

THE LIBERIA PRODUCE MARKETING CORPORATION, represented by and thru its Managing Director, **ALEXANDER M. JEFFY**, Appellant, *v.* **THE NATIONAL SEAMEN'S PORT & GENERAL WORKERS' UNION OF LIBERIA**, represented by and thru its President/Founder, **GEORGE T. GARBEH** and other Officers, Appellee.

APPEAL FROM THE DEBT COURT FOR MONTSERRADO COUNTY.

Heard: March 27 and April 8, 1985. Decided: June 20, 1985.

1. A party who seeks to intervene in an action (because of his interest in the subject matter, or who prays for substitution to preserve his right to the property because of an event which necessitated such action), is not considered a party to the suit until the motion is granted by the court and he is made a party.
2. A motion to intervene is a separate and distinct proceeding from the main suit, and if it is denied by the court, the proceeding is ended, unless an appeal is taken from the court's ruling.
3. Where a motion to intervene is denied and no appeal is taken therefrom and perfected, the party against whom the ruling was made has no standing in the main action to file a bill of information before the appellate court to review his claim which had been heard and terminated in the trial court.
4. Where a party-litigant who has been notified of the hearing of his case, or for continuation of the trial of his case, fails to appear, the court has no alternative but to proceed to hear the side of the party present.
5. The burden of proving the allegations of the complaint is on the plaintiff and cannot be conclusive against the defendant because of an abandonment by defendant.
6. Whenever an action is brought in the circuit court which could have been brought in a justice of the peace or magistrate court, the plaintiff shall not be entitled to costs.
7. Courts of justice cannot exercise original jurisdiction over a subject matter of an industrial or administrative nature cognizable before any ministry or agency of the government without violating the doctrine of separation of power.
8. An action of debt may be defined as the relief sought for the payment of money which the defendant is alleged to have contracted to pay the plaintiff.
9. An action of debt lies for the recovery of a fixed and definite sum of money which can be ascertained from fixed data by computation or is capable of being readily reduced to certainty.
10. The debt court lacks original jurisdiction over matters of an industrial nature, and where it assumes jurisdiction over such matters, its judgment is of no legal effect and must be reversed.
11. Where the statute provides a remedy for a wrong or injury, its provisions must be

strictly followed.

12. In matters over which a government agency has been expressly given original jurisdiction, a court is prohibited from exercising original jurisdiction.
13. Under the doctrine of administrative remedy, applicable to this jurisdiction, it is required that where a remedy before an administrative agency is provided for, relief must be sought by exhausting the remedy before the court will act.

Appellee, the National Seamen's Port and General Workers' Union, brought an action of debt in the Debt Court for Montserrado County, against the appellant, the Liberia Produce Marketing Corporation, for the recovery of \$161,700.00, representing membership dues alleged to have been collected by appellant through salary deductions of its employees who were members of the appellee union. The complaint alleged that in spite of several demands made by appellee, the appellant had refused to turn over to the appellee the dues collected from its members, in violation of the stipulations of the collective bargaining agreement concluded between appellant and appellee.

In its answer, the appellant alleged that the president and officers who had commenced the action were not the legitimate officers of the appellee union and therefore lacked the capacity to bring the suit in the court below. The appellant also contended that the allegations stated in the complaint did not constitute the elements of debt and some of appellant's workers had filed withdrawals of authorization to deduct amounts from their salaries and wages, and had instructed that no further payments be made to the appellee union.

At the call of the case for hearing, following the disposition of the issues of law, no one appeared for the appellant, although duly notified. Given this lack of appearance of appellant or its legal counsel, the counsel for appellee made application to the court for the invocation of Rule 7. The court granted the application and proceeded with the trial of the case. At the close of the presentation of evidence, the court entered judgment in favor of the appellee, awarding \$167,700.00, which included six percent interest on the principal and costs of court. Counsel appointed by court excepted to the judgment and announced an appeal for appellant.

On appeal, appellant argued that the debt court was without jurisdiction over the subject matter of the action, and that it was deprived of the opportunity to produce evidence in its defense by reason of the invocation of Rule 7 and the entry of judgment in its absence.

In addition, the persons claiming to be the legitimate officers of the appellee union filed a bill of information before the Supreme Court. The Court rejected the information, stating that the informants, having filed motions in the trial court raising the same issues, and the trial court having denied the said motions, they (the informants) remedy was to appeal the ruling of the trial court. The Court observed that although the informants had announce an appeal from the rulings of the trial court, they had failed to perfect the said appeal. This

defect, the Court said, brought finality to the informants claims. The Court noted that as a matter of law, a party who seeks to intervene or prays for substitution, is not considered a party to the action until the court has passed upon and granted the motion. Such motion, the Court said, is separate and distinct from the main suit, and thus where it is denied and no appeal is taken or perfected, the moving party is without standing to file a bill of information in the Supreme Court where the appeal from the main suit is pending.

On the contention of the appellant, the Court opined that while the trial court was correct in granting the application invoking Rule 7 of the Circuit Court Rules, the appellant having been duly notified of the hearing of the case, this did not relieve the plaintiff of the obligation to prove the allegations laid in the complaint. The Court noted that the matter laid in the complaint, having grown out of a collective bargaining agreement and involved a dispute over the leadership of the appellee union, which in turn led to the non-payment of the dues, was in the nature of a labor dispute. The Court referred to the law which prohibits courts of justice from exercising original jurisdiction over the subject matter of an industrial or administrative nature cognizable before any ministry or agency of the government, noting that the attempt to exercise such jurisdiction is in violation of the doctrine of separation of power. The Court opined that as the claim lacked all of the elements of an action of debt, the Debt Court was without jurisdiction to entertain the action. The appellee, the Court observed, should therefore have filed its action before the Ministry of Labour which was the proper forum to adjudicate industrial disputes. It noted that it is only after fully exhausting this administrative remedy that the appellee could have then resorted to the courts of law. accordingly, the Court declared the judgment of the debt court null and void *ad initio*, and ordered the same *reversed*.

Clarence E. Harmon appeared for appellant. *M. Kron Yangbe* and *William Godfrey* appeared for appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

This appeal originated from the Debt Court for Montserra-do County and grows out of an action of debt instituted by the National Seamen's Port & General Workers' Union (NSPGWU) against the Liberia Produce Marketing Corpora-tion (LPMC) for the recovery of an amount of \$161,700.00, representing union membership dues.

The two-count complaint alleged, in essence, that based upon a collective bargaining agreement which existed between the appellee union and the appellant corporation, having in its employ at the time 2,695 union members, the appellant collected the amount of \$161,700.00, representing monthly dues of \$2.50 from each member for a period of two years, beginning August 1, 1981. The complaint alleged that the appellant had refused to pay the said amount over to the appellee union.

In its answer, the appellant corporation contended in sub-stance that the president and officers who filed the debt action were not the legitimate officers of the Union, they having already been disqualified by the Ministry of Labour. This action by the Ministry of Labour, appellant said, left the president and officers without the capacity to bring the action. The appellant corporation further contended that the complaint should be dismissed because the allegations contained therein did not constitute any element of debt. Furthermore, the appellant corporation asserted that some of the workers had filed "withdrawal slips", informing management of the appellant corporation not to make any further deductions of union dues from their wages.

Pleadings having rested, on January 25, 1984, the court heard the law issues and ruled the case to trial on the merits. The court held, and counsel for appellee conceded, that the issues raised in the pleadings were mixed issues of law and fact. On the 2nd day of July, 1984, with all parties being represented by counsel, the trial of the case began. Thereafter, however, the case was suspended. When the trial resumed on the 16th day of July, 1984, no one appeared for the appellant corporation even though the appellant had been duly notified. Consequently, counsel for the appellee applied to the court for the invocation of Rule 7 of the Circuit Court Rules. The application was granted by the court and the trial was thereupon proceeded with. The appellee union presented evidence and rested, followed by the entry of final judgment by the court adjudging the appellant corporation liable to the appellee Union in the amount sued for plus six percent (6%) interest on the principal and costs of court. The counsel appointed by court to take the final judgment on behalf of the appellant corporation excepted to the judgment and announced an appeal to this forum of last review.

The six-count bill of exceptions tendered by the appellant raised only two issues but only one of which is pertinent enough to warrant our consideration. The issues are:

1. That the court below was without jurisdiction over the subject matter of the action;
and
2. That the appellant corporation was deprived of the opportunity to produce evidence pertinent to its defense by reason of the invocation of Rule 7 of the Circuit Court Rules and entry of judgment in the absence of the appellant.

When the case was called for argument before us, the Court's attention was called to a bill of information filed by persons who claim to be the legitimate officers of the National Seamen's Port & General Workers' Union of Liberia, represented by their counsel, Counsellor A. W. Octavius Obey, challenging the authority of the appellee to represent the workers in the debt action.

In keeping with our practice and procedure, argument on the bill of information was first entertained. From the presentation of counsel, we gathered that while the debt action was pending in the court below the said informants filed two motions before the Debt Court, one to intervene and the other for substitution. Those motions were resisted, heard and

denied by court.

Recourse to the records reveals that when the trial court ruled denying the motion to intervene, the informants herein, movants in the court below, excepted to the ruling and announced an appeal to the Supreme Court which was granted. However, the informants failed to perfect the appeal and consequently, they filed a second motion for substitution. This motion was also resisted, heard and denied by the court. Informants again noted exception but did nothing further to protect their interest in the action under the law, thereby putting finality to their claim. As a matter of law, a party who seeks to intervene in an action because of his interest in the subject matter, or who prays for substitution to preserve his rights to the property because of an event which necessitated such action, is not considered a party to the suit until the motion is granted by the court and he is made a party. Such motion is a separate and distinct proceeding from the action, and if it is denied by the court, the proceeding is ended, unless an appeal is taken from the court's ruling. Where the motion is denied and no appeal is taken and perfected, as was done in this case, the defaulting party has no standing in the action to file a bill of information before the appellate court to review, by such information, his claim which had been heard and terminated in the trial court. The information of Counsellor Obey for his clients is therefore hereby dismissed in its entirety.

From the history of the case, as given by the appellant in its brief and not denied by the appellee, coupled with the contents of the communications proferted to the pleadings of both parties, we have gathered that there was a rivalry over the leadership of the Union, appellee herein. This rivalry resulted in a series of administrative investigations and the exchange of communications, one of which communications came from the Ministry of Labour under the signature of Minister E. Sumo Jones, bearing Ref. No. AMZ/17-7GP/454/'82. This letter instructed the management of LPMC, appellant herein, not to release funds from the membership dues to any member of the Union claiming to be the legitimate leader until the Ministry so advised.

There are also communications in the records from some of the workers withdrawing their authorization from management to deduct union dues from their salaries and wages. These communications were not refuted by any evidence in the records.

However, of the issues presented in the seven-count brief filed by the appellant and countered by the appellee's fourteen-count brief, and which were heatedly argued, there is only one issue which must first be decided to see whether or not the final judgment of the court below, which we are called upon to review, is a valid or a void judgment. That issue relates to the question of the original jurisdiction of the trial court over the subject matter.

Appellant has contended that the allegations contained in the complaint do not constitute any element of an action of debt. We do not see the need to belabor the question of the invocation of Rule 7 of the Circuit Court Rules since, in the first instance, the court must have jurisdiction over the subject matter of a trial, and where that jurisdiction is lacking all its

acts in connection with the case are not valid. Nevertheless, the invocation of Rule 7 is upheld by this Court. We hold that where a party-litigant who has been duly notified for the hearing of his case or for the continuation of the trial of his case, fails to appear as was done in this case by the appellant corporation and its counsel, the court has no other alternative but to proceed to hear the side of the party present. The appellant corporation and its counsel having failed to appear at the resumption of the trial on July 16, 1984, even though notified, they were correctly considered as having abandoned their defense and the trial court acted properly in proceeding with the trial in the absence of the appellant. However, the burden of proving the allegations of the complaint was on the plaintiff/appellee and could not be conclusive against the defendant because of the abandonment. We shall therefore proceed to determine the jurisdictional issue.

Counsel for appellant argued, in essence, that a claim or dispute such as this, arising from collection or payment of union dues and growing out of a collective bargaining agreement, is industrial in nature and therefore cognizable before the Ministry of Labour--an executive department of government created for the purpose. Counsel for appellant asserted also that the courts of law may only exercise appellate jurisdiction over such dispute upon a petition for a judicial review duly filed by a dissatisfied party for the review of the administrative decision of the Ministry of Labour. The learned counsel argued further that the workers purporting to have been unionized having withdrawn the authorization given to management to deduct union dues from their salaries and wages, appellant was without any legal authority to further make said deductions and to pay the same over to the Union. Additionally, counsel argued, the Ministry of Labour having directed that no funds from the membership dues be released to any members of the Union claiming to be the legitimate leaders until the Ministry so advised, there could be nothing binding on the appellant for which an action of debt would lie. Counsel for appellant also argued that under the collective bargaining agreement that existed between the appellee and the appellant, all claims and disputes arising from the agreement are cognizable before the Ministry of Labour and not the debt court.

Arguing the jurisdictional issue, counsel for appellee contended that whenever an action which should have been initially instituted in a lower court is brought in a higher court, the plaintiff loses his costs. The course pursued, he says, is not a ground for dismissal of the action and does not constitute a lack of jurisdiction by the higher court. The learned counsel, in support of their arguments cited the Court to the Rev. Code 1:45.2 and the case *Alico v. Sandy*, 32 LLR 338 (1984), decided at the October Term, 1984, of this Court. The statute relied upon reads thus:

"Whenever an action is brought in a circuit court which could have been brought in justice's or magistrate's court, the plaintiff shall not be entitled to costs." Civil Procedure Law, Rev. Code 1: 45.2.

By this argument it appears to us that the learned counsel for appellee has conceded the

argument that the action was rightly cognizable before the Ministry of Labour and not the Debt Court. He claims however, that the penalty should be forfeiture of costs by plaintiff and not a dismissal of the action. In our opinion, the above quoted provision of the statute does not refer to matters cognizable before executive departments of government or administrative tribunals; it refers strictly to matters cognizable before courts of justice which may only review administrative decisions upon petition for judicial review on the point of law. Courts of justice can not exercise original jurisdiction over a subject matter of an industrial or administrative nature cognizable before any ministry or agency of the government without violating the doctrine of separation of power. To allow this would be to permit serious incursion into legally forbidden territory, and could gradually erode and finally destroy the doctrine of separation of power which is one of the hallmarks of our democracy. For reliance see *Ayad v. Dennis*, 23 LLR 165 (1974).

The records certified to us reveal that the rivalry over the leadership of the Union began on August 10, 1982, long before the institution of the action, when George Tarbah, the National president of the Union, by whom this action was brought, was said to have been impeached by the executive board of the Union, and John Barlone was appointed as acting president. The impeached president, George Tarbah, being dissatisfied, thereupon complained to the Head of State. This began the series of administrative investigations which were being conducted when the action of debt was filed. This situation led the managing director of the appellant corporation to seek the advice of the Minister of Labour who, on December 22, 1982, advised and directed that no funds from membership dues should be released to any members of the Union until further advised by the Ministry to do so. Counsel for appellant argued that this instruction of the Ministry of Labour had not been revoked when the action of debt was filed. Moreover, we observe that there is no showing of any evidence in the records that the leadership question was ever resolved by the Ministry of Labour or that the freeze on the membership dues was lifted prior to the institution of the action of debt in December 1983. In our opinion, therefore, the Ministry of Labour being the proper executive department created for the administration of the country's labour affairs, should have been allowed to settle the question of the Union's leadership. Thereafter, the proper authority of the Union could then have sought the release of the membership dues through the proper channel.

The *Alico v. Sandy* case, cited by counsel for appellee, is quite different from the case at bar. In that case, the action of damages was based on the allegation of false accusations made against the plaintiff by the defendant which imputed criminal conduct to the plaintiff that resulted in his arrest and imprisonment. Also, by reason of the false accusations, plaintiff was suspended and his salary withheld. Those accusations, which caused plaintiff great embarrassment, inconveniences and mental anguish, were later proved to be false and unwarranted.

In this case, however, the elements of debt are completely absent from the allegations of

the complaint, even though the complaint was entitled "action of debt" and was filed in the Debt Court. The allegations contained in the pleadings point to a controversy growing out of a collective bargaining agreement which is strictly industrial in nature and cognizable before the administrative department of government created for the hand-ling of such affairs--the Ministry of Labour. The membership dues sought to be recovered were not moneys borrowed by the appellant corporation with the promise to pay, which would have formed the basis of debt; nor did the money in question represent compensation for services rendered by the Union or the workers, and which compensation the appellant had refused to pay. Moreover, in the *Alico* case the court lacked original jurisdiction, whereas in the instant case, there was nothing of value received by appellant from the Union or the workers for which appellant refused to pay as would form the basis of the debt action.

We observed also that the collective bargaining agreement which existed between the Union and LPMC made no provision for collection of the membership dues by LPMC's management, through payroll deductions, to create a binding obligation on the appellant corporation. However, granting that by mutual understanding the management undertook to collect the dues by payroll deductions based upon the written consent of each worker and that the delivery of the money collected to the Union was withheld by orders of government because of an industrial dispute, and in the meantime the workers withdrew their written authority from management to make payroll deductions, could the remedy be an action of debt? Our answer is in the negative. In our opinion, the only remedy available to the Union was to seek redress from the source where the orders to withhold the dues originated, especially so when the withholding order was in keeping with the normal function and operation of government. To come to the courts to seek redress by means of debt action has the tendency to obstruct the normal administrative operation of the government and to involve the courts of justice in acts tending to make the settlement of industrial disputes ineffectual.

An action of debt may be briefly defined as the relief sought for the payment of money which the defendant is alleged to have contracted to pay the plaintiff. In this case, however, there being no provision in the contract binding the appellant to the Union for the collection and payment of membership dues through payroll deductions, and the workers who are alleged to have been covered by the Union contract having withdrawn their authorization from management to pay their membership dues to the Union through payroll deductions, the elements of an action of debt are missing.

Furthermore, an action of debt lies for the recovery of a fixed and definite sum of money or a sum of money which can be ascertained from fixed data by computation or is capable of being readily reduced to certainty. 1 AM. JUR. 2d, *Actions*, § 20. In the instant case, the agreement between the Union and LPMC was entered on August 1, 1981, and was to expire on August 1, 1983, that is to say, the agreement was for a period of two years certain. It is not known whether the alleged 2,695 workers of the appellant corporation were all still in

the employ of the appellant corporation at the time the action of debt was instituted. In fact, several of the workers had withdrawn their authorization for the deduction of membership dues from their salaries and wages a few months after the agreement came into effect and before the filing of the action of debt. Therefore, there could not have been any sum of money certain to form the basis for the action of debt. We strongly hold that the Ministry of Labour was the proper administrative forum where appellee should have sought redress for the recovery of any membership dues collected by appellant, not only because the Ministry had ordered the withholding of the dues but also because the withholding of the dues grew out of an industrial dispute over the Union's leadership.

Article 23, Section 2, of the collective bargaining agreement which existed between the appellee and the appellant provides that:

"Any dispute, claim, or grievance arising out of, or relating to the interpretation of the application of this agreement shall be submitted to the Ministry of Labour."

In our opinion, this provision of the agreement ought to have been strictly observed by the Union by taking the matter to the Ministry of Labour, where the leadership question would have been determined and the membership dues ordered released to the legitimate and proper authority of the Union. The Debt Court lacks original jurisdiction over matters of industrial nature, and where it assumes jurisdiction over such matters its judgment is of no legal effect and must be reversed.

In the case *Vamply of Liberia v. Kandakai*, reported in 22 LLR 241 (1973), this Court held that "when a statute provides a remedy for a wrong or injury, its provisions must be strictly followed." We further held that "in matters over which a government agency has been expressly given original jurisdiction, a court is prohibited from exercising original jurisdiction."

If the parties, by and through whom this action was brought, have been declared to be the legitimate leaders of the Union, and are of the conviction that membership dues were collected by the appellant corporation, they have the right to appeal to the management or the Ministry of Labour for recovery of the amount involved. They may except to any adverse ruling of the Ministry and seek judicial review of the administrative decision. The doctrine of exhaustion of administrative remedies which requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting the remedy before the court will act, is applicable in this situation. 2 AM. JUR.2d, *Administrative Law*, § 595, at 426.

In view of all that we have narrated herein above, and given the law cited, we are of the candid opinion that the judgment of the trial court is void *ab initio* for want of jurisdiction and the same is therefore hereby reversed, with costs against the appellee. And it is hereby so ordered.

Judgment reversed.