

**LIBERIA TELECOMMUNICATIONS CORPORATION**, by and thru its Managing Director, SEKOU KROMAH, et al., Petitioners, v. **HIS HONOUR VARNEY D. COOPER**, Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, June term, A. D. 1997, and **AURA LIBERIA MINING CORPORATION**, by and thru its President, FABRIZIO COLOMBO, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE PETITION FOR THE ISSUANCE OF A WRIT OF CERTIORARI.

Heard: April. 19,1999. Decided: June 4,1999.

1. The competency of a court or tribunal is its authority or jurisdiction to render a valid judgment.
2. A court cannot entertain, hear and dispose of a cause of action which is placed on the calender for the term after the one next to open, except by a motion to advance same on the docket for the term in which the court sits.
3. An action filed after the commencement of a term of court cannot be heard during the term because the defendant must be summoned at least fifteen days prior to the first day of the term of court.
4. A writ of certiorari will not be granted where adequate relief can be obtained through a regular appeal.

After pleadings rested in an action of damages, the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, granted respondent's application to strike defendant's amended answer for failure to serve said amended answer on him and to pay accrued costs thereof. Defendant excepted to the ruling and subsequently applied to the Supreme Court for a writ of certiorari. The Chambers Justice heard and denied the petition, from which ruling petitioner appealed to the Supreme Court *en banc*.

In his argument before the Supreme Court, petitioner contends that the trial judge granted co-respondent's application to strike petitioner's amended answer without any authority during the June Term since the action out of which the application grew, was venued before the trial court in its September Term. Respondents, on the other hand, relying on the case *Vargas v. Reeves and Eid*, 39 LLR 368 (1999), argued that the petitioner suffers a waiver and is therefore estopped to seek the aid of certiorari to review the ruling of the trial judge striking the amended answer, when it

subsequently filed a motion to recuse, appeared and argued same before the trial court.

The Supreme Court, upon review of the records, noted that the facts and circumstances in the *Vargas* case and the instant case are not similar; that the trial judge did not have jurisdiction over the instant case in that he was commanded to only hear and dispose of cases pending before the trial court in its June Term, A. D. 1997, and not cases venued for the September Term of the Court. Accordingly, the Supreme Court reversed the ruling of the Chambers Justice and granted the petition.

*M Kron Yangbe* of the Cooper and Togbah Law Offices appeared for petitioner. *Jerome Korkoya* of the Brumskine and Associates Law Firm appeared for respondents.

MR. JUSTICE JANGABA delivered the opinion of the Court.

These certiorari proceedings are before us on appeal from the ruling of Mr. Justice Sackor denying the writ of certiorari in Chambers during the October Term, A. D. 1998 of this Honourable Court.

The competency of a court or tribunal is its authority or jurisdiction to render a valid judgment. A court or tribunal without an authority or jurisdiction is therefore not competent to render a valid and enforceable judgment. A court cannot entertain, hear and dispose of a cause of action which is placed on the calendar for the term after the one next to open, except by a motion to advance same on the docket for the term in which the court sits. An application incident thereto is therefore cognizable before a court in the term within which the cause of action is venued.

This case before us on appeal grows out of an action of damages for wrong, filed on June 11, 1997 by the co-respondent herein, Aura Liberia Mining Corporation by and thru its president, Fabrizio Colombo, against the petitioner corporation in the Civil Law Court of the Sixth Judicial Circuit for Montserrado County. Plaintiffs complaint in the trial court is venued in its September Term, A. D. 1997, and the writ of summons directed to the sheriff commanded the defendant corporation to appear before the trial court on the third Monday of September to answer the complaint of the plaintiff. The writ of summons was served and returned served. The petitioner corporation filed its answer on June 20, 1997 venued before the court in its September Term, A. D. 1997 of the court. The plaintiff filed a reply on June 30, 1997 in the June term of the trial court, and a motion for summary judgment on July 3, 1997, also venued in the June Term of the trial court. The defendant withdrew and

filed an amended answer on July 8, 1997 which is venued before the trial court in its September term, A D 1997. The defendant alleged serving said answer on plaintiffs counsel but to no avail.

Plaintiffs counsel obtained a notice of assignment on the 9<sup>th</sup> day of July, A. D. 1997 for the disposition of the motion of summary judgment on the 15<sup>th</sup> day of July, A. D. 1997. The motion was not, however, disposed of as assigned. A notice of assignment was issued on the 23<sup>rd</sup> day of July, A. D. 1997, served and returned served for the disposition of the law issues on the 29<sup>th</sup> day of July, A. D. 1997. At the call of the case for the disposition of the law issues on July 29, 1997, counsel for plaintiff asked the trial judge not to dispose of the law issues but to hear and dispose of the motion for summary judgment which was previously assigned. Defendant's counsel informed the trial judge of the filing of an amended answer, which he twice allegedly attempted to serve on plaintiffs counsel along with the sum of L\$125.00 as accrued cost but to no avail. An application, by leave of court, was filed by plaintiffs counsel on the minutes of court on the 29<sup>th</sup> day of July, A. D. 1997, praying the court below to strike the amended answer of defendant for its failure to serve the said amended answer on plaintiff and to pay accrued costs thereof. Defendant resisted this application and the trial judge promised to investigate plaintiffs failure to receive and sign for defendant's amended answer along with the accrued costs. However, such investigation was never conducted.

The trial judge, His Honour Varney D. Cooper, granted plaintiffs application on August 1, 1997, striking defendant's amended answer, thereby placing the defendant corporation on a bare denial. Defendant excepted to this ruling with notice to take advantage of the statute. The motion for summary judgment was assigned for hearing on the 8<sup>th</sup> day of August, A. D. 1997, whereupon the defendant corporation filed a motion on August 6, 1997, to defer hearing of said motion to the September Term, A. D. 1997, stating that the action for damages for wrong was venued before the trial court in its September Term, A. D. 1997. The motion was resisted, heard and ruling thereof reserved.

The defendant corporation sought the aid of certiorari on the 12<sup>th</sup> day of August, A. D. 1997, praying this court to review and correct the ruling of the trial court striking its amended answer from the records of this case. An alternative writ was accordingly issued. The respondents filed their returns which was withdrawn and amended on the 21<sup>st</sup> day of August, A. D. 1997. Mr. Justice Sackor, presiding in Chambers over the 1998 October Term of this Court, heard and disposed of the petition, denying the issuance of certiorari for reason that petitioner submitted itself to the jurisdiction of

the trial court, and cannot thereafter challenge its authority. Petitioner excepted to this ruling and announced an appeal to this Court *en bane* for final review and determination.

The petitioner argued substantially before this Court that the trial judge entertained and granted plaintiffs application to strike its amended answer without any authority during the 1997 June Term of the trial court on grounds that the action of damages for wrong, out of which the application grew, was venued before the said court in its 1997 September Term. Petitioner also contended that the trial judge was mandated by this Court to resume jurisdiction and dispose of only cases docketed for the 1997 June Term, but not beyond said Term as the judge irregularly proceeded. Another issue raised and argued by petitioner before this Court is that the plaintiff had failed to file an amended reply to its amended answer, and therefore was not the last pleader with the right to move the trial court to strike its amended answer.

The sole issue raised and argued by respondents before us is that the petitioner suffers waiver and is accordingly estopped to thereafter seek a review of the interlocutory ruling by remedial process on grounds that the petitioner did not seek a remedial process immediately after the ruling of the trial judge striking its amended answer but filed a motion to defer hearing of a motion for summary judgment filed by plaintiff only upon being served with a notice of assignment for the disposition of said motion. Respondents contended that the motion to strike petitioner's amended answer became part of the records of appeal and was no longer within the reach of a remedial process. Respondents averred that the filing of the subsequent motion to defer hearing of the motion for summary judgment was the cut-off point as to the ruling on the previous motion to strike petitioner's amended answer. As such, respondents maintained that the ruling is only reviewable by appeal, and that a writ of certiorari will not be granted where adequate relief can be obtained through a regular appeal. Respondents relied on *Vargas v. Reeves and Eid*, 39 LLR 368 (1999). The appeal before us presents two cardinal issues for the determination of this case: They are:

1. Whether or not the trial judge had jurisdiction to entertain, proceed, and dismiss plaintiffs amended answer during the 1997 June Term while the action of damages for wrong out of which the application grew, was venued before the court in its 1997 September Term?
2. Whether or not the petitioner is estopped to seek a remedial process to review the adverse interlocutory ruling when it subsequently filed a motion to defer hearing of plaintiffs motion for summary judgment to the 1997 September Term of court.

These issues afore stated herein above will be decided in the reverse order. As to the issue of petitioner's estoppel to seek a remedial process to review the adverse ruling of the trial judge by its subsequent filing of a motion to defer hearing of plaintiffs motion for summary judgment, this court observes from the record in this case that the petitioner on August 6, 1997, filed a motion to defer hearing of the motion for summary judgment to the September Term, 1997, subsequent to a notice of assignment issued on the 4th day of August, A. D. 1997, for the hearing of said motion on the 8th day of August, A. D. 1997. Petitioner's motion to defer was resisted, argued and ruling thereof reserved. The Chambers Justice held that "the petitioner had failed and neglected to seek a remedial process available to an offended party from this Court at the time it excepted to the ruling striking its amended answer by petitioner's subsequent appearance and argument before the court below, notwithstanding its exception to the adverse interlocutory ruling.

Counsel for respondents also argued before this court that the petitioner suffers a waiver and is therefore estopped to seek the aid of certiorari to review the ruling of the trial judge striking its amended answer when it subsequently filed a motion to recuse, appeared and argued same before the trial court. Counsel for respondents relied on the case *Vargas v. Reeves and Eid*, 39 LLR 368 (1999) wherein this court held among other things that "... once petitioner filed her motion for the judge to recuse herself, this meant that petitioner/movant was ready to go to the next stage of the case, which is to dispose of said motion and proceed from a ruling thereon, thereby making the court's ruling on the motion for jury trial part of the settled record of the case. In short, filing of the subsequent motion to recuse was the cut-off point as to the ruling of the previous motion for jury trial. Only an appeal would render said ruling reviewable and a writ of certiorari will not be granted where adequate relief can be obtained through a regular appeal."

In the *Vargas* case, the trial court had authority or jurisdiction to entertain, proceed and dispose of petitioner's petition for declaratory judgment following the denial of her motion for jury trial. It was after the denial of the motion and the assignment of the case for hearing that petitioner subsequently filed a motion for the trial judge to recuse himself from hearing her case. Thus, the jurisdiction of the debt court was never challenged, but the judge presiding therein was asked to recuse himself from hearing the case. In other words, any other judge residing in the debt court could hear and dispose of that cause other than Judge Mathies against whom the motion to recuse was filed by the petitioner.

In the instant case, the trial judge was mandated by this court to hear and dispose of all cases docketed in the 1997 June Term of the trial court. However, the trial judge entertained, proceeded and granted plaintiffs motion to strike petitioner's amended answer during the June Term, A. D. 1997, notwithstanding the fact that plaintiffs complaint was venued before the September Term, A. D. 1997 of the trial court, and that the writ of summons which brought the petitioner under the jurisdiction of the trial court commanded the petitioner, defendant in the court below, to appear on the 3<sup>rd</sup> Monday in September, 1997 to answer the complaint of the plaintiff. The object of petitioner's motion to defer hearing of plaintiffs motion for summary judgment is that the trial judge did not have jurisdiction to hear and dispose of any case pending before the court in its September Term when the trial judge was only mandated to hear and dispose of cases docketed in the June Term. Thus, the petitioner in this case was not ready to go to the next stage of this case, and the subsequent filing of this motion to defer was not the cut-off point as to the ruling on the motion to strike its amended answer. The trial judge, in point of fact, proceeded contrary to the mandate of this Honourable Court commanding him to only hear and dispose of cases pending before the trial court in its June Term, A. D. 1997. The facts and circumstances in the *Vargas* case and the instant case are therefore not similar.

The second and final issue in this case is whether or not the trial judge had jurisdiction to entertain, proceed and grant plaintiffs application to strike petitioner's amended answer during the 1997 June Term while the action of damages for wrong out of which the application grew was venued before that court in its 1997 September Term.

A recourse to the records in this case shows that the cause of action out of which the motion for summary judgment grew is venued before the trial court in its September Term 1997, whereas the motion for summary judgment incident to the reply is venued before the trial court in its June Term, A. D. 1997. It is firstly irregular for an application growing out of the main suit to have been venued before the trial court in its June Term whilst the main suit is venued in the September Term of the court. Secondly, the application of plaintiff to strike the defendant's amended answer along with its reply should have been venued before the court in its September Term, and should have been entertained and disposed of during the September Term of the said court. The cause of action was filed by plaintiff on the 11<sup>th</sup> day of June, A. D. 1997, less than 15 days prior to the opening of the trial court:

In the case *Umarco v. Dennis*, 25 LLR 267 (1976), this Court held that "an action filed after the commencement of a term of court cannot be heard during the term because

the defendant must be summoned at least fifteen days prior to the first day of the term of court." This court holds that the motion growing out of the cause of action filed before the trial court in its September Term should not have been entertained and disposed of during the June Term of court, when in fact the main suit was not docketed for the said June Term of court. The records in this case did not show any evidence of a motion to advance the main suit to the docket of the trial court in its June Term. It was therefore irregular for the trial judge to entertain an application in the June Term. The trial judge therefore had no jurisdiction over plaintiff's application to strike defendant's amended answer, and proceeded without any authority.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the ruling of the Chambers Justice denying the writ of certiorari should be and the same is reversed, the petition is hereby granted and the peremptory writ ordered issued, setting aside the ruling of the trial court striking petitioner's amended answer from the records in this case. The Clerk of this court is hereby ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over this case and proceed with its hearing in keeping with law. Costs to abide final determination of this case. And it is hereby so ordered.

*Petition granted; ruling reversed.*