

CITIBANK, N.A., through its Vice President, LEONARD A. MAESTRE, Appellant, v. **JOS HANSON & SOEHNE (LIBERIA) LTD.**, through its Managers, E. AYOMANOR and B. SILLA, Appellee.

APPEAL FROM THE DEBT COURT FOR MONTSERRADO COUNTY.

Heard: April 10, 1989. Decided: July 14, 1989.

1. A judge cannot review the ruling, order or judgment of another judge of concurrent jurisdiction.
2. Where a judge recuses himself from the trial of a case, the rulings and orders made by him prior to his recusal are not affected by said recusal except when the recusal goes to the credibility of such rulings and, order and such issue is specifically raised before the succeeding judge.
3. A counter-award shall not be ordered or granted by a judge where the responsive pleading made no demand for such counter-award.
4. Courts shall not do for party litigants what they should do for themselves.

In an action of debt filed by Citibank, N. A., plaintiff/ appellant, against Jos Hanson & Soehne (Liberia) Ltd., defendant/ appellee, the debt court judge recused herself after disposing of the law issues. The recusal was based upon the request of the appellee. The succeeding *ad hoc* judge not only set aside the previous judge's ruling on the law issues, but after a full hearing also rendered a final judgment denying the prayer of the appellant and awarded a counter-award that was not demanded for in the answer.

On appeal, the Supreme Court reversed the trial court's judgment and held that the successor judge committed a reversible error when he set aside the ruling of the previous judge on law issues and substituted in its place his own ruling. The Supreme Court also ruled that the successor judge committed a further reversible error when he awarded a counter-award to the appellee who had made no demand for such counter-award in its responsive pleading.

H. Varney G. Sherman appeared for the appellant. *Alfred B. Flomo* appeared for appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

Appellant, Citibank, sued appellee, Jos Hansen & Soehne (Liberia) Ltd. in 1986 in an action of debt by attachment in the Debt Court for Montserrat County before Her Honour C. Aimesa Reeves. Appellee filed an answer admitting its indebtedness to the appellant, but contended that certain amounts collected on behalf of the former had not been credited to its account and that when those amounts were credited, it would be the appellant who would be found to be owing the appellee. Her Honour Judge Reeves disposed of the law issues on July 31, 1986, and on August 11, 1986, the case was assigned for hearing on the merits.

Immediately thereafter, counsel for the appellee filed a motion requesting Judge Reeves to recuse herself, which motion was heard and granted. Whereupon, the Chief Justice assigned His Honour II. Soe Bailey, Judge of the Monthly & Probate Court for Montserrat County, to hear the case on its merits. Judge Bailey proceeded to hear the case, starting with the disposition of the law issues even though same had been earlier disposed of by Judge Reeves before her recusal.

Neither Judge Bailey nor counsel for the parties gave credence to the disposition of the law issues made by Judge Reeves; instead, they ignored it. Thus, Judge Bailey again heard arguments and ruled on the law issues, dismissing all the counts in the appellant's complaint, except for count eight (8) which dealt with the repeated demands of appellant for payment of the debt by appellee and the appellee's failure to comply with the demands. Judge Bailey maintained that he was competent to dispose of the law issues despite the fact that Judge Reeves had heard same, since the recusancy of Judge Reeves obviously meant that her prior ruling was biased also, and should therefore be stricken by him to allow fair play for both sides to the controversy. Judge Bailey, in disposing of the law issues, dismissed the main issues concerning the obligations for the indebtedness; and notwithstanding, he ruled the cause to trial on its merits.

Counsel for appellant then filed a bill of information before Judge Bailey praying him to rescind his ruling on the law issues because Judge Reeves had heard same before recusing herself; and that the case should be tried based on the earlier ruling on law issues by Judge Reeves. The information was denied by Judge Bailey and he held appellant's counsel in contempt of court for filing the said information.

Arguments were entertained on both sides and at the conclusion of the evidence Judge Bailey ruled denying the claims of the appellant, and holding instead that appellant was indebted to the appellee in the sum of \$72,362.62, being the amount in excess of monies allegedly received by appellant over and above the payments made to it on behalf of appellee, but which were never credited to appellee's accounts. He also ruled that the interest payments originally charged were usurious and therefore denied same although the issue was never raised before him for determination. The judge held that the interest was now limited to 10%. Appellant excepted to the said ruling and announced an appeal to this Court for our review.

From the briefs before us and arguments from counsels, there are two major contentions on this appeal and they center around the striking off of Judge Reeves' ruling made on the law issues before she recused herself from trying the facts, even though no objections were made to the said ruling; and secondly, whether or not the lower court could pass on and award payments to appellee even though no such award was demanded by appellee in its answer.

We will start with the first issue, which is whether or not the recusancy of a judge means that rulings previously made by him/ her before the said recusancy and without any objections at that time from the parties to the conflict, can be stricken by the successor judge and a new ruling made in its place? We answer the said issue in the negative. The fact that a judge recuses himself or herself gives no right to the ad hoc judge to strike out the previous rulings made by his predecessor on the same matter and rendered before the recusancy, even if the latter ruling was without objections from either side to the conflict. Such an act in effect amounts to a review by the judge of the ruling of another judge of concurrent jurisdiction, which is forbidden by law. *Kaiyolu v. Corneh*, 18 LLR 369 (1968). This Court has held on several occasions in the past that judges of courts of concurrent jurisdiction have no power to vacate or set aside a judgment rendered by another which is not void on its face. *Francis v. The Mesurado Fishing Company, Ltd.* (1971), 20 LLR 542 (1971). This Court has also held that a judge's ruling which reverses the ruling of a colleague of concurrent jurisdiction is void *ab initio*, as he has no power to do so. *Kaba et al. v. Karneh et al.*, 24 LLR 436 (1975).

The principle that a judge may not review or modify or rescind any decision of a judge of concurrent jurisdiction is ignored only in situations in which the issue decided by the second judge was not previously passed upon by his colleague. *Wright v. Reeves*, 26 LLR 38 (1977).

From the foregoing, we hold that the act of Judge Bailey in setting aside the previous ruling of Judge Reeves on the law issues in this case amounted to a reversible error.

Finally, we will now consider whether or not the judgment dismissing the appellant's complaint and awarding appellee payment of a sum allegedly owed it by appellant but which counter claim was not demanded or pleaded in the answer is a competent judgment which can be sustained by this Court.

We are of the opinion and we maintain that the trial judge was again in error in making a counter-award to defendant when the same was never demanded or pleaded in the answer and to thereupon further proceed to dismiss the main cause of action of the appellant. We have authority to the effect that the court cannot do for parties what they should do for themselves. Furthermore, this Court has ruled on several occasions that issues not raised by the parties on their own initiative cannot be raised and ruled upon for them by the court on its own initiative. *Shabean v. Compagnie Francaise de l'Afrique Occidentale*, 13 LLR 278 (1958).

Therefore, the award made by Judge Bailey to the appellee is hereby overruled, the entire judgment reversed, and the cause remanded to the lower court to resume jurisdiction over the case and commence the hearing of the facts of the matter, based upon the earlier disposition of law issues made by Her Honour C. Aimesa Reeves. Costs to abide final determination. And it is hereby so ordered.

Judgment reversed; case remanded.