

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2025

BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SRCHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HER HONOR: CEATNEH D. CLINTON JOHNSON.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: BOAKAI KANNEH.....ASSOCIATE JUSTICE

Samuel D. Tweah, Former Minister of Finance & Development)
Planning, Counsellor Nyenati Tuan, Former Acting Minister of Justice,)
Stanley S. Ford, Former Director of Financial Intelligence Agency, D.)
Moses P. Cooper, Former Comptroller, Financial Intelligence Agency,)
and Jefferson Karmoh, Former National Security Advisor.....Petitioners)

Versus

His Honor Roosevelt Willie, Assigned Circuit Judge First Judicial)
Circuit Criminal Assizes "C" for Montserrado County, Sitting by Special)
Assignment, and the Republic of Liberia by & thru the Ministry of)
Justice and Liberia Anti-Corruption Commission of the City of Monrovia)
Montserrado County, Liberia.....Respondents)

) PETITION FOR
) THE WRIT OF
) PROHIBITION

Heard: November 17, 2025

Decided: December 18, 2025

MR. CHIEF JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

This is a petition for a writ of prohibition filed by some former senior government officials. They are requesting this Court to prohibit, reverse, enjoin, and vacate rulings and orders issued by the respondent judge of the First Judicial Circuit Court, Criminal Assizes "C," Montserrado County. The petitioners argued that the trial judge erred in three ways: first, by denying their motion to dismiss the indictment based on immunity as actors or operatives of the National Security Council (NSC); second, by refusing to rescind ex parte subpoenas issued to the Ministry of Finance & Development Planning (MFDP) & the Central Bank of Liberia (CBL), and the Financial Intelligence Agency (FIA); and third, by exceeding judicial authority and engaging in national security matters, which they claim should be off-limits, or in other words, the court was exceeding its jurisdiction. Ultimately, they seek a peremptory writ prohibiting the trial court from exceeding its jurisdiction.

After the alternative writ was issued, the Chambers Justice observing constitutional issues, forwarded the case to the full bench, noting that the constitutional issues raised are too significant for a single Justice to decide. The respondents, in resisting this petition, argued, among other things, that the petition is belatedly interposed, as the petitioners had already

entered pleas to the indictment and participated in jury selection for the trial. The respondents also argued that the petitioners do not fall under the National Security Council's statutory authority, that their actions are unrelated to national security, and that the subpoenas are entirely proper to uncover alleged theft, misuse of public funds, and money laundering for which the petitioners are charged.

For an appreciation of the parties' contentions in the petition and the resistance thereto, it is essential that we give a synopsis of the averments contained in the indictment.

The Grand Jury for Montserrado County, during the August Term 2024, issued an indictment charging the petitioners with serious felonious crimes: economic sabotage, theft of property, money laundering, criminal facilitation, and criminal conspiracy. The indictment provides a detailed account that these former officials of government namely: Samuel D. Tweah, Former Minister of Finance & Development Planning, Counsellor Nyenati Tuan, Former Acting Minister of Justice, Stanley S. Ford, Former Director of Financial Intelligence Agency, Moses P. Cooper, Former Comptroller of Financial Intelligence Agency and Jefferson Karmoh, Former National Security Advisor conspired to unlawfully withdraw, distribute, and convert public funds totaling One Billion, Fifty-Five Million, Five Hundred and Forty Liberian Dollars (L\$1,055,152,540.00) and Five Hundred Thousand United States Dollars (US\$500,000.00), all under the pretense of national security operations.

The petitioners were arraigned and they pleaded not guilty, moved to dismiss the indictment on the grounds of immunity and jurisdiction, and also moved to rescind the ex-parte subpoenas issued to government agencies, whose records the prosecution says are crucial. After a full hearing, the trial judge denied both motions. Consequently, the petitioners filed this petition seeking a writ of prohibition. We note that prohibition is an extraordinary remedy. This Court has repeatedly stated that prohibition only prevents a court from exceeding its jurisdiction; it does not correct simple legal errors, and it is definitely not an alternative to appeal. *E. Acquash English & Arabic School vs. His Honor S. Geevon Smith, et al.* Supreme Court Opinion, March Term 2019.

The petitioners, however, argue that the trial court lacked jurisdiction because their alleged actions were taken as "agents" of the National Security Council, which, in their view, is immune from review by any court under the political question doctrine. They also assert derivative presidential immunity under Article 61 of the Liberian Constitution.

Considering the petition, the resistance, and the allegations in the indictment, we identify the following three key issues:

1. Do the petitioners qualify as members or agents of the National Security Council under the 2011 National Security Reform and Intelligence Act (NSRI), which would allow them to act on its behalf and claim its protections?
2. Can the petitioners claim the immunity granted to the President under Article 61 of the Liberian Constitution to protect themselves from prosecution for the crimes as charged in the indictment?
3. Did the trial judge err by issuing ex-parte subpoenas for documents allegedly protected by national security confidentiality?

We will address these issues and related concerns in the order they are presented.

The first issue is whether the petitioners were members or agents of the National Security Council and, therefore, entitled to its protections under the 2011 Act. The petitioners argue that they acted under the NSC's authority, so any investigation into their conduct is barred by statutory confidentiality and the political-question doctrine. They refer to Section 3 of the 2011 Act, which details the NSC's composition and a "supporting group" of high-ranking officials who implement the Council's directives.

They argue further that their roles, such as Minister of Finance & Development Planning, Acting Minister of Justice, Director of the Financial Intelligence Agency, and National Security Advisor, made them de facto NSC actors. However, the respondents disagree, claiming that the petitioners operated entirely outside the NSC structure, that most of the petitioners were neither members nor agents of the NSC under the law, and that the fund withdrawals and disbursements occurred without any NSC authorization.

Section 2, sub-section (g) of the 2011, National Security Reform and Intelligence Act (NSRI), provides that: *"The President in his or her capacity as Chair of the NSC shall have as a supporting group for the implementation of the policy directives of the NSC the following members: The Minister of Justice, The Minister of National Defense, The Director of the National Security Agency, The Director of National Police, The Director of Executive Protection Services, The Chief of Staff, Armed Forces of Liberia, The Commissioner, Bureau*

of Immigration and Naturalization, The National Security Advisor to the President, and The G-2 Commander, Military Intelligence.”

The National Security Reform and Intelligence Act quoted above is unequivocally clear and unambiguous, it designates the President as Chair, supported by a group that includes the Minister of Justice, the Minister of National Defense, the Director of the National Security Agency, the Director of the National Police, the Commission of Liberian Immigration Service, the Director of EPS, the G-2 Commander, Military Intelligence.”, and few others such as the National Security Advisor. However, it does not name the Minister of Finance & Development Planning, the director of the Financial Intelligence Agency, the comptroller of the Financial Intelligence Agency, or the Acting Minister of Justice in his role as Acting Chair of Joint Security. Additionally, the Act prohibits the NSC from delegating financial execution powers to non-members without an expressed Council decision.

The petitioners attempted to persuade us, both through their petition and argument, that their involvement in NSC matters stemmed from implied delegation and necessity. However, this Court has held in the case: *In Re: The Constitutionality of Sections 16.1 & 16.2 of the Act to Establish the Liberia Anti-Corruption Commission and to Re-establish the Liberia Anti-Corruption Commission*, Supreme Court Opinion, October Term 2022, that, non-statutory membership cannot be inferred for a statutory body created by law.

Statutory commissions and other statutory bodies are creations of law; their composition, tenure, and authority must be strictly interpreted from their organic instruments and cannot be enlarged by implication. *In Re: The Constitutionality of Sections 16.1 & 16.2 of the Act to Establish the Liberia Anti-Corruption Commission and to Re-establish the Liberia Anti-Corruption Commission*, Supreme Court, Opinion, October Term 2022. *Ibid.*

In other words, when the Legislature has explicitly listed the members of a statutory body, additional members by implication are prohibited (*expressio unius est exclusio alterius*), meaning the express mention of one thing is an exclusion of others.

In the instant case, aside from the National Security Advisor, none of the other petitioners is listed as a member of the NSC and therefore they lacked the authority to act for the NSC unless such authority was expressly granted by the President or the NSC, as provided by the Act.

No such invitation or authorization was presented to support the claim of “delegation and necessity.” In fact, the indictment alleges explicitly that no NSC request, instruction, or resolution authorized the petitioners to withdraw or channel these funds.

The only evidence the petitioners rely on to demonstrate NSA involvement in the alleged crimes is a letter signed by the Acting Minister of Justice, who himself, is not a member of the NSC, including the director of the FIA Director to release funds. The NSC act requires that in the absence of the Justice Minister, the Minister of Defense shall preside. Hence, assuming that the Minister of Justice was absent, any such order could have legally emanated from the Minister of Defense who is the next in line as provided for by Section 2, sub-section (g) of the 2011 the NSRI Act. This is how the law intended the NSC's activities to be conducted.

There are no provisions in the Act that grant membership of the NSC to the Acting Minister of Justice, so he lacks the authority to act on behalf of the NSC. His actions, without an explicit delegation from the NSC as mandated by the Act, exceed his legal authority and therefore, his action is *ultra vires*. This Court has consistently rejected “self-designation” as a basis for statutory authority. *Caranda v. Worrekk*, 3 LLR 279 (1932); *Russ v. RL*, 5 LLR 189; *Quelo v. Providence Concrete Works*, 29 LLR 298 (1981); *Beneficiaries of Scott v. Johnson et al.*, 30LLR30 (1982).

This Court consistently enforces the principle that public officials, courts, statutory bodies, or private parties acting under statute cannot assume powers not granted by law. When such unauthorized acts occur, such as disbarment by a lower court in *Caranda v. Worrell*, the actions are void, not merely voidable. Entities described as “creatures of statute” (such as statutory bodies, benefit schemes, or procedural mechanisms) are strictly bound by law; their powers cannot be extended by implication or unilateral action. This jurisprudence embodies the rule-of-law principle: that is, public or private action must be authorized by law.

We hold therefore, that the respondents’ claim that several of the petitioners were not NSC members, and that no legitimate NSC authorization existed for the said transactions, and the alleged withdrawals were *ultra vires* and done without authority, are supported not only by the records before us but also find support in the law, and since the petitioners haven’t shown their actions were authorized NSC activities, they cannot hide behind the Council’s protection clause to shield alleged criminal conduct.

We now move to the second issue, that is: whether or not petitioners are entitled to presidential immunity under Article 61 of the Liberian Constitution.

The petitioners' primary argument is that since the President chairs the NSC and they acted on its behalf; they should receive derivative immunity similar to that which the President has under Article 61 of the Liberian Constitution. For the benefit of this opinion, we quote verbatim Article 61 of the Liberian Constitution, it states: "*The President shall be immune from any suits, actions or proceedings judicial or otherwise, and from arrest, detention or other actions on account of any act done by him while President of Liberia pursuant to any provision of this Constitution or any other laws of the Republic. The President shall not, however, be immune from prosecution upon removal from office for the commission of any criminal act done while President.*"

Firstly, let it be established that under a Republican form of Government, the president doesn't co-share his authority with anyone in the executive branch; therefore, all other persons serving in the executive branch of government are agents of the president and to allow them enjoy the same immunity as the president would not only be unreasonable and illegal but also inimical to the interest of the state.

Judging from the language of the authors of the Liberia Constitution, the immunity granted by the Constitution under Article 61 of the Constitution is personal and exclusive to the president, and non-transferable. It cannot be invoked by subordinate officials, even when such officials attempt to perform duties associated with presidential authority. It cannot even be extended to ministers, advisors, or anyone else, even if they are acting under presidential instructions.

Article 61 of our Constitution is explicit. It doesn't mention officers, agents, advisors, or ministers. There's no such thing as "derivative presidential immunity" in Liberian law. The petitioners cite no case law in which a head of state's immunity automatically extends to subordinates. And looking beyond Liberia, the same principle holds. In *United States v. Nixon*, 418 U.S. 683 (1974) the U.S. Supreme Court said, executive privilege doesn't shield officials from criminal process; in *Nixon v. Fitzgerald*, 457 U.S. 731 (1982) it gave absolute immunity only to the President, not his subordinates; and in *R v. Secretary of State, ex parte S.*, UK, 3 All ER 273 (1998), courts said, immunity for high executives doesn't trickle down. The universal rule is clear: executive immunity is personal and non-transferable.

Even if derivative immunity existed in Liberia (which is not the case), the petitioners would still need to prove that the acts alleged in the indictment were “acts of the President” or carried out with direct presidential authorization. On the contrary, the indictment alleges the opposite, no NSC authorization, no presidential approval, and petitioners acting without instruction or oversight from the NSC or the President. There is nothing before the Court to prove otherwise. Therefore, the petitioners' argument in this regard fails on both legal and factual grounds. Consequently, under Article 61 of the Liberian Constitution, immunity belongs solely to the President, and subordinate executive officers cannot use it to shield themselves from prosecution.

To conclude this issue, the Court says that assuming that the petitioners were entitled to immunity, such claim would have been exerted at the Liberia Anti-Corruption Commission or prior to their arraignment and joining of issue with the state. But the petitioners having been interrogated by LACC without objection, indicted, arraigned and pleaded not guilty to the crimes charged, they suffered laches and waiver to assert immunity at the trial.

We now move to the third issue, whether the trial judge err by issuing ex-parte subpoenas for documents allegedly protected by national security confidentiality?

The petitioners argue that the judge violated confidentiality and secrecy rules for the NSC and FIA, and that the subpoenas should not have been issued without notice, they however failed to cite the controlling law; they furthered argued that the ex-parte process of issuing the subpoenas violated their due process rights under Article 20 (a) of the Liberian Constitution.

The respondents have argued that on the contrary, the subpoenas are proper, because the documents subject of the subpoena are necessary to prove theft and misuse of public funds.

Our Criminal Procedure Law Rev. Code 2.17:3 is the relevant procedural code for issuing a subpoena. This law provides that: “*At the request of either the prosecuting attorney or the defendant, a subpoena commanding each person to whom it is directed to attend and give testimony at a specified time and place or to produce books, documents or other things designated therein or both, shall issue and may be served as provided in the Civil Procedure Law.*” Additionally, Civil Procedure Law Rev. Code 1.14:2 provides that: “*Subpoenas may be issued without a court order by the clerk of the court in which the action is brought or a judge of such court where there is no clerk.*”

The precise language of Criminal Procedure Law Rev. Code 2.17:3 does not require a hearing for the issuance of a subpoena, and when reading the said Criminal Procedure Law Rev. Code 2.17:3 along with the above-quoted statutory provision of the Civil Procedure Law Rev. Code 1.14, some subpoenas may even be issued by the clerk without the judge's knowledge.

If the subpoena in question requires the judge's attention, there is no requirement that it be issued after a hearing on the application or with notice to the opposing party. The law in Civil Procedure Law Rev. Code 1.14.4 provides the right to apply to quash or modify the subpoena before the deadline for compliance if it is deemed unreasonable or oppressive. The petitioners' application before the trial court only raised issues related to the ex-parte issuance of the subpoena, with no other allegations.

This Court, in interpreting the statute further has also held that: "subpoenas to third-party custodians of documents are often issued ex-parte though subject to later challenge or motion to quash." *Varney G. Sherman & Sherman and Sherman, Inc. v. Republic of Liberia*, Supreme Court Opinion, March Term 2017. Additionally, issuing ex-parte subpoenas to third-party agencies does not violate an accused person's due process rights.

The target of an investigation has no right to prior notice of subpoenas sent to third parties; moreover, ex-parte issuance is sometimes necessary to prevent the destruction or tampering with evidence. Common Law jurisdictions have consistently upheld ex parte subpoenas where evidence might be destroyed. *In Grand Jury Proceedings*, 713 F.2d 616 (8th Cir. 1983); *R v. Chief Constable of West Midlands Police* (UK), 1 AC 274 (HL) (1995).

The petitioners have also relied on Section 11 of the National Security Reform and Intelligence Act, which permits the NSC to manage funds privately. They claim that this act renders their financial activities "unreviewable." We quote the said Section 11 of the NSRI Act verbatim for clarity of this opinion:

"(a): to ensure the protection of its operation from public disclosure, the NSC shall be authorized to withdraw on a quarterly basis allotment to the extent necessary for the maintenance of secrecy, any or all of the funds appropriated by the Legislature and deposit those funds in a separate account in a bank or banks designated by the NSC with the approval of the chair who shall be the President of Liberia. The secretary shall also have the authority to set up and maintain its independent procurement and accounting system.

The accounts of the NSC shall be audited annually or as circumstances may require by an assigned auditor of the office of the General Auditing Commission.

(b): The Legislature shall make available to the NSA an annual budget sufficient to carry out their responsibilities to protect the national security of the Republic.

(c): To preserve the NSA from public disclosure of their operations, both bodies are authorize to withdraw to the extent necessary for the maintenance of secrecy its yearly appropriations through the Ministry of Finance and deposit them in its respective checking accounts in a Bank within the Republic to be designated by the President as the legal depository, it is authorized to develop and maintain its own procurement, accounting and auditing system separate from those of the general Government, its accounts shall be audited yearly or as circumstances may require by an auditor appointed by the President of Liberia.

(d): Funds made available to them may be expended for any purpose necessary to carry out its functions and may be expended without regard to the provisions of laws relating to expenditure of Government funds if essential for vital national security interests, unless specifically prohibited by other law.”

We take judicial notice of Section 11 of the NSRI Act quoted above and hold that the confidentiality provided therein is intended to benefit the NSC’s operations, not to conceal unauthorized acts falsely labeled as NSC business. This section also grants the NSC internal procurement and accounting powers, but it also subjects the NSC’s accounts to audit by the General Auditing Commission. However, nowhere does the statute says that courts can’t issue subpoena for financial records tied to alleged misuse of public money. The Act protects NSC operational secrecy, not alleged crimes by people outside the NSC acting without authorization. Assuming the act grants such immunity, we have earlier determined in this opinion that the accused are not NSC members.

Moreover, the information required by the respondent is not the petitioners' personal data; it is public records held by government agencies. Additionally, we do not see the petitioners' standing to challenge the production of those records as this Court has held in numerous cases that a mere interest in a problem, regardless of how qualified the individual or organization is, is not enough by itself to deem a person or organization adversely affected or aggrieved for the purpose of granting standing to seek judicial review. *Citizen Solidarity COUNCIL v RL*, Supreme Court Opinion, March Term A.D. 2016; *Center for Law and Human*

Rights Education et al v MCC et al., 39 LLR 32,39; *Concern Sector Youth v LISGIS et al.*, Supreme Court Opinion, March Term A.D. 2010.

From the above argument, it is clear that the petitioners are engaging in fishing expedition. They claimed that: that they acted on behalf of the NSC, asserting that NSC confidentiality prevents investigation, and on the other hand, arguing that the subpoenas violate secrecy. We reject both reasoning. You can't simply shout "national security" to conceal alleged misconduct. National security is not a cover for corruption. Therefore, the trial judge did not err in issuing ex-parte subpoenas.

We hold therefore that if the documents the court is requesting are relevant to proving the alleged crimes, no law prevents judicial access to them and therefore, the petitioners are legally barred from claiming a privacy interest in the government documents they are accused of misusing. However, given the petitioners' claims that the papers have national security implications, even though none of the subpoenaed institutions have raised such concerns, the trial court should conduct a pre-trial conference to determine whether any such national security issue is at stake, and if so, proceed in a manner to safeguard such national security interest during the proceedings.

The petitioners have also raised a subsidiary issue challenging the trial court's authority to hear this case, arguing that judicial review of national security and executive actions violates the constitutional separation of powers and is barred by the political question doctrine. In this Court's view, this argument is based on a complete misinterpretation of the separation of powers as outlined in the Constitution and the political question doctrine. Common-law jurisdictions worldwide recognize that the criminal prosecution of executive officials is justiciable, even when national security concerns arise. *United States v. North (Iran-Contra)*, 910 F. 2d 843(D.C.CIR.); *R v. Ponting (UK Official Secrets case)*, Crim LR 318 (Crown Court, Central Criminal Court, Old Bailey) 1985 The judiciary cannot be prevented from fulfilling its constitutional duty to hear a criminal case against a public official simply because the alleged crime relates to national security.

Article 3 of our Constitution establishes the separation of powers but assigns the interpretation of the Constitution and all laws including criminal adjudication specifically to the judiciary. The Executive enforces the law; the Judiciary interprets and applies it. To argue that a court cannot inquire into alleged misuse of public funds due to national security concerns would be

equivalent to undermining the entire constitutional framework of separation of powers and could open the floodgates for the siphoning of public resources.

After reviewing the petitioners' petition, the respondent's returns, the statutes, the Constitution, and the records sent to this Court, we hold that the petitioners are not members of the National Security Council under the 2011 Act, therefore, they cannot claim NSC immunity or confidentiality; we further hold, that under Article 61 of the Constitution of Liberia, presidential immunity is personal to the President and cannot be invoked by subordinates. The Court is also of the opinion that the trial judge's ex-parte subpoenas were lawful, proper, and necessary for justice; that the petitioners' request for a prohibition suffers laches and waiver in that they had earlier pleaded to the indictment and participated in the selection of jurors. Also, we hold that no separation of powers or political question doctrine prevent the courts of Liberia from investigating alleged criminal misuse of public funds.

In light of the above, and the petitioners having failed to show that the trial court exceeded its jurisdiction or abused its authority, the extraordinary remedy of prohibition will not be granted in this case.

WHEREFORE AND IN VIEW OF THE FOREGOING, the petition for the writ of prohibition is denied. The alternative writ issued is quashed, and the peremptory writ prayed for is denied. This matter is hereby remanded to the trial court to resume jurisdiction and proceed with the trial in keeping with the law. The clerk of this Court is hereby ordered to send a Mandate to the court below commanding the judge presiding therein to resume jurisdiction and proceed in keeping with the Judgment of this Opinion. IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLORS ARTHUR T. JOHNSON, M. WILKINS WRIGHT, A. NDUBUISI NWABUDIKE, G. WIEFUEH ALFRED SAYEH AND NORRIS L. TWEAH APPEARED FOR THE PETITIONERS. COUNSELLORS AUGUSTINE C. FAYIAH, SOLICITOR GENERAL OF THE REPUBLIC OF LIBERIA, JERRY D. K. GARLAWULO, JOEL ELKANNAH THEOWAY AND RICHARD J. SCOTT, JR., APPEARED FOR THE RESPONDENTS.

Petition denied.