

**UMARCO (LIBERIA) CORPORATION**, by and thru its General Manager, E. A. G. COLES, Petitioner, v. **HIS HONOUR J. HENRIC PEARSON**, Assigned Circuit Judge, March 1987 Term of the Civil Law Court, Sixth Judicial Circuit, and **KWEKU WALKER**, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING  
ISSUANCE OF THE WRIT Or' PROHIBITION.

Heard: October 31, 1989. Decided: January 9, 1990.

1. A judge has no right to *sua sponte* extend a term of court; but where a trial has begun, especially a trial by jury, the term is automatically extended until the trial is completed.
2. When a judge acts out of term, his judgment is void.
3. When a trial or other hearing is not completed and a judgment or ruling rendered during a term of court, it must be tried anew, unless it is a jury trial that commenced in a preceding term and must therefore continue during the succeeding term until completed.
4. The extension of a term time of a court to enable a trial judge to complete certain case(s) is different from a renewal of the assignment of a trial judge to preside over a succeeding term of that court. In the former instance, the trial judge may continue and dispose of those matters which he had already started; in the latter instance, any matter, except jury trial, not concluded within the previous term, must be tried anew in the succeeding term.
5. The principle of impartiality, disinterestedness and fairness on the part of a judge must always be exhibited, as an action of court which disregards the safeguard of litigants, deter the administration of justice.

Emmanuel Walker, who was employed by the Square Shipping Trading Company and assigned on the vessel, "MN Caroline", as deck hand, died by drowning when the said "MN Caroline" sank at high sea. The father of the late Emmanuel Walker, Kweku Walker, co-respondent in the prohibition proceedings, filed a suit in admiralty in the People's Civil Law Court, Sixth Judicial Circuit, Montserrado County, against the "MN Caroline" of the Square Shipping Trading Company, Limassoe of Bremen, West Germany, by and through its agent, UMARCO (Liberia) Corporation,

petitioner/movant for damages for wrongful death. Petitioner/movant moved the trial court to dismiss the case on the ground that it was not an agent or owner of the vessel "MN Caroline". The co-respondent judge, His Honour J. Henric Pearson, rendered final judgment against petitioner, holding that petitioner was indeed the agent and owner of the "MA' Caroline". To this ruling, petitioner excepted and petitioned the Justice in Chambers for a writ of prohibition. The Chambers Justice heard the petition for the writ of prohibition and denied it. Petitioner excepted and announced an appeal to the Full Bench of the Supreme Court. While the petition for the writ of prohibition was still pending unheard, petitioner filed a motion to dismiss the petition for want of jurisdiction. The Supreme Court consolidated the motion to dismiss and the petition for prohibition, heard same and ruled that the judgment of the lower court was void because the judge was out of term when he rendered final judgment. The final judgment of the trial court was therefore *declared null and void*.

*John T Teenia* appeared for the petitioner/movant. *Johnnie N Lewis* appeared for the respondents.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

This case emanates from the People's Civil Law Court for the Sixth Judicial Circuit filed in admiralty. The libelant, Kweku Walker, instituted this action of damages for wrongful death against the "MN Caroline" of the Square Shipping Trading Company, Limassoe" of Bremen, West Germany, by and thru its agent, UMARCO (Liberia) corporation, by and thru its General Manager, E. A. G. Coles, as libelee.

The libelant claimed, among other things, that he was the natural father of the late Emmanuel Walker, a former employee of the Square Shipping Trading Company, who was assigned on the vessel "MN Caroline" as deck hand. The libelant alleged further that Emmanuel Walker died by drowning on the 6<sup>th</sup> day of July, A.D. 1981 when the "MN Caroline" sank at high sea in Liberian territorial waters.

Mr. Kweku Walker, the libelant, further claimed that the death of his son, Emmanuel Walker, caused serious damages to him and other dependents who were being supported by the deceased. He consequently prayed to the court to award damages commensurate with the loss sustained.

In traversing the libelant' claims, UMARCO, libellee, filed a four-count answer, quoted below:

1. As to the entire petition, UMARCO says that same is false and misleading in that, UMARCO at no time acted as agent for the vessel "MN Caroline" and/or as her owner, as is falsely alleged by the libelant. Because of this false and misleading allegation, UMARCO prays for the dismissal of the entire petition with costs against the libelant.

2. And also because further as to the entire petition, UMARCO says that while it is true that it acted as intermediary between the vessel "MN Caroline" and the National Port Authority at the time the vessel berthed at the Freeport of Monrovia for the payment of all port charges and the performance of all stevedoring work at the aforesaid Port, UMARCO had nothing to do with that vessel after sailing from the Freeport of Monrovia. UMARCO submits and strongly contends that it has no knowledge as to how and when the crew of that vessel were employed. Consequently, UMARCO cannot be held responsible for any wrongful death alleged to have occurred on the high seas in Liberia as a result of the alleged sinking of the aforesaid vessel. Copies of letters as exhibits "A" and "B" are attached hereto.

3. And also because as to counts 1 and 2 of the petition in which it is alleged that libelant's son, Emmanuel Walker, was employed and served on the vessel "MN Caroline" as deck hand prior to the sinking at high seas of the vessel, which resulted into the alleged wrongful death of the said Emmanuel Walker, UMARCO says that the employment of sailors and crew members on board a vessel is solely the prerogative and responsibility of the vessel's owner and/or the master of such vessel.

UMARCO contends, therefore, that not being the owner and/or master of the vessel, it has no knowledge of any employment contract or contracts between the "MN Caroline" and libellant's allegedly deceased son. Hence, counts one and two of the petition should be overruled and with them the entire action dismissed with costs against the libelant.

4. And also because UMARCO denies any and all allegations of both law and fact as are contained in the petition but not made a subject of special traverse in this answer.

On the issue of not being an agent to the "MN Caroline" or its owner, the libelant in his reply said that the fact that UMARCO admitted to being an intermediary between the "MN Caroline" and the Freeport of Monrovia for the payment of all port charges and the performance of all stevedoring work, the law will presume an agency to have existed and will hold such person answerable in a suit brought through him against the principal.

Subsequently, UMARCO filed a motion for judgment stating that under the Liberia law, the agent/principal relationship terminates on the death of the principal. The libellee accentuated the fact that the "MN Caroline" sank on July 6, 1981, thereby terminating the agency relationship alleged to have existed between the "MN Caroline" and UMARCO.

Predicated upon the doctrine of *forum non conveniens*, UMARCO further argued that the action against it cannot be maintained in Liberia on ground that "MN Caroline" was the flagship of the Republic of Cyprus and that its alleged owner is a foreign corporation. Moreover, the said action cannot be maintained in Liberia because the late Emmanuel Walker and all of his beneficiaries for whom damages were being sought are all Ghanaian citizens.

UMARCO also maintained that the "MN Caroline" against whom the suit was filed has sunk, and therefore, the libelant should not have filed a suit in rem against the said vessel instead, the suit should have been instituted in personam against the alleged owner, Square Shipping Trading Company of Bremen, West Germany.

In March A.D. 1987, His Honor J. Henric Pearson, Assigned Circuit Judge, rendered final judgment against UMARCO, stating that UMARCO was indeed the agent and owner of the "MN Caroline". To this ruling, UMARCO announced exceptions, and petitioned the Justice presiding in Chambers for a writ of prohibition. After a hearing, the Chambers Justice denied the petition for prohibition. Petitioner excepted and announced an appeal to this Honourable Court.

When this case was called for hearing, petitioner/appellant called to our attention that they have filed a motion to dismiss for lack of both territorial and subject matter jurisdiction over the case. Upon application, which was granted, both the appeal from the petition of prohibition, the motion and resistance thereto were consolidated and heard.

Even though both briefs contain issues for our determination, yet we will first examine the issues in the motion and resistance thereto before, if need be, we examine the issues of the briefs pertaining to the prohibition. The substance of the motion reads thus:

1. Because movant says that the trial court, that is, the Civil Law Court, Sixth Judicial Circuit, Montserrado County, Republic of Liberia and this Honorable Court lack

jurisdiction over the subject matter out of which these proceedings grew. That is, the res, "MV Caroline", was a flag ship of Cyprus as will more fully appear from a telex message from the Lloyds of London, England, a reputed international shipping registry, hereto annexed and marked as exhibit "A" to form a part of this motion.

2. And also because movant says that the trial court as well as this Honorable Court has no territorial jurisdiction over the case out of which these proceedings grew because the vessel "MV Caroline" sank outside the Liberian territorial waters on July 6, A. D. 1981 as will more fully appear from a copy of the telex of 17.12.87 marked exhibit "A" and the Release executed by Mr. Kweku Walker, father of Emmanuel Walker (co-respondent/appellee) hereto annexed and marked exhibit "B" to form a part of this motion. Movant submits and strongly contends that the libelant (co-respondent herein) having acknowledged in his release of 17<sup>th</sup> November, 1981, duly notarized in Bremen, West Germany that the "MN Caroline" sank off the coast of Liberia is a vivid admission that this Honourable Court has no jurisdiction over the subject matter and has no territorial jurisdiction over the case.

3. And also because movant says that under the doctrine of *forum non conveniens* this action cannot be maintained in Liberia; in that the MV Caroline was the flagship of the Republic of Cyprus and the alleged owner is a foreign corporation. Further, the late Emmanuel Walker was a citizen of Ghana and the claimants (the father, the alleged widow and alleged child) are all citizens of Ghana. The vessel having sunk on the high seas, the proper forum to maintain this action should have been either in Cyprus, in West Germany, or in Ghana and not in Liberia.

The Resistance says:

1. That the identical issues raised in movant's motion were raised in petitioner's petition for a writ of prohibition, traversed in respondents' returns and ruled upon by the Justice presiding in Chambers. Respondents pray, respectfully, to incorporate its returns to the petition for a writ of prohibition into this resistance and to beg that your Honours will consolidate all the pleadings for argument and determination.

2. As to counts two and three of the motion, respondents pray that same be dismissed and denied, as having been waived, as the ground relied upon for the court to refuse jurisdiction is lack of territorial jurisdiction, which should have been raised in movant's responsive pleading to libelant's complaint.

Since the issues presented above by both parties in the motion as well as the resistance have reference to the issues raised in the briefs, we will now go to the issues in the briefs.

The cardinal issue in appellant's brief is issue 4 and while that of appellee's brief is issue 3; and these relate to the power and authority of a trial judge to render a ruling or judgment after the expiry of the term for which he is assigned to a particular circuit.

A judge has no right to *sua sponte* extend a term of court; but where a trial has already begun, especially a trial by jury, the term is automatically extended until the trial is completed. Judiciary Law, Rev. Code 17:3.11.

Petitioner strongly argued and maintained that no judge has the right to hear a case during one term and render judgment during the succeeding term, regardless of his re-assignment. When a case has not been completed during the term which it is heard, it must be tried anew.

This Court has held on numerous occasions that, the principle of impartiality, disinterestedness and fairness on the part of a judge must always be exhibited; actions of court which disregard the safeguards of the litigants deter the administration of justice.

Even though it was the same judge who presided over the December 1986 Term of the court when this case was heard, he had received a new mandate for the March 1987 Term of the court. The judge therefore erred when he heard the case during the December 1986 Term and rendered ruling during the March 1987 Term.

Section 3.8 of the Judiciary Law, Rev. Code 17, provides, as follows:

"1. Opening dates. Each judicial circuit shall meet four times a year in quarterly sessions. The First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth and Tenth Judicial Circuits of the Circuit Court shall open their quarterly sessions on the second Monday in February, May, August, and November in each year. The quarterly sessions of these circuits shall be entitled the February, May, August and November sessions. The Sixth Judicial Circuit of the Circuit Court shall open its quarterly session on the third Monday in March, June, September and December sessions.

2. Duration. Ten days before the opening of each quarterly session, there shall be a pre-trial chamber session to be held by the circuit judge assigned to sit during the quarterly session, which shall immediately be followed by a trial session beginning with the opening of each quarterly session and continuing for forty-two consecutive days, not including Sundays and legal holidays, unless sooner terminated because all business before the court is disposed of before the expiration of that period. Immediately following the close of the trial session there shall be a ten-day closing chamber session to be held by the judge assigned to sit for the quarterly session and any judge concurrently assigned to the circuit.

Section 3.9 of the Judiciary Law, Rev. Code 17, provides, as follows:

Assignment of judges to circuits.

Each circuit judge, except the judges commissioned as relieving judges, shall preside as resident judge over the circuit court of the circuit for which he was appointed. The Chief Justice of the Supreme Court shall assign, on a rotating system, a circuit judge to each quarterly session of the various circuits and if all business before a circuit court is disposed of before the expiration of a quarterly session, the Chief Justice shall have the power to reassign thereto to sit for the balance of the quarterly session in any other circuit in addition to the circuit judge currently assigned there, if he deems such reassignment will aid the prompt disposition of judicial business.

In the case *Thomas v. Dennis*, 5 LLR 92, 105,106 (1936), this Court said:

". . .When he (the judge) had adjourned the term *sine die* on said 13<sup>th</sup> day of December, 1934, he thereby limited his further authority within said circuit to ten days only, and within which ten days his duties were confined to hearing motions, approving bills of exceptions, and disposing of other secondary matters. . ."

The disposition of the issue of special assignment of a judge in the case, *Union National Bank v Monrovia Construction Company*, 23 LLR 197, 200 (1974), which libelant relies on, does not apply here. In fact, the *Union National Bank* case specifically provides that when a circuit judge's assignment has expired, he lacks jurisdiction to try an action in the assigned circuit unless the assignment is renewed.

By renewal of assignment, it means that the term time is extended beyond the time provided by statute; it does not mean that a new assignment is issued by the Chief Justice for the same circuit judge to preside over the next term of that court, as in the instant case. The Chief Justice's mandate did not cover the ensuing term otherwise he

would not have received a new assignment (mandate) for the next term in which he rendered the judgment now in question. That judgment is therefore void.

This issue having been raised before the Chambers Justice he should have granted the prohibition. Recourse to the consolidation of the motion and the petition show that the petition was filed against the enforcement of the final judgment in the damages suit. Having decided that the judgment is void, we hereby conclude that the case be remanded for trial. And it is hereby so ordered.

*Judgment reversed; case remanded for new trial.*