

CAROLINE EGBE, Director of Rotesh, Inc., et al., Petitioners, v. **HIS HONOUR JUDGE VARNIE D. COOPER**, Assigned Judge, Sixth Judicial Circuit Court and **FRED EGBE**, Director, Shareholder & Chief Executive Officer of Rotesh, Inc., Respondents.

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

Heard: November 9, 1989. Decided: January 9, 1990.

1. Certiorari, as a proper remedy to review an interlocutory ruling or determination, will lie to review the issuance of a preliminary injunction.
2. In this jurisdiction, a re-summons only obtains where the summons was not served on the defendants.
3. A court has no authority to enter judgment or decree against anyone over whom it has no jurisdiction either by service of process or voluntary submission; and that service of process is prerequisite for submission, unless there is voluntary submission.

Co-respondent Fred Egbe filed a petition for declaratory judgment, along with a motion for preliminary injunction against the petitioners in the Sixth Judicial Circuit, Montserrado County. The motion for preliminary injunction was served on the respondents in London through their agent, the International Trust Company (ITC). The writ of summons for the declaratory judgment was not served. Respondents appeared through their counsels and filed a resistance to the preliminary injunction, and a motion to dismiss the declaratory judgment for improper service of process. The judge assigned both the motion to dismiss and the motion for preliminary injunction but heard only the motion to dismiss. After hearing argument *pro et con* on the motion to dismiss, the court reserved ruling. Without a hearing of the motion for preliminary injunction, and without rendering a ruling on the motion to dismiss, the trial judge ruled on the motion for preliminary injunction, dismissed the resistance and granted the preliminary injunction. Notwithstanding the court's ruling granting the motion for preliminary injunction, Co-respondent Fred Egbe applied for a writ of re-summons for the declaratory judgment proceeding as well as the motion for preliminary injunction and same was granted by the trial judge. The petitioners, dissatisfied with the judge's actions, filed a petition for a writ of certiorari before the Justice in Chambers. After hearing the petition for the writ of certiorari, the Chambers Justice granted the writ, dismissed the preliminary injunction, and mandated the trial court to resume jurisdiction and to proceed with the main suit. It

was from this ruling of the Chambers Justice that petitioners appealed to the full Bench of the Supreme Court.

While the appeal was pending, the appellees/petitioners filed a bill of information before the Court, alleging that the respondents/appellants were continuing with publication of the writ of re-summons in a local newspaper despite the Supreme Court's order to stay all further proceedings in the court below.

On appeal, the Supreme Court consolidated both the appeal and the information upon request of the appellees/petitioners, there being no objection to said request. The Court held that the fact that the trial court had acquired no personal jurisdiction over appellees/petitioners, the motion to dismiss the motion for preliminary injunction should have been sustained. The Court also held that a court has no authority to enter judgment or decree against anyone over whom it has no jurisdiction either by service of process or voluntary submission. The Court therefore *affirmed and confirmed* the ruling of the Chambers Justice, thereby granted both the peremptory writ and the prayer of the bill of information.

Christiana Tab and *Philip A. Z Banks, III*, appeared for the petitioners/appellees. *Charles W Brumskine* appeared for the respondents/appellants.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

Mr. Fred Egbe, styled as director, shareholder, president and chief executive officer of Rotesh, Inc., a Liberian registered business corporation, filed an action for declaratory judgment on August 7, 1989, against Caroline Egbe, also styled as director of Rotesh, Inc., Emma Rolie Egbe and Rachel A. Egbe, in the Sixth Judicial Circuit Court, Montserrado County. He simultaneously filed the ancillary motion for preliminary injunction, including therein an application for a temporary restraining order to enjoin and to prohibit defendants from holding or convening a scheduled shareholders' meeting of said Rotesh, Inc., on August 14, 1989, pending a hearing on the motion for preliminary injunction. The said motion also prayed the court to set a date for hearing of the injunction and, if granted, to remain in effect until the main suit or declaratory judgment was finally determined.

Notice of the motion for preliminary injunction was served on the defendants in London, England, through the agents of Rotesh, Inc., in Liberia, the International Trust Corporation (ITC), but the writ of summons for the declaratory judgment, the main suit, was allegedly not served.

Subsequently, on August 16, 1989, petitioners made an appearance through their legal counsels in Liberia, who filed resistance and at the same time also filed a motion to dismiss the preliminary injunction on ground of improper service of process.

The trial judge then assigned both the motion to dismiss and the motion for preliminary injunction for hearing the following day. After arguments *pro et con* on the motion to dismiss, ruling was reserved to a later date. On the day assigned for ruling on the motion to dismiss, the trial judge denied same, granted the preliminary injunction, and dismissed the petitioners' resistance to the preliminary injunction, allegedly without a hearing.

The judge gave as reasons for his ruling the following: (i) the fact that petitioners had wrongly captioned their motion as motion to dismiss, which should have been or rightly called a "motion to vacate or dissolve"; (ii) the failure of petitioners to file an appropriate bond on their motion to dismiss the preliminary injunction; and (iii) the acknowledgment that petitioners had constructive knowledge of the motion for preliminary injunction, therefore the court had jurisdiction over them especially after making an appearance. However, the judge gave no specific reasons for the granting of the writ of preliminary injunction, and why he was convinced that petitioners should be restrained from convening a shareholders' meeting, and also from holding themselves out as directors and shareholders of Rotesh, Inc., pending termination of the declaratory judgment. The said judgment was made on August 22, 1989, and on August 23, 1989, the clerk of the Sixth Judicial Circuit, as per orders of the judge, issued the writ of preliminary injunction against the defendants.

Notwithstanding the above, plaintiff further returned to the trial court on August 25, 1989, made application for a writ of resummons in the motion for preliminary injunction and the action for a declaratory judgment, and also for service of the writ of resummons by publication in the said cases. This application was granted and a local newspaper commenced publication of the precepts in the actions.

The defendants/petitioners were dissatisfied and, consequently, on August 25, 1989, they proceeded to the Chambers Justice on a petition for a writ of certiorari against the ruling of the trial court dismissing the resistance to the motion for the preliminary injunction, and for granting the said writ of preliminary injunction without proper jurisdiction and a hearing. Therefore, on August 26, 1989, an alternative writ of certiorari was issued by the Justice in Chambers against the co-respondent trial judge, to stay all proceedings until the petition for a writ of certiorari was finally determined.

After arguments, the Chambers Justice granted the writ, dismissed the preliminary injunction, and further mandated the trial court to resume jurisdiction and to proceed with the main suit.

It is against the said ruling of the Chambers Justice that respondents in the certiorari proceedings have filed an appeal to the Full Bench of this Court of last resort.

While this appeal was pending, petitioners filed a bill of information before this Court, alleging continuous publication of precepts of the re-summons in a local newspaper, contrary to the orders of the alternative writ of certiorari which stayed all proceedings below. They therefore prayed this Court to declare the precepts so published null and void, and of no legal effect; and further to hold appellants in contempt of this Court.

At the call of this matter for hearing the appeal, appellees requested the Court for a consolidation of both the appeal and the bill of information; and as there was no objection from the respondents, this Court decided to have both consolidated and argued together. Civil Procedure Law, Rev. Code 1:6.3(1).

Respondents argued that the Chambers Justice had erroneously ruled against them, and contended that the ruling of the trial judge dismissing the motion to dismiss the preliminary injunction was lawful. Additionally, they maintained that the lower court had jurisdiction over the petitioners, and that they were given notice of the hearing of both the motion to dismiss and the motion for preliminary injunction.

On the other hand, respondents asserted that the lower court had not acquired jurisdiction over their persons, not having been lawfully served with summons on the declaratory judgment proceeding and the precepts on the motion for preliminary injunction. They further concluded that without a separate hearing on the motion for preliminary injunction they were denied their day in court, denied due process, and the important constitutional right to be heard, especially so in such an important matter as a motion for preliminary injunction involving valuable property rights. In conclusion they maintained that the judge below could not have *sua sponte* consolidated the motion to dismiss and the motion for preliminary injunction as there was no evidence of actual legal consolidation as the law requires in such cases. Petitioners concluded that they cannot be blamed for failing to file a bond where the judge had not required them to do so.

The Chambers Justice granted the writ of certiorari on the grounds that the lower court had acquired no personal jurisdiction over the petitioners and that the said court had failed to afford them a hearing before granting the writ of preliminary injunction. He maintained that the motion to dismiss, and the motion for preliminary injunction are two separate motions which should have been heard separately and not jointly as was done in this case. The Chambers Justice therefore concluded that the motion for preliminary injunction should be denied and the action for declaratory judgment proceeded with promptly. From this ruling, this appeal was filed by the respondents.

From a careful perusal of the records before us, along with the arguments of counsel in this case we find only one pertinent issue for our disposal here; and it is:

Whether or not the Chambers Justice was right in granting the writ of certiorari against the ruling of the trial court in dismissing defendants' resistance to the motion for preliminary injunction without a hearing?

We are certain that it is the office of certiorari to review and revise the works of lower courts of records on petition, and thereafter to set straight any obvious and detectable errors in the records, in the cause of justice and a speedy trial. Civil Procedure Law, Rev. Code 1:16.21 and 16:23. This Court has also ruled that certiorari, as a proper remedy or review of an interlocutory ruling or determination, will lie to review issuance of a preliminary injunction. *Kontar v. Mouwaffak and Lewis*, 17 LLR 259 (1965).

We observed that the question of jurisdiction was dominant in the consideration of the Chambers Justice in this matter, that is to say that the notice for preliminary injunction and the temporary restraining order were not properly served nor was the summons for the declaratory judgment served as required. Hence, he held that in fact the trial judge had acquired no jurisdiction over the person of the defendants, and therefore the motion to dismiss the motion for preliminary injunction should have been sustained; and that the motion for preliminary injunction ought to have been dismissed for improper service of process.

In studying the records in this case, we also realize that it is the question of the service of process that occupied the attention of the parties on this appeal, and we hold that it is important for our determination here also. At one stage we had almost concluded that the lower court had in fact acquired personal jurisdiction over the

defendants in the motion for preliminary injunction if not by actual service under statutory direction, then by constructive notice of the proceedings.

However, we were indeed astounded by the bill of information consolidated herein, which brought to our attention that plaintiff in the trial court, now co-respondent, had applied to the court below for a writ of re-summons in the motion for preliminary injunction and the declaratory judgment proceeding. The said request was granted by the trial court along with permission for its publication.

In all their arguments, the respondents have consistently maintained that they legally served the notice in the motion for preliminary injunction on the petitioners. They followed through with this argument during the hearing on the motion to dismiss before the Chambers Justice and still before us now. We are therefore at a loss to understand why the co-respondent later decided to apply for a writ of re-summons and permission for publication. In this jurisdiction, a re-summons only obtains where the summons was not served on the defendants. Civil Procedure Law, Rev. Code 1:3.35.

This action by both the trial court and the co-respondent lends credit to the contention of petitioners, and the holding of the Chambers Justice that in fact petitioners, as defendants in the lower court, were not legally served, and therefore were not under the jurisdiction of the trial court.

This Court in several opinions has held that a court has no authority to enter a judgment or decree against anyone over whom it has no jurisdiction either by service of process or voluntary submission, and that service of process is a prerequisite for jurisdiction unless there is voluntary submission. *Seton et al. v. Azango et al.* (Chambers), 20 LLR, 674 (1971).

Hence, we have no other alternative in the premises but to conclude that petitioners were never legally served with process, and therefore, that the motion for preliminary injunction should be vacated as prayed for by petitioners.

We therefore confirm and affirm the ruling of the Chambers Justice reversing the ruling of the trial court for lack of jurisdiction over the petitioners. The peremptory writ and the information are hereby granted and the ruling of the trial court is hereby reversed and set aside. Costs are disallowed. And it is hereby ordered.

Certiorari and information granted; judgment reversed.