

MOSES LAMIN et al. Petitioners, v. **HIS HONOUR TIMOTHY Z. SWOPE**,
Assigned Circuit Judge, Civil Law Court, and **SAVE THE CHILDREN (UK)**
FUND LIBERIA, represented by its Field Director, Respondents.

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

Heard: November 19, 1998. Decided: January 21, 1999.

1. A special appearance is defined as a submission to the jurisdiction of the court for some specific purposes only, not for all the purposes of the suit. A special appearance is for the testing or objecting to the sufficiency of the service or jurisdiction of the court over defendant without submitting to such jurisdiction.
2. A special appearance is an application to the court for relief in the nature of a motion predicated upon the defectiveness of the service and the lack of jurisdiction of the court over the person of the defendant for improper service of process.
3. No technical forms of pleadings are required in this jurisdiction, but the relief sought must be clearly stated so that the court may pass thereon in the most expeditious and least costly manner.
4. Personal service shall be made upon a domestic or foreign corporation by reading and personally delivering the summons within Liberia to an officer, or managing or general agent, or any other agent authorized by appointment or by statute to receive service of process, and if summons is delivered to a statutory agent by, in addition, mailing a copy thereof to the defendant.
5. A security officer upon whom service of process is made is not the representative to receive process for a corporation, especially where the security officer is only a third party contractor assigned to guide the premises of the corporation.
6. A third party security officer assigned to guide the premises of a corporation is not authorized by appointment or statute to receive process for and on behalf of the corporation whose premises he is guiding, in the absence of authority by appointment or statute.
7. Personal service of process means the actual or direct delivery of the summons or a copy thereof to the person to whom it is directed or to someone who is authorized to receive it in his behalf.

8. A service of process on a security officer in the absence of any authority by appointment or statute to receive the process is insufficient and ineffective to bring the defendant under the jurisdiction of the trial court as he is neither an officer or agent of the corporation.

9. Certiorari will not be granted where there is no showing that the judgment or order of the subordinate court or administrative tribunal is erroneous and manifestly prejudicial to the interest and rights of the petitioner.

Petitioners filed a petition for a writ of certiorari against the trial judge's dismissal of the sheriff's returns and ordering the issuance of new summons and service upon the co-respondent on the ground that the court had no jurisdiction over the Co-respondent, save the Children (UK) Fund Liberia. The facts of the case indicated that the ministerial officer of the court had delivered the summons to a security officer assigned to guard the premises of the defendant. The security officer is reported to have carried the writ to the field director and to have returned with the same unsigned. At the call of the case by the trial court for disposition of the law issues, the co-respondent made a special appearance in the court, challenging the court's jurisdiction over its person for reason that it had not been served with summons since the security officer on whom delivery had been made was not an officer of the corporation but was merely a third party contractor engaged to secure the premises of the co-respondent.

Being dissatisfied with the ruling of the trial court, the petitioner applied for a writ of certiorari. From the Justice in Chambers denial of the petition, petitioner appealed to the Court *en banc*. The Court affirmed the denial of the Justice in Chambers, holding that the security officer was not the proper authorized representative of the co-respondent upon whom process could be served for and on behalf of the co-respondent. The Court noted that process could only be made as provided by statute, which meant that the writ had to be served on a person who was an officer, managing or general agent, or other agent authorized by appointment or by statute to receive process on behalf of the corporation. The third party security officer, it said, was not an officer or one such agent specified by the statute.

The Court also dismissed the petitioner's contention that the trial judge should have investigated the returns of the sheriff to ascertain whether in fact it was false or incorrect. The Court further opined that, contrary to the assertion of the petitioner, a special appearance by the co-respondent corporation was sufficient under the law to challenge the jurisdiction of the court over its person. As such, it said, the

corporation did not have to file an answer; the special appearance was a submission challenging the jurisdiction of the court and was therefore sufficient in law. The Court therefore affirmed the denial of the petition.

Marcus R Jones of Jones & Associates Legal Consultants appeared for appellants. *Stephen B. Dunbar, Jr.* of Dunbar Law Offices appeared for appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This case is before us on appeal from the ruling of our distinguished colleague, His Honour John Nathaniel Morris, Associate Justice presiding in the Chambers of this Court during its March Term, A. D. 1998, denying petitioners' petition for a writ of certiorari in an action of damages for breach of contract presently pending before the Civil Law Court for the Sixth Judicial Circuit for Montserrado County.

The petitioners herein, Moses Lamin, Joe D.S. Mbayon and Aldysius Allison, instituted an action of damages for breach of contract on May 28, 1997 against Save the Children (UK) Fund, Liberia, in the Civil Law Court for the Sixth Judicial Circuit for Montserrado County. Petitioners basically alleged in their complaint that Co-respondent Save the Children Fund breached its employment contract entered into with them when the co-respondent seized their identification cards and prevented them from entering its premises without notice, thereby terminating their employment.

A writ of summons was duly issued commanding the appearance of Co-respondent Save the Children Fund Liberia on or before the 8th day of June, A. D. 1997. It was placed in the hands of Bailiff Blama K. Sheriff for service. The sheriff's returns of June 3, 1997 alleged that Bailiff Sheriff duly served the writ of summons on Co-respondent Save the Children Fund Liberia through its security officer, who upon taking the precept to the field director, returned said summons to the bailiff unsigned. The records in this case also revealed that a notice of assignment for disposition of law issues was issued on June 20, 1997, and served on the co-respondent for hearing on July 15, 1997. In response thereto, the defendant, co-respondent herein, filed a Special appearance before the Civil Law Court contending therein that it was never served with a writ of summons, to be brought under the jurisdiction of the court, and that the service of the writ of summons was materially defective and the sheriff's returns false and misleading. The special appearance was resisted and argued. On the 21st day of November, A. D. 1997, His Honour Timothy Z. Swope, who presided over the trial court by assignment, granted the defendant's special appearance and

dismissed the sheriff's returns. The judge then ordered the clerk to reissue the writ of Summons for proper service on the co-respondent corporation. The petitioners, being dissatisfied with the ruling, proceeded to this Court upon a petition for a writ of certiorari to review and correct the aforesaid ruling.

On the 18th day of June A. D. 1998, Mr. Justice Morris, presiding in Chambers, heard and denied petitioners' petition on grounds that the returns of the sheriff with respect to the service of the writ of summons on the corporation, was "quite vague and ambiguous, and that the corporation should be again be served with the writ of summons to be brought under the jurisdiction of the trial court.

Mr. Justice Morris further ordered the Clerk of this Court to send a mandate to the trial court ordering the judge thereof to resume jurisdiction over the case, reissue the writ of summons, have same properly served on the defendant therein, and proceed with the case in keeping with law. Petitioners again excepted to this ruling and appealed to this Court *en bane* for appellate review and determination.

Petitioners contend that the returns of the ministerial officer was never investigated by the trial court so as to ascertain the veracity of the sheriff's returns sine it was not challenged by the defendant, co-respondent herein. Instead, the trial judge ruled that the summons was never served relying on the affidavit of the co-respondent's security guard who alleged that the co-respondent was never served with a writ of summons. Petitioners also argued that the returns of the ministerial officer is presumed correct unless impeached by competent extrinsic evidence in a direct proceeding and that the summons was duly served as returned and not ambiguous.

The second issue raised by petitioners was that a special appearance is a common law writ which is abolished in Liberia and cannot be sustained in any court in this jurisdiction, and that very application to the court for an order or relief shall be made by a motion. Further, that an appearance is made by the service of an answer or a notice of appearance or by a defendant's motion within 10 days of a summons or re-summons, and not after the 10 day period allowed by statute.

The petitioners strongly contended that the co-respondent's security guard placed at the entrance of its premises to permit or deny the entry of persons thereto became an extension of the co-respondent, and that a service made through the security guard upon co-respondent's agent constituted a service of summons on the said co-respondent. Petitioners therefore prayed this Honourable Court to correct the errors

of the trial judge and the Justice in Chambers and to sustain the service of the writ of summons as being legal and sufficient.

On the other hand, Co-respondent Save the Child Fund contended that it was not duly summoned to be brought under the jurisdiction of the trial court since Security Officer Boima Washington was an independent third party contractor who was neither an employee nor an agent or an officer of the co-respondent authorized by appointment or by statute to receive service of process. Co-respondent also contended that Security Officer Washington in his affidavit stated that at no time on the 3rd day of June, 1997, did the officer of the court deliver any court papers or that a writ of summons was refused by or given to him by an officer of the court for delivery to the field officer of the co-respondent. As such, the co-respondent said, the returns of the sheriff alleging service of summons on it was false and misleading, and that Co-respondent Save the Children Fund was never properly summoned. In short, co-respondent save the Children Fund maintained that the trial court had not acquired jurisdiction over its person for reason that it was not properly summoned.

Co-respondent Save the Children Fund also contended that it only became aware of the pendency of the main suit against it upon the receipt of a notice of assignment for the disposition of the issues of law 10 days after the sheriff's alleged returns, and the as such, it could not have put in an appearance or filed an answer within 10 days as contended by the petitioners. Co-respondent further maintained that the law in this jurisdiction on forms of pleadings provides that no technical forms of pleading are required but that the relief sought must be clearly stated so that the court may pass thereon in the most expeditious and least costly manner. Furthermore, it argued that a special appearance is a motion which is an application to the court for relief based on the defectiveness of the service and lack of jurisdiction of the trial Court. Hence, it said, the trial judge committed no reversible or prejudicial error when he sustained its special appearance over petitioners' contention that co-respondent should have filed a motion. Co-respondent Save the Children Fund also strongly argued before this Court that the returns of the sheriff was proved to be false by the affidavit of Security Officer Boima Washington which the trial judge took into account in making his ruling. In other words, the affidavit of Security Officer Washington constituted a competent extrinsic evidence to impeach the evidence of the sheriff's returns.

Finally, Co-respondent Save the Children Fund vehemently contended that the judge's ruling that the court did not have jurisdiction of the co-respondent, and that a writ of summons be re-issued and served on the co-respondent was sound in law. As such, it said, certiorari will not lie where the ruling is legally sound, and that certiorari

will lie only to review and correct decisions that are erroneous and legally unsound. There was no prejudice to the petitioners in having the co-respondent properly brought under the jurisdiction of the trial court to defend itself. Co-respondent Save the Children Fund therefore prayed this Honourable Court to confirm and affirm the ruling of Mr. Justice Morris denying the peremptory writ.

The questions to be resolved by this Court are:

(1) Whether or not the special appearance filed by Co-respondent Save the Children Fund is legally sufficient to contest the jurisdiction of the trial court.

(2) Did the trial court acquire jurisdiction over Co-respondent Save the Children Fund upon a service of process on a security officer, a third party independent contractor, assigned to guard its premises? And

(3) Whether the ruling of the trial judge ordering the clerk to re-summons Co-respondent Save the Children Fund to defend itself manifestly prejudice the substantial rights of the petitioners for which certiorari will lie?

We shall decide these issues in the order they are raised. As to the issue of whether or not a special appearance is legally sufficient to contest the jurisdiction of the trial court, this Court says that a motion is an application to a court for relief pursuant to the Civil Procedure Law, Rev. Code 1: 10.1. We shall define a special appearance and its purpose in enabling as to decide whether or not it is a motion sufficient to contest the jurisdiction of the trial court. Law writers have defined a special appearance as "a submission to the jurisdiction of the court for some specific purposes only, not for all the purposes of the suit. A special appearance is for the testing or objecting to the sufficiency of service or jurisdiction of the court over defendant without submitting to such jurisdiction". BLACK'S LAW DICTIONARY 97 (6th ed.1990).

It is clearly shown from the quoted universal principle of law that a special appearance is a submission to the jurisdiction of a court by a defendant party for a specific purpose only, but not for all the purposes of the entire suit. Its purpose is to test or object to the sufficiency of the service or the jurisdiction of the court over the defendant without submitting to the jurisdiction of the trial court. Thus, a special appearance is an application to the court for relief in the nature of a motion predicated upon the defectiveness of the service and the lack of jurisdiction of the court over the defendant for improper service of process. It is also provided by law in our jurisdiction that no technical forms of pleadings are required, but that the relief

sought must be clearly stated so that the court may pass thereon in the most expeditious and least costly manner. Civil Procedure Law, Rev. Code 1: 9.3(2); *Giko v. Giko*, 22 LLR 155 (1973), text at 163. The trial judge therefore committed no reversible error when he entertained the special appearance filed by Co- respondent Save the Children Fund to test or object to the sufficiency of the service of the jurisdiction of the trial court for improper service.

The second issue for our determination relates to the jurisdiction of the trial court over Co-respondent Save the Children Fund upon a service of process on a security officer, a third party independent contractor, assigned to guard its premises. Our statutory law on the personal service of process within Liberia upon a corporation provides that "personal service shall be made upon a domestic or foreign corporation by reading and personally 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).

The language of the above quoted statutory provision is indeed clear that a personal service of process shall be made upon a corporation within our jurisdiction by reading and delivering the summons to an officer, or managing or general agent, or to other agent authorized by appointment or by statute to receive service of process. Thus, the security officer upon whom the alleged service has been made was not the representative of Co-respondent Save the Children Fund to receive process as contended by the petitioners herein. The security officer was a third party contractor only assigned to guard the premises of Co-respondent Save the Children Fund. He was in no way authorized by appointment or statute to receive process for and on behalf of the co-respondent corporation. In the case *Liberian American Insurance Corporation v. Wright and A Hejazji Corporation* , 37 LLR 417 (1993), decided by this Court during its October Term, A. D. 1993, this Court held that "personal service of process means the actual or direct delivery of the summons or a copy thereof to the person to whom it is directed or to someone who is authorized to receive it in his behalf" A service of process on a security officer in the absence of any authority by appointment or statute to receive a process is insufficient and ineffective to bring the defendant corporation under the jurisdiction of the trial court as lie is neither an officer or agent of the co-respondent corporation. *Holsber v. Townsend*, 7 LLR 293 (1941), text at page 297; *Samuels v. Samuels*, 11 LLR 276 (1952), text at 281.

The last and final question to be resolved by this Court is whether the ruling of the trial judge ordering the clerk to resummons Co-respondent Save the Children Fund to defend itself manifestly prejudice the substantial rights of the petitioners for which certiorari will lie.

As stated earlier herein, His Honour Timothy Z. Swope, presiding over the trial court by assignment, granted the co-respondent corporation's special appearance testing or objecting to the sufficiency of the service and the jurisdiction of said court, dismissed the sheriffs returns, and ordered the clerk to re-issue the writ of summons for proper service on the co-respondent. Petitioners fled to this court to seek the aid of certiorari. Mr. Justice Morris, presiding in Chambers of this Court, heard and denied petitioners' petition, thereby affirming the ruling of the trial judge. The petitioners excepted to the ruling and appealed to this Court *en banc*. We observe that the trial judge granted the co-respondent corporation's application and dismissed the sheriffs returns on the ground that the service of process on the security officer, a third party contractor assigned to guard its property, was defective and that the trial court therefore lacked jurisdiction over the co-respondent. Thus, the clerk was accordingly ordered to re-issue a writ of summons to be properly served on the co-respondent corporation, thereby affording it the opportunity to have its day in court. The ruling of the trial judge, affirmed by the then Chambers Justice, promoted the due process of law and the ends of a substantial justice, but in no way and manner manifestly prejudiced the rights and interests of the petitioners herein. This Court will not grant certiorari where there is no showing that the judgment or order of the subordinate court or administrative tribunal is erroneous and manifestly prejudicial to the interests and rights of a petitioner. Civil Procedure Law, Rev. Code 1: 16.21(1); *Union National Bank SAC v. Koroma et al.* 21 LLR (1972)(Chambers), text at 583; *Wight v. Reeves, et al.*, 26 LLR 38 (1977).

Wherefore, and in view of the foregoing, it is the candid opinion of this Court that the ruling of Mr. Justice Morris should be, and the same is hereby affirmed. The Clerk of this Court is hereby ordered to send a mandate to the Court below informing the judge presiding therein to resume jurisdiction over this case and have the writ of summons served on the defendant corporation in accordance with law and thereafter let defendant file its answer and let this law take its course. Costs to abide final determination of this case. And it is hereby so ordered.

Petition granted