

**IN RE: Khaled Ibrahim, Elise Cooper**, Administratrix of the Intestate Estate of the late Roland Cooper and **N. Nancy Cooper** thru her Attorney-In-Fact, Maltida E.Cooper, Administratrix of the Intestate Estate of the late Emmett Cooper, all of the City of Monrovia, Liberia.... PETITIONERS Versus His Honour **Emery S. Paye**, Assigned Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, June Term, A. D. 2005 and **Hejazi**, all of the City of Monrovia, Liberia  
RESPONDENT

PETITION FOR THE WRIT OF PROHIBITION. JUDGMENT CONFIRMED;  
PEREMPTORY WRIT DENIED

Heard: March 29, 2006 Decided: August 18, 2006

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT.

Annis Hejazi and Annis Hejazi Corporation allegedly leased a parcel of land from Roland Cooper, now deceased, in 1987. In the year 2001, the said corporation entered into two lease agreements with Khaled Ibrahim and Ruth Ibrahim for the same premises for a period of three years each.

Recourse to the records shows that in 2004, the two lease agreements expired, but Sub-lessees/Appellants refused to vacate the premises. Appellees therefore instituted an Action of Summary Proceedings to Recover Possession of Real Property against the Sub-lessees/Appellants to which action the Appellants filed Answer and a Motion to Dismiss. But before the Motion to Dismiss was heard, the administratrixes of the estate of Roland Cooper and Emmett Cooper, joint-owner of the said property, filed a Bill in Equity for the cancellation of the Lease Agreement purportedly entered into between Roland Cooper and Annis Hejazi and the Annis Hejazi Corporation in 1987. The said administratrixes then filed an action to Intervene in the Summary Proceedings case.

The Judge of the trial Court entertained arguments pro et con and denied the Motion to Dismiss the Summary Proceedings and also denied the Motion to Intervene filed by the administratrixes of the estate. And also denied their right to appeal from the decision.

The Petitioner/Appellant, Ruth Abraham, noted an exception to the Judge's ruling dismissing her Motion to Dismiss the Summary Proceedings. Consequently, the Co-Petitioners/Co-Appellants Khaled Ibrahim and Ruth Ibrahim, Petitioned the then

Chambers Justice for a Writ of Certiorari to review the Judge's refusal to grant their Motion to Dismiss the Summary Proceedings. The Co-Petitioners, Administratrixes of the Cooper estate, petitioned for a Writ of Mandamus for the trial Judge to grant their right of appeal.

The Chambers Justice consolidated the two Petitions and had a combined conference with the Co-Petitioners in Certiorari and Mandamus. Subsequently, and without any hearing, the Chambers Justice ordered the Clerk of the Supreme Court to inform the Trial Judge that the stay order growing out of the Petition for Certiorari was lifted and that the Judge should resume jurisdiction over the case and proceed in keeping with law. However, the Chambers Justice remained silent on the issue of the Petition for Mandamus. After reading the mandate from the Chambers Justice, the Judge ordered the issuance of a notice of assignment for hearing of the Summary Proceedings out of which the Certiorari grew. But before the hearing date of the Summary Proceedings, the Co-Petitioners/Co-Appellants, Khaled Ibrahim and Ruth Ibrahim, filed a Bill of Information before the Full Bench of the Supreme Court. The administratrixes also filed a Bill of Information before the Full Bench.

Upon receipt of the two sets of Bill of Information, the Chief Justice ordered the Clerk to issue a stay order and cite all parties to a conference in his Chambers, including the Judge. After the conference, the Chief Justice ordered the Petitioners to withdraw their Bill of Information and to file appeals before the Full Bench; he however did not lift the Stay Order. Co-Respondent/Co-Appellee Hejazi filed a Bill of Information before the Full Bench.

While the Bills of Information were pending before the Full Bench, the Chambers Justice, without having a hearing again sent a mandate to the Court below granting the Mandamus and ordering the Judge therein to grant the appeal of the intervenors in order to enable them to file their appeal before the Full Bench. That mandate remained unread in the Judge's file because of the Stay Order pending the disposition of the Bills of Information filed before the Full Bench.

Because of the several remedial proceedings that grew out of this action of Summary Proceedings, bordering along the line of Judicial chaos, the Full Bench of the Supreme Court decided to step in and unravel the various contentions rallying around the pivotal question of law as contained in Section 2.2 of the New Judiciary Law which is: whether or not a Chambers Justice's refusal to issue a citation or Alternative Writ is appealable to the Supreme Court? And whether after the refusal to issue a

citation the Chambers Justice can instruct the trial Judge to do more than resuming jurisdiction and proceeding along the path it has chosen.

The Supreme Court heard arguments from all the parties and handed down an opinion dated June 13, 2005 the full text of which Opinion is quoted below:

ADJUDGED:

"That(a) the refusal of the Chambers Justice to order the issuance of a Citation or Alternative Writ is not appealable to the Full Bench of the Supreme Court. Only after the issuance of a Citation or the Alternative Writ, a hearing held and ruling made granting or denying the Peremptory Writ, appeal lie there from to the Full Bench of the Supreme Court; (b) the portion of Section 2.2 of the New Judiciary Law approved May 10, A.D. 1971, and published June 22, A. D. 1972 which states that: "...including the refusal to issue such Writs..." Is hereby interpreted to mean that after Returns have been filed by the Respondent(s) to a Petition in a remedial writ, a formal hearing has been conducted by the Justice in Chambers and ruling made by said Justice in Chambers, either or both parties may appeal from the said ruling to the Full Bench of the Supreme Court. The reference to "writs", which appeared in the portion of Section 2.2 of the New Judiciary Law now under review is the Peremptory Writs and not the Alternative Writs, since it is only upon the refusal to issue the Peremptory Writ by a Chambers Justice, a party may announce an appeal therefrom to the Full Bench of the Supreme of Court; (c) a Bill of Information shall lie before the Supreme Court en banc to review the conduct or action of Justice in Chambers, who, after refusing to order the issuance of a remedial writ, abuses his discretion by instructing the Trial Court to do more than just resuming jurisdiction and proceeding with the case along the path it has chosen..

Since we have concluded in this Opinion, that the lone issue which we considered from each of the cases is determinative of the five matters, there is no need to have any further hearing in any of the cases. The Clerk of this Court is therefore ordered to send a mandate to the respective Courts from whence four of the cases emanated to resume jurisdiction over their respective cases and give effect to this Opinion. In connection with the fifth case considered in the Opinion: Liberia Institute of Public Accountant Versus the Ministry of Finance et al., which case did not grow out of a matter pending before the lower Court, the Stay Order is hereby lifted. Costs disallowed. AND IT IS HEREBY SO ORDERED."

On the basis of the above quoted Supreme Court decision, the Clerk sent a mandate to the Court below for the presiding Judge therein to resume jurisdiction and give effect to said Opinion of the Supreme Court.

The records show further that on August 17, 2005, the Trial Judge resumed jurisdiction over the two cases, i.e. the Action of Summary Judgment out of which the Certiorari grew, and the Motion to Intervene out of which the Mandamus grew. At the call of the case, Counsels for Petitioners Khaled Ibrahim and Ruth Ibrahim, made a submission requesting that the Judge, before proceeding any further, should first read an earlier mandate, in other words, the mandate from the Chambers Justice ordering the trial Judge to grant the appeal, the basis of the Mandamus. Counsels from both sides argued and subsequently the Judge denied the said submission. As a result, the Appellants excepted to the ruling denying their submission. They thereafter requested for continuance and after arguments, said request for continuance was also denied. Appellants requested the Court to be allowed to spread their resistance to the Motion for Summary Judgment on the record of the Trial Court which request the Court granted.

After hearing arguments pro et con the Judge granted the Motion for Summary Judgment, holding Co-Petitioners Khaled Ibrahim and Ruth Ibrahim liable in the Action of Summary Proceedings to Recover Possession of Real Property. The Judge therefore ordered that Co-Petitioners Khaled Ibrahim and Ruth Ibrahim be evicted from the premises and that Co-Respondents Annis Hejazi and Annis Hejazi Corporation be repossessed. The Court also awarded Co-Respondents past due rent in the amount of \$16,000.00 and damages for wrongful withholding of Appellee's property also in the amount of \$16,000.00. The Co-Petitioners neither excepted to the final judgment nor announced an appeal therefrom. They instead subsequently filed a Petition for the Writ of Prohibition to prohibit the Trial Judge from enforcing the judgment.

The then Chambers Justice His Honor Ishmael P. Campbell before whom the Petition for the Writ of Prohibition was submitted, cited the parties to a conference after which the writ was issued and served on the parties. Respondents filed their Returns to the Writ of Prohibition. Justice Campbell however did not hear the Petition up to his departure from Chambers Jurisdiction. His successor Justice in Chambers, Her Honour Felicia V. Coleman, heard arguments pro et con and subsequently quashed the Alternative Writ and denied the Peremptory Writ of Prohibition. She then ordered the Clerk to send a mandate to the Judge below to resume jurisdiction and enforce the judgment against Co-Petitioners Khaled Ibrahim

and Ruth Ibrahim. Counsels for Co-Petitioners excepted to this ruling and thereafter appealed to the Full Bench of this Honourable Supreme Court.

The Appellants are before this Court in search of justice, which they argued, was denied them by the ruling of the Chambers Justice. Their six Count issues of law and their discussion of each to support the Petition for a Writ of Prohibition are quoted verbatim as follows:

**"ISSUE PRESENTED:**

1. Whether an Intervenor is entitled, as a matter of law, to an Appeal from a Judgment denying the right to intervene?
2. Whether the interpretation of Section 2.2 of New Judiciary Law can be retroactively applied?
3. Whether a Subordinate Judge can refuse to read and execute a Mandate of the Supreme Court?
4. Whether the refusal of the Trial Judge to obey the Supreme Court Mandate rendered null and void subsequent proceeding entertained by him in these proceedings?
5. Whether a Chambers Justice has the authority to review, modify, reverse or rescind an Order of a Predecessor Chambers Justice?
6. Whether or not the refusal of the Trial Judge to read the Mandate of the Supreme Court Chambers Justice deprives him of jurisdiction to proceed any further into the same case, and whether or not the Mandate from the Full Bench dated June 12, 2005 and delved into the merits of the Five (5) cases?

DISCUSSION OF ISSUES:

Turning to the first issue of whether an Appeal from a Judgment denying the right to intervene is a matter of right: Petitioners say yes.

The right of an Appeal from a Judgment, decree decision or Ruling of any Court or administrative Board or agency, the Supreme Court, shall be held inviolable

INTERVENTION AS OF RIGHT

In general upon timely application, any person shall be allowed to intervene in an action...

1) When the representation of the applicant's interacts by existing parties is or may be bound by a Judgment in the action; ....1 LCCR 5.61 page 71-72.

2) Turning to the Second Issue, Petitioners say no...

"No person shall be made subject to any law of punishment which was not in effect at the time of the commission of an offered, nor shall the Legislature enact any bill of attainder or expose Facto Law" Article 21 Constitution of Liberia 1986.

"Because the review held was not one on the merits of any of the cases, but merely with respect to the common procedural issue raised, the members of the Supreme Court decided that the Full Bench would hear the arguments of the Lawyers." See in Re THE EFFECT OF SECTION 2.2 OF THE NEW JUDICIARY LAW.

TURNING TO THE Fourth Issue Petitioners say no. a subordinate Court must fully respect and give deference to mandates of the Supreme Court of Liberia. A Trial Judge has no discretion to select which mandate of the Supreme court he will give credence to see HAGE VS. ST. MICHAEL AGRICULTURAL COMPANY VS. SWOPE AT ALL 38 LLR TEXT AT PAGE; SHAFT VS. MATHS 38 LLR PAGE.

Turning to the Fifth Issue, Petitioners say no. Madam Justice Felicia Coleman possessed no authority to review a reverse the actions of her predecessor. Thus, when the learned Chambers Justice Coleman in the Ruling appealed from stated"...The Trial Judge committed no error when he refused to read the Mandate of Justice Greaves since to do so would undermine and render ineffectual, null and void the Opinion and Mandate of the Supreme Court, which supersedes that of Justice Greaves." She not only misinterpreted the Supreme Court Opinion but also proceeded to reverse he Predecessor. This authority is only rested in the Full Bench. See

SHERMAN ET AL VES REEVES 23 LLR PAGE 227 SYLLIBI 3.

Turning to the Sixth Issue, Petitioners say no and contends that by virtue of the denial of the Subordinate Court Judge of the submission informing him of the existence of a Supreme Court Mandate, all proceedings carried out subsequent were in vacuity and proceeding by Wrong Rules which ought to be observed at all times.

Thus, the entire proceedings were illegal and contrary to established practice and procedure contemptuous on the face.

"WHEREFORE and in view of the forgoing, Petitioners pray Your Honour to quash the Alternative Writ, deny the Peremptory Writ and grant all relief that Your Honour may deem just, legal and equitable."

We chose to quote the issues and their discussion word for word in this opinion not because we consider them to be crafty, clear, or intelligible as is required. It is in fact the lack of those attributes. Our prime aim in quoting the full text of Appellant's issues and discussions is to call the attention of all Counsellors that come before this Bench, that the Supreme Court is not the Secretariat of the Bar; the Supreme Court is not the proofreader or the research center for Lawyers who write citations omitting page numbers or make error that render unintelligible citations of law. See Count 1(b) of appellants' brief under the caption Intervention As of Right, also the cited cases Hage s. St. Michael 38 LLR-on page, no page number of text referred to; likewise the other case Shaft vs. Maths 38 LLR no page number.

But more than the above carelessness shown, it is quite amazing and perhaps a matter of first impression that counsel who has filed a Petition for a Writ of Prohibition and filed a brief listing and arguing issues in support of the Petition, will conclude his brief thus:

Wherefore and in view of the forgoing, Petitioners pray Your Honour to quash the Alternative Writ, deny the Peremptory Writ and grant all relief that Your Honour may deem just, legal and equitable.

The Supreme Court might just do that, but first we must address a few of the issues raised by the parties for future reference.

Writing hurriedly and arriving out of breath in Court to argue from documents that have not been proofread, revised, and again revised, is not the hallmark of a Supreme Court Counsellor. Henceforth, the Supreme Court will not waste time and patience trying to figure out what is meant or where the pages are to be found in the books and cases cited. Henceforth, such carelessness and unprofessionalism will be grounds for discounting the clause or count of the brief, Bill of Exception, or any other proceedings submitted to this Court.

We shall now return to the issues relied on by Counsel in support of their Petition for the Writ of Prohibition. According to the records before this Honourable Court, when the Full Bench sent a mandate lifting the Stay Order, the Trial Judge resumed jurisdiction to proceed from where he left off when the Stay Order, growing out of the Writs of Bill of Information were filed before the Supreme Court. It was no error when the Trial Judge resumed jurisdiction and assigned the case for further proceeding. The contention that he should have read the Chambers Justice mandate first before carrying out the Supreme Court mandate does not constitute proceeding by wrong rule. The Supreme Court has held that "the right of a Chambers Justice to grant or not to grant a Petition for a Remedial Writ cannot be questioned. However, where the Justice in Chambers denies the granting of such writ after conducting a full hearing before all the parties concerned, such decision is appealable to the Full Bench." Naiih Saat, et al vs. Metric Harb and Frank Smith, 29 LLR 113 Sy1.1 (1981). The Supreme Court has said further that "when a Chambers Justice exercises his discretion not to issue a citation or the Alternative Writ, the Chambers Justice should go no further in the instruction to the Trial Judge other than to resume jurisdiction and proceed with the case along the path it has chosen" June 13, 2005 Opinion of the Supreme Court interpreting Section 2.2 of the New Judicial Law.

The Trial Judge, by proceeding to resume jurisdiction in the case, did not proceed by wrong rule. The error in the proceeding was committed when the Chambers Justice ordered the Clerk to send a mandate to the Trial Judge to proceed while a Stay Order from the Supreme Court was still in force, and the same Chambers Justice in the said mandate, ordering the Judge to allow the Intervenors/Appellants to proceed with their appeal without citing the parties and conducting a hearing, thereby affording a party or parties the opportunity to appeal from his decision or ruling. The mandate, therefore, having been erroneously issued, was void ab initio and therefore had no effect. So reading the said mandate before resuming jurisdiction would have had no effect on the outcome of Appellants' case; in other words, reading the Chambers Justice's mandate that was irregularly issued, would have been an exercise in futility. Failure to read it did not prejudice Appellants' case as said mandate would have had no effect. It is our holding, therefore that the Judge did not proceed by wrong rule. The Supreme Court is the final arbiter of all proceedings and when it rules, rightly or wrongly, its decision stands until overturned, or modified by itself. A Chambers Justice's mandate cannot supercede the mandate of the Full Bench.

The Trial Court having proceeded according to law and heard arguments pro et con and rendered a final decision holding the Co-Defendants/Appellants Khaled Ibrahim and Ruth Ibrahim liable in the action of the Summary Proceedings to Recover



Possession of Real Property, and having awarded in Summary Judgment of US\$16,000.00 to the Sublessors/Defendants Annis Hejazi and Annis Hejazi Corporation for past due rent and another US\$16,000.00 as damages for wrongful withholding of property the Judgment rendered was final. At that stage of the trial two events had occurred: 1) the Judge did nothing to change the previous position of the Trial Court with respect to denying the appeal, the Chambers Justice also had denied the Mandamus, because what is not done right is not done at all. Therefore, the issue of the denial of the Judge to allow the appeal was dangling in the air unresolved. 2) The other event that happened was that the same Judge rendered a final decision in the whole matter. One would have thought that at that stage of the trial the Co-Appellants would have taken advantage of the opportunity to appeal their cases: denial of their right to intervene, denial of their right to appeal from said decision, and appeal from the Summary Judgment. The law is settled that the right to an appeal from a final judgment is a matter of right, not a privilege. The statute states that:

"Every person against whom any final judgment is rendered shall have the right to appeal from the judgment of the Court except from that of the Supreme Court the decision of the Supreme Court shall be absolute and final." 1 LCL Rev. Section 51.2-Judgments subject to review.

The judgment in this Summary Proceeding was final, and therefore a fit subject for an appeal. The Chambers Justice having failed to issue the Writ of Mandamus in conformity with law the mandate growing out of said writ was of no legal affect.

The Supreme Court, has held in many cases without success, to impress on the minds of some Consellers, that the Writ of Prohibition is not the cure for all judicial misfortunes or ails. The Writ of Prohibition cannot be used in place of an appeal; for, the Writ of Prohibition has a clearly defined role. It is used to stop a Trial Judge from proceeding when and where it has no jurisdiction or if it has jurisdiction, it can still be stopped when it proceeds by wrong rule. Counsels for Petitioners/Appellants have come by Writ of Prohibition expecting this Court to pass on issues that could have been settled, one way or the other, by an appeal. The Supreme Court held also that, "Prohibition will not lie in substitution for an appeal." Isaac C. Kumeh vs. Gardiner and Klwah-ye 29 LLR 451, Sy1.1 (1982). The Supreme Court has held further in another case, that "the right of a Chambers Justice to grant or not grant a Petition for a Remedial Writ cannot be questioned. However, after conducting a full hearing before all the parties concerned, such decision is appealable to the Full Bench." Najib Saab, et al vs. Metric Harb and Frank Smith, 29 LLR 113, Sy1.1 (1981). In an another

case, the Supreme Court held that "when a Chambers Justice exercises his discretion not to grant a citation of the Alternative Writ, the Chambers Justice should go no further in the instruction to the Trial Judge other than to resume jurisdiction and proceed with the case along the path it has chosen." June 13, 2005 Opinion based on an interpretation of Section 2.2 of the New Judiciary Law.

After a careful perusal of the records submitted to this Court, we find no showing that the Trial Judge proceeded by wrong rule and that the Chambers Justice was in error when she confirmed the said Trial Judge's ruling. The Chambers Justice Her Honour Felicia V. Coleman proceeded in keeping with law.

It is therefore the considered Opinion of this Court that Prohibition will not lie. The proper remedy should have been an appeal which would have settled all the issues that Appellants have herein submitted for our determination in a Petition for a Writ of Prohibition. Judgment is confirmed and the Peremptory Writ is hereby denied. Cost against the Appellants. AND IT IS HEREBY SO ORDERED.