

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2018

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEHASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIEASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOHASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE

His Honor Kabineh M. Ja'neh, Associate Justice of)
the Supreme Court of the Republic of Liberia)
.....PETITIONER)

Versus

The House of Representatives of the National)
Legislature, by and thru its Speaker, Honorable)
Bhofal Chambers.....DEFENDANTS)

PETITION FOR A WRIT
OF PROHIBITION

HEARD: November 9, 2018

DECIDED: November 30, 2018

DISSENTING OPINION

The factual issues having been laid out and narrated in the Majority Opinion of this case in regards to papers filed and hearings held in this matter, but I, Justice Jamesetta H. Wolokolie, and Justice Sie-A-Nyene G. Yuoh having disagree fundamentally with the interpretation of the issues raised, we have decided to withhold our signatures to the Majority Opinion, propounding our stance on our own understanding and interpretation of the laws decisive of this case.

We shall proceed to address the issues outlined in the Majority Opinion which are as follows:

1. Whether or not the House of Representatives was legally obligated to honor the writ of prohibition ordered issued by the Justice in Chambers and file formal returns to the writ of prohibition?
2. Whether or not the Ministry of Justice can legally represent the House of Representatives in this case?
3. Whether or not prohibition will lie against the House of Representatives in this case?

We shall commence with the issue of the Respondent House of Representative's communication to the Chambers Justice, Justice Sie-A-Nyene G. Yuoh, in response to the alternative writ of prohibition issued out by her and which the Respondent ignored and continued with the very process

ordered stay; and the Ministry of Justice subsequent representation of the Respondent despite this communication sent to her, and in essence the Court.

As mentioned in the Majority's Opinion, Associate Justice Yuoh, having reviewed a petition for a writ of prohibition filed before the Justice in Chambers by His Honor, Associate Justice Kabineh M. Ja'neh, Petitioner, praying for the issuance of a writ of prohibition to stay certain violations of the Liberian Constitution (1986) by the Respondent House of Representatives in a bid to impeach him, had issued the alternative writ, instructing that the Respondent stayed all further proceedings in the matter and the parties returned to status quo ante, pending the disposition of the petition. She further instructed the Respondent to file its returns to the writ on or before the 18th day of August, A. D. 2018. The Chambers Justice then commanded the Clerk to have the matter forwarded to the full bench because of the constitutional issues raised in the petition.

Upon receipt of the writ by the Respondent, the Chief Clerk of the House of Representatives, Madam Mildred N. Sayon, on August 29, 2018, wrote a letter directed to the Justice in Chambers. In her letter, Madam Mildred N. Sayon stated that she had been instructed by the Respondent House of Representatives to write to the Justice in Chambers that the writ issued by her violated Articles 3, 42 & 43 of the Liberian Constitution; therefore, the House advised that in the interest of constitutional democracy and separation of powers that the Justice vacate the writ and avoid embarrassment to the Supreme Court. In fact, the Respondent insolently referred to the writ emanating from the Justice in Chambers and in essence this Court, as a "purported writ" and that it, the Respondent, was in "possession of a paper."

In order that we grasp a full appreciation of the disrespectful and total disregard to the Constitutional Authority of this Court exhibited by Members of the House of Representatives, we hereunder reproduce the full text of the letter as follows:

"THE HONORABLE HOUSE OF REPRESENTATIVES

Capitol Building

P. O. Box 9005

Monrovia, Liberia

Website: www.legislature.gov.lr

August 29, 2018

Her Honor

Justice in Chambers

Sie-A-Nyene G. Yuoh

Supreme Court of Liberia

Temple of Justice
Capitol Hill
Monrovia, Liberia

RE: PURPORTED WRIT

Your Honor:

I present compliments and by directive of the plenary of the Honorable House of Representatives of the 54th legislature (in session) have the honor, to inform you that it is in possession of a paper served on it entitled, Writ of Prohibition, by your honor Justice in Chambers Sie-A-Nyene Yuoh. The Plenary of the House of Representatives has instructed me to further inform you for reasons set out below, that the House of Representatives does not intend to honor the terms or conditions of the writ.

The House thinks that the writ violates Article 3 Separation of Power clause, Article 42 immunity clause, Article 43 impeachment powers and a long line of cases and precedents in this jurisdiction and its progeny.

You are therefore advised in the interest of our constitutional democracy and consistent with the separation of powers and checks and balances to vacate this writ and avoid embarrassment to the sacred institution of the Supreme Court.

Kind regards.

Sincerely yours,

Mildred N. Sayon
Chief Clerk"

It is important that we note here that this communication from the Respondent quoted above still remains before the Supreme Court as it has never been withdrawn by the Respondent House of Representatives.

The Majority in their Opinion denounce the insolent content of the letter sent to this High Court of last resort, stating that it is highly improper and irregular; that the Court expects that the Respondent being a part of the Legislative Branch of Government and not an ordinary party, which is held at a higher standard to set example and give direction to the general public, would accord respect to the Judiciary Branch, recognizing the duties and functions of the Judiciary Branch as provided by law. Even where the Respondent disagreed with the discretion exercised by the Chambers Justice, it should have exercised restraint and meticulously follow the rule of law by filing its defense(s) with the Court. The Respondent's deliberate non-compliance with the order of the Supreme Court, the Majority have stated, is a bad example set by those who make our laws as the laws they make require compliance by all. The Majority writes, "The law requires that parties seek redress in court;

and if a party is sued, that party must file defense(s) in court. But the example set by the House of Representatives, if anything to go by, then a party defendant in a lawsuit who believes that he/she is not in error will no longer file defense(s) in court. That party is justified, by the example set by our lawmakers, to inform the presiding judge, through a letter, that he/she/it will not abide by any order of the court and refuse to file a responsive pleading. This is utterly wrong and not the right path of a democratic society under the rule of law."

The Majority in dealing with the communication sent to the Court by the Respondent refers to Chapter 42, Section 42.1, 1LCL Revised, Civil Procedure Law, which provides that the failure of a party, upon service of process, to appear, file or proceed to trial, is a ground for a default judgment against the defaulting party. The Majority has however stated that despite this rule, the law extant in our jurisdiction requires that the granting of a default judgment does not entitle the complainant to relief without proof of the allegations set forth in his/her/its pleading, and a final judgment cannot be rendered on a default judgment without proof of the allegations in the pleading. The Management of the *Liberia Electricity Corp. v. Varpilah*, 37 LLR 664, 672 (1994); *Krangar et al. v. NPA*, 36 LLR 931, 937 (1990). The Majority have also made reference to the holding of this Court that, "A default judgment is an imperfect judgment that must be made perfect by the production of sufficient evidence by the plaintiff in substantiation of his claim." (*Salala Rubber Corp. v. Garlawolo*, 39 LLR 609). They further referred to Section IV (c) of the Supreme Court's Rule, stating that this is a provision for this Court to proceed to hear the petition though the Respondent House of Representatives deliberately refused to file returns and failed to attend upon the cause. Thus, notwithstanding the fact that the House of Representatives did not file formal returns to the petition for prohibition even though it was duly informed, we for a different reason support the Supreme Court proceeding to hear the petition for prohibition and to make a decision as to whether the petition presented legal reason(s) to warrant the issuance of the peremptory writ of prohibition.

We are in disbelief that our majority colleagues would evoke and rely upon laws and precedents applicable to the lower courts. The law and cases regarding default judgment referred to by the Majority are inapplicable to the Supreme Court and the case at bar, since the Supreme Court, unlike the lower courts, does not take evidence so as to make an imperfect judgment perfect by the production of evidence.

Furthermore, this section of the Supreme Court's Rules, section IV (c), for which the Majority rely for hearing of the petition is also inapplicable as this section of the Rules refers to matters on "APPEALS" and "FAILURE OF COUNSEL TO APPEAR". This is not the case before us as this is a case in which the Court is exercising initial jurisdiction because of the subject matter and the parties involved. We therefore do not find the law making a default judgment perfect by the production of evidence relevant to the Supreme Court and especially where the Respondent House of Representatives has deliberately flaunted the Court's jurisdiction to hear this matter in a demeaning fashion, disregarding the Court's precept requiring Respondent to file its returns. We therefore do not find the law making a default judgment perfect by the production of evidence or the Supreme Court Rule IV (c) relevant to the case at bar, especially where the Respondent House of Representatives has deliberately flaunted the Court's jurisdiction to hear this matter in manner demeaning and disrespectful to this Court.

The questions presented in this petition for which our Majority Colleagues urged us to pursue the path of a default judgment is purely constitutional and not issues of fact; we wonder what evidence will the petitioner be required to produce in order to make such imperfect judgment perfect. Will he be required to produce a copy of the Constitution for this Court's reading of Articles 43 and 73 so that it understands the wording of same? Or will he be cross-examined on whether or not the Legislature had prescribed rules for impeachment proceedings?

Under other circumstances where the petition dealt with issues other than the constitutional interpretation by the Court, the communication sent to the Court by the Respondent would have warranted an outright granting of the Petitioner's application to the Court, but our proceeding for hearing into this petition is however based solely on the Court's legal authority of constitutional judicial review. The present petition presents such constitutional concerns and this Court can conduct hearing to make a determination on constitutional issues raised. Therefore, the absence of the Respondent House of Representatives and its refusal to file returns do not automatically abate the matter filed before the Court. Further, the Court's decision to conduct hearing into this petition is based on the Constitutional issues raised in the petition and for which the matter was forwarded to the full bench for determination.

This brings us to the second issue as to the representation of the Respondent House of Representatives by the Ministry of Justice. As stated supra, due to the request of the Petitioner to this Court for a determination of certain

violations of the Constitution raised in his petition, and which this Court under Article 66 of the Constitution (1986) has the authority to do, it is in this regard we are obligated to deal with said alleged Constitutional violation.

It was in this regard that the Court invited the Ministry of Justice to appear in support of the applicable laws made and provided for and the Ministry of Justice in obedience to the mandate of the Court did appear and file a brief on August 29, 2018, denouncing first and foremost that it was a party to the matter before the Court. In the Ministry's brief, it stated that the Respondent House of Representatives did not request the Ministry to represent it in the matter, and that the Ministry was not representing the Respondent; that the Ministry of Justice is an institution under the Executive Branch of the Liberian Government clothed with the statutory responsibility to give legal opinion to that Branch of the Government; that the only reason the Ministry was filing a brief was because the Supreme Court had asked it to do so and which action on the part of the Court was provided for by law. The Ministry emphasized that its brief was not filed on behalf of the Respondent House of Representatives whose position is contained in its communication to the Supreme Court. Portion of the Ministry's brief of August 29, 2018, referred to reads as follows:

"Before proceeding to address the issue, it is worthy to note that the Ministry of Justice was not made a party to the action filed before this Honorable Supreme Court and is not a party. The Ministry of Justice is an institution under the Executive Branch of the Liberian Government clothed with the statutory responsibilities to give legal opinions to that branch of government. It does not represent the House of Representatives, the Respondent herein, which is of the legislative branch of government neither had it been requested to represent it in this matter.

That the only reason this brief is being filed by the Ministry of Justice is because the Supreme Court of Liberia has asked it to do so, as stated herein above, which action on the part of the Court is provided for by law. This brief is therefore not one filed on behalf of the Respondent whose petition is as contained in its communication to the Supreme Court."

In view of the above, like the petitioner, we were taken aback by the Ministry of Justice amended brief filed on October 18, 2018, reversing the Ministry of Justice's position. In the Ministry's amended brief, the Ministry now states that the Ministry's appearance in the matter, as per law, requires the Ministry to go beyond giving advisory opinion in this case. The Ministry makes reference to the Executive Law Sections 22.2(a) and 24(a), which they say gives the Ministry the authority to defend the Republic of Liberia, its organs, agencies

and officers whenever there is a matter before the court. In this case, the Ministry says, the House of Representative is an organ of the Legislature, one of the three branches of the Liberian Government, and this means that the Minister of Justice/Attorney General needed to appear before the Supreme Court in the prohibition proceedings on behalf of the Respondent House of Representatives by operation of law. The Ministry of Justice appearance before the Court, the Minister says constitutes appearance of the Respondent House of Representatives. Also, considering that the petition for a writ of prohibition averred that the House was violating various provisions of the Constitution and prayed for restraining order from the Supreme Court against the House of Representatives, the appearance of the Ministry of Justice, the Ministry said, should and ought not only to give an opinion on applicable laws but to support the constitutionality of the Respondent's action and/or its conduct.

The Petitioner questions the Ministry of Justice appearance for the respondents when its appearance was based on the invitation by the Court to provide support in regard to applicable laws in the matter. The Ministry of Justice subsequent role in the manner and form to represent the Respondent House of Representatives, the Petitioner contends, is unlawful and irregular. The Petitioner states that Chapter 22 of the *New Executive Law* is clear and unambiguous that representation by the Ministry of Justice is limited to prosecute or defend proceedings to which the "Republic of Liberia or any officer thereof" is named as a party; that legally, the House of Representatives, a part of the Legislature, one of the three Branches of Government, cannot be said to be the Republic of Liberia, nor can the Speaker of Respondent House of Representatives be said to be an officer of the Republic of Liberia within the meaning and intent of the statute which requires representation by the Ministry of Justice. The Petitioner therefore rejected this assertion of the Ministry of Justice and moved this Court to have stricken before it the Ministry's amended brief as it was not in consonance with the Supreme Court's mandate to the Ministry of Justice.

The Majority are in agreement with the Ministry of Justice position in its amended brief, stating that the Ministry has the right under the law to represent the Respondent House of Representatives. It refers to the Supreme Court's case *Grace Kpaan v. the House of Representatives et al.* (Supreme Court Opinion, October Term, 2015). This case, the Majority says, concludes that members of the Legislature are officers of the Republic of Liberia within the meaning of Section 22.2 (a) of the New Executive Law and that the Ministry of Justice is therefore duty bound to represent them. Quoting from

the case *Grace Kpaan v. the House of Representatives, et al.*, in support of its position, the Majority write:

“...Where an officer of the Republic requires legal assistance to prosecute and/or defend an interest in the execution of his/her duty authorized under the law, as to that interest, the Justice Ministry is duty bound to represent that officer... Its mandate is not confined to representation of the Executive Branch of Government. Its mandate extends to representation of the entire Government as a unit... In our jurisdiction, the traditional scheme of things has been to have the Ministry of Justice act as legal counsel only for the Executive Branch of the Government, and not the other two branches. But it cannot be a subject of any rational debate that part of the primary function of the Ministry of Justice is to defend all branches of the Government, including the Legislature. That is precisely why the Ministry of Justice is granted the right, as well as an imposed duty, expressly provided under Section 5.64, Civil Procedure Law (1973), to intervene in support of the constitutionality of the statute...”

We believe that the Majority affirmation supporting the Justice Ministry’s alleged obligation to represent the Respondent House of Representatives and its reliance on the *Grace Kpaan* case in giving said support is erroneous and legally faulty.

In the *Grace Kpaan* case, the Supreme Court of Liberia addressed the question whether the Ministry of Justice is statutorily authorized to represent an officer of the Executive Branch of government against the House of Representatives of the Legislature. In its Opinion, the Court in interpreting Sections 22.1 and 22.2 of the Executive Law of Liberia creating the Ministry of Justice concluded as follows:

“Its [Ministry of Justice] mandate is not confined to representation of only the Executive Branch of the Government. Its mandate extends to representation of the entire Government as a unit. This Court has seen nothing in the mandate, not even by a fleeting proposition that seeks to authorize or permit the Ministry of Justice to represent a **component of that unit**, the Government, as against another component of that same unit.” “Where an officer of the Republic is in a lawsuit involving another officer of the Republic, the Ministry of Justice’s representation is on the side of the law, and not to represent one officer of the Republic against another officer.” (Emphasis ours).

In reaching the above construction, the Supreme Court firstly defined who an officer of the government is. It stated: “the word “officer” includes all those of the three branches constituting the Government”.

In its interpretation of Section 22.2 (a) of the New Executive Law, the Supreme Court reached a number of reasonable conclusions. Firstly, that a Justice of the Supreme Court, the Speaker and Members of the House of

Representatives are all officers of the Government and as stated by the Majority, where an officer of the Republic is in a lawsuit involving another officer of the Republic, the Minister of Justice representation is on the side of the law, and not to represent one officer of the Republic against another officer

The Majority in their reasoning supports the Ministry of Justice position to represent the Respondent states: *"The Petitioner, an Associate Justice of the Supreme Court of Liberia, did not file his petition for prohibition in the name of the Supreme Court and did not require legal assistance from the Ministry of Justice to prosecute his interest; so, the issue of whether the Ministry of Justice is representing two officers of the Republic cannot apply."*

We find the position of the Majority hilarious because there is no law that requires that an official under Article 71 to be impeached be represented by its institution or the Ministry of Justice. We find it even more hilarious, to say the least, since the Ministry of Justice itself in its previous brief, filed on August 29, 2018, and as quoted above stated that the Respondent House of Representatives had not requested the Ministry of Justice to represent it, and the only reason the Ministry of Justice had appeared was because the Supreme Court had asked it to do so, requesting the Ministry to provide laws in support of the matter before it. Nowhere in the records has the Ministry of Justice shown to this Court that the Respondent House of Representatives, subsequently, after the filing of the Ministry's brief on August 29, 2018, requested the legal representation of the Ministry in this matter. And as the Petitioner contended in its argument before us, which we are in agreement with, even where representation by the Ministry of Justice was sought thereafter by the Respondent, the Ministry should have firstly proceeded to withdraw the offensive communication of the Respondent House of Representatives sent to this Court, file returns to the Petitioner's petition, before filing its amended brief. As the Petitioner asserts, and we do also agree, a brief is not a pleading which the law requires filed in response to a petition; A brief is a narrative outlining the laws in support of pleadings already before the Court. Respondent therefore cannot legally be before this Court on an amended brief and without withdrawal of its communication. Therefore, the role of the Ministry of Justice remains that for which it was directed by the Court to do in the Court's letter of August 20, 2018, that is, "appear in support of the applicable laws made and provided for".

Secondly this bid for impeachment does not involve the entire Supreme Court Branch but specifically a sitting Associate Justice of the Judiciary Branch of Government who is an Officer of the Government which he remains until he

is impeached as per the due process right provided for under Article 20 (a) of our Constitution.

We take note that the Ministry of Justice, in its resistance to the motion by the Petitioner to strike the Ministry's amended brief, states that the Petitioner had waived its right since the Petitioner argued the matter on October 22, 2018, without firstly filing its motion to strike. We disagree as the Petitioner's counsels did contest the Ministry of Justice amended brief and its representation of the Respondent during the hearing held on October 22, 2018. The Petitioner's counsels said that they received the amended brief the very morning of the argument on October 22, 2018, raised the issue of the Ministry of Justice subsequent representation of the Respondent, and asserted that the Executive Law did not give the Ministry of Justice the right to represent the Respondent in this case.

The Majority having stated that the *Grace Kpaan* case provides that the Ministry can only appear to advise on the side of the law where two officers of the government are involved in a legal dispute, and as we have opined, the Petitioner being a sitting Justice of the Supreme Court and an Officer of the Judiciary Branch of the Government who is contesting the constitutional grounds of his removal by the Respondent, a part of the Legislative Branch of Government, it is legally improper for the Ministry of Justice to take sides in representing a party, that is, the Respondent House of Representatives. So as the Petitioner argued, and we agree, the Ministry of Justice can only appear as per the mandate of the Supreme Court, proffering such interpretation as to the provisions of the laws raised in the Petitioner's petition since there was no appearance of the Respondent before the Court. We therefore hold to the contrary that the October 18, 2018 amended brief of the Ministry of Justice should have been ordered stricken from the records of the Court.

We must add further that this Court by permitting the Ministry of Justice to represent the House of Representatives in a case as the one before us will lead to troublesome precedent in our jurisprudence. It may invariably spring forth the question whether the Ministry of Justice can represent the House of Representatives in a similar suit commenced for the impeachment of a President and who appears before this Court challenging said impeachment. In such a case, will the Ministry of Justice represent the House of Representatives or the President?

This Court has already address this issue that there must be a defined interest of the Government as a whole or a unit in order to warrant representation by the Attorney General or the Ministry of Justice. And in the event of

controversies occurring between units of the Government or officers of units of Government this do not furnish an occasion for representation by the Ministry of Justice of one of those units or officers against the other; *Mary Broh v. The Honorable House of Representatives*, Supreme Court Opinion, October Term, 2013.

We having disagreed with the Majority that the Ministry of Justice cannot represent the Respondent House of Representatives against the Petitioner in this matter before us, and therefore its amended brief of October 18, 2018, be stricken, and that the Respondent is not legally before the Court, the Court should have limited itself to the interpretation of those constitutional issues raised in the Petitioner's petition.

It is the law extant in our jurisdiction that courts cannot raise issues not brought before it. *Shaheen v. Compagnie Francaise de L'Afrique Occidentale*, 13 LLR 278, 286 (1958); *Gallina Blanca, S.A. v. Nestle Products, Ltd. Et al*, 25 LLR 116, 119 (1976); and that a court should not do for a party what the party ought to do for itself. *Citibank N.A. v. Jos Hanson and Soehoe (Liberia) Ltd.* 36 LLR 198, 201 (1989); *Garnett Heirs et. al. v. Allison*, 37 LLR 611, 619 (1994). The Respondent not having filed its appearance before the Supreme Court, it was legally not before the Court, and the Majority ruling, that the petition filed was premature and therefore prohibition will not lie, is in total violation of this settled law in our jurisdiction. By ruling that the petition filed was premature, the Majority have raised issues not raised and brought before the Court in the petition filed before it. The Court is only now bound to look, as the Petitioner has requested, at the unconstitutionality of the grounds for impeachment being considered by the Respondent, and determine further, whether the Respondent could in fact proceed to act on an impeachment where the procedures for impeachment has not been adopted by the Legislature.

What the Petitioner has raised and is therefore before us is the issue of the Respondent's violation of Articles 73, 71, 43 and 20 (a) of the 1986 Constitution in its bid to impeach him. The Petitioner says that the grounds cited by the two Legislators, Honorables Thomas P. Fallah and Acarous Gray in their letter to the Plenary of the House of Representatives, requesting for his impeachment violates Article 73 of our Constitution and that no for impeachment having been adopted by the Legislature, the attempt by the Respondent to impeach him violates Article 43 of the Constitution.

We believe that this Court should have limited its interpretation to these provisions of the Constitution. But the Majority have gone through great

length to discuss the premature filing of the Petitioner's petition, making reference to the 2017 attempt by some members of the House of Senate and the House of Representatives to impeach three members of the Supreme Court. The Majority asserts that based on a writ of summon issued by the House of Representatives and duly served on the three Associate Justices, that warranted the issuance of an Alternative Writ of Prohibition; that the Court ordered the Alternative Writ of Prohibition in 2017 because that body accepted and endorsed the recommendation of its Judiciary Committee to impeach members of the Court purely on grounds that the Justices were in error in their judicial opinions which violated Article 73 of the Constitution that no Judge can be held to answer or account for judicial opinions rendered or expressed. Making reference to the 2017 impeachment prohibition events, the Majority writes: "So clearly the House of Representatives, though having the constitutional power to prepare a bill of impeachment proceedings against justices of the Supreme Court, they were, at the time, proceeding by the wrong rule and the extraordinary writ of prohibition will certainly apply in such a case".

These statements of the Majority in relying on the above past events, is legally untenable for two substantial reasons. Firstly, to reference events in an Opinion of this Court that have not been decided and set as a precedent to invoke the principle of *stare decisis*, since the impeachment attempt of the three Justices were never decided by this Court is erroneous. Secondly, the argument of the Majority that impeachment proceeding commences only when the Plenary of the House of Representatives votes and endorses the request or proposal is flawed both in law and facts. A request, petition, proposal or call for impeachment, once entertained, commences the process for impeachment, and once the Plenary of the House of Representatives endorses and draws up a bill of impeachment same terminates the responsibility of the House of Representatives as delegated by the framers of the Constitution. At what stage then can a person to be impeached challenge the process at the House of Representatives in the absence of the procedure mandated under Article 43 of the Constitution (1986)?

Furthermore, a bill of impeachment is a formal document outlining the alleged violations of the person(s) to be impeached and presented to the Senate for an impeachment trial. Thus a bill of impeachment is synonymous to an indictment in a criminal trial. Therefore, to follow the argument of the Majority that a person being impeached cannot challenge any steps toward the impeachment bill but can only seek legal redress after the House of

Representatives endorses the bill is tantamount to preventing a person accused of an offense from challenging the police arrest order or police invitation until a formal indictment can be drawn.

So then, can the Majority determine that the Petitioner filing of his petition was premature when there is no procedure for impeachment as mandated by Article 43 of the Constitution?

Our stance on the importance of prescribed procedure for impeachment proceedings stamp from the fact of what obtained in 2017, when the Plenary of the Respondent House of Representatives sought the impeachment of three Associate Justices, based on a petition filed before the House of Representatives by three senators and two representatives. The Plenary of the House referred same to the House Committee on Judiciary for its study and subsequent report to the Plenary. The House Committee on Judiciary then summoned the three Justices to answer to the petition for impeachment, and upon the non-appearance of the Justices, the House Committee on Judiciary sent a report which was endorsed by the Plenary of the House for impeachment. But in this case, the complaint was made by two representatives which was forwarded to an ad hoc committee for its review and to report to the plenary in two weeks.

The Majority has said that it does not agree with the Petitioner's argument that by forwarding the petition for his impeachment to an ad hoc committee instead of the House Committee on Judiciary, the Speaker of the House of Representatives committed an error for which prohibition will lie. The Majority holds that the decision of the Respondent to submit the petition to an ad hoc committee was an internal, administrative act which cannot be sanctioned by the Judiciary, especially so since no member of the House Committee on Judiciary has raised issue. In such a case, the only test is whether by such administrative act, the due process right of the petitioner was violated. And in this case, the Petitioner did not say that his right to due process was in anyway violated by merely setting up a different committee other than the usual House Committee on Judiciary to peruse the petition.

We strongly disagree with this position taken by the Majority, as it can be seen that because of the absence of a procedure for impeachment in the 2017 scenario and the present scenario there are clear indications that impeachment proceedings are left to the whims, caprices and arbitrary action of the Respondent. Without the prescribed procedure as dictated by Article 43 of the Constitution, how can the Petitioner or anyone impeachable under Article 71 of the Constitution know the mode for an impeachment proceeding

and be able to challenge the proceedings and ultimately the violation of his due process right?

The Respondent's venture into an impeachment exercise after thirty-two (32) years since the 1986 Constitution mandated the Legislature to prescribe the procedure governing impeachment proceedings, and the Legislature not having adopted a procedural law for impeachment as required by Article 43 of the Constitution, the commencement of an impeachment proceeding by the Respondent House of Representatives is *ultra vires* and therefore prohibitive.

Under the sacred principle of constitutional construction, there are certain provisions of the Constitution that are self-executing while others are not self-executing but require enabling legislation to effectuate them. *Vargas v. Reeves*, 39 LLR 368, 376-377(1999); *Intestate Estate of Bower et al. v. Williams et al.*, 40 LLR 84, 94(2000); *Pioneer Construction Company v. Her Honor Morgan et al.*, Supreme Court Opinion, March Term, 2015. For instance, Article 3 mandates that the governing structure of the Republic be divided into three separate but coordinate branches - self executing; Article 30 sets the requirements for contesting a legislative seat, self-executing; Article 83(a) sets the date for Presidential and Legislative elections, self-executing; etc.

Constitutional provisions that are not self-executing are subject to further legislation to effectuate their full implementation. The following, including Article 43, subject of interpretation, are few examples of provisions that are not self-executing:

Article 20(b)

"b) The right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. **The Legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal.**" [Emphasis ours]

Article 27 (c)

c) **The Legislature shall, adhering to the above standard, prescribe such other qualification criteria for and the procedures by which naturalization may be obtained.**

Article 74

In all matters of contempt of court, whether in the Supreme Court or in other courts, the penalties to be imposed shall **be fixed by the Legislature and shall conform to the provisions on Fundamental Rights laid down in this Constitution.**

In these instances, wherein the framers of the Constitution delegated separate

responsibilities to the Legislature to prescribe rules and procedures for the effectuation of non- self-executing provisions of the Constitution on issues not limited to its internal functions as a body, that is, when these prescribed rules and procedures center on the rights of citizens, and other issues of national implication, the Legislature has always prescribed those procedures through the enactment of legislations consistent with the lawmaking processes of the Constitution.

This is why when the Legislature was empowered by the framers of the Constitution (1986) to prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal, it enacted the Civil Procedure Law, Revised Code 1 and the Criminal Procedure Law, Revised Code II; when it, the Legislature, was mandated to prescribe such other qualification criteria for and the procedures by which naturalization may be obtained, it enacted the Alien and Neutralization Law; and when it was mandated to fix the penalty for judicial contempt, it enacted the Judiciary law.

We therefore do not see why Article 43 of the 1986 Constitution having mandated and imposed a constitutional obligation on the Legislature to "prescribe the procedure for impeachment proceedings which shall be in conformity with the requirement of due process of law, that in the prescription of such procedures, this 54th legislature should now deviate from the intent of the framers and the long standing historical precedents by its predecessors.

Article 38 requires each House adopt its own rules of procedure personal to each House for the conduct of each House's business; whereas, Article 43 of the Constitution (1986) does not designate promulgation of procedure separately but states that the Legislature should prescribe the procedure for impeachment proceedings.

"Rules" are regulations governing a court or agency's internal procedures for the orderly conduct of business and also for the orderly conduct of business in a deliberative assembly. Whereas, "Procedure" is a specific method or course of action and the judicial rule or manner for carrying on a civil law suit or criminal prosecution (Black's Law Dictionary, 9th Edition). Had the framers of the Constitution wanted for each House to prescribe the procedure for impeachment proceedings it would have stated so as it did in Article 38 for adoption of rules of procedure for each House. The intent therefore of Article 43 was for the prescribe procedure to take the same form and manner as an enactment of a law. For example, Article 20 (b) stipulates: "The Legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive

filing and hearing of an appeal. So what did the Legislature do? It enacted the appeal statutes as contained in the Civil Procedure Rev. Code 1:51, and Criminal Procedure Rev. Code 2:24., and therefore the House of representative could not proceed to entertain any complaint, petition or action for impeachment absent a prescribe procedure by both Houses of the Legislature.

These are the ambiguities that the framers anticipated to be cured by the Legislature before embarking upon an impeachment proceeding whether by filling a proposal or by endorsing said proposal when they mandated that not only the Legislature shall prescribe the procedure for impeachment proceedings but that such procedure must be in conformity with the requirements of due process of law.

The Petitioner also seeks to prohibit the Respondent from proceeding with an impeachment procedure against him based on allegations that he, as an Associate Justice of the Supreme Court, misinterpreted and misapplied the Code of Conduct, and that while presiding in Chambers he issued a remedial writ of certiorari in the case: *Ecobank Liberia v. Austin Clark*. The Respondent questions the discretion of the Associate Justice/Petitioner, claiming that it reduced the Supreme Court to the whims and caprices of the defendant, Ecobank, which is proved misconduct, gross breach of duty and inability to perform the function of his Office. These allegations, the Petitioner says constitute interference with the Judicial function and violate Article 73 of our Constitution, on grounds that Article 73 of the Constitution prohibits the summon, arrest, detention, prosecution civilly or criminally of judicial official by or at the instance of any person or authority on account of his/her judicial opinions rendered or expressed, judicial statements made and judicial acts done in the course of a trial in open court or in chambers, except for treason or other felonies, misdemeanor or breach of the peace. Statements made and acts done by such officials in the course of a judicial proceeding shall be privileged and no such statement made or acts done shall be admissible into evidence against them at any trial or proceeding. The Petitioner acts performed as Justice in Chambers therefore constituted judicial privilege under this said Article of the Constitution.

This issue of judicial privilege has not been addressed by the Majority but the Majority has put themselves out to represent the Respondent who has shown no regards for the Supreme Court by its letter to the Court when it raised the defense of prematurity of the Petitioner's petition. By so doing, the Majority have raised an issue not put forth by the Respondent before this Court. In

fact, if the Majority wanted to proceed in this manner, then they should have limited themselves to the Constitutional issues raised by the Respondent in its letter to the Court, particularly paragraph 2 thereof, which states:

"The House thinks that the Writ violates Articles 3, separation of powers clause. Article 42 immunities Clause, Article 43 impeachment powers and a long line of cases and precedence in this jurisdiction and its progeny."

A recourse to the provisions of the following articles of the Constitution, Articles 3, 42, 43, 71, 73 is as follows:

Article 3:

Liberia is a unitary sovereign state divided into counties for administrative purposes. The form of government is Republican with three 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 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.

Article 42:

No member of the Senate or House of Representatives shall be arrested, detained, prosecuted or tried as a result of opinions expressed or votes cast in the exercise of the functions of his office. Members shall be privileged from arrest while attending, going to or returning from sessions of the Legislature, except for treason, felony or breach of the peace. All official acts done or performed and all statement made in the Chambers of the Legislature shall be privileged, and no Legislator shall be held accountable or punished therefor.

Article 73

No judicial official shall be summoned, arrested, detained, prosecuted or tried civilly or criminally by or at the instance of any person or authority on account of judicial opinions rendered or expressed, judicial statements made and judicial acts done in the course of a trial in open court or in chambers, except for treason or other felonies, misdemeanor or breach of the peace. Statements made and acts done by such officials in the course of a judicial proceeding shall be privileged, and, subject to the above qualification, no such statements made or acts done shall be admissible into evidence against them at any trial or proceeding.

Article 43:

The power to prepare a bill of impeachment is vested solely in the House of Representatives, and the power to try all impeachments is vested solely in the Senate. When the President, Vice President or an Associate Justice is to be tried, the Chief Justice shall preside; when the Chief Justice or a judge of a subordinate court of record is to be tried, the President of the Senate shall preside. No person shall be

impeached but by the concurrence of two thirds of the total membership of the Senate. Judgments in such cases shall not extend beyond removal from office and disqualification to hold public office in the Republic; but the party may be tried at law for the same offense. The Legislature shall prescribe the procedure for impeachment proceedings which shall be in conformity with the requirements of due process of law.

Article 71:

The Chief Justice and the Associate Justices of the Supreme Court and the judges of subordinate courts of record shall hold office during good behavior. They may be removed upon impeachment and conviction by the Legislature based on proved misconduct, gross breach of duty, inability to perform the functions of their office, or conviction in a court of law for treason, bribery or other infamous crimes.

Our review of Article 3 relates to the separation of powers and independence of the three branches of government; Article 42 relates to Legislative Privilege; Article 73 relates to Judicial Privilege; Article 43 relates to designation of the actors for the purposes of impeachment, and for the enactment of the procedure for impeachment proceedings; and Article 71, for the due process proceedings for impeachment of Chief Justice, Associate Justices of the Supreme Court, and Judges of subordinate courts of record.

In light of all these irregularities and violations of the Constitution that we have outlined herein above, the Majority have held that prohibition will not lie because of the following: (1) It was premature for the Petitioner to query the existence of a procedure or process which had legally not commenced (making reference to Article 43 of the Constitution); (b) The Petitioner, an Associate Justice of the Supreme Court, could not raise issue of judicial privilege at the level of the House of Representatives, as proved misconduct must take place at the Liberian Senate since it is at the Senate that impeachment trial is conducted.

This Court has held in numerous opinions that prohibition is granted to prevent some great outrage upon settled principles of law and procedure, in cases where wrong, damage and injustice are likely to follow such action. It 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 this extraordinary writ. *Togba v. RL*, 35LLR 389 (1988), *Mary Broh v. Honorable House of Representatives*, Supreme Court Opinion, October Term 2013.

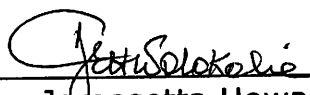
We submit therefore that in the absence of the enactment of the procedure for impeachment proceedings as required by Article 43 of the Constitution,

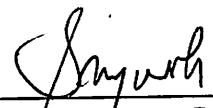
prohibition will lie to prohibit ongoing acts and threats of future acts which are ultra vires. *Mary Broh v. Honorable House of Representatives*, Supreme Court Opinion, October Term 2013. Also, prohibition will lie where there is an infringement on the judicial privilege of a judicial officer, in this case, the Petitioner, as provided for under Article 73 of the Constitution (1986).

Having concluded that prohibition will lie, we have declined to append our signatures to the Majority Opinion of this Court; thus, our dissenting Opinion.

The Clerk will file this Dissenting Opinion in the archives of the Supreme Court.

Signed:


Jamesetta Howard Wolokolie
Associate Justice, Supreme Court of Liberia


Sie-A-Nyene G. Yuoh
Associate Justice, Supreme Court of Liberia