

DOMINNY MOORE, Administrator of SLEWION GBO/MARY PIERRE
INTESTATE ESTATE and **SHIRLEY P. JAEPLOE** and **HER HONOUR GLORIA
M. SCOTT**, Judge, Monthly & Probate Court, Montserrado County, Movants/Appellees, *v.*
ALSTON SICKLEY and **PINKEY SICKLEY**, Respondents/Appellants

MOTION TO DISMISS AN APPEAL FROM A RULING OF THE CHAMBERS
JUSTICE DENYING THE PETITION FOR A WRIT OF PROHIBITION.

Heard: October 23, 1995. Decided: January 25, 1996.

1. An appeal from the ruling of the Justice in Chambers is less formal than an appeal from a subordinate court and does not require the approval and filing of a bill of exceptions, the filing of an appeal bond, and the service and filing of a notice of completion of appeal.
2. Appeal from the Chambers Justice to the full bench opens the entire record without reservation and is heard by the full bench *de novo*.
3. The granting of an appeal by the Chambers Justice is not discretionary.
4. The provision of Rule III, Part 3 of the Rules of court permitting appeals to the Supreme Court, upon terms and conditions as the Justice may prescribe, does not contemplate the imposition of conditions that would defeat or restrict the right to an appeal.
5. An appeal from the Chambers Justice serves as a supersedes and no other action can be taken or demanded by the Justice after the announcement of an appeal, except under a special circumstance that the thing involved is a perishable commodity which must be disposed of or treated cautiously, to avoid irreparable loss, damage or injury to either or both parties or for the conservation of perishable property or the continuity of the flow of income.
6. The phrase, “upon such conditions as the Justice may prescribe”, as used in Rule III, Part 3, of the Rules of Court, with respect to the granting of appeal, contemplates orders necessary to be prescribed in order to avoid irreparable loss, damage or injury to the thing involved or the subject matter of the case during the pendency of the appeal
7. The clause “upon such conditions as the Justice may prescribe” does not grant the Chambers Justice the extraordinary privilege of extending the law and the Rules of this Court or to add other restrictions or demands with the view to enlarging the rules of law.

8. Case law cannot be construed as a law making exercise; they are judicial cases interpreting laws enacted by the Legislature and explaining in detail the procedure relevant to justiciable issues.

This motion to dismiss grows out of an appeal announced from a ruling of the Chambers Justice denying a petition for a writ of prohibition. In granting the appeal, the Chambers Justice mandated the appellants to superintend, transcribe and transmit the records to the full bench within two weeks from the date of the ruling, and that upon their failure to comply with this mandate, it would be construed that they are not inclined to take the appeal, in which case, the Clerk was ordered to send a mandate to the trial court consistent with the ruling. When the appellant failed to transcribe and transmit the records to the full bench, appellee moved for dismissal of the appeal.

The Supreme Court, upon review of the records, held that the mandate of the Chambers Justice linking the right to appeal to the transmission of the records to the full bench in two weeks restricted appellant's right of appeal, and thereby breached the provisions of law and procedure governing appeals. The Court also opined that the phrase "upon such conditions as justice may prescribe", as used in Rule III, Part 3, of the Rules of Court with respect to appeals, did not contemplate the imposition of conditions that would defeat or restrict the right to an appeal; rather, it contemplated orders necessary to avoid irreparable loss, damage, or injury to the thing or the subject matter of the action during the pendency of the appeal. Accordingly, the Supreme Court *denied* the motion and ordered the appeal proceeded with.

M. Kron Yangbe appeared for appellant/respondent. *Molley Gray* and *Jonathan Williams* appeared for appellee/ movant.

MR. JUSTICE BADIO, SR. delivered the opinion of the Court.

The movants' motion to dismiss averred that Mr. Justice Smith, then presiding in Chambers during the March 1994 Term of this Court, denied the petition for a writ of prohibition and quashed the alternative writ issued and served. The respondents/appellants excepted to the ruling and announced an appeal to the full bench.

The movants averred further that despite the Chambers Justice's mandate that appellants superintend, transcribe and transmit the records to the full bench within two weeks from the date of the ruling for expeditious hearing, the appellants failed to comply; and therefore, the appeal should be dismissed. The appellants' recorded resistance and succeeding argument expressed dismay at the reason indicated in the motion and reiterated with emphasis that no law or procedure dictates such restriction and demand. He argued that once an appeal is

announced and the Justice notes the exceptions and grants the appeal, that is the end of the exercise as far as the Justice is concerned. The process of transcribing the records for the full bench is the responsibility of the Clerk of the Court. In his ruling granting the appeal, Justice Smith stated the following:

THE COURT:“The appeal announced is hereby granted as a matter of right. The appellants thru counsels, are ordered to see to it that the appeal is perfected by having the entire records transcribed and forwarded to the full bench thru the clerk’s office of the Supreme Court within the period of two weeks as from the date of the rendition of the ruling hereof, as remedial processes may be reversed during or out of term time. Failure on the part of the appellants to have the records transcribed and forwarded to the full bench within the appropriate period of two weeks as of today’s date as stated inter alia, it would be construed that the petitioners/appellants are not inclined to take the necessary appeal, but rather done as to keep the case in abeyance without final determination; and in that eventuality, the clerk of court is hereby ordered to send a mandate to the court below as in keeping with the orders contained in this ruling. And it is so ordered. Matter suspended”.

Unlike cases on appeal from subordinate courts of record which require the approval and filing of bill of exceptions, the filing of appeal bond and the filing and service of a notice of completion of appeal, an appeal from the ruling of a Justice in Chambers is less formal and does not necessitate those requirements. Appeal from the Chambers Justice to the Full Bench opens the entire records without reservation and is heard by the full bench *de novo*. *Coleman v. Crawford and Stubblefield*, 19 LLR 29, 33 (1968). In fact the statutes are silent on the process or procedure required for taking appeal from the ruling of the Chambers Justice to the court *en banc*. However, Rule III, Part 3 of the Rules of Court, provides that “upon a hearing had under such alternative writ, an absolute writ may be issued directing the performance, or non-performance, or cessation of any act, which to the court or justice thereof may seem just, legal or equitable, subject to appeal to the Supreme Court upon such conditions as justice may prescribe”. See Revised Rules of Court, 13 LLR 704. That portion of the Chambers Justice’s ruling which demanded that the respondents/appellants should have the records in the proceedings transcribed and forwarded to the full bench within two weeks must be interpreted as we view it and to its fullest implication, especially as it is construed in this case and the appellee’s motion. In essence, that ruling attempted to restrict the appellants’ right of appeal and also to impose upon them the duty and responsibility of the Clerk of Court who is solely responsible to transcribe the records and have them forwarded to the Bench *en banc*. In fact, the granting of appeal by the Chambers Justice does not require the exercise of discretion but simply the exercise of a relatively simple requirement of law and procedure. Perhaps the source of difficulty in the interpretation of the clause “upon such conditions as the justice may prescribe” is due to the different

enigmatic kinds of reasoning. In fact, the rules governing appeals, especially those taken from the Chambers Justice, do not require discretion, the exercise of which restricts or limits the appellants' right of appeal.

We admit that the clause "upon such conditions as the justice may prescribe," leaves a vacuum which could lead to inconsistent or faulty interpretation. Therefore, it must be analyzed to show its syntactical construction, meaning and legal intent and effect. The major point of emphasis in this rule and the relevant clause is the word "prescribe". According to Black's Law Dictionary, 5th ed., the word "prescribe" is to assert a right or title to the enjoyment of a thing on the ground of having hitherto had the uninterrupted and immemorial enjoyment of it; to lay down as authoritatively as a guide to impose as a peremptory order, to direct, to mark out a peremptory and perpetual bar to every species of action. It becomes our prerogative, therefore, to give the particular clause prospective effect to avoid any confusing interpretation. Hence, we must make it clear that in a particular case such as this, where the law appears ambiguous or provides a condition which introduces unusual circumstances or interpretations, this Court has the legal right to interpret that law in the interest of the parties consistent with the intent or spirit of the law. In other words, we have the responsibility of ascertaining and providing the true meaning of the rule of court or the law where the language presents doubtful meanings and negative applications which would lead to injustice or absurd results.

It must be re-emphasized that an appeal from the Chambers Justice serve as a supercedas and no other action can be taken or demanded by the Justice after the announcement and granting of an appeal, except under special circumstances where the thing involved is a perishable commodity which must be disposed of or treated cautiously to avoid irreparable loss, damage or injury to either or both parties, or for the conservation of perishable property or the continuity of the flow of income. In essence, a Chambers Justice shall permit an appeal but order the exercise of some conditions on the ground that a trust be established during the prosecution and finalization of the appeal so that the property may be secured from loss or damage and to be available to the party who may be successful at the termination of the case on appeal. In that case, however, such action must be within the reasonable limits or circumstances of the law. These are the prescribed conditions contemplated by the law.

We may add also that the ruling of the Chambers Justice, stated *inter alia*, discussed the office of prohibition and held that prohibition may not be used as a process for reviewing, but may be invoked only to prevent an inferior court from assuming jurisdiction which is not legally vested in it or, having jurisdiction, but exceeded it or proceeded by rules contrary to those which should be observed at all times. The Chambers Justice ordered that the alternative

writ be quashed and the petition denied. That was also another condition prescribed. In essence, the Justice's ruling ordered the non performance of the acts requested in the petition for prohibition and therefore a denial of the petition. In the circumstance, it could not be construed, under any parity of reasoning, that the clause "upon such conditions as the justice may prescribe" grants the Chambers Justice the extraordinary privilege of extending the law and the rules of this Court or to add other restrictions or demands with the view to enlarging the rules of law. Justices of the Supreme Court neither make nor formulate laws, and they cannot extend the provisions of law to incorporate additional restrictions, limitations or demands. The imposition of any additional demands introduces a concept which cannot be divorced from law making exercise.

One may ask how are reported cases or case laws considered? Are they not laws in essence? The answer is simple. Reported cases or case laws are those judicial cases arranged to interpret jurisdiction, subject matter, or case, significant and simple; to interpret the laws enacted by the legislature and to explain in detail any and all procedures relevant to a justiciable issue. It includes also the aggregate of reported cases that form a body of jurisprudence, or the law of a particular subject as evidenced or formed by the ad-judged cases, as distinguished from statutes and other sources of law. It includes the aggregate of reported cases that interpret statutes, regulations, and constitutional provisions." BLACK'S LAW DICTIONARY (5thed). Therefore, case law cannot be construed as a law making exercise.

Hence, the inclusion of the additional orders by the Chambers Justice, commanding the Clerk to send a mandate to the trial court for the enforcement of his ruling, if the respondent/appellant failed to transcribe and transmit the records to the full bench *en banc* in two weeks from the date of that ruling, even though not actually implemented, was a breach of the provisions of law and procedure and cannot receive our endorsement and confirmation. The motion is therefore denied and the appeal is ordered proceeded with. And it is hereby so ordered.

Motion denied