LIBERIA INDUSTRIAL DEVELOPMENT CORPORATION, represented by its Chairman**,** LEROY E. FRANCIS, Informant, v. **HIS HONOUR NAPOLEON B. THORPE**, Assigned Circuit Judge presiding over the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, and EL NASR EXPORT-IMPORT COMPANY, represented by its Manager, MOHAMMED TAHA AHMED, Respondents.

INFORMATION PROCEEDINGS.

Heard: January 11, 1984. Decided: February 9, 1984.

1. Where an appeal bond is materially defective or insufficient, it cannot be considered as a bond filed to meet one of the jurisdictional steps required to be taken to complete the appeal, therefore, the appeal will crumble and the court is without jurisdiction to hear and decide the case on the merits.

2. The right of no one shall be concluded by a judgment rendered in a suit to which he is not a party, and a party cannot be bound by a judgment without being allowed his day in court.

3. A party is not bound by any act or omission of a counsel who voluntarily appears without the relation of attorney and client having previously been established between him and such party.

4. A party against whom the Supreme Court has entered judgment may seek further relief by a petition for re-argument, where there is palpable mistake inadvertently made by the Court on points of law or fact, or by information, where the party claims not to have had his day in court and has no knowledge of the action and judgment, not having been personally served; and the Supreme Court, in the interest of justice, may take cognizance thereof.

5. Issues not raised in the pleadings cannot be successfully argued.

6. Where there is no service of court precepts on the informant corporation, it cannot be bound by any judgment of the court in the proceedings.

7.A company is not a natural person, and therefore service of process is required to be made on an officer or agent of the corporation or upon any other person authorized by appointment or by statute to receive service of process.

Foreclosure proceedings were instituted in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, by the co-714 respondent company, El Nasr Export-Import Company, against the informant, Liberia Industrial Development Corporation (LIDCO), based upon leasehold and a chattel mortgage executed by the informant to secure payment of a loan effected by the informant.

The petition alleged that the respondent corporation, now informant had defaulted in its payment, in violation of the loan agreement, and for which the mortgage agreement was

executed. An application for a default judgment was made by the corespondent company, after the informant, respondent in the proceedings in the trial court, had failed to file returns to the petition and to appear for the hearing of the case after being presented with a notice of assignment in keeping with the sheriff's returns. The application was granted and the case disposed of ex parte. A final decree was then entered granting the petition for the foreclosure of the mortgage. The trial judge appointed one Attorney J. D. Kennedy to take the ruling on behalf of informant. Coincidently, Attorney Kennedy had gone to the court to take the judgment on behalf of the informant. The court appointed attorney excepted to the judgment and announced an appeal to the Supreme Court, which appeal was perfected and subsequently dismissed on the strength of a motion to dismiss filed by the co-respondent herein for failure by the informant to comply with the jurisdictional steps required for filing a proper appeal bond. The case was remanded to the lower court with instruction to enforce its judgment. In the course of enforcing the Supreme Court' s judgment, the lower court ordered that the property of the informant be exposed to public auction to raise the amount sued for.

It was from the foregoing action of the trial court that the informant filed a bill of information before the Supreme Court to prevent the enforcement of the judgment, stating as the basis therefor that it was never brought under the jurisdiction of the court as it was never served with the writ of summons or a notice of assignment for the hearing of the case. The Supreme Court agreed with the contention of the informant and therefore granted the information and remanded the case with instruction that the writ of summons together with the petition be served on the informant and that it be allowed to file a responsive pleading nunc pro tunc.

Isaac Nyeplu appeared for the informant. M Fahnbulleh Jones and Roland Barnes appeared for the respondents.

MR. JUSTICE SMITH DELIVERED the opinion of the Court.

The records of this case disclosed that foreclosure proceedings were instituted in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, by the co-respondent company herein, El Nasr Export-Import Company, by and thru its manager Mohammed Taha Ahmed, against the informant, Liberia Industrial Development Corporation (LIDCO), by and thru its Chairman, LeRoy E. Francis, based upon a leasehold and a chattel mortgage executed by the informant on December 15, 1972, to secure payment of a loan effected by the informant on December 14, 1972.

The petition in the foreclosure proceedings filed in court on December 1, 1979, alleged in substance that the respondent corporation, now informant, had defaulted in its payment in of the loan violation of the loan agreement for which the mortgage agreements were executed. This was the basis of the action as filed.

The records further showed that an application for a default judgement was made by the co-respondent company and granted, and the case was heard by the lower court ex parte. A final decree was entered on the 22' day of December, 1980, in which the petition for the foreclosure of the mortgage was granted and the property of the informant was ordered exposed to public auction to raise the amount sued for. Exception to the judgement was taken and noted, and an appeal to the Supreme Court was announced and perfected.

When the case was reached in the Supreme Court for argument during its March Term, 1982, a three-count motion to dismiss the appeal on jurisdictional grounds was found on the files of the case to which the Court's attention was called by counsel for the appellee/movant. The motion attacked the appellant's appeal bond as being materially defective.

Under the law of our jurisdiction, where an appeal bond is materially defective or insufficient, it cannot be considered as a bond filed to meet one of the jurisdictional steps required to be taken to complete the appeal, and therefore the appeal will crumble and the Court is without jurisdiction to hear and decide the case on the merits. Civil Procedure Law, Rev. Code 1: 51.4 and 51.8; see also Talery and Cooper v. Wesley, 21 LLR116 (1972).

At the hearing of the motion to dismiss, the Court discovered that appellant's appeal bond was materially defective, in that, the affidavit of sureties neither carried a description of the property offered as security nor the names of two natural persons as sureties as required by the Civil Procedure Law, Rev. Code 1:. 63.2(1)(3)(b). It was also discovered that the certificate of property valuations carried the names of property owners whose names were not found in the affidavit of sureties, all of which incurable blunders rendered the appeal bond of the appellant defective and the appeal dismissible. The Court therefore had no alternative but to dismiss the appeal, not having been given jurisdiction to open the records and hear the case on its merits by reason of appellant's failure to properly take one of the jurisdictional steps to complete its appeal under the Civil Procedure Law, Rev. Code 1:.51. 4(c), 51.8 and 63.2 (1), cited supra. The Court in its judgement ordered the trial court to resume jurisdiction over the case and enforce its judgement as is the normal procedure and practice hoary with age in our jurisdiction. At that hearing, Counsellor Edward R. Moore and John Wleh Togba appeared for El Nasr Export-Import Company, appellee/ movant, and Counsellor Lewis K. Free appeared for the appellant/respondent, the Liberian Industrial Corporation (LIDCO).

On November 15, 1982, that is to say, about five months after the mandate of the Supreme Court to the trial court to resume jurisdiction and enforce its judgement, the informant herein filed a bill of information before the Full Bench, and Mr. Chief Justice Gbalazeh ordered issuance of the necessary precept.

In the bill of information, informant alleged substantially that when the foreclosure proceeding was instituted, the chairman of the respondent company, LeRoy E. Francis, was not within the bailiwick of the country, and that neither he nor any officer of the company was served with the assignment or the writ of summons personally or constructively and returned served; that the trial court proceeded to hear the case and rendered a default judgment against the informant corporation without the company having its day in court; and that in the process of enforcing the judgment of the trial court, as ordered by the mandate of the Supreme Court, Co-Respondent Judge Thorpe exposed to public sale a distillery and a rice mill belonging to informant and located on Jamaica Road, Monrovia, not in accordance with the judgment as rendered against informant.

What seemed to be inescapable and which claimed our judicial attention for consideration and decision were, the allegations specifically made in the bill of information and strongly argued by counsel for informant that, no service whatsoever of neither the writ of summons nor the notice of assignment was made on the informant corporation and that the judgment of the trial court was a default judgment rendered without a notice of assignment either for the hearing of the case or for the rendition of final judgment. Informant cited the Court to the case Tubman v. Murdoch, reported in 4 LLR179 (1934), in which this Court held that the rights of no one shall be concluded by a judgement rendered in a suit to which he is not a party, and a party cannot be bound by a judgement without being allowed his day in court.

The respondents countered the six-count bill of information with a fourteen-count returns, but the basic issues raised in the bill of information with which we are concerned and which, in our opinion, are decisive of the contentions raised are:

1. Whether or not the respondent corporation in the foreclosure proceedings was legally served and returned served with either the writ of summons or the notice of assignment?

2. Whether or not the said respondent corporation did not have its day in court and a default judgment was rendered against it?

Respondents have contended basically in their returns that informant having perfected and prosecuted an appeal which was dismissed by the Supreme Court, it has no further standing in the case except to comply with the judgement of the Court; that at the time the foreclosure proceeding was instituted, LeRoy E. Francis, chairman of the respondent corporation, was still in the country, and that the sheriff's returns to the writ of summons and all other precepts of court indicate that the respondent corporation was duly served and returned served but neglected to appear or answer; and that it was not necessary that service should have been made only on LeRoy E. Francis, chairman of the respondent corporation, but that service could also have been made on any officer of the corporation, and that such service would constitute legal service. This is the summary and basic defense of the respondent corporation to the bill of information. Respondents therefore contended that the

Court should give no cognizance to the information especially so where the informant did not show in its bill any illegal act on part of the corespondent judge in the enforcement of the Supreme Court's mandate.

Counsel for informant strongly argued, and counsel for respondents denied, that there was no lawyer/client relationship previously established between the informant corporation and Counsellor Lewis K. Free and Attorney J. D. Kennedy who excepted to the judgement of the trial court and thereafter perfected and prosecuted an appeal before the Supreme Court. He argued that the act of Counsellor Free and Attorney Kennedy cannot bind the informant, they not having been retained by informant. Counsel for informant in support of this argument cited the Court to the case Bryant v. Bryant, 4 LLR 328 (1935), in which this Court held, at Syl. 1, that:

"A party is not bound by any act or omission of a counsel who voluntarily appears without the relation of attorney and client having previously been established between him and such party."

From the arguments presented on both sides, the following questions arise and are considered by us to be the only necessary issues required to be decided in order to arrive at a fair and impartial determination of the controversy; they are:

1. Whether or not, by reason of the judgment of the Supreme Court dismissing appellant's appeal on jurisdictional grounds, the respondent corporation in the foreclosure proceeding had no more remedy to seek relief from the judgment.

2. Whether or not there is evidence of the establishment of a previous lawyer/client relationship when Counsellor Lewis K. Free perfected and prosecuted an appeal for the informant from the trial court's judgment granting the petition in the foreclosure proceedings.

3. Whether or not the informant corporation was not allowed its day in court and a default judgment was entered against it; and

4. Whether or not the respondent corporation was duly served and returned served when the foreclosure proceedings were filed in court.

We shall discuss and pass on these issues in the order as they are listed.

As to whether a party is estopped from seeking further relief by reason of a judgement of the Supreme Court in a given case, we say it all depends upon the circumstances surrounding the case. A party against whom the Supreme Court has entered judgement may seek further relief either by a petition for re-argument, where there is a palpable mistake inadvertently made by the court on the points of law or fact, or by information, where the party claims not to have had his day in court and has no knowledge of the action and judgement, not having

been personally served; and the Supreme Court, in the interest of justice, may take cognizance.

Our Civil Procedure Law, Rev. Code 1: 3.44, provides that:

"A person served with a summons other than by personal delivery to him, within or without Liberia, who does not appear may be allowed to defend the action at any time before final judgment or within five years after entry of the judgment or within thirty days after written notice of the judgment is personally delivered to him within or without Liberia, whichever period expired, upon a finding of the court that he may have a meritorious defense and that he has not personally received notice of the summons in time to appear as required by section 3.62 and defend..." (Emphasis ours).

Section 3.62 refers to the time when appearance is required, and it is within ten days after service of summons or resummons. In view of this provision of our statute, and because informant has alleged that there was no personal service whatsoever made upon the informant corporation, the informant is within the pale of the law when it filed the bill of information and the Court, in the interest of justice, should take legal cognizance and convince itself as to the truthfulness of the allegation. And where it can be shown by the records that the informant was never personally served in keeping with law, it may be allowed to defend the action.

Coming to the issue of lawyer/client relationship, counsel for informant argued in his brief that there was no previous lawyer-client relationship established between the informant and Counsellor Lewis K. Free who appeared in the Supreme Court and prosecuted the appeal which has been dismissed by the Court. While it is true that a party is not bound by the act of a lawyer who is not retained by him, yet, this allegation is not contained in the bill of information to be argued. The failure of the informant to aver this allegation in the bill of information does not only violate the fundamental principle of notice to the opposing side to traverse the said allegation in its returns and to present facts to establish the lawyer/client relationship between Counsellor Lewis K. Free and the respondent company, but such failure also deprived this Court of such evidence that could only be gathered from the records in order to arrive at an unerring conclusion on the point. It is very elementary that issues not raised in the pleadings cannot be successfully argued. The contention of the informant in his argument therefore has no foundation for the consideration of the Court.

On the questions of whether or not the informant corporation was summoned and returned summoned when the foreclosure proceedings were filed in court, and whether or not default judgment was entered against the informant corporation without having its day in court, the trial records have the answers.

From a recourse to the trial records, we observe that the foreclosure proceedings filed in the December 1979 Term of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, were called for hearing on Wednesday, March 19, 1980, being the Yd day's session of that term of the court with His Honour E. S. Koroma presiding. No one appeared for the respondent corporation, now informant in these proceedings; the Togba & Padmore Law Firm, by and thru Counsellor John Togba appeared for the petitioner in the foreclosure proceeding, now co-respondent, and made the following record:

"Petitioner is represented by the Togba & Padmore Law Firm, by and thru Counsellor Togba, and respectfully prays that a judgement by default, commonly referred to as imperfect judgement, be rendered, in that, although the respondent has been summoned in keeping with law, he has failed to appear or file an answer within the time specified by law. And petitioner respectfully requests that Your Honour takes judicial notice of a certificate received from the clerk of the Civil Law Court on the 27 th day of December, 1979, certifying the non-appearance and non-filing of the answer as stipulated above. And submits."

The trial court granted this application after it had ordered the sheriff to call the respondent/informant three times at the door of the courtroom according to procedure, when there was no answer. An ex parte trial was thereupon had when the petitioner company therein presented its side of the case. On Thursday, May 22, 1980, being the 2nd day's chamber session of the December Term, 1979, the lower court rendered final judgment, petitioner therein being represented as of record with the court appointing Attorney J. D. Kennedy who happened to be in court to take the judgment for the respondent/informant corporation. The court's appointed counsel noted exception to the final judgement and announced an appeal to the People's Supreme Tribunal at the time, now the People's Supreme Court.

And so it is quite clear that a default judgment was entered against the informant corporation, it not having answered or appeared at the trial; but as to whether or not the said corporation, respondent in the foreclosure proceedings, was duly summoned and returned summoned as alleged in respondent company's application for a default judgment as quoted supra, which formed the basic contention of the informant corporation, is the next question for our consideration. We must therefore take recourse to the writ of summons to ascertain what the returns of the sheriff disclosed. For the benefit of this opinion, we quote the sheriff's returns as proferted to the bill of information and not denied by the respondent company. The returns read, as follows:

"THE SHERIFF'S RETURNS' "On the 3rd day of December, A. D. 1979, Henry Nelson a bailiff of this court served the within writ of summons_on the within named defendant company by giving them a copy of the said writ of summons and also attached thereon was

the complaint; and I now make this as my official returns to the office of the clerk of court. Dated this 3r d day of December, A. D. 1979. P. Edward Nelson, H, Sheriff, Mont. Co., R. L." (emphasis ours).

We quote also for the benefit of this opinion the sheriff's returns to the notice of assignment issued on March 18, 1980, for the hearing of the case on the 19t h of March, 1980, at the hour of ten o'clock in the morning; the said returns read, as follows:

"SHERIFF'S RETURNS "On the 18th day of March, A. D. 1980, court Bailiff George Sherman reported that the within notice of assignment was served on the within named counsel for plaintiff and the respondent Philipoo refused to sign and receive a copy of said notice of assignment. I now make this as my official returns to the office of the clerk of court. Dated this 18th day of March, A.D. 1980. P. Edward Nelson, II, Sheriff, Mont. Co., R. L." (Emphasis supplied).

The questions which have arisen from these returns are:

1. Can it be correctly said that the informant corporation was legally served and returned served when according to the returns the writ of summons was served on the company instead of on LeRoy E. Francis, chairman of the informant corporation, who the respondents in this proceeding argued was not out of the country when the foreclosure proceedings were filed in court, or in his absence the name of any of the officers of the corporation on whom service was made?

2. Can the Philipoo named in the returns and alleged to have refused to sign and receive copy of the notice of assignment be assumed to be the person designated for the purpose of receiving service of court precept on the corporation, the returns not having identified him as such?

Our answer to these questions is that no service was made on, the informant corporation, and therefore it cannot be bound by any judgment of court in the proceeding. Our statute is not silent on how service should be made on a corporation, whether it be a domestic or foreign corporation. Here is the statutory provision on the point:

"Personal service shall be made upon a domestic or foreign corporation by reading and personally delivering the summons within Liberia to an officer, or managing or general agent, or to any other agent authorized by appointment or by statute to receive service of process, and, if the summons is delivered to a statutory agent, by, in addition, mailing a copy thereof to the defendant." Civil Procedure Law, Rev. Code 1: 3.36, Personal Service of Summons within Liberia upon a Corporation.

Liberia Industrial Development Corporation (LIDCO) is a domestic corporation doing business in the City of Monrovia, County of Montserrado, and counsel for the respondent company had contended in his returns and strongly argued that LeRoy E. Francis, chairman

of the informant corporation, by and thru whom the action was brought against his corporation was in the country at the time the foreclosure proceeding was filed in court. Why then was he not personally served? Or why the returns of the sheriff did not show the name and identity of the person of the informant corporation upon whom service was made?

As shown by the sheriff's returns to the writ of summons, service was made on the company. A company is not a natural person, and therefore service of process is required to be made on an officer or managing or general agent of the defendant corporation or upon any other person authorized by appointment or by statute to receive service of process.

It not having been shown by the sheriffs returns that any officer of the informant corporation was ever summoned and returned summoned, it is our considered opinion that the default judgment of the trial court has no binding effect upon the informant corporation, respondent in the foreclosure proceedings, and hence unenforceable. It is our further opinion that the trial court should resume jurisdiction over the foreclosure proceedings, set aside the default judgment, and have a writ of summons issued and served nunc pro tunc with copy of the petition annexed, upon the reading of the mandate from this Court, and the informant corporation has ten (10) days of the service of the said summons to file its returns as though the proceeding has just been filed, and the court shall proceed to dispose of the cause, commencing with the disposition of legal issues. Costs to abide final determination of the case. And it is hereby so ordered.

Information granted; case remanded.