

REPUBLIC OF LIBERIA, Movant, *v.* **BLAMA KENNEH**, Respondent.

MOTION TO INTERVENE IN PROCEEDING APPEALED FROM THE CIRCUIT
COURT FOR THE TENTH JUDICIAL CIRCUIT, LOFA COUNTY.

Heard May 9, 1985. Decided June 20, 1985.

1. The right to intervene in an action is conditioned upon the statute conferring such right, the inadequacy of representation of the applicant's interest by the existing parties to the action, the binding effect of the judgment upon the applicant, or the adverse effect on the applicant by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or of an officer thereof.
2. The right of intervention in an action by a government officer is conditioned upon a claim or defense based on a statute or executive order administered by such officer or agency, or upon regulation, order, requirement, or agreement issued and made pursuant to the statute or executive order.
3. The fundamental rule in construing statutes is to ascertain and give effect to the intention of the Legislature.
4. Where the language of a statute is of doubtful meaning, or where an adherence to the strict letter would lead to injustice, or absurdity, or to contradictory provisions, the duty devolves upon the court to ascertain the meaning.
5. The spirit or reason of the law should prevail over its letter, especially where the literal meaning is absurd or would work injustice, or where the provision was inserted through inadvertence.
6. The words of a statute may be rejected and other substituted even though the effect is to make portions of the statute completely inoperative.
7. Every statute must be construed with reference to the object intended to be accomplished by it.
8. A person desiring to intervene must serve a motion to intervene upon all parties affected thereby. The motion must state the grounds therefor and be accompanied by a pleading setting forth the claim or defense for which intervention is sought. Rev. Code 1 :5.63.
9. Under certain circumstances, a third party may be permitted to intervene in a case pending in a court prior to the rendition of the judgment in which his rights and interests are or will be materially affected.

10. The interest asserted to support intervention must be of such character as to support a separate and independent action by the intervenor.
11. Intervention is permitted only if the intervenor would have been a necessary or proper party in the first instance to the original law suit.
12. The interest which entitles a person to intervene must be of such direct and immediate character that the intervenor will either gain or lose by the direct operation and effect of the judgment to be rendered between the original parties. Thus, a person whose interest is not direct or substantial, but is rather an indirect, inconsequential, remote, conjecture or contingent one, cannot intervene.
13. The interest which entitles a person to intervene must also be one arising from the claim to the subject matter of the action or some part thereof or a lien upon which the property interest in the matter of litigation.
14. An application to intervene must be timely made, meaning that the application must be made in the trial court before commencement of the trial and before judgment is rendered, and not in the Supreme Court where the case is pending on appeal.
15. While the statute does not provide for a time in which intervention must be made, any unreasonable delay or laches serve to defeat the right to intervene. Intervention can also not be made after a settlement between the original parties or after the plaintiff has voluntarily dismissed his action.

Respondent instituted an action of damages in the Tenth Judicial Circuit Court, Lofa County, against the Lofa County Agricultural Development Project. Pleadings having been exchanged, the case ruled to trial, and a trial held, the jury returned a verdict in favor of the appellee. The appellant noted exceptions and prosecuted an appeal to the Supreme Court.

While the appeal was pending, the Republic of Liberia, through the Ministry of Justice, filed before the Supreme Court a motion to intervene in the action. The Court denied the motion to intervene, holding that while the statute granted to a party the right to intervene where his rights or interests may be adversely affected by the judgment, the motion to intervene had not been timely filed as required by law. The motion to intervene, the Court opined, should have been filed before the commencement of trial and rendition of judgment, not before the Supreme Court while the case was pending for hearing on appeal. The law, the Court observed, was clear as to the filing of a motion to intervene. Accordingly, it said, it would not entertain any attempt to circumvent the intent of the Legislature by construing the law otherwise.

The Court further held that the Republic had failed to demonstrate the interests which were adversely affected by the judgment, noting that intervention could only be had upon a showing that the interest of the applicant would be substantially and adversely affected by a judgment of the court. The mere assertion by the Republic that it owned the equipment of the Lofa County Agricultural Development Project and that it was part owner of the project along with the World Bank Agricultural Program, without proof, it said, were insufficient to show the rights or interests contemplated by law or which must be shown to be affected. Citing laws in support of the rights and interests requirements, the Court concluded that the Republic had failed to show the grounds upon which the motion could be filed, that is the interest affected by the judgment. Accordingly, it said, it could not give legal effect to the points raised in the motion.

On the basis of the foregoing, the Court *denied* the motion to intervene.

S. Momolu Kiawu appeared for the movant. *Francis Y. S. Garlawolo* appeared for the respondent.

MR. JUSTICE NYEPLU delivered the Opinion of the Court.

When this case was called, the movant informed the court that she had filed a motion to intervene in the proceedings before this Court. We herewith quote the motion in its entirety:

"And now comes the Republic of Liberia, movant, by and thru her counsel, the Ministry of Justice, represented by Counsellor Abraham B. Kroma, Solicitor General of Liberia, and S. Momolu Kiawu, Senior Legal Counsel, Ministry of Justice, R. L. and most respectfully showeth unto this Honourable Court the following, to wit:

1. That it has just come to the knowledge of movant that the above cause was instituted in the 10th Judicial Circuit Court, Lofa County, in which final judgment was rendered about a year ago in said case, that is to say, judgment was rendered on the 19th day of December, A. D. 1983 as the records will show. (*See* judgment).
2. That the records before this Honourable Court show that the equipment in question is owned by the Republic of Liberia, assigned to, operated and managed by the Ministry of Public Works, which was being used by the Ministry of Agriculture for the Lofa County Agriculture Development Project in Lofa County, under the Ministry of Agriculture, Republic of Liberia, a project jointly owned by the Republic of Liberia and the World Bank Agriculture Program. The fact is that the project is known by plaintiff/ appellee as such, yet she neglected to join the Republic of Liberia as defendant/appellant.
3. Movant fears that any judgment rendered by this Honourable Court could affect the interest of the said movant, notwithstanding the fact that she had never had her day in court, that is, by means of due process of law, as required by both the statute and

the Constitution, which provide that no person should be deprived of life, property or privilege without due process of law.

4. That movant says and avers that this motion to intervene is not being filed for the mere purpose of unduly delaying or to prejudice the adjudication of the rights of the plaintiff, the original party thereof.

Against this motion, respondent filed returns containing six counts. We now quote counts 2, 3 and 4 thereof because of their relevancy:

- "2. That petitioner, by the operation of law, cannot be legally joined as party by this Court except by the court below; for to do so would be tantamount to receiving new pleadings and evidence. Respondent submits that intervenor should have filed its motion with the trial court since it had notice of the protracted pendency of the subject case. This is what our statute has to say:

'Additional parties may be brought in--Parties may be added by order of any court except the Supreme Court on motion of any or on its own initiative at any stage of the action on any terms that are just. . . Any court except the Supreme Court may, on application in a proper case, order them to be brought in as parties to the action if jurisdiction can be obtained over them'.

3. That since the motion for intervention must concomitantly and simultaneously be accompanied by a pleading setting forth the claim or defense for which intervention is sought, same is not cognizable before the court. This is what our statute says:

"A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought".

Thus, respondent submits that to grant intervenor's motion would accrue unto it the right to file new pleadings and raise therein new matters.

- "4. That intervenor has shown no evidence of ownership except a mere reference to police charge sheet which is encroached in the records and which cannot be reviewed now owing to the pendency of respondent's motion to dismiss the appeal".

The motion and its resistance raise one or more pertinent issues for determination.

1. At what stage can an affected party in a civil case intervene, that is to say, during the trial in the court below or at the appellate level?

The statute controlling intervention by affected parties, lays down in unequivocal terms, the following conditions which must be adhered to.

The Civil Procedure Law, Rev. Code I :5.61, subchapter E, under intervention, states:

- "1. *In general.* Upon timely application, any person shall be allowed:

- (a) When a statute of the Republic of Liberia confers a conditional right to intervene; or

- (b) When the representation of the applicant's inter-ests by existing parties is or may be inadequate and the applicant is bound by a judgment in the action; or
- (c) When the applicant is so situated as to adversely affected by a distribution or other disposition of property in the custody or subject to the control or disposition of the court or of an officer thereof.

2. Right of government officer to an action relies for, ground of claim or defense upon any statute or executive order administered by a Liberian government officer or agency, or upon regulation, order, requirement, or agree-ment issued or made pursuant to the statute or executive order, the officer or agency shall, upon timely application, be permitted to intervene in the action".

These conditions, laid down and regulated by statute, being plainly classified according to the intent of the construction of said statute, there can be no circumvention of the intent of the lawmakers in construing same. Thus; it is provided that:

"Intervention - a. In general. The great fundamental rule in construing statutes is to ascertain and give effect to the intention of the legislature. This intention, however, must be the intention as expressed in the statute, and where the meaning of the language used is plain, it must be given effect by the courts, or they would be assuming legislative authority. But where the language of the statute is of doubtful meaning, or where an adherence to the strict letter would lead to injustice, to absurdity, or to contradictory provisions, the duty devolves upon the court of ascertaining the meaning. If the intention of the legislature cannot be discovered, it is the duty of the court to give the statute a reasonable construction, consistent with general principles of law. Those principles state:

(d) "Spirit or letter of law. Closely allied to the doctrine of the equitable construction of statutes, and in pursuance of the general object of enforcing the invention of the legislature, is the rule that the spirit or reason of the law will prevail over its letter. Especially is this rule applicable where the literal meaning is absurd; or, if given effect, would work injustice, or where the provision was inserted through inadvertence. Words may accordingly be rejected and other substitu-ted, even though the effect is to make portions of the statute entirely inoperative. So the meaning of general terms may be restrained by the spirit or reason of the statute, and the general language may be construed to admit exceptions". 36 CYC. 1108 - 1109.

(e) "Policy and purpose of act. Every statute must be construed with reference to the object intended to be accomplished by it. In order to ascertain this object, it is proper to consider the occasion and necessity of its enactment, the defects or evils in the former law, and the remedy provided by the new one; and the statute should be given that construction which is best calcula-ted to advance its object by suppressing the mischief and securing the benefits intended. For the purpose of determining the meaning, although not the validity, of a statute, recourse may be had to considerations of public policy, and, to the established policy of the legislature as

disclosed by a general course of legislation. Ordinarily where the lawmaking power distinctly states its design, no place is left for construction". 36 CYC 1110-1111.

The procedure controlling the filing of a motion to intervene states: "A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought". Civil Procedure Law, Rev. Code 1:5.63.

Construing the intent therefore of the statute, could the movant file such a motion in the Supreme Court without showing the grounds therefor? In the case *Johns v. Wither-spoon*, this Court held that: "Under certain circumstances, a third party may be permitted to intervene in a case pending in a court prior to the rendition of the judgment where his rights and interests are or will be materially affected. 9 LLR 152 (1946).

The movant having failed to state its whereabouts during the hearing of this case, as well as to establish any ownership in the property involved, and which is the subject of this appeal, it must be concluded that she therefore has no interest to protect by such intervention. While it is true that we did not delve into the merits of the appeal, counsel for respondent succinctly argued before this Court that movant did not proffer copy of the contractual agreement entered into by and between the Government of Liberia and the World Bank for the Lofa County Agriculture Development Project which, according to movant, is partly owned by the Government of Liberia. This alleged ownership, counsel for respondent asserted, movant had failed to establish by not proffering any documentary evidence to his motion as required by law. Additionally, counsel for respondent called the Court's attention to the fact that when the case was filed, the managing director for the Lofa County Agriculture Development Project, instead of referring the matter to movant, if indeed the project was partly owned by the Government of Liberia, elected to retain private lawyers to represent the Lofa County Agriculture Development Project throughout the proceedings without any consultation with the county attorney for Lofa County. Moreover, counsel for respondent stated, the movant did not exhibit any letter from the managing director of the Lofa County Agriculture Development Project to the Minister of Justice informing him of the pendency of this case on appeal in the Supreme Court, prior to the filing of the motion to intervene. This Court cannot in any way give credence to or tolerate in-officiousness, obscureness and squalidness, patently compounded by spurious tactics designed to defeat the ends of justice sought by an aggrieved party appearing before this Court.

The intervenor has alleged in the motion that she is the owner of the equipment which is alleged to have caused the damages for which the action was filed. It was also argued by the intervenor that the operator of the equipment was a paid employee of the intervenor. Yet, as noted earlier, there was absent evidence of ownership in the intervenor who had neglected to make profert of her bill of sale to qualify her as the bona fide owner of the vehicle. Moreover, the said equipment was never attached or levied upon by the court which might

have created fear of a judicial sale and thereby divest the intervenor of ownership. The object of the action was to redress the injury done to the plaintiff. We do not believe that the Republic of Liberia has any interest therein. The principle espoused by legal authorities is that the interest asserted to support intervention must be of such character as to support a separate and independent action by the intervenor, and that intervention is permitted only if the intervenor would have been a necessary or proper party in the first instance to the original law suit. 59 AM JUR 2d, *Parties*, § 140, page 271. The interest which entitles a person to intervene must be of such direct and immediate character that the intervenor will either gain or lose by the direct operation and effect of the judgment to be rendered between the original parties. Further-more, the interest must be one arising from the claim to the subject matter of the action or some part thereof or a lien upon the property interest in the matter of litigation. A party whose interest is not direct or substantial, but is rather indirect, inconsequential, remote, conjecture, or contingent, cannot intervene. 59 AM JUR 2d., *Parties*, § 139, at 569. *See also the case Republic v. Yancy*, motion to intervene, 31 LLR __ (1983), decided July 7, 1983.

It would seem to us that the motion to intervene in this action should have been made in the trial court before commencement of the trial and before judgment was entered, and not in the Supreme Court where the case is pending on appeal. Our statute, as quoted *supra*, states that the application must be timely. We interpret this statute to mean that the application shall be made before trial or before judgment is entered in the suit. Some statutes, just like ours, make no provision governing the time for intervention; but as a general proposition, unreasonable delay or laches defeats the right to intervene. In particular, an attempt to intervene is ordinarily too late where made after commencement of the trial, after entry of final judgment or decree, after a settlement between the original parties, or after the plaintiff has voluntarily dismissed his action, 59 AM JUR 2d., *Parties*, §161, p. 594.

The question raised by the motion to set aside the appeal, for which the case is already docketed, has already been considered. Reverting now to the motion to intervene in a matter on appeal before this Court, we opine that it is incumbent upon us to consider what the intention of the framers of the Constitution was when they included a provision that guaranteed the rights of a party and stipulated what a party is required to do under the statute in such cases made and provided. In reviewing the rights which movant maintained she did not enjoy in the court below, together with the citation of the Constitutional alluded to by movant, we find in the Constitution that the right of appeal in civil and criminal cases is one of the fundamental prerogatives upon which the liberty of the people stands. To do away with this idea would be to set aside the dearest provision of the framers of the Constitution, made in the bulwark of our national fabric. The right serves as a preventative against repression to the enjoyment of civil liberty; without which the people must become oppressed in manhood and enterprise. A consequence of the lack of such right is that our energy, thrift, enterprise and noble aspirations would cease to exist and flourish under our

flag, and we may thereby be forced to seek some other land for encouragement and protection. The lawmakers, knowing this, and considering our situation, disadvantages, and knowledge in law and political government at the time, sought to make our national road to greatness plain and easy by enacting statutes as our guide, to be understood by the whole people. In this connection, the Constitution, although adapted and not yet enforceable, clothed the Supreme Court with appellate jurisdiction in all cases of appeal but it withheld the right to receive new pleadings and evidence — acts which the movant has attempted to have this Court do.

The language of the statute by which the right of appeal to the Supreme Court is secured cannot be mistaken by the simplest mind. Likewise is the language of the statute relating to the right to file a motion to intervene. The language of this statute cannot be mistaken to a mind if that mind be free from prejudice, hatred, influence or bribery. It is also very clear that the Legislature, in enacting the statute on appeals and other interlocutory motions, intended for them to be the proper steps by which both civil and criminal cases or appeal should find their way to the Supreme Court.

It is scarcely necessary for us to say that when several parties are indicted in one indictment or joined in one civil action, they may make a common defense, and if the trial be joint, all should join in one plea or defense. In case an appeal is prayed for, the bill of exceptions should embrace the names of all the parties appealing, however many there may be.

This Court is therefore of the opinion that the point raised in the motion is of no legal effect.

Accordingly, the Court adjudges that the motion be and the same is hereby denied. The clerk of this Court is hereby ordered to have this case docketed for the October A. D. 1985 Term. And it is so ordered.

Motion denied