

LIBERIA PETROLEUM REFINING COMPANY, by and thru its Managing Director, Belle Y. Dunbar, all Deputies and all Corporate Officers, including the Manager of the Legal Department, Appellant, *v.* **HER HONOUR COMFORT S. NATT**, Judge, National Labour Court, Montserrado County, R. L., and **CLARANCE CONNEH et al.**, Appellees.

APPEAL FROM THE CHAMBERS JUSTICE DENIAL OF THE PETITION FOR A
WRIT OF PROHIBITION.

Heard: April 6, 2004. Decided: August 13, 2004.

1. Where a party fails to except to a ruling and announce an appeal therefrom, subsequent motions filed against the said ruling does not have the necessary legal foundation and the trial court is under no legal obligation to entertain said motions.
2. An appellant cannot enjoy the benefit of any form of appellate review by remedial process or before the Full Bench where it has failed to note exceptions to the final judgment and announced an appeal therefrom which would be an indication of appellant's disagreement with the ruling.
3. An exception shall be noted by a party at the time the court makes an order, ruling or comment to which he objects. Failure to note exception to any such action shall prevent assigning it an error on review by the appellate court.
4. In the absence of an exception and the announcement of an appeal from a final judgment, prohibition will not lie to restrain the judge from enforcing the final judgment.
5. Prohibition may not be used as a process for the review of a final judgment and correction of errors committed in the trial of a cause for which other remedies are available.

Appellant/petitioner filed a petition for a writ of prohibition before the Justice in Chambers praying the issuance of the alternative and peremptory writs against the National Labour Court Judge from enforcement of the ruling made by the said Judge affirming the ruling of the hearing officer of the Ministry of Labour adjudging the appellant/petitioner liable to the appellees/ respondents. The appellees, former employees of the appellant, had commenced an action of unfair labour practice against the appellant. The records did not show that the appellant excepted to the ruling of the hearing officer but indicated that a petition was file before the National Labour Court for judicial review. The National Labour Court, rather than ruling on the appellees' motion to strike the petition, ruled instead on the merits of the case, reversed the ruling of the hearing officer, and remanded the case on the ground that the hearing officer did not state a sum certain.

On appeal to the Supreme Court, it reversed the Labour Court ruling and ordered that the said court rule on the motion to strike before proceeding to the merits of the case. The

National Labour Court, in obedience, ruled on the motion to strike the petition for judicial review, denied and dismissed the same, and proceeded thereafter to entertain arguments on the merits of the petition for judicial review. A ruling was entered affirming the ruling of the hearing officer but with modification. Neither party excepted to the ruling or announced an appeal therefrom. Instead, the appellant, after refusing to tax the bill of costs issued by the National Labour Court, filed a motion to rescind the court's final judgment, a motion to stay enforcement and a bill of information. The National Labour Court Judge declined to hear any of the motions and ordered the clerk to forward the bill of costs for taxation by the parties. It was from this action of the lower court that the appellant sought the intervention of the Supreme Court by the filing of a petition for a writ of prohibition. The Petition was denied by the Chambers Justice and an appeal taken to the Full Bench.

The Supreme Court, after its review of the ruling of the Chambers Justice, affirmed the same, noting that the Court could not entertain any action on the decision of the National Labour Court Judge since the appellant had not noted exception to the judgment of the National Labour Court nor announced an appeal from the said judgment. The Court opined that prohibition could not be used as a process for the review of a final judgment of a lower court or to correct errors made by the lower court, from which an appeal should have been taken or where other remedies were available.

Accordingly, the Court upheld and affirmed the decision of the Chambers Justice who had upheld the National Labour Court's decision declining to pass upon the several motions filed before that court by the appellant.

Frederick D. Cherue of the Dugbor Law Firm, in association with *John J. N. N. Caranda*, appeared for the appellant. *Cooper W. Kruah* of the Henries Law Firm, in association with *Jonathan Williams* appeared for the appellee.

MADAM JUSTICE COLEMAN delivered the opinion of the Court.

This case has its origin from the Ministry of Labour where the co-appellees, a group of former employees of the Liberia Petroleum Refining Company instituted an action of unfair labour practice against the appellant, Liberia Petroleum Refining Company (L.P.R.C.), before the said Ministry. A hearing officer heard the matter and awarded the former employees the total of Liberian Dollars Three Million Nine Hundred Twenty-Four Thousand, One Hundred & Sixty (L\$3,924,160.00) as award for wrongful dismissal; United States Dollars One Hundred Sixty-Eight Thousand (US\$168,000.00) as accrued resettlement benefits; United States Dollars Seventy-Seven Thousand Four Hundred & Twenty (US\$77,420.00) as economic benefits and 1,227 bags of rice, which represented rice ration. The ruling was delivered to the appellant on February 10, 2000.

The record does not show that the appellant ever excepted to the ruling of the hearing officer, but does reveal that the appellant filed a five-count petition for judicial review on February 24, 2000 before the National Labour Court for Montserrado County. When the petition for judicial review was called for hearing on May 10, 2000, counsel for the former employees moved the Labour Court to strike the petition for judicial review and dismiss same on grounds that the petition was filed beyond the statutory period of ten (10) days, and that Counsellor Frederick D. Cherue, who filed the petition, was not a counsel of record. The motion to strike appellant's petition for judicial review was resisted and argued, and the Labour Court Judge, instead of ruling on the motion to strike appellant's petition for judicial review, proceeded to rule on the merits of the petition for judicial review, which had not yet been argued before her. She reversed the ruling of the hearing officer and remanded the case to the Labour Ministry on ground that the hearing officer's ruling did not state a sum certain.

The appellee appealed from the National Labour Court Judge's ruling. The Supreme Court, after a hearing during the October Term, A. D. 2001, reversed the National Labour Court Judge's ruling and remanded the case to the Labour Court to dispose of the motion to strike the petition for judicial review and make a determination therefrom.

The National Labour Court, in obedience to the mandate of the Supreme Court heard, denied and dismissed the motion to strike the petition for judicial review on April 15, 2002, and thereafter, on June 20, 2002, proceeded with the hearing of the petition for judicial review. On the 5th day of August, A. D. 2002, the National Labour Court Judge rendered final judgment, confirming the ruling of the hearing officer with modification, by disallowing the award of United States Dollars One Hundred Sixty-Eight Thousand (US\$168,000.00) as accrued resettlement benefits; United States Dollars Seventy-Seven Thousand Four Hundred Twenty (US\$77,420.00) as economic benefits, and 1,227 bags of rice as accrued rice ration. She only awarded the former employees the sum of Liberian Dollars Three Million Nine Hundred Twenty-Four Thousand, One Hundred Sixty (L\$3,924,160.00) for wrongful dismissal. Counsel for appellant did not except to the ruling or announce an appeal from this final judgment. The appellee's counsel also did not except to the ruling of the National Labor Court Judge. The National Labour Court made a notation in its minutes that "no *exception* was noted by either party". The clerk of the court was ordered to prepare a bill of costs against the appellant for taxation by the parties and approval by the judge for satisfaction of the judgment. The appellant refused to tax the bill of costs and instead filed a motion to rescind on August 6, 2002, a day after the final judgment. On August 8, 2002, the counsel for appellant filed a motion to stay enforcement of judgment and a bill of information.

The appellees in these proceedings filed returns to the motion to stay enforcement of the judgment and to the bill of information, praying the National Labour Court not to entertain them because the appellant did not have any legal standing or right to file any paper against a

ruling that was not excepted to or appealed from. The National Labour Court Judge declined to hear and determine the motion to rescind the bill of information and the motion to stay enforcement of the judgment. The judge then ordered the clerk to again forward the bill of costs for taxation by the parties. The appellant, LPRC, again refused to tax the bill of costs. Hence, a citation for contempt was issued against the appellant, LPRC, to show cause why it should not be held in contempt for failure to tax the bill of costs.

On the 24th day of September, 2002, the appellant, LPRC, filed an 11-count petition for a writ of prohibition, praying the Chambers Justice to restrain the co-respondent judge, Her Honour Comfort S. Natt, from enforcing the judgment rendered by her on August 5, 2002.

The appellant contended in its petition that a writ of prohibition is the proper remedy to restrain an inferior court from proceeding by improper rules or attempting to proceed by rules different from those which ought to be observed at all times.

The appellant also contended that the motion to rescind was filed because in Her Honour's ruling, she had inadvertently changed the ruling of the hearing officer from reinstatement to a money judgment. The appellant averred that the ruling of the hearing officer is not a money judgment, but required the reinstatement of the appellant. The National Labour Court Judge deleted the reinstatement aspect of the hearing officer's ruling and maintained the portion on the money judgment.

The appellant also maintained that the judgment which the National Labour Court attempted to enforce by criminal contempt was illegal, in that it required the payment of double interest, which the law forbids. Under the law, no double or compound interest is permitted, and that to so rule was illegal. The appellant also alleged that the double interest(s) referred to above, was the foundation upon which the bill of information was based and which information had not been passed upon or considered by the National Labour Court.

The alternative writ of prohibition was ordered issued immediately. The respondents, now appellees, who are former employees of LPRC, appeared by and thru their counsel, and filed returns on October 1, 2002. They raised several defenses in both law and facts, and prayed the Chambers Justice to deny and dismiss the appellant's petition and to order the judge of the National Labour Court for Montserrat County to resume jurisdiction and enforce the judgment.

The appellees, in their returns, contended principally that the appellant, thru its counsel, had not excepted to the final judgment of the National Labour Court or announced an appeal therefrom. The appellant, therefore, could not legally raise any issue against said ruling since the appellant had no legal basis to have filed any motion to rescind a ruling not excepted to, or file a bill of information raising any issue whatsoever against such ruling, in the absence of an exception to said ruling.

The appellees also contended that the appellant cannot raise any issue relating to the bill of costs on ground that its counsel refused to tax said bill when it was presented to him for

the purpose of registering his objections to the bill of costs. The appellees therefore maintained that appellant's counsel, by his refusal to sign the bill of costs, waived whatever objections appellees may have had in relation to the bill of costs. As such, there was no point of dispute between the two counsels on the bill of costs, which would have necessitated the intervention of the judge to settle.

Finally, the appellees contended that the refusal of the judge to entertain the bill of information, motion to rescind, and the motion to stay enforcement of judgment was consistent with our laws, practice and procedure in this jurisdiction. They asserted that once a judgment or ruling is made and a party fails and neglects to except to it, then it means that the party agrees with the ruling and is bound thereby and cannot take a position inconsistent with said ruling.

The petition for the writ of prohibition was argued and on the 18th day of March, A. D. 2003, His Honour Justice M. Wilkins Wright, presiding in Chambers, made a ruling in the absence of appellant's counsel and without appointing a deputy counsel to take the ruling in its behalf. Mr. Justice Wright in his ruling denied appellant's petition for a writ of prohibition. We quote below the relevant portion of the Chambers Justice's ruling for the benefit of this opinion:

“It is crystal clear that the petitioner cannot enjoy the benefit of any form of appellate review in this Court, whether in Chambers or before the Court *en banc*, because it knowingly failed to do for itself what it should have done, by not excepting to said ruling and appealing therefrom. And the Court will not do for parties what they ought to do for themselves. Anything short of that fundamental requirement renders the appellate court impotent to even listen to the case, not to mention reversing the said ruling.

We fully concur with the respondents that petitioner, by the failure and neglect of its counsel to except to the ruling and appeal therefrom, deprived the appellant of the right and required capacity and legal standing to raise any issue against the ruling, since indeed it had acquiesced in, and agreed to abide by said judgment/ruling. And we so hold.

Pursuant to the above holding, this Court therefore rules that the motion to rescind and the bill of information are not properly before the National Labour Court in contest of any aspect of that court's ruling of August 5, 2002 and therefore it was no error for the judge to ignore them and proceed with enforcing its judgment, as there is no legal impediment to its validity and hence enforcement.”

Mr. Justice Wright concluded his ruling by saying “that due to the deliberate, voluntary and unexcused absence of the petitioner and since there is no appeal from our ruling, the Clerk of this Court is hereby ordered to immediately give effect to this ruling by sending a mandate down to the court below for enforcement of its judgment.”

Following the Justice in Chamber's ruling, the appellant, on the 24th day of March, A. D. 2003, filed a bill of information venued before His Honour M. Wilkins Wright alleging in substance that the failure of the Justice in Chambers to appoint a deputy counsel for the purpose of announcing an appeal in its absence and that of its counsel, denied them the right of appeal as provided for by the Constitution, and information will lie to correct this inadvertent error. The information was ordered docketed and the necessary writ ordered issued by Her Honour Gloria M. Musu-Scott, former Chief Justice.

The bill of information was heard by the Full Bench during the March, A. D. 2003 Term of Court and the bill of information was granted. The Clerk of the Supreme Court was ordered to docket the appeal from the Chambers Justice's ruling in the prohibition proceedings to be heard by the Full Bench on appeal. Hence, this appeal.

The salient issue to determine this appeal is whether or not the Chambers Justice erred by ruling that prohibition will not lie to restrain a judge from enforcing a final judgment not excepted to or appealed from?

The Chambers Justice ruled that the grounds for prohibition did not exist in the instant case. He found that there was neither any showing that the National Labour Court Judge's action was contrary to rules which should be observed at all times nor any showing that the National Labour Court Judge did not have or exceeded her jurisdiction or proceeded by wrong rules.

The records reveal that after the judge rendered the final judgment in the petition for judicial review, no party excepted to the final judgment. The judge made record to the effect that no exceptions or appeal had been taken from the final judgment. A day after the final judgment was rendered, another counsel for appellant LPRC, in person of Counselor Fredrick Cherue, realizing the error that had been made when no exception was taken and appeal announced, tried to cure that error by the filing of various unmeritorious motions, hoping that the judge would entertain those motions, deny them, and give appellant the opportunity to appeal to the Supreme Court. And this is exactly how this case found its way before us.

We concur with the position of the appellee. It is our holding that appellant having failed to except to the ruling and announce an appeal therefrom, subsequent motions filed against the said ruling do not have the necessary legal foundations. The trial court was therefore under no legal obligation to entertain said motions.

We also agree with the Chambers Justice's ruling. Accordingly, it is our holding that the appellant cannot enjoy the benefit of any form of appellate review by remedial process or before the Full Bench because it failed to note an exception to the final judgment and announce an appeal therefrom. Such action would have been an indication of appellant's disagreement with the ruling, thereby giving notice to the court and the other party that it intends to take advantage of the statute through some appellate review.

Our Civil Procedure Law provides at section 21.3, 1 LCLR 180 “An exception shall be noted by a party at the time the court makes any order, decision, ruling or comment to which he objects. Failure to note an exception to any such action shall prevent assigning it an error on review by the appellate court.”

In the absence of an exception and the announcement of an appeal to a final judgment, prohibition will not lie to restrain the judge from enforcing the final judgment. In the case *National Port Authority v. Choukair*, 36 LLR 249 (1989), this Court held: “Prohibition may not be used as a process for the review of a final judgment and correction of errors committed in the trial of a cause for which other remedies are available.”

Wherefore, and in view of the law cited and the facts in the instant case, it is the opinion of this Court that the ruling of the Chambers Justice, denying appellant’s petition for a writ of prohibition, is hereby confirmed. The alternative writ is ordered quashed and the peremptory writ refused. The un-appealed ruling of the National Labour Court rendered on August 5, 2002 is ordered enforced without delay. The Clerk of this Court is hereby ordered to send a mandate to the court below, commanding the judge presiding therein to resume jurisdiction and enforce the court’s final judgment of August 5, 2002, with costs against appellant. And it is hereby so ordered.

Petition denied.