

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

BEFORE HER HONOR : SIE-A-NYENE G. YUOH.....CHIEF JUSTICE
BEFORE HER HONOR : JAMESETTA H. WOLOKOLLIE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR : YUSSIF D. KABA..... ASSOCIATE JUSTICE
BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR..... ASSOCIATE JUSTICE
BEFORE HER HONOR : CEANEH D. CLINTON-JOHNSON..... ASSOCIATE JUSTICE

Atty. Mohammed El-Dust Fahnbulleh, Dr./Cllr. Niveda Ricks)
Onuoha, Atty. Patmilla Doe Paivey & Pindarous Allison,)
Commissioners of the Independent National Commission)
on Human Rights of the City of Monrovia Liberia...Appellants)
)
Versus) Appeal
)
Cllr. T. Dempster Brown, Chairperson, Independent National)
Commission on Human RightsAppellee)
)
GROWING OUT OF THE CASE)
)
Atty. Mohammed El-Dust Fahnbulleh, Dr./Cllr. Niveda Ricks)
Onuoha, Atty. Patmilla Doe Paivey & Pindarous Allison,)
Commissioners of the Independent National Commission)
on Human Rights of the City of Monrovia, Liberia.....Petitioner)
)
Versus) Petition for the Writ
) of Prohibition
Cllr. T. Dempster Brown, Chairperson, Independent National)
Commission on Human RightsRespondent)

HEARD: OCTOBER 30, 2024 DECIDED: DECEMBER 19, 2024

MADAM JUSTICE CLINTON-JOHNSON DELIVERED THE OPINION OF THE COURT

This case is an Appeal from the ruling of our distinguished colleague, His Honor Yussif D. Kaba, during the March Term of this Court, when he served as Chambers Justice. In his ruling, denied the petitioners’ petition, ordered quashed the alternative writ and denied the issuance of the peremptory writ prayed for. The petitioners noted exceptions to the ruling and announced appeal to this Court *en banc*.

The historicity of this case is that, Atty. Mohammed El-Dust Fahnbulleh, Dr./Cllr. Niveda Ricks Onuoha, Atty. Patmilla Doe Paivey & Pindarous Allison, all Commissioners of the Independent National Commission on Human Rights (INHCR), appellants herein, filed a petition for the Writ of Prohibition against Cllr. T. Dempster Brown, Chairperson, Independent National Commission on Human Rights (INHCR), appellee herein, basically contending that

the appellee had taken unto himself powers not dedicated to him by law; that the appellee had assumed the power of the President of the Republic of Liberia and had ordered the withholding of their respective salaries for the month of June, 2024, because they had disagreed with the appellee's position on the President's instruction to the Legal Advisor to investigate the on-going crisis amongst the Commissioners of the INCHR. The appellants alleged further that as co-equals, the appellee does not have such power to withhold their salaries except the President of the Republic of Liberia.

The appellants sternly contended in their petition that as co-equals, the Appellee, being first amongst equals, decisions are made collectively by majority members of Commissioners and implemented by the administrative head, pursuant to Article eleven (11) four (4) of the act creating the Independent National Commission on Human Rights; and also as enshrined in Article nine (9), one (1) of the act creating the Independent National Commission on Human Rights. The power of the Commission is vested in all seven members of the Commission, and there is no provision in the Act creating the commission and policy document that requires, instructs and/or directs other Board Members, including the appellants, to report to appellee. The appellants argued that it is only the President of the Republic of Liberia that has the authority to withhold their salaries, reprimand any member of the Board of Commissioners of the INCHR consistent with the Act of the Commission. The appellants added that assuming without admitting that appellee had the power to withhold salaries of the Commissioners of INCHR, they were never accorded due process relative to the allegations of absenteeism. The appellants therefore prayed the Justice in Chambers to set-aside and overturn the illegal administrative decision of the appellee and order the INCHR to immediately and forthwith pay all salaries, benefits and remunerations they are entitled to, and grant unto them any and all other relief that the Justice will deem just, legal and equitable.

Upon receipt of the petition for the writ of prohibition, the Chambers Justice cited the parties for a conference on July 4, 2024; thereafter ordered the issuance of the alternative writ of prohibition; and ordered the appellee file his returns to the appellants' petition in keeping with law.

The records show that on July 11, 2024, the appellee filed his returns to the appellants' petition for the writ of prohibition. In his returns, the appellee stated that he was appointed by the President of the Republic of Liberia as Chairperson of the Independent National Commission on Human Rights (INHCR), with the authority to administer the affairs of the Commission as its administrative head. The appellee stated that by these powers, he has the

authority to make administrative decisions for the welfare of the Commission under the Act creating the Independent National Commission on Human Rights. The appellee contended that he and the appellants are not equally situated as alleged by the appellants because he is the administrative head of the Commission, and in consultation with the Board of Commissioners, may allocate responsibilities between Commissioners which may include exercising supervisory responsibilities and/or powers over the Commission; that he has the authority to regulate the activities of the Commission and monitor the work force of the Commission as its administrative head.

The appellee alleged in its returns that the appellants were not going to work and refused to submit their performance reports for their assigned oversight responsibilities; that as part of the monitoring and supervisory authority over the Commission and its work force, he discovered the following: that co-appellant Pandarious Allison is a student at the Louis Arthur Grimes School of Law, and teaches English at the University of Liberia with assignment at Fendall Campus, with full salary. This act, according to the appellee, is in gross violation of Article VII, subsection two (2) of the 2005 Act of the Commission; which talks about the Chairperson and Commissioner shall be full time officials of the Commission. Also, the appellee stated that co-appellant Pandarious Allison is in violation of Article XV of the Commission's Act, which prohibits commissioner from engaging into business or occupation or profession or any other activities for which he or she is paid. The appellee further stated that Co-Petitioner Pandarious Allison had deliberately refused to go to work for the period for which his salary was withheld based on assertions that he was not receiving gas and/or fuel from the Commission, and he never had money to buy fuel or gas.

As for Co-appellant Niveda Ricks, according to the appellee, she is a full-time teacher at the Louis Arthur Grimes School of Law. This status also violates Articles XV and VII (2) of the Act creating the Commission, and Article 11.17 of the Code of Conduct, captioned "Work Ethic". This provision of the Code of Conduct mandates all public officials and employees of Government to report for duty timely in compliance with officials of government working hours which runs from 8a.m to 5p.m. Regrettably, the appellee contended, that the Co-appellant Niveda Ricks in April of 2023 left for the United States of America without his knowledge, and remained there for the period of five months, allegedly for medical treatment without any evidence, except one from a dentist department from ELWA Hospital; But upon her return in August of 2023, she and the other appellants went to appellee's office to demand their salaries.

The appellee also contended that the act of co-appellant Ricks violated sec. 1 of the Government of Liberia Revised Travel Ordinance which mandates that foreign travels for officials business for all cabinet ministers, heads of agencies, and commission shall be authorized by the Office of the President or their Board, and for deputy and assistant minister and commissions, the respective heads of their institutions shall approve their travel. The appellee maintains that this guideline was grossly violated for which the appellee instructed the comptroller to return her salaries to the Ministry of Finance and Development Planning.

As for Co-Respondent Mohammed Fahnbulleh, the appellee stated in his returns that, he deliberately stayed away from work due to pending investigation against him based on allegations on the death of a mechanic and a criminal charge of sexual assault against him awaiting indictment. The appellee stated that the salaries of the appellants are deposited in the Consolidate Government Account based on the fact that they are not entitled to it because they did not work for it. The appellee therefore prays the Chambers Justice to set-aside and dismisses the petition for the Writ of Prohibition since said petition lacks merit in its entirety.

The Chambers Justice, having entertained arguments between the parties, delivered his ruling on August 30, 2024. The Chambers Justice denied the Petitioners' petition for the Writ of Prohibition. The Appellants excepted to the ruling and appeal to the Full Bench of this Court sitting in its October term A.D. 2024.

In their arguments before this Court, the appellants strongly contending that they and the appellee, are presidential appointees and as such, the appellee lacks the authority to seize their salaries. The appellants are of the opinions that this act on the part of appellee is a violation of Article 20, section 5; Article 9; Article 14 of the Act establishing the Independent National Commission of Human Rights (INCHR); and the 1986 Constitution of the Republic of Liberia. These contentions by appellants, the appellee believes fall within the scope of his authority as head of the INCHR. The appellee also strongly believed that in his capacity as head of such administrative agency, he has the power to make such administrative decisions for the Commission; to seize the appellants' salaries in the event they consistently failed to report to work or to perform duties assigned to them. The appellee cited and relied on Articles 10, 7, 14, 7(2) of the 2005 Act creating the Commission/INCHR; Article 11.17 of the National Code of Conduct and section 1 of the Government of Liberia revised Travel Ordinance.

Having reviewed the records before this Court, listened to arguments proffered by the parties; and having analysed the laws cited and relied upon by the Parties, this Court has determined that there are two issues determinative of this case:

1. Can the administrative head of an agency of Government, like the Independent National Commission on Human Rights, take administrative actions, to include the seizure of the Commissioners salaries, for their failure to report to work?
2. Whether or not the Chambers Justice was within the ambit of the law when he quashed the Alternative Writ of Prohibition earlier issued; and denied the issuance of the peremptory writ of prohibition prayed for by the appellants?

We shall address the issues in the order by which they are presented; beginning with: Can the administrative head of an agency of Government, like the Independent National Commission on Human Rights, takes administrative actions, to include the seizure of the Commissioners salaries, for their failure to report to work?

The appellants strongly argued that both the appellants and appellee are all presidential appointees, co-equals and collectively have the same powers and authorities to lead, direct, administer, and decide the running of the affairs of the Commission. The appellants further contended that and any all decisions to be made must be as the result of majority members; that there is no provision of the Act creating the commission and/or any policy document that gives the appellee the power or authority to seize the appellants' salaries for any reason; that if the appellants commit any wrong, only the President, the appointing authority can reprimand the appellants and not the appellee. The appellants therefore challenged the decision of the appellee in holding their salaries without due process and without the approval from the President of the Republic of Liberia. The appellants, citing Article 20, section 5, Article 9, Article 14 and Article 10(2) of the INCHR Act; section 10.6 of the Executive Law; and Article 50(a) of the 1986 Constitution of Liberia, emphasized that the appellee is without any legal authority to reprimand them for any reason whatsoever without the approval of the appointing authority. The action of the appellee, the appellants argued, is illegal and a subject for reversal as a matter of law.

The appellee, on the other hand argued that as administrative head of INCHR, the Act creating the Commission conferred on him the authority in making administrative decisions for the welfare of the Commission. As such, he has the legal authority to withhold the appellants salaries, and take all actions that are administratively prudent and in the best interest of the commission. The appellee further stated that being the administrative head of the INCHR, and with the authority given to him by the Act creating the Commission to make administrative decisions for the welfare of the Commission, he possess the legal competence to take administrative actions, to include the withholding of the salaries, benefits and remunerations of the Commissioners for failure to go to work. The appellee maintained that

his action is within the ambit of the law, and that prohibition would not lie. The appellee referenced that as head of the Commission, he is duty bound to ensure that the Commission remains effective, efficient and up to the tasks as enshrined in the Act creating the Commission. The appellee stated further that he has the power to administratively arrest and subdue any act which tends to undermine the smooth functioning of the commission and cast expressions on it. Thence, the appellants' failure to go to work has the audacity to undermine the dignity of the commission and make it ineffective in all respects. It is based on this backdrop that he ordered the withholding of the appellants salaries because they have not work for the period to receive pay.

The Court is obliged to take recourse to some provisions of the Act establishing the INCHR. These include: Article 10(1) and Article 10(5) respectively. Article 10(1) states:

“The Chairman of the Commission shall be the administrative head of the Commission”

Article 10(5) states:

“Chairman shall make administrative decisions for the welfare of the Commission.”

Article 10(2) also states that,

“The Chairperson, in consultation with Commissioners, may allocate responsibilities between Commissioners, which may include policy-making and supervisory responsibilities.”

Article 20(2) and Article 20(5) point or emphasize the independence of the INCHR and the means by which communications are channelled, respectively.

Also, Articles 3 and 4 defines the competence or authority of the Commission and function of the Commission, respectively. Article 11 provides for meetings of the commission and 10.6 of the Executive Law provides for the delegation of authorities conferred upon the head or collectively heads of an administrative and or autonomous executive entities.

This Court notes and observes that Article 10(5) of the INCHR Act conferred upon the Chairman in the exercise of administrative decision for the Commission's welfare. The provisions of the statute quoted supra place the Chairman, appellee before this Court, in the position to supervise the administration of the Commission and make administrative decisions for the welfare of the Commission. This means that, the appellee has the leverage to exercise administrative power for the smooth operation of the Commission. It is important to note with specificity that Article 10(2) of said Act allowed the Chairman to consult with other Commissioners for the purpose of allocating responsibilities between Commissioners, which responsibilities may include policy-making and supervisory responsibilities.

We note and fully agree with the observations of the Chambers Justice that with the exception of section 10(2) of the Act creating the Commission, none of this reliance had a direct bearing on the resolution of the contentious issue, whether the Chairperson of the Commission possesses the legal competence to withhold other Commissioners salaries since the Commissioners failed to report to work. However, it is important to note that Article 10 at section 10.5 of the Act provides that “The Chairperson shall make the administrative decision for the welfare of the commission”. This means the chairperson has implicit administrative authority. He/she has the legal capacity to make legal decision relative to the internal operations and day-day management of the commission. In this context, ‘administrative decisions’ typically refers to actions or decisions that deal with the organization, management and functioning of the Commission, rather than policy-making or adjudicatory decisions. By the letters of Article 10 section 10.5, legal challenges to the administrative powers and authority of the Chairperson would generally need to show that he/she acted beyond the scope of his/her administrative authority or violated applicable laws. Interestingly, this provision of the Act gives the chairperson of the INHCR discretionary authority to manage and direct the internal affairs of the commission, within the limits of their mandate and subject to applicable legal and procedural constricts.

We fully agree with the rulings of the Justice in Chambers; we quote excerpts of the ruling below:

“...it must also be noted that Article 10, at section 10.5 also provides that the ‘Chairperson shall make the administrative decisions for the welfare of the commission’. Distinguished from section 10.2, which provides for consultation with other commissioners, section 10.5 exclusively, mandatorily and commandingly conferred upon the chairperson authority to make administrative decision for the welfare of the commission. The question then is, can it be said that the failure of the commission to continuously, without excuse or justification, report to work be considered as administrative and therefore falls within the province of the chairperson’s administrative decision-making power to withhold their salaries of such commissioners? To answer this question we must first of all determine the intent of the statute framers. It must be noted that the lawmakers deliberately inserted in section 10.5 the clause ‘...for the welfare of the commission’ as the basis for conferring upon the chairperson the authority to make administrative decision for the commission. Definitely, the failure of the commissioner or commissioners to report to work will certainly affect the welfare of the commission, and therefore, action must be taken to correct that. According to the Act, the administrative authority falls within the exclusive domain of the chairman. This, in our mind, gives the chairperson, the Chief Administrative Officer of the entity, to monitor staff attendance which also includes the attendance of commissioners to work, considering the autonomy of the commission, it cannot be expected that the President of the Republic of Liberia exercise such authority of supervision over the administration of the commission without compromising its independence. This is exactly why the framers of the Act created the Human Rights Commission, conferring administrative authority to the Chairperson.” Having stated our full agreement with the ruling of our distinguished colleague, we hold that the appellee was within the ambit of the law to order the seizure of the appellants’ salaries for their failure to report to work without any justifiable reason.

We shall now proceed to address the next issue; same being, whether or not the Chambers Justice was within the ambit of the law when he quashed the alternative writ of prohibition earlier issued, and denied the issuance of the Peremptory Writ of Prohibition prayed for by the appellants? We answer YES.

The Justice in Chambers properly ruled when he denied the issuance of the peremptory writ of prohibition. This Court had said on numerous occasions that Prohibition will lie where a trial judge or an administrative agency proceeds by wrong rules rather than rules which should be observed at all times. *Roberts v Kaba et al* [2004] LRSC 20; 42 LLR 228 (2004) (17 August 2004). From the facts and circumstances in this case, the appellee was within the ambit of the law when he took appropriate administrative action against the appellants in the interest of the Commission. Prohibition will not lie where the act complained of is not wrong or illegal, and is within the scope of authority of the person or office complained against. *Komai v. The Ministers of Justice and Public Works*. [1989] LRSC 40; 36 LLR 518, 522 (1989). Prohibition will not lie or will be disallowed where it is shown that it is intended to prevent, prohibit or obstruct an administrative agency of government from exercising its lawful and administrative duties and administrative duties and responsibilities. *Wesseh v. Tubman* [1979] LRSC 1; 28 LLR 3, 12 (1979). Acknowledging the mandatory authority the Act bestowed upon the Chairperson of the Commission, this court says that it agrees with the Chambers Justice that it is the law in this jurisdiction that prohibition will lie where the tribunal or respondent has assumed jurisdiction not ascribed to it by law, has exceeded its designated jurisdiction, or in the exercise of its jurisdiction, proceeded by wrong rules other than those which should be observed at all times, or to prevent an inferior court from proceeding by irregular means. *J.E. Acquash English & Arabic School vs. His Honor S. Geevon Smith, et al. Supreme Court Opinion, March Term 2019*. The records having shown that the appellee did not assumed authority not ascribed to him by law, prohibition will not lie. Our Revised Code, *Civil Procedure Law 1:16.21(3)* defines prohibition as a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein. This court holds that in this instance, prohibition will not to restrain or prohibit the respondent.

WHEREFORE AND IN VIEW OF THE FOREGOING FACTS AND CIRCUMSTANCES, the Chambers Justice's ruling denying petitioners' petition for the Writ of Prohibition is hereby affirmed, the alternative writ quashed and the peremptory writ prayed for is hereby denied.

The Clerk of this Court is ordered to inform the parties in accordance with this opinion. AND
IT IS HEREBY SO ORDERED.

Prohibition denied.

When this case was called for hearing, Counsellor Jimmy Saah Bombo of the Central Law Offices, Inc. appeared for the appellants. Counsellor T. Dempster Brown appeared pro se, and as appellee.