

**LEF INVESTMENT COMPANY**, by and through **ALETHA JOHNSON**, Attorney-In-Fact for **LEROY E. FRANCIS**, President of **LEF INVESTMENT COMPANY**, Petitioner, v. **HIS HONOUR NAPOLEON B. THORPE**, Circuit Judge presiding, September 1982 Term of the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, **ROLAND JONES, J. E. THOMPSON, et al.**, Respondents.

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

Decided: January 24 & 25, 1984. Decided: February 9, 1984.

1. Persons who should be joined as parties' plaintiff or defendant are persons (a) who ought to be parties to an action if complete relief is to be accorded between the persons who are parties to such action, or (b) those who might be inequitably affected by a judgement in such action.
2. Issues not raised in the court from which the appeal is taken cannot be raised for the first time in the appellate court except that of jurisdiction of the court of origin over the subject matter.
3. An issue of law which was not raised in due time and form in the trial court cannot be considered on appeal.
4. A brief shall contain a statement of the issues and the points to be argued with supporting legal authorities.
5. If a judgment had been entered without jurisdiction of the person of the defendant, the defect is cured if the defendant thereafter appeared and participated in subsequent proceedings or invoked the action of the court for his benefit.
6. Prohibition cannot lie where the sheriff in the performance of his duties exercises due care in securing the properties duly seized by him.

In April, 1980, the Co-respondents Roland Jones and J. E. Thompson instituted an action of damages by attachment against LEF Investment in the Sixth Judicial Circuit, Montserrado County. While the case was pending, a military coup occurred in Liberia, and the courts suspended their activities. When the courts were reconstituted, the said co-respondents requested that the case be assigned for trial. A notice of assignment was duly issued and served on the parties, but the petitioner and its counsel failed to appear for the trial. A default judgment was therefore rendered against it.

Subsequently, Mrs. Aletha Johnson, attorney-in-fact for Mr. LeRoy Francis, president and majority shareholder of petitioner Company, was brought to court to satisfy the judgment, she tendered a check valuing Seven Hundred Sixty Nine Dollars and Fifty Cents (\$769.50) to the sheriff to avoid going to jail. Thereafter, the petitioner filed several motions before the

lower court including one for deferred payment. While these motions were still pending, the petitioner applied to the Chambers Justice for a writ of prohibition. The Justice, after hearing the petition, ordered that the peremptory writ be issued. From this ruling of the Chambers Justice, the respondents appealed to the Full Bench. Arguing before the Full Bench, the petitioner raised for the first time the issue of jurisdiction.

The ruling of the Chambers Justice granting the petition was reversed, the petition denied and the alternative writ quashed. The Court held that the payment made by the petitioner was not payment against the petitioner's obligation but was instead paid to secure the release of petitioner's representative from jail. The Court rejected petitioner's contention that at the time of the trial of the case, it had been seized and taken over by the government, noting that had such been the case, the petitioner should have brought this to the attention of the trial court since the law firm that previously represented the petitioner was the same firm that represented petitioner at the proceedings in the lower court. The Court also rejected issues raised by the petitioner which it said had not been raised in the lower court and which were not presented in a proper and timely manner on appeal.

Joseph M Kennedy appeared for the appellants/respondents. Joseph P. H. Findley appeared for the appellee/petitioner.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The Co-respondents Roland Jones and J. E. Thompson instituted an action of damages by attachment against LEF Investment Company by and through its General Manager, Alex Boadi, in the Sixth Judicial Circuit Court for Montserrado County in April 1980. While the case was pending, the military coup took place and the courts' operations were suspended. After the courts were reconstituted, the co-respondents requested court for the trial of their case and the court issued a notice of assignment which was duly served on the parties, but petitioner and its counsel failed to appear at the trial. A default judgement was therefore rendered against it. Before trial, when a representative of the petitioner was arrested under the attachment, it tendered a check valuing \$769.50 to the sheriff to avoid the representative going to jail. In an attempt to prevent the Court from enforcing its ruling, petitioner applied to the Chambers Justice for the writ of prohibition. The alternative writ was ordered issued and served on the respondents. The Justice after hearing the petition ordered the peremptory writ issued. Respondents appealed from the ruling of the Chambers Justice to the Full Bench. Hence, this case is now before us for final determination.

Count one of the petition related to the organization of the company under the Liberian law, while count two averred that Aletha Johnson who had filed this petition was attorney-in-fact for LeRoy E. Francis, president and owner of the majority of the shares of LEF Investment Company. Count three of the petition referred to the institution of the damage suit by Co-respondents Roland Jones and J. E. Thompson on April 3, 1980 and petitioner was required

to appear but there was a military coup on April 12, 1980 in Liberia and the courts' operations were suspended.

In count four of the petition, petitioner averred that on the 23<sup>rd</sup> day of May, 1980, long before trial, co-respondents made petitioner to pay them seven hundred sixty nine dollars and fifty cents (\$769.50) with the understanding that they would withdraw the case from the court. The question is what did the seven hundred sixty nine dollars and fifty cents represent? Our answer is found in counts 3 and 4 of petitioner's submission filed before the trial court on July 9, 1980, which we recite below:

"3. And also because defendant says that on the 22<sup>nd</sup> day of May, A. D. 1980, the plaintiff resurrected his case and had the defendant arrested and brought before the sheriff for Montserrado County.

4. And also because the defendant says that on the 23<sup>rd</sup> day of May, 1980, he deposited with the sheriff Seven Hundred Sixty Nine & 50/100 Dollars (\$769.50) in his own interest to avoid going to jail; quite surprisingly, although there had been no trial of said case or any judgement of any kind, the sheriff issued to him the following receipt:

“Received from LEF Investment Company, 1 (one) check with face value of \$769.50, representing part-payment of principal and costs of court with interest in the case Roland Jones and J. E Thompson, plaintiff versus LEF Investment Company, represented by its General Manager Alex Boadi, defendant. Dated this 22<sup>nd</sup> day of May, A. D. 1980.

P. Edward Nelson, II

Sheriff, Montserrado County

Check No. 56065

Amount: \$769.50"

Photostat copy of which receipt is hereby attached for your information and marked Exhibit "A".

From petitioner's own submission, portion of which is quoted above, we hold that the check of seven hundred sixty nine dollars and fifty cents was a cash bond tendered and not a payment against the damage suit. We therefore affirm the trial court's ruling declaring the amount as a cash bond to secure petitioner from going to jail. Count four is therefore not sustained.

Petitioner contended in count five that "at the time of the determination of this action of damages, LEF Investment Company had been reacquired by the Government of Liberia and LeRoy E. Francis and all of the shareholders and original management of the company which is now reinstated, were without both capacity and authority to defend." The Court observed from the record that the petitioner was represented by the Philip J. L. Brumskine Law Firm which was served with all the notices of the different assignments including the

notice of assignment for the trial. It was this Law Firm that filed the submission in this case. If it is true that the petitioner company was reacquired by the Government of Liberia at the time of the trial, what prevented the counsel for petitioner from moving or petitioning the court to this effect when the notice of assignment was served on him for the trial, since the law firm was not incapacitated? There was no evidence in the records before us to the effect that the Government of Liberia reacquired the petitioner's company at the time of the trial, and there is also no evidence in the records that the court was duly informed by the petitioner at the time of the trial that the Bureau of Reacquisition had acquired the LEF Investment Company; yet, petitioner contended that the Bureau of Reacquisition should have been made a party. Persons who should be joined as parties are persons (a) who ought to be parties to an action if complete relief is to be accorded between the persons who are parties to such action, or (b) who might be inequitably affected by a judgement in such action shall be made plaintiff or defendants therein. Civil Procedure Law, Rev. Code 1: 5.51. In the instant case, the action accrued and a damage suit was instituted against the petitioner company prior to the April 12, 1980 military coup. On October 24, 1980, the general manager of the petitioner company wrote the below letter to the Minister of Justice:

"October 24, 1980

Honourable Chea Cheapoo, Sr.,

Minister of Justice

Ministry of Justice,

Monrovia, Liberia

Dear Sir:

We have the honour to refer to your High Office, the attached assignment filed in by Messrs. Roland Jones & J. E. Thompson, as plaintiffs against this company for your kind information.

Brief history of the case is, this company bought from the plaintiffs, a quantity of cartons of second-handed bottles. Unfortunately, settlement of same was overdue resulting to a long argumentative issue.

However, when plaintiffs sued for recovery of cost of said bottles, a check representing full payment and other incidentals was made to the sheriff and our then counsel petitioned the Honourable Bench against receipt of such payment because courts had then not been reconstituted at the time.

The check is still with the sheriff of the said court and will be happy for your further directives.

With thanks and kindest regards, we remain,

Respectfully yours,

Sgd. Alex M. Boadi

GENERAL MANAGER

cc: Your Honour E. S. Koruna,  
Assigned Circuit Judge Sixth Judicial Court,  
Temple of Justice Monrovia, LIBERIA."

The contents of the above letter clearly indicate that the company was still under the complete control and administration of the general manager, Alex M. Boadi. There were also several communications from the Executive Mansion to the general manager of LEF Investment Company requesting the petitioner company to comply with the ruling of the court by paying the judgement sum, but the petitioner failed and refused to obey the directives of the Executive Head. We quote the last of these series of letter written to LEF Investment Company.

"RRC-III/Am-1/141'82      May 4, 1982

Mr. Manager:

Mr. John E. Thompson has informed me that you have incessantly facilitated the disregard and disobedient attitude to the CIC's letters Ref. PRC-II/DM-2/520/'82 and PRCII/Arn-1/811/'82, urging the management of LEF Investment Company to give credence to the ruling of a court of competent jurisdiction in which damages were awarded and should have long since been paid to Mr. Thompson to the turn of \$16,561.51 (Sixteen Thousand, Five Hundred Sixty-one 51/100).

In view of your alleged obstruction and disrespect to these instructions, you are again reminded to carry out, without further delay, the ruling of the court by making settlement to Mr. Thompson, in the amount of \$16,561.51 (Sixteen Thousand Five Hundred Sixty-One, 51/100), and also have me informed of your action in the premises.

IN THE CAUSE OF THE PEOPLE, THE STRUGGLE CONTINUES!

Cordially yours,

Sgd. Major Harry T. Fabor Nayou

MINISTER OF STATE/CHAIRMAN OF THE CABINET

The General Manager

LEF Investment Company

Monrovia, LIBERIA."

From the afore quoted letters, we are not inclined to go along with petitioner on the point that the Bureau of Reacquisition should have been made a party. However, if the Government of Liberia felt that it would be inequitably affected by the judgement of the court, it had the right to intervene in keeping with statute.

When petitioner's motion to secure relief from judgement was denied, it seemed that it conceded the legal soundness of the court's judgement when it filed another motion on November 3, 1982 for deferred payment as quoted below:

"NOW COMES Aletha Johnson of Paynesville, Liberia, Africa, attorney-in-fact for LeRoy E. Francis, president of LEF Investment Company and legal representative of LEF Investment Company, MOVANT and showeth unto Your Honour the following, to wit:

1. That LEF Investment Company is a corporation organized under the corporations laws of Liberia.
2. That movant is attorney-in-fact for LeRoy E. Francis, president owner of majority shares of LEF Investment Company as more fully appears by copy of POWER OF ATTORNEY (GENERAL) filed herewith and marked exhibited "A" as part of this motion.
3. That Co-respondents Roland Jones and J. E. Thompson instituted an action of damages on the 3rd of April, 1980 against defendant in the June, A. D. 1980 Term of the Civil Law Court for the Sixth Judicial Circuit. Defendant was required by statute to file his appearance or answer on the 13 th; but there was a military coup in Liberia on the 12th of April, 1980 and the incoming Government suspended the Constitution and the courts were also out of commission and did not function for a protracted period.
4. That the company was returned to the original owners, shareholders and management on July 8, 1982.
5. That movant filed a motion to secure relief from the judgement of Your Honour but you denied the motion on grounds stated in ruling. See minutes of court Exhibit "B."
6. That presently petitioner has no assets available for immediate payment of the judgement but through strain and stress petition will make available Y4 or 25% (twenty five percent) of the amount due on the judgement and also hereby tenders a bond to the effect that petitioner will faithfully comply with the order of the court to pay the judgement within the time specified and that he will pay interest on the unpaid balance at the rate of six percent per year.

WHEREFORE and in view of the foregoing, movant respectfully prays Your Honour to grant this motion and defer the payment in keeping with stipulations to be drawn and signed by the parties and approved by this Honourable Court.

Respectfully submitted,

Aletha Johnson, attorney-in-fact,

MOVANT by & thru her counsel; FINDLAY & ASSOCIATES

Sgd. Joseph Findley COUNSELLOR-AT-LAW

It would appear from the records that after petitioner had filed the above motion for deferred payment and before the judge could pass upon said motion, she filed her petition for prohibition against the judge.

Although she did not raise any jurisdictional issue in her petition, yet, in her brief she raised the question of jurisdiction over her person, because, according to her, the judgement was not rendered against LEF Investment Company but against the Bureau of Reacquisition. She contended in her brief that the Bureau of Reacquisition had acquired title by PRC Degree by which the Bureau of Reacquisition had acquired the alleged title to the corporation. Black's Law Dictionary defines a brief as:

"A written or printed document, prepared by counsel to serve as the basis for an argument upon a cause in an appellate court, and usually filed for the information of the court. It embodies the points of law which the counsel desires to establish, together with the arguments and authorities upon which he rests his contention. A brief within a rule of court requiring counsel to furnish brief, before arguments, implies some kind of statement of the case for the information of the court. A 'brief is the vehicle of counsel to convey to the appellate court the essential facts of his client's case, a statement of the questions of law involved, the law he would have applied and the application he desires made of it by the court." BLACK'S LAW DICTIONARY 240 (4th ed.).

From the above quotation, it is crystal clear that the brief should contain issues of essential facts and the statement of the questions of law involved. Therefore, issues not raised in the court from which the appeal is taken cannot be raised for the first time in the appellate court except that of jurisdiction of the court of origin over the subject matter. An issue of law which was not raised in due time and form in the trial court cannot be considered on appeal. *Johns v. Republic*, 13 LLR 143 (1958), text at 152. In other words, issues not raised in the lower court, and not presented in proper and timely manner on appeal, will not be considered by the Supreme Court. *Flood v. Alpha*, 15 LLR 331 (1963). The statute provides that the brief shall contain a statement of the issue and the points to be argued with supporting legal authorities. Civil Procedure Law, Rev. Code 1: 51.14 and 51.15(1) of the same law states, "the appellate court shall not consider points of law not raised in the court below and argued in the briefs, except that it may in any case, in the interest of justice, base its decision on a plain error apparent in the records."

The jurisdictional issue over the person of the petitioner raised in the petitioner's brief not having been raised in the petition and argued before the Chambers Justice whose ruling we are reviewing cannot be considered by this Court. However, we would like to comment on the jurisdictional issue raised by the petitioner.

The general manager of LEF Investment Company, Alex Boadi, having been served with precept and placed under the jurisdiction of the court, the court was correct to proceed with

the trial because the court had acquired jurisdiction over the person of LEF Investment Company. This Court is consistent in its holding that:

"If a defendant, though not served with process, takes such a step in an action, or seeks relief at the hands of the court as is consistent only with the proposition that the court has jurisdiction of the cause and of his person, he thereby submits himself to the jurisdiction of the court, and is bound by its action as fully as if he had been regularly served with process." King v. Williams, 2 LLR 523 (1925), text at 525.; Koroma v. Parker Paint Company, Inc. 23 LLR 133 (1974), text at 135; and Galina Blanca, SA v. Nestle Products, Ltd., 25 LLR 116 (1976), text at 120. Also see 14 AM. JUR., Courts, § 192.

At common law it is held that:

"According to general rule, if a judgement has been entered without jurisdiction of the person of the defendant, the defect is cured if the defendant thereafter appeared and participates in subsequent proceedings or invokes the action of the court for his benefit." 3 AM. JUR., Appearance, § 37; Helou Bros. v. Kiazolu-Wahab and Hunter, 17 LLR 520 (1966), text at 537.

In this case, Petitioner LEF Company by and through Aletha Johnson, attorney-in-fact for LeRoy E. Francis, president of LEF Investment Company of Monrovia filed through her counsel, Counsellor Joseph Findley, a motion to secure relief from judgement and a motion for deferred payment. Earlier, LEF Investment Company through its general manager, Alex Boadi, had filed a submission which was disposed of by the court. Therefore, she cannot at this time raise the issue of jurisdiction over her person in her brief. For these acts of LEF Investment Company through her General Manager and attorney-in-fact pointed to the inescapable conclusion that she was properly brought under the jurisdiction of the court. Count five of the petition is not sustained.

As to count six of the petition, the court says that the judge rightly denied the motion to secure relief from judgement because the \$769.50 which petitioner claimed to have been paid in full settlement of respondents' claim was simply a cash bond deposited with the sheriff as ruled upon by the judge. Secondly, the judge could not have legally set aside and abated a ruling given by his colleague as requested in the prayer of the petition which we quote thus:

"WHEREFORE and in view of the foregoing, movant prays for relief from the judgement upon which the execution is issued; that the said judgement be vacated, the execution stayed, plaintiffs ordered nonsuited and that they be cited to show cause why they should not be attached in contempt for interfering with the settling the rest of the case why it is pending before court; furthermore, why they have failed to discontinue said suit as their conduct in accepting payment aforesaid perhaps; with costs against plaintiffs.



Respectfully submitted,

Aletha Johnson,

Attorney-In-Fact &

Movant by & thru her counsel:

FINDLEY & ASSOCIATE

Sgd. Aletha Johnson

Sgd. Joseph Findley Counsellor-At-Law"

With regards to count seven of the petition, the court says there is no evidence in the records of this allegation regarding the purported time of the company allegedly returning to the original owners, there being no evidence also of when it was purportedly taken from the original owners. Counts six and seven of the petition are overruled.

Referable to count eight of the petition, the Court says that although the statute provides 'the sheriff shall levy upon any interest of the judgement debtor in personal property capable of delivery by taking the property into his custody without interfering with lawful possession of pledges and lessees, yet where the personal properties are such that the sheriff is unable to at once convey them to the court or the premises of the court, we see no ill in securing said properties by placing padlocks to the doors of the building to secure such properties, especially when it may not be possible to easily transfer these properties to court. Therefore, prohibition cannot lie because the sheriff in the execution of due care of the service tried to secure the properties duly seized by him. Count eight of the petition crumbles to counts six and seven of the returns and is therefore denied.

Counts one, four and five of the respondents' returns are sustained while counts two and three of the returns are overruled. Count eight of the returns gained support from the motion for deferred payment filed by petitioner on November 3, 1982, supra. Hence, said count is sustained.

In support of all the facts narrated and the laws cited, it is our holding that the ruling of the Chambers Justice granting the Petition should be and the same is hereby reversed, the petition denied, and the alternative writ quashed. The Clerk of this Court is hereby instructed to send a mandate to the lower court commanding the judge therein presiding to resume jurisdiction over the case and accordingly give effect to this opinion. And it is hereby so ordered.

*Petition denied*