

In the Honorable Supreme Court of the Republic of Liberia
Sitting in its March Term, A.D. 2018

Before His Honor: Francis S. Korkpor, Sr.Chief Justice
Before His Honor: Kabineh M. Ja'neh.....Associate Justice
Before Her Honor: Jamesetta H. Wolokolie.....Associate Justice
Before His Honor: Philip A. Z. Banks, IIIAssociate Justice
Before Her Honor: Sie-A-Nyene G. Yuoh.....Associate Justice

The General Services Agency, represented by its Director)	
General, Mrs. Peraine Davis-Parkinson and the Abi)	<u>ACTION:</u>
Jaoudi & Azar Trading Corporation represented by its)	APPEAL
President, Mr. George Abi Jaoudi also of the City of)	PETITION FOR
Monrovia, Liberia.....Appellants)	A WRIT OF
Versus)	PROHIBITION
The Testate Estate of the Late John H. Richards, by and)	
Thru its Executrix/Executors, Matilda Richards-Outland,)	
Adeline R. Morris, Gerald Richards and Walker Richards,)	
Of the City of Monrovia,.....Appellee)	

Appeal from the Ruling of the Chambers Justice
Granting the Petition for a Writ of Prohibition;
Ruling Reversed.

Heard: October 31, 2016. Decided: July 5, A.D. 2018.

Counsellors Albert S. Sims and G. Moses Paegar of Sherman & Sherman Inc., appeared for the Appellants. Counsellor Augustine C. Fayiah, Assistant Minister of Justice for Litigation, Ministry of Justice, appeared for the Co-appellant, General Services Agency (G.S.A.). Counsellors Rosemarie B. James and Emmanuel B. James of International Group of Legal Advocates and Consultants, Inc., appeared for the appellee.

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

This appeal emanates from the ruling of our Distinguished Colleague, His Honour Philip A.Z. Banks, III, then presiding in the Chambers of this Court, granting the alternative writ of prohibition and ordering the issuance of the peremptory writ. The provisional/alternative writ issued by the Chambers Justice prohibits and enjoins the General Services Agency, acting for and on behalf of the Liberian Government, from receiving, taking and accepting any monies from Abi

Jaoudi and Azar Trading Corporation, First Appellant and Respondent, as rental pursuant to an agreement of lease the Chambers Justice concluded to have been illegally consummated between the parties for property which "had been returned to Mr. John H. Richards."

According to the records certified before us, the herein Appellee John H. Richards Testate Estate, on July 4, A.D. 2012, filed a petition for a writ of prohibition against the General Services Agency (G.S.A.), acting for the Government of Liberia. Petitioner John H. Richards Testate Estate, by this petition, sought to forbid and proscribe the Liberian Government through the General Services Agency from collecting rentals pursuant to a 2001 agreement of lease executed between the General Services Agency (G.S.A.) and the herein appellant, Abi Jaoudi and Azar Trading Corporation.

We herewith reproduce the thirteen-count petition as follows:

- "1. *That Petitioner is the Testate Estate of the late John H. Richards, owner of the parcel of land on which the Abi-Jaoudi Supermarket is built and situated on Randall Street, Monrovia, Liberia. Petitioner says that the history of the said property, from its transfer from Liberia's late President Joseph Jenkins Roberts through several processes until it got to petitioner can be seen from the documents attached hereto, including deeds and will, marked in bulk P/1. Petitioner says that the said documents clearly verify the assertions made herein.*
2. *That in 1955 or thereabout, during the administration of the Late President of Liberia, William V.S. Tubman, the late John H. Richards was informed that the Government of Liberia was expropriating a parcel of his land containing 0.717 acres of land, located on Randall Street, in the City of Monrovia. No particular process or avenue, as is required to be pursued in such situation, was followed by the Government of Liberia in the purported expropriation of the land of Late John H. Richards. The intent of the Government in effecting the expropriation, Mr. Richards learned at the time, was that the Government desired to use the land for agricultural fair, a critical public use and public purpose at the time.*

Although Mr. Richards had reservations regarding the manner in which and the process utilized by the Government in taking his property, and particularly given that the use of the property for use to conduct an agricultural trade fair did not require a permanent taking, he was nevertheless not inclined to contest or challenge the action of the Government, given, firstly, that the action was for a stated purported public purpose, the highly volatile and political situation obtaining in the country at the time, and the indications from the Government that he would be compensated for the Government's taking or use of the property.

3. That in 1960, five years following the Government's taking of the property of John H. Richards, through no court or other legal process, for use of the property to conduct an agricultural trade fair, and no longer finding the need for using the property further for the purpose of the agricultural trade fair, the Government of Liberia proceeded to enter into a lease agreement with the Abi-Jaoudi and Azar Trading Corporation, organized and owned by a Lebanese merchant, for a period of twenty years with the option of another twenty years. The portion of the property covered by the lease agreement was 0.57 acres or 2.2 lots of the property which the Government had purportedly expropriated from Mr. John H. Richards. Attached are copies of the agreements marked Exhibit P/2 in bulk. There are no other instruments showing that at any time the lease agreement was amended to increase the acreage of the lease to Co-Respondent Abi-Jaoudi and Azar Trading Corporation. If anything, the acreage was decrease. Yet, the recent studies conducted showed that the co-respondent Abi Jaoudi and Azar Trading Corporation, professing to have secured the property under a lease from the Government of Liberia, has extended its occupation, with the seeming acquiescence of the past Governments of Liberia, to the entire property which the Government of Liberia had taken for the agricultural fair.

4. That although demands were made by Mr. John H. Richards for compensation by the Government of Liberia for the use or expropriation of his property, there are no records that Mr. Richards ever received payment from the Government of Liberia, notwithstanding in leasing the property to the Abi Jaoudi and Azar Trading Corporation, the Government was receiving an annual rental payment from the lessee. Allegations made that instructions were given by President Tubman for payment to be made, that Public Works had written a letter on the same matter, and that a Journal Entry made reference to a Claims Account evidence that payment was made is not supported by any receipt signed by the late John H. Richards or check made out to John H. Richards or vouchers made out to John H. Richards. Hence, as late as the early 1980s the Estate and heirs of John H. Richards continued to make representation to the Government of Liberia for compensation for the property if indeed the Government had expropriated same.
5. That predicated upon the representations made to the Government of Liberia in the 1980s, mentioned in count 4 above, the Government of Liberia, through the then Head of State, Samuel Kanyon Doe, in August 1984, ordered that the property be returned to Mr. Richards "as is", "effective immediately", and with no cost to the Government. Copy of the letter from President Samuel K. Doe is attached and marked Exhibit P/3. Petitioner says that the mechanism adopted by the then Head of State in rescinding the Government's previous action and in ordering that the property be returned immediately to Mr. Richards, followed the same process and procedure adopted by the Government in 1955 in taking or using the property of Mr. Richards, which at the time the Government recognized was owned by Mr. Richards. Petitioner says that as at that point, ownership to the property reverted to Mr. Richards, done by the proper supreme authority of the Government of Liberia.

Further as to count 5 above, Petitioner says that the order by the then Head of State in returning the petitioner's property to him in August 1984 was never challenged in any court of law by any person or government official, or reversed by any subsequent President or Head of States of Liberia, and hence remains a standing order to this day. Hence, legally and technically the property in question owned by the petitioner and any person(s), whether within or without the Government are and would be acting illegally in trying to withhold the property from the petitioner. Indeed, the extension of lease or new lease done in respect of Co-Respondent Abi-Jaoudi and Azar Trading Corporation after the expiration of the certain lease period and the optional period in 2000, would have been done illegally and against the orders of the Head of Sates in 1984, against the ownership of the property by John H. Richards, and the parties would be subject to pay compensation for such use after ownership of the property had reverted to John H. Richards in 1984.

7. That notwithstanding the orders of the Head of State returning ownership and possession of the property in question to Mr. John H. Richards, certain officials of the government, acting contrary to the order of the Head of State, and for their own selfish gains and reason, continued to act as if the property had not been returned to Mr. John H. Richards: they continue to receive rental for the property in the name of the Government of Liberia when the Government had in fact returned the property to its rightful and previous owner, Mr. John H. Richards, without any challenge in court that the Government had acted illegally in returning the property to Mr. Richards; that the lessee, Co-Respondent Abi Jaoudi and Azar Trading Corporation continued to pay rental to the said officials, purportedly for the Government of Liberia, in full knowledge of the order issued by the Head of State in August 1984, and which it had not challenged in any court of law in the Republic; and that all of the parties, the officials of the Government and Co-Respondent

Abi Jaoudi and Azar Trading Corporation, in acting as they have been doing, are fully aware that the Transitional Provisions of the Liberia Constitution clearly forbids any examination into any action taken by the people's Redemption Council pursuant to authority held by that Body during the period of military rule in Liberia.

8. *That the Minister of Justice had fully concurred with the position enunciated above although from a different perspective, which is that assuming that the purported expropriation was done legally by the Government, the Government of Liberia, not finding any further need to utilize the property for a public purpose, as was intended, should have offered the property back to Mr. John H. Richards. Hence, she had recommended that the Government returns the property to Mr. Richards, as it should have done when it abandoned the public interest; that the Government could not legally have proceeded to lease the property to another private party for the benefit and interest of that private party, to the detriment of the original owner who should have been given the right of first refusal. Petitioner says that whilst this position supports the petitioner's contention that the right and ownership to the property belong to John H. Richards, petitioner maintains in addition that this right was long recognized by the Government of Liberia when the Head of State, in August 1984, ordered the property returned to Mr. John H. Richards, action which the then Minister of Justice clearly stated the Government had the right to do and which he noted had been legally done. The recognition by the Minister of Justice of the legality of the transfer back to Mr. John H. Richards and the lack of any challenge by any party to the action taken, except for the fact that the then Director General of the General Services Agency failed to have Mr. Richards take physical possession of the property, clearly showed that the property was returned to Mr. John Richards as of the date of the Head of State's order of the property to John H. Richards.*

Petitioner says that notwithstanding the above, the General Services Agency is under tremendous pressure from the Speaker of the House of Representative who, not having the constitutional authority, but on the instigation and persuasion of Co-Respondent Abi Jaoudi and Azar Trading Corporation to have the laws of Liberia violated for its own selfish gains, is directing and seeking to intervene in a matter that is of a purely judicial nature and in which the Speaker has no prerogative, by insisting that the GSA accepts funds from co-respondent Abi Jaoudi and Azar Trading Corporation, in violation of the decision taken by the prior Samuel Kanyon Doe Government. Petitioner says that if there is anyone dissatisfied with or desiring to contest or go against Government's action, the recourse is by the judicial process, not through the Office of the Speaker of the House of Representatives. Thus, co-respondent Abi Jaoudi and Azar Trading Corporation, bent on violating the constitutional right of the petitioner, has influenced the Speaker of the House of Representatives to instruct the GSA to collect and receive rental from the Co-Respondent Abi Jaoudi and Azar Trading Corporation. On the said instructions, directive and order of the Speaker of the House of Representatives, in violation of the provisions of the constitution relating to separation of powers, the power of the courts and of the executive, the property rights of citizens, and the transitional provisions, the GSA has made the decision and is proceeding to collect rental from co-respondent Abi Jaoudi and Azar Trading Corporation as if the Government owned the property being illegally occupied by Co-respondent Abi Jaoudi and Azar Trading Corporation; that the act and manner of the GSA, in trying to collect rental from Abi Jaoudi and Azar Trading Corporation and the act of Abi Jaoudi and Azar Trading Corporation in seeking to pay rental to the Government for the Petitioner's property occupied illegally by the said corporation, without a resort to the courts, are all contrary to law, rules and procedures which ought to be observed at all times, and especially as such action is usurping the jurisdiction of the courts, for which prohibition will lie to prohibit such acts.

Copies of the letter from co-respondent Abi Jaoudi and Azar Trading Corporation, addressed to Speaker Alex Tyler and the letters under the signature of Mildred N. Sayon, Chief Clerk of the House of Representatives, indicating that she was acting on the directives of the Speaker of the House of Representatives, are attached hereto and marked Exhibits P/4 and P/5 in bulk.

10. Petitioner says further as to count 9 hereinabove, that because the GSA and Co-Respondent Abi Jaoudi and Azar Trading Corporation are without the authority to reverse the decision of a Head of State, prohibition will lie to prohibit them acting in such manner. Petitioner further says that if Co-Respondent Abi Jaoudi and Azar Trading Corporation or the General Services Agency believes that the Attorney General and Minister of Justice acted illegally in advising the Government of Liberia to return ownership of the property in question to heirs of John H. Richards which was the same position adopted by the administration of the Late President Samuel K. Doe, their recourse is through the courts, not before the Speaker of the House of Representatives or to act illegally and without any legal authority to pay and receive rental for property which the Government of Liberia has returned to John H. Richards, its rightful owner. Petitioner therefore prays that the Respondents be prohibited from acting in the manner being pursued by them, in respect of which they also do not have jurisdiction, that being reserved to the courts.
11. Petitioner says further that when it attempted to assert its right to its legitimate property; the GSA Director General referred the matter to the Minister of Justice for a legal opinion. The Minister opined that the Government's take-over of the private property of the claimant was illegal as there is no evidence that the Government ever paid the Family for the land upon expropriating said land and therefore the property should be returned to the family and let Abi Jaoudi deal with the family directly, if they are still interested in remaining on the property.

Petitioner submits that in spite of the legal opinion of the Minister of Justice, the Respondent GSA is bent on taking rental from Co-Respondent Abi Jaoudi, much to the detriment of Petitioner's family, for which Prohibition will lie, to prevent, restrain, prohibit and enjoin the said GSA from receiving any rental payment from the Co-Respondent Abi Jaoudi, in violation of the property rights of the Petitioner as guaranteed by the Constitution of Liberia. Attached are copies of documents and communications marked Exhibit P/6 in bulk.

12. Prohibition is the proper remedy; it is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein. Civil Procedure Law, Chapter 16 Subchapter B Section 16.21 (3) 1LCLR 146. The Supreme Court of Liberia has held that Prohibition will lie where the respondent has assumed to itself authority it does not have, or has exceeded its legal authority, or is proceeding by wrong rules other than those which should be observed at all times. Clearly, in the instant situation, where the Government of Liberia had returned petitioner's property to him, no government agency or official had the authority to prevent the petitioner assuming possession of the returned property, in violation of the action by the President in returning the property to the petitioner, and to even go further to seeking to receive the rental due on the said property. In such a case, prohibition will lie, especially where the party, such as the petitioner, is in the process denied his due process of law guaranteed by the Constitution of Liberia and so eloquently espoused on his due process of law guaranteed by the Constitution of Liberia and so eloquently espoused on by Chief Justice Grimes in the case *Wolo v. Wolo*, 5 LLR 423 (1937). Petitioner says that this is even more critical for issuance of the writ of prohibition where the action being pursued by the General Services Agency and co-respondent Abi Jaoudi and Azar Trading Corporation run contrary to the Opinion of the Attorney General of Liberia whose Opinion, the Supreme Court has recognized, states the Legal Opinion and Position of the Government of Liberia.

Petitioner therefore prays that the respondent be restrained from proceeding in a matter over which they have no jurisdiction and regarding which they are proceeding by wrong rules and procedures which ought to be observed at all times.

13. Petitioner says, contends and maintains that Prohibition is the proper remedy to prohibit and restrain a government agency from proceeding by wrong rules, or exceeding its jurisdiction, or from assuming jurisdiction not ascribed to it by law. This Supreme Court has held that Prohibition will not only prohibit what is to be done, but will also undo that which has already been done illegally. Petitioner now seeks to have this Honorable Court reverse and set aside all the past erroneous transactions involving this property, including the paying and receiving of rentals by the Respondents herein. In the instant case, Respondent GSA's action to continue violating Petitioner's property right by depriving Petitioner of the use of, or income from, its legitimate property for which the Government did not pay compensation to the Petitioner, violates the Property Clause of the Constitution of Liberia. See Article 20 (a) of the 1986 Constitution of Liberia.

WHEREFORE, and in view of the foregoing, Petitioner most respectfully prays Your Honor to grant this Petition and order the Respondents not to proceed with the payment of any rentals in furtherance of their deprivation of the Petitioner and hold that the Legal Opinion rendered by the Minister is valid and binding upon all functionaries of Government, and to grant unto the Petitioner any and all other and further relief as would be just, legal, and equitable in the premises.

Respectfully submitted: Petitioner:
By and thru their legal counsel
The International Group of Legal Advocates
and Consultants, Cllr. Emmanuel B. James,
Esq. Cllr. Roesemarie B. James and Cllr. A.
Kanie Wesso"

To the petitioner's petition, the Ministry of Justice, on November 14, A.D. 2012, for and on behalf of the Government of Liberia, through Co-respondent General Services Agency, filed returns containing seven-count.

It is appropriate to remark here that the returns filed by the Justice Ministry may be characterized, at best, as but a summation of the views heretofore expressed and position taken by the Minister of Justice/Attorney-General, Counsellor Christiana Harmon Tah. Those views were earlier articulated in Minister Tah's communication of May 28, A.D. 2012. The marked difference between the Minister's communication of May 28, A.D. 2012 and the Ministry's returns filed on November 14, A.D. 2012, on behalf of Government might probably be seen in the vehemence of articulation made in the pleadings. We must further note that the said returns also ends with an apparent ambivalent position taken by the Justice Ministry in the controversy. For instance, in the prayers contained in the returns, the Justice Ministry while expressing its perfect agreement with the demand pressed by Petitioner John H. Richards Testate Estate for the return of the disputed property to the Estate, yet beseeched the Chambers Justice at the same time to *"deny this Petition and dismiss the entire proceedings as to it, and discharge the said Co-Respondent GSA from further answering to this suit..."*

For the benefit of this Opinion, we herewith reproduce the returns filed by the Justice Ministry:

- "1. Co-Respondent GSA says when the Petitioner attempted to assert its right to its property, the G.S.A. Director General referred the matter to the Minister of Justice for a legal opinion. The Minister opined that the Government's take-over of the private property of the claimant was illegal as there is no evidence that the Government ever paid the Family for the land upon expropriating said land and therefore the property should be returned to the Family and let Abi Jaoudi deal with the Family directly, if they were still interested in remaining on the property. Co-Respondent attaches hereto copy of the said Legal Opinion of the Minister, hereby marked Co-Respondent's Exhibit RS/1 to form a cogent part of this Returns.
2. In spite of the Legal Opinion of the Minister of Justice, the Co-Respondent Abi Jaoudi took the matter to the Speaker of the House of Representatives to compel Co-Respondent GSA to take and receive rental from Co-Respondent Abi Jaoudi, for which the Petitioner filed the instant Prohibition proceedings to prevent, restrain, prohibit and enjoin the said GSA from receiving any rental payment from the Co-Respondent Abi Jaoudi as mandated by the Honorable Speaker.

Co-Respondent GSA is and has to be guided by whatever opinion or legal advice given it by the Government's chief Legal Advisor and therefore relies on the current Legal Opinion rendered by the Minister of Justice referred to above and says that it is prepared to abide by whatever ruling' or decision made by this Honorable Court because, on the one hand, there is information that the land was expropriated by the Government of Liberia without any compensation for the purpose of conducting an agricultural trade fair, and that said land was subsequently leased out to the Abi Jaoudi and Azar Trading Corporation to conduct commercial activities; on the other hand, there is also record that former President Doe ordered the property returned to the Petitioner because it could not be established that the Government ever acquired legal title to the property. Thus, at this point, the Co-Respondent GSA will abide by the final determination of this matter by this Honorable Court because GSA is being accused by Co-Respondent Abi Jaoudi and its supporters of refusing to receive revenues due Government, while at the same time, GSA is also accused by Petitioner of illegally occupying Petitioner's private property without just compensation.

4. Co-Respondent GSA says based on the Legal Opinion of the Minister of Justice, it is confirmed and clear that the Government of Liberia, violated the 1847 Constitution of Liberia when it took the private property of Mr. John Richards for an intended public purpose (agricultural trade fair) and did not pay compensation for said real property, neither did the Government continue to use said property for the original public purpose but rather divested itself of said property by giving it to another private person, in this case, Co-Respondent Abi- Jaoudi to engage in commercial activities. Therefore, Co- Respondent GSA cannot lay claim and is not laying claim of ownership to the subject property, as per the Legal Opinion of the Minister of Justice.
5. As to the claim by the Co-Respondent Abi Jaoudi that there is another action pending between the same parties for the same property, Co-Respondent GSA further says this averment is not supported by the facts or any record in this case, as there is nothing attached to the pleading to substantiate this allegation. Therefore this has to be taken as untrue, for which this claim should be denied and overruled.

Co-Respondent denies any and all claims, issues and allegations raised in the Petition and the Returns of Co-Respondent Abi Jaoudi which were not specifically traversed in this Returns.

7. As regards the Prohibition proceedings, Co-Respondent GSA says there is no action or conduct of its that should be prohibited because it has not or is not pursuing any judicial action nor assuming authority over anything which it ought not to, nor is it proceeding by any wrong rules other than those which should be observed at all times, nor has it denied Petitioner due process in any matter. Therefore, Prohibition will not lie against it.

WHEREFORE, and in view of the foregoing legal and factual reasons, the Co Respondent General Services Agency most respectfully prays Your Honor to deny this Petition and dismiss the entire proceedings as to it, and discharge the said Co-Respondent GSA from further answering to this suit, and render a ruling that fairly disposes of this matter, and grant unto the Co-Respondent any and all other and further relief as would be just, legal and equitable.

RESPECTFULLY SUBMITTED:

The General Services Agency / CO-RESPONDENT,
 By and thru the Ministry of Justice, R. L.
 Cllr. Christiana P. Tah
 Minister of Justice
 Cllr. Samuel K. Jacobs
 Senior Legal Counsel MOJ
 Cllr. E. Boakai Harvey Legal Counsel/MOJ
 Cllr. Augustine C. Fayiah,
 Assistant Minister for Litigation/MOJ
 Cllr. Benedict F. Sannoh, Deputy Minister for Economic
 Affairs/MOJ,
 Cllr. Yamie Quiqui Gbeisay Senior Legal Counsel/MOJ,
 Cllr. Serena F. Garlawolu Legal Counsel/MOJ,
 Cllr. J. Daku Mulbah County Attorney for Montserrado
 County,
 Cllr.M. Wilkins Wright Solicitor General, R.L.
 Dated this 14th day of November A.D. 2012.

From an intelligent reading of the returns, quoted herein above, it is not difficult to see that the Justice Ministry was expressly admitting that (a) the Tubman Administration made no compensation payment to the petitioner. The net effect of this admission would be that the taking of the land by the Liberian

Government was an illegal act; and (b) that there was technically and legally speaking “no case” to be defended as Head of State Samuel Kanyon Doe had in fact recognized the illegality of the Liberian Government’s conduct in taking the property in question, and as a consequence thereof, ordered the property returned to the herein petitioner.

We find the position taken by the Justice Ministry not only interesting but least surprising! This is because peeping back into the events occurring over the last sixty (60) years, Minister Tah’s communication of May 28, 2012, respecting the ownership of the property in dispute, says it all. The May 28, 2012 letter, in reference, by the Minister of Justice/Attorney General, Honourable Christiana Harmon Tah, was addressed to Honourable Pearine Davis-Parkinson, Director General of the General Services Agency (G.S.A.). It was in response to the General Services Agency’s request to the Justice Ministry seeking legal opinion, guidance and advice in the property title controversy between the General Services Agency, representing the Government of Liberia and Petitioner John H. Richards Testate Estate.

It must be said, *en passant*, that a request as such by an agency of the Liberian Government is consistent with the statutory mandate of the Ministry of Justice, stipulated under Chapter 22, sub. Chap. A, Section 22.2, 3 LCLR.

We here reproduce, again for the benefit of this Opinion, the May 28, A.D. 2012 letter of the Attorney General in response to GSA Director General’s request for legal advice:

“May 28, 2012

CPT/MOJ/AG/RL/1845/12

The Honorable Pearine Davis-Parkinson
Director General
General Services Agency (GSA)
U.N. Drive
Monrovia, Liberia.

Dear Madam Director General:

I refer to our meeting in my office on April 19, 2012 with Counsellor Seward M. Cooper and representatives of the Richards family – led by Joseph G. Richards – and Abi Jouadi & Azar Trading Company and its Legal Counsel,

Moses Paegar, pursuant to your request for legal resolution to the "long standing misunderstanding" surrounding real property on Randall Street in the City of Monrovia, upon which the Abi Jouadi Supermarket is situated.

For ease of reference, I have attached hereto a 30-point chronology of facts culled from various communications and documentations such as letters, maps, survey reports, wills, legal opinions, etc., which guided our understanding and analysis of this matter. All parties, including the Government, were encouraged to present supporting documents.

To state the facts briefly, the Government of Liberia, in 1955, expropriated 0.717 acres of land situated on Randall Street in the City of Monrovia, owned by John H. Richards, to be used for an Agricultural Fair. According to the records we have examined, the said parcel of land was conveyed in September 1866 by President Joseph Jenkins Roberts to his nephew, John Roberts, who subsequently devised the property to his daughter, Matilda Roberts Richards. Matilda Richards, in turn, bequeathed several parcels of property to her five children, including John H. Richards, in the general vicinity of Randall Street/Somalia Drive. In 1960, 0.57 acres (or 2.28 lots) of the same property, expropriated in 1955, was then leased by government to Messrs. Abi Jouadi & Azar Trading Company, upon which location a supermarket now stands. I understand that the spot upon which the supermarket structure has been erected is owned by John H. Richards, hence the prominence of the latter in this matter.

In the most recent survey report released by the Ministry of Lands, Mines and Energy in July 2011, it is revealed that Abi Jouadi & Azar Trading Company is presently occupying 1.65 acres (or 6.60 lots), which is more than the area leased out by the Government in 1960. In fact, there is no documentation to show how the area under lease to the company increased from 0.57 of an acre to 1.65 acres.

The Liberian Constitution of 1847, at Article 1, Section 13, which provided the legal basis for the expropriation of the property in question, states that "private property shall not be taken for public use without just compensation." This provision is consistent with Article 24(a) of the 1986 Constitution, which is even more explicit in respect of the safeguards of fundamental rights of property owners. It is indisputable that there was a "taking" of the property by Government. As such, the primary question that remains is whether or not the "public use" and "just compensation" requirements of the Constitution have been met. Although I have attached numerous self-explanatory documents, it is prudent to recount critical facts to establish the basis for the decision in this matter.

As early as 1960, the records show that Mr. John H. Richards requested compensation for his property and, pursuant to that request, President William V.S. Tubman authorized the Under Secretary of Public Works and Utilities to compensate Mr. Richards but, apparently, no payment was made then, and there is no evidence that any payment has ever been made for the taking of said property.

Sometime in the 1980's, Counsellor Winston Tubman representing John H. Richards, wrote an undated letter to President Samuel Kanyon Doe, and for the first time, it is observed, both issues of "compensation" and "public use" were raised. Succinctly, Counsellor Tubman requested the President to authorize his Legal Advisor to convene a meeting with a view to resolving this matter. Interestingly, the Legal Advisor, Counsellor Tuan Wreh, advised the President in 1983 that Government could retain the property under the doctrine of Adverse Possession. It is not my wisdom to cast aspersion on my former professor by trying to determine how he arrived at this decision, especially since President Doe shortly thereafter, specifically in August 1984, rescinded the earlier decision and then ordered the property returned to Mr. Richards, "as is" with no cost to Government effective immediately." Accordingly, the then Minister of Justice, the Honorable Jenkins K.Z.B. Scott, addressed a letter to Abi Jouadi & Azar Trading Company, instructing that the rent due under the Lease for 1985-1986 be paid directly to Mr. Richards. Notwithstanding, and in a bizarre twist of circumstances, the Director General for the General Services Agency (GSA) on February 21, 1985, also wrote to Abi Jouadi & Azar Trading Company and cautioned that any payment "to M. Richards will be paid at your own privity (sic) and risk." In so doing, the Director General had effectively thwarted Mr. Richards' hard-earned claim to victory and undermined the authority of the Head of State.

During the 1990's, this matter was again revived, and upon instruction from President Charles G. Taylor, Counsellor David Gbala, Deputy Minister for Legal Affairs at the Ministry of Justice, investigated and concluded on July 23, 1998 "that Mr. John H. Richards, the complainant, is to repossess his premises without further delay." To date, as far as the records show, the repossession never occurred and absolutely no compensation was awarded.

Then as recently as 2009, under the current Administration, the heirs of Matilda Richards resurrected this matter to the attention of President Ellen-Johnson Sirleaf who assigned it to the then Legal Advisor, the Honorable Morris Saytumah. After the meeting of members of the Richards family with Honorable Saytumah and the GSA Director-General, the Honorable Willard Russell, a new survey of the said property was ordered. From the minutes recorded, it was clear that there lay no dispute that the property upon which Abi Jouadi is operating a supermarket belongs to the heirs of Matilda Richards.

Interestingly, however, Counsellor Richard S. Klah, Senior Legal Counsel in the office of the Legal Advisor to the President, wrote an Aide Memoire on January 12, 2010 essentially maintaining that, while the Government should compensate the family, the property should not be returned as Government is not precluded "from allowing a third party to the beneficial use of the expropriated property in the public interest." He specifically cited two U.S. cases: *Berkman v. Parker*, 348 U.S. 26 (1954), and *Kelo v. City of New London*, 545 U.S. 469 (2005) where the Courts essentially held that expropriating private property to give to another private party for economic development does not violate the private use clause, especially when the development project creates jobs, increases taxes and revitalizes the community. I emphatically disagree with Counsellor Klah to wit: (1) these decisions are based on very close votes of U.S. Supreme Court Justices and, not surprisingly, have been widely criticized; (2) the decision to take from one private owner and give to another is not public use simply because it provides incidental or unintended benefits such as jobs and increased taxes; (3) in the *Berkman* case, the Court noted the difference between merely taking property from one private owner and giving it to another private owner whom the Government felt had better use for the property, as compared to taking property from a private owner who has abused and neglected the property to the extent that allowing the original owner to retain the property would jeopardize the health and safety of the general public (example where an owner allows his property to create a drug-infested environment); and (4) to use mere economic development for taking property from one private person and giving [it] to another will erode and undermine the very provision of the Constitution designed to protect the property rights of the people from arbitrary Government decisions.

To be candid, I am categorically astounded whenever I review the facts of the Richards case, in view of my observation that it is just inconceivable that Government would invoke Eminent Domain and expropriate property of a private citizen without just compensation, lease it out to a private business entity to generate profits, recognize the action as a travesty of Justice and, yet do nothing to bring relief to the family. The fact that this has gone on for an extensive period of more than 50 years is appalling, unfathomable, unconscionable, capricious, and represents gross abuse of power by the sovereign, to say the least.

Succinctly, the facts show that President Tubman ordered compensation in 1961, but his instruction was never carried out. The Head of State and the Minister of Justice during the Doe Administration determined that the property should be returned to the Richards family, but this decision was strangely derailed by the then Director -General of the General Services Agency (GSA).

The Legal Advisor to the President of the current Administration, the Honorable Morris Saytumah, attempted to conclude this matter, but it was quickly torpedoed by the unusual opinion of his Senior Legal Counsel, Richard S. Klah.

Therefore, in view of all of the foregoing, it is my considered opinion that the time has come for us to thread the right path and lay this matter to rest, once and for all. Moreover, in a conversation with the family, I have requested that in order for this matter to be resolved quickly and amicably, the family should agree to accept the property expropriated by the Government in 1955 and move forward without any demand for compensation from the Government and Abi Jaouadi & Azar Trading Company for the portion of real property leased out by the Government to the Company. This decision is without prejudice to the rights of the heirs of John H. Richards or any other member of the Richards family who might have a claim against Abi Jaoudi in respect of other parcels of land in the vicinity of the property in question. Once the expropriated property is returned to the Richards family by Government, it will be the prerogative of both parties to determine the terms of a continued relationship.

Permit me to assure you, Madam Director General, that the Ministry of Justice will work in tandem with your Agency until the final handing over process is concluded.

Let us, therefore, look forward to a speedy process.

Sincerely,

Christiana P. Tah

MINISTER/ATTORNEY GENERAL/RL

*cc: Her Excellency Madam Ellen Johnson-Sirleaf
President of the Republic of Liberia*

The Richards Family

Abi Jaoudi & Azar Trading Company"

Suffice it to say that the May 28, A.D. 2012 letter, herein above quoted, not only clearly urged the General Services Agency (G.S.A.) to the effect that the time has come *"to thread the right path and law and put this matter to rest, once and for all"*; but also emphatically called on the Liberian Government to essentially return the disputed property to the John H. Richards Testate Estate. This call appeared to have emboldened the stance taken by the Testate Estate of John H.

Richards. We express this view given the radical turn of events thereafter. For less than six (6) weeks following the release of the Attorney General's communication of May 28, A.D. 2012, the Testate Estate of John H. Richards, on July 4, A.D. 2012, filed a petition before the Justice in Chambers seeking the issuance of a writ of prohibition to enjoin the G.S.A. from collecting any and all rentals pursuant to the 2001 Agreement of Lease executed between the General Services Agency and the herein appellant, Abi Jaoudi & Azar Trading Company. Later, we will say more about this in this Opinion.

In the face of this quandary created by the apparent outright refusal by the Liberian Government to defend its tenant, a usual warranty term couched in lease agreements, Appellant/Co-respondent Abi Jaoudi & Azar Trading Corporation, on October 26, A.D. 2012, filed separate returns to John H. Richards Testate Estate's petition. The returns filed by Appellant Abi Jaoudi & Azar Trading Corporation, which contain twenty eight (28) counts, has also been reproduced hereunder to wit:

1. *That on the 26th day of March, 1986, Petitioner instituted an Action of Ejectment against Co-Respondent Abi Jaoudi & Azar Trading Corporation in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County for a parcel of land, situated, lying and being on Randall Street, Monrovia, Liberia, known as the number parcel 61. The said action of ejectment is still pending before the Civil Law Court for the Sixth Judicial Circuit undetermined. Attached hereto and marked in bulk as Exhibit "CR/1" are copies of the Complaint and Writ of Summons. Defendant's Amended Answer and Plaintiff's Amended Reply, and Clerk's certificate issued by the Clerk of the Civil Law Court in substantiation of the pendency of the herein mentioned Action of Ejectment in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, undetermined.*
2. *That while the Action of Ejectment referred to in count one (1) above is still pending undetermined, the Republic of Liberia, as Lessor of Co-Respondent Abi Jaoudi & Azar Trading Corporation, filed a Bill of Information before the Civil Law Court for the Sixth Judicial Circuit, praying Court to, in compliance with Judge Henrique Pearson's Ruling*

on Law issues, ordering the Clerk of said Court to issue a new Writ of Summons directed to the Government of the Republic of Liberia to intervene in the Action of Ejectment. A copy of the referenced Bill of Information is hereto attached as Exhibit "CR/2" in substantiation of the averment contained herein.

3. That Petitioner filed a Motion for Sequestration of Rent in the Civil Law Court for the Sixth Judicial Circuit for Montserrado County, ancillary to the Action of Ejectment, which Motion is still pending undetermined. Attached hereto and marked as Exhibit "CR/3" is a copy of the Motion for Sequestration of Rent in substantiation of the averment contained herein.
4. That based upon the averment contained in Counts One(1) through Three (3) above, co-respondent Abi Jaoudi & Azar Trading Corporation submits and says that there is an action pending between the same parties to the instant Petition for the Writ of Prohibition over the selfsame subject matter. Hence, the instant petition for the issuance of the Writ of Prohibition should be denied and dismissed.
5. That as to Counts One (1), Two (2), Three (3) and Four (4) of the Petition, Co- Respondent Abi Jaoudi & Azar Trading Corporation says that the Government of Liberia acquired title to the property, subject of the Petition for the Writ of Prohibition and the Action of Ejectment pending before the Civil Law Court for the Sixth Judicial Circuit, from the late Mary Ann Richards in 1955 when the National Produce Council first used it for the agricultural fare: but because the Government of Liberia could not establish the record of payment of the purchase price at the time, the Government of Liberia then entertained a claim from John H. Richards for payment for both the lease of the property for the five (5) years (1955-1960) and also for the purchase price of the aforesaid land. A check in the amount of \$3,368.00 (Three Thousand Three Hundred Sixty-Eight

Dollars) was issued by the Government of Liberia and paid to John H. Richards, representing rent in the amount of \$500.00 (Five Hundred Dollars) for the first years of use and \$2,868.00 (Two Thousand Eight Hundred Sixty-Eight Dollars) as purchase price for said property. Copies of letters dated March 3, 1961, April 12, 1961, and relevant pages of the record book in which said check was entered are hereto attached in bulk as Exhibit "CR/4" in substantiation of the averment contained herein.

6. That also as to Count Five (5) above, Co-Respondent Abi Jaoudi & Azar Trading Corporation says that prior to the purchase of the property from Mr. John Richards, the Government of Liberia had already leased the said property to Co-Respondent Abi Jaoudi & Azar Trading Corporation, and John Richards was aware of the existence of said Lease Agreement; and it is in consequence of the aforesaid lease that John Richards claimed compensation of the purchase price. Co-Respondent Abi Jaoudi & Azar Trading Corporation submits that with such payment of the fees for the property, the Government of Liberia became the absolute, fee simple owner of said property and accordingly the Government of Liberia has the right and absolute authority to maintain the lease already entered into with Co-Respondent Abi Jaoudi Azar Trading Corporation and to enter new leases with said Co-Respondent Abi Jaoudi & Azar Trading Corporation. Co-Respondent Abi Jaoudi & Azar Trading Corporation says that it has a valid Lease Agreement with the Government of Liberia for the property, subject of the Action of Ejectment and the instant Petition for the Writ of Prohibition for the period up to and including April 30, A.D. 2041. Attached hereto and marked as Exhibit "CR/5" is a copy of the referenced Lease Agreement in substantiation of the averment contained herein.
7. That as to Count Five (5) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation says that it confirms and affirms Counts Five (5) and Six (6) above and incorporates said counts into this count of the Returns in traversal of Count Five (5) of the Petition.

8. That also traversing Count Five (5) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation says that based upon the averments contained in Counts Five (5) and Six (6) above, President Samuel Kanyon Doe could not, and therefore did not write the letter referred to in Count Five (5) of the Petition (marked as Exhibit "P/3" to the Petition). Co-Respondent Abi Jaoudi & Azar Trading Corporation submits that had President Samuel Kanyon Doe written the said letter (Exhibit "P/3" to the Petition), the Minister of Justice at the time would have complied with the alleged orders of President Samuel Kanyon Doe. Co-Respondent Abi Jaoudi & Azar Trading Corporation wonders why Mr. John Richards did not follow-up with the President of Liberia to ensure that his orders were implemented, if indeed he ever gave such orders; but rather, Mr. John Richards elected to file an Action of Ejectment against Co- Respondent Abi Jaoudi & Azar Trading Corporation in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County in 1986, which action is still pending before said Court undetermined.
9. That further traversing Count Five (5) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation confirms Counts Four (4) above and incorporates said count into this count of the Returns in traversal of Count Five (5) of the Petition. Co-Respondent Abi Jaoudi & Azar Trading Corporation submits and says that the property, subject of the Petition for the Writ of Prohibition and the Action of Ejectment pending before the Civil Law Court for the Sixth Judicial Circuit, was not among those properties confiscated by the Government of Liberia in the wake of the 1980 coup d'etat, but rather it was one that was acquired by the Government of Liberia through purchase from Mr. John Richards.
10. That as to Count Six (6) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation maintains Counts Seven (7) through Nine (9) above and incorporates said counts into this count of the Returns in traversal of Count Six (6) of the Petition.
11. That further traversing Count Six (6) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation says that the Government of Liberia consists of three (3) branches, namely: the Executive, the Legislature, and the Judiciary.

The Legislature makes the law, the Executive enforces the law, and the Judiciary interprets the law, and no person in any of the three branches of Government can exercise the rights and powers assigned and delegated to the other branches of Government by the Constitution of Liberia. Under Liberian law, it is the Judiciary that adjudicates the rights of parties to property, liberty, etc. Accordingly, and assuming that President Samuel Kanyon Doe ordered the return of the property, subject of the Petition for the Writ of Prohibition, to Mr. John Richards, said order was void ab initio and of no legal effect, for President Doe lacked the constitutional authority to have ordered the return to Mr. John Richards property which had been purchased from him 'by the Government of Liberia. The determination of whether or not Mr. John Richards was entitled to the referenced property lies squarely within the purview of the Judicial branch of Government and not the Executive. It was against this backdrop that Mr. John Richards instituted an Action of Ejectment against Co-Respondent Abi Jaoudi & Azar Trading Corporation before the Civil Law Court for the Sixth Judicial Circuit, which action is still pending before said court undetermined.

12. That as to Count Seven (7) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation confirms and affirms Counts Six (6) through Eleven (11) above and incorporates said counts into this count of the Returns in traversal of Count Seven (7) of the Petition. Co-Respondent Abi Jaoudi & Azar-Trading Corporation submits that it has at all times had a valid Lease Agreement with the Government of Liberia in respect of the property, subject of the instant Petition for the Writ of Prohibition, and has accordingly paid rent for said property directly to the Government of Liberia pursuant to the terms of said Lease Agreement and not to any Government official as is being insinuated in Count Seven (7) of the Petition.

13. Also traversing Count Seven (7) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation submits and says that the property, subject of the Petition for the Writ of Prohibition, was never turned over to Mr. John Richards, as he was fully compensated for same, and therefore could not eat his cake and have it at the same time. Co-Respondent Abi Jaoudi & Azar Trading Corporation submits that any surrender of the said property to the Richards family or any other third party for that matter, is subject to the Lease Agreement existing between the Government of Liberia and Co-Respondent Abi Jaoudi & Azar Trading Corporation. Under no condition, except where Co-Respondent Abi Jaoudi & Azar Trading Corporation has given up its leasehold right to the herein-mentioned property, can the Government of Liberia surrender possession and custody of same to a third party, not excluding the Richards family; for to do otherwise would amount to a deprivation of Co-Respondent Abi Jaoudi & Azar Trading Corporation's constitutional right to property without due process of laws.
14. Further traversing Count Seven (7) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation says that the purchase of the property, subject of these proceedings, from Mr. John Richards by the Government of Liberia was not an action taken by the People's Redemption Council. Accordingly, the constitutional provision that any act or action taken by, and in the name of the People's Redemption Council cannot be challenged in any court in the Republic of Liberia is not applicable to the instant matter for reasons stated in several counts above.
15. That as to Count Eight (8) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation says that while it is true that our law provides that where a property is expropriated by the Government of Liberia for public use, and such public use and purpose no longer exist, the original owner of said property must have the right of first refusal to acquire or reacquire said property, Co-Respondent Abi Jaoudi & Azar Trading Corporation submits that title to the property in question remains in the Government of the Republic of Liberia and that Co-Respondent Abi Jaoudi

& Azar Trading Corporation, as Lessee of the Government of Liberia, has only possessory right thereto. So Petitioner still has the opportunity of reacquiring the property from the Government of Liberia at the fair market value as provided for by law; and any such purchase of said property by petitioner or any third party, would be subject to the Agreement between the Government of the Republic of Liberia and Co-Respondent Abi Jaoudi & Azar Trading Corporation.

16. That as to Count Nine (9) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation says that it is the Liberian people's money that was used to purchase the property, subject of the Petition for the Writ of Prohibition, from Mr. John Richards, and that the Speaker of the House of Representatives and the entire Legislature for that matter represent the people of Liberia. This is why when the people's property was about to be taken over by the Richards family through the assistance of their family member, who is now the Director General of the General Services Agency, Co-Respondent Abi Jaoudi & Azar Trading Corporation thought it prudent to refer the matter to the people's representatives, the National Legislature. Co-Respondent Abi Jaoudi & Azar Trading Corporation says that it is cognizant of the fact that the National Legislature does not exercise judicial power, and therefore was only bringing to the attention of the National Legislature the manipulation by some officials of the Government of the Republic of Liberia to deprive the Liberian people of their property without due process of law, a process which the Petitioner had initially pursued to determine his right to the property, subject of these proceedings but subsequently abandoned. So, it is rather Petitioner who has abandoned his Action of Ejectment and instead employed the services of some family members within the Government of the Republic of Liberia to usurp the functions of the court by attempting to have the Government of Liberia surrender possession and occupancy of the herein-mentioned property to Petitioner without due process of law.

7. That also as to Count Nine (9) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation says that it is not in illegal occupation of the property, subject of these proceedings, as its possession and occupancy of same is pursuant to and in keeping with a valid Lease Agreement which it has executed with the Government of Republic of Liberia and in consequence of which it has paid, and continues to pay the rental consideration contained therein. Accordingly, the Speaker of the House of Representatives does not have to instruct the General Services Agency to collect and receive rent from Co-Respondent Abi Jaoudi & Azar Trading Corporation. The Lease Agreement between Co-Respondent Abi Jaoudi & Azar Trading Corporation and the Government of the Republic of Liberia imposes the duty upon Co-Respondent Abi Jaoudi & Azar Trading Corporation to pay, and the Government of Liberia to receive rent thereunder. So, if Co-Respondent Abi Jaoudi & Azar Trading Corporation tenders the rent, and the Government of Liberia refuses to accept the rent, the Government of Liberia cannot evict, eject, and oust Co-Respondent Abi Jaoudi & Azar Trading Corporation from the subject premises for non-payment of rent without due process of law.
18. Further to Count Nine (9) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation says that it is in quiet possession and enjoyment of the property, subject of the Petition for the Writ of Prohibition. Accordingly, it has no reason to resort to litigation. But where its possession and peaceful enjoyment of said property is threatened, then and in that case it will resort to litigation. Co-Respondent Abi Jaoudi & Azar Trading Corporation submits that it is Petitioner who is claiming title to the property being possessed and occupied by Co-Respondent Abi Jaoudi & Azar Trading Corporation. It is therefore, the Petitioner who must proceed to court by pursuing its Action of Ejectment instead of soliciting the assistance of family members within the Executive branch of Government to surrender and deliver Government's property to Petitioner without due process of law.
19. That as to Count Ten (10) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation confirms and affirms Counts Six (6) through Eighteen (18) above, and incorporates said counts into this count of the Returns in traversal of Count Ten of the Petition.

20. That as to Count Eleven (11) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation says that the Director General of the General Services Agency being the family member of Petitioner, was in error when she requested the Minister of Justice, who also erred when she delivered an opinion in respect of the ownership of the property, subject of the Petition for the Writ of Prohibition, when said matter is still pending before the Civil Law Court for the Sixth Judicial Circuit undetermined. Co-Respondent Abi Jaoudi & Azar Trading Corporation submits that the opinion of the Minister of Justice and Attorney General of the Republic of Liberia was not based upon evidence and facts surrounding the purchase and subsequent lease of said property to Co-Respondent Abi Jaoudi & Azar Trading Corporation. The said opinion was based purely on one family member attempting to assist another family member in acquiring Government property.
21. That as to Counts Twelve (12) and Thirteen (13) of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation confirms and affirms Counts Six (6) through Twenty (20) above and incorporates said counts into this count of the Returns in traversal of Counts Twelve (12) and Thirteen (13) of the Petition.
22. That also as to Count Twenty-One (21) above, Co-Respondent Abi Jaoudi & Azar Trading Corporation says that neither Co-Respondent Abi Jaoudi & Azar Trading Corporation nor the General Services Agency has violated any rights of Petitioner without due process of law. Co-Respondent Abi Jaoudi & Azar Trading Corporation submits that Petitioner filed an Action of Ejectment against Co-Respondent Abi Jaoudi & Azar Trading Corporation before the Civil Law Court for the Sixth Judicial Circuit, Montserrado County in which proceedings the court ordered the Government of Liberia, as Lessor of Co-Respondent Abi Jaoudi & Azar Trading Corporation, to be made a party defendant in said proceedings now pending before said court undetermined. Until the court determines said action of Ejectment and declares Petitioner as owner of said property, Petitioner has no property rights in said property.

23. That also traversing Counts Eleven (11) through Thirteen (13) of the Petition, Co- Respondent Abi Jaoudi & Azar Trading Corporation says that the opinion of the Attorney General of the Republic of Liberia is not law; rather, it is simply an advice to the Executive Branch of Government. Only the Opinion of the Supreme Court of Liberia is law and has a binding effect on all persons within the Republic of Liberia. So, the opinion of the Attorney General in the instant matter has no legal effect. It is only the decision by the court in the Action of Ejectment that will determine the rights of the parties to the property, subject of the Petition for the Writ of Prohibition. Anything to the contrary is void ab initio and of no legal effect.
24. That specifically as to Count Thirteen (13) of the Petition. Co-Respondent Abi Jaoudi & Azar Trading Corporation says that no Government agency has proceeded by the wrong rules or exceeded its jurisdiction, or is assuming jurisdiction not ascribed to it by law. Co-Respondent Abi Jaoudi & Azar Trading Corporation says that the General Services Agency of the Government of Liberia is the custodian of all Government properties (real and personal), and it is authorized to conclude lease agreements with third parties in respect of Government properties and collect rent pursuant thereto. So, Prohibition will not lie to prohibit an agency of the Executive Branch of Government from exercising the duties to and devolved upon it by statute; to do otherwise is to prohibit the Executive Branch of Government from performing its constitutional duties contrary to law.
25. That as to the prayer of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation says that it is not the office of the¹ Writ of Prohibition to prohibit the parties to a Lease Agreement from paying and receiving rent under said lease agreement. Co-Respondent Abi Jaoudi & Azar Trading Corporation submits that any person who has been deprived of his property has a remedy under the law, which remedy Petitioner has already availed himself by the filing of an Action of Ejectment before the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. Accordingly, the instant Petition for the Writ of Prohibition should be denied and Petitioner advised to pursue his Action of Ejectment.

26. Also as to the prayer of the Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation says that it is highly contemptuous and an attempt to undermine the dignity and integrity of the Supreme Court of Liberia by requesting the Supreme Court of the Republic of Liberia to hold and declare a legal opinion rendered by the Minister of Justice as law absolute and valid and binding upon all functionaries of Government. Co-Respondent Abi Jaoudi submits that it is not the office of Prohibition to give effect and binding force to opinions rendered by the Minister of Justice; rather, it is the Minister of Justice who is obligated by law to give effect to the Opinions and Judgments of the Supreme Court. To ask the Supreme Court to give binding effect to an opinion of the Attorney General of the Republic of Liberia is not the office of Prohibition and such request is highly contemptuous for which Petitioner's counsel should be attached in contempt of this Honorable Court.
27. That as to the entire Petition, Co-Respondent Abi Jaoudi & Azar Trading Corporation says that the Petitioner has not stated any statutory grounds for which Prohibition will lie in the instant case. Co-Respondent Abi Jaoudi & Azar Trading Corporation submits that the instant Petition for the Writ of Prohibition was filed purposely to harass Co-Respondent Abi Jaoudi & Azar Trading Corporation, as the Speaker of the House of Representatives, who was alleged to be usurping the functions of the courts, was not named as a party respondent in these Prohibition proceedings.
28. Co-Respondent Abi Jaoudi & Azar Trading Corporation denies all and singular the allegations of both law and facts contained in the Petition for the Writ of Prohibition and not specifically traversed in these Returns.

Wherefore and in view of the foregoing, Co-Respondent Abi Jaoudi & Azar Trading Corporation prays Your Honor to deny and dismiss Petitioner's Petition, rule cost of these proceedings against the Petitioner, and grant unto Respondent any other and further relief as Your Honor may deem just, legal and equitable in the premises.

Respectfully submitted,

Abi Jaoudi & Azar Trading Corporation CO-RESPONDENT;
By and through its Legal Counsel:
Sherman & Sherman R. Fole Sherman Law Building
17th Street & Cheeseman Avenue, Sinkor Monrovia, Liberia.

While presiding in Chambers, our distinguished Colleague, Mr. Justice Philip A.Z. Banks, III, heard the petition and on February 25, A.D. 2013, handed down a ruling. It is from this ruling granting petitioner's petition that this appeal is before the Supreme Court *en banc*.

Before dealing with the appeal, we desire to note here that at the call of the appeal for hearing before the Supreme Court, the Ministry of Justice, representing Co-respondent General Services Agency, requested the Court's permission to make a submission on the minutes of Court. Permission having been duly granted, counsel for the Justice Ministry brought to the Court's attention that its client, the Liberian Government, infact did not appeal from the Chambers Justice's Ruling of February 25, A.D. 2013, from which the current appeal emanated. Counsel submitted that the General Services Agency (G.S.A.) did not announce an appeal from the Chambers Justice's ruling delivered on February 25, A.D. 2013, which granted Petitioner John Richards Testate Estate's petition. Under the circumstance, for the Supreme Court to have cited the General Services Agency for the appeal hearing and designating G.S.A. as co-appellant, according to counsel, must have been an error.

This is the way the Ministry of Justice articulated its contention:

"At this stage, counsel for co-appellant, G.S.A., begs to inform Court that during the hearing of these proceedings before the Justice in Chambers, the [herein designated] co-appellant, General Services Agency, conceded to the ruling of the Chambers Justice; as such, there is no legal basis that G.S.A. should be made a party [appellant] before the Supreme Court.

It is the law, practice and procedure [in this jurisdiction that] for one to be an appellant before the Supreme Court, that person must have been dissatisfied with the ruling of the inferior tribunal and/or court or the Chambers Justice and announced an appeal therefrom. This not having been the case, I respectfully beg that the G.S.A. should be dropped from these [appeal] proceedings. And respectfully submits."

Being in harmony with the laws and rules in vogue, the application made by the Government lawyer was granted. The General Services Agency (G.S.A.) was accordingly ordered dropped as co-appellant and the Government legal counsel, the Justice Ministry, was thereafter relieved from any further representation of the Liberian Government's interest in these appeal proceedings. The net effect was that Abi Jaoudi & Azar Trading Corporation was left as the lone appellant in these proceedings.

In disposing of the questions raised in the petition and returns thereto filed, we will traverse the following issues determined by this Court to be germane and dispositive of the controversy at bar:

- (1) Is the "*right of first refusal*" provision of the Liberian Constitution (1986), forming the foundation of the Chambers Justice's ruling, properly applicable to the facts and circumstances of this case?
- (2) Does the evidence revealed in the records before this Court support the conclusion that no compensation was paid to the petitioner for the "*expropriated*" property?
- (3) Is one Justice of the Supreme Court vested with the authority to entertain, address and pass on a constitutional question?
- (4) Will prohibition lie under the facts and circumstances of this case?

We will address these issues not necessarily following the arithmetic sequence in which they have been presented. As we address the individual question, it would be appropriate to perhaps reference or quote relevant parts of the Chambers Justice's ruling and critical conclusions reached in respect of the particular question.

On the issue of constitutional protection for property rights, on the one hand, and the taking away by the State of private property through seizure and confiscation, on the other hand, the Chambers Justice articulated thus:

"...with specific reference to the right respecting property, ...the only exception which that sacred document, the Constitution, makes to the right to acquire, maintain and protect property and property rights is the right of condemnation vested by the Constitution in the Government of Liberia. Article 24 (of the 1986 Liberian Constitution) states the exception, as follows:

- "(a) While the inviolability of private property shall be guaranteed by the Republic, expropriation may be authorized for the security of the nation in the event of armed conflict or where the public health and safety are endangered or for any other public purposes, provided:*
 - (i) that reasons for such expropriation are given;*
 - (ii) that there is prompt payment of just compensation;*
 - (iii) that such expropriation or the compensation offered may be challenged freely by the owner of the property in a court of law with no penalty for having brought such action; and*
 - (iv) that when property taken for public use ceases to be so used, the Republic shall accord the former owner or those entitled to the property through such owner, the right of first refusal to reacquire the property."*

As seen hereinabove, the Chambers Justice has cited and relied on Article 24 of the Liberian Constitution (1986) in supporting and preserving private property rights and ownership. There is no question that Article 24 as referenced unequivocally provides protection for private property ownership. But similarly also the said Article 24 vests in the Liberian State the power and the authority to confiscate private property for public use, in which case the Constitution sets condition precedent. Where there is an act of seizure or confiscation of private property, the Constitution, amongst others, directs in every such case swift payment of "just compensation".

From our examination, it is clear that our Distinguished Colleague copiously recognizes this point. The Chambers Justice does recognize that Article 24 of the Liberian Constitution not only directs but also expressly reserves to the previous owner the constitutional right of first preference of re-acquisition of the confiscated property. The "*right of first refusal*" is the constitutional language used to make that point, should the public use no longer obtain. In emphasizing the right to reacquisition of seized private property where public use thereof no longer exists, our Esteemed Colleague properly made a few interesting analyses. For instance, the Chambers Justice, while seemingly conceding that the events of expropriation of petitioner's property in the instant case commenced and ended under the canopy of the 1847 Constitution, (amended through 1972), and not the current Liberian Constitution (1986), the Chambers Justice yet held:

"...In the instant case, the events leading to the commencement of these prohibition proceedings, and in a prior ejectment suit, commenced in 1986 in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, have their genesis in a certain action taken by the Government in the 1950s when the 1847 Constitution was then in effect and was the governing supreme Law of the Land. Yet, while that fact could provide a purported basis for a party to make a claim and the argument that the provisions enshrined in detail in the 1986 Constitution, quoted above, were not in the 1847 Constitution, a fact we acknowledge, we hold the view that the principles stated in the quoted provisions of the 1986 Constitution were fully applicable at the time of the existence of the 1847 Constitution, even though not set out in the details set forth in the 1986 Constitution. This view, in fact, was held by the Government, including the courts, as the governing principle at the time the Government took the action in taking the property from Mr. John H. Richards for a public purpose. And we believe that it was in the exercise of that right, accorded by the Constitution, as far back as 1847, and reiterated in detail in the 1986 Constitution, that the Government of Liberia, in 1956, took control and possession of the property owned by the late John H. Richards."

Our Colleague stated further:

"...Further, the Minister of Justice and Attorney General of Liberia, referencing the communication from her predecessor, of the Samuel K. Doe Administration, agreed that the action of the Government in the first instance in not keeping the use of the property to a public purpose had violated the Liberian Constitution. LIB. CONST., Art. 24 (1986). We hold that view to be correct. In not returning the property to Mr. Richards once the public purpose no longer existed or in not providing Mr. Richards with the right of first refusal, but instead concluding a lease agreement with co-respondent Abi Jaoudi and Azar Trading Corporation, the Government clearly acted in breach of the Constitution and the established law of the nation; and that breach was also in clear violation and an infringement of the right of Mr. Richards, as the Minister of Justice set out in her letter, referenced herein. And we make clear that while the Opinion of the Attorney General is not law and is not treated as law unless adopted by the Court to be the law, it does set out the position of the Government on the particular matter dealt with in the letter, in so far as it gives clarity to the Court of the position of the Government on the issue..."

We find these conclusions rather troubling. Firstly, from a close examination of the records before this Court, it can be safely said that what obtained in the current case was tantamount to outright purchase of a private property by the Liberian Government. We are compelled to reach this inevitable conclusion for reason that we see no court records of condemnation proceedings instituted by the Liberian Government to seize the petitioner's property. What is clearly seen in the certified records is evidence tending to demonstrate that the Liberian Government paid a certain sum which was signed for and received by the petitioner. The public records evidencing this payment, not having been refuted, must stand valid for all intents and purposes. Further, our Colleague concluded that no compensation payment was made to the petitioner for the "expropriated" property, apparently relying on the Opinion of the Attorney General. We herewith quote this part of the Chambers Justice's ruling as follows:

"Moreover, where the Government has stated that no payment was ever made to Mr. Richards for the property which the Government had purportedly expropriated, Co-respondent Abi Jaoudi and Azar Trading Corporation cannot insist that such payment was made, especially in light of no direct evidence showing that Mr. Richards received payment from the Government. By what parity of law, we ask, can Co-respondent Abi Jaoudi and Azar Trading Corporation challenge the Government's assertion that it did not make payment to Mr. Richards? We do believe that the fact that the co-respondent held

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