Heirs of the late Mozart J. Bernard, **Heirs of the late Emma G. Bernard**, **heirs of the late Joseph J. Chesson** and the **heirs of the late Jeanette Gibson** of Liberia and the United States of America APPELLANTS VERSUS **Youssef Kashouh**, a Lebanese Businessman of Monrovia. Liberia, **St. Joseph Construction Company** of Monrovia, And **Azzam Shaity** a Liberian Businessman of Monrovia, Liberia APPELLEES

APPEAL. APPEAL DENIED

HEARD: OCTOBER 31, 2005 DECIDED: JANUARY 5, 2006

MR. JUSTICE KORKPOR, SR. DELIVERED THE OPINION OF THE COURT

This appeal grows out of a Petition for the Cancellation of a Lease Agreement filed on July 9, 2002, by Petitioners who are heirs of the late Mozart J. Bernard, the late Emma C. Bernard, the late Joseph J. Chesson and the late Jeanette Gibson respectively of Liberia and the United States of America against Mr. Youssef Kashouh, a 'Lebanese businessman of Monrovia, the St. Joseph Construction Company of Monrovia, Liberia and Mr. Azzain Shaity, a Lebanese businessman also of Monrovia, Liberia.

The Respondents filed their Answer denying the allegations set forth in the Petition and pleadings rested.

The Trial Judge ordered arguments in the Motion for the Correction of Court's Order filed by the Respondents, now Appellees, and Disposition of Law Issues and made ruling denying the Motion for the Correction of Court's Order and placing the Appellees on bare denial, to which ruling the Appellees excepted and gave notice that they would take advantage of the law.

On October 23, 2002, the Appellees filed with the Justice in Chambers a Petition for the Writ of Certiorari to review the rulings of the Trial Judge on the Motion for Correction of Court's Orders and the Disposition of Law Issues.

Upon receipt of the Petition for the Writ of Certiorari, the Chambers Justice issued a Stay Order and cited the parties to an informal conference that was eventually held on the 3rd day of January 2003. At the end of the conference, the Chambers Justice is alleged to have orally informed Counsels for both parties that "they would hear from him".

On January 13, 2003, the Chambers Justice instructed the Clerk of the Supreme Court, in his handwriting in the following words:

"Madam Clerk,

We decline to issue the writ but you will mandate the Judge to resume jurisdiction and set aside all the

previous proceedings and redocket the law issues raised by the parties in their pleadings."

On the same day, January 13, 2003, the Clerk of the Supreme, Court in obedience to the Chambers Justice's instruction, wrote to the Trial Judge as follows:

"By directive of His Honour M. Wilkins Wright, Associate Justice presiding in Chambers, you are hereby mandated to resume jurisdiction in the above entitled cause of action, set aside all previous proceedings and rehear the law issues raised by the parties in their pleadings and go to trial of the facts and allow defendants to produce evidence in their own defense. Bare denial is hereby reversed"

Undoubtedly, this is one of those cases wherein the Justice in Chambers exercised his discretion not to grant a remedial writ but then proceeded to order action(s) in the lower court as if he had had a full and formal hearing on the petition for a remedial writ.

The facts of this case are therefore similar and analogous to the facts --in five separate matters decided by this Court during the March Term, A., D. 2005 In re: The Effect of Section 2.2 of the New Judiciary Law and Article 20(1)) Of the 1986 Constitution as They Relate to Appeal After Refusal by the Chambers Justice to Issue a Remedial Writ. In those cases, as in the case before us, the deciding question is whether or not an appeal may be taken from the refusal of the Chambers Justice to order the issuance of alternative Writ?

Other collateral but related issues addressed by this Court in the five cases alluded to herein above and which are also relevant in this opinion are (a) When a Chambers Justice refuses to order the issuance of an alternative writ, can he/she at the same time give order or mandate, other than informing the lower Court to resume jurisdiction and proceed with the case in keeping with law, and (b) can a Justice in Chambers refuse to grant a request for the issuance of alternative writ yet orders the Clerk of the Supreme Court to issue a mandate granting the prayer in the petition of the remedial writ?

Section 16.26 1 LCLR Civil Procedure Law, Page 150 provides that:

"A final decision by a Supreme Court justice in a proceeding in certiorari, mandamus, or prohibition may be appealed to the Supreme Court en banc. The appeal shall be heard and determined immediately in or out of term time."

And Section 16.27 LCLR Civil Procedure Law, Page 150 provides that:

"The following limitations shall apply to the issuance of writs of certiorari, mandamus, prohibition, and error:

a. No such writ shall issue as a matter of right;

b. No such writ shall issue in any case in which it appears that the petition is devoid of legal merit and is

made solely for the purpose of delay;

c. No peremptory writ shall issue before there has been an opportunity for arguments by all interested parties to be heard.

From the provisions of our Civil Procedure Law cited above as well Section 16.22 Daze146 thereof, we see clearly that remedial writs have two phases; the alternative writ which has to be issued before a formal hearing, the issuance, of which has always been discretionary with the Justice in Chambers, and the peremptory writ which is issued after a formal hearing has been had with the parties represented by their counsels. The practice is that only after a ruling is made by Justice in Chambers denying or granting the peremptory writ can an appeal lie therefrom to the Full Bench of the Supreme Court. But where the Justice-in Chambers holds an informal discussion and/or conference with the parties in a petition for remedial writ (like in the case before us) and later decides not to order the issuance of the alternative, no appeal will lie because at that point, no alternative writ has been issued and no ruling has been made.

In the case: Mitchell and Sons Distillery vs. Nelson 22 LLR 67 (1973) text at page 68, Chief Justice James A. A. Pierre speaking for the Court said: "A Justice's discretion to grant or refuse to grant a remedial writ cannot be questioned. Even though his decision in the matter after hearing may be appealed to the Court en. banc", This principle of law was upheld by this Court eight years later in the case: Nazib Saarb et al. vs. Metric Harb et al., 29 LLR 113(1981). In that case, this Court held that "No appeal can be taken from the refusal of a Justice in Chambers to order the issuance of an alternative writ upon presentation of a petition for a remedial writ. These decisional laws are not without statutory support, they are supported by our statute which provides that a remedial writ will not be issued as a matter of *right,* and where it appears that a Petition for a remedial writ is devoid of legal merits and made solely for the purpose of delay the request for the issuance of a remedial writ will not be granted." Reliance: 1 LCLR, Civil Procedure Law, Section 16.27, Page 150.

There is no just reason to change the long standing position of this Court that no appeal can lie from the refusal of a Justice in Chambers to exercise his discretion not to take up a petition for a remedial writ or order the issuance of a remedial writ. We see much wisdom in the opinions of our predecessors that are consistent on this issue. We therefore conclude that for this Bench to take a position otherwise is to open a pandora box thereby allowing countless matters to be brought on petitions for remedial writs, for, in our opinion, even if the Chambers Justice sees no merits in the petitions and refuses to order the issuance of the alternative *writs,* some unscrupulous parties might appeal to the Supreme Court en banc. And since our law *is silent* on the *number* of times a party may file a petition for a remedial writ in a given case, some lawyers may use this loophole as a scheme to stall or delay cases almost indefinitely.

Section 51.2 of the Civil Procedure Law provides that every person against whom final

judgment is rendered shall have the right to appeal from said judgment, except the Supreme Court, while Section 16.26 of the Civil Procedure Law provides that an appeal may only be taken from a final decision by the Supreme Court Justice to the Full Bench in a proceeding in Certiorari, Mandamus or Prohibition.

Also, there is a long line of cases supporting the principle of law that an appeal can only be taken to the Full Bench of the Supreme Court from: a Final Judgment, and a judgment is final when it settles the rights of the parties and there is nothing left to do or pronounce. In re: The Testate Estate of Fineboy Larzalee and In re: The Application of Madam Klubo Larzalee 28 LLR 99 (1979): David Garmonyou Vs. Lamco J.V. Operating Company and The Ministry of Labor, 35 LLR 417 (1988); and Bong Mining Company Vs. Joseph A. Benson, 34 LLR 592 (1988).

All of the authorities cited above, agree that in order for an appeal to lie; there must be a judgment, decree, decision or ruling, which puts an end to the controversy existing between contending parties on the merit of the case. We see that in the case before us, the Chambers Justice did not order issued the alternative writ, thus there was no Returns filed and hearing had thereon. It follows, therefore, that there was no final judgment, decree, decision or ruling made by the Chambers Justice, which puts an end to the controversy between the contending parties. In such a case no appeal from his apparent refusal to order the issuance of the alternative can lie before this Court. On the other hand, either party in this case has the right of appeal: to the Supreme Court after the lower court makes a final decision.

Let us now come to the collateral issues we raised earlier in this opinion. This Court is not unmindful that in the exercise of his discretion to refuse to issue and hear a petition for a remedial writ from which we have held that there is no appeal, a Justice in Chambers may step out of bound and go beyond the mere exercise of discretion. In fact, there are some reported cases in which Justices of this Court have not restricted themselves to the pure exercise of their discretion to refuse to order the issuance of a remedial Writ, but have gone on to take actions bordering the matter, subject of the Petition for remedial writ. The current case before us is a classic example. The question is what happens in such a case. In other words 7What happens, for example, when the Chambers Justice refuses to order the issuan9e of a remedial writ, but orders the Clerk of the Supreme Court to grant the prayer of the petition in the very remedial writ he had refused to issue, as in the case before us?

This Court addressing the same issues involving the refusal of the Chambers Justice to issue a remedial writ in the five consolidated cases mentioned above said .

"In the earlier reported cases in which Chambers Justices of this Court sought to circumvent the established procedures, this Court held that their conducts or actions were wrong.

In the case: Municipal District of Buchanan Vs. Bridgeway Corporation and National Milling Vs. Bridgewav Corporation, 36 LLR 470 (1989), this Court held that a letter from a Chambers Justice to a

Trial Judge, growing out of a remedial process, ordering the Trial Judge to perform certain act is irregular and constitutes violation of the rights of the aggrieved party.

In the case: Mitchell and Sons Vs. Nelson already cited supra, this Court said. "If Justice of the Supreme Court issues any orders which in any manner effect the proceedings in a subordinate Court otherwise than as permitted, his act is a palpable error."

In the case: Gabriel Doe Vs. Lee D. Mitchelle and His Honour Hall W. Badio, Assigned Circuit Court Judge, Sixth Judicial Circuit reported in the Supreme Court Opinions, October Term, A.D. 1988, this Court held that "where a remedial writ is denied by a Chambers Justice, he or she will go no further than allow the Trial Judge to proceed with the case."

WHEREFORE and in view of what we have said, this Court holds that the refusal of a Chambers Justice to order the issuance of a remedial Writ is not appealable to the Full Bench of the Supreme Court; only after granting, the alternative writ, a hearing had and ruling made granting or denying the peremptory writ can appeal lie therefrom to the Full Bench of the Supreme Court. Hence, Certiorari will not lie in this case. The alternative writ sought is therefore' quashed and dismissed and the Peremptory Writ denied.

The Clerk of this Court is hereby ordered to send a mandate to the Court below to resume jurisdiction over this case, disregard the instruction of the Chambers Justice mandating the lower Court to "set aside all previous proceedings and rehear the law issues raised by the parties in their pleadings and go to trial of the facts and allow Respondents to produce evidence in their own defense. The instruction of the Chambers Justice to reverse the lower Court's ruling on bare denial should also be disregarded. The Clerk is instead ordered to mandate the Lower Court to proceed with the matter in keeping with law from the point in the proceeding where it stopped before the intervention by the Chambers Justice: Costs against Appellees. AND IT IS HEREBY SO ORDERED.