

PETER BONNER JALLAH, Appellant, v. **THE REPUBLIC OF LIBERIA**, by
and thru the INTERIM GOVERNMENT OF NATIONAL UNITY (IGNU), by
and thru the Minister of Justice, Appellee.

APPEAL FROM THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT,
CRIMINAL ASSIZES "B", MONTSERRADO COUNTY.

Heard: May 19, 1994. Decided: September 23, 1994.

1. A civilian is regarded as a combatant where he gives aid to the actual combatants in the war, and the fact that the war is a civil war and not a war between nations, makes no difference since the parties to the civil war engaged in exchange of prisoners and adopted courtesies and other rules common to war between nations.
2. Belligerents may consist of combatants and non-combatants and in the case of their capture, both have the right to treat the other as prisoners of war.
3. A peace keeping force has the right to self-defence which entitles it to protect itself from any of the warring factions and, in doing so, to use all means whatsoever necessary for such protection, provided that such means do not violate the rights of the civilian population
4. The presence of ECOMOG in Liberia as a peace keeping force created by the Economic Community of West African States (ECOWAS) does not extinguish the established government's right and power to defend the sovereignty of the State and to protect the rights and privileges of each and everyone of its citizens.
5. Internal disorder, rebellion and continuing civil war does not affect Liberia's existence as a nation or its sovereignty. Neither does a State surrender its independence and sovereignty by associating with a stronger power and accepting its protection.
6. In the absence of rights and privileges granted under the UN Charter, the Convention on Privileges and Immunities of the United Nations, or a Status of Forces Agreement, a peace keeping force has no power and authority to arrest and detain citizens of the host country.

7. Habeas corpus is a proceeding brought by any person whose liberty has been restrained without due process of law. The person seeking the benefit of this writ is entitled to it as a matter of right.

8. Whenever the court is satisfied that the person seeking the benefit of a writ of habeas corpus is being restrained of his liberty and that such detention is illegal, the Judge cannot deny the issuance of the writ.

9. In the absence of a Status of Forces Agreement, a peace keeping force has no legal right to arrest and detain any citizen of this country in its military camp.

10. Whatever privileges, power or authority ECOMOG enjoys in Liberia, it does so at the pleasure of the Government of the Republic of Liberia and therefore the Government cannot deny responsibility and shift blame on ECOMOG when any of its citizens are detained by ECOMOG.

11. The Government of Liberia is responsible to safeguard the lives, properties, rights and liberty of its citizens. Hence this sovereign responsibility may not be alienated to a peace keeping force.

12. Where a citizen of Liberia is detained by ECOMOG, the existing Government (IGNU) is a proper party against whom habeas corpus proceedings could lie.

13. It is error for the trial judge to deny and dismiss a petition for habeas corpus without taking evidence to determine whether the petitioner's arrest and detention was legal or illegal.

14. A court may inquire on habeas corpus whether the detention of the petitioner is within the authority of those detaining him.

These proceedings emanate from a habeas corpus petition filed in the Circuit Court, First Judicial Circuit Criminal Assizes "C" Montserrado County by petitioner, Peter Bonner Jallah who was arrested by the ECOMOG Peace Keeping Force along with some security officers of the Interim Government of National Unity for allegedly collaborating with the National Patriotic Front of Liberia (NPFL) in facilitating the infamous Octopus attack on Monrovia and its environs. The habeas corpus petition was filed against the Interim Government as respondents even though petitioner was detained by ECOMOG. The petitioner contended that as a civilian, his arrest and detention without due process of law in a military facility was a violation of his rights

granted under the Constitution of Liberia, the OAU Charter on Human and Peoples Rights, the UN Convention on Civil and Political Rights as well as the Universal Declaration of Human Rights.

Respondent appeared and contended that they were not the proper party respondent and that the petitioner was not being held by IGNU, but by ECOMOG, and therefore ECOMOG should be the proper party respondent. Respondent further contended petitioner, Peter Bonner Jallah, was an active participant in the Octopus attack against Monrovia, and as such his capture made him a prisoner of war. As a prisoner of war, respondent contended that petitioner is not entitled to a writ of habeas corpus. The judge of the Criminal Court denied the petition, from which ruling petitioner excepted and announced an appeal to the Supreme Court.

The Supreme Court upon review of the records held that a civilian may be designated a combatant and a prisoner of war in the Liberian civil war. The Court, however held that petitioner was a combatant. Hence, the Court concluded that it was a gross error for the trial judge to have dismissed the petition. With respect to the arrest and incarceration of petitioner by ECOMOG, the Court held that in the absence of rights and privileges granted to ECOMOG under the UN Charter, the Convention on Privileges and Immunities of the United Nations, or a Status of Forces Agreement, ECOMOG has no power and authority as a peace keeping force to arrest and detain citizens of Liberia. With respect to the question as to whether or not the Interim Government of National Unity is the proper party respondent, the Court held in the affirmative. The Court held that ECOMOG cannot be separated from the Liberian Government in any of its action designed to maintain law and order in Liberia. Finally the Court noted that the arrest, detention and maltreatment of petitioner by ECOMOG at its base, which was not refuted, is a blatant violation of petitioner's constitutional and human rights. Hence the Court, considering the aforesaid, concluded that the arrest and detention of petitioner by respondent was illegal, and taking note of respondent's responsibility to safeguard the lives, properties, rights and liberty of its citizens, the Supreme Court held that IGNU was the proper party respondent in the habeas corpus proceedings.

Accordingly, the Supreme Court *reversed* the judgment of the trial court. Prior to the hearing of the appeal in the habeas corpus, ECOMOG released petitioner, Peter Bonner Jallah from further custody. However, notwithstanding that the release of the appellant had rendered the case moot, the Supreme Court determined to proceed with it on the merits.

Benedict F. Sannob appeared for petitioner. *George E. Henriès* and *H. Varney H. Sherman* appeared as *Amicus Curiae*.

MR. CHIEF JUSTICE BULL delivered the opinion of the Court

The following are the facts of this matter as they appear in the records which came up to this Court from the First Judicial Circuit, Criminal Assizes "B" of Montserrado County, presided over at the time, by Judge C. Alexander B. Zoe.

Appellant, Peter Bonner Jallah, filed in Criminal Court "B" a petition dated 8th September 1993, praying for a writ of habeas corpus alleging that on October 26, 1992, he, appellant, was arrested at his home in the City of Monrovia by ECOMOG soldiers and some security personnel of the Interim Government of National Unity (IGNU) for allegedly collaborating with the National Patriotic Front of Liberia (NPFL) in facilitating the October 15, 1992 "Octopus" attack on Monrovia. Petitioner alleged further that he was taken to the ECOMOG military base where he was incarcerated and detained up to the date of the filing of his petition. Appellant further alleged that while in detention, he was "beaten, tortured and subjected to all sorts of indignities and inhumane treatment"; that appellant through his counsel, during the period of appellant's detention wrote to the Field Commander of ECOMOG, as well as the President of the Interim Government of National Unity (IGNU), complaining of his inhumane treatment, but "these two functionaries paid deaf ears to appellant's complaint." Appellant further complained that because he is a civilian, his detention in a military prison, without being charged, not only violates his constitutional rights under Article 20 (e) and (f) of the Liberian Constitution, but also violates the OAU Charter on Human and People's Rights; the UN Convention on Civil and Political Rights; and the Universal Declaration of Human Rights. Further, that all of the ECOWAS Countries that created ECOMOG are signatories to these "rights documents" and their respective governments have pledged that the rights under these documents will be respected and protected. Finally, that ECOMOG being a creature of ECOWAS, it must also adhere strictly to the observance and protection of these rights.

In countering the contentions brought forth in the petition in the writ of habeas corpus filed by appellant, the respondent, now appellee, the Interim Government of National Unity (IGNU) by and through the Minister of Justice, protested that they were not the proper party in these proceedings because the petitioner, Peter Bonner Jallah, was not being held by IGNU, but was in the custody of ECOMOG at its military base. Therefore, ECOMOG would have been the proper party against whom

these proceedings in habeas corpus should have been instituted. Respondent IGNU further stressed in its returns that even though petitioner was not in its custody, "investigations conducted by IGNU revealed that the petitioner Jallah was actively involved with the National Patriotic Front of Liberia (NPFL) as a combatant in the launching and sustaining of the unprovoked "Octopus" military attack on Monrovia and its inhabitants, the Interim Government of National Unity (IGNU) and ECOMOG. This action by the NPFL caused the loss of thousands of lives. Security information and intelligence reports, the returns continued, also revealed that petitioner, Peter Bonner Jallah, participated in directing the NPFL missiles and artillery assaults and attacks on Monrovia through the use of various communication and other devices; that petitioner's involvement in the attacks rendered him an active combatant and, as such, his capture made him a prisoner of war as that term is defined; that even though petitioner was in ECOMOG' s custody, habeas corpus would not obtain as that writ could not be enjoyed by prisoners of war. Finally, respondents argued that the Accord concluded in Cotonou, Benin, on July 25, 1993, provides the basis for the release of prisoners of war, and that when prisoners of war are being exchanged, all prisoners of war being held by the warring parties, including those held by ECOMOG, will be released under the auspices of the Red Cross.

His Honour Judge Zoe denied petitioner Jallah's petition on the grounds that the petitioner had admitted that he was engaged in passing information to the NPFL which resulted in his arrest and detention by ECOMOG. The judge's conclusion stemmed from the following statement made in the petition for the writ of habeas corpus:

"That on October 26, 1992, a little over ten (10) months ago petitioner was arrested by ECOMOG and some security personnel of the Interim Government of National Unity (IGNU) on suspicion of his collaborating with NPFL."

The court further said that the above quoted statement is an admission on the part of petitioner himself and is evidence against him that he had engaged in battle as a combatant which caused his arrest and detention at the ECOMOG base for military reasons. Therefore, according to the judge, petitioner was not a civilian but a combatant. Judge Alexander Zoe also adduced evidence from the argument of the petitioner's counsel before him which he used to deny the petition as well. For example, the judge in his ruling, said that when petitioner's counsel was arguing, he told the court that a letter was written to the President of the Interim Government of National Unity (IGNU) establishing that petitioner took part in the hostility of October 15, 1992, and also that petitioner was found with sophisticated

communication device in his possession which he used to direct NPFL in raining missiles on Monrovia.

This Court is surprised that a judge of our circuit court would, in the absence of the production of proper evidence, deny a petition for a writ of habeas corpus on the grounds alleged in his ruling dismissing said habeas corpus petition. How could the judge consider arguments of counsel and the allegation made in the complaint or petition that petitioner was arrested on suspicion of collaborating with the National Patriotic Front of Liberia (NPFL) during its October 15 "Octopus" attacks on Monrovia as evidence of admission of guilt of petitioner.

Judge Zoe indeed overlooked the basic issues raised in the petitioner's petition in these habeas corpus proceedings. This Court regards the judge's act as either deliberate, or an indication of his inability to discern the essential issues raised in this matter which are of vital importance to the proper disposition of these habeas corpus proceedings.

Considering the contentions of the parties in these habeas corpus proceedings, we believe that the relevant issues worthy of consideration in this opinion are the following:

1. Can petitioner/appellant, Peter Bonner Jallah, a civilian, be designated a combatant and a prisoner of war in the Liberian Civil War?
2. What are the rights and privileges which ECOMOG, a peace keeping entity in Liberia, may exercise in the absence of a Status of Forces Agreement clearly defining such rights and privileges?
3. Whether the Republic of Liberia is a proper party to these habeas corpus proceedings?

Before addressing these vital issues and in order to provide for a better understanding of this opinion, we deem it necessary and expedient to give a brief history of the presence of ECOMOG in Liberia today and the establishment of the Interim Government of National Unity (IGNU) as has been revealed by the records before us.

In November 1989, an armed group calling itself the National Patriotic Front of Liberia (NPFL) emerged in Liberia under the leadership of Mr. Charles Taylor. The

proclaimed purpose of this group of Liberians was to liberate the Liberian people by forcibly removing from office Samuel K. Doe, a dictatorial President who, nine years earlier, as a Master Sergeant in the Armed Forces of Liberia (AFL), successfully staged a coup d'etat (with the help of sixteen other non-commissioned officers and enlisted men), assassinated a constitutionally elected President of Liberia, and established themselves the government to rule the peaceful people of Liberia. The greater majority of the Liberian people whole-heartedly embraced Mr. Taylor's objective and acclaimed him for his bravery and gallantry in taking on strongman Samuel K. Doe.

Unfortunately, what began as a campaign of liberation very early turned out to be an era of merciless persecution of, and death for the citizens of our beloved country without exception as to age, gender or ethnicity. By September 1990, even before Mr. Doe was killed, the National Patriotic Front of Liberia (NPFL) had split into another warring faction, called the Independent National Patriotic Front of Liberia (INPFL) headed by one Prince Johnson emerged. These two warring factions together with our own national army equally participated in causing the death of thousands of our citizens and the destruction of millions of dollars worth of private and public properties. During the five years since 1989, these three warring factions have been joined by five other similar groups calling themselves the United Liberation Movement for Democracy in Liberia (ULIMO), Liberia Peace Council (LPC), Lofa Defense Force (LDF), Nimba Defense Force (NDF) and Bassa Defense Force (BDF), respectively.

Today, unarmed, innocent, helpless civilians, which include children, women, elderly, the blind and the crippled, continue to be the victims of these so-called "Liberators". This very sad state of affairs, evident by the total collapse of organized government in Liberia, the absolute abolition of law and order, and the indiscriminate destruction of lives and property by the first two warring factions, aroused the concern and sympathy of the leaders of the Economic Community of West African States (ECOWAS). These West African leaders decided that something had to be done to aid the Liberian people to restore law and order once again to their country; to end the savagery of the warring factions; and to prevent the massive killings of the Liberian people.

Accordingly, in order to accomplish these objectives, the leaders of the Economic Community of West African States (ECOWAS) created the Cease-fire Monitoring Group (ECOMOG) and suggested that the Liberian people organize an Interim

Government of National Unity which would include representatives from the warring factions, political parties and interest groups.

Thus, the Interim Government of National Unity (IGNU) and ECOMOG came into existence. This interim government was intended to be a government that would restore peace to our country through reconciliation, stability and usher in a new national government through a free and fair elections. This was part of the ECOWAS Peace Plan for Liberia.

The implementation of this Peace Plan could represent the success of the Agreement of the Economic Community of West African States to ensure that peace and security would be maintained among its member states in this African sub-region.

It is important to mention here that one of the basic provisions of the ECOWAS Peace Plan for Liberia was also the mandate that the Interim Government would enter into a Status of Force Agreement with ECOWAS to define the relationship between ECOMOG and IGNU. This mandate was endorsed at the Assembly of Liberians held in Banjul on August 7, 1990, and again in November 1990 at the Final Communique of the Heads of Governments of ECOWAS. The Interim Government was again reminded of the necessity to enter into a status of Forces Agreement with ECOWAS. However, the Interim Government failed to heed this important mandate of ECOWAS. We shall say more about the Status of Forces Agreement later in this opinion.

At this juncture, before addressing the issues in this matter, we shall digress for a moment to pay deserved tribute to two of this Court's renowned lawyers. When this matter was called for hearing, we lost no time in recognizing its significance and historical importance, not to mention, the fact that some of the issues presented in this cause have not heretofore come before this Court. For these reasons, we appointed Counsellors George E. Henries and H. Varney G. Sherman to serve as *Amicus Curiae*. We are indeed pleased to mention that the *Amicus Curiae* briefs submitted and argued before us by these two distinguished Counsellors-At-Law have greatly aided this Court in the determination of this matter. We express our thanks to these Counsellors and acclaim them for their devotion to this Court and for their service to our profession.

We shall now discuss the issues in this *case*:

2. Can petitioner/appellant, Peter Bonner Jallah, a civilian, be designated a combatant and a prisoner of war in the Liberian civil war?

The Liberian civil conflict may be correctly recognized as a war which is existing in a divided nation consisting of opposing hostile factions, who are contending for exclusive control of the government and people of this nation. All of these opposing factions are enemies of the established government of the sovereign people of Liberia. 93 C.J.S., *War and National Defense*, Section 9, *Civil War in General; Occurrence and Existence*.

Under International Law, a civilian is regarded as a combatant where he gives aid to the actual combatants in the war, and the fact that the war is a civil war and not a war between nations, makes no difference since the parties to the civil war engaged in exchange of prisoners and adopted courtesies and other rules common to war between nations.

The Cotonou Accord to which all parties of the Liberian conflict subscribed, contains provisions for the exchange of prisoners of war. This provision of the Cotonou Accord resembles the Geneva Convention of May 12, 1949 governing treatment of prisoners of war and also the Hague Convention of war of 1907 relating to the laws and customs of war on land. In these two Conventions, belligerents may consist of combatants and non-combatants and in the case of their capture, both have the right to be treated as prisoners of war.

In the instant case, Petitioner Peter Bonner Jallah was alleged to have given aid to the National Patriotic Front of Liberia, one of the warring factions contending for the exclusive control of the government and sovereign people of Liberia during the October 15, 1992 "Octopus" invasion. If this fact had been proven by the proper production of evidence, there is no reason why petitioner may not be designated as a combatant and a prisoner of war. It was therefore incumbent upon the respondent to have presented evidence of petitioner's involvement in aiding the NPFL in its October 15, 1992 invasion of the City of Monrovia, and only upon such evidence could the court below make a proper determination of the legality or illegality of petitioner's arrest and detention. In the absence of such evidence, it was gross error for the judge in the court below to dismiss the petitioner's petition.

2. What are the rights and privileges which ECOMOG, a peace keeping entity in Liberia may enjoy and exercise in the absence of a Status of Forces Agreement clearly defining such rights and privileges?

ECOMOG is a peace keeping force created by the Economic Community of West African States, (ECOWAS) of which Liberia is a member. ECOMOG is not present in Liberia to participate in the on-going civil war, nor is ECOMOG an occupying force. This Court, however, does recognize the right of ECOMOG to self-defense which entitles it to protect itself from any of the warring factions and in doing so, to use all means necessary for such protection, provided that such means do not violate the rights of any citizen of this sovereign Republic.

Liberia is a free and sovereign State. Internal disorder, rebellion and continuing civil war do not affect the existence of a nation or its sovereignty; neither does a state surrender its independence and sovereignty by associating with a stronger power and accepting its protection. Therefore, the presence of ECOMOG in Liberia as a peace keeping force created by the Economic Community of West African States (ECOWAS), does not extinguish the established government's right and power to defend the sovereignty of the State and to protect the rights and privileges of each and everyone of its citizens. 45 AM JUR 2d, *International Law*, § 14, *Effect of Internal Disorder, Civil War; Revolution; Id.* §37, *Sovereignty, Rights and Powers: Generally*.

In order to ensure that the rights of our people are protected, it is mandatory that ECOMOG's existence, movements and operations in Liberia, as well as its relationship with the established government and its sovereign people, must be clearly defined. This Court therefore strongly urges the Liberia National Transitional Government (LNTG) to immediately enter into a Status of Forces Agreement with the Economic Community of West African States (ECOWAS) which will define the rights and privileges of ECOMOG in Liberia. To do so would implement item No. 3 of the final communique of the meetings of Liberians held in Banjul, the Gambia from August 27, to September 1, 1990, mandating the Interim Government to enter into a Status of Forces Agreement with ECOWAS.

The arrest, detention and maltreatment of petitioner by the ECOMOG forces at its base in the manner alleged by petitioner (and not refuted by respondents) is a blatant violation of petitioner's constitutional and human rights. The act which petitioner was alleged to have committed e.g. suspicion of collaborating with the National Patriotic Front of Liberia "in the launching and sustaining of the unprovoked "Octopus" military assault and attacks on Monrovia and its more than one million inhabitants, on the Interim Government of National Unity, and on ECO-MOG...." presents no legal justification for petitioner's arrest, detention and mal-treatment by ECOMOG, a peace keeping force.

In the absence of rights and privileges granted under the UN Charter, the Convention on Privileges and Immunities of the United Nations, or a status of forces agreement, ECOMOG has no power and authority as a peace keeping force, to arrest and detain citizens of this Republic. We have seen no right given to ECOMOG under any of these International Treaties that would entitle ECOMOG to arrest petitioner under the facts presented in these proceedings. It would have been proper for ECOMOG having investigated petitioner Jallah, to turn him over to the Government of the Republic of Liberia (IGNU) to be charged and prosecuted in accordance with the laws of Liberia. We wish to re-emphasize the urgent need for our Government to enter into a status of forces agreement with ECOWAS which will clearly define the rights of ECOMOG as a peace keeping force and its relationship to the Liberian Government and its citizens.

3. Is the Republic of Liberia the proper party to these habeas corpus proceedings?

Habeas corpus is a proceeding brought by any person whose liberty has been restrained without due process of law. The person seeking the benefit of this writ is entitled to it as a matter of right. And whenever the court is satisfied that such person is being restrained of his liberty and that such detention is illegal, the judge cannot deny the issuance of the writ. Civil Procedure Law, Rev. Code 1:16.52-16.55. Even where a person is a prisoner of war, the court may inquire whether such detention is within the authority of the military and even where such person is not a prisoner of war but is being detained by the military, habeas corpus is available to such prisoner. 39 AM JUR 2d. *Habeas Corpus*, § 101 - 102, *Prisoner of War*.

We have already mentioned above that in the absence of a status of forces agreement, ECOMOG as a peace keeping force has no legal right to arrest and detain any citizen of this Republic in its military camp, including this petitioner. This being so, whatever privileges, power or authority ECOMOG enjoys in Liberia, it does so at the pleasure of the Government of the Republic of Liberia and therefore the Government cannot deny responsibility and shift blame on the Peace Keeping Force. This military force is to cooperate and collaborate with the Government of the Republic of Liberia under conditions which were contained in the Banjul Final Communique. The Communique provides that the Interim Government of National Unity (IGNU) is to assume full power for the governance of the State as provided for in the Constitution of Liberia. ECOMOG is mandated and charged with the responsibility to maintain law and order which law and order must conform with the Liberian Constitution and all laws promulgated under said Constitution. ECOMOG cannot therefore be

separated from the Liberian Government in any of its actions designed to maintain law and order in this Republic. The facts in these proceedings reveal that the arrest of petitioner on October 26, 1992, by ECOMOG was facilitated with the aid of some security personnel of the Interim Government of National Unity (IGNU). This allegation was not denied, neither was the detention of petitioner without charge. We must conclude therefore that petitioner's detention was known and permitted by the Interim Government of National Unity (IGNU). The Government of Liberia is responsible to safeguard the lives, properties, rights and liberty of its citizens. This is the sovereign responsibility which may not be alienated to any other sovereign or entity such as ECOMOG.

There is no doubt in the mind of this Court that the Republic of Liberia being represented by the then existing IGNU Government was a proper party against whom these proceedings could lie.

It is unfortunate to note that the entire habeas corpus proceedings conducted by the trial judge was erroneous, irregular and biased with respect to trial procedure in our jurisdiction. The judge took evidence from arguments of both counsels, but failed to determine whether appellant was a prisoner of war by collaborating with the National Patriotic Front of Liberia (NPFL) during the October "Octopus". The trial judge ruled that petitioner admitted in passing on information to the National Patriotic Front of Liberia (NPFL), when he placed in his petition that he was arrested by ECOMOG with the assistance of some security personnel of the Interim Government of National Unity (IGNU) on suspicion of helping the NPFL.

The admission which the judge speaks about is merely an allegation in the petitioner's petition stating the reasons why he was arrested by ECOMOG. How could the judge regard such an allegation as guilt. It was incumbent upon the respondent in these proceedings to show by proper evidence that their alleged suspicion of petitioner's participation in the 1992 "Octopus" invasion on Monrovia was supported by evidence to warrant the arrest and detention of the petitioner. Such evidence cannot be obtained from arguments of counsels or from allegations made by petitioner describing the reasons for his arrest and detention. The trial judge greatly erred in concluding that petitioner's detention was legal, based on the particular allegations in the petition and the arguments of counsels.

The trial judge therefore committed a reversible error when he denied and dismissed petitioner's petition without taking evidence to determine whether the petitioner's arrest and detention by ECOMOG, a military force, was legal or illegal.

It is a fundamental principle of law that:

"A court may inquire on habeas corpus whether the detention of even a prisoner of war is within the authority of those detaining him." 39 AM JUR 2d, *Habeas Corpus* § 102, *Prisoner of War*.

The failure of the trial judge to determine firstly, by the proper production of evidence, whether petitioner was a combatant and prisoner of war and, secondly, that his detention was legal or illegal renders his judgement reversible.

Before concluding this opinion, this Court in passing, deems it expedient to mention in this opinion that why this appeal was being argued, this Court was informed that petitioner was released from the custody of ECOMOG on May 6, 1994, exactly one year six (6) months and ten (10) days after petitioner's detention.

For the foregoing reasons and the law controlling, the judgment of the court below denying and dismissing appellant's petition is hereby reversed. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the presiding judge to resume jurisdiction over this case and give effect to this opinion. And it is hereby so ordered.

Judgment reversed