

His Honour **Yussif D. Kaba**, Assigned Circuit Judge, and the **Government of the Republic of Liberia**, by and thru the Honourable Minister of Lands, Mines & Energy or his Authorized Representative of the City of Monrovia, Liberia
APPELLANTS VERSUS **Bentley International Trading Corporation (Ross Mines Ltd.)** by and thru its President and CEO, Kenneth A. Ross, Jr. of the City of Monrovia, Liberia APPELLEE) APPEAL

APPEAL DENIED AND PETITION GRANTED

HEARD: November 22, 2005 DECIDED: January 6, 2006

MR. JUSTICE CAMPBELL DELIVERED THE OPINION OF THE COURT

This case is before us on an appeal from the ruling of the Chambers Justice in a Mandamus Proceedings which grew out of a Petition for Declaratory Judgment. The Chambers Justice in his ruling ordered the Peremptory Writ issued and also ordered the Judge below to grant the Petitioner/Appellee appeal nunc pro tunc so as to confer jurisdiction on the Supreme Court to review the ruling of the Court below. To this ruling, Respondent/Appellant excepted and announced an appeal to this Honourable Court for judicial review.

The facts show that Petitioner/Appellee entered into a Mining Concession Agreement with the Respondent/Co-Appellant Government of the Republic of Liberia, through the Ministry of Lands, Mines and Energy on January 8, 1979, for the Boconjideh Concession Area. In August 1999, Petitioner/Appellee observed that another Company, Freedom Gold, Ltd., had taken up residence on a portion of the concession property. Petitioner/Appellee immediately launched an investigation at the Civil Law Court, Sixth Judicial Circuit, Montserrado County, to confirm whether any cancellation proceedings involving the subject property was instituted at the said Court and found out that no such action had been field. Petitioner/Appellee then obtained Certificates from the Clerk and Sheriff of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, to the effect that no such proceeding had been initiated. Petitioner/Appellee further communicated with the Court Administrator to ascertain as to whether the Returns of Court from the Sixth Judicial Circuit included any matter/case relating to the cancellation of Petitioner/Appellee' s Concession Agreement.

In response to this inquiry, the Court Administrator informed Petitioner/Appellee's counsel that according to the Returns sent up from the Sixth Judicial Circuit for

Montserrado County, sitting in its December Term, A. D. 1998, presided over by His Honour Judge Joseph Andrews, a Declaratory Judgment Action instituted by the Republic of Liberia, through the Minister of Lands, Mines and Energy was disposed of against Petitioner/Appellee. Petitioner/Appellee immediately informed the Court Administrator that the inclusion of the Declaratory Judgment case involving Petitioner/Appellee and the Government of Liberia could best be termed as an error as Petitioner/Appellee was neither summoned nor notified of any such proceedings. In his communication to the Court Administrator, Petitioner/Appellee attached the Certificates of the Clerk and the Sheriff of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, in substantiation of the fact that Petitioner/Appellee was never served any Writ of Summons or assignment for the said case.

On September 13, 1999, Petitioner/Appellee filed a Petition for a Writ of Error in the Chambers of the Chief Justice. After waiting for twenty four (24) days without receiving any action on the Petition for the Writ of Error, Petitioner/Appellee, on the 7th day of October, A. D. 1999, filed a Motion for Relief from Judgment before the Civil Law Court, Sixth Judicial Circuit, Montserrado County, sitting in its September Term, A. D. 1999. Petitioner/Appellee's basic contention in support of its Motion for Relief from Judgment is that it was never served a Writ of Summons and that the said Judgment from which it prayed relief, was obtained by fraud. Following the hearing of the Motion, the Judge concluded that Petitioner/Appellee was never served a Writ of Summons or an assignment in the Declaratory Judgment Proceedings. The Judge, therefore, held as follows:

"Wherefore and in view of the foregoing and the law controlling, it is the Ruling of this Court that Movant's Motion for Relief from Judgment ought to be and same is hereby granted; the Resistance is denied and dismissed and by that the Movant is hereby relieved from the Judgment in the Declaratory Judgment Proceedings and the parties are hereby restored to their original positions they held prior to the filing of the Petition for Declaratory Judgment. This Judgment is without prejudice to the Republic of Liberia, to proceed to the proper forum for the relief it sought before this Court. The Clerk of this Court is hereby ordered to issue a writ of possession and place same in the hands of the Sheriff to have the Movant repossessed of the property which they were dispossessed of as a result of this Ruling. AND IT IS SO ORDERED."

The Respondent/Co-Appellant Government of Liberia herein announced an exception and appealed to the Honourable Supreme Court from the said Ruling. The exception was noted and the appeal granted.

A careful perusal of the records as transcribed to this Court show that on the 16th day of November, A. D. 1999, precisely eight (8) days after Co-Respondent Judge Kaba's Ruling granting Petitioner/Appellee's Motion for Relief from Judgment and granting an appeal to the Supreme Court based on said ruling, Respondent/Co-Appellant filed a Motion to Rescind the ruling, granting the relief from judgment before Judge Kaba. On the selfsame day, that is, November 16, 1999, a Notice of Assignment was issued for hearing of the Motion on the next day, same being November 17, 1999. One of Counsel for Petitioner/Appellee, in person of Counsellor James E. Jones, had traveled out of the bailiwick of the Republic; therefore, the Notice of Assignment was served on Counselor Snosio Nigba, the second Counsel for Petitioner/Appellee. Counsellor Nigba immediately communicated with the Court and informed the Judge that he was recovering from typhoid fever and hypertension; hence, he requested that the Hearing be postponed to another day. A medical certificate was attached to this request for postponement. At the call of the case, Judge Kaba acknowledged receipt of the Letter of Excuse and the accompanying medical certificate, but indicated that since Counsellor Nigba was seen in Court the previous day, he could not grant the excuse.

On the basis of the above, the Co-Respondent/Co-Appellant Judge proceeded to hear the Motion ex-parte under Section 10.7 of the Civil Procedure Law, Default On Motion, and appointed Counsellor Osborne Diggs to take the Ruling on behalf of Petitioner/Appellee's Counsel. Following the Ruling, Counsellor Diggs excepted and since the Ruling was a final Judgment, announced an appeal to the Honourable Supreme Court. The Court then ruled as follows: "this Court says that while normally an appeal is a matter of right in the case, we note that the Respondent has previously filed an appeal to the Supreme Court by way of Error Proceedings which were denied by the Honourable Supreme Court. In view of the said denial of Respondent's appeal by the

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Supreme Court, we have no alternative but to deny the Respondent's appeal. AND IT IS SO ORDERED".

It is from the denial of Petitioner/Appellee's appeal, that Petitioner/Appellee filed before the Justice in Chambers, a Petition for a Writ of Mandamus, to compel the Judge to grant the appeal.

According to the records, the Alternative Writ was ordered issued by the Chambers Justice and Returns to the Petition was filed with the Clerk of the Supreme Court.

After hearing the Petition, the Chambers Justice ruled, granting the Petition of Mandamus and ordered the Peremptory Writ issued.

To this Ruling, the Co-Respondent/Co-Appellant Government of Liberia excepted and announced an appeal to the full Bench of this Honourable Court, which appeal was granted.

From the facts and circumstances mentioned above, the issue that is determinative of this case is: Whether or not Mandamus will lie?

In other words, whether or not the Ruling of the Chambers Justice is proper and legal?

The records before us reveal that a Motion to Rescind Judgment was filed with the Civil Law Court by the Co-Respondent/Co-Appellant after the Court granted the Motion for Relief from Judgment filed by the Petitioner/Appellee. The records further show that the Motion to Rescind Judgment was heard and granted in the absence of the Petitioner/Appellee's Counsel despite a written request of excuse with an attached Medical Certificate addressed to the Trial Judge for the postponement of the hearing of the Motion due to ill health of Petitioner's Counsel.

The Counsel appointed by the Court to receive the ruling excepted to the said ruling and announced an appeal to the Honourable Supreme Court, but the appeal was denied on ground that an appeal to the Supreme Court by way of Error Proceedings was denied. We must mention at this point that we have not seen anywhere from the records of this case that any appeal in this matter was previously denied by the Supreme Court. We only observe that the Supreme Court may not have acted on the Petition for Writ of Error. Due to the alleged denial of an appeal by the lower Court, a Petition for a Writ of Mandamus was then filed before the Chambers Justice by the Petitioner/Appellee against the Respondents/Appellants. The case file further reveals that the Alternative Writ of Mandamus was ordered issued, served and Returns filed. The records also show that the Petition was heard and the Chambers Justice granted the Petition, ordered the Peremptory Writ issued and ordered the Judge below to grant the Petitioner/Appellee appeal nunc pro tunc so as to confer jurisdiction on the Honourable Supreme Court to review the Ruling of the Judge below. To this Ruling of the Chambers Justice the Respondents/Appellants excepted and announced an appeal to the Supreme court for review.

This Court says the Trial Judge below erred when he refused to grant the appeal

announced in open Court by the Petitioner/Appellee, in that the ruling made in the Motion to Rescind Judgment finalized the issues raised in the Motion for Relief from judgment filed by the Petitioner/Appellee. Our statute provides 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." See 1LCLR page 249, Section 51.2. The Trial Judge therefore did not act in conformity with the above quoted statute when he denied Appellee the right to appeal from said ruling.

We therefore hold that the Ruling of Chambers Justice granting the Petition of Mandamus was legal, in that where the right of appeal is denied as in this Mandamus will lie to compel the Trial Judge to grant the appeal.

Wherefore and in view of the foregoing, it is the ruling of this Honourable Court that the ruling of the Chambers Justice granting the Petition of Mandamus, and ordering the Judge below to grant the Petitioner/appellee appeal nunc pro tune is hereby affirmed. The Clerk of this Court is hereby ordered to send a mandate to the Sixth Judicial Circuit, Montserrat County, to resume jurisdiction and grant the appeal of the Petitioner/Appellee nunc pro tunc. AND IT IS HEREBY SO ORDERED.

Counsellor Theophilus C. Gould, Solicitor General appeared for Appellant while Counsellor F. Musa Dean, Jr. appeared for the Appellee.