

Aba Boccum of the City of Monrovia, Republic of Liberia
PETITIONER/APPELLEE VERSUS His Honour, **Wondah Sondah**, Associate
Magistrate, Monrovia City Magisterial Court, Monrovia, Republic of Liberia.
RESPONDENT/APELLANT

APPEAL. SUMMARY PROCEEDING

HEARD: May 11, 2005 DECIDED: September 15, 2005

MADAM JUSTICE COLEMAN DELIVERED THE OPINION OF THE
COURT

The records certified to this Court reveal that on March 9, 2004, Counselor Momodu T.B. Jarwondah filed a Petition for Summary Proceeding before His Honor Wynston O Henries, Resident Circuit Judge, Six Judicial Circuit Court, against Associate Magistrate S. Sondah on behalf of his client Aba Boccum, alleging that Aba Boccum is a Lessee of one Mrs. Martha Chibli who resides in the United States of America; that without any court process whatsoever, Magistrate Sondah issued Writs of Possession and Execution against his client Aba Boccum; and that based upon these Writs, Aba Boccum's business place was invaded by court officers who forcibly and wrongfully evicted the Petitioner without due process of law.

Based on the complaint in the Summary Proceedings, a Writ of Summons was issued on March , 2004, commanding Magistrate Sondakito to appear before the Civil Law Court on March 9, 2004 at 1:30 p.m. for a conference. On the same day Counselor Samuel Clark informed the Court that he had been retained to represent the legal interest of Magistrate Sunday and requested postponement of the conference to another date in order to adequately prepare and defend his client. This request was granted.

In response to the Summary Proceedings, the Respondent filed 4-Count Returns. In Count 1, of the Returns, Respondent denied the averments in the complaint that there was no court process whatsoever, but said that Defendant Aba Boccum was summoned, appeared, and confessed judgment in the Summary Proceeding to Recover Possession of Real Property filed against him.

In Count-2 Respondent averred that there was 'another action pending between the same parties, on the same subject matter before Criminal Court "A" hence, the Civil Law Court Judge should refuse jurisdiction over this matter; that the office of

Summary Proceedings is to investigate interlocutory ruling of the magistrate or Justice of the Peace and not Final Judgment, and that only a regular appeal would lie to review such a Final Judgment.

After several assignments for the hearing of the Summary Proceedings *were* postponed, the Petitioner filed a Petition for Mandamus to compel the trial Judge to hear the Summary Proceedings. The Justice in Chambers ordered the trial Judge to conduct the Summary Proceedings, which was finally heard and the judge rendered a ruling on April 16, 2004, acceding to the contention of the Petitioner that it did not have its day in court; and ordered the Magistrate to resume jurisdiction and let the parties have their day in court.

We herewith quote excerpts of the Judge's Ruling as follows: "This Court say that while it might be true this case was venued before the Criminal Court 'A', that Court lacks jurisdiction over civil matters therefore, this Court has the right to resume jurisdiction. How be it, the contention here is that the Petitioner/Defendant says he did not have day in the court below. Based upon that, it is the ruling of this Court that this case is hereby order send back to the court below with instruction that the Magistrate resume jurisdiction and let the parties have their day in court. And this case should take precedent over all causes before the court below"

To this ruling, the Respondent/Appellant excepted and announced an appeal, which was granted by the Trial Court, hence this appeal.

Respondent/Appellant submitted a 3-Count Bill of Exceptions. In count Respondent/appellant alleged that the Judge erred where he reversed the Final Judgment of the Magistrate in view of the fact the Respondent/Appellant had produced records of the proceedings in the Magistrate Court to show that the trial was conducted, Petitioner confessed judgment, and final judgment entered, from which no appeal was taken.

Respondent/Appellant contended in count 2 of the Bill of Exceptions, that the Lower Court also erred in reversing the ruling of the Magisterial Court when two Summary Proceedings in two separate courts, namely, Criminal 'Courts "A" and the Civil Law, were filed by the Petitioner/Respondent, and the Summary Proceedings in Criminal Court "A" was not withdrawn and is still pending, yet the Judge proceeded to resume jurisdiction and render a ruling reversing the Final Judgment of the Magisterial Court.

In count 3 of the Bill of Exceptions, Appellant alleged that the Judge erred when he reversed the ruling of the Magistrate without taking into consideration that the final judgment had been executed, the Appellant put in possession of her property; and leased to another party. That the reversal of the Magistrate's final judgment would render injustice to the appellant.

There is only one issue that is determinative of this appeal:

1. Whether or not the Trial Judge of the Civil Law Court erred in reversing the Magistrate's ruling without determining all the legal and factual issues raised in the pleadings?

Even though we see many irregularities in the manner of service of the Writ of Summons and the trial proceedings in the Magisterial Court, we observe that the Trial judge did not pass on all of the issues raised in the Petition for Summary Proceedings and the Returns, neither were the factual issues tried when the Judge rendered a ruling on the Summary Proceedings and ruled that the Civil Law Court had jurisdiction, and Without taking any evidence to determine the factual issues raised, also ruled that the Petitioner did not have its day in Court, and ordered the Magistrate to resume Jurisdiction and "let the parties have their day in Court"

In the complaint for Summary Proceedings filed, the Complainant/Appellee alleged that "without any court process whatsoever, summons from the City Court, Magistrate Sondah issued in favour of Mrs. Chebli both the Writ of Execution and Writ of Possession upon the strength of which my client's business place was invaded by court officials who forcibly opened his shop and wrongfully evicted him without any due process of law"

The Respondent Magistrate in his Returns raised several legal and factual issues.

We herewith quote verbatim the 3 Counts of the Returns:

"1) Respondent denies averments in the Complaint that there was no court process whatsoever issued in the instant case. The fact is that Mr. Abu Boccum was summoned, appeared and confessed judgment in the Summary Proceedings filed against him by the Plaintiff, Martha Chibli. Attached hereto is a copy of the Court's record"

"2) That there is another action pending between the some parties on the same

subject matter in criminal Court "A". As such, Your Honour must refuse jurisdiction over this matter. Attached hereto is the Clerk's certificate to this effect"

"3) That the office of a Summary Proceeding is to investigate interlocutory rulings of a Magistrate or Justice of the Peace; not a Final Judgment. Thus only a regular appeal will lie to review a Final Judgment of Respondent especially so when there is nothing left to be done.

The legal issues raised by the Respondent in his Returns relate to another Summary Proceeding pending in another court between the same parties and the same subject matter that the office of Summary Proceeding is to investigate interlocutory ruling of a Magistrate or Justice of the Peace and not a Final Judgment where there is nothing left to be done.

Judge Henries in ruling on the Summary Proceedings only ruled on the allegation of the Respondent that another Summary Proceeding was pending in another court. That is Criminal Court 'A'. This is how the Judge ruled on that issue: "What [while] it might be true this case was venued before the Criminal Court 'A', that Court lacks the jurisdiction over civil matter therefore this Court has the right to resume jurisdiction"

Attached to the Returns of the Respondent, was a Clerk's Certificate from Criminal Court 'A' indicating that a Summary Proceedings between the same parties and the same subject matter was still pending before Criminal Court "A"; and had not been Withdrawn.

The Judge having acknowledged that another Summary Proceedings between the same parties and on the same subject matter was pending in Criminal Court "A" decided to assume jurisdiction because the main case out of which the Summary Proceedings grew was a civil matter, and determined that the Criminal Court "A" lacked jurisdiction over civil matters; therefore the Civil Law Court had the right to assume jurisdiction. 1 LCLR Civil Procedure Law Section 11.2(d) page 118 states "At the time of service of his responsive pleading, a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint or counterclaim on any of the following grounds: ..." (d) That there is another action pending between the same parties for the same cause in a court in the Republic of Liberia"

We are of the view that the Judge erred in assuming jurisdiction over a matter that was also pending in another court between the same parties and involving the same

subject matter.

The law quoted supra forbids a party to file two separate actions to be pending between the same parties for the same cause in a court in Liberia. This is a ground for dismissal of the action, and the Judge should have so rule, even if the other party did not request dismissal. The Judge should have reviewed the Clerk's certificate attached to the Returns and dismiss the action, especially when there was no denial of this fact.

In the case *Chang and American International Underwriters (AIU) Verses Mulbah Tokpa* 29 LLR page 22 (1981) the court held that while a judge should rule on all law issues, but if he fails to do so, the case will not be reversed or remanded on that ground, except the Appellate Court determines that the failure of the judge to rule on a law issue(s) had substantially affected the basic or fundamental rights of the party(ies)

In the instant case, the other issues raised in the pleadings relating to the office of Summary Proceedings and that a regular appeal will lie to review a Final Judgment and not Summary Proceedings were not passed upon, even though these issues were squarely raised in the Returns of the Respondent. It is clear to this Court that the failure of the judge to rule on these law issues and to also try the factual issues to determine whether or not the Petitioner/Appellee had his day in court, have adversely affected the substantial rights of the parties which was not a harmless error. Therefore, this case must be remanded so that the judge will pass on those law issues raised in the pleadings and not passed upon; conduct a hearing if necessary, so as not to prejudice the rights of any party. And we so hold.

However, because we have earlier stated that from the review of the records it appears that there were multiplicity of irregularities which occurred in the manner the trial was conducted and the Summary Proceedings heard and other irregularities, in the interest of justice, it is the holding of this Court that the ruling of the Judge on the Summary Proceedings be and same is hereby reversed with instruction that the lower court resume jurisdiction and dispose of all the legal and factual issues raised in the pleadings in keeping with law.

Wherefore and in view of the foregoing, we are of the considered opinion that the ruling of the Civil law Court Judge in the Summary Proceedings be and same is hereby reversed. The clerk of this Court is hereby ordered to send a mandate to the Civil law Court informing the judge presiding therein to give effect to this Opinion.

Costs to abide final determination. AND IT IS HEREBY SO ORDERED.