

ANGELA BUTLER-ABDULLAH, thru her Attorney-In-Fact, **WALTER BAKER**, Informant, v. **HIS HONOUR J. HENRIC PEARSON**, Assigned Circuit Judge, Sixth Judicial Circuit, **COMMERCIAL FISHERIES CORPORATION**, by and thru its President, **ARTHUR S. FARHAT**, and **LAURENCE D. MEYEH et al.**, Respondents.

INFORMATION PROCEEDINGS

Heard: February 6, 1989. Decided: July 14, 1989.

1. Substantive law is the rights and duties of persons in their ordinary relations with each others, while procedural rules govern the decisional forms whereby these rules may be maintained or redressed when they have been violated or when their violation has been threatened.
2. The purpose and function of a bill of information, submission, prohibition and mandamus are separate and distinct and, therefore, one cannot serve for the other.
3. When an issue has reached the point of executing a mandate of the Supreme Court, remedial writ will not lie to obstruct such execution. However, should there occur any obstruction to the execution of the Supreme Court's mandate, the proper procedure is by way of information.
4. The court may refuse to render or enter a declaratory judgment where such judgment, if rendered, would not terminate the uncertainty or controversy giving rise to the proceeding.
5. An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court, after filing of the bill of exceptions, for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond or to serve notice of completion of appeal as required by law.
6. A final judgment is one which disposes of the case either by dismissing it before a hearing is had upon its merits or, after trial, by rendering judgment either in favor of plaintiff or defendant. An interlocutory judgment is one which determines some preliminary or subordinate point or plea or settles some step, question or default arising in the progress of a cause, but does not adjudicate the ultimate rights of the parties.
7. An appeal taken from an interlocutory judgment and before the rendition of final judgment cannot, under the statute, be entertained by the appellate court.
8. A ruling denying a motion for summary judgment is an interlocutory ruling and therefore not appealable.
9. Even though the approval and filing of the bill of exceptions ordinarily divests the trial court of jurisdiction over the matter, where the ruling or judgment against which the bill of

exceptions is filed is rescinded or modified within term time, the said bill of exceptions becomes null and void and is properly vacated by the trial judge.

The informant filed an action of replevin in the Sixth Judicial Circuit Court and to which an answer was filed. Following the filing of the answer, the informant moved the court for summary judgment. The said motion was resisted by the Co-respondent Commercial Fisheries Corporation, and was heard and denied by the court. From this denial, the movant noted exceptions and announced appeal to the Supreme Court. Subsequently, the movant submitted a bill of exceptions which was approved by the trial judge. Following the approval and filing of the bill of exceptions, the trial judge assigned the case for hearing. To prevent the trial judge from proceeding to hear the case, the informant prepared and presented to the Chambers Justice a petition for a writ of prohibition. Upon receiving the petition, the Chambers Justice held a conference with the parties and thereafter directed the Clerk of the Supreme Court to send an order to the court below not to continue with the hearing of the case since an appeal was announced and granted and a bill of exceptions had been approved and filed. Following the receipt of this order by the court below, the informant presented her appeal bond to the trial judge for approval, but the said judge refused to accept and approve the bond on the ground that he had been ordered by the Chambers Justice to stay all further proceedings in the case. The informant communicated with the Justice who had succeeded his colleague in Chambers about this refusal of the trial judge to approve the appeal bond. In response, the Chambers Justice addressed a letter to the trial judge ordering him to approve informant's appeal bond. The trial judge refused to honor this order.

Following this disobedience to the Chambers Justice's order, the informant prepared and presented to the Clerk of the Supreme Court for filing, a petition for a writ of mandamus to compel the trial judge to approve the appeal bond. The Clerk of the Supreme Court, however, refused to accept and file the petition on the ground that she had been directed by the Chambers Justice not to receive and file any such petition. Predicated upon this development, the informant filed the petition for a writ of mandamus before the Full Bench. While the petition for the writ of mandamus was pending before the Full Bench, the trial judge rescinded his ruling on the motion for summary judgment, vacated the approved bill of exceptions and ruled the case to *status quo ante*.

While this process was going on, there was a change in the assignment of judges in the Sixth Judicial Circuit from Judge Pearson to Judge Tulay, who then assigned the case for hearing. The informant filed a motion requesting Judge Tulay to refuse jurisdiction over the case. The motion was resisted, heard and denied. The informant then prepared and presented a petition for writ of prohibition which, according to him, the Clerk of the Supreme Court was ordered by the Chambers Justice not to receive and file. Prior to preparing and presenting the petition for a writ of prohibition, informant had appealed from the ruling denying the motion to refuse jurisdiction.

In passing upon the several briefs presented in arguing the bill of information, the submission, prohibition and mandamus, the Supreme Court opined that these processes could not be merged or consolidated because each had a separate, distinct purpose and function which could not serve each other. The Supreme Court also ruled that the court may refuse to render or enter a declaratory judgment where such judgment, if rendered, would not terminate the uncertainty or controversy giving rise to the proceeding. The Supreme Court further ruled that the denial of a motion for summary judgment is an interlocutory ruling, which is not appealable. Consequently, it said, a judge acts within the scope of the law if within term time he revokes his acts in granting an appeal from a declaratory or interlocutory judgment. Finally, the Supreme Court held that when an issue has reach the point of executing a mandate of the Supreme Court, no remedial process will lie to obstruct such execution. However, if the execution of the Supreme Court's mandate occasioned any obstruction, the proper procedure is by way of information. So the Supreme Court will not entertain any bill of information when it is not occasioned by a case pending before it and/or from the enforcement of its mandate. The bill of information was therefore denied.

Joseph Findley for informant. *Toye C. Bernard* for respondents.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

This case has its genesis in a replevin action filed in the lower court, Sixth Judicial Circuit, Montserrado County. Informant filed an action of replevin; and to which, respondents filed an answer. After pleading rested, informant filed a motion for summary judgment. The co-respondent judge, His Honour J. Henric Pearson, after hearing said motion for summary judgment, ruled against the informant. Informant excepted to this ruling, announced an appeal, which was granted. Informant subsequently filed a bill of exceptions, which was approved. Thereafter, the corespondent judge issued a notice of assignment for the hearing of the case. To prevent this action of the judge a petition for the writ of prohibition was prepared and taken to the Justice presiding in Chambers. The Chambers Justice held a conference with the parties and ordered the Clerk of this Honourable Court to inform the trial court not to continue with the case since an appeal was announced and a bill of exceptions had been approved.

Informant's counsel alleged that he prepared and presented to the trial judge the appeal bond for approval but the trial judge refused to approve same on the grounds that he had a stay order from the Chambers Justice to stay further proceeding in the case. Informant then communicated the state of affairs to His Honour Justice Azango, who succeeded in Chambers. Justice Azango addressed a letter to Co-respondent Judge Pearson ordering him to approve the appeal bond of the informant, but Judge Pearson refused. Informant thereafter prepared a petition for a writ of mandamus and submitted it to the Clerk of the Supreme Court for filing. The Clerk refused to file the petition on the grounds that she had

instructions from the Justice presiding in Chambers not to file any petition, except upon getting an order from him to do so. This, according to informant's counsel prompted the filing of a writ of mandamus before the Full Bench of the Supreme Court. While the petition for the writ of mandamus was pending, His Honour Judge Pearson rescinded his ruling on the motion for summary judgment and vacated the approved bill of exceptions, thereby placing the case in *status quo ante bellum*.

Judge Tulay was subsequently assigned to succeed Judge Pearson to preside over the Sixth Judicial Circuit. Judge Tulay then assigned the case for hearing, but the informant filed a motion contending that Judge Tulay did not have jurisdiction over the matter. The motion was heard and denied by Judge Tulay. To prevent Judge Tulay from going into the matter a petition for the writ of prohibition was prepared by informant. Informant's counsel alleged that he took the prepared petition to the Chambers of Justice Robert G. W. Azango who ordered the Clerk not to file same.

As a result of the foregoing, the trial judge, His Honour Tulay, heard the motion for summary judgment and denied it. Again informant's counsel excepted and announced an appeal.

Before proceeding to dispose of the issues raised in the respective briefs by informant and respondents' counsel, it is worthy to note the following. This Court has on many occasions distinguished between substantive law and procedural law. These occasions include many context and purposes. The line has been drawn at one place, sometimes another. Attempts at precision have been made, of course, in dealing with specific problems, but for the present it is enough to note the familiar principle that the rules of substantive law defines the rights and duties of persons in their ordinary relations, with each other, while procedural law governs the decisional forms whereby these rights may be maintained or redressed when they have been violated, or when their violation has been threatened.

Procedural law is a model of dispute resolution technique. It involves an appraisal by a disinterested person, the court, of the conflict situation in terms of its objectively ascertainable aspects, evidence, and resolution according to principles applicable regardless of the identity of the specific disputants. Procedure should also give all parties to a dispute the feeling that they are being fairly dealt with; and finally, procedure should yield final and lasting adjudications so that people may enjoy repose and security in their legal relationships.

Turning now to the issues raised in the respective briefs, as well as the circumstances surrounding the case, the issues which we consider pertinent for our determination are:

1. Whether the four (4) proceedings: information, submission, prohibition and mandamus can be merged into one?

2. Whether or not a judge may resume jurisdiction over matters after he has approved a bill of exceptions by rescinding his ruling and vacating the bill of exceptions?
3. Whether a declaratory judgment has the force and effect of a final judgment?
4. Whether or not an appeal can lie from said judgment?
5. Whether or not a judge having rescinded his ruling and vacated the bill of exceptions a subsequent judge can entertain the matter?

Whether the four (4) proceedings: information, submission, prohibition and mandamus can be merged into one?

Never before in our legal history have the four (4) proceedings information, submission, prohibition and mandamus been merged into one. The purpose and functioning of each is separate and distinct; and hence, one cannot serve for the other. This is crystal clear from Section 16.21 of the Civil Procedure Law, Rev. Code 1, which states the purpose of two of these writs or proceedings, as follows.

Mandamus:

"Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty."

Prohibition:

"Prohibition is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein."

Turning to the bill of information, this Court has on numerous occasions said that when an issue has reached a point of executing a mandate of the Supreme Court, a remedial writ is out of the question. If anything goes wrong at that stage, it is the duty of the party who feels that he is being wronged in some way to bring an action of wrong against whoever is committing the wrong to the attention of the Court *en banc*. From time in memorial it has been the practice to come by bill of information to this Court. *Kromah v. Pearson et al.*, 34 LLR 304 (1986); *Liberian Aggregate Corporation v. Taylor*, 35 LLR 3 (1988). But this is not the situation in this case. No mandate of the Supreme Court is being executed. Likewise, there is nothing pending before this Court or has emanated from this Court to encourage the entertaining of a bill of information, or a submission, or a merger of all the remedial processes. We therefore proceed to the disposition of the other issues.

Whether or not a judge may resume jurisdiction over matters after he has approved a bill of exceptions by rescinding his ruling and vacating the bill of exceptions?

Whether a ruling denying a motion for summary judgment has the force and effect of final judgment?

The very first thing to be considered is whether the judgment rendered by His Honour J. Henrique Pearson was interlocutory or whether it was a final judgment, from which an appeal would lie. Counsel for informants strongly contends that the judgment of His Honour J. Henrique Pearson was a judgment from which an appeal would lie and in support of this contention, he relied on Section 43.7 of the Civil Procedure Law. This law provides that: "All judgments under this chapter may be reviewed in the same way as other judgments." But this provision of law governs ruling on declaratory judgment proceeding and not ruling on summary judgment proceeding, as in the instant case. More than this, even for a declaratory judgment proceeding, Section 43.5 of the Civil Procedure Law provides that: "The court may refuse to render or enter a declaratory judgment where such judgment, if rendered, would not terminate the uncertainty or controversy giving rise to the proceedings."

Informant further cited the Civil Procedure Law, Rev. Code 1: 51.16, which states:

"An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of the completion of the appeal as required by statute."

Based on this latest citation of law, informant contended that Judge Pearson's action was tantamount to the dismissal of the appeal after filing of the approved bill of exceptions, and hence illegal.

We refuse to uphold this argument of counsel for informant. In so doing, we will define what is a final judgment and what is an interlocutory judgment. The law distinguishing the two judgments reads, as follows:

"A final judgment is one which disposes of the case, either by dismissing it before a hearing is had upon its merits or after trial, by rendering judgment either in favour of plaintiff or defendant. An interlocutory judgment is one which determines some preliminary or subordinate point or plea or settles some step, question, or default arising in the progress of a cause, but does not adjudicate the ultimate rights of the parties." *Halaby v. Farhart*, 7 LLR 124 (1940), text at 125.

Informant motioned the trial court to declare their rights to the vessel. Judge Pearson denied the motion and granted an appeal and subsequently approved the bill of exceptions. Having reconsidered that "the court may refuse to render or enter a declaratory judgment where such judgment, if rendered, would not terminate the uncertainty or controversy giving rise to the proceeding" as provided by the Civil Procedure Law, Rev. Code 1: 43.5, he rescinded his decision and vacated the bill of exceptions. The law reserves the power and authority to a

judge to rescind or modify his ruling or judgment within term time upon notice to all parties. *Raymond International (Liberia) Ltd. v. Dennis et al.*, 25 LLR 131 (1976). Since Judge Pearson exercised this power and authority timely and properly, the bill of exceptions, which is against the rescinded ruling, became null and void, and it was therefore properly vacated by Judge Pearson.

We fail to see Judge Pearson's claim that he was misled by informant's counsel to approve the bill of exceptions. Nowhere in the records have we seen that the counsel was held in contempt concerning his action as alleged by the judge. The only thing he did with the case was re-docketing it as of its filing date.

The next issue is whether or not an appeal can lie from the judgment of Judge Pearson?

An interlocutory judgment or a declaratory judgment which would not terminate the uncertainty or controversy giving rise to the proceedings is one that does not put finality to the case. It is not appealable. This Court has held that an appeal taken from an interlocutory judgment and before the rendition of final judgment cannot, under the statute, be entertained by the appellate court. Even if the formalities for the appeal were completed, the appeal would not be entertain by the Court. *Minus v. Crayton*, 1 LLR 73 (1874).

The next issue is whether or not a judge having rescinded his ruling and vacated the bill of exceptions a subsequent judge can entertain the matter?

A ruling denying a motion for summary judgment, being interlocutory, no appeal should have been granted and the corespondent judge, His Honour J. Henrique Pearson, having realized his error corrected same timely. Therefore, Judge Tulay, who had now taken jurisdiction over that circuit, was right when he assigned the case for hearing since the case had been returned to *status quo ante helium* by Co-respondent Judge Pearson. Judge Tulay had every right to hear said motion for summary judgment and to rule accordingly. Our law, as well as Black's Law Dictionary 1264 (5THed.), define *status quo ante helium* thus: " . . .The state of things before the war." That is, status of the case before the motion was heard.

Under these circumstances, informant's contentions are unfounded, baseless and unwarranted; hence cannot be upheld by this Court.

In view of what we have narrated and the law cited, it is our considered opinion that the information be and same is hereby denied. Costs to abide the final determination of the case. And it is hereby so ordered.

Information denied.