

HENRY BLAMO, Petitioner, *v.* **HIS HONOUR CHARLES B. ZULU**, Judge, People's Debt Court for Grand Gedeh County, **HENRY B. TOE**, Sheriff of the People's Debt Court, Grand Gedeh County, and **FRANCIS N. TOPOR**, Respondents.

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

Heard: November 1, 1982. Decided: February 3, 1983.

1. Every person called as a witness must be sworn before being allowed to testify.
2. Every witness on the stand during a trial must be discharged by the court and noted on the records, before another witness is sworn and permitted to testify.
3. Prohibition will lie to give relief wherever a subordinate court proceeds in the hearing of a case in a manner which is contrary to known and accepted practice and in violation of proper and ethical procedure.
4. The debt court as established by our statute law, though a court of record, is not a court of general jurisdiction as is the circuit court; its jurisdiction is limited to debt actions only and to no other actions.
5. The procedure in the debt court and the method of enforcement of its judgment is the same as that of the circuit court.
6. A debt is a contractual obligation to repay in the future for consideration received in the present.
7. An action of debt is an action to enforce the payment of a debt, and the complaint must aver a written obligation or promise to pay an amount loaned or due for services rendered or goods sold and delivered upon a promise, and the refusal to pay same, or it must state that the defendant owes the plaintiff money upon account made in the normal course of a business transaction, in which case the plaintiff must annex to his complaint the account made, stating distinctly and intelligibly the articles with which the plaintiff intends to charge the defendant so as to give the defendant due notice of the facts the plaintiff intends to prove.

10. Jurisdiction may be determined both from the title of an action (caption) and from the cause of action as averred in the complaint, provided, of course, that the averments do correspond and have direct bearing or reference to the captioned title of the action. However, where there is a conflict between the title of the action and the averments of the complaint, the averments will be given precedence and thus prevail over the captioned title. In other words, jurisdiction is determined from the averments of the complaint whether or not the title agrees with the averments.

11. Where the court lacks jurisdiction over the subject matter, a judgment thereon is void regardless of the consent of the parties, and prohibition will lie to restrain enforcement of a void judgment where no other remedy is available.

12. Even upon an unverified application for a writ of prohibition, the Supreme Court may in the interest of justice and in exercise of its discretionary powers, direct the court below to correct gross irregularities or errors arising from the attempted enforcement of a void judgment.

13. A court cannot render a valid judgment unless it has jurisdiction over the subject matter of the litigation or cause of action even with full jurisdiction over the parties.

14. It is necessary to the validity of a judgment that the court should have jurisdiction of the question which its judgment assumes to decide, and jurisdiction to render a judgment for the particular remedy or relief which that judgment undertakes to grant.

15. When the action set forth in the complaint of plaintiff is not suited for the form of action chosen, the action should be dismissed.

16. Unless defendant, by his silence or conduct, has acquiesced in the trial of the new and different cause of action on which the judgment proceeded, a plaintiff ordinarily must recover, if at all, on the cause of action, which he has alleged, and a judgment in his favour must be based on the theory or ground of liability on which his pleadings have placed his right to recover. Plaintiff cannot set up one cause of action in his complaint and recover on proof of another and a different cause of action; nor can he recover on some theory not suggested in his declaration or complaint.

From a ruling of the Justice in Chambers denying a petition for a writ of prohibition, the petitioner appealed to the Supreme Court. Upon review of the records, the Supreme Court found that the entire proceedings in the trial court were conducted in a reckless and irregular manner; that the trial judge had departed from rules, practice and procedure which must obtain at all times, and that the debt court lacked jurisdiction over the subject matter of the action. The Supreme Court accordingly

A judge of a court of justice be he of the lowest or the highest court is a living statute sitting on the throne of justice, the last place of hope for man on earth. When a man's rights and liberty are infringed upon, or where those inherent and inalienable rights as guaranteed by the law of the land are assailed by anyone in authority in the discharge of his official duty, it is to this exalted figure (the judge) that he finally looks for redress. Where powerful forces attempt to make might right, and where every avenue has been explored for redress to no avail, the last place of hope is the rule of law--the courtroom.

A judge is the custodian and determiner of the rights of man and is the priest of justice in the adjudication process, by virtue of which he is an integral part of the anchor which holds any stabilized government in balance. Therefore, one who holds the position of a judge and sits on the throne of justice must always be conscious of what he is doing. If he finds himself deficient, he should light his night candles and read extensively, because law is a progressive science. Most of his company and conversations should be with law books; he should always endeavor to be conversant with the rules governing the practice and procedure in our courts, and where he finds himself unable to keep abreast, the most honorable thing to do is for him to give up and resign the post in order to save himself from embarrassment as a result of the deplorable state of affairs he will create by his erroneous and prejudicial rulings and/or judgments. The rights of party litigants cannot, under any circumstances, be compromised at the shortcoming of one who, by his judicial appointment, is required to have at least one third of the knowledge of law to be in the position to determine the rights and wrongs of party-litigants.

This action of debt originates from the People's Debt Court for Grand Gedeh County, the trial of which petitioner contends was the scene of irregularities ever known to our trial system, practice and procedure. These irregularities consequently resulted into the institution of these prohibition proceedings before this Court of last resort to prohibit the enforcement of the judgment emanating therefrom; petitioner contends that the judgment is void for lack of jurisdiction by the court over the cause, in that, the averments of the complaint suggest an action of damages instead of action of debt as instituted.

In his complaint to the debt court, co-respondent Francis N. Topor substantially alleged that he was

"5. That Defendant Henry Blamo on June 13, 1980, carried plaintiff's complaint to the Commanding General, AFL, stating that plaintiff was in possession of documents evidencing the opinion of Supreme Court of Liberia awarding defendant judgment in the sum of twenty-five thousand dollars and that plaintiff should surrender said documents to the Commanding General, knowing fully well that there was no such opinion. Plaintiff was then arrested by the Deputy Commanding General, Larry Borteh, including all plaintiffs' belongings in the car, namely: one (1) rain coat valuing \$250.00, one black pair of shoes at \$50.00, one set of cross pen valuing \$63.00, and one umbrella at \$45.00. See exhibit "A" hereto attached to form part of this complaint.

6. That the Deputy Commanding General, Col. Larry Borteh, refused to deliver up plaintiff's car to him. The said Deputy Commanding General used and spoiled the car costing \$6,000.00 as will more fully appear from the copy of the bill of sale hereto annexed to form part hereof.

7. That the total expenses incurred from the prosecution of the above case against the Cavalla Timber Company in Zwedru, Tchien, Grand Gedeh County, Republic of Liberia, and in the Supreme Court and the Supreme Tribunal in Monrovia amount to as follows:

Air travel four trips @ \$45.00 per trip, \$	180.00
" " " " 65.00 " "	260.00
Boarding and maintenance from	
September to October 1979,	4,200.00
Supreme Court expenses, 1980,	500.00
Supreme Tribunal expenses, 1981,	<u>514.00</u>
Total expenses,	<u>\$5,780 .00</u>

The defendant, petitioner herein, filed an answer simultaneously with a motion to vacate the writ of attachment, contending that the averments of the complaint and the relief sought are suited for an action of damages and not for an action of debt.

Monrovia, that is, the Carlor, Gordon, Hne and Teewia Law Offices, counsel of record for petitioner, who at the time had not arrived from Monrovia. Counsellor Bailey further indicated that he had only received the letter from his said colleagues without the file of the case. Under the circumstances, he made application to the court for the continuance of the case until the arrival of the petitioner from Monrovia, and for time to enable him to obtain the case file from Monrovia, since he was not a resident of Zwedru, but of Monrovia. Counsel for Co-respondent Topor resisted the application for postponement and argued that the absence of the petitioner constituted abandonment of his defense, and the court should, therefore, invoke Rule 7 of the Circuit Court Rules and allow co-respondent herein to prove his side of the case.

Despite the fact that the legal issues raised in the pleadings, as well as the motion to vacate the writ of attachment, had not been disposed of, and although Counsellor Bailey had accordingly appeared and announced representation for the petitioner herein, the learned judge of the debt court entered ruling denying the application for continuance, sustaining the resistance thereto, invoking Rule 7 of the Circuit Court Rules, and declaring the petitioner as having abandoned his defense. The co-respondent judge thereupon permitted Co-respondent Topor to take the stand and state his side of the case.

Rule 7 of the Circuit Court Rules Revised, as invoked by the co-respondent judge and relied upon in his ruling, is only applicable after the law issues in a civil action have been disposed of and where either party has failed to appear and there is no motion for continuance filed. In this case, however, the legal issues as raised in the pleadings together with the motion to vacate the writ of attachment had not been disposed of when the co-respondent judge denied petitioner's application for continuance, rejected his counsel, and ruled that petitioner had abandoned his defense and ordered the Co-respondent Topor to take the stand and prove his side of the case. Rule 7 of the Circuit Court Rules Revised reads as follows:

"The issues of law having been disposed of in civil cases, the clerk shall call trial docket of these cases in order. Either of the parties not being ready for trial, shall file a motion for continuance, setting forth therein the legal reason why the case might not be heard at the particular term of court; the granting or denying of which shall be done by the court in keeping with law, and in its discretion. A failure to file a motion for continuance or to appear for trial after return by the sheriff of a written assignment

announced representation for him, and permitted Co-respondent Topor to take the stand and state his side of the case. Upon taking the stand, Co-respondent Topor moved the court for dismissal of defendant's answer for being allegedly filed out of statutory time. The court granted the Co-respondent Topor's motion and allowed him to take the stand without even being placed under oath, in violation of the law controlling. (See minutes of court, November 17, 1981).

In keeping with statute, every person called as a witness shall swear or affirm that he will testify truthfully before being allowed to give evidence in any action. Civil Procedure Law, Rev. Code, 1:21.6. The records from the trial court also do not show that Witness Francis Topor was discharged from the witness stand before Witness A. T. Nah, upon application, was qualified to take the stand for the Co-respondent.

Witness A. T. Nah took the stand and, on the direct examination, identified a receipt for \$4,200.00 said to have been issued by him for financial assistance rendered Co-respondent Topor during the progress of the debt case filed against the Cavalla Timber Company on behalf of the petitioner. The said witness also testified and identified a bill of sale for a Mazda car, which Co-respondent Topor alleged in his complaint to have been impounded by Deputy Commanding General Col. Larry Borteh at the instance of the petitioner. The two instruments, having been previously identified by Witness A. T. Nah and marked by court, were admitted into evidence for Co-respondent Francis Topor. Here again the trial records do not show that Witness A. T. Nah was discharged from the stand and Co-respondent Topor rested evidence when the case was suspended until the next day, November 18, 1981, at the hour of ten o'clock in the morning for final judgment

Accordingly, on November 18, 1981, the court entered final judgment adjudging petitioner liable to pay to Co-respondent Topor the amount of \$12,088.00, representing alleged debt the petitioner owed him plus interest and costs, aggregating \$13,265.04, for which a bill of costs was issued for payment. It was during the process of executing the bill of costs, which the records do not show was taxed by the parties, that petitioner fled to the Chambers of this Court by a 13-count petition for a writ of prohibition to enjoin and prohibit the enforcement of the judgment, alleging principally that the trial court was without jurisdiction over the cause of action to have rendered such a judgment, and that the co-respondent judge proceeded contrary to rules, practice and procedure which ought to obtain

the trial court to resume jurisdiction and enforce its judgment. Petitioner excepted to the said ruling and appealed to the Full Bench for final review.

The main issues raised by the parties, and which we deem necessary to consider in the interest of justice and out of fairness to both parties, are:

1. Whether or not the debt court indeed had jurisdiction and could render a valid judgment in the action of debt by attachment, considering the averments of plaintiff's complaint, which suggest an action of damages?
2. Whether or not the co-respondent judge proceeded contrary to rules, practice and procedure which ought to be observed at all times?

We shall now proceed to discuss the said issues in the reverse order.

In the case *Montgomery v. Findley* and Haddard, [1961] LRSC 27; 14 LLR 463 (1961), this Court held that prohibition will lie to give relief whenever a subordinate court proceeds in the hearing of a case in manner which is contrary to known and accepted practice and in violation of proper and ethical procedure. This Court also held in *Dweb v. Findley et al.* [1964] LRSC 23; , 15 LLR 638 (1964), that although prohibition is usually used as a remedy where a tribunal has unwarrantedly assumed or exceeded its jurisdiction, it will also lie where a tribunal has proceeded by rules contrary to, or different from those which regularly obtain in the disposition of such cases.

Under our practice and procedure, when a case is called either for trial or disposition of law issues, representation of party litigants is made on the minutes of court; and according to statute, a party, other than an infant or incompetent person, may prosecute or defend a civil action in person or by attorney, or both, except that a corporation or voluntary association shall appear by attorney, and a party may be represented in a court of a stipendiary magistrate or justice of the peace by a husband, wife, father, mother, brother, sister, son, daughter, or guardian. Civil Procedure Law, Rev. Code 1: 1.8.

being disposed of, the co-respondent judge declared the petitioner as having abandoned his defense despite the fact that counsel for petitioner was physically present in court and had announced representation for petitioner. This conduct on the part of the co-respondent judge was tantamount to proceeding contrary to law, practice and procedure which must obtain at all times. Furthermore, in keeping with the statute regulating our trial procedure, any person called to testify must be placed under oath in order to speak the truth and nothing else but the truth. But strangely, however, the co-respondent judge permitted Co-respondent Topor to take the stand and testify on his own behalf without being placed under oath. Yet, in the midst of all these irregularities, the co-respondent judge on the 18th day of November, 1981, proceeded to render final judgment. In view of the reckless and irregular manner in which the trial was conducted, and because of the departure by the co-respondent judge from the rules, practice and procedure, which must obtain at all times, it is our holding that prohibition will lie. Where a subordinate court, as in this case, proceeds in a manner which is quite contrary to known and accepted practice and in violation of proper and ethical procedure, prohibition will lie.

The other issue raised by the petitioner in his petition and which was strongly argued before us is, the question of jurisdiction of the debt court over the subject matter. Petitioner's counsel argued that although the complaint is entitled "action of debt", yet, its averments are not suited to the form of debt action; instead, the said averments are suited for an action of damages, over which the debt court cannot exercise jurisdiction. The question that has sprung from this argument is, how is jurisdiction of the subject matter determined? Is it from the title of the case or from the cause of action as averred in the complaint? Let us first see what is the jurisdiction of the debt court as given to it by law.

The debt court as established by our statute law, though a court of record, is not a court of general jurisdiction as is the circuit court; its jurisdiction is limited to debt actions only and to no other actions. According to the New Judiciary Law, Rev. Code 17:4.2, the debt court shall have exclusive original jurisdiction of all civil actions to obtain payment of a debt in which the amount is \$500.01 or more. It shall not exercise original jurisdiction where the amount is less than \$500.01. The procedure in the debt and the method of enforcement of its judgments shall be the same as that of the circuit court in civil actions.

this definition, in our opinion, a complaint in an action of debt whether it is based upon money borrowed by the defendant from the plaintiff, on a promissory note, on an account, or for goods sold and delivered, must aver: (1) a written obligation or promise to pay an amount loaned or due for services rendered or goods sold and delivered upon a promise to pay, and (2) the refusal to pay the same; or it must state that the defendant owes the plaintiff money upon account made in the normal course of business transaction, in which case the plaintiff must annex to his complaint the account made, stating distinctly and intelligibly the articles with which the plaintiff intends to charge the defendant so as to give the defendant due notice of the facts the plaintiff intends to prove. Our opinion in this respect is supported by the statutory forms of complaints as set forth in Forms Nos. 1, 2, 3 and 4. Civil Procedure Law, Rev. Code, Forms Nos. 1, 2, 3, and 4, pp. 287-288.

Co-respondent Francis Topor's complaint in the debt action averred the loss of his shoes, rain coat, cross pen, umbrella and the value of his Mazda car allegedly impounded by Deputy Commanding General, Col. Larry Borteh, by reason of a complaint the petitioner, his client, made against him to the Commanding General. The said complaint also listed plane fare, boarding and subsistence allowance, as well as what Co-respondent Topor termed as "Supreme Court and Supreme Tribunal expenses," aggregating \$12,000.00, for the recovery of which account he sued out the action of debt. This Court notes that Co-respondent Topor does not make any mention in his said complaint of the twenty-five percent legal fee for services he allegedly rendered in the aforesaid case involving the Cavalla Timber Company, nor did he annex any evidence of petitioner's obligation or promise to pay the said amount. Petitioner thereupon attacked the jurisdiction of the court over the subject matter of the debt action, contending that the averments of the complaint are better suited for action of damages instead of debt over which the trial court can only exercise jurisdiction.

In order to determine whether jurisdiction of the subject matter is determined from the title and/or caption of a case, or from the cause of action as averred in the complaint, let us see what really is the "subject matter" of an action over which the court has jurisdiction in order to render a valid judgment.

"Subject matter" of an action is defined by Black's Law Dictionary 1594 (4th.ed) as "the subject", or matter presented for consideration; the thing in dispute, the right which one party claims as against the other. The presentation of the matter for consideration may be done by the averments of the

subject matter that jurisdiction is finally determined. Further, jurisdiction may be determined both from the title of an action (caption) and from the cause of action as averred in the complaint, provided, of course, that the averments do correspond and have direct bearing or reference to the captioned title of the action. However, where there is a conflict between the title of the action and the averments of the complaint, the averments will be given precedence and thus prevail over the captioned title. In other words, jurisdiction is determined from the averments of the complaint whether or not the title agrees with the averments. But generally, both the caption and the averments of an action are supposed to be in harmony. 20 AM JUR. 2d., *Courts*, § 105; 49 C.J.S., *Judgments*, §19.232

In *Tompo et al. v. Republic*, 13 LLR 207 (1858), it is held by this Court that where the court lacks jurisdiction of the subject matter, a judgment thereon is void regardless of the consent of the parties. Also in *Kanawaty et al. v. King* [1960] LRSC 66; , 14 LLR 241 (1960), this court also held that, prohibition will lie to restrain enforcement of a void judgment where no other remedy is available. Even upon an unverified application for a writ of prohibition, the Supreme Court may, in the interest of justice and in exercise of its discretionary powers, direct the trial court to correct gross irregularities or errors arising from the attempted enforcement of a void judgment. It is therefore our holding that the subject matter of a case is the nature of the cause of action and the relief sought. A court cannot therefore render a valid judgment unless it has jurisdiction over the subject matter of the litigation or cause of action even with full jurisdiction over the parties. A judgment is thus wholly void in the event the subject matter is withheld from the jurisdiction of a particular court. It is therefore necessary to the validity of a judgment that the court should have jurisdiction over the question which its judgment assumes to decide, and jurisdiction to render a judgment for the particular remedy or relief which that judgment undertakes to grant. 49 C.J.S, *Judgments*, §19 (a) and (d),.

A court has the power and duty to examine and determine whether it has jurisdiction of a subject matter presented to it, and the question shall be considered by the court before it looks at other matter involved in the case; this, the court may and must, on its own motion do, without waiting for the question of its jurisdiction to be raised by any of the parties involved in the proceeding (for authority, see 20 AM JUR. 2d, *Courts*, § 92.

In the instant case, Co-respondent Topor's complaint is entitled: "action of debt" and the averments

no jurisdiction, can the probate court correctly assume and exercise jurisdiction over such case, because the title and/or caption is, “interference with intestate estate”? Our answer is no. The probate court will definitely refuse jurisdiction. In *Jantzen v. Coleman*, [1915] LRSC 11; 2 LLR 208 (1915), this Court held that when the action set forth in the complaint of plaintiff is not suited for the form of action chosen, the action should be dismissed. For another authority on the point, relief to or a recovery by plaintiff must be based on and justified by facts alleged in his pleading. Unless the defendant, by his silence or conduct has acquiesced in the trial of the new and different cause of action on which the judgment proceeded, a plaintiff ordinarily must recover, if at all, on the cause of action which he has alleged, and a judgment in his favour must be based on the theory or ground of liability on which his pleadings have placed his right to recover. Plaintiff cannot set up one cause of action in his complaint and recover on proof of another and a different cause of action; nor can he recover on some theory not suggested in his declaration or complaint. 49 C.J.S., *Judgments*, § 53.

In view of the foregoing and the legal citations, it is our considered opinion that the debt court should resume jurisdiction over the debt action and set aside his said judgment, and proceed to hear the case anew, beginning with the disposition of the legal issues raised in the pleadings. The ruling of the Justice in Chambers is, therefore, hereby reversed and the petition for a writ of prohibition granted with costs against the respondents,

The Clerk of this Court is hereby ordered to send a mandate to the court below, commanding the judge therein presiding to resume jurisdiction and hear the case anew, beginning with the disposition of law issues in the interest of justice. And it is hereby so ordered.

Ruling reversed.