

NATIONAL IRON ORE COMPANY, represented by its Chairman, Minister of Finance, **WILSON K. TARPEH**, et al., Informants, v. **HIS HONOUR FULTON M. YANCY**, Associate Justice in Chambers, **HIS HONOUR VARNEY D. COOPER**, Assigned Circuit Judge, Sixth Judicial Circuit, et al. Respondents.

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

Heard: April 1, 1998. Decided: August 6, 1998.

1. Under Liberian jurisprudence, a corporation is considered a legal entity which is separate and distinct from its shareholders.
2. The Government of Liberia, as a shareholder, cannot personally be liable for the liability of the corporation.
3. A plaintiff-in-error ought to pay accrued costs in order to enable the appellate court to acquire jurisdiction over the error proceeding. This is the prerequisite to the issuance of the writ and is mandatory.
4. An appeal shall be taken at the time of rendition of judgment by oral announcement in open court. Such announcement may be made by the party, if he represents himself, or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for this purpose.
5. The right of appeal from a judgment, decree, decision or ruling of any court or administrative board or agency shall be held inviolable.
6. A Chambers Justice or judge commits a reversible and prejudicial error when he neglects and fails to exercise his statutory duty devolved upon him to appoint or deputize a counsel on behalf of the absent attorney of record to take the ruling.
7. Misjoinder of parties is not ground for dismissal of an action, but a motion to drop the disjoined party is appropriate.
8. Parties may be dropped by order of the court on motion of any party or on its own initiative at any stage of the action and on any terms that are just.

On the 2nd day of June, A. D., 1993, a petition was filed in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County by the heirs of the late D. Twe by and

through their legal representative, D. Twe, Jr., and Victor Patterson, praying for cancellation of a lease agreement between the heirs and the National Iron Ore Company.

The Ministry of Justice, represented by Minister J. Laveli Supuwood, and the Ministry of Finance, through its in-house legal counsel, Counsellor Thompson Jargba, filed their returns to the cancellation proceeding. Petitioners thereupon filed a reply and asked that the returns be dismissed on grounds that the National Iron Ore Company (NIOC) is a corporation, which cannot legally be represented by the Government of Liberia, and also that the Republic lacked the capacity to contest the cancellation proceeding, since the Government was not a party to the lease agreement sought to be canceled.

Pleadings rested and the trial court disposed of the law issues and ruled the case to trial. However, on the 7th day of September, A. D. 1994, the Minister of Justice, Counsellor J. Laveli Supuwood, filed a notice of withdrawal of respondents' returns on grounds that the Government is not clothed with the capacity to contest cancellation proceeding because the Government was never a party to the lease agreement between the heirs of the Late D. Twe and the National Iron Ore Company, Ltd. The court then canceled the lease agreement, and on the 28th day of October, A. D. 1994, issued a writ of possession in favor of the heirs of the late D. Twe, thus placing them in possession of the subject properties.

On the 23rd day of November, A. D. 1994, Counsellor Thompson Jargba, in-house counsel for the Ministry of Finance, filed before the Chambers Justice a three-count petition for a writ of prohibition to restrain the enforcement of the trial court's judgment. The petitioners contended that the Minister of Justice withdrew the responsive pleadings filed by lawyers of the two ministries without the knowledge, consent and approval of petitioner. They also contended that the trial court also proceeded by wrong rules in that the trial judge erred by honouring the notice of withdrawal under the signature of the Minister of Justice, Counsellor J. Laveli Supuwood, who was never a signatory to the responsive pleadings of the petitioners. The petition was resisted by respondents who contended that the Minister of Justice was clothed with legal authority to withdraw a government case in that the Ministry of Justice is the prosecuting arm of the Government, and advises the Government on legal matters.

When the case was assigned by the Chambers Justice for hearing on the 24th day of January, A. D. 1996, petitioner's counsel failed to appear but sent an excuse

requesting a postponement of the case for one week on grounds that he had lost his reading glasses. The letter was read at the call of the case, but was denied by the Chambers Justice, Associate Justice M. Fulton W. Yancy, on grounds that the letter was intended to delay and baffle the case. The Justice permitted counsel for respondents to argue his side of the prohibition proceedings. Justice Yancy thereupon denied and dismissed the prohibition proceeding.

The petitioner thereafter filed a petition for a writ of error on grounds that despite his letter of excuse to the Chambers Justice, the said letter was denied, thus denying him his day in court, especially as no deputy was appointed to take the ruling on his behalf. Consequently, he said, he was denied his right of appeal.

The Supreme Court agreed with the respondents that a writ of error would not lie since the petitioner had failed to pay the accrued costs as required by statute. The Court opined that the payment of accrued costs was a prerequisite to the issuance of the writ of error, that the requirement was not permissive but mandatory and that a failure to pay such costs deprived the Court of jurisdiction over the case and rendered the same dismissible. The Court therefore denied the petition.

Notwithstanding the denial, however, the Court decided to go into the allegations made against the Justice in Chambers by the plaintiff-in-error. The Court held that it was reversible and prejudicial error for the Justice in Chambers to appoint or designate an attorney to take the ruling for the plaintiff-in-error. The Court noted that under the Liberian Constitution, the right of appeal was inviolable. These act by the Justice, the Court said, was not only a failure to exercise the duty imposed by statute but that the said failure deprived the plaintiff-in-error of its day in court, and was therefore reversible.

The Court further determined the issues raised in the petition for a writ of prohibition, holding that the trial court had erred in entertaining the notice of withdrawal of the entire case, filed by the Minister of Justice, after the case had been ruled by trial, since the Minister had represented one of the parties in the very matter when he was in private practice. The Court noted that it regarded the act of the Minister was unethical and a violation of his oath of office as a lawyer, noting that the said act was not only unprofessional but that it prejudiced the interest of the petitioner in prohibition and the NIOC. The Court therefore reversed the judgment of the trial court, remanded the case for a new trial to afford the defendant corporation the opportunity a fair trial and due process of law, and that the new trial begins with the disposition of the pleadings filed by the parties. The Court also

suspended Counsellor from the practice of law, directly and indirectly, for a period of three months, and reiterated its reversal of the ruling of the Justice in Chambers in the error proceedings.

Thompson Jargba appeared for informants. William A. N. Gbaintor appeared for respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

On the 2nd day of June, A. D. 1993, the heirs of the late D. Twe, by and through their legal representatives, D. Twe, Jr. and Victor Patterson, filed a petition in the Civil Law Court of the Sixth Judicial Circuit Court for Montserrado County, praying for cancellation of a lease agreement between the heirs and the National Iron Ore Company, Ltd., (NIOC).

The records in this case disclosed that the Ministry of Justice and the in-house counsels of the Ministry of Finance filed returns to the cancellation proceeding. Petitioners thereupon filed a reply and contended that the returns be dismissed on grounds that NIOC was a corporation which could not legally be represented by the Government of Liberia, and that the Government of Liberia lacked the capacity to contest the cancellation proceeding as it is not a party to the lease agreement sought to be canceled.

After resting of the pleadings in the case, the trial court disposed of the law issues and ruled the case to trial. On September 7, 1994, the then Minister of Justice, Counsellor J. Laveli Supuwood, filed in the trial court a notice of withdrawal withdrawing the respondents' returns without reservation for reasons that the Government of Liberia was not clothed with the capacity to contest the cancellation proceedings because the Government was not a party to the lease agreement between the heirs of the late D. Twe and the National Iron Ore Company, Ltd.

The trial court upon the withdrawal of returns canceled the lease agreement and issued a writ of possession on October 28, 1994 in favour of the heirs of the late D. Twe, thereby placing them in possession of the subject property.

On the 23rd day of November A. D. 1994, the in-house counsel of the Ministry of Finance, Counsellor Thompson Jargba, fled to the Chambers of this Court upon a three-count petition for a writ of prohibition, praying this Court to restrain the enforcement of the trial court's judgment. Petitioner contended that Minister of

Justice withdrew the responsive pleadings filed by lawyers of the Ministries of Justice and Finance without the knowledge, consent and approval of the petitioner. Petitioner also contended that the trial court proceeded by wrong rule which ought to be observed at all times, in that the trial judge erred in honouring the notice of withdrawal carrying the signature of the Minister of Justice, Counsellor Supuwood, who was never a signatory to the responsive pleadings of petitioner.

The petition was resisted by the respondents on December 12, 1994, contending that the Ministry of Justice was the prosecuting arm of the Liberian Government and to advise the Liberian Government on legal matters. Respondents contended that the Minister of Justice was clothed with the legal authority to withdraw a government case.

The petition was assigned for hearing on January 24, 1996, but petitioner's counsel failed to appear. Instead, he sent a letter of excuse for one week postponement alleging that he had lost his reading glasses. The letter was read at the call of the case, but was denied by Mr. Justice Yancy on grounds that the letter intended to delay the case. The Chambers Justice permitted counsel for respondents to argue his side of the prohibition proceeding, and thereafter denied and dismissed the prohibition proceeding.

It is the denial and dismissal of the prohibition which prompted the petitioner to file a petition for a writ of error on February 5, 1996, alleging that the Chambers Justice denied and quashed the petition in the absence of the plaintiff-in-error, notwithstanding the letter of excuse, without appointing a counsel to take the ruling, thereby depriving the plaintiff-in-error its right of appeal.

Counsel for plaintiff-in-error also filed a seven-count bill of information on the 30th day of January, A. D. 1997, during the pendency of the error proceeding before this Court. We observe that the information is the recital of the very facts contained in the error proceeding. Hence, it is not worthy of consideration by this Court as it does not conform to the office of a bill of information in our jurisdiction.

In counter-argument, defendants-in-error contended before this Court that plaintiff-in-error failed and neglected to pay accrued costs as a prerequisite for the granting of the writ of error in accordance with Chapter 16, section 16.24(d), pages 148-149 of the Civil Procedure Law, Rev. Code1.

Defendants-in-error also contended that the petition for a writ of prohibition filed by Counsellor Jargba was intended to delay and baffle the case, in that he had failed over one (1) year to make any effort to hear the petition, and that the Chambers Justice correctly denied his frivolous excuse, which also intended to continue to delay and baffle the case.

Counsel for defendants-in-error also strenuously contended and argued that counsel for the plaintiff-in-error had no capacity before this Court, in that the Government of Liberia had already conceded and withdrawn from the case through the Ministry of Justice, on grounds that the National Iron Ore Company, Ltd. was a corporation distinct from its shareholders and that the Government was not a party to the lease agreement canceled by the lower court. Defendants-in-error therefore requested this Court to confirm the ruling of Mr. Justice Yancy, and order to the lower court to enforce its judgment.

The issues to be resolved by this Court are:

1. Whether or not the failure of plaintiff-in-error to pay accrued costs renders their petition dismissible;
2. Whether or not the Co-respondent Chambers Justice committed reversible error when he failed to appoint and deputize a counsel to take the ruling for the plaintiff-in-error in the instant case; and
3. Whether or not the plaintiff-in-error was denied its day in court when the then Minister of Justice withdrew its entire returns in the cancellation proceeding without reservation.

Plaintiff-in-error admitted during the argument of this case that they did not pay accrued costs on grounds that the Government of Liberia does not pay costs. The records certified to this Court clearly show that the Government of Liberia, by and through the Ministry of Justice, withdrew without reservation the entire returns in the lower court in the cancellation of the lease agreement between the heirs of D. Twe and the National Iron Ore Company, Ltd. The records also reveal that the Government was never a party to the prohibition proceedings, and was not a party in the error proceeding sought by the plaintiff-in-error. Further, the fact that the Minister of Finance is the Chairman of the Board of Directors of the National Iron Ore Company, Ltd. does not in any way make the Government of Liberia a party to the case at bar.

Under our Liberian jurisprudence, a corporation is considered a legal entity which is separate and distinct from its shareholders, and the Government of Liberia, a shareholder, cannot personally be liable for the liability of the corporation. See Association Law, Rev. Code 5:2.5 and 2.6. Hence, the Government of Liberia is not a party in this proceeding as contended by plaintiffs-in-error, and plaintiffs-in-error ought to have paid accrued costs to enable this Court to acquire jurisdiction over the error proceedings. The Civil Procedure Law, Rev. Code 1:16.24(d), provides that "as a prerequisite to issuance of the writ, the person applying for the writ of error, to be known as the plaintiff-in-error, shall be required to pay all accrued costs."

It is clear from the above quoted relevant portion of the statute that the payment of all accrued costs is a prerequisite for the issuance for the writ of error and is not permissive but mandatory. This Court also held in the case. Nigerian Ports Authority v. Braithwaite, et al., 26 LLR 338 (1977), that "the statutory provision for payment of accrued costs by a petitioner for a writ of error is prerequisite to issuance of the writ is mandatory."

The payment of all accrued costs is one of the mandatory requirements imposed by the statute for the issuance of a writ of error, and as such, must be strictly adhered to and complied with by a petitioner, the failure of which will cause the Supreme Court not to take jurisdiction to grant the relief sought by an applicant.

In the case *Morris v. Reeves*, 27 LLR 334 (1978), this Court held that: "The Supreme Court will not issue a writ of error unless the applicant has satisfied the statutory prerequisite of payment in the court below of all costs accrued in the case out of which the error application grows." The patent defect of plaintiff-in-error's petition for writ of error as hereinabove mentioned, deprives this Court of jurisdiction over the error proceedings and therefore renders it dismissible. The petition is accordingly denied and dismissed.

Traversing the second issue, which is, whether or not the corespondent Chambers Justice committed reversible error when he failed to appoint and deputize a counsel to take the ruling for the plaintiff-in-error in the case at bar, we note that the statutory law of this land with respect to appointment of counsel at the rendition of judgment in the absence of counsel of record, provides that:

"An appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he

represents himself or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for this purpose." Civil Procedure Law, Rev. Code 1: 51.6.

It is this Court's interpretation and construction from the law quoted supra that the Chambers Justice committed reversible error when he failed and neglected to deputize an attorney to take the ruling on behalf of the plaintiff-in-error, as strictly contemplated by the legislative intent of the lawmakers of this land. Further, "the right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable..." For reliance, see The Constitution of the Republic of Liberia, Article 20(b). Therefore, in compliance with the provisions of the Constitution and the statutory law quoted supra, it is the holding of this Honourable Court that the Chambers Justice committed a reversible and prejudicial error when he neglected and failed to exercise his statutory duty devolved upon him by not appointing or deputizing a counsel on behalf of the absent counsel of record for plaintiff-in-error in the instant case, at the date and time of rendition of his ruling in the prohibition proceedings. Therefore, it is the holding of this Honourable Court that the ruling of the Justice in Chambers is hereby reversed and the petition for a writ of prohibition is hereby granted.

With respect to issue number three, which is whether or not the plaintiff-in-error was denied its day in court when the then Minister of Justice withdrew its entire returns in the cancellation proceedings without reservation, recourse to the certified records before this Honourable Court clearly shows that upon the disposition of the law issues, the trial judge ruled to trial the petition for cancellation of a lease agreement, the returns and the reply. Subsequently, on the 7th day of September A. D. 1994, the then Minister of Justice, Counsellor J. Laveli Supuwood, filed a notice of withdrawal, withdrawing respondents' entire returns without reservation, giving as his rationale that the Government of Liberia lacked the capacity to contest the cancellation proceedings because the Government was not a party to the lease agreement between the heirs of the late D. Twe and the National Iron Ore Company, Ltd., and that notwithstanding the fact that the National Iron Ore Company, Ltd. is a legal entity which is separate and distinct, it can sue and be sued its own name under the New Association Law of Liberia referred to supra.

A very thorough and careful perusal of the certified records before this Honourable Court further reveals that the then Minister of Justice, Counselor J. Laveli Supuwood, was private counsel for petitioners in the cancellation proceedings prior to his

appointment as Minister of Justice. This fact is evident by his letter of June 12, 1989, addressed to the defendant corporation to the effect that the lease agreement would not be extended beyond the 30th of June, A. D. 1989, and that the corporation should surrender the property in question by June 15, 1989, as another lease agreement was entered into with a new tenant as of July 1, 1989.

It is important to note that the defendants' entire returns in the cancellation proceedings, along with its attachments to the petitioners' petition for the cancellation of the lease agreement, was withdrawn without reservation by the then Minister of Justice after the disposition of law issues and the case ruled to trial, notwithstanding his prior knowledge of this case as private legal counsel for the petitioners in the cancellation proceedings.

This Court considers the acts of Counsellor J. Laveli Supuwood as unethical, unprofessional, and contrary to his oath of admission as a professional lawyer. It was then impossible for the defendant corporation to have filed its responsive pleading to the cancellation proceedings, consequence of which, the lease agreement was canceled and a default judgment rendered against the corporation without having its day in court.

The then Minister of Justice could have filed a motion before the trial court or the trial court on its own initiative could have dropped the Government of Liberia as a party defendant at any stage of the action. For reliance, see Civil Procedure Law, Rev. Code 1:5.56. It is therefore the holding of this Honourable Court that the withdrawal of defendant's responsive pleadings along with its attachments by the then Minister of Justice was prejudicial to the interest of the corporation, thereby denying it of its day in court.

This Court considers the acts of Counsellor J. Laveli Supuwood, the Minister of Justice, grave and violative of his oath of admission to the legal profession. This Court therefore orders his suspension from the practice of law, directly or indirectly, for the period of three (3) months within the Republic of Liberia, commencing from the date of rendition of this opinion, to serve as a deterrent to all practicing lawyers.

Wherefore and in view of the foregoing, it is the candid opinion of this Court that the ruling of the Chambers Justice and the judgment of the lower court should be, and the same are hereby reversed and the case remanded for a new trial upon the pleadings filed, notwithstanding the denial of the petition for the writ of error, to afford the corporation the opportunity for a fair trial or due process of law consistent

with the Constitution and the statutory laws of this land. The Clerk of this Court is hereby ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction over the case and to proceed with the cancellation proceedings in keeping with law. Costs are to abide final determination of the case. And it is hereby so ordered.

Judgement reversed; case remanded for new trial.