

LIBERIA AGRICULTURAL COMPANY (LAC) represented by its Comptroller,
GEORGE Q. MENSAH, v. **HIS HONOUR JOHN H. MATHIES**, Judge, Debt Court
for Montserrado County, the Sheriff of the Debt Court for Montserrado County, and all
those serving under his authority, and **ELIAS HAGE AND ST. MICHAEL**
AGRICULTURAL COMPANY, Respondents.

MOTION TO STRIKE BILL OF INFORMATION.

Heard: April 30, 1997. Decided: July 18, 1997.

1. At any time before trial any party may, in so far as it does not unreasonably delay trial, once amend any pleading made by him by (a) withdrawing it and any subsequent pleading made by him, (b) paying all costs incurred by the opposite party in filing and serving pleadings subsequent to the withdrawn pleading, and (c) substituting an amended pleading.
2. The phrase "at any time before trial" means before any examination is conducted before a competent tribunal of the facts or law put in issue in a cause, for the purpose of determining such issue.
3. When a court hears and determines any issue of fact or law for the purpose of determining the rights of the parties, it may be considered a trial.
4. An amendment is within the pale of the law if made before the date of the hearing. On the other hand, an amendment made after the issuance and service of assignment has the potential to unreasonably delay the trial or hearing.
5. A party filing a responsive pleading is allowed one withdrawal and ten days within which to amend such responsive pleading for the purpose of inserting new matters, if necessary.

Informants/respondents filed a bill of information before the Supreme Court, growing out of a petition for a writ of prohibition to restrain the trial court from enforcing the final judgment of the Supreme Court. In response to an attack made by the movant on the bill of information, to the effect that the informants had failed and neglected to verify the information as required by the Civil Procedure Law, the informants withdrew the information and filed an amended bill of information. Having withdrawn the original bill of information and filed an amended bill of information, the informants resisting the motion to strike argued that the motion had thereby become moot. In arguing the motion, counsel for the movant maintained that although a party has a right to withdraw a pleading, that right cannot be exercised after a notice of assignment has been issued and served on the parties.

The Court rejected the arguments of the movant, holding that the statute not only grants the right of withdrawal and refiling of an amended pleading by a party, but that the right is exercisable "at any time before trial", which the Court interpreted to mean as long as the trial court has not yet conducted an examination into the law or facts in issue or heard and

determined any issue of law or fact. The Court opined that as it had not heard or determined the rights of the parties, the withdrawal effected by the informants was within the pale of the law. The Court therefore *denied* the motion to strike and *ordered* that the case docketed for hearing and disposition.

MRS. CHIEF JUSTICE JOHNSON delivered the opinion of the Court.

Movant, Liberia Agricultural Company (LAC), represented by its comptroller, George Q. Mensah, of Monrovia, Liberia, on April 25, 1997, filed a motion to strike a bill of information which was filed on April 22, 1997 against the Debt Court Judge for Montserrado County, His Honour John H. Mathies, the sheriff of that court, Elias Hage, and St. Michael Agricultural Company.

The sole reason averred by movant for striking off informants' bill of information is that the informants had failed, refused and neglected to verify their bill of information as required by the Civil Procedure Law, Rev. Code 1:9(1). The movant contended that the legal consequence of the failure to verify is that the bill of information should be stricken and dismissed as though it was never filed.

The respondents/informants, His Honour John H. Mathies et al., by and thru their counsel, in their resistance which was spread on the minutes of Court, argued that the motion to strike the bill of information was moot in that the alleged unverified bill of information was no longer before the Court as it had been withdrawn in keeping with the practice in this jurisdiction which gives a party the right to withdraw his pleadings one time either before returns are made or after returns are made, subject to payment of costs by the withdrawing party. Counsel for respondents/informants further asserted that the bill of information was purposely withdrawn to avoid delay in determining this matter which is so urgent. Consequently, respondents/informants prayed that the motion to strike be dismissed and that the Court proceed to hear the bill of information.

The parties were allowed to argue briefly in support of their respective position. Movant's counsel, Counsellor H. Varney G. Sherman, conceded the fact that a party has the right to once withdraw and amend any pleading filed by him. He however disagreed that this right can be exercised even after the issuance and service of a notice of assignment for hearing of the matter, as was done by counsel for informants, Counsellor Farmere Stubblefield. Movant's counsel maintained that after the issuance and service of a notice of assignment for hearing of a given case, a party may not withdraw and amend a pleading at that stage except by leave of court.

Before proceeding to determine the issue raised in the motion to strike the bill of information, it is necessary to recap the history of the case at the Supreme Court. The records show that this case originally travelled to this Court during its October Term, A. D.

1996, on a petition for the writ of prohibition, growing out of a proceeding to enforce a money judgment against movant herein, then defendant, and in favor of respondent herein, then plaintiff, in an action of debt in the Debt Court for Montserrado County. Subsequent to the disposition of the prohibition proceedings by this Court, reargument proceedings were held at the instance of movant. In the reargument proceedings, the movant prevailed when this Court, during its October Term, 1995 declared, among other things, that the sale of its properties and concession was null and void. Thereafter, movant again filed another petition for a writ of prohibition seeking to prohibit and restrain the enforcement of a "final judgment" of the court below, in which the said court attempted to execute the mandate of the Supreme Court. As a consequence of this last petition for prohibition by movant, Respondent Judge Mathies et al., filed a bill of information before this Court *en bane*. It is this bill of information that the motion to strike, subject of this opinion, seeks to have stricken.

With this background information of the case before this Court of last resort, we shall now proceed to consider the issues presented by the said motion to strike and the resistance thereto, which are: (a) Whether or not the failure to verify a pleading is a fatal error which warrants the striking of said pleading, and (b) when may a pleading be withdrawn and amended? We shall dispose of these issues in the reverse order.

Movant, as aforesaid, strenuously argued that withdrawal and amendment of a pleading cannot be done after the issuance and service of a notice of assignment for the hearing of a matter except by special leave of court. Movant's counsel further warned that were the Court to allow this to be done, it would open a pandora's box or a floodgate for the indiscriminate withdrawal and amendment of pleadings by party litigants.

The records reveal that an amended bill of information was filed on April 25, 1997 at 3:15 p.m. by Co-respondent Judge Mathies et al., whereas the motion to strike was filed on the same April 25, 1997, but at 1:15 p.m., by Movant Liberia Agricultural Company (LAC).

The law controlling amendment of pleadings is section 9.10 of the Civil Procedure Law, Rev. Code 1, captioned *amended pleading*, which states, as follows:

"At any time before trial any party may, insofar as it does not unreasonably delay the trial, once amend any pleading made by him by:

- a) Withdrawing it and any subsequent pleading made by him;
- b) Paying all costs incurred by the opposite party in filing and serving pleadings subsequent to the withdrawn pleading;
- c) Substituting an amended pleading.

The key phrases in the above statutory provision are: "*At any time before trial*" and "*Insofar as it does not unreasonably delay trial*". The logical question then becomes when does trial or hearing

commence? In the case *Bong Mining Company v. Benson*, 34 LLR 592 (1987), this Court, speaking through Justice Robert G. W. Azango, interpreted the phrase *at any time before trial* to mean "before any examination is conducted before a competent tribunal, according to the law of the land, of the facts or law put in issue in a cause, for the purpose of determining such issue". Justice Azango further said that when a "court hears and determines any issue of fact or law for the purpose of determining the rights of the parties, it may be considered a trial". *Id*

In the instant case, as already stated, respondents/informants filed their amended bill of information on April 25, 1997, at 3:15 p.m., five days before the assigned date of the hearing of the bill of information, which was April 30, 1997, although movant's counsel, during arguments, disclosed that he received copy of respondent's amended bill of information only two days before the date of the hearing, that is to say, on the 28' day of April 1997. Given the above interpretation, therefore, it is clear that the amendment was within the pale of the law since said amendment was made before the date of the hearing. On the other hand, an amendment which is made after the issuance and service of a notice of assignment has the potential to unreasonably delay the trial or hearing.

We hold this view because paragraph 3 of section 9.10 of the Civil Procedure Law also allows a party filing a responsive pleading to the one withdrawn and amended ten days within which to also amend such responsive pleading, if it becomes necessary to do so by the insertion of new matter in the opposing pleadings.

Wherefore, and in view of the facts stated herein and the law cited, this Court is of the opinion that the motion to strike should be and the same is hereby denied. The Clerk of Court is ordered to docket the bill of information for hearing by this Court. And it is hereby so ordered.

Motion to strike denied.