

**AMAFRA INTERNATIONAL INC.**, Petitioner/Appellee, v. **HIS HONOR  
TIMOTHY Z. SWOPE**, Resident Circuit Judge, Eighth Judicial Circuit Court,  
Nimba County, and **TOWEH AGRICULTURAL AND FORESTRY  
CORPORATION**, Respondents/Appellants.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING  
THE WRIT OF MANDAMUS.

Heard: November 6, 1989. Decided: January 9, 1990.

1. An injunction is ancillary to a main suit and its function is to afford preventive relief.
2. Temporary injunction cannot be in force after the main suit out of which it grew is determined.
3. Where a matter is pending before the Supreme Court, the lower court loses jurisdiction.
4. Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty; and where there is no official duty to be performed, mandamus will not lie.
5. Property or properties brought under the control of a court are kept under the custody of the sheriff.

Co-respondent, Toweh Agriculture & Forest Corporation, filed a petition for proper accounting and a motion for an injunction against the petitioner, Amafra International, Inc., to enjoin the petitioner from the use of certain equipment. The action of proper accounting was heard and determined and the appellee filed a petition for a writ of error. A bond was later filed for the purpose of vacating the temporary injunction, but the temporary injunction was not vacated by the presiding judge nor by the judge who presided over the succeeding term of court. Petitioner therefore filed a petition for a writ of mandamus to compel the judge presiding to vacate the temporary injunction and to release the equipment so enjoined. The Justice in Chambers granted the mandamus and the respondents appealed to the full Bench of the Supreme Court.

On appeal, the Supreme Court held that mandamus will not lie for property or properties brought under the control of the court and kept under the custody of the sheriff and not the judge; and that the approved bond, if valid, should have been

presented to the sheriff. The Court also held that mandamus will not lie when there is a writ of error pending, growing out of the same case. Hence, the ruling of the Chambers Justice was *reversed* and the petition for a writ of mandamus was *denied*.

*David M Toweh* and *Joseph Williamson* appeared for the appellants/respondents. *Elijah Garnett* appeared for the appellee/ petitioner.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

The records before us show that on March 31, 1987, Co-respondent Toweh Agricultural & Forestry Corporation, filed a petition for proper accounting against petitioner herein, Amafra International, Inc. in the Eight Judicial Circuit Court, Nimba County, and an action for an injunction, ancillary to the main suit for the purpose of enjoining petitioner from the use of certain equipment. The action for proper accounting was heard and allegedly determined with final judgment against Amafra International, Inc. On May 1, 1987, petitioner filed a petition for a writ of error. The petition for a writ of error is still pending before this Honourable Court.

The records further reveal that Amafra International filed a bond on the 1st day of June 1989 to indemnify co-respondent from all damages it may sustain. The bond as offered is intended to vacate the temporary injunction; however, the equipment was not released by the presiding judge. Subsequently, during the succeeding term of the trial court, an application was made to the resident judge, who was now presiding over the circuit court to have the equipment released; but the application was not honored. Petitioner then filed this petition to have the resident judge order the equipment released. The Justice presiding in chambers ruled that:

". . .Mandamus, being the correct remedy under our law, petitioner most respectfully petitions this Honorable Court that the statute, having provided that failure or refusal of a judge to do any act which he is bound by law to do, the party whose interest is being affected has the statutory right to fly to the Justice in Chambers through a petition for a writ of mandamus to compel the judge to do the act he is legally compelled to do.... . . .

On the basis of these factors, we have no alternative but to grant the application of petitioner's counsel and allow him to argue his case, it being supported by the rules of this Court... In view of all that we have observed, it is our ruling that the peremptory writ is hereby granted."

It is from this ruling that respondents have appealed to this Honorable Court.

During the argument before us, and in support of respondents' brief, four (4) issues were argued. They are:

1. Can the ruling of the Chambers Justice bind and conclude the rights of Toweh Agricultural & Forestry Corporation, appellant, based upon the false return of the marshal?
2. Can a Justice whose assignment in Chambers has expired continue to exercise chambers jurisdiction concurrently with the assigned Chambers Justice?
3. Can a temporary restraining order, which is ancillary to a main suit, continue after the main suit is terminated?
4. Can a writ of mandamus lie when the remedy sought is unavailing?

On the other hand, petitioner's brief contains these issues, which were argued:

1. Whether a judge can legally review the action of his colleague?
2. Whether mandamus will lie to compel a judicial officer to do what he is legally authorized to do?

The judicial history of this Honourable Court, backed by statutory law, shows that an injunction is ancillary to a main suit. "Its function is to afford preventive relief . . ." *Johnson v. Powell*, 4 LLR 221 (1934). One cannot concede any legal soundness in the argument that by operation of law the temporary injunction would continue to be in force after the main suit, especially where petitioner/appellee admits that a petition for a writ of error is pending before this Honourable Court. It follows automatically that the injunction was non-existent. The assigned judge therefore erred when he approved the bond to vacate the injunction.

Appellee contends that the refusal of the resident judge, who was now presiding over the Ninth Judicial Circuit, to honor its application was tantamount to the review of his colleague's action. We fail to concede that because there was nothing to be overturned or reviewed, the bond was a nullity. Further, the granting of the temporary stay order on the petition for the writ of error brought the entire

proceeding to a standstill, even if the temporary injunction was pending. How then could petitioner file a bond to receive the property in question.

Lawyers should be of good repose and not deceiving. They are arms of court and should be fair to their clients.

The other issues are of no importance in deciding this petition, for the petition for the writ of error is still pending. Should we attempt to pass upon those other issues, which have been similarly raised in the error proceeding, we would be passing upon the error proceeding. We therefore leave those other issues for the error proceeding.

Reverting to whether the circumstances of this case is such as would warrant the issuance of the writ of mandamus, we take recourse to the definition of mandamus, as provided in our statute. Our statute defines mandamus in the following words:

"Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty." Civil Procedure Law, Rev. Code 1:16.21.

The resident circuit judge, who was then presiding over the trial court, it is alleged, refused to release the equipment. What was the official duty that he refused to perform? Was the assigned judge's order addressed to the resident circuit judge or to the sheriff in whose custody the equipment should have been? Do judges ordinarily and physically turn over properties? Property or properties brought under control of a court are kept under the custody of the sheriff. The approved bond, if valid, should have been presented to the sheriff. Civil Procedure Law, Revised Code 1:7.21. So there was no official duty required to be performed by the resident circuit judge, which he refused to perform, and which refusal might have formed the basis for the issuance of the writ of mandamus against him to compel him to perform.

Wherefore and in view of the foregoing, the ruling of the Chambers Justice ordering the issuance of the writ of mandamus is hereby reversed and the petition is denied. And it is hereby so ordered.

*Petition denied; ruling reversed.*