

**HENRY E. JACK et al.** and **RUDOLPHUS BROWN**, Hearing Officer, Ministry of Labour, Petitioners, v. **HIS HONOUR ARTHUR K. WILLIAMS**, Judge, National Labour Court, and the **LIBERIA ELECTRICITY CORPORATION (LEC)**, by and thru its Managing Director, **SAMUEL N. BURNETTE, JR.**, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING A  
PETITION FOR A WRIT OF PROHIBITION.

Heard: May 16, 1989. Decided: July 14, 1989.

1. While the general rule is that when a party seeks relief at the hand of the court as if they had been regularly served and thereby they submit themselves to the jurisdiction of the court, the proper step to take in such a case, when parties have not been directly served with the process, is to file a responsive pleading contesting the jurisdiction of the court.
2. A writ of summons based upon a petition to the court for judicial review of an administrative decision, or any other petition for that matter, should be accompanied by a judge's order and not written directions.
3. A petition to the court is an application addressed to the court itself, filed before a judge therein for the exercise of his authority in redressing a wrong or to state what law governs in a particular controversy.
4. Written directions are a mere set of instructions addressed to the clerk of court based upon a complaint filed before a judge.
5. When a motion to dismiss is denied, the movant may note exceptions and appeal therefrom or come up on regular appeal after determination of the main cause of action on its merits, instead of coming to the Supreme Court on certiorari.

A petition for judicial review was filed in the National Labour Court eight (8) days following the ruling of the Ministry of Labour against Co-respondent Liberia Electricity Corporation (LEC). Following the filing, the petition was served on only the hearing officer, Rudolphus Brown, and not the main parties of interest, Henry E. Jack et al. Further, the petition was served without a judge's order. Petitioners herein filed a motion to dismiss the petition for judicial review on the grounds that the petition was filed and served on the Ministry of Labour without a judge's order, coupled with the fact that the petition was never served on Henry E. Jack et al., who were the principal parties of interest. As such, the petitioners herein asserted that the National Labour Court lacked jurisdiction over the subject matter and the persons of Henry E. Jack et al. Based upon this attack, the corespondent herein withdrew its original petition and filed an amended petition with a judge's orders which were served on all the parties along with a writ of summons. This service was, however, made forty (40) days following the ruling of the hearing officer.

Predicated upon this service, the petitioners in the prohibition proceeding, the hearing officer and Henry Jack et al., filed an amended motion praying that the National Labour Court refuse jurisdiction over the matter on the grounds that (a) although the amended petition for judicial review, the judge's orders, and the writ of summons were served on the parties, said service was made beyond the time required by statute, and (b) following the establishment of the National Labour Court, all petitions for judicial review were to be filed and served within ten (10) days after the ruling of the Labour Ministry and not otherwise.

Despite this contention, the National Labour Court proceeded to hear the petition for judicial review. At this juncture, Henry E. Jack et al. and the Ministry of Labour petitioned the Chambers Justice for the issuance of a writ of prohibition. The petition was heard and granted and the peremptory writ ordered issued. From this ruling of the Chambers Justice, respondents appealed to the Supreme Court *en banc* for a review and final determination.

In reversing the ruling of the Chambers Justice, the Supreme Court reasoned that it was taking the decision because of the several blunders made by both parties and its desire to mete out transparent justice. The Court accordingly remanded the case to the National Labour Court with instructions that it permits the petitioners to note their exceptions to his ruling and to proceed thereafter to hear and determine the case on the merits.

*Henrietta M Koenig* of the Koenig Law Firm, in association with *J. Edward Koenig*, appeared for petitioners. *Roger C. H.*

*Steele* of the Steele and Steele Law Offices, in association with *Alfred B. Flomo* of the Dugbor Law Firm, appeared for respondents.

MR. JUSTICE KPOMAKPOR delivered the opinion of the Court.

The principal contentions of the petitioners in the amended petition for prohibition are that Co-respondent Liberia Electricity Corporation (LEC), against whom a ruling had been made by the hearing officer at the Ministry of Labour, filed its original petition on June 2, 1988 for judicial review without a judge's order; that petitioners herein, Rudolphus Brown, hearing officer of the Ministry of Labour, and Henry E. Jack et al. were never served with a copy of the petition as required by law; and that the petitioners in the prohibition proceeding had subsequently filed an amended motion to dismiss the petition for judicial review because of the lack of jurisdiction over the persons of petitioners in that whilst the final judgment of the hearing officer was rendered on May 24, 1988, the National Labour Court had not acquired jurisdiction over the case up to and including July 4, 1988, forty (40) days after final judgment had been rendered.

The petitioners contended further that despite the fact that Co-respondent LEC had withdrawn its original petition for judicial review and filed an amended petition with a

judge's order and a writ of summons attached thereto and had served same on the petitioners in prohibition, this act did not confer jurisdiction upon the National Labour Court because the amended petition was filed without statutory time — i.e. 40 days after the ruling of the hearing officer, instead of 10 days as contemplated by the law.

In resisting the petition for a writ of prohibition, the respondents filed a twenty-count amended returns, contending mainly that while Co-respondent LEC did in fact file its petition for judicial review on June 2, 1988 without a judge's order, and without serving a copy thereof directly upon the Co-petitioners herein, Henry E. Jack et al., but rather upon Co-respondent Rudolphus Brown, the hearing officer, the petitioners had waived their right to contest the jurisdiction of the court by appearing and traversing the issues raised in the petition for judicial review.

The respondents also admitted that when Co-respondent LEC was attacked by the petitioners in the prohibition proceeding, it withdrew the original petition for judicial review on July 4, 1988 and filed an amended petition, this time with judge's order and a writ of summons attached and served directly on the petitioners. Respondents contended, therefore, that petitioners could not voluntarily appear in trial court, file their returns, and later contest the jurisdiction of the trial court over their persons and the subject matter. Respondents further contended that prohibition will not lie since the co-respondent judge had jurisdiction over the subject matter and did not proceed by any wrong rules.

Respondent contended finally that the amended petition for prohibition be denied because the original petition was verified by the legal counsel of petitioners, instead of the petitioners themselves, in keeping with the relevant statute.

Our distinguished colleague, Mr. Justice Azango, who heard the prohibition proceedings in Chambers, identified in his ruling the following as the issues to be determined:

"Whether or not a copy of the petition was served on the petitioners in keeping with statute as alleged by respondents?"

Our colleague also stated that he considered the most leading issue as being "whether or not the amended petition of July 4, 1988 gave the National Labour Court jurisdiction over the case at bar", and he therefore opined that prohibition will lie. The Chambers Justice held, relying upon *The Liberia Bank For Development and Investment v. York and Brown*, 35 LLR 154 (1988), that a petition for judicial review, after the legislative dissolution of the then Board of General Appeals, must be filed ten (10) days after the hearing officer has given his final ruling. Mr. Justice Azango concluded that since the amended petition for judicial review was filed forty (40) days after the hearing officer rendered his ruling, the National Labour Court lacks jurisdiction over the petitioners. He then granted the prohibition and dismissed the petition for judicial review.

In short, the petitioners have contended in their amended petition for the writ of prohibition, brief and argument before this Bench that the National Labour Court never acquired jurisdiction over their persons since the petition for judicial review was not served upon them, the real parties in interest, but rather upon the hearing officer who in turn gave them copies.

We reject the contention of the respondents that although petitioners were not served directly with process, but since they sought relief at the hand of the court as if they had been regularly served, they thereby submitted themselves to the jurisdiction of the court. While this is the general rule, *Greaves v. Jantzen*, 24 LLR 420 (1975), the said rule is not applicable to the instant case. In fact, the proper step to have taken in such a case was to file a responsive pleading contesting the jurisdiction of the court which the petitioners did in this case and which we deny could be construed as a waiver of any rights of theirs.

In the case *The Management of Camer Shipping Lines v. Hill*, 33 LLR 497 (1985), the Court stated the issue as being whether or not a writ of summons based upon a petition to the court for judicial review of an administrative decision should be issued either upon court's orders or upon a written directions of the petitioner addressed to a the clerk of court?

The issue stated in the *Camer Shipping Lines* case is slightly different from that of the case at bar since, in the latter case, there is no question as to whether a writ of summons based upon a petition to a court for judicial review of an administrative decision should be accompanied either by a written direction or a judge's order. It is conceded that such a summons should be accompanied by a judge's order. However, we have referred to the *Camer Shipping Lines* case in the hope that it will be understood that our holding or position remains unchanged.

According to Mr. Justice Smith who spoke for the Court in the *Camer. Shipping Lines* case, this was the first time the question had been propounded in this jurisdiction for determination. Our distinguished colleague pointed out that a petition for judicial review of an administrative decision, or any petition to a court for that matter, is an application addressed to the court itself, filed before a judge therein for the exercise of his authority in redressing a wrong or to state what law governs a particular controversy. Justice Smith described a written direction as a mere set of instructions addressed to the clerk of court based upon a complaint filed before a judge. The petitioner seeking a judicial review, Justice Smith continued, must obtain a court's order which directs the clerk to receive and file the petition, to have the same served upon the agency, the Board of General Appeals in this case, and to notify all parties of record to appear and file returns on a day or date prescribed by law.

The case *Larmie v. Banks and Carew*, 33 LLR 3 (1985), is one in point. The basic issue in the *Larmie* case and the case at bar is the same; that is, whether a remedial writ is the proper remedy when a court has denied a motion to dismiss?

The facts in the *Larmie* case are that Carew, the plaintiff in the lower court, sued Alhaji Larmie in ejectment. The defendant simultaneously filed his answer and motion to dismiss on the ground that the court lacked jurisdiction over the subject matter. After the reply was filed and the pleadings rested, the judge denied the motion to dismiss, holding that he had jurisdiction over the subject matter. The defendant excepted to the ruling and fled to the Chambers Justice on certiorari. In sustaining the denial of the petition, this Court, speaking through Mr. Chief Justice Gbalazeh, and relying upon the case *Raymond Concrete Pile v. Perry*, 13 LLR 522 (1960), held:

"It has therefore been the precedent in our jurisdiction that where such action as a motion to dismiss is denied, the movant may note down exceptions and come up on regular appeal after a determination of the main cause instead of coming up on certiorari in order to multiply litigations, or he may appeal therefrom." *Larmie v. Banks and Carew*, 33 LLR 3 (1985).

The court went on: "The injury which appellant complained of and sought to review by certiorari can adequately be reviewed by the course of a regular appeal. Therefore, the denial of the motion to dismiss was not such a prejudice that would have affected the main cause of action to the detriment of the appellant, and if however it did, an appeal could have cured the situation." *Id.*

In spite of our holding in the *Camer Shipping Lines* and *Larmie* cases, as far as written directions and judge's orders are concerned, this is one area in which we believe that mere technicalities which do not affect the merits of the case should not be strictly followed. See *Levin v. Juvico Supermarket*, 23 LLR 201 (1974) and *Sirleaf v. Reeves*, 20 LLR 433 (1971).

Decree #21, the latest legislative enactment, gives the National Labour Court exclusive jurisdiction over all cases emanating from the labor inspectors.

Thus, the pivotal issue in this case, as was in the *Larmie* case, is whether or not when a trial judge denies a motion to dismiss for want of jurisdiction or otherwise, the proper remedy available to the movant is a remedial process, prohibition in this case? It is our holding, as we did in the *Larmie* case that in such cases and circumstances there are only two choices available to the movants. He may except to the ruling and go through the hearing until final determination of the matter, or he may there and then announce an appeal from the ruling denying his motion. The rationale is that this Court frowns upon hearing cases in piecemeal.

The verification of the petition for the writ of prohibition by counsel for the petitioners, instead of the parties themselves, was another issue raised by the respondents.

While the statute provides that the petitioner himself shall verify the petition for the writ of prohibition, the Court has not always been consistent in interpreting the relevant section of the law regarding verification. For example, in *Sodatonou v. Bank of Liberia, Inc.*, 20 LLR 512 (1971), this Court stated that the petition for the writ of prohibition need no longer be

verified by the party himself, but if it were still required, the Supreme Court would not enforce the technical requirements if doing so would mean that an unconscionable act against the judiciary would be countenanced. Yet, three years later, however, this Court, addressing the same issue, held that "an application for a writ of prohibition must be duly verified by the party himself and not by counsel." *King v. King et al.*, 23 LLR 418 (1974). Incidentally, the Court's opinion in the *King* case made no mention of its earlier decision in the *Sodatonou* case.

In the instant case, counsel for the petitioners withdrew the petition when attacked by their adversary in the returns and filed an amended petition with one of the petitioners verifying it. While we would like it to be understood that we favor the Court's position in the *Sodatonou* case, we will not take a definite position on this issue in this case.

In view of the blunders made by both parties and because of the desire of the Court to mete out transparent justice, the ruling of the Chambers Justice granting the writ of prohibition is hereby reversed. The Clerk of this Court is ordered to send a mandate to the lower court ordering the judge presiding therein to resume jurisdiction over the case and permit the petitioners to note their exceptions to the ruling on the motion to dismiss and proceed to hear and determine the case on the merits. And it is hereby so ordered.

*Petition denied.*