

**REPUBLIC OF LIBERIA**, thru the Ministry of Justice, thru HAIDER FISHING CORPORATION, Petitioner, v. **HIS HONOUR C. ALEXANDER B. ZOE**, Assigned Judge, and **SALAMI N. HAIDER et al.**, Respondents.

PETITION FOR A WRIT OF PROHIBITION TO THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT, CRIMINAL COURT "C", MONTSERRADO COUNTY..

Decided November 4, 1994.

1. Prohibition is directed against a tribunal rather than the party to the parent case.
2. In prohibition proceedings, the acts complained of are directly the acts of the court and not the party to the parent case; hence the judge should file returns to the petition or urge the lawyer of the party in interest to file returns to defend the court.
3. The counsel for respondent in prohibition proceedings, whether or not he is urged by the respondent judge to file returns, is duty bound to do so in defence of the action for which he has been retained and paid.
4. The prosecuting attorney may by leave of court file a dismissal of an indictment or complaint or of a count contained therein as to either all or some of the defendants. The prosecution shall thereupon terminate to the extent indicated in the dismissal. Criminal Procedure Law, Rev. Code 2:18.
5. Where an indictment is returned by the grand jury to the court and filed to form part of the records of the court, the dismissal of the indictment cannot be done without leave of court.
6. Where the dismissal of an indictment is done without leave of court, the respondent judge may hold prosecution in contempt.
7. The assets of a corporation do not form part of decedent estate. Where the majority shareholder of a corporation dies, any property of the corporation must come under the custody and control of the remaining shareholder.

The Ministry of Justice and Haider Fishing Corporation are the petitioners in this prohibition proceeding, filed against His Honour C. Alexander B. Zoe, Assigned Circuit Judge of Criminal Court "C", Montserrado County. The petitioners following

the return of an indictment to the court, filed a notice of dismissal of the said indictment without leave of court, and released the vessel and the coldroom, which was in their possession as fruit of the crime, to the Haider Fishing Company, co-petitioner, the rightful owners without court orders. Defendant in the theft case, Nadia Haider thereupon filed a bill of information before the co-respondent judge praying the court to have the said vessel impounded and to hold the petitioners in contempt for releasing the vessel to the fishing company without court orders. The co-respondent judge heard the information, and in ruling thereupon, adjudged the petitioners guilty of contempt, and ordered the vessel and the coldroom released to the informants, defendants in the theft of property action for which prosecution had filed a dismissal. Petitioners excepted to this ruling and applied to the Chambers Justice for a writ of prohibition, contending among other things that the respondent judge exceeded his jurisdiction and proceeded by wrong rule when he ordered the fishing vessel and the coldroom, properties of the Haider Fishing Company, turned over to the informant, Salami N. Haider who in his prayer in the bill of information did not even pray for the vessel to be turned over to him.

The Supreme Court upon review of the records, opined that where the indictment has been returned to the court, it cannot be dismissed without leave of court, and where as in the instant case, the indictment is dismissed without leave of court, the trial judge may hold prosecution in contempt. The Supreme Court also held that the respondent Judge exceeded his jurisdiction and proceeded by rule contrary to those which ought to be observed at all times when in ruling on the contempt proceedings, ordered the vessel and the coldroom retrieved and turned over to Mr. Salami Haider. As to the question of who is the proper party entitled to the possession of the fishing vessel and the coldroom, until the question of their ownership is judicially determined, or until it shall be amicably resolved out of Court, the Court held that the remaining shareholders of the Haider Fishing Corporation should have custody and control, and that the assets of a corporation cannot form part of the decedent estate.

Accordingly, the Chambers Justice granted the petition and ordered the peremptory writ of prohibition issued commanding the Judge therein presiding to resume jurisdiction and immediately retrieve the fishing vessel and the coldroom and turn them over to the possession of the Haider Fishing Company through its Vice President, Naider N. Haider.

Appearances not indicated.

MR. JUSTICE SMITH, presiding in Chambers.

The Ministry of Justice and Haider Fishing Corporation are the petitioners in this prohibition proceeding, filed against His Honour C. Alexander B. Zoe, Assigned Circuit Judge of Criminal Court "C", Montserrado County. The petitioners alleged that the respondent judge, after the fishing boat which was the fruit of crime in the possession of the prosecution, was released to the rightful owners, the Haider Fishing Corporation, following the filing of a dismissal with reservation, of the indictment found by the grand jurors against the defendant in the Theft of Property case, the co-respondent judge cited petitioners in contempt proceedings for releasing said vessel without court's order, and adjudged them guilty of contempt; imposed fine on Counsellor David D. Gbala, Deputy Minister for Legal Affairs, Ministry of Justice, and ordered Counsellor Roger K. Martin who assisted the prosecution, and Naider N. Haider, Vice President of the Haider Fishing Corporation alleged owner of the vessel, to whom said vessel was released, to go to jail. The contempt proceeding grows out of a bill of information filed by the defendant in a theft of property case, for which the indictment was dismissed. The information prayed the court to have said vessel impounded and to hold the petitioners in contempt for releasing the vessel to the fishing company. The petitioner alleged that during the argument, in the information proceeding for contempt, the respondent judge seized from petitioners all their files and books as well as the personal properties of Counsellor Roger K. Martin who was assisting the petitioner in the contempt proceeding. That up to the filing of this proceeding, the respondent judge is still holding on to the properties and in addition has impounded and released to the Informant the fishing vessel of the Company of which one of the petitioners, Naider N. Haider is Vice President.

That the respondent judge proceeded by wrong rule when he ordered the said fishing vessel, properties of the Company, turned over to the informant, Salami N. Haider who in his prayer in the bill of information did not even pray for the vessel to be turned over to him; and by so doing, the respondent judge has exceeded his jurisdiction by adopting a rule contrary to those which ought to be observed at all times. Hence, prohibition will lie against him. These are succinctly the averments of the petition.

Mr. Justice Hne who presided in the Chambers of this Court in its March Term, A. D. 1994, sent a stay order to the court below on the 2nd day of September, 1994 followed by the issuance of the alternative writ of prohibition on the 21st day of September, 1994, commanding the respondents to file their returns on or before the 1st day of October, 1994. Regrettably, when the case was called for argument on October 12, 1994, there was no returns on the file either from corespondent Salami

N. Haider or from the respondent judge himself. It should be noted here that prohibition is directed against a tribunal rather than the party to the a parent case. *Dweb v. Findley*, 15 LLR 638 (1964). This is so because the acts complained of are directly the acts of the court and not the party to the parent case, and therefore reason dictates that the judge file returns to the petition or urge the lawyer of the party in interest to file returns to defend the court. However, counsel for respondent, whether or not he is urged by the respondent judge to file returns, is duty bound to do so in defence of the action for which he has been retained and paid. This was not done in this case. The court cited the counsel for the parties in interest in a contempt proceeding but was purged of contempt and by leave of court, had filed said returns.

The 19-count returns filed by the respondents contained some legal issues praying for the dismissal of the petition; but in our opinion, and in the interest of justice, we shall only consider the pertinent issues in the determination of the controversy. They are as follows

- (1) Whether the dismissal of the indictment in the theft of property charge was made by leave of Court,
- (2) Whether the respondent judge in all of his acts in the proceeding proceeded by any rule contrary to those which ought to be observed at all times or exceeded his jurisdiction;
- (3) In whose possession was the vessel and cold room when the indictment was found;
- (4) In whose possession was the fruit of crime before the dismissal of the indictment and before respondent judge awarded their possession to the informant, Salami N. Haider et. al. against whom the indictment was found; and
- (5) Who is the proper party entitled to the possession of the fishing vessel, *Kathy Lynn* and the cold room until the question of their ownership has been judicially resolved, or shall be amicably resolved out of court.

During argument, it was brought out to the notice of the court that the real parties tussling over the fishing vessel are brother and sister by "pa" and "ma". These are questions the court sees fit to address in the interest of justice, rather than the legal issues raised which might not resolve the issues.

As to the first question, that is, whether the dismissal of the indictment was by leave of court, we must consult the statute on dismissal of indictment by the prosecution. The prosecuting attorney may by leave of court file a dismissal of an indictment or complaint or of a count contained therein as to either all or some of the defendants. The prosecution shall thereupon terminate to the extent indicated in the dismissal. Criminal Procedure Law, Rev. Code 2:18.1. It does not appear that the dismissal of the indictment with reservation was by leave of court. Although the court to which an indictment is returned by the grand jury cannot object to the dismissal, but as the indictment was returned to the court and filed to form part of the records of the court, the dismissal of the indictment cannot be done without leave of court so that the judge presiding can make the proper record to strike the case from the docket. This must be done at the hearing of the notice of dismissal. At that stage, if the defendant was in detention pending trial, he will be discharged by court, or where the defendant was at large under bond, only his bond shall be ordered returned to him, and the prosecution at that stage will terminate. The dismissal not having been done by leave of court, the respondent judge was in place to have held the prosecution in contempt, and this act of the judge in holding the parties in contempt did not exceed his jurisdiction nor was it contrary to the rules which ought to be observed at all times; hence, prohibition will not lie on that point.

Coming to the second question as to whether or not the respondent judge exceeded his jurisdiction or proceeded by rules which ought to be observed at all times, the court observes that the notice of dismissal went further to inform the trial Court that the subject of the indictment had been released to the Haider Fishing Company in keeping with the opinion of the Supreme Court delivered on February 18, 1994, during its October Term, 1993. This brings us to the point of considering the question as to whose possession were the fishing vessel and cold room when the indictment was found, and to peruse the opinion of the Supreme Court which is alleged to have ordered the vessel and the cold room turned over to the Haider Fishing Company.

Recourse to the opinion of the Court referred to, we discovered that the Court concluded as follows:

"In view of the foregoing, the original action; interference with intestate estate in Liberia, being the wrong form of action to be brought against a Corporation and brought in the wrong forum, since the assets of the Corporation do not form any part of decedent estate, the action brought before the Monthly and Probate Court of Montserrado County is ordered dismissed and the Judge of the said Court is ordered

to immediately release the fishing vessel and open the coldroom. She is not to accept any bond from any of the parties to the action. The Shareholders of the Corporation are not barred from instituting the correct form of action before a Court of competent jurisdiction in order to protect their respective rights, if any. The Clerk of this Court is instructed to send a mandate to the Court below ordering the Judge thereof to give effect to this opinion. Costs disallowed. AND IT IS HEREBY ORDERED."

This was the judgment of the Supreme Court, February 18, 1994, and there is no indication as to whom the vessel or coldroom were ordered to be turned over. The question arising out of this movement is how did the probate court execute the Supreme Court mandate? The court was ordered to immediately release the fishing vessel, open the coldroom, and not to accept any bond from any of the parties. What then became of the vessel released? The status of the fishing vessel and the coldroom which we assume to be the property of Haider Company, should have been shown by the records. However, there must have been a new development, when on the 22nd day of July, 1994, the Clerk of this Court under the direction of Mr. Justice Hne who was presiding in Chambers of this Court, March 1994 Term, wrote Her Honour Frances Johnson-Mothes resident Judge, Criminal Assizes "C", that the Stay Order of July 11, was revoked, and the impounding of the vessel was endorsed while the indictment was being looked into. The instruction to Judge Morris came in a wake of her orders to turn over the vessel Salami Haider and the Ministry of Justice impounding the fishing vessel on the ground that the vessel was the fruit of crime (FOC) on which the State had to prosecute the theft of property case. The Chamber Justice therefore endorsed the impounding of the vessel while the Indictment was being looked into. And therefore, the fishing vessel and the coldroom were not in the custody of the Court when the respondent judge came into jurisdiction in the Criminal Court "C". The respondent judge therefore exceeded his jurisdiction and proceeded by rule contrary to those which ought to be observed at all times when, in ruling on the contempt proceeding, ordered the vessel and the coldroom retrieved and turned over to Mr. Salami Haider, in which case prohibition will lie especially where an appeal was announced and denied by the respondent Judge despite the order of Mr. Justice Hne dated September 2, 1994 to stay the enforcement of his judgment since an appeal was announced. Questions 2, 3, and 4 have therefore been answered.

As to question 5, who is the proper party entitled to the possession of the fishing vessel *Kathy Lynn* and the coldroom, until the question of their ownership is judicially determined, or until it shall be amicably resolved out of Court, it is important to

know who are the owners and officers of the Haider Fishing Company, in order to answer this question. From the records before us, the two (2) parties tussling over the fishing boat and the coldroom are said to be brother and sister by "Ma and Pa". It is alleged and not denied that Naider N. Haider is Vice President of the Board of Directors of the Haider Fishing Company and a 36% shareholder in the company. One Maryann Hutchinson owns 15% shares in the company and the balance 49% shares was owned by Nazem Wadih Haider, the father of the two (2) contending parties, Salami Haider and Nadia N. Haider.

It is therefore reasonable to conclude that after the death of the majority shareholder in the corporation, the other two (2) members who are alive are owners of the company and hence any property of the corporation must be under their custody and control. However, respondents filed with their returns an exhibit marked R/1. This exhibit contains a bill of sale for the vessel *Kathy Lynn* and other attachments which show that the vessel and other items were bought by Nazem W. Haider, the deceased who was 49% shareholder in the Company. While it is true that the bill of sale does not indicate that it was bought by the Haider Fishing Company as argued by counsel for respondent, yet the boat certificate of registry from the Ministry of Finance, Bureau of Maritime Affairs, bearing number 39593, proferted by the respondents shows that the owner of the boat was Nazem W. Haider for use of the N. W. Haider Fishing Company to render fishing service. It must therefore be concluded that the boat was bought by the said Nazem W. Haider for the use of the company of which he was the President of the Board of Directors and majority shareholder, and his daughter Nadia Haider, as Vice President of the Board of Directors and a holder of 36% share in the company. If there be any disagreement or confusion or dispute over the ownership of the fishing vessel and other properties of the company, the Haider Fishing Company is entitled to the custody, possession and use of any such properties until the contrary is proven, and not Salami Haider to whom the respondent Judge delivered possession in defiance of the order of Mr. Justice Hne, when indeed and in truth, the said Salami Haider is neither a member of the Board of Directors and/or a shareholder in the fishing company. As held by this court in its October Term Opinion delivered February 18, 1994, the assets of a corporation do not form part of decedent estate. The Haider Fishing Company, represented by its Board of Directors is the proper party entitled to the possession of the fishing vessel and the coldroom, and prohibition will lie against the respondent judge to undo what was illegally done by going further in his contempt proceeding to dispossess the rightful owners, the Fishing Company of the vessel and coldroom and to give their possession to a stranger. *Ayad v. Dennis*, 23LLR 165(1974) ).

WHEREFORE, and in view of all that we have narrated herein above and the controlling law, the petition is hereby granted, and a peremptory writ of prohibition is hereby issued. The Clerk of this Court is hereby ordered to send a Mandate down to the Court below commanding the Judge therein presiding to resume jurisdiction and immediately retrieve the fishing vessel and the coldroom and turn them over to the possession of the Haider Fishing Company through its Vice President, Naider N. Haider. Costs are disallowed. And it is hereby so ordered.

*Petition granted.*