

**Messrs Tama Ghandour, Gabriel Nimely, and Thompson Jaba** all of the City of Monrovia, Liberia PETITIONERS/APPELLANTS VERSUS The Solicitor General of the Republic of Liberia County Attorney for Montserrado, and all Prosecuting Attorneys of Liberia, all of the City of Monrovia Liberia RESPONDENTS/APPELLEES

PETITION FOR THE WRIT OF PROHIBITION. PETITION DENIED

HEARD: November 17, 2005 DECIDED: January 5, 2006

MADAM JUSTICE COLEMAN DELIVERED THE OPINION OF THE COURT

This matter is on appeal growing out of a Petition for the Writ of Prohibition filed against the Solicitor General of the Republic of Liberia, Cllr. Theophilus C. Gould, Respondent herein, by Messrs Tama Ghandour, Gabriel Nimely and Thompson Jaba, Defendants below, Petitioners / Appellants herein.

The records before us show that on the 21st day of September A.D. 2004, the Petitioners/Appellants in these proceedings filed a five (5) Count Petition before the Justice in Chambers, His Honour John L. Greaves, for the Writ of Prohibition against the Solicitor General, Cllr. Theophilus C. Gould for what Petitioners considered as a gross abuse and improper use of Executive Power by the Solicitor General of the Republic of Liberia.

In the Petition, Petitioners alleged that they are party defendants in an Action of Forgery/Counterfeiting brought by the Republic of Liberia pending before his Honour Logan Broderick, Assigned Circuit Judge Criminal Court "C", Temple of Justice, that grew out of an indictment from the grand jury for Montserrado County which resulted to the arrest of the Petitioners/Appellants, but they were later released upon the posting of a valid band consistent with law.

The Petitioners also averred and contended that they were wrongfully, illegally and maliciously charged and indicted by the Republic of Liberia upon misrepresentation made to the said Republic by Respondent Gould regarding their alleged commission of the crime of forgery and counterfeiting.

The Chambers Justice ordered the issuance of the Alternative Writ of Prohibition, and Respondents filed their Returns along with a Motion to Dismiss.

In the Motion to Dismiss, Respondents contend that Petitioners' Petition was not verified in keeping with law; that is, instead of the Petition being verified by the Petitioners as required by law, it was verified by their legal counsel.

In the Returns, Respondents contend that following the dismissal of a first indictment against Co-Petitioner Tama Ghandour et al, the Respondents obtained a second indictment,

and prayed for the issuance of a Writ of Arrest from Criminal Court "C" presided over by Judge Broderick, based on the second indictment. The Writ was issued and later served on the Defendants/Petitioners herein.

Respondents say that Petitioners did not identify any arbitrary act, neither did they point out the commission of any illegal act of the Respondents for which Prohibition should lie. The Respondents prayed that the Petition for a Writ of Prohibition be denied and dismissed.

At the call of the case for hearing, Counsel for Respondents moved the Court for the consolidation of the issues raised in the Petition, Returns, and the Motion to Dismiss. This request was granted and hearing was conducted, with arguments pro et con heard.

The Chambers Justice ruled that the Petitioners should have cured the defects pointed out by Respondent in the Motion to Dismiss, by withdrawing and refilling an amended Petition; that where the pleading is not properly verified or certified, it may be stricken and the entire action maybe dismissed. The Chambers Justice also ruled that the 'Solicitor General and the County Attorney have statutory responsibilities to prosecute criminals and their actions in the instant case were in consonance with the law controlling when they obtained a second indictment after the first indictment was dismissed. The Chambers Justice concluded his ruling by denying the granting of the Peremptory Writ, quashed the Alternative Writ and dismissed the entire Petition. From this ruling, of the Chambers Justice, the Petitioners/Appellants excepted and announced appeal to the Full Bench of the Supreme Court.

The single issue determinative of this appeal is:

(1) Whether or not a Petition for a Writ of Prohibition that is not verified or signed by the Petitioners themselves should be dismissed?

Before discussing this lone issue, this Court would like to briefly discuss the issue of Defendants being indicted for the second time following the dismissal of the first indictment, which was also passed upon by the Chambers Justice.

This Court held in the case: James Williams Vs. The Republic of Liberia 14 LLR page 452 that "The quashing of an indictment is not equivalent to an acquittal and the same Defendant may be re-indicted and retired for the offense charged in the quashing indictment"

The effect of the dismissal of an indictment as found in 1 LCLR Criminal Procedure Section 18.3 provides: "Dismissal of an indictment or complaint under section 18.1 or 18.2 at any time before the jury is impaneled and sworn or, if the case is to be tried by the court, before the court has begun to hear evidence, shall not constitute a bar under the provisions of section 3.1 to a subsequent prosecution"

This provision of the statute quoted above was upheld in the case: Republic of Liberia Petitioner Vs. His Honour Harper S. Bailey, et. al., Respondents. 31 LLR, page 443 Text at 444, in which this Court held that: "The dismissal of an indictment does not go to the merit of the case, the dismissal of an indictment is not a bar to further prosecution if an indictment is dismissed before a jury is selected, sworn and empaneled or where a case is triable by a judge without a jury, before the court begins to hear evidence"

This Court also held in the case: Victor Logan, Appellant Vs. Republic of Liberia, 33 LLR, 434 Text at 436437, "that under certain circumstances, one can be re-indicted for the same offense after a dismissal of the first prosecution, and in such situations, a Motion to quash the indictment can not be sustained", further, "the quashing of an indictment is not equivalent to an acquittal and the same Defendant can be re-indicted and re-tried for the offense charged in the quashed indictment.

We are therefore in full agreement with the Chambers Justice's ruling based on the laws cited and relied on, that the dismissal of a first indictment is not a bar to further prosecution.

We will now dispose of the single issue that we have determined is decisive of this matter: which is, Whether or not a Petition for a Writ of Prohibition that is not verified or signed by the Petitioners themselves should be dismissed?

In the Motion to Dismiss the Petition the Respondent requested the Court to dismiss the Petition basically because the Petition was not verified consistent with law, that is, instead of the Petition being verified by the Petitioners, the Affidavit was signed by their legal counsel.

In argument before the Court, Counsel for Petitioners argued that improper verification is not one of the ground stated in Section 11.2 of 1 LCLR for dismissal of an action, and that it is within the preview and discretion of the Judge whether to maintain the pleading or have it stricken.

Our law on verification provides generally that pleadings shall be made by the party serving the pleadings or by the attorney of such party, however, in the case of Injunction and in a Prohibition proceedings, in every such case pleadings shall be verified by the party himself. 1 LCLR Civil Procedure Law Section 9.4 (b) page 107..

Paragraph 5 of the same provision cited above states clearly under the heading

"Effect of improper verification or Certification. If a pleading is not properly verified or certified, or if it is verified or certified with intent to defeat the purpose of this section, it may be stricken, and the action may proceed as though the pleading had not been served." This means that if the pleading is a responsive pleading it will simply be stricken and the action may proceed as if that pleading was never served.

In the instant case, where the pleading is the initial complaint, when stricken as required by law, then there is nothing left before the court to determine.

To verify is to establish the truthfulness of the statement, or to confirm or substantiate that some thing already done in writing is true. The major question is who is to verify. The party himself or his attorney or agent? Verification by attorney or agent of a party . is generally authorized by statute. VERIFICATION ATTORNEY OR AGENT 41 AM JUR 282 Our statute clearly answers the question on verification by providing that an attorney may verify a pleading but in a Prohibition and in an Injunction proceedings the pleadings shall be authenticated by the party himself.

Since our statute specifically provides that Injunction and Prohibition pleadings shall be verified by the party himself, the case at bar, being a Prohibition proceeding it was mandatory that statements contained in the affidavit should have been signed by the party himself or one of the parties, if many.

This Supreme Court has held that " Where a petition for a Writ of Prohibition is not verified by the party himself, the petition will not be entertained" the Monrovia City Corporation, represented by its Managing Coordinator, Daniel Johnson/PETITIONER Vs. His Honour Samuel Kpana, Judge, National Labour Court, and Horris Powo/RESPONDENT, 37 LLR page 824

This Court has upheld the statutory provision requiring that " The verification of a complaint in an action to secure an injunction or in Prohibition Proceedings shall in every case be verified by the party himself and not by counsel. Nyan Doloand Joseph Freeman/Petitioners Vs. His Honour E. S. Koroma, Assigned Circuit Judge presiding over the People's Civil Law Court, and Anthony M. Hatem/Respondents. 30 LLR page 816 (1982), Kaduan Vs. His Honour Hall W. Badio, Associate Magistrate William Sattro 30 LLR page 301 text at 304 (1982)

From a careful inspection of the Petition, it is clear that the affidavit attached to the Petition was verified by the Counsel of the Petitioners and not by the Petitioners themselves or one of them in clear violation to the mandatory requirement of the: statute and case law pertaining to verification of a Petition for Prohibition. We therefore have no alternative but to uphold the ruling of the Justice in Chambers and dismiss the Petition for the Writ of Prohibition; and we hereby so do.

Wherefore, and in view of all the controlling laws cited herein, it is our considered opinion that the Petition for the Writ of Prohibition be hereby denied, the Alternative Writ should be and same is hereby quashed, the Peremptory Writ of Prohibition is denied and Judgment of Chambers Justice is hereby affirmed. The Clerk of this Court is hereby ordered to send a mandate to the court below, commanding the judge presiding therein to resume jurisdiction

and enforce this judgment. Costs ruled against Appellants. AND IT IS HEREBY SO ORDERED