

Hafez M. Jawhary of Monrovia, Liberia PLAINTIFF/APPELLANT VERSUS
Mohammed Housseini, also of Monrovia Liberia, DEFENDANT/APPELLEE

APPEAL MOTION TO DISMISS DAMAGES FOR WRONG

HEARD: April 7, 2009 DECIDED: July 24, 2009

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE
COURT

Appellant, Hafez M. Jawhary, plaintiff below, filed an action of damages for wrong in the Civil Law Court, Sixth Judicial Circuit, of Montserrado County against Mohammed Housseini, appellee, on January 7, 2008. In his complaint the appellant alleged that the appellee had filed a Bill of Information before the Supreme Court informing the Court that the appellant had refused and neglected to pay a balance amount owed the appellee from a judgment of debt; thereby, disobeying the mandate of the Supreme Court sent on May 3, 2001. The appellant, Hafez M. Jawhary said This Bill of Information filed by the appellee, caused the Supreme Court to rule and send a mandate to the Debt Court instructing the judge to have the appellant make payment immediately or be arrested and jailed until payment of the full amount due was made. When he failed to pay, he was arrested and put in jail as per the mandate of the Supreme Court. The appellant spent forty-three (43) days in incarceration and has alleged that the mandate of the Court, instigated by the appellee, caused him disgrace, shame, and ridicule in the community. He therefore claims damages against the appellee for such act.

Here is the genesis of the case: The appellee, Housseini, filed an action of debt against the appellant, Jawhary in the Debt Court of Montserrado County to recover a sum US\$109,000.00. The case was heard by a panel of special jurors who brought a unanimous verdict of "guilty" against the appellant. A final Judgment was rendered, adjudging the appellant liable to the appellee. The appellant began payment, but with his counsels' assistance, filed several applications all to avoid payment and to frustrate the appellee. This caused the Supreme Court in one instance to suspend from legal practice one of appellant's Counsel, Counsellor Alexander Zoe for six months and another of his counsels, Counsellor Frederick Cherue to pay a fine of L\$2,500.00.

On August 4, 2005, the appellee filed a bill of information before the Supreme Court, the third bill before the court in the debt matter between the parties. We quote the Bill of Information:

"That, sometimes in 1998 or thereabout, Informant obtained a unanimous jury verdict against the respondent herein in an action of debt, based upon which a final judgment was entered by the Debt Court of Montserrado County; from which respondent excepted and announced appeal to this Honourable Court. Upon hearing of said appeal, the judgment of the Debt Court was affirmed and confirmed and this Court ordered that respondent satisfies said judgment.

Predicated upon the said decision of this Honourable Court, the respondent's motion in the Court below for a deferred payment was granted after the payment of Twenty-five percent of the Bill of Costs; and, when some payments were made thereafter, the respondent refused to further comply with the judgment as previously ordered by this Honourable Court; at which time, respondent was ordered detained under Section 44.73, Sub-paragraph 2 of 1LCLR by the Debt Court of Montserrado County, which led respondent to proceed by Information to this Court thru his Counsel at the time, Counsellor Frederick D. Cherue to seek the release of respondent and respondent was released with a provision that he should continue with the payments to satisfy said judgment, but upon respondent's release, he remained adamant and refused to make any further payment, thus prompting the Debt Court to have him detained again under the same provision of law. Respondent's Counsel again fled to this Honourable Court to seek his release which was obtained, but in ruling on said second Information. This Court ordered said respondent to pay the entire balance judgment in the sum of Fifty Thousand United States Dollar (US\$50,000.00) or be detained under Section 44.73;

Sub-paragraph 2 of 1LCLR, and respondent's Counsel was fined for obstructing the orders of this Honourable Court. See hereto annexed for easy reference the minutes of this Court's Sitting of March 29, A.D. 2001, marked as 'A' to form a material part of this information. Respondent was then detained after he defied the orders of this Court until he paid the sum of Eight Thousand United States Dollars (US\$8, 000.00) and prayed this Court for time to pay the balance Forty-two Thousand United States Dollars (US\$42,000.00). His request was granted by this Court and respondent was released from further detention.

When said case was called on May 3, 2001, during its March Term, this Court again extended the period within which the balance US\$42,000.00 of the judgment should be paid by respondent herein by Forty-five (45) days, effective as of said May 3, 2001; and, when at the expiration of said period, respondent was still defying this Court, he was then ordered remanded to jail until he complies with the orders of this Court. It is at this point that the Executive Branch of Government of the immediately past Government interfered with the Orders of the Judiciary Branch under said Administration. See hereto, attached copy of a communication jointly signed by the Ministers of Finance and Justice at the time, pledging to settle the said balance judgment of US\$42, 000.00 on behalf of respondent herein at his request and minutes of this Court for the Sitting of May 3, 2001, respectively marked "B" and "C". Also, see copy of a letter addressed to the Minister of Finance at the time by the Minister of State and Chief of Staff at the time. The Executive Mansion, requested the said Minister of Finance by directive of the then President of Liberia, to honor the promise made to the Supreme Court of Liberia by the letter jointly signed by the said Minister of Finance and Minister of Justice respectively, which communication is proferted herewith and marked "D" for easy reference by Your Honours.

That, since the said communication of January 2, 2002 written by the said Minister of State for Presidential Affairs, by directive of the then President, six (6) months after the promise made to this Court by the aforementioned Ministers in their communication of July 12, 2001, only Five Thousand United States Dollars (US\$5,000.00) has been paid by the said Ministry of Finance on behalf of respondent; and since the intervention of the Executive Branch of Government upon the request of respondent, H.M Jambafy, as the communication of July 12, 2001, herein marked as "B", clearly shows, said respondent remains answerable to this Honourable Court as a matter of law.

That this Information will lie and should be made to lie because it is crystal clear that the mandate of this Honorable Court has not been fully complied with.

WHEREFORE, and in consideration of all the foregoing, Informant respectfully prays Your Honours to cause the Alternative Writ of Information to be issued and served upon the above named respondent to show any reason(s) he might have as to why he cannot be made to fully satisfy the Mandate of this Honourable Court; and, after hearing, to order the Peremptory Writ granted ordering respondent to satisfy the balance of the judgment under the mandate of this Court in the amount of Thirty-seven Thousand United States Dollars (US\$37,000.00)."

The appellant filed his returns to the bill of information and stated that whilst it is true he was a judgment debtor as an outcome of a debt action filed by the appellee against him and confirmed by the Supreme Court, he believed he had no more obligation under the judgment as the judgment had been honored and settled and the mandate of the Supreme Court complied with; that he had made an irrevocable assignment of money and or funds due him by the Government of Liberia to the Supreme Court to the effect that the government would discharge his indebtedness; that this assignment was accepted by the appellee and this Honorable Court; that the Government had practicalised its promise by making partial payment of US5,870.32 leaving a balance payment of US\$36,129.68; that the letter issued by the government was an unconditional guarantee and the appellee was under the principle of law, duty bound to look up to the government of Liberia/Ministry of Finance as the debtor/obligor or the guarantor and not to appellant; that an assignment is generally considered as a transfer of a right that one has made an effective assignments, and by the execution of such, the right to performance by obligor had extinguished; that under an effective assignment, the assignor does not guarantee that the debtor will

perform, but does warrant that the right assigned exists and is free of defenses. Therefore, the informant has no re-course against the respondent for any delay in the settlement by the debtor. The appellant therefore prayed that the Information be dismissed on the ground that he was not the proper party but the GOL.

The Supreme Court heard the Bill of Information, and ruled in favor of the appellee, granting the appellees' bill of information.

Speaking on behalf of the Court, Justice Felecia Coleman considered the following issues:

1. *Whether or not the letter of July 12, 2001, jointly signed by the Minister of Finance and Justice of the Republic of Liberia exonerated the respondent [appellant] from further responsibility in complying with the order of this Court?*

2. *Whether or not the orders of the Honorable Court as found on page four of the sitting of May 3, 2001, had been complied with? and*

3. *Whether or not Information will lie against the respondent [appellant] under the facts and circumstances of the case?*

The Letter of July 12, 2001 referred to by the appellant as the Republic of Liberia's irrevocable commitment and unconditional promise to pay and settle appellant's debt reads thus:

REPUBLIC OF LIBERIA MINISTRY OF FINANCE MONROVIA, LIBERIA
MF/2-4/ CBA-edm/jnsg/067/=011 July 12, 2001

Her Honour

The Chief Justice of the Supreme Court

Temple of Justice Building Monrovia, Liberia

RE: MOHAMMED HOUSSEINI VERSUS HAFEZ M. JA WHARY

Upon the request of Mr. M Jawhary whom we understand is a Defendant in the above matter, US\$42,000.00 (FORTY-TWO THOUSAND UNITED STATES DOLLARS) PAYMENT HAS BEEN APPROVED BY THE Ministry of Finance to be made to the Marshal of the Supreme Court of Liberia.

Documents, with respect to the above, are in progress. Unfortunately, the payment can not be made now to the Marshal of the Supreme Court due to urgent National Security Payments and payments of salary arrears to Government employees for the July 26, Season. Madam Clerk, we assure you that the payment to the Marshal will be of high priority following the settlement of what is mentioned herein above.

Kind regards,

Sgd. M. Nathaniel Barnes
M Nath aniel Barnes
Minister of Finance

ATTESTED

Hon. Eddington A. Varmah
MINISTER OF JUSTICE"

In disposing of the issue whether or not the letter of July 12, 2001, was an assignment of the debt as the appellant has alleged, the Supreme Court held that said letter was not an assignment, the letter was only an intention of the Government to inform the Court that it did owe the appellant some money and to facilitate his release from prison. The letter was not intended to facilitate settlement of the claim between the parties nor intended to be an assignment or to make the Government of Liberia the debtor/obligor. In an assignment, the Court said, the appellant would be

the assignor and the appellee the assignee; generally the law will not enforce an assignment of this nature which the appellant says exist.

The Court also disagreed with the appellants' argument that the assignment was accepted by the appellee and the Supreme Court; thus, extinguishing the obligation of the appellant. The appellee, the court said, did not consent to release the appellant from his obligation, and appellee's consent can not be inferred from appellee's act of accepting the partial payment of US\$5,000.00 made through the Court.

Regarding the argument that the bill of information would not lie against appellant, the appellant argued that the bill of information will not lie against him since he was not the proper party but the Government of Liberia/Finance; that he appellant had fully complied with the Court's mandate by the alleged assignment, therefore the information should lie against the Government and not the appellant. The appellee on the other hand, argued that the mandate of the Supreme Court had not been complied with. That it was upon the request of the appellant that the Executive Branch of Government intervened. The appellant still remained answerable to the court until the entire amount was paid.

The Supreme Court ruled that it was the appellant who was adjudged liable to pay the appellee; it was he who requested the Ministry of Finance to pay to appellee whatever funds was due him and he was under an obligation to insure that his debt and the mandate was fully satisfied; that after the letter from the Finance Minister, appellant did not do anything to ensure that that the Ministry of finance pay the funds as promised since 2001. The Court said in its view it was the appellant and not the Ministry of Finance that interfered with the execution and compliance with the mandate of the Supreme Court and therefore information would lie against the appellant Jawhary.

The Supreme Court then sent a mandate to the Debt Court as follows: *"The Clerk of this Court is hereby ordered to send this very last mandate to the Court below ordering the Judge Presiding to resume jurisdiction and immediately collect the full sum of US\$37, 000.00 with 6% (per cent) per annum from the Respondent, and upon his failure to immediately settle his debt to Informant in keeping with law, the Respondent is to be committed to common jail until the full sum is paid. Costs are ruled against the Respondent. AND IT IS HEREBY SO ORDER."*

When this mandate was read, and the appellant failed to pay the debt as per the Supreme Court's mandate to the Debt Court, appellant was incarcerated where he remained for 48 days until the debt was paid and fully satisfied.

Appellant feeling aggrieved by this court's action said to be instigated by the appellee, appellant filed on January 7, 2008, an action of damages. His complaint reads as follows:

1. *"Plaintiff says that he was Party Defendant in an Action of Debt instituted by the Defendant in the Debt Court for Montserrado County in which Plaintiff was adjudged liable to the Defendant in the total amount of US\$130,925.00, including cost of court."*

2. *"Plaintiff says that he paid to the Defendant, then Plaintiff in the Debt Action, the amount of US\$88,925.00, leaving a balance of US\$42, 000.00 to fully satisfy the judgment of the Debt Court."*

3. *"Plaintiff says that the case progressed to the Supreme Court via a Bill of Information and the Supreme Court ruled that the Plaintiff, then Defendant in the Debt Court, pay to the Marshall of the Court, via the Bill of Cost, the amount of US\$42,000.00, the balance remaining to satisfy the judgment of the Debt Court."*

4. *"Plaintiffs says that in an effort to fully satisfy the judgment of the Debt Court in favor of Defendant, he wrote the then Minister of Finance authorizing the Ministry of Finance to assign to*

the Marshall of the Supreme Court the amount of US\$42,000.00 from the amount of US\$75,000.00 due Plaintiff to cover the full judgment of the Supreme. Attached and marked exhibit P/1 in bulk are Plaintiff's letter to then Minister of Finance, requesting that the Ministry of Finance assign the payment of US\$42,000.00 to the Marshall of the Supreme Court and the Notice of Assignment of income."

5. "Plaintiff complains and says that the then Minister of Finance, agreeing to the assignment of payment, wrote to the then Chief Justice of the Supreme Court, Gloria Musu Scott, informing the Chief Justice that the Ministry of Finance has agreed to make full payment of the US\$42,000.00 to the Marshall of the Supreme Court. This Assignment of Payment, from the Ministry of Finance to the Marshall of the Supreme Court, for full payment of the US\$42,000.00, was attested to by the then Attorney General of Liberia. Attached and marked as exhibit P/2 is the said letter from the then Minister of Finance to the Chief Justice of the Supreme Court."

6. "Plaintiff complains and says that the Supreme Court did not object to this Assignment of Payment's arrangement executed by the Plaintiff, then defendant/respondent in the Bill of Information filed in the Supreme Court."

7. Plaintiff further complains and says that in keeping with the Assignment of Payment to the Supreme Court, the Defendant, then Plaintiff in the Debt Action, was paid by the Ministry of Finance and did receive the amount of US\$5,000.00 in keeping with the Assignment of Payment with the Supreme Court, leaving a balance of US\$37,000.00. Plaintiff says that, by that payment of US\$5,000.00 by the Ministry of Finance and the receipt thereof by the Defendant, then Plaintiff in the Debt Action, Defendant had acknowledged and accepted the Assignment of Payment of the US\$42,000.00 by the Government for and on behalf of Plaintiff. Hence, Plaintiff says that he had complied with the Supreme Court's mandate as payment of the US\$42,000.00 had begun, with the payment of the US\$5,000.00 and received and acknowledged by the Defendant; also, that after the receipt of the US\$5,000.00 by the Defendant from the Ministry of Finance, the Defendant proceeded to fill out a claim form marked 000071 with the Ministry of Finance for the balance US\$37,000.00, which claim form was received at M.O.F on April 29, 2005. Attached and marked exhibit P/3 in bulk is the Ministry of Finance memo authorizing the US\$5,000.00 payment to the Defendant and a letter from the Defendant to the Minister of Finance acknowledging receipt of the initial US\$5,000.00 and the claim form requesting the Ministry of Finance to pay the balance US\$37,000.00, which the Defendant certified to be true, correct and indicate an accurate record of my account with the Government of Liberia, and signed as Beneficiary/Assignee. Hence, Defendant acknowledged and accepted the Assignment of Income of Plaintiff to him through the Marshall of the Supreme Court. Hence damages for Wrong will lie.

8. Plaintiff says that because the payment by the Government was being delayed, the Defendant, then Plaintiff in the Debt Court, wrote the then President of Liberia, Charles Taylor to intervene to have the Minister of Finance settle the payment with the Supreme Court, that based on his appeal to the President, the President instructed the then Minister of State to instruct the Minister of Finance to do all in his power to honor the Assignment of Payment arrangement with the Supreme Court, which the Minister of State did in a letter to the Minister of Finance. Attached and marked exhibit P/4 is a letter from the Minister of State, dated January 2, 2002, to the Minister of Finance, urging that the Finance Minister honors the commitment to the Supreme Court.

9. Plaintiff says that the action by the Defendant in appealing to the President to have the Ministry of Finance pay him in keeping with the Assignment of Payment is an ACKNOWLEDGEMENT OF THE ASSIGNMENT OF PAYMENT by the Government to him on behalf of the Plaintiff, and therefore, it was wrong for him to have brought a Bill of Information alleging that the Plaintiff was baffling the mandate of the Supreme Court, when he himself was making effort for the Finance Ministry to honor its promise to pay him on behalf of the Plaintiff, hence an action of damages for wrong would lie.

10. Plaintiff complains and says that because the Ministry of Finance, from whom the Defendant, then Plaintiff in the Debt Action, had received a payment of US\$5,000.00 as per the Assignment

of Payment arrangement with the Supreme Court, had not paid the defendant for a protracted period, the Defendant filed a Bill of Information before the Supreme Court alleging that Plaintiff had refused and neglected to pay the balance of US\$37, 000.00 and to obey the mandate of the Supreme Court ordering him to make payment to the Defendant, then plaintiff in the Debt Action. This action of the defendant, Plaintiff says, was wrongful for which damages will lie.

11. Plaintiff says that as the result of the Bill of Information filed before the Supreme Court, the said Court ordered the Defendant jailed until he raises the balance US\$37, 000.00. Plaintiff was arrested and jailed for 43 days. Plaintiff says that this action of the defendant, when he had received payment from the Government and the Government had promised to make full payment pending some pressing state obligations including the payment of salaries, has brought disgrace and shame to him and had ridiculed him in the community for which damages would lie.

12. Plaintiff says that the Defendant, having received partial payment from the government in keeping with the Assignment of Payment to the Marshall of the Supreme Court, acknowledged that the Plaintiff was making efforts and had made efforts to have the judgment of the Debt Court and the mandate of the Supreme Court satisfied in keeping with law and practice. Have the Finance Ministry honor its promise to make payment to him on behalf of the Plaintiff, hence a suit for damages for wrong would lie.

13. Plaintiff further complaining, says that the delay by the Ministry of Finance to pay the full amount of the judgment was due to no fault of the Plaintiff that will warrant a Bill of Information to be filed to the Supreme Court alleging that the Plaintiff has refused, neglected and failed to honor the mandate of the Supreme Court, hence Plaintiff says that for such action of the Defendant, which resulted into the Plaintiff being jailed for 43 days, bringing shame, disgrace, embarrassment, ridicule and emotional distress upon the Plaintiff, Plaintiff says that damages will lie, and Plaintiff so prays.

WHEREFORE AND IN VIEW of the foregoing, Plaintiff prays Your Honour will grant unto Plaintiff judgment for Damages for Wrong against the Defendant in an amount not less than US\$1,000,000.00 (ONE MILLION UNITED STATES DOLLARS) for the disgrace, shame, emotional distress and ridicule in the community that the Defendant's action has brought unto the Plaintiff; and to grant unto Plaintiff any and all further relief that Your Honor may deem just, legal and equitable in the premise."

Answering to the appellant/plaintiff's complaint, the defendant filed his answer along with a motion to dismiss the action:

The appellee filed an answer to the appellant's complaint of damages and a motion to dismiss the complaint, submitting that all the facts as narrated in the appellant's complaint were considered extensively and decided in the Supreme Court's opinion and Judgment dated September 16, 2005; that the lower court lacks jurisdiction to review facts that the Supreme Court had determined; that the complaint principally based on a matter that the Supreme Court had decided on in favor of the appellee, the complaint should be dismissed as a matter of law.

Hearing the argument on the motion to dismiss, principally on the principle of res judicata, the Presiding Judge, Kobo Nuta, ruled dismissing the appellant's complaint. He stated in his ruling that in our practice and proceedings, issues handled by the Honourable Supreme Court and ruled upon is usually very carefully considered when these issues are raised thereafter in a subsequent proceedings in the Lower Court. That the lower court lacks an authority to review and pass on the issues already passed on by the Honourable Supreme Court.

It is to this ruling of the Judge that appellant has excepted and for which we are poised to answer the lone question argued before this Court, "whether the legal principle of res judicata will apply to the complaint of damages filed by the appellant?"

The appellee argued that the Supreme Court passed on all the facts and points contained in the appellant's complaint for damages; therefore, the principle of res judicata applies. Besides, the court below was without any color of authority to review, modify or reverse the Opinion of the Supreme Court, which granted the appellee's Information since for the Civil Law Court to sustain appellant's complaint and award damages, it would have to determine that appellee's bill of information was improperly or illegally granted by the Supreme Court which authority the Civil Law Court does not have.

The appellant on the other hand argued that in order for the action to be properly dismissed on the doctrine of res judicata, the trial must be identical to the first trial in the following manner: (A) Identical parties (B) Identical theories of recovery (c) Identical demands in both trials. Appellant argued that while his action of damages carries the same parties, it is in the reverse order, that is, appellant, the defendant in the debt action is now the plaintiff; and appellee, the plaintiff in the debt action, is now defendant; that the damages is filed in the Civil Law Court while the previous debt action was filed in the Debt Court. Two separate actions in two separate courts; two different and factual disputes between the parties; two separate theories of recoveries and demands. And, clearly the action for debt and his action for damages for wrong do not have the same theories of recovery, neither the identical demand, though both actions may have identical parties. Also, the decision in the action of debt could not put to finality issues that are raised in his action of damages for wrong.

We disagree with this argument by appellant. There are two principal categories or branches within the general doctrine of res judicata: claim preclusion, known as res judicata and issue preclusion, known as collateral estoppel. Fundamentally, under both, a right, question, of fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties or their privies. More specifically, "res judicata" or "claim preclusion" refers to the effect of a prior judgment in preventing a litigant from reasserting or relitigating a claim that has already been decided on the merits by a court of competent jurisdiction, whether relitigation of the claim raises the same issues as the earlier suit. "Collateral estoppel" or "issue preclusion," on the other hand, generally refers to the effect of a prior judgment in limiting or precluding relitigation of issues that were actually litigated in the previous action, regardless of whether the previous action was based on the same cause of action as the second suit. Am. Jur 2d Judgment, Section 465; Wahab vs. Helou Brothers 24 LLR 250, 257 (1975).

The best and most accurate test as to whether a former judgment is a bar in subsequent proceedings between the same parties in the application of the doctrine of res judicata is for a court to consider the identity or facts essential to the maintenance of both actions, and whether the same evidence would sustain both. If the same facts or evidence would sustain both, the two actions are considered to be on the same cause of action, within the rule that the judgment in the former is a bar to the subsequent action.

In appellant's complaint of damages for wrong, the facts and issues are identical to the returns filed to the appellees Bill of Information filed in the Supreme Court and which issues this Court had ruled on extensively.

Let us look at the issues raised in appellant's complaint and the bill of information ruled on by the Supreme Court. Both raise the identical issues: Whether or not the letter of July 12, 2001, signed by the Minister of Finance and attested by the Minister of Justice was an assignment of debt to the Republic of Liberia which exonerated the defendant from further obligation of the Judgment Debt; whether the appellee acknowledged and accepted the assignment of appellants income to him through the Marshall of the Supreme Court; and, whether or not Information would lie against the appellant under the facts and circumstances of the case

As narrated above, the Supreme Court dealt extensively with these issues in its September 16, 2005 ruling and found that there was no assignment of the debt; that there was no consent to the assignment by the appellee, and that information would lie against the appellant.

With the Supreme Court ruling as stated above, we feel that the appellant's complaint is his insistence on having the court below decide on the identical issues of whether there was an assignment, and whether information would lie under the attaining circumstances. The appellant's complaint imputes that the court below should rule otherwise and thereby assign wrong to the appellant for filing of the Bill of Information which this court has said was proper.

Under the facts and circumstances of the matter between the parties and the appeal before us, this Court fails to see the two different legal and factual disputes between the parties or the two separate theories of recoveries and demands.

The principle of *res judicata*, this Court has said, bars litigation of issues in a case involving the same parties and the same subject matter where the case has once before been judicially determined; that is to say where the merit of the issue have been previously tried and judgment rendered there under. *Bility vs Sirleaf*, 34 LLR 552, 557 (1988). Also where an action is actually litigated and determined in an action, the determination is conclusive in any subsequent action between the parties based upon the same cause of action. *Wahab vs. Helou Brothers* 24 LLR 250, 257 (1975). This Court as far back as 1928, in the case *Phelps vs. Williams*, 3LLR, 24, has said that the decisions of the Supreme Court are binding upon all subordinate courts within this Republic.

Another argument made before this Court by the Appellant was that a Bill of Information is not a main suit or can not be construed as an action from which recovery will lie. Is the appellant contending that for *res judicata* to lie, the issue decided by court must be made in a previous independent action? We disagree. Any written or oral application made on notice before, during, or after trial to court, for the purpose of obtaining a rule or order directing some act to be done in favor of the applicant and which is made within the frame work of an existing action or proceeding is a proceeding of court and the court may decide and rule on the merit of an issue therein. The decision or ruling on the issue(s) invoke in this application to court, especially by the Supreme Court, is sufficient to invoked *res judicata*. The narrower principle underlying the rule of *res judicata* is that one who has actually litigated an issue should not be allowed to relitigate it. Once a proceeding has been decided by the Supreme Court, regardless of the nature of the action, the decision is *res judica* in all courts of the Republic of Liberia if the same parties thereafter sue the same persons over the same matter for the same thing. *Borbor vs. Tay*, 21 LLR, 112, 113, (1972).

Although the Counsel for appellant has argued strenuously that he is not requesting the court below to review the ruling made by this Court on the Bill of Information filed, we feel otherwise. There is no way the court below can make a decision in the matter filed before it without passing on the issues raised in the damages suit which have already been decided and passed on by this Court.

We agree with the judge that it would be wrong for the court below to proceed with the appellant's complaint since it would be relitigating matter already decided by the Supreme Court, an authority the lower court does not have. We therefore affirm the Judge's ruling.

The Clerk of this Court is ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction and give effect to this judgment. Costs against the appellant. AND IT IS HEREBY SO ORDERED.