

**IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS OCTOBER TERM, A.D. 2020.**

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SRCHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIEASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE..... ASSOCIATE JUSTICE
BEFORE HER HONOR: YUSSIE D. KABAASSOCIATE JUSTICE

Dunbar & Dunbar Law Offices, represented by and)
thru its President and Managing Attorney, Cllr. Stephen)
B. Dunbar, Jr. and all authorized officers acting under its)
authority, City of Monrovia, Liberia.....1st Appellant)

And)

Cllr. Stephen R. Dunbar, Jr., Mamba Point, Monrovia,)
Republic of Liberia.....2nd Appellants)

Versus)

APPEAL

International Bank (Liberia) Limited, represented by its)
General Manager, Mr. Joseph Amin and Chief Executive)
Officer, Mr. Henry Saamoi, all of the City of Monrovia,)
Republic of Liberia.....Appellee)

GROWING OUT OF THE CASE:)

Dunbar & Dunbar Law Offices, represented by and)
thru its President and Managing Attorney, Cllr. Stephen)
B. Dunbar, Jr. and all authorized officers acting under its)
authority, City of Monrovia, Liberia.....1st Petitioner)

And)

Cllr. Stephen R. Dunbar, Jr., Mamba Point, Monrovia,)
Republic of Liberia.....2nd Petitioner)

Versus)

PETITION FOR THE
WRIT OF CERTIORARI

International Bank (Liberia) Limited, represented by its)
General Manager, Mr. Joseph Amin and Chief Executive)
Officer, Mr. Henry Saamoi, all of the City of Monrovia,)
Republic of Liberia.....Respondent)

GROWING OUT OF THE CASE:)

Dunbar & Dunbar Law Offices, represented by and)
thru its President and Managing Attorney, Cllr. Stephen)
B. Dunbar, Jr. and all authorized officers acting under its)
authority, City of Monrovia, Liberia.....1st Petitioner)

And)

Cllr. Stephen R. Dunbar, Jr., Mamba Point, Monrovia)
Republic of Liberia.....2nd Petitioner)

Versus)

PETITION FOR
JUDICIAL REVIEW

International Bank (Liberia) Limited, represented by its)
General Manager, Mr. Joseph Amin and Chief Executive)
Officer, Mr. Henry Saamoi, all of the City of Monrovia,)
Republic of Liberia.....Respondent)

GROWING OUT OF THE CASE:)

Dunbar & Dunbar Law Offices, represented by and)
thru its President and Managing Attorney, Cllr. Stephen)
B. Dunbar, Jr. and all authorized officers acting under its)
authority, City of Monrovia, Liberia.....1st Movant)

And)

Cllr. Stephen R. Dunbar, Jr., Mamba Point, Monrovia,)
Republic of Liberia.....2nd Movant)

Versus)

MOTION TO DISMISS
APPEAL

International Bank (Liberia) Limited, represented by its)
General Manager, Mr. Joseph Amin and Chief Executive)
Officer, Mr. Henry Saamoi, all of the City of Monrovia,)
Republic of Liberia.....Respondent)

GROWING OUT OF THE CASE:)

Dunbar & Dunbar Law Offices, represented by and)
thru its President and Managing Attorney, Cllr. Stephen)
B. Dunbar, Jr. and all authorized officers acting under its)
authority, City of Monrovia, Liberia.....1st Movant)

And)

Cllr. Stephen R. Dunbar, Jr., Mamba Point, Monrovia,)
Republic of Liberia.....2nd Movant)

Versus)

MOTION FOR
ENLARGEMENT
OF TIME

International Bank (Liberia) Limited, represented by its)
General Manager, Mr. Joseph Amin and Chief Executive)
Officer, Mr. Henry Saamoi, all of the City of Monrovia,)
Republic of Liberia.....Respondent)

GROWING OUT OF THE CASE:)

International Bank (Liberia) Limited, represented by its)
General Manager, Mr. Joseph Amin and Chief Executive)
Officer, Mr. Henry Saamoi, all of the City of Monrovia,)

| | |
|--|------------------|
| Republic of Liberia.....Plaintiff |) |
| |) |
| Versus |) |
| |) |
| Dunbar & Dunbar Law Offices, represented by and thru |) |
| its President and Managing Attorney, Cllr. Stephen |) |
| B. Dunbar, Jr. and all authorized officers acting under its) |) |
| authority, City of Monrovia, Liberia.....1 st Defendant |) |
| |) ACTION OF DEBT |
| And |) |
| |) |
| Cllr. Stephen R. Dunbar, Jr., Mamba Point, Monrovia, |) |
| Republic of Liberia.....2 nd Defendant |) |

HEARD: July 22, 2020

DECIDED: February 8, 2021

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

These certiorari proceedings are before us on appeal from the Ruling of our distinguished Colleague, Mr. Justice Yussif D. Kaba, the Justice presiding in Chambers during the March A.D. 2019 Term of this Honorable Court.

The certified records reveal that on September 20, 2018, the Chief Judge of the Commercial Court, Her Honor Judge Eva Mappy Morgan entered a final judgment against the Dunbar & Dunbar Law Offices and Counsellor Stephen B. Dunbar, the appellants, holding them liable in an action of debt to the International Bank (Liberia) Limited, the appellee, for the amount of US\$584,748.98 (Five Hundred Eighty Four Thousand Seven Hundred Forty Eight United States Dollars Ninety Eight Cents).

The appellants noted exceptions to the trial court’s judgment, announced an appeal to the Supreme Court and filed their bill of exceptions within the 10 days period provided by law. On November 22, 2018, the appellants proffered an insurance appeal bond to Judge Eva Mappy Morgan for approval but the judge did not approve the bond but mandated that the appellants instead make a deposit of the judgment amount, US\$584,748.98 (Five Hundred Eighty Four Thousand Seven Hundred Forty Eight United States Dollars Ninety Eight Cents) into an escrow account designated by the Commercial Court pursuant to Article IV (2) and (3) of the Act establishing the Commercial Court. This provision of the Act which speaks to the procedure in perfecting an appeal from a judgment of the Commercial Court to the Supreme Court provides thus:

“An appeal from a judgment of the Commercial Court shall not serve as a stay on enforcement of the judgment, provided that the amount of the judgment paid shall be placed in an interest-bearing account with a commercial bank designated by the Commercial Court pending disposition of the appeal. Payment of the full amount shall be a condition precedent for the completion of an appeal from a judgment of the Commercial Court, **but the appeal bond which may be required of the appellants, shall be exclusive of the amount of the judgment paid.**” [Our Emphasis]

We have emphasized the portion of the above Act referring to the appeal bond before the Commercial Court in order to pass upon same. The requirement for the depositing of the judgment amount into an escrow account in a commercial bank is mandatory, while the filing and approval of an appeal bond in the Commercial Court is discretionary that can only be exercised in the event the court so mandates. On this issue, the Supreme Court has espoused thus:

“...the wording of the Commercial Court statute regarding the payment of the judgment amount is mandatory while the requirement of the appeal bond is discretionary. However although the filing of an appeal bond is discretionary with regards to the Commercial Court, we must quickly state here that where said discretion is applicable, the requirement for filing of the bond shall only be for the purpose of satisfying the cost of court and not for the satisfaction of the judgment amount or to indemnify the successful party.” *Pioneer Construction v. Morgan*, Supreme Court Opinion, March A.D. 2015 Term.

In the present appeal, the trial Court did not require the appellants filing an appeal bond before proceeding to the next step of completing their appeal to this Court, and the Act establishing the Commercial Court does not make the filing of an appeal bond mandatory in the process of perfecting an appeal from a judgment of the Commercial Court. The only mandatory addendum to those steps found in the wording of the provision of the quoted Act is the ‘*payment of the judgment amount*’. Had the Act made it mandatory for the filing of an appeal bond to complete the process of an appeal from a final judgment of the Commercial Court, then and there, failure of the court to approve the bond would be tantamount to refusing to perform a mandatory statutory duty. This

is not the case. Therefore, we hold that the Commercial Court acted within the pale of the law when it refused to approve the appeal bond upon the failure of the appellants to deposit the judgment amount in an interest bearing escrow account designated by and under the control of the Commercial Court.

Notwithstanding the above quoted provision of the Commercial Court Act, on November 30, 2018, the appellants filed a petition praying for the issuance of the writ of mandamus before Madam Justice Sie-A-Nyene G. Yuoh, the Justice presiding in Chambers during the October A.D. 2018 Term, of this Court seeking to compel Judge Eva Mappy Morgan approve his appeal bond. On December 12, 2018, the Justice held a conference between the appellants and the appellee and subsequently declined to issue the alternative writ of mandamus.

The records show that on December 14, 2018, the appellants filed before the Supreme Court *en banc*, an action captioned: “In Re the Constitutionality of an Act to Amend the Judiciary Law, Title 17, Liberian Code of Laws”. The said case still pending before the Supreme Court undetermined we will say no more on this matter.

On December 17, 2018, the appellee filed a motion to dismiss the appellants’ appeal alleging that the appellants had failed to perfect their appeal within the 60 days statutory period provided for by section 51.4 of the Civil Procedure Law and Article IV (2) and (3) of the Act Establishing the Commercial Court. On December 18, 2018, the appellants filed a motion for enlargement of time to perfect its appeal stating *inter alia* that the 60 days statutory period was stayed as of the date of the filing of their November 30, 2018, petition for mandamus and that the period commenced tolling as of December 17, 2018 when the Clerk of the Supreme Court notified the Commercial Court about the Justice’s decision declining the issuance of the writ.

On March 4, 2019, the Chief Judge of the Commercial Court consolidated the motion to dismiss the appeal and the motion for the enlargement of time. The appellants made a submission on the trial court’s records stating that they had deposited the judgment amount of US\$585,748.98 (Five Hundred Eighty Five Thousand United States Dollars Nifty) into an escrow account at the Ecobank (Liberia) Limited in compliance with the appeal statute of the Commercial Court and as such the judge should approve their appeal bond and allow them to perfect their appeal. In substantiating the allegations made in the submission, the appellants proffered a letter of authorization from the

Dunbar & Dunbar Law Offices addressed to the Ecobank (Liberia) Limited and a letter from Ecobank (Liberia) notifying the Chief Judge of the Commercial Court of the appellants' authorization. We deem it necessary to quote both letters verbatim, to wit:

“March 1, 2019
The Management
Ecobank Liberia
Sinkor
Monrovia, Liberia

Dear Sir/Madam:

Dunbar & Dunbar Law Offices ('Dunbar & Dunbar') maintains with Ecobank Liberia ('Ecobank') a checking account designated as Account No. 01710234726549001, the authorized signatory of which is Counsellor Stephen B. Dunbar, Jr.

We hereby authorize and instruct Ecobank to:

(a) Debit Dunbar & Dunbar Checking Account No. 01710234726549001 in the amount of US\$585,000.00 (Five Hundred Eighty-Five Thousand United States Dollars); and

(b) place the US\$585,000.00 (Five Hundred Eighty-Five Thousand United States Dollars) in an interest-bearing escrow account (the 'Escrow Account') to be held by Ecobank for the purposes of and to be utilized as a cash bond in connection with the appeal of the final judgment of the Commercial Court of Liberia in the Dunbar & Dunbar Law Offices and Cllr. Stephen B. Dunbar, Jr., Appellant versus The Three-Judge Panel, Her Honor Eva Mappay Morgan, Chief Judge, His Honor Chan Chan Paegar and Richard Klah, Associate Judges and International Bank (Liberia) Limited, represented by its General Manager, Mr. Joseph K. Anim and Chief Executive Officer, Henry F. Samoi, Appellee.

The herein cash bond necessitate the appeal of the final judgment of the Commercial Court of Liberia, Action of Debt, which final judgment is the subject of the appeal and the final decision of the Supreme Court of Liberia.

The Escrow Account shall remain in place pending further written instruction and authorization by the undersigned for disbursement/payment following the hearing of the appeal and final decision of the Supreme Court of Liberia. [Our Emphasis]

To this end, Ecobank is further authorized and instructed to provide written notice to the Commercial Court of Liberia informing the court of the placing of US\$585,000.00 (Five Hundred Eighty-Five Thousand United States Dollars) in an interest-bearing Escrow Account as a cash bond for the said appeal.

And for so doing this shall constitute Ecobank's legal and sufficient authority.

Kind regards.

Sincerely,
Stephen B. Dunbar, Jr.
Counsellor-at-Law”

The letter from the Ecobank (Liberia) Limited to the Commercial Court is as follows:

“March 1, 2019
Her Honor, Eva Mappy Morgan
Chief Judge
Commercial Court of Liberia
Temple of Justice
Monrovia, Liberia.

MAY IT PLEASE YOUR HONOUR

We, Ecobank Liberia ('Ecobank'), hereby provide formal notice to Your Honour and the Commercial Court of Liberia that based on the authorization and instruction of Dunbar & Dunbar Law Offices ('Dunbar & Dunbar') and Counsellor Stephen B. Dunbar, Jr., US\$585,000.00 (Five Hundred Eighty-Five Thousand United States Dollars) have been set aside from Dunbar & Dunbar checking account No. 01710234726549001 maintained at the Ecobank Liberia and placed in an interest-bearing escrow account to be held by Ecobank for purposes of and to be utilized as a cash bond in connection with the appeal of the final judgment of the Commercial Court of Liberia in the case Dunbar & Dunbar Law Offices and Cllr. Stephen B. Dunbar, Jr., Appellant versus The Three-Judge Panel, Her Honor Eva Mappay Morgan, Chief Judge, His Honor Chan Chan Paegar and Richard Klah, Associate Judges and International Bank (Liberia) Limited, represented by its General Manager, Mr. Joseph K. Anim and Chief Executive Officer, Henry F. Samoi, Appellee.

We attach for Your Honour's easy reference, self-explanatory copy of the authorization and instruction by Dunbar & Dunbar and Counsellor Dunbar filed in the office of the clerk of the Commercial Court.

Kind regards.

FOR: Ecobank Liberia
SEAL

BY: Vamah Bhatu Hodges
Counsellor-at-Law”

On March 4, 2019, the Chief Judge of the Commercial Court, Her Honor Judge Eva Mappy Morgan rendered her final ruling on the motion to dismiss and the motion for enlargement in which she granted the appellee's motion to dismiss for the appellants failure to complete their appeal within the statutory period of 60 days. As to the appellants' motion for enlargement of time, Judge Morgan denied same stating that the manner in which the appellants opened the escrow account at the Ecobank was not in consonance with Article IV (2) and (3) of the Act establishing the Commercial Court, and not under the control of the Commercial Court, which did not qualify the appellants

being granted the motion for enlargement of time for their failure to complete a mandatory step to complete the appeal process.

The appellants noted exceptions to Judge Morgan's ruling and filed a petition for judicial review before the full Panel of the Commercial Court. On May 16, 2019, the three panel of judges heard the petition for judicial review and thereafter confirmed the ruling of the Chief Judge, that the appellants were in violation of the 60 days statutory period for the perfecting of their appeal as provided for in section 51.4 of the Civil Procedure Law and Article IV (2) and (3) of the Act establishing the Commercial Court.

Subsequently, on May 20, 2019, the appellants filed for the writ of certiorari before Mr. Justice Joseph N. Nagbe, the Justice presiding in Chambers during the March A.D. 2019 Term of this Court. In their petition, the appellants alleged that Judge Morgan and the three Panel of Judges erred by overlooking the fact that the 60 days statutory period stayed as of the time of the filing of the petition for the writ of mandamus on November 30, 2018; that said statutory period commenced tolling December 17, 2018 when Justice Yuoh's Mandate was read in open court; that the judges abused their discretion in denying the appellants' motion for enlargement of time; and that the judges were also in error to dismiss the appellants' appeal after a cash bond was already deposited at the Ecobank.

On June 4, 2019 Justice Nagbe issued the alternative writ of certiorari and mandated that the appellee, the International Bank of (Liberia) Limited file its returns on or before June 13, 2019, and in obedience thereto, the appellee filed a 51 count returns basically alleging that the mere filing of the appellants' November 30, 2018, petition with the Clerk of the Supreme Court did not vest jurisdiction in the Supreme Court over the parties; that the 60 days statutory period did not stay as of the time of the filing of the said petition; that the manner in which the cash bond was deposited at the Ecobank was *ultra vires* and not under the control of the Commercial Court as contemplated by the Legislature; that the appellants were in clear violation of section 51.4 of the Civil Procedure Law and Article IV (2) and (3) of the Act Establishing the Commercial Court thus Judge Eva Mappy Morgan and the three Panel of Judges committed no error when they dismissed the appellants' appeal.

Mr. Justice Nagbe who ordered the issuance of the alternative writ of certiorari did not hear the petition and returns thereto. On September 3, 2019, Mr. Justice Yussif D. Kaba

who succeeded Mr. Justice Nagbe, assigned the petition for arguments, and on September 16, 2019, Mr. Justice Kaba rendered his ruling wherein he granted the petition in part and denied it in part. Mr. Justice Kaba granted the writ of certiorari on grounds that the Commercial Court was without jurisdiction when it dismissed the appellants' appeal noting that the appellants had already filed their bill of exceptions within the 10 days statutory time. On the other hand Mr. Justice Kaba denied the writ of certiorari on grounds that the appellants had failed to comply with the appeal statute of section 51.4 of the Civil Procedure Law and Article IV (2) and (3) of the Act Establishing the Commercial Court. Both the appellants and the appellee appealed the decision of decision of Mr. Justice Kaba to the Supreme Court *en banc*, hence, the present appeal.

We have determined that the issue now before us is whether or not the Ruling of the Justice in Chambers was proper when he disposed of the petition for certiorari on the following three issues which are:

1. Whether the statute providing for the judgment sum growing out of an action of debt in the Commercial Court which is to be placed in an escrow account designated by the Commercial Court, requires, that the said escrow account be opened in the name of the Commercial Court and to be under the control of the Commercial Court?
2. Whether the motion for enlargement of time filed by the appellants for the completion of the appeal based on the facts and circumstances of the instant case is within the authority to be exercised by the Commercial Court?
3. Whether or not the trial court erred by dismissing the appellants' appeal after the filing of and approval the bill of exceptions?

We are in agreement with our Distinguish Colleague that the above three (3) issues crafted in his Ruling embody the crux of the contentions of the parties to this appeal thus our review will be restricted to the review and disposition of these issues.

As to the first issue regarding the escrow account, the Justice in Chambers deemed it expedient to review certain controlling phrases of Article IV (2) and (3) of the Act

Establishing the Commercial Court and we first quote the said provisions, before reviewing our Colleague's Ruling. To wit:

“An appeal from a judgment of the Commercial Court shall not serve as a stay on enforcement of the judgment, provided that the amount of the judgment paid shall be placed in an interest-bearing account with a commercial bank designated by the Commercial Court pending disposition of the appeal. Payment of the full amount shall be a condition precedent for the completion of an appeal from a judgment of the Commercial Court, but the appeal bond which may be required of the appellants, shall be exclusive of the amount of the judgment paid.” [Our Emphasis]

Our Colleague ruled on the escrow account as follow:

“...Under the provision of the Act, the first controlling phrase is that ‘an appeal from a judgment of the Commercial Court shall not serve as a stay on enforcement of the judgment...’. The second controlling phrase of the Act is that ‘...payment of the full amount shall be a condition precedent for the completion of an appeal from a judgment of the Commercial Court...’. And, the third controlling phrase which has generated so many contention in these proceedings is that ‘...the amount of the judgment paid shall be placed in an interest-bearing account with a commercial bank designated by the Commercial Court pending disposition of the appeal...’. This last controlling phrase which goes to the crux of the dispute in this case, provides that an interest bearing escrow account must be designated, alternatively named selected or chosen by the court for the payment of the full amount of the judgment of the court. There appears much contention on this point, whether the escrow account must be in the name of the court and whether the court must exercise control over the escrow account are the two points of disagreement in the case under review.

The questions begging for answers are: (1) in whose name should the escrow account be opened and (2) who should exercise control over the same? A meticulous search of the opinions of the Supreme Court to answer these questions yielded no result, thus, suggesting the questions to be of

first impression since the creation of the Commercial Court of Liberia in the year 2010. The law in vogue in this jurisdiction is that where a question appears to confront a court for the first time, practice and procedure permit that the court consults the common law for a resolution of the same.

Common law and usages of the courts of England and of the United States, other authoritative treaties, principles and rules set forth in case laws when applicable, are deemed as Liberian Laws" *Fallah v. R.L.*, Opinion of the Supreme Court, March Term, A.D. 2011.

In furtherance of this practice and procedure, the Chambers directs its search to 28 Am Jur. Escrow, sections 1 and 21 as follows: An "escrow", as a general rule, is created when the grantor parts with all dominion and control of an instrument or money by delivering it to a third person or a depository with instructions to deliver it to the named grantee upon the happening of certain conditions. It is an instrument which by its terms imports a legal obligation, and which is deposited by the grantor, promisor or obligor, or his agent with a stranger or a third party, the depository, to be kept by him or her until the performance of a condition or the happening of certain events and then to be delivered over to the grantee, promisee, or obligee. Escrow, by definition, means 'neutral,' independent from the parties to the transaction. It is essential to an escrow that the instrument or money be delivered to a stranger or third party.

By their nature, courts of law are a neutral party to suits that come before them for resolution. *Lonestar Communication v. His Honour Chesson*, Supreme Court Opinion March Term, A.D. 2016. Ordinarily, a commercial bank would serve the role of a neutral third party to receive escrow agreement and the instructions contained therein as well as to exercise control over the escrow account in an ordinary course of a business transaction. However, in the case of the Act under review, it can be said that the Legislature contemplated that the Commercial Court exercises control over an interest-bearing escrow account established in consequence of a judgment from the court. An account opened under the Act ought to be under the name of the court to indemnify the judgment creditor as contemplated by the Legislature. To interpret the Act

differently as the petitioners would want us to do in the instant case would be defeating the end objective of the Act. This Chambers says that the payment of the full amount of the judgment is a condition precedent to the completion of an appeal from the court. The Supreme Court has interpreted "a condition precedent" as a mandatory requirement for the completion of an appeal emanating from the court. It follows therefore that an appeal from a final judgment of the Commercial Court does not serve as a stay to the enforcement of the judgment. *Pioneer Construction Company v. Her Honor Morgan et al.* Opinion of the Supreme Court, March Term, A. D. 2015. The only logical explanation for the requirement to have the escrow account established in the face of the clear language of the statute that "an appeal shall not serve as a stay to the enforcement of the judgment" is to provide security to the judgment debtor so that in the event the appeal is upheld, the said sum will be returned to the said judgment debtor. For the control of such funds to remain under the control of any person other than the court will certainly rendered fruitless the provision that an appeal shall not serve as a stay to the enforcement of the judgment."

We affirm this portion of Mr. Justice Kaba's Ruling and the rationale therefrom which finds support in the records, due to the fourth paragraph in the appellants' letter of instruction dated March 1, 2019, under the signature of Cllr. Stephen B. Dunbar Jr., addressed to the Ecobank (Liberia) Limited, quoted herein below:

"The Escrow Account shall remain in place pending further written instruction and authorization by the undersigned for disbursement/payment following the hearing of the appeal and final decision of the Supreme Court of Liberia."

This portion of the letter from all intents and purposes shows that the said escrow amount remains under the control of Cllr. Stephen B. Dunbar, Jr. and not the Commercial Court. Hence, we hold that the communication from Counsellor Dunbar to the ECOBANK wherein he *sua sponte* designated the commercial bank and retained control of the deposited amount of US\$585,000.00 (Five Hundred Eighty-Five Thousand United States Dollars) is in clear violation of the mandatory provision of the Act Establishing the Commercial Court which makes the full payment of the judgment

amount placed in a commercial bank designated by the Commercial Court under its control within the appeal period of sixty (60) days.

As to the second issue regarding the denial of the appellants' motion for enlargement of time by the trial court, the Justice in Chambers ruled that the Commercial Court committed no error when it denied the said motion. The appellants in their brief filed before this Court have disagreed and argued that the 60 days statutory period should be enlarged since the Supreme Court became seized of jurisdiction over this case as of the date of filing their petition for a writ of mandamus on November 30, 2018, thus staying the 60 days statutory period as of the time of the filing of the said petition and that it commenced tolling only after December 17, 2018, the date of the reading of Justice Yuoh's Mandate in open court. We disagree with the appellants' contention and confirm the Ruling of Mr. Justice Kaba.

It is trite law that the issuance of the writ brings a party under the jurisdiction of the court *viz* confers jurisdiction on the court over a person. While an action may be commenced by the filing of the requisite papers or the lodging of a complaint, the law recognizes the "writ" as the instrument that establishes the court's authority to act over a person or acquire jurisdiction over a person. The Civil procedure Law, Rev Code 1:3.31 provides that: "a civil action is commenced in a court of record by filing a complaint or petition with the clerk and the **issuance of the appropriate writ**. In a court not of record, a civil action is commenced by making of an oral complaint to the justice or magistrate and **issuance of the appropriate writ**." [Our Emphasis]

Our emphasis on the above highlighted provision of the Civil Procedure Law is confirmed by the Supreme Court, as follows:

"The mere filing of an indictment, information, complaint or petition to court does not confer on the court jurisdiction over the party defendant or party respondent. Although the court, from the caption, may determine its own jurisdiction of the subject matter to bring the defendant or respondent under its jurisdiction by means of precept, it is the warrant of arrest in criminal cases, or a writ of summons in civil cases, and in special proceedings the alternative writ or citation duly issued by the clerk under the seal of court, served on the party and returned served by the sheriff or marshal or their deputies, that brings the parties under the jurisdiction of the court."

Emmanuel v. Hilton et al. 32 LLR 277 (1984); *Jawhary v. Ja'neh*, Supreme Court Opinion, October Term, A.D. 2012.

Applying the above quoted principle of law to the present appeal this Court says that the mere filing of the petition for the writ of mandamus did not *sua sponte* confer jurisdiction upon the Supreme Court absent the Justice in Chamber's instructions ordering the Clerk of this Court to issue the alternative writ. Hence, the Justice in Chambers did not acquire jurisdiction over the parties and there was no compelling reason to have the statutory period enlarged or paused/stayed in the tolling of the mandatory 60 days statutory period for the completion of the appeal. *Jawhary v. Ja'neh*, Supreme Court Opinion, October Term, A.D. 2012.

As to the last issue which is whether or not the Commercial Court committed a reversible error when it proceeded to dismiss the appellants' appeal after the approval and filing of the bill of exceptions within the 10 days statutory period as provided for in section 51.7 of the Civil Procedure Law, We hold that Mr. Justice Kaba properly ruled, that only the Supreme Court is authorized to dismiss an appeal after the bill of exceptions is approved and filed within the 10 days statutory period.

The Civil Procedure Law Rev, Code 1:51.16 provides that: "an appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the statutory 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."

In providing interpretation for section 51.16 of the Civil Procedure Law, the Supreme Court has held that: "where the bill of exceptions is filed with the trial court within the time prescribed by the appeal statute, the trial court loses jurisdiction to pass upon or entertain any issue relating to the dismissal of the appeal. At that juncture, following the filing of the bill of exceptions within the time allowed by law, it is only the Supreme Court that can assume jurisdiction to entertain and pass upon the motion to dismiss the appeal for any subsequent deficiencies in perfecting the appeal. The statute without any ambiguity recognizes that following the filing of the bill of exceptions within the time allotted by law, the trial court retains very limited jurisdiction but not including entertaining any motion to dismiss the appeal but for the sole purpose of approving the

appeal bond and the service and filing of the notice of completion of the appeal.” *Housseni v. Kaydea*, Supreme Court Opinion, March Term, A.D. 2012; *More v. Wilson*, Supreme Court Opinion, March Term, A.D. 2012.

This Court says that although the appellants’ appeal is dismissible as a matter of law however, the filing and subsequent approval of the bill of exceptions within the 10 days statutory period clearly deprived the Commercial Court from retaining jurisdiction over this case and was prohibited from dismissing the appellants’ appeal. That given these facts and the controlling law quoted *supra* the Supreme Court *en banc* is the only forum clothed with the requisite authority to dismiss the appellants’ appeal and not the Commercial Court.

Notwithstanding, we recognize that this case is before us on a writ of certiorari, and ordinarily the writ of certiorari concerns itself with the correction of the alleged erroneous ruling of the trial court and not the dismissal of the case. However, this Court having already held herein that the appellants’ appeal is dismissible as a matter of law, this Court says that in consonance with the construction of the Civil Procedure Law to promote the just, speedy and inexpensive determination of every action and in the interest of substantive justice, coupled with the fact that this matter has been pending before the courts for a protracted period, it is only but fair that we order the dismissal of the appellants’ appeal. We hold that the appellants’ appeal is dismiss as a matter law.

WHEREFORE AND IN VIEW OF THE FOREGOING, the alternative writ of certiorari issued is quashed and the peremptory writ of certiorari is denied. The Ruling of the Justice in Chambers is affirmed but with the following modifications:

- 1) That the appellants’ appeal is dismissed as a matter of law;
- 2) That the Ecobank (Liberia) Limited is mandated to immediately place in the name and control of the Commercial Court the judgment amount of US\$585,000.00 (Five Hundred Eighty-Five Thousand United States Dollars) maintained with it in the escrow account number 01710234726549001, plus accrued interests, for the satisfaction of the judgment of the said court. The Clerk of this Court is ordered to send a mandate to the Commercial Court to give effect to this Opinion. Costs are ruled against the appellants. AND IT IS HEREBY SO ORDERED.

Petition denied & appeal dismissed.

When this case was called for hearing, Counsellors Lavela Koiboi Johnson, Sr. and Stephen B. Dunbar, Jr. appeared for the appellants. Counsellor Abraham B. Sillah, Sr., of Heritage Partners & Associates, Inc. appeared for the appellee.