FIRESTONE PLANTATIONS COMPANY, by and thru its Manager, Petitioner/Appellant, v. **HIS HONOUR FREDERICK K. TULAY**, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, **ALHAJI SALIHOU SIRLEAF** and **JOHN TAMBA**, Respondents/Appellees.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE ISSUANCE OF THE WRIT OF CERTIORARI.

Heard: June 18, 1986. Decided: July 31, 1986.

1 If appellant was not required by the Chambers Justice to pay accrued cost, his failure to pay said cost was not sufficient ground to deny his petition.

2 Harmless procedural technicalities will not be allowed to defeat the administration of justice.

3 A party who has benefitted by satisfaction of a judgment is estopped from thereafter seeking another judgment in the same case from the same defendant, as there can be but one satisfaction of a judgment.

4 After judgment has been rendered in an action, the course of action is extinguished and may no longer be pursued. Rights once adjudicated cannot be disputed again by the same parties.

5 The principle of estoppel by the acceptance of benefits may operate to prevent a party from profiting by his own wrong. Under some circumstances estoppel may arise from the acceptance of benefits even in the absence of knowledge of the facts at the time of such acceptance, as where the ignorance was due to negligence and the other party cannot be placed in *status quo,* or where the benefits are retained after knowledge of the facts has been obtained.

6 A compromise and settlement fairly made with the facts equally known by both parties is a final and conclusive adjustment of their controversy; where it is made

between persons legally competent to contract and is supported and founded upon sufficient consideration, it has in certain respects the effect of judgment between the parties. Parties and those who claim under them with notice may not go behind a compromise which was made in good faith as a settlement of prior disputes and which is free from such fraud as would vitiate any other contract although they were ignorant of the full extent of their rights. The merits of the controversy do not affect this rule.

7 Where a remedy in the judicial or in the administrative forum is available to the same party in the same situation, he has his choice as to which remedy he will take. Sometimes, the statute itself provides that a party must elect between the remedies and may not avail himself of both. Under such a statute, a party who elects to proceed before the administrative tribunal and is denied relief on the merits there may not later bring the common law action which he might have chosen in the first instance, and one who obtains relief on his claim in the administrative tribunal is bound by such award and may not later institute a common law action to seek additional relief on the same claim.

The appellees instituted an action of damages against the appellant before the Sixth Judicial Circuit for Montserrado County. While the action was pending, the appellee filed another complaint on the same matter at the Executive Mansion, as a result of which the appellant paid the appellees more than twice the amount they had sued for with the understanding that they would withdraw the matter from the court. Notwithstanding, appellees proceeded with the court case. When the case was called, appellant filed a bill of information to the effect that appellees' claim had already been satisfied and prayed that the action be dismissed. The trial court ruled against the appellant who then filed a petition with the Chambers Justice for a writ of certiorari. Upon hearing of the petition, the Chambers Justice denied the petition for the writ of certiorari and ordered alternative writ quashed on the ground that petitioner did not pay accrued costs. An appeal then ensued to the full bench. The Supreme Court *reversed* the ruling of the Chambers Justice and ordered the trial court to strike the case from its docket asserting that the claim which is subject of these

proceedings, had already been settled administratively and the appellees/respondents had been paid and, therefore, they cannot now try to recover a second compensation on the same claim.

S. Edward Carlor and *J. D. Gordon* of the Carlor, Gordon, Hne & Teewia Law Offices appeared for the appellant. *M Kron Yangbe* appeared for the appellees.

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

Appellees, Alhaji Salihou Sirleaf and John Tamba filed an action of damages on June 28, 1982, in the Civil Law Court for the Sixth Judicial Circuit sitting in its September Term, 1982 against appellant, Firestone Plantations Company, praying for special damages in the amount of $6,975.00 representing the value of appellees' pick-up damaged by appellant's truck on the Monrovia-Kakata Highway, as well as general damages for pain and suffering as a result of said accident. Pleadings having rested, law issues were disposed of and the case was ruled to trial. But before trial could commence, the appellees went to the Executive Mansion where they also lodged a complaint on the same matter the pending before the Civil Law Court. As a result of the complaint which was made to two generals at the Executive Mansion, the Manager of Firestone Plantations Company, appellant, was brought down to Monrovia by soldiers and ordered to pay the sum of $14,000.00 to the appellees. The appellees issued a release to appellant in the presence of the generals. A copy of said release, witnessed by the generals, is quoted hereunder:

REPUBLIC OF LIBERIA, MONTSERRADO COUNTY: AGREEMENT OF RELEASE: KNOW ALL MEN BY THESE PRESENTS: That we JOHN TAMBA & ALHAJI SALIHOU SIRLEAF of the City of Monrovia, Montserrado County, Republic of Liberia, in consideration of the sum of fourteen thousand dollars ($14,000.00) which is accepted in full settlement and satisfaction for the damages done to our pick-up truck TT-353, and injuries done to our bodies which occurred on or about the 2nd day of October, A. D. 1980, at or near Kakata/Monrovia Highway, Freeman Reserve, Division No. 20 do for ourselves, our administrators,

executors, and assigns hereby release and forever discharge the Firestone Plantations Company; together with its successors and assigns, from any and all manner of claims, debts, damages, sum of money actions, causes of action, and demands whatsoever in law or in equity and including such as could have arisen by reason of, or in any manner that might grow out of said accident.

Accordingly, our lawyer, Counselor Raymond Hoggard will withdraw the damages suit now filed in the Sixth Judicial Circuit Court against Firestone.

IN WITNESS WHEREOF, I have lodged this instrument this 8th day of June, A. D. 1983.

(Sgd.) John Tamba

JOHN TAMBA

(Sgd.) A. S. Sirleaf his x cross

ALHAJI SALIHOU SIRLEAF

(Sgd.) Robert Teah

WITNESS

(Sgd.) D. K Wright

WITNESS

Counsel for appellees, Counselor Raymond Hoggard, now deceased, did not withdraw the matter from court as stipulated in the agreement of release and, consequently, appellees return to court to continue the self-same case for further compensation through the court.

Upon hearing that the appellees had returned to the court to continue their suit for additional compensation in contravention of the "agreement of release" executed by them, counsel for appellant filed a bill of information before the presiding judge prior to going into the trial. In the bill, appellant informed the court that the appellees had taken the case to the Executive Mansion where they were paid more than twice the amount requested as special damages by them in an out-of-court settlement between the parties, evidenced by the "agreement of release" herein-above

quoted; that Counselor Raymond Hoggard had died before he could effect withdrawal of the matter from the court as agreed; that said case should therefore be stricken from the trial docket; and that Counselor William Godfrey, the new counsel for the appellees, being aware of the transaction at the Mansion, should have filed the withdrawal.

After arguments on the information, the presiding judge made the following ruling:

"COURT'S RULING

John Tamba, the plaintiff herein, sued out an action of damages against the informant/company and pleadings rested with the reply. The court then passed on the issue of law raised in the pleadings ruling the case to trial before a jury. It was after this that the parties found their way to the Executive Mansion, not before the Head of State, of course, and there informant, herein, paid respondent the sum of fourteen thousand dollars. From that time to the day the damage suit was assigned for trial the parties had never reported the Mansion transaction to this court nor have they withdrawn the action.

Informant has brought this information asking the court to strike the case from the docket as settlement has been made in it. Respondent hold a contrary view.

Except the receipt given respondent for the $14,000.00 made profert of in the information, this court has no record whatsoever touching the transaction in the Mansion. Since this is a court of record, we cannot order the withdrawal of a case regularly entered on a docket before this court. The transaction at the Mansion, being outside the walls of this courtroom, does not and cannot affect us. Therefore, we rule that the trial of this case commences on a day to be set. And it is so ordered.

Given under our hand in open court this 29th day of April, A. D. 1985. Frederick K. Tulay ASSIGNED CIRCUIT JUDGE"

To this ruling counsel for appellant excepted and filed a petition for the writ of certiorari before His Honour Boima K. Morris, Justice presiding in Chambers.

The Chambers Justice confirmed the ruling of the court below holding that the accrued costs were not paid before the petition for certiorari was filed as required by statute. He further noted that counsel for appellant should not have filed information in the court below but should have moved for newly discovered evidence or filed a motion for relief from judgment. He therefore ruled that:

"In view of the foregoing we hold that one of the mandatory statutory requirements not having been met by the petitioner, the failure to pay the accrued costs and the respondent judge not having erred in his ruling, the petition is hereby denied, the alternative writ quashed and the peremptory writ denied with costs against the petitioner."

From this ruling, counsel for appellant appealed to the bench *en banc*. Hence the matter is now before us.

One of the reasons given for denying appellant's petition was the non-payment of accrued costs. But it is not shown whether in the citation to appellant the Chambers Justice required payment of the accrued cost before issuance of the writ. If appellant was not required by the Chambers Justice to pay accrued cost, his failure to pay said cost was not sufficient ground to deny his petition. Civil Procedure Law, Rev. Code 1: 16.23. Furthermore, the question of payment of accrued costs as a prerequisite to the issuance of remedial writs has repeatedly been addressed in cases decided by this Honorable Court, among which are: *Reeves et al. v. Johnson et al.,* 28 LLR 30 (1979), wherein Chief Justice Pierre, speaking for the Court said that:

". . . It is therefore our opinion that to require the payment of accrued costs as a condition upon which all writs of certiorari will be granted could not have been the intention of the Legislature because that would not be in harmony with the law which commands that for certiorari to be granted hearing of a case must still be in

progress and the judgment must not have been rendered. Costs are generally assessed at the finality of a suit. Before finality and in such circumstances, it would be impossible to know what the total or accrued costs of some cases would be at determination so therefore it would be impossible for the petitioner to know in every case what accrued costs to be paid would be."

The most recent pronouncement was made by this Court when Justice Jangaba, speaking for the Court in *American Life Insurance Company et. al v. Sarsih et. al.,* 34 LLR 64 (1986), said on the same subject that:

"Certainly, the statute makes a clear distinction between the two writs in terms of requirements for their issuance; for in one case it specifically lays down that accrued costs must be paid before said writ can be issued, while in the other it merely says that petitioner shall pay all accrued costs without laying down a specific time for payment thereof. The former is error and the latter condition is certiorari.

It is our sincere conviction that the statute would have specifically said so if it required the payment of accrued costs in certiorari as done for error. Since it has failed to do so, the reasonable idea is that it never intended payment of accrued costs in certiorari as precondition to issuance of the writ of certiorari."

With respect to the question of whether the appellant should have filed a motion for relief from judgment instead of a bill of information, we believe that since a judgment in the case had not yet been rendered, there could not have been any such motion for relief. However, we cannot say that information could not achieved the same objective as a motion for newly. discovered evidence in the case at bar. In fact, the evidence at issue was not newly discovered, it was evidence that began to exist from the moment the $14,000.00 was paid on June 8, 1983 up to the filing of the information on October 11, 1984, and which was public knowledge among the litigants and those who procured the settlement. As the matter was still in court and not yet withdrawn, it was but proper that knowledge of this settlement be brought to the attention of the court by information. Be that as it may, the object of the whole

exercise being to inform the court of what had transpired between the parties concerning the case before it, it really made no difference what mode was used to bring the out-of-court settlement of the matter to the court's attention. Whether this was done by motion or by information, the main purpose was simply to alert and guide the court to render a just decision. Therefore, harmless procedural technicalities cannot be allowed to defeat the administration of justice.

We now come to the issue of whether the out-of-court settlement which transpired at the Executive Mansion should have been taken into account to decide whether trial of the case in the court should have proceeded. It is the view of this Court that since appellees have not denied the fact of settlement of the claim, the information filed by appellant's counsel should have been received by the court so as to prevent a situation of unjust enrichment of one party.

As has already been observed, the appellees knowing that the matter was a subject of judicial proceedings in the Civil Law Court, took the case to the Executive Mansion where there they received more than twice the amount of the claim. To proceed with the same case and again award another amount for the selfsame claim will certainly result in a clear case of unjust enrichment. In *Wahab v. Helou Brothers, et. al.,* 24 LLR 250 (1975), this Court laid down the principle that:

"1. A party who has benefitted by satisfaction of a judgment is estopped from thereafter seeking another judgment in the same case from the same defendant.

2. There can be but one satisfaction of a judgment.

3. After judgment has been rendered in an action, the course of action is extinguished and may no longer be pursued."

Also in *Reeves v. Webster Ankra,* 22 LLR 181 (1973), this Court said that "Rights once adjudicated cannot be disputed again by the same parties."

This Court's position that appellees are *estopped* from pursuing further proceedings to receive a second compensation is supported by the following authorities:12 AM JUR, *Contracts,* § 64.

"The principle of estoppel by the acceptance of benefits may operate to prevent a party from profiting by his own wrong. Under some circumstances estoppel may arise from the acceptance of benefits even in the absence of knowledge of the facts at the time of such acceptance as where the ignorance was due to negligence and the other party cannot be placed in *status quo* or where the benefits are retained after knowledge of the facts has been obtained."

In 11 AM JUR, p. 272, § 25, it is stated that: "A compromise and settlement fairly made with the facts equally known by both parties is a final and conclusive adjustment of their controversy; where it is made between persons legally competent to contract and is supported and founded upon sufficient consideration, it has in certain respects the effect of judgment between the parties. It operates as a merger of, and bars all right to recover on the claim or right of action included on, and the defenses thereto. The compromise agreement is substituted for the pre-existing claim or right, and the rights and liabilities of the parties are measured and limited by the terms of the agreement. Parties and those who claim under them with notice may not go behind a compromise which was made in good faith as a settlement of prior disputes and which is free from such fraud as would vitiate any other contract although they were ignorant of the full extent of their rights. The merits of the controversy do not affect this rule."

In 42 AM JUR, § 255, at page 703, it is stated: "Where a remedy in the judicial or in the administrative forum is available to the same party in the same situation, he has his choice as to which remedy he will take. Sometimes, the statute itself provides that a party must elect between the remedies and may not avail himself of both. Under such a statute, a party who elects to proceed before the administrative tribunal and is denied relief on the merits there may not later bring the common law action which he might have chosen in the first instance, and one who obtains relief on his claim in the

administrative tribunal is bound by such award and may not later institute a common law action to seek additional relief on the same claim."

Consequently, to uphold the ruling of the Chambers Justice and confirm the position of the court below will surely open a floodgate or a Pandora's Box for which there might be no end.

Claims that were settled administratively from April 1980 to January 5, 1986, will be re-opened by many on the ground that they were settled outside of the court administratively; that notices of such settlements were not brought to the court's attention in keeping with law and procedure; and that since that was not done, it became necessary to have the claims settled again in keeping with the correct procedure in the courts.

Surely if the ruling were to be confirmed, many unscrupulous persons who had removed their cases from the courts and obtained full settlements of their claims by duress and coercion from their victims would use such a decision as precedent to go back to the courts and pursue the same claims to be paid for the second time. This would be a strange development in our judicial system and would create a serious situation. Therefore, since the appellees, Alhaji Salibou Sirleaf and John Tamba, have already received from the appellant, Firestone Plantations Company, more than full settlement of their claim and executed a release therefor, they cannot now come to the court and pursue the same claim for further payment.

In view of the foregoing, it is the opinion of this Court that the ruling of the Justice in Chambers be, and the same is hereby reversed. The court below is ordered to strike the said case from its docket. Costs against the appellees. And it is hereby so ordered.

Ruling reversed