supreme Court held that "the writ of prohibition will be granted to prevent some outrage upon settled principles of law and procedures in cases where wrong, damage, and injury are likely to follow such action; that the writ is also granted where an action or proceeding makes it apparent that the rights of a party litigant cannot be adequately protected by a remedy other than through the exercise of the extraordinary writ of prohibition; and that the writ of prohibition does not only halt whatever remains to be done by the court or administrative agency against which it is issued, but it also gives further relief by undoing what has already been done. *Togba v. RL*, 35 LLR 389 (1988); *Parker v. Worrel*, 2LLR 525, 526 (1925); *Nelson v. Boye*, 27 LLR 174, 179 (1978).

Before concluding this comprehensive Opinion, the Court refers to the allegation contained in the petition of Hon. Andrew Peters of the National Identification Registry that the President had not only nominated Dr. Edward Liberty as Executive Director of the National Identification Registry but proceeded to and did submit his name to the Senate for confirmation contrary to the relevant provision of the Act creating the National Identification Registry; that according to the Act, the appointment of an Executive Director of the Registry lies squarely within the authority of the Board of Registrars and not the President of Liberia; hence, the

President had assumed authority not granted him by law. The Court reviewed the National Identification Registry Act and found that section 4.6 (d) provides thus: “The Board of Registrars shall be responsible to appoint the Executive Director and Deputy Executive Director of the Registry.” The language of the statute is clear. This Court says, however, as it cannot receive evidence, it cannot establish the veracity of petitioner’s Peter’s averments hence, will not burden this Opinion.

WHEREFORE IN VIEW OF THE FOREGOING, the alternative writ of prohibition issued by the Justice in Chambers is hereby affirmed and the peremptory writ prayed for is granted. The nominations giving rise to these petitions are hereby ordered revoked. The Clerk of this Court is mandated to inform the parties accordingly. AND IT IS HEREBY SO ORDERED.

Petitions granted.

When this case was called for hearing, Counsellors Arthur T. Johnson, Samuel Y. Zaza, C. Alexander B. Zoe, Fredrick L. Gbemie and James N. Kumeh, appeared for the respective petitioners. Counsellor N. Oswald Tweh, Minister of Justice and Attorney General of the Republic of Liberia and Counsellor J. Adolphus Karnuah appeared for the Executive Branch of Government.