

MERIDIEN BIAO BANK LIBERIA LIMITED, by and thru its Acting President and authorized representative, Petitioner, *v.* **HIS HONOUR FRANCIS N. TOPOR** Assigned Circuit Judge, First Judicial Circuit, Criminal Court 'A', Montserrado County, Respondent.

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

Heard: October 25, 1995. Decided: January 25, 1996.

1. A contempt proceeding is distinct and independent in itself and is not a part of the controversy out of which it grows.
2. A contempt proceeding does not necessarily require the pendency of a main action before the court.
3. A party summoned for contempt does not necessarily have to be a party to the main suit before a trial judge to warrant his appearance. His failure to appear in obedience to the summons, by itself, constitutes contempt.
4. The willful neglect and failure to appear for a hearing after notice does not constitute a denial of a day in court and a denial of due process of law.
5. A day in court means an opportunity to be heard after notice to appear.
6. Due process of law is the law which hears before it condemns; the law which proceeds upon inquiry and renders judgment only after trial.
7. It is a statutory right of a court of competent jurisdiction, on its own motion, to issue a writ of summons for a criminal contempt and to sit and dispose of same without surrendering its authority to another tribunal of the same jurisdiction.
8. A court of competent jurisdiction can punish a party duly summoned for a public wrong or for any offense against its dignity and authority, although such public wrong or offense may not, strictly speaking, be committed in the presence of the offended court or judge.
9. The power to punish for contempt of court is intrinsic to the court, as an incident necessary to its existence under an orderly form of government.
10. A writ of prohibition cannot be granted to correct irregularities wherein the petitioner

inexcusably failed to abide by the writ of summons and appear for the hearing.

11. A party upon whom a summons is served is duty bound to appear to defend his legal interest, and a disobedience to such summons amounts to a contempt.

12. It is contemptuous for a party, who upon receipt of a summons for contempt, inexcusably fails to appear or file returns, but seeks the aid of prohibition to prevent his appearance

These prohibition proceedings grow out of a writ of summons for contempt issued by the First Judicial Circuit, Criminal Assizes, Court "A", Montserrado County, against Meridien BIAO Bank for an alleged illegal deduction from the deposit of His Honor Francis M. Torpor, who was then presiding by assignment over said court. The summons was duly issued and served upon the petitioner Meridien Bank but instead of abiding the writ, the petitioner fled to the Chambers Justice for a writ of prohibition, alleging that it is beyond the scope of respondent authority to hold it in contempt. Petitioner alleges that the contempt proceedings instituted by the judge were a purely personal matter which did not bear any relation to the operations of the court and to the dignity of the judge. Petitioner also contends that it is not a party to any action before the respondent judge, and that the action between them merely grew out of an alleged contractual relationship which is cognizable before a civil court.

The Chambers Justice upheld the petitioner's contentions, holding that it was not proper for the respondent judge to hold petitioner in contempt in personal matters which have no relation to the case at bar. From this ruling, the respondent judge appealed to the full bench.

The Supreme Court, following a review of the records, held that it was incumbent upon petitioner to have appeared before the respondent judge in obedience to the writ of summons or to file its returns in defense of its legal interests, and that the willful neglect and failure of petitioner to appear before the judge did not constitute a denial of a day in court or a denial of due process to warrant the granting of a writ of prohibition. Accordingly, the Supreme Court reversed the ruling of the Chambers Justice and denied the petition.

Moses K. Yangbe and *Joseph Constance* appeared for the appellant. *Cyril Jones* appeared for the appellees.

MR. JUSTICE SACKOR delivered the opinion of the court.

These prohibition proceedings are before us on appeal from the ruling of Mr. Justice Frank

W. Smith, then Justice presiding in Chambers of this Court, granting the petition for prohibition on grounds that the contempt proceeding instituted by the respondent judge was purely a personal matter which did not warrant contempt of court. The respondent judge being dissatisfied with this ruling, appealed to this Court *en banc* for our review and determination.

The records in this proceeding reveal that on the 8th day of May, A. D. 1995, the respondent judge, presiding over Criminal Court "A" at that time, issued a writ of summons for contempt against the petitioner bank, commanding its appearance on the 9th day of May, A. D. 1995 for an alleged illegal deduction from respondent's deposit and the failure of the petitioner to approve his withdrawal slip. The summons was duly issued and served upon the petitioner and returned served, but petitioner failed to appear to defend itself in the contempt proceeding. Instead, petitioner fled to the Chambers Justice for a writ of prohibition to restrain and prohibit the respondent judge from further hearing the contempt proceeding.

As stated earlier, the Chambers Justice heard and granted the petition on grounds that the right of the respondent judge to hold petitioner in contempt was exercised in a personal matter which did not bear any relation to the operation of the court and the dignity of the judge. From this ruling, the respondent judge appealed to this Court *en banc* for a review and final determination.

Petitioner contends that it is not a party to any action or cause of action before the respondent judge. Petitioner also contends that the summons for contempt for an alleged illegal deduction and failure to approve withdrawal slip, is a transaction growing out of an alleged contractual relationship between the petitioner and the respondent judge, and as such, any redress growing out of this relationship is cognizable before a civil court; that the respondent judge presiding over a criminal court has no jurisdiction to demand the appearance of the petitioner as the act committed does not constitute a criminal act.

Petitioner further argues that the respondent is a complainant and a judge in this contempt proceeding and that it was not afforded an opportunity to appear and file its returns, thereby denying it its day in court. Petitioner strongly maintains that the respondent judge acted without the scope of his authority and the jurisdiction of his court; that he proceeded contrary to the laws and procedures in this jurisdiction, by not instituting either an action of debt in a debt court or an action of damages in a civil court; and that he denied the petitioner the right of due process of law. These are the reasons which petitioner asserts warrant the application for and issuance of the writ of prohibition.

Respondent, on the other hand, argues that contempt proceedings need not necessarily grow out of a main case pending before a court, but can be separate and maintained without any case being pending before a court. Counsel for respondent further maintains that a judge can preside over a contempt proceeding initiated by him; that the petitioner was afforded an opportunity to be heard but failed to appear; and that prohibition is not the proper remedy for a party who alleges that he did not have his day in court. Respondents' counsel succinctly argued that the co-respondent judge had jurisdiction over the contempt case; that the mere summons for contempt does not deprive one of his right to be heard or violate any element of due process of law; that prohibition will not lie to prevent the hearing of a contempt proceeding after the service of the writ of summons on the petitioner; and that there are other remedies available to the petitioner by error, appeal, or certiorari. Counsel for respondents therefore requested this Court to reverse the ruling of the Chambers Justice granting the peremptory writ of prohibition.

The issues relevant for the determination of this prohibition proceeding are:

(1) Whether or not prohibition will lie to correct irregularities of a judge wherein the petitioner for prohibition, defendant in the trial court, inexcusably fails to appear?

(2) Whether or not the respondent judge had the authority to issue a writ of summons for contempt?

We shall discuss and decide these issues in the reverse order but shall firstly discuss some other issues raised in this proceeding which are not decisive of the case. A contempt proceeding is distinct and independent in itself and is not a part of a controversy out of which a contempt proceeding arises. It does not necessarily require the pendency of a main action before the court, and a party duly summoned for contempt under such circumstances does not necessarily have to be a party to a main suit before a trial judge to warrant the appearance of such party. The rule is stated thus: "A proceeding for contempt is not a part of the main case before the court but a proceeding in itself, and a criminal contempt proceeding is independent and not part of the proceeding out of which the alleged contempt arose." 17 AM JUR. 2d, *Contempt* § 77.

With regards to the allegations contained in the summons for contempt being a transaction growing out of an alleged contractual relationship between petitioner and the respondent, this Court agrees that the writ of summons might have grown out of said alleged contractual relationship between the petitioner and the respondent judge, which might not bear any relation to the operation of the court below; yet, it was incumbent upon the petitioner to have appeared before the respondent judge or filed its returns in defense of its legal interest

in obedience to the summons for contempt duly issued from a court of law.

Petitioner contends that the respondent judge denied its day in court and its right to due process of law. Recourse to the records reveals that the co-respondent judge duly issued a writ of summons for contempt against the petitioner, which said process commanded the petitioner to appear the next day to be heard. After notice duly served upon it, the petitioner deliberately and inexcusably failed and neglected to appear or file its returns in defense of the contempt proceedings. The summons, as it appears, was due notice given to the petitioner bank to appear for a hearing, and there is no showing in the records that the respondent judge adjudged petitioner guilty of contempt without a summons and a hearing of the contempt proceeding. The willful neglect and failure of petitioner to appear before the co-respondent judge for a hearing, after notice, does not constitute a denial of its day in court or a denial of due process of law as contemplated by our law. Law writers have defined 'day in court' and 'due process of law' as follows:

“A day in court means an opportunity to be heard after notice to appear....”

“Due process of law is the law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial.” BALLENTINE'S LAW DICTIONARY 307-308 (3rd ed. 1969).

We shall now discuss the issue whether or not the respondent judge had the authority to issue a summons for contempt. Counsel for petitioner argues that the respondent judge acted without the scope of his authority and the jurisdiction of his court and therefore proceeded contrary to rules which ought to be observed at all times, as the controversy out of which the contempt arose did not constitute a criminal act. It is a statutory right of a court of competent jurisdiction, on its own motion, to issue a writ of summons for a criminal contempt and to sit and dispose of same without surrendering its authority to another tribunal of the same jurisdiction and it can further punish a party duly summoned for a public wrong or any offenses against its dignity and authority, although such public wrong or offenses may not, strictly speaking, be committed in the presence of the offended court or judge. *Gibson v. Wilson et al.*, 8 LLR 165 (1943). See also 17 AM. JUR 2d., *Contempt*, § 81; Judiciary Law, Rev. Code 17: 12.5. This Court has also held that: “The power to punish for contempt of court is intrinsic to the court, as an incident necessary to its existence under an orderly form of government.” *In re Tom N. Bestman et al.*, 20 LLR 567 (1972).

This Court cannot deny inferior courts of the statutory right given to the courts or judges in this jurisdiction, but can only under certain circumstances review a decision of a contempt

proceeding properly brought before it by an aggrieved party by error, certiorari or appeal. The respondent judge exercised his intrinsic power to issue a summons for contempt and never proceeded contrary to rules which ought to be observed at all times as argued by the petitioners. This Court, as stated earlier, can review a decision of a contempt proceeding with respect to how the offended respondent judge was belittled, disregarded, disrespected and embarrassed by the petitioner bank concerning the alleged illegal deduction from his deposit and the approval of his withdrawal slip.

The second issue for the determination of this proceeding is whether or not prohibition will lie to correct irregularities of a judge wherein the petitioner for prohibition inexcusably failed to appear although duly notified. The summons served upon the petitioner in this prohibition proceeding commanded its appearance, but the petitioner inexcusably failed and neglected to appear before the respondent judge for a hearing of the contempt proceeding. Instead of abiding by the time and appearing according to the assignment made, and putting in any defense it had, the petitioner bank decided to substitute prohibition for an appearance and to request this Court of denier resort to restrain and prohibit the respondent judge from further hearing and determining the contempt proceeding. This Court has held that: "A writ of prohibition will not be granted to correct irregularities wherein the petitioners for prohibition inexcusably failed to appear as defendants." *Kpunel et al. v. Hunter et al.* 15 LLR 50, 55 (1962).

A party upon whom a summons is served is duty bound to appear to defend his legal interest, and a disobedience to such summons amounts to a contempt. We therefore cannot, by prohibition, correct petitioner's own neglect and deliberate failure to appear to defend its legal interest. We observe that the purpose, use and benefit of this extraordinary writ, as provided by our statute, has been abused by some legal practitioners of this Court and we shall now devise some ways to curtail its use in preventing a party's willful disobedience to and disregard of a process duly issued and served upon said party by a court of competent jurisdiction in our judicial system. This Court will hereafter punish a party for contempt who, upon receipt of a summons for contempt, inexcusably fails to appear or file returns but seeks the aid of prohibition to prevent his appearance.

We therefore disagree with the Chambers Justice for ignoring the willful neglect and deliberate failure of petitioner to appear in obedience to the summons for contempt emanating from a court of competent jurisdiction. The sole ground upon which the Chambers Justice granted the prohibition, i.e., that the contempt proceeding grew out of a controversy not in relation to the operation of the respondent's court, can only be reviewed on appeal, or by error or certiorari, upon appearance of the petitioner or upon being adjudged guilty of contempt in its absence, after appearance.

Wherefore and in view of the foregoing facts and circumstances and the controlling laws, it is the candid opinion of this Court that the ruling of the Chambers Justice granting the petition should be, and the same is hereby reversed, and the petition denied with costs against the petitioner. The Clerk of this Court is hereby ordered to send a mandate to the court below wherein the respondent judge is presiding, to resume jurisdiction and proceed with the contempt proceedings in accordance with law. And it is hereby so ordered.

Petition denied.