

SOCIETA LAVORI PORTO DELLA TORRE, Petitioner, *v.* **HIS HONOUR
EUGENE L. HILTON**, Presiding Judge, Ninth Judicial Circuit, Gbarnga, Bong County,
and **LAWRENCE GOELON**, Respondents.

APPEAL FROM THE CHAMBERS JUSTICE GRANTING OF THE PEREMPTORY
WRIT OF PROHIBITION.

Heard October 25, 1984. Decided November 22, 1984.

1. Prohibition is directed to a tribunal which has exceeded its jurisdiction, or having jurisdiction over the person and subject matter, has proceeded contrary to rules which are to be observed at all times.
2. Jurisdiction of a person is acquired through the service of process.
3. Personal service upon a domestic or foreign corporation shall be made by delivering the summons within Liberia to an officer, or managing agent or general agent, or to any other agent authorized by appointment or by statute to receive service of process.
4. Where summons is delivered to a statutory agent, a copy thereof must, in addition, also be mailed to the defendant. Civil Procedure Law, Rev. Code 1 :3.38(6).
5. The site agent of a corporation is an officer of the corporation duly authorized to receive service of precepts for the corporation.
6. A defendant who does not appear or file an answer is not entitled to notice.
7. A court may enter default judgment against a defendant who has failed to appear, plead, or proceed to trial. Rev. Code 1 :42.1
8. Notice is not required to be served on a defaulting party when the claim is for a sum certain or for a sum which can by computation be made certain. Where the claim is not for a sum certain or for a sum which by computation can be made certain and the defendant has appeared, or if more than one year has elapsed since the default, the

defendant is entitled to at least five days notice of the time and place of the application for judgment. Civil Procedure Law, Rev. Code 1 :42.7(1).

9. Where notice is required to be served on a defendant who has not appeared or answered such notice may be dispensed with upon good cause shown. Civil Procedure Law, Rev. Code 1:42.7(1).

Petitioner filed a petition for a writ of prohibition against the trial court judge, praying that the judge be prohibited from enforcing a default judgment entered against the petitioner, for reason that the petitioner was never made a party to the damages action filed in the Ninth Judicial Circuit by co-respondent Goelon. The petitioner's contention was that service of the writ of resummons having been made on an agent who was not an officer of the corporation or who was not an authorized agent to receive process on behalf of the corporation, the trial court never acquired jurisdiction over the petitioner. Petitioner also contended that no notice of assignment was served on it for the disposition of the issues of law and the trial of the case.

The returns to the writ of resummons showed that service was made on the petitioner's site agent stationed at a workshop and office along the highway being constructed by petitioner. The Justice in Chambers granted the prohibition, holding that there was no written evidence indicating that the site agent was appointed as legal representative for the corporation's general manager.

On appeal, the Supreme Court reversed the ruling of the Chambers Justice. The Court stated that the statute provided that service of process could be made upon an officer of a corporation. The Court reasoned that Mr. Martina, being the site agent for the Belela office of the petitioner, was, in the contemplation of the statute, an officer of the petitioner corporation authorized to receive precepts for the corporation. As such, the Court opined, the petitioner was brought under the jurisdiction of the trial court. The Court said further that the petitioner, having been brought under the jurisdiction of the trial court, and having failed to file an answer or to otherwise appear, was not entitled to be served with any notice for the disposition of the issues of law.

Moreover, the Court said, since no answer had been filed in the case, there was no need for

the trial judge to pass on the issues of law, which is required only where pleadings are exchanged. The Court also opined that under the circumstances, the trial judge acted properly in entering default judgment against the petitioner. The Court determined further that the trial court judge had not acted contrary to law in his disposition of the case, and that as such prohibition would not lie. The prohibition was therefore denied and the *default judgment* entered against the petitioner was *affirmed*.

H. Varney G. Sherman of the Maxwell and Maxwell Law Firm appeared for petitioner. *Francis Garlawolo* appeared for respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The petitioner herein is a company and has filed this petition because, according to the petitioner, it was never made a party to the alleged action of damages for breach of contract filed in the Ninth Judicial Circuit Court of Bong County, Republic of Liberia, by co-respondent Lawrence Goelon, in that it was never served with a summons. The petitioner requested the Court to take judicial notice of the records of the trial court, particularly the returns of the writ of resummons which shows that the writ of resummons was purportedly served on the petitioner.

Petitioner further contended that the records of the trial revealed that no assignments were issued either for the disposition of the law issues, or for the trial of the facts. Finally, petitioner maintained that "action of damages for breach of contract" must necessarily grow out of the violation or breach of a covenant of an existing contract and must also necessarily involve some legal issues.

The respondents, in their returns, averred that the writ of re-summons was duly served upon the petitioner, as evidenced by the returns of the sheriff. With regards to no assignments being issued, the respondents maintained that the statute plainly provides that no service of assignment needs to be made upon parties in default. Relative to the disposition of law issues, respondents contend that law issues are raised only in adverse pleadings, and that in the case at bar, petitioner did not file an answer.

Prohibition is directed to a tribunal which has exceeded its jurisdiction, or having jurisdiction

over the person and subject matter, has proceeded contrary to rules which are to be observed at all times. The pertinent issue for the determination of this petition, therefore, is whether or not the court did acquire jurisdiction over the person of the petitioner.

Since jurisdiction is acquired through the service of a process, in this case the writ of re-summons, we shall examine the writ of re-summons and ascertain if the petitioner company was brought under the jurisdiction of the Ninth Judicial Circuit Court.

We quote the returns to the writ of re-summons for the benefit of this opinion:

“On the 26th day of June, A. D. 1981, Bailiff David Webbo served the within writ of resummons on the defendant, Societa Lavori Porto Della Torre, by and thru its general manager’s legal representative of Bong County, R. L., to appear before this Court on the 10th day of August, A. D. 1981 at the hour of 10 o’clock a.m. for the hearing of said case, to answer the complaint of the plaintiff in the said case. And also they were informed with the copies of the writ and the complaint left with them. And to report their appearance before the clerk’s office on the 7th day of August after the tenth day service of said writ. I am now making my official returns to this Honourable Court, through the office of the clerk of court. Dated this 26th day of June, A. D. 1981. Brown P. Diggs, sheriff, Bong County.”

In filing the petition, it would appear that the petitioner denied being served with the writ of re-summons. The Justice in Chambers sent a mandate to Judge Eugene L. Hilton, who was then presiding over the Ninth Judicial Circuit Court of Bong County by assignment, to conduct an investigation into the service of the resummons on the petitioner, and to submit his findings to the Chambers Justice as to whether or not the re-summons was really served on the petitioner.

Judge Eugene L. Hilton, in obedience to the mandate from Mr. Justice M. Kron Yangbe, conducted an investigation and forwarded his findings to the Chambers Justice on June 16, 1982. The second to the last paragraph of Judge Hilton’s findings is quoted herewith:

"It is our opinion that the writ of resummons in question was properly served on the defendant company."

The record of the investigation also revealed that the re-summons was served on one Mr. Martina who was the defendant company's site agent for the Totota-Ganta Road, stationed in Belela where the defendant company had a workshop and an office.

In his ruling, the Chambers Justice held that because there was no written evidence indicating that Mr. Martina was appointed legal representative for the general manager, the re-summons served on Mr. Martina, the site agent, could not there-fore be construed as having been served on the company. The relevant statute on service of process upon a corporation provides:

"Upon a corporation. Personal service shall be made upon a domestic or foreign corporation by reading and person-ally delivering the summons within Liberia to an officer, or managing or general agent, or to any other agent authorized by appointment or by statute to receive service of process, and, if the summons is delivered to a statutory agent, by, in addition, mailing a copy thereof to the defendant." Civil Procedure Law, Rev. Code 1 :3.38(6).

It is our feeling, and we so hold, that by virtue of Mr. Martina being a site agent for the Belela office of the defendant company, he was also an officer of the company authorized to receive service of precepts for the defendant company as per the above quoted statute.

The petitioner further alleged that he was not served with notice for the disposition of the law issues and for the trial. The respondents, on the other hand, maintained that the petitioner was not entitled to notice. Here are the relevant provisions of the statute which respondents relied upon:

"If a defendant failed to appear, plead, or proceed to trial, or if the court orders a default for any other failure to proceed, the plaintiff may seek a default judgment against him." Civil Procedure Law, Rev. Code 1 :42.1, *Right of Plaintiff.*

"1. *When required.* Notice is not required when the claim is for a sum certain or for a sum which can by computation be made certain. If the plaintiff's claim is not for a sum certain or for a sum which can by computation be made certain and if the defendant has appeared or if more than one year has elapsed since the default, the defendant is entitled to at least five day's notice of the time and place of the application for judgment. Where notice to a

defendant who has not appeared is required by this section, such notice may be dispensed with upon good cause shown." *Ibid.*, § 42.7 (1), *Notice*.

In the instant case, the defendant, now petitioner, did not appear nor file an answer. It was therefore not entitled to notice as per the statute quoted above. There being no answer filed to the complaint, we see no need for the trial court to have passed on the law issues, which are to be raised only in the exchanged of pleadings. These contentions are therefore not conceded.

In view of the foregoing circumstances, as well as the facts narrated and the laws cited, it is our candid opinion that the court did acquire jurisdiction over the petitioner company in the damages suit because the writ of resummons was served on an officer of the defendant company, the site agent for Belela Office, Mr. Martina. Hence, prohibition will not lie. The ruling of the Justice in Chambers is therefore reversed, the petition denied, the alternative writ quashed and the peremptory writ denied. And it is hereby so ordered.

Prohibition denied.