HIS HONOUR JOHN H. MATHIES, Debt Court Judge, Montserrado County, C. S. SETHI of SETHI BROTHERS, et al., Appellants, v. **THE LIBERIA TRADING AND DEVELOPMENT BANK (TRADEVCO)**, by and through its Acting General Manager, Appellee

BILL OF INFORMATION PROCEEDING

Heard: October 21, 1999 Decided: December 16, 1999

1. Costs of court are generally required to be paid only upon the rendition of final judgment, which defines the rights and obligations of the parties to a case, and they are assessed against and to be paid by the losing party.

2. Only a final judgment may determine who is the losing party and therefore the appropriate and legal party to pay costs of court.

3. Where a case is terminated by a voluntary discontinuance, costs of court are not required by law to be paid.

4. Where a party seeks to revive a discontinued case, the costs incurred for the discontinued case may be required by court to be paid by the party seeking to have the case revived, before the court proceeds with the new case.

5. In the absence of a revival of the action which has been voluntarily discontinued, there can be no payment of costs of court under the law.

6. Where the sheriff has not participated in the collection of a judgment amount or any other money from a party to a case in court, sheriff's collection fees shall not be assessed against the party who is liable to make the payment.

7. When a lawyer taxes a bill of costs to collect an amount as judgment and sheriff's collection fee in full knowledge that his client had received payment of the amount sued for and also that said amount was received without the sheriff's participation, that lawyer has committed a reprehensible act, for which he shall be attached in contempt of court and punished.

8. A judge who knowingly and intentionally orders the preparation of and approves a bill of costs for amounts which have already been paid, such as the amount of obligations sued for, or which ought not to be paid, such as costs of court in a voluntary discontinuance, has committed a reprehensible act, which reflects

negatively on his integrity and impartiality. Accordingly, such judge shall be attached in contempt of court and punished.

9. The disobedience and disregard for instructions of the Chambers Justice by a judge of a lower court will not be countenanced or tolerated by the Supreme Court; and any lower court judge who engages in disobedience to or disregard to instructions of the Supreme Court shall be attached in contempt and punished.

10. Judges shall not abuse the constitutional immunity provided in Articles 71 & 73 of the 1986 Constitution, as the intention of the framers of the Constitution is to safeguard and ensure independence of the Judiciary by protecting the right of each judge or judicial officer to perform acts and render decisions, rulings and judgments according to the Constitution and laws, his/her conscience and the fear of God.

11. Each judge shall conduct trial and the affairs of each court in conformity with law and procedures and conduct himself with honor, honesty, integrity, dignity and in obedience to laws and procedures; thereby engendering confidence in the Judiciary and respect for judicial officers.

Appellant, C. S. Sethi, instituted an action of debt against The Liberian Trading and Development Bank, appellee, at the Debt Court for Montserrado County. Summary Judgment against appellee found itself before the Chambers Justice on a writ of prohibition and it was reversed and the case ordered resumed and tried in keeping with law. Before this trial could be completed, the parties entered into a stipulation whereby they agreed to and did voluntarily discontinue the case. The notice of voluntary discontinuance was filed with the Debt Court for Montserrado County.

After this voluntary discontinuance, the debt court judge called the case for hearing, but appellee was unprepared to proceed in that it had not brought any witnesses to court in light of the voluntary discontinuance. The debt court Judge then entered a judgment against appellee in the amount of the debt, plus interests and costs of court. Appellant's counsel taxed the bill of costs and the debt court judge approved it. A writ of execution was ordered issued and it was issued, commanding the sheriff to seize and offer for public auction appellee's properties until the amount of the bill of costs is collected and if no property was found, the managers of appellee should be arrested and taken to a court of competent jurisdiction to be dealt with according to law until the judgement debt was satisfied.

To prohibit and restrain the enforcement of this judgment through the aforesaid writ of execution, appellee fled to the Chambers Justice who issued a stay order, investigated the matter and ordered the debt court judge to resume jurisdiction and proceed according to law. Instead of doing so, the debt court judge proceeded to enforce his judgment and this caused appellee to return to the Chambers Justice on a bill of information. The Chambers Justice granted the bill of information; but appellant excepted and announced an appeal to the Supreme Court.

After a hearing, the Supreme Court found that both appellant and the debt court judge had conducted themselves irregularly and illegally. The Supreme Court first ruled that payment of costs is ordinarily required only when a case is terminated by a final judgment; it is not required when a case is terminated by voluntary discontinuance. The Supreme Court ruled that it is only when a party revives a case that has already been discontinued that the court may require that such party to pay the costs of court for the discontinued case as part of the procedure for the revival; but this was not the situation in this case.

The Supreme Court also found that appellee had made payment under the notice of voluntary discontinuance and there was nothing left for the sheriff to do. The Supreme Court then held that where there is no collection to be made by the sheriff on a judgment debt, the sheriff is not entitled to a fee for collection.

The Supreme Court further determined that counsel for appellant had knowingly and intentionally taxed a bill of costs with false information and amounts. This conduct was deemed reprehensible; and consequently, appellant's counsel was attached in contempt of court and punished by the imposition of a fine.

The Supreme Court ruled that the debt court judge's conduct in disobeying the orders of two different Chambers Justices and deliberately enforcing the collection of court costs that his court was not entitled to was both in contempt of the Supreme Court and also inimical to the fair and impartial dispensation of justice by a neutral judge. Accordingly, the Supreme Court warned judges that disobedience of orders of the Supreme Court would not be tolerated; the Supreme Court also warned judges not to conduct themselves in a manner that would reflect negatively on their integrity and honesty. The debt court judge was accordingly attached in contempt and a fine imposed on him.

The Supreme Court *affirmed* the ruling of the Chambers Justice granting the bill of information.

M Kron Yanghe appeared for appellants. *Stephen B. Dunbar, Jr.* appeared for appellee.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

This cause of action is before this Court on review from a decision rendered by Mr. Justice Elwood L. Jangaba, Assigned Chambers Justice on a bill of information filed by appellee against appellant. The Chambers Justice granted appellee's bill of information and appellant announced an appeal to this Court *en banc.*

The facts of this case as contained in the bill of information are that The Liberian Trading and Development Bank, appellee was defendant in an action of debt filed for the September, A. D. 1995 Term of the Debt Court for Montserrado County by appellant, C. S. Sethi. On January 25, 1999, appellant and appellant filed a joint voluntary discontinuance with the clerk of the Debt Court for Montserrado County, thereby terminating the action. On January 27, 1999, His Honour, Judge John H. Mathies of the Debt Court for Montserrado County ordered the bailiffs to serve a writ of execution on appellee. The writ of execution, which had been prepared by the clerk of the debt court upon the instruction of Judge Mathies, commanded the sheriff of the debt court to seize and expose for sale properties of appellee in satisfaction of the court's judgment.

At this point appellee fled to the Chambers Justice and filed a petition for the writ of prohibition. The Chambers Justice issued a stay order and scheduled a conference with the parties. After the conference, the Chambers Justice ordered a mandate sent to Judge Mathies with the instructions to resume jurisdiction and bring the matter to a final close in keeping with law. Following the reading of the mandate Judge Mathies ordered the case assigned for February 8, 1999. On the said scheduled date, Judge Mathies ruled that appellee had abandoned its case and he revived and confirmed a summary judgment rendered on October 30, 1998, which judgment was the subject of the conference in a previous prohibition proceeding before Mr. Justice Karmo Soko Sackor, then Chambers Justice, based on the petition of appellee. At that time, Mr. Justice Sackor implicitly reversed the summary judgement of October 30, 1998 rendered by Judge Mathies and ordered Judge Mathies to proceed with the trial of the case according to law.

Now, after Judge Mathies had confirmed and affirmed his summary judgment of October 30, 1998, even though it had been reversed on the prohibition proceeding before Mr. Justice Sackor, Judge Mathies then ordered appellee to pay the costs of

court. It is from this last judgment and order of Judge Mathies that appellee fled to the Chambers of Mr. Justice Jangaba with a bill of information, which was granted; and hence this appeal.

The issue decisive of this matter is whether or not cost of court is payable whenever an action is discontinued as a result of a voluntary discontinuance?

To make a determination of this issue, the Court shall consider the law on voluntary discontinuance. Firstly, voluntary discontinuance is defined as follows:

"Voluntary action on the part of plaintiff, whereby his case is dismissed without decision on (the) merits. *Ferber v. Bruecki,* 322, Mo. 892, 17 S.W. 2d 524, 527; FED. R Civil P. 41(a); BLACK'S LAW DICTIONARY 1575 (6th ed).

The Civil Procedure Law, Rev. Code 1, provides the following on voluntary discontinuance:

"11.6 Voluntary Discontinuance
"1. *Without an order.* Except as otherwise proved by law any party asserting a claim may discontinue it without an order.

"(a) By serving upon all parties to the action a notice of discontinuance at any time before a responsive pleading or a motion for summary judgment is served, whichever first occurs, and filing the notice with proof of service with the court, or

"(b) By filing with the court a stipulation in writing signed by the attorneys of record for all parties.

"2. By order of court. Except as provided for in paragraph 1 an action shall not be discontinued by the claimant except upon order of the court and upon such terms and conditions as the court deems proper.
"3. Discontinuance after submission. A discontinuation may not be granted after the case has been submitted to the court or jury to determine the facts except upon the stipulation of all parties.

"4. Effect of Discontinuance. Unless otherwise stated in the notice, stipulation or order of discontinuance, the discontinuance is without prejudice, except that a discontinuance by means of notice under paragraph 1(a) of this section operates as an adjudication

on the merits if the party has once before discontinued by any method an action based on or including the same claim for relief in a court of the Republic of Liberia.

"5. Costs of previously discontinued action. If a plaintiff who has previously discontinued an action in any court, domestic or foreign, commences another action based upon or including the same claim against the same defendant, the court, upon motion by the defendant, may make such order for the payment of costs of the action previously discontinued as it may deem proper and may stay the proceedings in the subsequent action until the plaintiff has complied with the order.

"Let us examine this provision of section 1:11.6 of the Civil Procedure Law, Rev. Code 1, on voluntary discontinuance.

Section 1:11.6 sets forth the two ways a claimant may obtain a voluntary discontinuance. The first method is without an order of court as stipulated in paragraph 1. In the absence of a court order, a notice of discontinuance must be served on all parties before a responsive pleading or motion for summary judgment is served, or before filing with the court a written stipulation signed by all the parties.

The second method by which a claimant may secure a voluntary discontinuance or discontinue a cause of action is by court order, issued or granted upon terms and conditions as the court may see fit.

In simple terms, the question is how may a person asserting a claim secure a voluntary discontinuance or discontinue a cause of action? The simple answer is a claimant may discontinue his action with or without court order. What shall be sufficient to discontinue an action in the absence of a court order? The answer is a notice of discontinuance served on all parties before responsive pleadings are served or before a motion for summary judgment is served. Also sufficient to discontinue an action without a court order is a written stipulation signed by all parties' counsel of record.

Section 11.6 also sets forth when or at what stage of a cause of action a claimant may secure a voluntary discontinuance.

Paragraph 1 stipulates that a cause of action may be discontinued when pleadings are being exchanged and before trial commences. At this point, voluntary discontinuance may be obtained without a court order by serving on party either a notice of discontinuance or a written stipulation signed by the parties. This is to say, an action

may be voluntarily discontinued prior to the commencement of trial by a notice of discontinuance or written stipulation signed by all parties' counsel of record.

Also, an order granting voluntary discontinuance may discontinue a trial after trial has commenced. Paragraph 3 of section 1:11.6 provides that after action has been submitted for the trial of the facts to a court or jury a claimant may secure a court order granting voluntary discontinuance. Under these circumstances, where actual trial has commenced, the court shall order or grant a discontinuance of the action upon the filing of a stipulation signed by all the parties.

The next question is what legal effect does a voluntary discontinuance have on an action?

Paragraph 4 of section 1:11.6 discontinues the action without prejudice except otherwise stipulated in the notice, stipulation or order of discontinuance. This paragraph also provides another exception which states that a notice of voluntary discontinuance obtained under subsection 1(a) of section 1:11.6 shall operate as adjudication of the case on the merits if the claimant had obtained a prior discontinuance by any method based on or including the same claim in any court in the Republic.

This now brings us to the crux of this matter. Are costs of court payable when voluntary discontinuance is obtained?

The aforementioned section 1:11.6 of the Civil Procedure Law, Rev. Code 1, provides, in paragraph 5, when costs should be ordered by the court:

"Costs of previously discontinued action. If plaintiff who has discontinued an action in any court, domestic or foreign, commences another action based upon or including the same claim against the same defendant, the courts upon motion by the defendant, may make such order for the payment of costs of previously discontinued as it may deem proper and may stay the proceedings in the subsequent action until the plaintiff has complied with the order." (Emphasis ours).

This paragraph states that costs of court are payable whenever an action which was previously discontinued by any method, whether by stipulation of parties, notice of discontinuance or court order, in domestic or foreign courts, is subsequently revived against the same party, the court may order the claimant or person reviving the claim to pay the costs of the previous action which was discontinued.

It should be noted that costs of court are required only upon the revival of the action previously discontinued. The implication here is that upon the discontinuance of a cause of action no cost is payable and costs of court remain non-payable as long as the discontinuance holds and remains effective.

It should be recalled that it was stated earlier that the effect of a discontinuance is without prejudice to either party, and this view is the intent of the lawmakers. Hence the question is against whom will the court levy cost of court?

It is common and elementary legal knowledge and practice in the courts of Liberia that costs are levied by the court against the losing party or one found liable in a final judgement, which determines the rights and obligations of the parties to an action. This is not the case with a stipulation, notice or order of voluntary discontinuance, for the law provides that unless otherwise stated in the notice, stipulation or order for the discontinuance, a discontinuance obtained whether prior to trial or after trial has commenced, is without prejudice to either party. (Emphasis ours). A notice or order of discontinuance or a written stipulation signed by the parties does not allow the court to determine which party is liable or not liable, hence the difficulty or legal impediment to determine who shall pay the costs of court. Only a final judgment may determine who is the losing party and therefore the appropriate and legal party to pay costs of court. There is no losing party when a voluntary discontinuance is obtained; therefore the payment of costs of courts is not applicable.

Further, a voluntary discontinuance is obtained by a written stipulation signed by counsel of record of all parties, a notice or order of voluntary discontinuance is not a final judgment rendered by a court.

It is our interpretation that the payment of costs of court is permissible under section 1:11.6 (5) under review to serve only as a penalty against a claimant who revives the action after a voluntary discontinuance is obtained. In the absence of a revival of the action which has been voluntarily discontinued, there can be no payment of costs of court under the statute under review.

In the face of the clear and unambiguous language of section 1:11.6 of the Civil Procedure Law, Rev. Code 1, we find the orders of the Judge of the Deft Court for Montserrado County, His Honour John H. Mathies, to appellee to make payment of the costs of court in this action, which has been voluntarily discontinued by a written stipulation signed by the parties, irregular and illegal.

What is of grave concern is the extent to which Judge Mathies proceeded to ensure compliance with his order for payment of costs of court by appellee.

After the filing of the voluntary discontinuance on January 25, 1999, Judge Mathies ordered the issuance of a writ of execution with the following instruction to the sheriff of the Debt Court for Montserrado County, Maj. James B. Gant:

"GREETINGS:

"YOU ARE HEREBY COMMANDED to seize and expose for sale the goods, chattels and personal properties of THE LIBERIA TRADING & DEVELOPMENT BANK (TRADEVCO), represented by and thru its Acting General Manager, also of the City of Monrovia, Liberia, and if the sums realized therefrom be not sufficient, then seize ITS REAL PROPERTIES until you shall have realized the sums of US$3,020.00 UNITED STATES DOLLARS) AND L$786.00 (SEVEN HUNDRED AND EIGHTY SIX LIBERIAN DOLLARS), and if you cannot find goods, chattels and personal properties of the DEFENDANT, you are hereby commanded to ARREST his living body and forthwith bring HIM before any judge of competent jurisdiction to be dealt with according to law unless HE will pay the said sums of money for the satisfaction of this court's judgment.

"At this point, the appellee fled to the Chambers Justice, Mr. Justice Elwood L. Jangaba, by way of a petition for the writ of prohibition to prohibit and restrain Judge Mathies and the ministerial officers of his court from serving the said writ of execution. The Chambers Justice issued a stay order and scheduled a conference. After the conference, the Chambers Justice mandated Judge Mathies to resume jurisdiction and bring the matter to a final close in keeping with law.

After the reading of the mandate from the Chambers Justice, Judge Mathies proceeded to assigned the case for hearing. At the scheduled hearing on February 8, 1999, Judge Mathies ordered appellee to produce his witness to continue the hearing notwithstanding the fact that voluntary discontinuance had been obtained by a written stipulation signed by both appellee and appellant, C. S. Sethi. Appellee then informed Judge Mathies that the debt action had terminated due to the written stipulation signed by both parties and filed in the court's records; hence appellee did not have a witness. Judge Mathies was reminded of this fact, but he proceeded with the hearing of the case.

At this point, Judge Mathies revived a summary judgment decision he had rendered on October 30, 1998. This summary judgment was the subject of a conference before Mr. Justice, Sackor, as a result of a previous petition for a writ of prohibition. Then Mr. Justice Sackor mandated Judge Mathies to resume jurisdiction and proceed according to law and this mandate was read in open court on December 9, 1998. On December 12, 1998, the hearing of the matter continued and appellant's two witnesses were qualified, and the trial progressed.

Clearly, the decision or final judgement rendered by Judge Mathies on October 30, 1998 was of no legal effect and had become a nullity, for the trial continued after the conference with Mr. Associate Justice Sackor. Now by what legal authority could Judge Mathies revive and confirm this final judgment? We see no legal authority. This confirmation and affirmation of the overruled summary judgment of October 30, 1998 was most illegal and irregular. This is a clear act of desperation to collect costs of court.

Judge Mathies ordered the clerk of court to issue a bill costs, which was approved by him and taxed by Counsellor M. Kron Yangbe, counsel for C. S. Sethi, appellant, for the amount US$80,400.00 (Eighty Thousand Four Hundred United States Dollars) and L$786.00 (Seven Hundred Eighty-Six Liberian Dollars) to be collected. Of the amount of US$80,400.00 (Eighty Thousand Four Hundred United States Dollars) to be collected, US$73,000.00 (Seventy-Three Thousand United States Dollars) was the principal amount sued for and US$1,560.00 (One Thousand Five Hundred Sixty United States Dollars)was the sheriff's collection fee. It is worthy to note that C. S. Sethi, appellant, had already received the full sum sued for as a result of the written and signed stipulation, hence the sheriff could not have collected this amount to be entitled to 6% of US$73,000.00. In other words, counsel for C. S. Sethi, appellant, taxed a bill of costs to collect a total amount of US$80,400.00 in full knowledge that his client had received payment of the amount sued for and also that said amount was received without the sheriff's participation. In truth and in deed Counsellor Moses Kron Yangbe a senior counsellor of the Supreme Court Bar and a former Associate Justice of the Supreme Court of Liberia affixed his signature to a document, which he had knowledge contained intentional misstatements of facts and figures in violation of his sworn oath as a lawyer. This Court finds this conduct of Counsellor Yangbe reprehensible and unacceptable and therefore orders that he pay a fine of L$5,000.00 (Five Thousand Liberian Dollars) into Government revenue; and upon his failure to pay same he shall be barred from the practice of law until this order is complied with.

Further, Judge Mathies approved a bill of costs, also in full knowledge that a written and signed stipulation had been duly filed and pursuant to that instrument, the action of debt was discontinued, the sum sued for had been paid to and received by C. S. Sethi, appellant, without the sheriff collecting same. The conclusion here is that not only was the bill of costs irregularly issued, but it contained intentional misstatement of facts and figures. The logical inference here is that the appellant and Judge Mathies, in their desperation and determination to receive payment of costs of court, proceeded beyond the illegal and irregular issuance of this bill of costs to include misstatement of facts, even at the risk of disobedience and total disregard for the instructions of two Chamber Justices. This disobedience and disregard for instructions of the Chambers Justices by a judge of a lower court will not be countenanced or tolerated by this court, and this Court finds same extremely contemptuous. We therefore order that Judge John H. Mathies pay a fine of L$5,000.00 (Five Thousand Liberian Dollars) into Government revenue and exhibit receipt for same to the Marshal of the Supreme Court.

Our concern is how this desperation and determination to ensure payment of costs of court could affect the effective administration of justice. Clearly under the foregoing circumstances one would logically question the integrity of the judge and precepts from his court. Also, these irregular and illegal acts of the judge in his desperate bid to secure the payment of cost of court leads one to ponder whether the court and the law exist for the objective resolution of controversies or payment of costs of court.

This court warns all judges not to abuse the constitutional immunity for judges as provided for in Articles 71 & 73 of the 1986 Constitution. The intention of the framers of the Constitution is to safeguard and ensure independence of the judiciary by protecting the right of each judge or judicial officer to perform acts and render decisions, rulings and judgments according to the Constitution and laws, his/her conscience and the fear of God. The intention of the framers of the Constitution is premised on the expectation that all judges would not only be knowledgeable and skilled in the law, but also have respect for the law.

This Court expects that each judge will conduct trial and the affairs of each court in conformity with law and procedures and conduct himself/herself with honor, honesty, integrity, dignity and in obedience to laws and procedures; thereby engendering confidence in the judiciary and respect for judicial officers.

Wherefore, and in view of the foregoing, the ruling of the Chambers Justice, Mr. Justice Elwood L. Jangaba is hereby ordered affirmed and confirmed, thereby granting appellee's bill of information. Further, the bill of costs taxed by counsel for appellant, C. S. Sethi, and approved by Judge John H. Mathies, is hereby declared null and void *ab initio* and of no legal effect whatsoever. If any amount of money was collected by appellant C. S. Sethi or Judge Mathies, same should be refunded forthwith. Costs are ruled against appellant. And it is hereby so ordered.

Information granted.