

AMINATA SHIPPING LINES, INC., Petitioner, v. **HELLENIC CRUISING
HOLIDAYS,** Respondent.

APPEAL FROM THE RULING OF THE JUSTICE IN CHAMBERS
GRANTING THE PETITION FOR A WRIT OF PROHIBITION.

Heard: July 6, 1992. Decided: September 4, 1992.

1. Article 20(a) of the Constitution of Liberia states that: "The right of appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable".
2. An appeal is defined as a complaint to a superior court of an injustice done or error committed by an inferior one, whose judgment or decision the court above is called upon to correct or reverse.
3. When an appeal is announced by either a plaintiff or defendant, such appeal serves as a stay to the execution of the judgment.
4. A writ of prohibition is the proper remedial process to restrain an inferior court from taking action in a case beyond its jurisdiction or attempting to proceed by rules different from rules which out to be observed.
5. Prohibition will not only prohibit the doing of an unlawful act but will undo what has already been done.

Libellant Aminata & Sons, Inc. brought an action for breach of contract by attachment in the Civil Law Court of the Sixth Judicial Circuit, Montserrado County. The suit was brought against Hellenic Cruising Holidays. The latter moved to dismiss the suit on grounds that it was brought against the wrong party, the ship instead of its owner. The libellee also moved to dismiss because the court papers were served by the sheriff of the Civil Law Court, Montserrado County, rather than the Marshal of the Supreme Court or his deputy, as usually done in admiralty cases.

When the motion to dismiss was called for hearing on May 30, 1992, libellant asked the judge to recuse himself since he was assigned to the June Term of Court and, therefore, had no jurisdiction over the matter. The judge refused to recuse himself, heard the motion, and dismiss on grounds that the court lacked jurisdiction over libellee for want of proper service. Libellant appealed. The appeal was granted but

the judge ruled that the appeal will not serve as a supersedeas to his final ruling dismissing the action. Therefore libellant petitioned the Chambers Justice for a writ of prohibition.

The Chambers Justice had to decide whether the judge acted outside his statutory term and whether the judge was correct in enforcing his ruling notwithstanding an appeal was announced. The Chambers Justice determined that the issue concerning whether the trial judge had jurisdiction to hear the motion to dismiss should be heard by the full bench. The full bench granted prohibition on grounds that prohibition will lie not only to prohibit the doing of an unlawful act, but will undo what has already been done. The ruling of the trial judge dismissing the action was therefore declared null and void.

Henry Reed Cooper and *Moses K Yangbe* of the Cooper & Togba Law Firm, in association with *S. Raymond Horace, Jr.*, appeared for petitioner. *Charles Walker Brumskine* of Brumskine and Associates, in association with *Joseph P. H. Findley*, appeared for the appellees.

MR. JUSTICE BULL delivered the opinion of the Court.

This case comes to us on appeal from the Chambers of our distinguished colleague, Mr. Justice Morris, who heard and passed upon a petition for a writ of prohibition filed before him by the appellee, Aminata Shipping Lines, a shipping company doing business in Liberia. According to the certified records, this matter began with the filing of an action of damages for breach of contract by attachment in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County.

The records reveal that Findley & Associates Law Firm filed an action for damages for breach of contract by attachment before the Civil Law Court for the Sixth Judicial Circuit, Montserrado, sitting in its June A. D. 1992 Term. In said action, the parties therein are Aminata Shipping Lines, designated as Libellant, and Hellenic Cruising Holidays, designated as Libellee. A ship called MV REMVI, owned by the libellee, the respondent/appellant, in these proceedings was attached.

Libellant, the petitioner/appellee, posted an indemnity bond for the attachment in the sum of L\$255,000.00 in the court below.

The libellee filed a motion to dismiss the above action because, according to libellee, (a) the wrong party was sued, that is to say, the ship, Hellenic Cruising Holidays, and

not its owner, and (b) that this action being an action in admiralty, the Marshal of the Supreme Court or his deputy should have served a munition on the party instead of the sheriff serving a summons as was done in this case; hence, the Court did not acquire jurisdiction over libellee. When the motion to dismiss was called for hearing, libellant moved His Honour Judge Zoe to recuse himself on the grounds that he was assuming jurisdiction over the June Term of the Court contrary to the statute as laid down in the judiciary law. In other words, the judge had convened the June Term on the 29th day of May, which was more than ten days before the June Term should have begun. The judge denied the motion to recuse himself proceeded to hear the motion to dismiss the action, and thereafter dismissed libellant' action on the grounds that the court lacked jurisdiction over the libellee for want of proper service of process. The libellant excepted to the ruling on the motion and the judgment dismissing the action and announced an appeal to the March A. D. 1992 Term of the Honourable Supreme Court. Judge Zoe granted the appeal but ruled that said appeal will not serve as a supersedeas to his final ruling dismissing the action. Again, libellant excepted and gave notice that libellant will file a petition for writ of prohibition to stay the execution of Judge Zoe's judgment.

For the purpose of this opinion, we shall quote below the two counts of the petition for writ of prohibition filed by the appellee:

1. "That according to sections 3.8 and 3.9, chapter 3 of the New Judiciary Law, a circuit judge may be assigned quarterly to a circuit and may assume jurisdiction only ten days immediately proceeding the opening session of the circuit. Co-respondent judge assumed jurisdiction on the 29 th day of May, A. D. 1992, and assigned disposition of a motion to dismiss of the damages suit of which these proceedings grew for May 30, 1993, contrary to the statute referred to and without jurisdiction. Counsel for petitioner called his attention to it by a motion to recuse but the co-respondent judge denied the motion, proceeded to dispose of the motion to dismiss and dismissed the suit, to which petitioner excepted and announced an appeal, which the court granted but upon the urging of respondent's counsel, the judge ordered his judgment enforced notwithstanding the appeal which he granted to which petitioner also excepted..."

2. "It is clear from count 1 that the co-respondent judge had no jurisdiction whatsoever, had not come into session, and should not have entertained the hearing of said motion as he did. prohibition would lie and prevent a judge from enforcing his judgment after an appeal has been announced therefrom and also prevent the judge from assuming jurisdiction contrary to law and legislative acts prescribing how

and by what means a judge should exercise his authority."

These two counts of the petition for writ of prohibition just quoted present the two basic issues which his Honour, Mr. Justice Morris, the Chambers Justice, was called upon to decide. These issues are:

1. Could His Honour Judge C. Alexander Zoe assume to act outside the statutory June A. D. 1992 Term of the Sixth Judicial Circuit Court to which he had been assigned; and
2. Could the Judge enforce his ruling after an appeal had been announced from said ruling by a party in the position of plaintiff?

We do not agree with our distinguished colleague that the issue that Judge Zoe lacked jurisdiction to hear and pass upon the motion to dismiss the action of damages should be decided by the full bench and not by these prohibition proceedings. A ruling on this issue is indeed the crux of this matter and would have rendered unnecessary the consideration of other issues.

When this case was called for argument, counsel for appellee informed the Court that he had filed a bill of information, which he asked the court to hear before hearing the prohibition on appeal. The court however decided to hear both the information and the appeal together. The information was first argued by both parties. The main points of the information are: (1) that although the trial judge lost jurisdiction by virtue of the appeal, he had however ordered the vessel that was attached to be turned over to its owners; (2) that informant/appellee perused the trial court's file and discovered that the trial judge's orders was erroneous as to the filing of a bond by defendant in the trial court; and (3) that these proceedings have been, and continue to be marred by complete disregard for the authority of this Court - meaning the Supreme Court. Appellee, in the prayer of the information asked this Court to order the compliance with the peremptory writ of prohibition and that the subject vessel be seized and detained at the Freeport of Monrovia pending the final disposition of the appeal, and that respondents be ordered to show cause why they should not be held in contempt of the Supreme Court.

Whilst this Court appreciates appellee's counsel concern for upholding its dignity, we cannot be persuaded by allegations, evidence of which do not clearly appear in the records before us, which on their face show contempt for this Court. With respect to the other issues in the information, we expect to resolve them in this opinion.

We come now to the prohibition. As stated above, the two issues before us are: (1) Did Judge Zoe act outside the statutory June A. D. 1992 Term of the Sixth Judicial Circuit Court to which he was assigned; and (2) whether the enforcement of the judge's ruling was automatically stayed by the appeal announced by the plaintiff. We shall consider these two issues in the reverse order.

Appeal is one of the fundamental rights guaranteed to every person under the provisions of Article 20(a) of the Constitution of the Republic of Liberia. This provision of the Constitution states that "the right of appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. The Legislature shall prescribe rules and procedures for the expeditious and inexpensive filing and hearing of an appeal". LIB. CONST., Art. 20(a) (1986). The Civil Procedure Law, Rev. Code 1:51.20, also grants to every person the right to appeal. In order to clearly appreciate the meaning and intent of the provision of the Constitution, it is necessary to define the key word, "appeal". Appeal is defined as a "complaint to a superior court of an injustice done or error committed by an inferior one, whose judgment or decision the Court above is called upon to correct or reverse. "BLACK'S LAW DICTIONARY 124 (4 th ed.)

Clearly, from this definition, when an appeal is announced, the party announcing such appeal believes that he has suffered some injustice or that the court has committed some error which is adverse to the party's interest, and which he desires to have corrected by the superior court. What purpose would an appeal serve if the judge's judgment, decision, or ruling is enforced? The obvious answer is *none whatsoever* and, moreover, the appeal provision under the Constitution would be most ineffective. The Legislature can only prescribe rules and procedure for the expeditious and inexpensive filing and hearing of an appeal. The Legislature cannot prescribe any rule or procedure which would in any manner violate Article 20(a) of the Constitution. The right to appeal is not a statutory right. It is a right mandatorily granted to every person by the Constitution and this right is inviolable.

During the argument of this matter before us, appellant's counsel, Henry Reed Cooper, stressed that "the provision of the Civil Procedure Law, section 51.20, is not *unconstitutional*. *It is not vague*. It is plain and it is clear.." He therefore asked this Court to reverse the Chambers Justice ruling and rule strictly in accordance with the *plain and simple meaning* of Rev. Code 1:51.20.

Counsel for appellee, Charles W. Brumskine, on the other hand, argued that this

Court has already construed section 51.20 of Rev. Code 1 in the case *Doe et al. v. Ash-Thompson and The Proposed Liberia Action Party et al.*, 33 LLR 251 (1985). This opinion construed section 51.20 to apply equally to defendant and plaintiff when either of them announces an appeal. The Counsellor therefore requested this Court to uphold the *Doe v. Ash-Thompson* opinion of the Court.

In his ruling on this issue, His Honour, Mr. Justice Morris, relied heavily upon the case *Doe et al. v. Ash-Thompson and The Proposed Liberia Action Party et al.*, delivered by this Court on June 21, 1985 and recorded in the opinion of the People's Supreme Court of Liberia March Term, A. D. 1985. What strikes us is the fact that prior to the enactment of Volume 1 of the Revised Code in 1973 which contains section 51.20, now under review, our 1956 Civil Procedure Law provided that an appeal shall operate as a stay of execution of the judgment appealed from. See Civil Procedure Law, 1956 Code 6: 991. Yet, the new Civil Procedure Law changed that provision of law in a manner which appears to grant this right of stay of execution to a defendant only. It was argued before us by counsel for appellant that our Constitutional Law states that words and phrases in statutes shall be read and construed in their usual accepted meaning according to the approved usage of the language. Section 51.20 mentions only *defendant* (Emphasis ours). Counsel was in fact arguing that the Legislature meant defendant only may benefit from a stay of the execution of a judgment upon announcing an appeal since it excluded plaintiff. Defendant is defined thus:

"The person against whom an action or proceeding is brought. Any natural or artificial person who is sued or who is joined with another party or parties who are sued". BALLENTINE'S LAW DICTIONARY 323 (3 1d ed.)

This definition, notwithstanding, we are convinced that appeal is a fundamental right guaranteed to every person by the Constitution which entitles him to appeal from the judgment, decree, decision or ruling of any court, or administrative board or agency, except the Supreme Court. The Constitution is the supreme law of the land and takes precedence over every, any and all statutes.

In the ruling on the prohibition matter, our distinguished colleague, His Honour Justice Morris, in deciding the issue whether a person in position of a plaintiff may benefit from a stay of the execution of the judgment upon the announcement of the appeal, the justice opined that this issue had been settled by the opinion of this Court delivered June 21, 1985 in the *Doe et al v. Ash-Thompson et al.* case, which the court reviewed.

In that opinion, the Supreme Court interpreted section 51.20 of the Civil procedure Law, Rev. Code 1, to equally apply to a defendant and a plaintiff on the basis of the general construction of statute as found in Volume 2 of Ruling Case Law, § 1 (6), pages 29-30, as follows: "Statutes giving and regulating the right of appeal are recognized as remedial in their nature, and should receive a liberal construction in furtherance of the right of appeal. In accordance with this principle, where the right of appeal or the writ of error is given in general terms by one statute, another statute dealing with the review of particular proceedings and granting the right to appeal or to a writ of error to one party, will not be deemed exclusive so as to prevent a review by the party not mentioned. For example, a statute granting the right to a writ of error to the defendant in summary proceedings and making no provision with regard to the plaintiff does not preclude the issuance of a writ of error at the instance of the plaintiff under a general statute." *Brodher v. Swirsky*, 86 Conn. 32, Atl. 104, 42 L.R.A. 654.

Section 51.20 of the Civil Procedure Law, Rev. Code 1, was passed as a general statute by the Legislature as a procedure only for the easy hearing of an appeal. This is the statute which *Doe et al. v. Judge Ash-Thompson et al.* interpreted. We are in agreement with this interpretation and hold that when an appeal is announced by either a plaintiff or defendant, such appeal serves as a stay to the execution of the judgment.

We shall now decide the issue of whether the judge assigned to preside over the June A. D. 1992 Term of the Sixth Judicial Circuit Court may exercise jurisdiction over the action of damages for breach of contract suit filed in the said June Term before its statutory term begins.

The statute which relates to this issue is section 3.8 of the Judiciary Law, Rev. Code 17: 3.8 (1), which prescribes that each circuit court shall meet in quarterly sessions and stipulates the time this meeting shall take place. The Sixth Judicial Circuit shall meet in four quarterly sessions designated as the March, June, September and December Sessions, respectively. Each of these sessions shall begin on the 3rd Monday of each of these months. Section 3.8 (2) also provides for the judge assigned to each quarterly session to preside over pre-trial chamber session which has a duration of ten days prior to the opening of the quarterly session and an additional ten days closing session following the trial session which has a duration of 42 consecutive days, exclusive of Sundays and legal holidays. New Judiciary Law, Rev. Code 17: 3.8 (1) and (2).

Judge Zoe, although assigned to preside over the June A.D. 1992 Term of the Sixth Judicial Circuit Court, convened the June Term of said court on May 29, 1992 and assigned the action for damages filed for breach of contract in the said June Term for disposition of the motion to dismiss said action, for the 30th day of May, 1992. One wonders why this judge was so anxious to take up this matter. The judge must have known that he could not sit in the June Term unless he did so 10 days prior to the opening of the term. The June Term of the Sixth Judicial Circuit Court opened on Monday, the 15th day of June, A. D. 1992. The statute permits the judge assigned to preside over the said term to hold a pre-trial Chambers Session beginning 10 days before the opening of quarterly session of the June Term of the Sixth Judicial Circuit Court. Judge Zoe violated this statute when he issued an order for assignment of this matter on May 29, 1992 to be heard on the 30th day of May, 1992. This act of the judge was unauthorized and without any legal basis, and everything he did during this period was null and void and of no legal effect.

Since we have decided that His Honour Judge Zoe had no authority to hear this case and had no jurisdiction to preside over the June A. D. 1992 Term of the Sixth Judicial Circuit Court *prior* to ten days preceding the opening session of said court, *a priori*, prohibition is the proper action instituted to allow this Court to review the unlawful and unauthorized action of the court below. As far back as 1925 in the case *Parker v. Worrell*, 2 LLR 525 (1925), the Supreme Court held that "a writ of prohibition is the proper remedial process to restrain an inferior court from taking action in a case beyond its jurisdiction or attempting to proceed by rules different from rules which ought to be observed". This principle of law has been followed throughout a number of cases heard in this jurisdiction and remains the law until this day. Further, inasmuch as the judge below attempted to proceed by rules different from those which ought to be followed and observed, prohibition will not only prohibit the doing of an unlawful act but will undo what has already been done. *Boye v. Nelson*, 27 LLR 174 (1978). It is our holding therefore that the judgment dismissing the damage suit in this case is declared null and void and that the said damage suit remains as it was when originally filed.

Wherefore, and in view of the foregoing, we affirm and confirm that portion of the Chambers Justice's ruling ordering the issuance of the peremptory writ forever restraining the enforcement of the illegal judgment of His Honour Judge C. Alexander Zoe in the action of damages for breach of contract. We declare the judgment dismissing the action for damages null and void and of no legal effect and the appellant may tender a proper bond in the court below if appellant so desires.

The Clerk of this Court is ordered to send a mandate to the court below to the effect of this judgment. Costs are ruled against appellant. And it is hereby ordered.

Judgment reversed.