IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2020

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR..............................CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE… ....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH…......................ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE…............................... ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA… .... ASSOCIATE JUSTICE

The Management of Firestone Liberia, Inc.	)	
By and thru its Managing Director, Ed Garcia	)	
Of Harbel, Margibi County, Liberia…………	)	
…………………………………Appellant	)	
	)	
Versus	)	APPEAL
	)	
His Hon. Joseph N. Nagbe, Justice presiding in	)	
Chambers, Supreme of Liberia, His Honor Yamie	)	
Quiqui Gbeisay, Sr., Assigned Circuit Judge,	)	
13th Judicial Circuit for Margibi County, sitting in	)	
its February Term, A.D. 2019, Labor Division,	)	
and the Retirees of Firestone Liberia Inc.,	)	
representedBy their Spokesman, J. Feay Roberts,	)	
of Margibi County, and other parts of the	)	
Republic of Liberia………………..Appellees	)	
	)	
GROWING OUT OF THE CASE:	)	
	)	
The Management of Firestone Liberia, Inc.	)	
By and thru its Managing Director, Ed Garcia	)	
Of Harbel, Margibi County, Liberia…………	)	
…………………………………Petitioner	)	
	)	
Versus	)	PETITION FOR A WRIT
	)	OF CERTIORARI
His Honor Yamie Quiqui Gbeisay, Sr.,	)	
Assigned Circuit Judge, 13th Judicial Circuit	)	
For Margibi County, sitting in its February	)	
Term, A.D. 2019, Labor Division, and The	)	
Retirees of Firestone Liberia Inc., represented	)	
By their Spokesman, J. Feay Roberts, of	)	
Margibi County, and other parts of the	)	
Republic of Liberia………………..Respondents	)	
	)	
GROWING OUT OF CASE:	)	
	)	
The Management of Firestone Liberia, Inc.	)	
By and thru its Managing Director, Ed Garcia	)	
Of Harbel, Margibi County, Liberia…………	)	
…………………………………Movant	)	
	)	
Versus	)	MOTION TO DISMISS

TheRetirees of Firestone Liberia Inc., represented)
By their Spokesman, J. Feay Roberts, of)
Margibi County, and other parts of the)
Republic of Liberia………………..Respondents)

GROWING OUT OF THE CASE:

The Management of Firestone Liberia, Inc.)
By and thru its Managing Director, Ed Garcia)
Of Harbel, Margibi County, Liberia…………)
…………………………………Movant)

Versus) MOTION TO VACATE

TheRetirees of Firestone Liberia Inc., represented)
By their Spokesman, J. Feay Roberts, of)
Margibi County, and other parts of the)
Republic of Liberia………………..Respondents)

GROWING OUT OF THE CASE:

TheRetirees of Firestone Liberia Inc., represented)
By their Spokesman, J. Feay Roberts, of)
Margibi County, and other parts of the)
Republic of Liberia………………..Petitioners)

Versus) PETITION FOR DECLARATORY JUDGMENT

The Management of Firestone Liberia, Inc.)
By and thru its Managing Director, Ed Garcia)
Of Harbel, Margibi County, Liberia…………)
…………………………………Respondent)

Heard: March 18, 2020 Decided: September 3, 2020

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This appeal is predicated upon a ruling of our distinguished colleague, Mr. Justice Joseph N. Nagbe denying the petition for a writ of certiorari prayed for by the Management of Firestone Liberia, Inc., the appellant. The crux of the appellant's petition filed before the Chambers Justice is that the Retirees of Firestone Liberia Inc., acting through their spokesman, J. Feay Roberts, co-appellees, filed a petition for declaratory judgment before the 13th Judicial Circuit Court for Margibi County, sitting in its Labour Division, substantially seeking the court to declare void and of no legal effect two memoranda issued by the appellant in respect of co-appellees' pension payments, requesting the court to declare that the co-appellees be paid

retirement pensions in keeping with the law under which they were retired, and to declare that the appellant is under obligation to locate each retiree contrary to the appellant's two memoranda directing the co-appellees to the National Social Security and Welfare Corporation, Nasscorp, for payment of their pensions under the New Decent Work Act (2015), and directing the co-appellees to submit to a verification process of their respective status as retirees. The co-appellees also filed an application for an interim order to restrain the appellant from enforcing its memoranda aforesaid, and the co-appellee judge, His Honor, Yamie Quiqui Gbeisay ordered the issuance of the interim order as prayed for by the co-appellees without a bond to indemnify the appellant.

The petition for a writ of certiorari also alleged that the appellant filed its returns along with a motion to dismiss and a motion to vacate the interim order, respectively. In the motion to dismiss, the appellant challenged the jurisdiction of the court sitting in its labour division to entertain the petition, and the capacity of J. Feay Roberts to institute the action for and on behalf of the appellees. As to the motion to vacate, the appellant prayed the trial court to vacate the interim order on grounds that the co-appellees failed and neglected to file a bond to indemnify the appellant as is required by operation of Chapter 7, Section 7.63 of the Civil Procedure Law Revised Code.

The petition for a writ of certiorari further alleged that the appellant's motion to dismiss was regularly heard and, on the 5th day of April 2020, denied by the trial court. Subsequently, on the selfsame 5th day of April 2020, the trial court issued and had served on the parties an assignment for the hearing of the motion to vacate the interim order which was heard and denied on the 9th day of April, 2020. It is from the denial of these two rulings by the trial court that the appellant fled to the Justice presiding in Chambers for a review and correction. Our colleague, after a conference, ordered the alternative writ issued in which the appellees were ordered to file their returns. Upon a hearing of the petition, our colleague denied the peremptory writ citing the principle annunciated in *Vargas v. Reeves et al, 39 LLR 368 (1999)* which provides as follows:

> "A petition for certiorari is permissible only where the trial court rules on a motion or other matter in a trial, exceptions are taken thereto, and the party proceeds forthwith to apply for the remedial writ. If the petitioner waits until an assignment is issued and served, and files a motion or participates otherwise in the case, the original action excepted no longer comes within the reach of a remedial process, and certiorari can no longer be pursued. The process of appeal must therefore then be pursued. The writ of certiorari will not

> be granted where adequate relief can be obtained through a regular appeal must therefore then be pursued."

It is from this ruling that the appellant has appealed and urge the Full Bench to review, correct and reverse the ruling of our colleague. The question, therefore, before this Court is: whether the findings and conclusions of our colleague are supported by the law?

As rightly held by our colleague, the precedent in this jurisdiction is that a writ for remedial process must be pursued with such speed and timeliness so as to avoid unnecessary delay in the trial of cases in the inferior courts. To permit party litigants to assign errors before an appellate court under a remedial process without observing timeliness will constitute a promotion of the very evil that the precedent is endeavoring to arrest, and an abuse of the object of the remedial writ. This is why the precedent instructs that when an interlocutory ruling is made in the lower court, the aggrieved party must immediately seek remedial relief. To however wait until the proceeding progressed to another stage with the participation of the aggrieved party, removes the particular ruling from the ambit of a remedial process and may properly be a subject of a regular appeal. That said, we shall now endeavor to inquire whether the facts and circumstances in *Vargas v. Reeves et al, 39 LLR 368 id*. are analogous to the facts and circumstances of the present case? To answer this query, we shall proceed to analyze the facts and circumstances of the present case in respect of the applicability of the controlling precedent.

In *Vargas v. Reeves et al, 39 LLR 368 id*, the petitioner, Manuella Pedilla Vargas, filed a petition in the lower court praying for a declaratory judgment against the co-respondent, Ezzat N. Eid under a sublease agreement. Pleadings having rested, the judge ruled on the law issues, and determined that there were no material disputes as to the facts in the case. She therefore ruled the case to trial of the facts without a jury, and immediately thereafter assigned the case for hearing. The petitioner filed a motion demanding a trial by jury, asserting that there were issues in dispute. The motion was resisted by the co-respondent, heard and denied by the judge. The petitioner excepted to the judge's ruling and announced that he will avail himself of the statute. Thereafter, petitioner filed a motion for the judge to recuse herself from hearing the case. While the motion was pending, the petitioner petitioned the Justice in Chambers for a writ of certiorari, praying the Supreme Court to review the trial judge's denial of the request of the petitioner for a trial by jury, contending that the statutory provision which prescribed the time within which a request for trial by jury should be made was unconstitutional.

The Justice in Chambers forwarded the petition to the Bench *en banc* for disposition on constitutional grounds. The Supreme Court *en banc* denied the petition holding in part that, although the petitioner had taken exceptions to the ruling denying the request for a trial by jury, he had failed to immediately proceed by remedial process for a review of the ruling, but had instead waited until an assignment for trial had been issued and served on the parties, and had further filed a motion of recusal. By these acts, the Court said, the petitioner had rendered the remedial process impermissible since the matter before the trial court was no longer the ruling denying the request for a jury trial but a motion to recuse. Therefore, the Court held that the only remedy to pursue then was an appeal. Certiorari, the Court observed, could not be used as a substitute for appeal, especially where appeal was an adequate remedy.

We note that this precedent was affirmed in our recent opinion in the case: *BeaGeorge Cooper v. His Honor, Joseph N. Nagbe et al, Supreme Court Opinion, October, A.D. 2019.* The petitioner/appellant, *BeaGeorge Cooper* filed a petition for a writ of certiorari before the Chambers Justice seeking to reverse the trial judge's ruling for denying her bill of information growing out of two motions. But, the appellant waited until trial commenced in the main suit and the co-appellee, Jerome G. Korkoya, rested with his production of evidence before the appellant filed her petition for a writ of certiorari for a remedial relief. The appellant's petition was denied by this Court for the reason above stated.

However, our review and dissections of the two precedents vis-à-vis the present case now under scrutiny presents somewhat mixed findings. As earlier stated, on the 5th day of April 2020, the trial judge entered ruling denying the appellant's motion to dismiss, and on the 9th day of the same April 2020, the motion to vacate was heard and denied. Can it be said that between the 5th and 9th day of April, that is four days, the appellant had sufficient time to file its petition for review and correction of the alleged error of the trial judge denying its motion to dismiss. We think so. The motion to dismiss having assailed the co-appellees' complaint on jurisdictional grounds and the capacity of the co-appellees' spokesman, the appellant ought to have given prompt consideration if it intended to seek remedial process to correct the alleged error of the co-appellee judge. The appellant's argument that it avoided multiplicity of suits before this Court by not filing its petition to correct the alleged error on the motion to dismiss, but waited to consolidate said motion with the ruling on the motion to vacate is not persuasive.

How could the appellant predict the likely outcome of a denial on its motion to vacate and use that prediction as the basis for its delay considering the service of a notice of assignment for the hearing on the 9th day of April 2020? We are left to wonder. According to the appellant, it waited for the courts determination of the motion to vacate because this Court frowns on review of a case in piece meal. If this argument is anything to go by, then, the co-appellees' contention that the appellant not having timely filed its petition before the Chambers Justice, its exceptions are reserved for regular appeal overcome the former's argument. We note that it is only legally justifiable that the appellant complies with the precedents since it intended to pursue remedial process from the ruling of the co-appellee judge on the motion to dismiss. We hold that a notice of assignment having been issued, served and returned served on the motion to vacate, and hearing had, the ruling on the motion to dismiss was no longer within the reach of a remedial process. Therefore, our colleague did not err when he denied the peremptory writ and ordered quashed and vacated the alternative writ in respect of the motion to dismiss.

However, can the above conclusion apply to the writ in respect to the motion to vacate the interim order? We do not think so. Unlike the motion to dismiss, there were no further steps taken to have removed the ruling on the motion to vacate from the reach of a remedial process, except that a notice of assignment was issued, served and returned served on the parties for the hearing of the petition for declaratory judgment on the 16th day of April 2020. Prior to the hearing of the main petition, the appellant filed its petition for a writ of certiorari before the Chambers Justice on the 13th day of April 2020. The service of the notice of assignment alone cannot remove the co-appellee judge's ruling on the motion to vacate from the ambit of a remedial process as the co-appellees would want this Court to believe. The precedent in *Vargas v. Reeves id* underscores the conjunctive act that follows the service of the notice of assignment. That is, after the service of the notice of assignment, a motion is filed or pending *and* the petitioner participates in other proceeding, then and in that case, the ruling excepted to prior is removed from the reach of a remedial process. This is not the case with the ruling on the motion to vacate. No proceeding was had on the hearing of the main petition for declaratory judgment as assigned on the 16th day of April in consequence of the petition for the writ of certiorari filed before the Chambers Justice. We, therefore, hold that the service of a notice of assignment alone

without subsequent action taken in the proceeding below cannot remove an interlocutory ruling from the ambit of a remedial process. It was an inadvertence for our colleague to have overlooked this part of the petition filed before him. And considering that our colleague did not pass on the ruling on the motion to vacate on account of this inadvertence, this Court having seized of the review and corrections of any palpable errors consistent with its authority of appellate review, shall proceed to examine the issue raised by the appellant.

The contention or issue raised by the appellant in the court below is that the co-appellees failed or neglected to file a bond along with their application for an interim order to restrain the appellant from enforcing its two memoranda which are substance of the petition for declaratory judgment. The co-appellees did not deny the allegation of failing or neglecting to file a bond with their application, but argued that the appellant violated the constitutional right of the co-appellees by depriving them of pensions without a hearing judgment consistent with due process. Granted, the argument of the co-appellees is anything to go by, can it be said that this alleged constitutional violation on the part of the appellant repudiates the statutory requirement for filing a bond in order to secure an injunctive relief? The answer is a resounding no. In fact, the alleged constitutional violation presents a justiciable question for a determination by a competent court of jurisdiction. Here is the appellant arguing that the creation of the National Pension Fund under the New Decent Work (2015) repealed Section 2501 of the defunct Labour Practices Law of Liberia which required an employer to pay pension to retirees equal to 40% of the retirees' average pay in the last five years of their employment. In the face of the justiciable questions raised by the parties, the trial court could not have restrained the appellant without a bond consistent with Civil Procedure Law Revised Code: 1:7.63 (3) which reads as follows:

> "Prior to the granting of a preliminary injunction, the plaintiff shall give a bond in an amount to be fixed by the court, to the effect that the plaintiff, if it is determined that he was not entitled to an injunction, will pay all damages and costs which may be incurred by any party who is found to have been wrongfully enjoined"

Assuming that the interim order issued by the trial court was intended to restrain the appellant from committing an immediate and irreparable injury, loss, or damages within the meaning of Section 7.64 of the self-same statute, the co-appellees were still required to file a bond "in an amount to be fixed by the court". Surprisingly, the co-appellee judge denied the appellant's motion to vacate without stating the reason therefor. We hold that the facts and circumstances surrounding the application for an interim order and the denial of the appellant's motion to vacate the same depicts not only a departure and deviation from the clear and unambiguous command of the statute, but it also describes gross irregularity and arbitrariness that tend to materially injure the right of the appellant. We hold that the co-appellee judge's ruling denying the appellant's motion to vacate was without the pale of the law, arbitrary and irregular. This Court has held in a litany of opinions including *Ministry of Justice v Francis et al 37 LLR 880 (1995)* as follows:

> "The writ of certiorari is for the purpose of correcting errors committed by a subordinate court or other while a matter is pending when such error materially prejudice or injures the rights of a party." William v. Clarke, [1913] LRSC 13; 2 LLR 130,132 (1913)"

WHEREFORE AND IN VIEW OF THE FOREGOING, in respect of the motion to vacate, the alternative writ of certiorari is granted and the peremptory writ is ordered issued. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction and proceed forthwith with the hearing and determination of this case. Cost to abide the final determination of the case. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors G. Moses Paegar, Golda A. Bonah-Elliot and Neto Z. Lighe, Sr. of Sherman & Sherman, Inc. appeared for appellant. Counsellor J. Johnny Momoh of J. Johnny Momoh & Associates Legal Chambers appeared for the appellees.