Mrs. Williette A. Kesselly for herself and as Natural Guardian for her minor children Hawa Micketta K. Kesselly and Jewel A. C. Kesselly all of the City of Monrovia, Liberia APPLLANTS VERSUS The Management of **Sabena Brussels Airlines** Represented by and thru its Manager or Authorized Representative(s) Ashmun Street, Monrovia, Liberia, 1st Defendant and the Management of **Karovoyage Travel Agency**, Represented By and thru its Manager or Authorized Representative(s) of Broad Street, City Of Monrovia, Liberia APPELLEE

APPEAL. JUDGMENT AFRIRMED

HEARD: OCTOBER 24, A.D. 2006_ DECIDED: DECEMBER 21, 2006

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT

This case has come before the Full Bench of the Honorable Supreme Court on appeal from the ruling of Ad-hoc Justice, His Honour James W. Zotta, then presiding in Chambers during the October Term, 2005, granting the Petitioner's petition for a Writ of Certiorari. The petition grew out of a suit filed in Action of Damages for Breach of Contract at the Civil Law Court, Six Judicial Circuit for Montserrado County.

Certified records in this action reveal that appellants herein, plaintiffs below, Mrs. Kesselly, for herself and as natural guardian for her minor children, Hawa Micketta K. Kesselly and Jewel A. C. Kesselly, instituted an action of damages for breach of contract against the Management of Sabena Brussels Airlines by and thru its Manager and Authorized Representative, 1 St Defendant, and the Management of Karovoyage Travel Agency thru its Manager/Representative, 2 nd defendant, in the Six Judicial Circuit, Civil Law Court for Montserrado County, sitting in its March Term, 2003.

In the Complaint, plaintiffs/appellants alleged that on the 20 th of August 2002, co-plaintiff Mrs. Kesselly purchased three (3) round trip tickets for herself and her two minor children from defendant, (Karovoyage Travel Agency) a ticketing agent of the 1 st defendant. It was arranged and as a result plaintiffs/appellants were booked on 1s t defendant Airlines S. N. Brussels from Monrovia to Brussels, and from there to Newark, New Jersey and then to Charlotte, North Carolina, United States of America. It is alleged that appellants were also booked, as per same arrangement, to return home to Liberia, using the reverse route.

Plaintiffs alleging also say that they took off to their final destination in the USA successfully. While in America, and following three (3) telephone calls made by plaintiffs to CONTINENTAL Airlines, acting as agent for 1s t defendant Airlines, plaintiffs' departure dates using the reverse route, were further confirmed for Wednesday November 20th, 2002 from America to Brussels and Thursday November 21st A.D.2002, from Brussels to Monrovia.

As a result of said confirmation and re-confirmation, Plaintiffs were received, checked in and boarded on the connecting flight (Continental Airlines) from USA to Brussels, as scheduled on November 21, 2002. While in Brussels, and without any prior notice to plaintiffs of a change in schedule, 1s t defendant then informed plaintiffs that it had changed plaintiffs' travel schedule from Brussels to Monrovia, from the 21 to 27 of November, 2002. According to plaintiffs, their tickets and passports were thereafter taken away from them by the 1st defendant's agent who promised to arrange hotel accommodation for them for the six (6) days period of change in schedule. Plaintiffs say they waited from 8:45 a.m. to 5: p.m. that is to say, they waited for about six (6) hours in the terminal without food or water even for the two children, fifteen (15) months and nine (9) years old, respectively.

Plaintiffs further complained that in the course of this long and humiliating waiting at the instance of 1 st defendant, immigration officers approached them and requested co-plaintiff, Mrs. Kessely to sign a document written in a language other than English and unknown to co-plaintiff Mrs. Kessely, which she resisted and refused to sign.

Plaintiffs say that they were thereafter rounded up by Police and Immigration officers and locked up in prison for one whole night with strange men who were smoking throughout the night. Locked up in such condition, plaintiffs say they suffered complication and due to the same said reason, co-plaintiff, A.C. Kessely, 15 months old, suffered severe cold leading to fever, eventually requiring medical treatment. It is alleged that said co-plaintiff A.C. Kessely was later treated here in Monrovia at the SDA Cooper Hospital.

According to the complaint, on the next day, same being November 22, 2002, plaintiffs were removed from prison and placed in a sealed-up security van and escorted by seventeen (17) security officers, as if they were terrorists, to a waiting plane and sent back to America. Back in America, plaintiffs say they were forced to await their new departure date. As a result of what happened, Plaintiffs say they suffered humiliation, disgrace both mental anguish and physical stress and torture, in the hands of immigration and police officers.

Failure by 1 St defendant to amicably address the difficulties explained herein, plaintiffs filed an action of damages for breach of contract on March 7, 2003, at the Civil Law Court. Plaintiffs prayed in their complaint to be awarded, for both Special and general damages, in a sum not to exceed US$ 1,000,000.00(One Million United States Dollars).

The Court's records as transmitted to us indicate that a writ of summons was issued along with the complaint to be served on defendants, including codefendant S. N. Brussels. The said summons was placed in the hands of Bailiff David Rennie for service. The Sheriff's Returns, dated March 13 th 2003, indicates that the Bailiff duly served the writ of summons on co-defendant S. N. Brussels but that "Assistant Manager Morris refused to sign and receive the writ".

According to said Returns, Assistant Manager Morris refused to sign and receive the summons because they were not under Sabena Brussels Airlines and that Sabena Brussels Airlines is not operating again. Our inspection of the writ of summons confirms that it was returned unsigned.

Records transmitted to us further reveal that a notice of assignment for disposition of law issues was issued on the 28 th day of April 2004; that is to say more than 13 (thirteen) months after service of the Writ of Summons. This Notice of Assignment was served on 2nd-defendant's counsel on same day and date, 28TH April 2004. First-Defendant was however not served because it could not be located, as evidenced by the Sheriffs Returns.

First defendant/appellee herein on May 24 2004, filed a motion for special appearance before the Civil Law Court. In said motion, petitioner contended that it was never served the writ of summons, so as to be brought under the jurisdiction of the Court. Petitioner further contended that the Sheriff's Returns is materially and incurably defective and misleading, and denied ever having any one in its employ as Assistant Manager called Mr. Morris. Petitioner also says it was moving the court by special appearance to correct error in the complaint relative to the name and capacity of the 1 st defendant.

The motion for special Appearance was resisted and argued. On October 21, 20004, His Honour Yussif D. Kaba, presiding by assignment, denied 1St defendant/movant's motion. The Judge ruled that the 1 st defendant be placed on bare denial of the facts as contained in the complaint. We quote said ruling verbatim:

"One basic point that attracts this court's attention is, the reason the Sheriff alleged in his Returns that was given by the said Mr. Morris for refusing to receive and sign for the writ of summons. That reason is, that Sabena Brussels Airlines is not operating again but they are under S.N. Brussels Airlines."

"This Returns was made on the 13 th day of March, 2003. It is quite a coincidence that said same reasons are again advanced by the movant's counsel in justifying their Motion. The court in its mind, and after a careful perusal of the motion and its resistance, it is convinced that indeed and in fact, the Returns of the Sheriff is true and correct and should therefore govern in the instant case."

"The defendant, the Movant herein, having therefore been served and based upon their refusal to receive and sign for the writ of summons, failed to file an Answer to the complaint more than a year and two months thereafter, the court says that the said 1St defendant, movant herein, suffers from waiver and larches and therefore is forever estopped from coming before this Court and praying for an opportunity to do what they on their own should do with in the time provided for by law. The court says that to permit the movant to file an answer will constitute an abuse of discretion."

Dissatisfied with this ruling, movant/1 St defendant excepted and fled to then Chambers Justice, His Honor, John L. Greaves with a petition, praying for a Writ of Certiorari. On November 5, 2005, Justice Greaves ordered issuance of the alternative writ and ordered the Respondent Judge to stay all further proceedings pending the disposition of the petition for Certiorari.

On February 15, 2006, Ad-hoc Justice then presiding in chambers, His Honor James Zotaa ordered the clerk to issue notice of assignment for hearing of the petition. Following said hearing, the Ad-hoc Justice ruled granting petitioner's petition for the writ of Certiorari and ordered the respondent judge to resume jurisdiction over the case and allow petitioner/1st-defendant to file its answer nunc pro tunc. It is from this ruling, plaintiffs/appellants announced this appeal to the court "en banc" for appellate review and determination.

This Court says that there is only one salient issue to be answered in this case; that is:

Whether the trial court acquired jurisdiction over 1 St defendant/appellee through service of precepts in keeping with law?

To arrive at an informed conclusion, we need to examine the circumstances attending to service of the precept in this case. We must therefore revert to the records before us beginning with the Sheriff's Returns. But firstly, what is summons?

In defining summons, Mrs. Chief Justice Johnson-Morris, speaking for this Court held "A Summons is defined as an instrument used to commence a civil action or special proceedings and is a means of acquiring jurisdiction over a party.

A writ of process is directed to the sheriff or the proper officer, requiring him to notify the person named, that an action has been commenced against him in the court from where the process issues, and that he is required to appear on a day named, and answer the complaint in such action. Upon the filing of the complaint the clerk is required to issue a summons and deliver it for service to the Marshall or to a person specially appointed to serve it." Pentee versus Zoe, 38 LLR 485,497 (1997)

Section3. 33 of 1LCLR sheds more clarity as regard the legal function and service of writ of summons. It reads: "The summons shall be directed to the ministerial officer of the court in which the action is brought; shall state the court and names of the parties, together with their addresses, if known; shall be signed by the clerk and bear the seal of the court; shall state the time within which the defendant is required to appear and defend; and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. In a court not of record, a statement of the substance of the complaint shall be included in the summons."

From these citations, it is clear, generally speaking, that service of precept is a mandatory requirement, not discretionary, in order for a court to acquire jurisdiction over a party. This principle of law has been upheld in many opinions of this Court, including *Tubman Versus Murdoch* in which the Court said: *"no court has authority to render judgment against a party who has not been served with process to bring him under its jurisdiction, or who has not voluntarily appeared and submitted to the court's jurisdiction. Any judgment rendered contrary to this rule is void as to the party against whom it is rendered." _Gabbidon Versus Flomo, 26 LLR 214, 218 (1977).*

On the claim and counter-claim over service of summons in this case and for the benefit of this opinion, we shall quote the Sheriff's Returns word for word:

THE SHERIFF'S RETURNS

"On the 13th day of March A.D. 2003, Bailiff David Rennie of the Civil Law Court duly carried out this writ of summons to be served on the within named co-defendant but the Asst. Manager Mr. Morris refused to sign and receive this writ of summons and said that they are not under the Sebena Brussels Airlines and Sebena Brussels is not operating again but they are under the S.N. Brussels Airlines. Hence, I now make this as my official returns to the Clerk of this Court. Dated this 13 th day of March 2003."

Approved: -Signature Affixed
SHERIF
SIXTH JUDICIAL CIRCUIT COURT
Montserrado County, R.L.

Signed: Signature Affixed
SHERIFF DAVID RENNIE
BAILIFF, SIXTH JUDICIAL CIRCUIT

Contesting the said returns, petitioner/appellee argued in his brief and orally before this Court that the Sheriff's Returns to service of the writ of summons to the effect that one Mr. Morris, an Assistant Manager of the 1s t defendant corporation refused to accept and sign for said Summons, is incurably defective; because First-defendant/appellee does not have any one in its employ as Assistant Manager, nor any employee called Mr. Morris.

The petitioner/appellee further explained that the first time appellee became aware of the pendency of the proceedings was when the notice of assignment for ruling on disposition of law issues was "forwarded" to first-defendant. Petitioner further argued and said that due to such improper service of summons, petitioner/appellee was never brought under the jurisdiction of the court.

This Court says that hoary with practice and procedure in our jurisdiction, a ministerial officer must duly serve a court precept and make Returns thereto. Within this context, a Sheriff's Returns is generally presumed correct. Under normal circumstances, the Returns is considered evidence of service. This is also true where a party is said to have chosen to refuse to receive and sign for a court's precept. But at the same time, it must be clearly stated that a Sheriff's Returns tending to indicate service of process, when challenged, cannot in itself, be conclusive.

The presumption of Returns being correct crumbles by any challenge posed by a party litigant as to its accuracy. In other words, a Returns of the ministerial officer showing service of precepts, does not *ipso facto* prove actual service. In the face of a challenge, the judicial tribunal is there and then placed under a duty to institute investigation in order to determine the accuracy of said Returns. Under these circumstances, the investigation becomes a duty, and is far from being discretionary.

In *Badio Versus Liberia Industrial Corporation 35LLR 229, 238 (1988),* this Court expressed similar position that where an issue is raised as to whether or not a party was brought under the jurisdiction of court by proper service of process, the issue should be investigated. Further holding this position, Mrs. Chief Justice Johnson-Morris speaking for this Court said: "Under the practice and procedure in this jurisdiction, the court is usually guided by the returns of the sheriff which are presumed to be correct for all intents and purposes unless they are challenged, in which case the court is to conduct an investigation into the manner of service." *PENTEE VERSUS ZOE, 38 LLR 485, 494 (1997)*

In the case at bar, the challenge made against the Returns of the Ministerial Officer was never investigated by the trial court to ascertain the veracity of the Returns.

Failing to investigate this controversy, the trial court could not have established by positive evidence as to whether the writ summons was ever served on one Assistant Manager named Mr. Morris, nor could the trial court ascertain as to whether the said Mr. Morris was a bonafide employee of the first-defendant, or whether Mr. Morris as a person, ever existed. This neglect on the part of the court below to investigate controversy over this service is a reversible error.

Moreover, it is strictly within the province of the trial court to investigate and take evidence. Unlike the Supreme Court, the trial court has original jurisdiction in the case at bar, to take evidence, investigate, and verify the authenticity as to the Returns of the Sheriff and based on its findings, determine whether a party has been duly summoned and brought under its jurisdiction.

Recourse to the case file once again, it is interesting to note that the Returns of the same Sheriff's office to the notice of assignment for disposition of law issues, dated the 28th day of April 2004 reported that service could not be done because 1St defendant "could not be found."

We quote said Returns here word for word:

"On the 28th day of April A.D. 2004, Bailiff Nimely Browne of the Civil Law Court duly served this notice of assignment on Counsel for plaintiff/petitioner who signed and received a copy while the secretary for Defendant Counsel P.A. Kemokei signed and received a copy but the 1 st defendant (the Management of Sabena Brussels Airlines and thru its Manager or authorized Representative) could not be found and therefore they were not served. Hence, I now make this as my official Returns to the clerk of this court. Dated this 4 day of May 2004."

Signed: (Signature Affixed)
Nimely Browne
Bailiff, 6th Judicial Circuit
Montserrado County, R.L.
Approved (Signature Affixed) THE SHERIFF

Yet, when notice of assignment was issued for ruling on law issues, the same office of the Sheriff which earlier reported that 1 st defendant Management could not be found, hence, no service was done, this time around reported that the 1 st Defendant Management was duly served. Again, we quote said Returns verbatim:

SHERIFF'S RETURNS

"On the 18th day of May 2004, Bailiff Peter Wheree of the Civil Law Court duly served this notice of assignment on both counsels and the Management of Sabena Brussels Airlines who signed and received their copies. Hence, I now make this as my Returns to the Clerk of this court. Dated this 19th day of May A.D. 2004"

Signed (Signature Affixed)
Peter Wheree
Bailiff, Sixth Judicial Circuit
Montserrado County, R.L.
Approved: (Signature Affixed)
THE SHERIFF

A review of *38 LLR (pp 494-496)* shows that Bailiff David Rennie has been involved in similar controversial situation. That he was now again involved in what appeared to be a situation like manner, ought to have alerted the trial court to investigate.

In the referenced case: *Pentee Vs. Zoe 38 LLR 494-496,* this is what the Supreme Court said regarding the behavior of Bailiff David Rennie: "The issue of the service

of the precepts upon the plaintiff-in-error is further complicated in that Bailiff Rennie, after swearing to the affidavit, quoted above, again swore to another affidavit, this time in favor of the defendant-in-error, to the effect that he was misled and fooled by Counselor McFarland to issue the first affidavit". In the first affidavit, Bailiff David Rennie, had made OATH to this effect:

(1) "I never saw and served plaintiff-in-error Renney Pentee any precepts growing out of the above case."

(2) "Besides that, no summons was ever given me and served on plaintiff-inerror Renney Pentee, only writ of attachment was served, together with the complaint, on plaintiff-in-error's father by mistake."

We therefore hold that the trial court's failure to investigate this crucial issue against the background of a legal duty to do so was reversible error.

In passing, we take note of respondent/appellant's assertion that 1 st defendant Management had knowledge of the case pending before the Civil Law Court in light of the numerous communications that were exchanged between them. As evidence thereof, respondents/appellants' letters dated December 7, 2002 and the petitioner/appellee's reply dated January 15, 2003 as well as respondents/appellants' second letter to 1 st defendant management dated January 30, 2003, were attached as exhibits.

Nevertheless, evidence of exchanges of communications between the parties herein before or after filing of the complaint could neither be a legal substitute for service nor will tons of such instruments between parties confer jurisdiction on a party not legally summoned. We hold that no amount of communications exchanged between parties litigants will constitute service of process. This Court speaking through Mr. Justice Smallwood has held: "All court officers empowered to serve precepts must always serve such document on the person authorized to receive a process, other-wise, service will not be considered proper." *National Port Authority Vs. Tarr, 37LLR 449, 453 (1994); Liberia Industries Corporation Versus Thorpe, 31 LLR 714, 724 (1984)*

In the absence of .conclusive evidence of service of the summons on the appellee-first defendant in this case, we cannot but uphold and affirm the ruling of Ad-hoc Justice Zotaa.

WHEREFORE, AND IN VIEW OF THE FOREGOING, it is our considered opinion:

That the ruling of the Ad-hoc chamber's Justice, granting petitioner's petition for a writ of Certiorari ordering the court below to allow petitioner/1s t defendant to file its answer nunc pro tunc, is sound in law and procedure controlling and same shall be and is hereby affirmed;

The Clerk of this Court is hereby ordered to send a mandate to the court below informing the Judge presiding therein to resume jurisdiction, and have the writ of summons served on the 1s t defendant's corporation nunc pro tunc. Costs to bide final determination. AND IT IS HEREBY SO ORDERED.
Affirmed.