

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

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

Prof. Wilson K. Tarpeh of the City of Monrovia)
Republic of Liberia.....Petitioner)
)
Versus) Petition for the
) Writ of Prohibition
The Executive Branch of Government of the Republic of)
Liberia, represented by the Minister of Justice, Attorney)
General of the Republic of Liberia, Solicitor General, County)
County Attorneys and Prosecuting Attorneys of the Ministry)
of Justice, and Emmanuel K. Urey Yarkpawolo, also of the)
City of Monrovia, Republic of Liberia.....Co-respondents)

HEARD: March 27, 2024

DELIVERED: April 24 2024

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The petitioner, Prof. Wilson K. Tarpeh, in a petition for a writ of prohibition filed before the Justice in Chambers, complains that he was appointed Executive Director of the Environmental Protection Agency (EPA) by his Excellency George Manneh Weah, then President of the Republic of Liberia, on October 2, 2020; that the Act creating the EPA states that the Executive Director shall serve for a period of seven (7) years and shall be eligible for reappointment; that having been appointed and commissioned by His Excellency, George Manneh Weah, and having taken office and entered upon his duties, his appointment and right to the office of Executive Director constitutes a property right within the contemplation of Chapter III, *Fundamental Rights*, of the Constitution of Liberia, which he must enjoy consistent with law and of which he cannot be deprived without cause and due process of law; that he has the right to the office of Executive Director of the Environmental Protection Agency up to October 1, 2027, except for cause duly established through due process of Law. The petitioner refers to the Environmental Protection Agency ACT, PART III – ORGANIZATION AND ADMINISTRATION OF THE AGENCY. Section 16 - The Executive Director.

The petitioner says that while going about his normal duties, petitioner learned from the Executive Mansion website that the President, His Excellency Joseph Nyuma Boakai, Sr. had appointed one Emmanuel K. Urey Yarkpawolo as Acting Executive Director of the EPA; that

upon receipt of the appointment information from the Executive Mansion website, petitioner addressed a letter to President Joseph Nyuma Boakai, Sr., reminding him, among many things, that he holds a tenure position as per Section 16 of the EPA Act, and therefore His Excellency needed to reconsider his appointment with the intent to withdraw same. The letter dated February 19, 2024, also informed the President that if he did not desire the services of petitioner in the EPA position, petitioner should be compensated for the period of forty-three (43) months (March 1, 2024 - October 1, 2027), representing the remaining period of his tenure.

The petitioner contends further that the appointment of an Executive Director of the EPA is not pursuant to Article 54 of the Constitution, and persons serving as an Executive Director of the EPA does not serve at the will and pleasure of the President, consistent with Article 56 of the Constitution, but that he rather serves pursuant to the Act creating the EPA which is not within the removal powers of the President, and there being no cause shown and a hearing had thereon consistent with due process, his removal, and the appointment of Emmanuel K. Urey Yarkpawolo in his post is a gross violation of the Act creating EPA, such act being ultra vires, unconstitutional, and hence of no legal effect.

The petitioner then prayed the Justice in Chambers to issue the alternative writ of prohibition, restraining and enjoining Emmanuel K. Urey Yarkpawolo from further working as Acting Executive Director of the Environmental Protection Agency until a hearing shall have been had on this petition at a time and date to be determined.

The Justice in Chambers, upon receipt of the petitioner's petition which had come in with several other petitions where the petitioners contend their right to tenures under several entities' Acts, had the alternative writ issued, commanding the respondents to these petitions file their returns to the writs. He further instructed the Clerk to have the matter forwarded to the full bench for speedy disposition of the petitions.

The co-respondent, Ministry of Justice (MOJ), filed its returns to the petition for the writ of prohibition averring *inter alia* that the Environmental Protection Agency (EPA) is an agency under the Executive Branch of Government; hence, the petitioner as head of said Executive Agency was subject to serve at the will and pleasure of the President of Liberia; that assuming *arguendo*, that even were the petitioner's position covered by tenure, the petitioner would still not be entitled to benefit from said tenure because his appointment to the position of Executive Director was done contrary to the Act establishing the EPA.

We note that the petitioner designated Emmanuel K. Urey Yarkpawolo as co-respondent to the petition for the writ of prohibition, and predicated thereto, Co-respondent Yarkpawolo also

filed returns to the petition wherein he resists the petitioner's contention that pursuant to the Act establishing the EPA, he is entitled to a seven (7) year tenure by virtue of his appointment and commission as Executive Director by the former President George Manneh Weah in 2020. Co-respondent Yarkpawolo argues that the petitioner was serving as an interim Executive Director; that the status of the petitioner's position is determinable on the basis of his appointment; that the petitioner appointment by former President Weah did not emanate from the Policy Council submitting a list of three candidates, inclusive of the petitioner, to former President Weah, and from which list, former President selected the petitioner and appointed him and which would have entitled him to tenure; that pursuant to the EPA Act, it is only when a candidate is appointed by the President of the Republic of Liberia based on his/her selection from a list of three persons submitted by the Policy Council of the EPA to the President, that a right to tenure applies; that in the absence of three recommended names from the Policy Council, the President of the Liberia may appoint an interim/acting Executive Director to head the EPA, which was the case with the petitioner; that because the seven-year tenure does not apply to an interim Executive Director, the petitioner ceased to hold his office as interim Executive Director upon the inauguration of President Joseph Nyuma Boakai, Sr. pursuant to Executive Order No. 123.

Taking judicial cognizance of the law appertaining to the writ of prohibition, this Court says that same cannot apply to the Co-respondent Emmanuel K, Urey Yarkpawolo in his capacity as an appointed acting Executive Director of the EPA, given that the said Yarkpawolo is not pursuing any action that the writ of prohibition may order him to refrain from pursuing. Hence, Yarkpawolo lacks the required legal capacity to defend against the alternative writ, and his designation as co-respondent is in a nominal capacity, especially noting that the Judgment of this Opinion cannot be directed at him and thereby making his returns to the petition moot.

Howbeit, we note that co-respondent Ministry of Justice also resisted the petitioner's averment that based upon his appointment and commissioning as Executive Director of EPA by former President Weah, he has security of tenure to hold office for seven years, and could only cease to hold office pursuant to the grounds stipulated in the EPA Act, viz.: a) resigns; b) is found guilty of gross misconduct on the advice of the Board and the approval of the Policy Council; c) is unable to discharge the functions of his office for health reasons. The co-respondent MOJ asserts that the appointment of the petitioner by former President Weah was a unilateral decision by the former President, and was not based upon recommendation from the Policy Council as required by law; that the former President's unilateral decision to appoint the petitioner without the dictates of Section 16.1 of the EPA Act constituted a "total violation" of the said Act, and that predicated on the said violation of the EPA Act, the co-

respondent MOJ asserts that the petitioner was unlawfully holding the office of Executive Director because of the illegal manner in which he was appointed to said office.

The co-respondent MOJ further averred that the petitioner acquiesced in his replacement because he acknowledged the legitimacy of co-respondent Yarkpawolo's appointment as interim Executive Director; that the petitioner not only prepared and submitted "Agency Status Notes" to co-respondent Yarkpawolo, but he further participated in the turnover ceremony by clearing his office and relieving the official vehicle assigned to the Executive Director; that by these acts, the petitioner validated the legitimacy of President Joseph Nyuma Boakai's appointment of co-respondent Emmanuel K. Urey Yarkpawolo, and cannot now pray court to prohibit and undo the appointment of an Interim Executive Director of the EPA.

This Court asks whether under the facts and circumstances of this case, the petitioner's appointment as the Executive Director of the EPA by former President George M. Weah in 2020 warrants him tenure under Part III, Section 16 of the EPA Act?

To determine this, we must look at the relevant portion of the EPA Act under which the petitioner asserts his claim. PART III- ORGANIZATION AND ADMINISTRATION OF THE AGENCY, Section 16. *The Executive Director*, reads thus:

- 1) There shall be an Executive Director who is a person with wide environmental knowledge and recognized commitment to sustainable management of the environment, appointed by the President from a list of three names recommended by the Council, except that the President may appoint an interim Executive Director pending the information of the Council;
- 2) The Executive Director shall serve for a period of 7 years and shall be eligible for reappointment, except that there shall be appointed an interim Executive Director.
- 3) The Executive Director shall have security of tenure but shall cease to hold office if he:
 - a) Resigns;
 - b) Is found guilty of gross misconduct on the advice of the Board and the approval of the Policy Council;
 - c) Is unable to discharge the functions of his office for health reasons.

The Act creating the EPA clearly indicates that the President selects the Executive Director from the list of three names recommended and submitted by the Policy Council to the President, and in such case the Executive Director shall have a security of tenure for seven years. Where the formation of the Council is pending, the president shall appoint an interim Executive Director.

A keen review of the file reveals that the petitioner proffered or filed no document showing that the petitioner was chosen from among a list of three persons recommended by the Policy Council to the President. And as if this were not a problem to consider, the petitioner made no mention of his selection process in his petition, regarding the existence or submission of said list to include his name, or whether he ever went through the legal required selection process that would entitle him to tenure under the EPA Act.

Where the selection process regarding the tenured position of the Executive Director is clearly stipulated in the EPA Act, and there is no showing – neither in document or argument – that the petitioner assume a tenured position through the legal required process, we cannot give a different or further interpretation to the clearly written provision of the Act.

It is worth mentioning herein also that, in reference to Section 16.1 of the EPA Act, which section grants the President the power to appoint an interim Executive Director in the absence of the Policy Council, President Weah, as per the letter exhibited by the petitioner did proceed unlawfully when he appointed the petitioner as “Executive Director,” instead of “interim Executive Director.” Since the appointment of petitioner circumvented, or was bereft of the legally required process or procedure, the petitioner’s appointment as Executive Director was in violation of the EPA Act. It might be that it is President Weah’s issuance of an appointment letter bearing “Executive Director” that prompted the petitioner to believe or claim that he holds a tenured position as the Executive Director of the EPA.

It is worth noting also that the phrase “interim Executive Director” is copied verbatim from the Act; that the grammatical construction of the said phrase, which does not capitalize the word “interim”, suggests that same does not form part of the title “Executive Director” but was only meant to qualify the latter. We therefore hold that given the facts and circumstances contiguous to the appointment of the petitioner, his appointment was in the capacity of an interim Executive Director, hence the security of tenure was not applicable to the petitioner.

This Court has opined in several Opinions that where the provisions of a statute are clear and unambiguous, said statute needs no further interpretation: *Pentee v. Tulay*, 40 LLR 207, 212 (2000); *Liberia Agriculture Co. (LAC) v. Associated Dev. Co. (ADC)*, Supreme Court Opinion, October Term, A. D. 2012; *Ware v. RL*, Supreme Court Opinion, March Term, 2012.

From the records of the file, especially as regards the process of the petitioner’s appointment as Executive Director of the EPA and that which would entitle him to tenure, the crust of these proceedings, it can only be said that the legally required process as per the EPA Act was not observed or followed that would warrant the petitioner’s claim to tenure.

A writ of prohibition will not be granted by the Court where the respondent Executive Branch of Government did not proceed wrongly when President Boakai appointed Emmanuel K. Urey Yarkpawolo as interim Executive Director of the EPA where the Policy Council has not been formed. The petitioner having only served as interim Executive Director of the EPA, his removal was in consonance with the Executive Order 123, signed November 22, 2023, by former President George M. Weah, Sr., in which he stated that all non-tenured presidential appointees shall be presumed to have resigned as of the date of the inauguration of the incoming President (Joseph Nyumah Boakai).

WHEREFORE AND IN VIEW OF THE FOREGOING, the alternative writ of prohibition issued by the Justice in Chambers is hereby quashed, and the peremptory writ prayed for denied. The Clerk of this Court is mandated to inform the parties accordingly. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Thompson Jargba appeared for the petitioner. Counsellor N. Oswald Tweh, Minister of Justice and Attorney General of the Republic of Liberia, and Counsellor J. Adolphus D. Karnuah, II, Director of Civil Litigation, Ministry of Justice, appeared for the Executive Government. Counsellors Tiawan Saye Gongloe and Lamii Kpargoi appeared for the co-respondent, Emmanuel K. Urey Yarkpawolo.