IN RE: Hafez M. Jawhary, APPELLANT Versus **Republic of Liberia** APPELLEE

APPEAL

Heard: July 7, 2005 Decided: August 15, 2005

MR. CHIEF JUSTICE COOPER DELIVERED THE OPINION OF THE COURT

This is an appeal from a judgment of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, in a criminal contempt proceedings.

The records certified and forwarded to this Court reveal that the Appellant called a press conference where tie read a prepared statement in which he strongly criticized the Resident Circuit Court Judge His Honour Wynston O. Henries. The appellant is said to have given wide publicity to that press statement by having it broadcast over Radio Varitas and subsequently televised on Clar T.V., a local television station. The same statement was later published in the Inquirer News Paper. Because the court below considered the allegations contained in the press statement to be coarse, callous, defamatory and a personal attack on the Judge, false, the Appellant was cited in keeping with Section 12.5(2) Hof the New Judiciary Law, in criminal contempt, as provided for by Section 12.5(1)(e) of the New Judiciary Law, to appear in court at an appointed date and time to show cause, if any, why he should not be held in contempt for the aforesaid remarks.

Pursuant to the citation, the appellant made his formal appearance by filing a four-count Answer in which, amongst other things, he challenged the jurisdiction of the court over his person and claimed that all the allegations contained in his press statement are true. A court appointed Amicus Curiae also filed a legal memorandum in the court below. After the denial of a motion for the judge in the court below to recuse himself from the matter, a hearing was had and the Appellant was adjudged -guilty of „ criminal contempt, and sentenced to thirty (30) days imprisonment in keeping with Sec. 12.6 of the New Judiciary Law. It is from this final judgment that the Appellant appealed, which brought this matter before us for review.

Proceeding in order of sequence in the review of this appeal, we must here take into consideration the bill of exceptions, which consists of four counts, since under our practice this constitute the complaint before the Supreme Court against the claimed

irregularities committed by the trial judge during the trial/hearing.

Count one of the bill of exceptions charged the trial judge, pointed out that "... having made pre judgment by 'your extra-judicial statement to the effect that I will not sit down and allow a foreigner to insult this court,' which your Honor admitted to, your Honour should have granted respondent's application for you to recuse yourself." The question then is whether this statement attributed to the judge constitutes a pre judgment of the Respondent, the Appellant herein, for which the said judge was to -rescue himself from the hearing. To begin with, we ask ourselves what constitutes prejudgment in the eyes of the law? To our mind, pre judgment is a determination of the merits of a matter before- the. parties have been given an opportunity to present the law and the facts of the case. The real issue then is, does this statement attributed to the judge constitute a pre-determination of the merits of the matter before the fact? We say no. The statement attributed to the judge is nothing more than a restatement of the law and the authority inherently vested in the judge to protect the dignity and uphold the respect due the court. It is a power vested in the court by law and the very nature of court to "not sit down and allow a foreigner to insult this court". In fact it is based on his perception of the court regarding the press statement of appellant that the citation for the contempt proceedings was ordered issued by the Judge for the Respondents to appear to show cause, if any, why he should not be held in contempt. The burden of proof then was on the Respondent, the Appellant herein, to show that this act was not an insult to the court. The mere fact that the judge may have made the statement attributed to him does not constitute pre judgment for which the judge was to rescue himself. Moreover, the Court in all contempt proceedings, is of necessity both the accuser and the Judge. Thus, the Judge cannot recuse himself on mere allegation that he pre-judged the matter. In this connection, we therefore conclude that the trial judge correctly refused to rescue himself, and consequently count one of the bill of exception is hereby denied and dismissed.

Count two of the Bill of Exceptions is based on Appellant's allegation that the trial court had lost jurisdiction over the case in question prior to the time that Appellant made the press statement; and that in spite of the fact that the court had lost jurisdiction over the subject matter the moment the Judge approved the Bill of Exceptions, the trial judge evaded this issue and arbitrarily proceeded to rule on the contempt case on its merits.

The Court is in complete agreement with the Appellee's assertion that this Count two allegation is completely devoid of any legal basis. We see from the records that the

bill of exceptions in the main case was approved on April 19, 2004, and that the press statement appeared in the Inquirer Newspaper on Monday April 19, 2004, the same day. This means that the press statement was issued to the Newspaper at least on the day before it was printed, i.e. on Sunday, April 18, 2004, or earlier on Saturday, April 17, 2004. Notwithstanding, this fact has no bearing on the contempt proceedings. This Court has held that "a contempt proceeding is distinct and independent in itself and is not a part of the controversy out of which a contempt proceeding arises. It does not necessarily require the pendency of a main action before the court..." Meredien BIAO Bank vs Topar, 38 LLR 174, Text on page 178.(1996) Therefore, whether or not the court had jurisdiction over the main suit in no way extinguished the court's authority vindicate itself from alleged contumacious acts committed. This Court further says that a court may even exercise its contempt power against a person not a party to any suit before the court so long as" act of that party falls within the legal definition of contumacious act. Therefore Count two of the Bill of Exceptions, being without legal basis, is denied and dismissed.

Count three and four raise the issue of the alleged denial of opportunity to the Respondent the Appellant herein, to produce evidence in support of his allegation and, by that, the denial of due process of law.

It must be noted that the defense of the Appellant to the criminal contempt charge is not a denial of the fact that the Appellant did call the press conference at which a prepared press statement was read d later broadcasted on Radio Varitas, televised on Clar T.V., and subsequently published in the Inquirer Newspaper. The main defense of the Appellant was that all of the allegations contained in the --said press statement are true. Counsel for Appellant strenuously argued this point before us law that truth is a valid defense in a criminal contempt case such as the one before us. Sec. 12.5(1)(e), of the New Judiciary Law. The issue then is, since the defense of the Appellant is that the allegations contained in the press statement are true, was he afforded an opportunity to prove the same presentation of evidence? According to the Appellant, no such opportunity was afforded him, but the court appointed Amicus Curiae argued that, to the contrary, the Appellant was afforded the opportunity to file his legal memorandum in the lower court and to prove his contention of the truthfulness, p allegations contained in the press statement.

To do justice to this issue, therefore, the record of these proceedings have been searched in order to establish whether the Appellant was accorded the opportunity to provide proof of his allegations against the court and, by that, whether the requirement of due process of law was met.

A perusal of the Appellant's Answer shows that his contention that the allegation contained-in t press statement is true, is general and without specificity. Further to this, while it may not be a requirement that one charged with criminal contempt must file a legal memorandum in addition to an Answer, in this case, however, the Appellant could have taken advantage of the opportunity afforded him by the court to state specific instances in support of his allegations. This the Appellant failed to do.

It is clear that the trial Judge gave Appellant and his counsels, Counsellors Francis Garlawolo and Joseph Blidi, two experienced Counsels of this Bar, adequate opportunity to present whatever evidence they may have had in Appellant's defense. Although the Appellant was present in court, his counsel did not see fit to have him and his witnesses called to take the stand and testify. Can the Judge be blamed for this? Appellant's conduct of not requesting the Judge for the opportunity to produce evidence to support his defense has to be deemed a waiver. Nevertheless, since this Court stands for justice and fairness, and Appellant has said he has abundant evidence of the truthfulness of the allegations made against the Judge, we are hereby giving the Appellant the benefit of the doubt by letting him have the opportunity to present the evidence he says he has, by remanding this case to the said court so that he can produce same.

Wherefore and in view of the foregoing, this case is remanded to the court below to be heard before His Honour Wynston O. Henries, who is the Resident Judge for Sixth Judicial Circuit and who, incidentally, will be presiding in the September Term of that court. The Clerk of this Court is hereby ordered to send a mandate to the court below as per this directive, commanding the said Judge to resume jurisdiction over the case, with the specific instruction that the Appellant herein be afforded the opportunity to produce evidence in support of his contention. Costs are disallowed. And it is hereby ,so ordered.

COUNSELLOR FRANCIS Y.S. GARLAWULO APPEARED FOR THE APPELLANT COUNSELLOR M. WILKINS WRIGHT APPEARED FOR THE APPELLEE.