

J. J. ROBERTS FOUNDATION, represented by its Chairman of the Board of Trustees, MRS. GERTRUDE BREWER, or other authorized representative, Petitioner, v. HIS HONOUR YUSSIF KABA, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, and MERIDIEN PROPERTIES INCORPORATED, INC. (MPI), by and thru its authorized representative, Respondents.

**JJ Roberts Foundation v Kaba et al [2000] LRSC 32; 40 LLR 309 (2000)**

**APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE PETITION FOR ISSUANCE OF A WRIT OF CERTIORARI.**

Heard: November 30, 2000. Decided: December 21, 2000.

1. The sole purpose of a pretrial conference is to simplify the issues raised in the pleadings so as to guide the subsequent proceedings in a case, avoid unnecessary delays, and accord a speedy and inexpensive determination of the case.
2. A pretrial conference does not determine the ultimate rights of the party litigants, unless the parties agree that it should have that effect.
3. A judge can dispose of a pending motion in a case during a pretrial conference.
4. The attorneys of the parties to a suit must confer before the date scheduled for a pretrial conference in order to reach an agreement on as many matters as possible in the action and thereafter submit to the court on behalf of the clients a memorandum statement of the matters agreed upon as to the issues of law and fact.
5. The order of a pretrial conference shall be signed by the judge of the trial court and the lawyers for both of the parties to the case.
6. When the order for a pretrial conference is entered, it shall become a part of the trial records, superseding the pleadings and controlling the subsequent course of the action.
7. The order of a pretrial conference is a legal nullity if not signed by the judge and the counsels for the parties, and as such would not preclude a party from arguing the legal issues raised in the pleadings during the disposition of the law issues.
8. Where the law issues in a case do not constitute statutory grounds for the dismissal of an action, a judge must pass upon all of the law issues raised in the pleadings; however, where the law issues contain statutory grounds for the dismissal of an action, the judge is limited to passing only on those issues which result in the dismissal of the action.

*Henry Reed Cooper and M. Kron Yangbe* of the Cooper and Togba Law Firm appeared for petitioner/appellant. No one appeared for respondents/appellees.

**MR. JUSTICE MORRIS delivered the opinion of the Court.**

This case is before us on appeal from the ruling of our distinguished colleague, Mr. Justice Wright, then presiding in Chambers during the March Term, A. D. 2000, of this Honourable Court. Mr. Justice Wright had ruled that the petitioner, J. J. Roberts Foundation, should have filed its petition for certiorari to review the lower court's ruling on the pretrial conference immediately following the trial judge's conduct of the of the pretrial conference and his making of a ruling thereon as to the issues that would guide the further proceedings in the case, commencing from the motion to dismiss, rather than waiting until the trial court had

entertained arguments and made a ruling on the motion to dismiss. Mr. Justice Wright had also ruled that the petitioner in these certiorari proceedings had agreed to and acquiesced in the mode of procedure when, subsequent to the ruling on the pretrial conference, it participated in the arguments on the motion to dismiss and awaited the rendition of an adverse ruling on the said motion before seeking the aid of certiorari to review the ruling on the pretrial conference. The Justice had held that the filing of the certiorari petition at that stage should have been from the ruling on the motion to dismiss. In short, Mr. Justice Wright had ruled that the ruling on the pretrial conference was not subject to remedial review subsequent to the arguments on and determination of the motion to dismiss, and that instead it should have been the judge's ruling on the motion to dismiss that should have been made the proper subject of remedial review. The ruling of Mr. Justice Wright is the subject of this appeal before us.

The case has its origin in the Sixth Judicial Circuit Court, Montserrado County, wherein Meridien Properties Incorporated (MPI), co-respondent in these certiorari proceedings, instituted an action for declaratory judgment against the J. J. Roberts Foundation, petitioner herein. In response to the declaratory judgment petition, the J. J. Roberts Foundation filed an answer along with a motion to dismiss the action, contending principally that Co-respondent MPI lacked the capacity to sue. Correspondent MPI filed a reply along with a resistance to the motion to dismiss.

The motion was assigned for hearing, but Meridien failed to appear. Whereupon the court proceeded to hear the J. J. Roberts Foundation's arguments and to thereafter reserve its ruling. Subsequently, MPI filed a bill of information, which was resisted by the J. J. Roberts Foundation, heard and granted by the trial court. In the ruling, the judge reinstated the motion to *status quo* and ordered a rehearing thereof. The motion to dismiss was accordingly assigned for a new hearing. However, the court, upon the request of the J. J. Roberts Foundation, ordered a pretrial conference pursuant to the provisions of chapter 12 of the Civil Procedure Law, Rev. Code 1, with the view of identifying and simplifying the issues for the speedy and inexpensive determination of the case. During the pretrial conference Meridien Properties Incorporated gave notice that it would produce the assignment of lease agreement at the trial.

At the end of the pretrial conference, the trial court identified several issues in the motion and resistance, and ruled that the said motion and the other pleadings raised identical issues of law and fact that would guide and enable the trial court in making an informed determination of the motion and the case. The motion was assigned for hearing on October 14, 1999. The J. J. Roberts Foundation argued that Co-respondent MPI did not have the capacity to institute the action, asserting that MPI was not a lessee, tenant, or nominee of the lessee. MPI, on the other hand, argued that the lease agreement between the J. J. Roberts Foundation and Meridien Bank was assigned to Co-respondent MPI by the said Meridien Bank. MPI also argued that the J. J. Roberts Foundation was aware of the assignment of lease, that the Foundation had received rental payments directly from the co-respondent herein, and that the Foundation's counsel had acknowledged in several letters the existence of the said agreement.

The trial court ruled denying the motion to dismiss, stating as the grounds therefor that the J. J. Roberts Foundation had received rental payments under the lease directly from MPI; that counsel for J. J. Roberts Foundation had in several letters acknowledged the existence of the assignment as evidenced by copies of receipts of rental payment and communications

between the Foundation and the Co-respondent MPI relative to the property; that MPI had given notice that it would produce the assignment which was then in possession of Meridien Bank under seizure by the then National Bank of Liberia; that in the interest of justice and fairness, the court would obtain evidence from MPI at the hearing of the case, which act it could not undertake at the level of the motion to dismiss; and that the co-respondent's excuse for not making proffer of a copy of the assignment of lease was legal. The trial judge therefore concluded that he could not dismiss the petition for declaratory judgment on the ground of lack of capacity to sue.

The petitioner herein excepted to the ruling and applied to this Court of last resort upon a nine-count petition for a writ of certiorari, counts 6 and 7 of which this Court deems relevant for the determination of this case.

In count 6 of the petition, the petitioner contended that the trial judge had failed in his ruling to pass upon all the issues raised by the parties during the conference, and that consequently petitioner addressed a letter to the trial judge who gave the petitioner the assurance that said communication would serve as an amendment to his ruling on the pretrial conference. In count 7 of the petition the petitioner further contended that the trial judge had failed in his ruling on the motion to dismiss to address all of the law issues raised at the pretrial conference and during the arguments of the motion to dismiss, especially the principal issues of privity, contract and the law on option.

In counts 7 and 8 of their returns, respondents contended that the petitioner had failed to avail itself of the law relating to applying for a writ certiorari since it had allowed the ruling by the trial judge on the pretrial conference, which was handed down prior to the hearing and determination of the motion to dismiss, to lapse until after the motion to dismiss was argued and ruled upon. The respondents asserted that under the law the election by the petitioner to have its motion to dismiss heard removed the ruling on the pretrial conference from becoming a subject for remedial review simply because the ruling on the motion to dismiss was not in its favor. The respondents also maintained that the petitioner's letter to the judge relative to an amendment to the judge's ruling on the pretrial conference was a private communication to which Co-respondent MPI had no privity, and which therefore was a legal nullity, especially as the said letter did not constitute a motion to rescind, as contemplated by the law.

In counts 11, 12, and 13 of their returns, the respondents contended that the pretrial conference which was requested by petitioner clearly identified the issues that would guide the subsequent proceedings in the case, and that the trial judge committed no reversible error in addressing only those issues that were identified during the pretrial conference when he passed on the motion to dismiss. The respondents argued in count 12 of their returns that the trial judge had adequately passed upon the issue of the lack of privity of contract or capacity to sue. Hence, they said, the allegation that the trial judge had not passed upon the privity of contract issue had no factual and legal basis. In count 13 of their returns, the respondents asserted that while the trial judge was required by law to pass on all of the law issues raised in the pleadings during the disposition of law issues, he was limited to pass only on those law issues which were statutory grounds for the dismissal of an action if the resolution of those issues resulted in the dismissal of the appeal.

The facts and circumstances in this case present two (2) salient issues for determination. They are:

1. Whether or not the trial judge failed to pass on the issue of capacity to sue, subject of the motion to dismiss?
2. Whether or not the ruling on the pretrial conference precluded the petitioner from arguing the legal issues raised in its resistance (pleading) during the disposition of law issues?

We shall decide the above issues in the reverse order. As to the issue of the pretrial conference, we hold that the sole purpose of a pretrial conference is to simplify the issues raised in the pleadings so as to guide the subsequent proceedings in a case. This will avoid unnecessary delays and should result in a speedy and inexpensive determination of the case. A pretrial conference, under our law, does not determine the ultimate rights of parties litigant, except such parties so agree. The judge can also dispose of a pending motion in a case during a pretrial conference. For reliance, see Civil Procedure Law, Rev. Code 1:12.1, 1 LCLR 124 (1973). Counsel for petitioner asserted in his brief that the final order on the pretrial conference entered by the trial judge was never signed by attorneys for both parties as required by law, and that both counsels had never met prior to the pretrial conference pursuant to law due to the absence of the respondents' counsel from Liberia. The petitioner maintained that what is not legally done is not done at all. We agree with the assertion of petitioner's counsel that the attorneys for both parties should have conferred before the date scheduled for the pretrial conference in order to reach an agreement on as many matters as possible, and to thereafter submit to the court a memorandum statement of the matters agreed upon as the issues of facts and law on behalf of their clients. For reliance, see section 12.3 of the Civil Procedure Law, Rev. Code 1, 1 LCLR 125 (1973).

A recourse to section 12.5 of the Civil Procedure Law reveals that the order of the pretrial conference shall be signed by the judge and the lawyers for both parties. When entered, it shall become part of the record, superseding the pleadings and controlling the subsequent course of the action. We observe that counsels for both parties did not confer prior to the date of the pretrial conference to reach an agreement upon the matters they deemed relevant for the determination of the case, and that they also never signed the order of the said conference. Therefore, we hold that the order is a legal nullity and does not preclude the petitioner from arguing during the disposition of the law issues, the very legal issues raised in its responsive pleading (i.e. the answer). The order at the conclusion of the pretrial conference was not manifestly prejudicial to the rights and interests of the petitioner, for which certiorari will lie. As to the second issue, i.e., whether or not the trial judge failed to pass upon the issue of the capacity of Co-respondent MPI to sue, we hold in the affirmative and state that the trial court did pass on the said issue. We observe from the ruling of the judge on the motion to dismiss that contrary to the allegation of the petitioner herein, the trial judge adequately passed upon the issue of privity of contract or the capacity to sue. See sheets 7 and 8 of the ruling on the motion to dismiss. We are also in agreement with the contention of respondents that the trial judge is only limited to law issues relative to statutory grounds for dismissal of an action, but not to all of the issues raised in the pleadings which are not statutory grounds for dismissal of an action.

Wherefore, and view of the foregoing, it is the considered opinion of this Court that the ruling of the Chambers Justice should be and the same is hereby affirmed, and the case is remanded. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the presiding judge therein to resume jurisdiction over the case and proceed with the hearing, commencing with the disposition of law issues. Costs are to abide the final determination of the case. And it is hereby so ordered.

*Petition denied.*