

LONE STAR INSURANCE COMPANY, represented  
by its General Manager, REINHARD REICHTER,  
and REINHARD REICHTER, Appellants, *v.* HIS  
HONOUR VARNIE D. COOPER, Assigned Circuit  
Judge, Sixth Judicial Circuit, Montserrado County, and  
ABI JAOUDI & AZAR TRADING  
CORPORATION, represented by its President, ELIE  
J. ABIJAOUDI, Appellees.

APPEAL FROM THE RULING OF THE CHAMBERS  
JUSTICE DENYING THE PETITION FOR THE  
ISSUANCE OF THE WRIT OF PROHIBITION.

Heard: April 5, 2001. Decided: July 6, 2001.

1. Under the Liberian statutory law, no person shall practice law or appear before any court as an attorney or counselor-at-law without a lawyer's license.
2. The deadline for lawyers and law firms to obtain annual licenses in order to practice law and to operate a law firm is the second Monday in March of each year, after which no lawyer or law firm that has not obtained the lawyer's license for the year shall be permitted to practice law in any court in Liberia.
3. Under Rule 5 of the General Rules applicable to all courts in Liberia, each lawyer is required to pay annual dues to the Liberian National Bar Association.
4. The Liberian statute provides for the dismissal of a case where the party asserting a claim has no legal capacity to sue.
5. A lawyer is the agent and representative of the client, a private party, and any act of the lawyer, within the scope of his duty, is binding on the client, party to a suit.

6. The filing of pleadings for a client is within the scope of authority and duty of a lawyer, and therefore any defect in the institution or prosecution of a cause of action or other neglect of the counsel directly affects and impacts upon the rights and interests of the client.
7. A counsel who has not procured his lawyer's license for the year by the second Monday in March, when he signs and files a petition or complaint, is in violation of the law, and hence, has no legal authority or standing to perform any legal act and, as agent for the client, he renders the client's claim dismissible.
8. When an agent goes beyond the scope of his duty and in so doing makes it impossible for a judgment of a court of law to be executed because the judgment debtor had no assets in Liberia, when the judgment debtor should have had such assets in Liberia and might have had assets in Liberia if not for the role played by the agent outside the scope of his legal duty, the agent will be required to ensure that the judgment is satisfied.

9. In the case where an agent is sought to ensure that the judgment against the principal is satisfied because of some act of the agent done outside the scope of his authority, the relevant issues of fact must be established to warrant holding the agent to such duty.
10. It is not permissible for a party to rise for the first time in a petition or brief before the Supreme Court issues and defenses which were not raised in the trial court.
11. Prohibition proceedings are dismissible where the issues raised therein were not previously raised in the trial court and passed upon.
12. Prohibition is preventive in nature and seeks to restrain acts taken or in progress or already completed, and where commenced prematurely, it will be denied and dismissed.
13. Prohibition cannot be commenced on the basis of presumptions or threats of possible action, but must be based on clearly taken decisions or actions.
14. A person's constitutional right to due process of law is violated where, not having committed any criminal offense but is merely named as a party to a civil suit which has not been called for hearing, he is arrested.
15. Although lawyers are to be zealous and meticulous in prosecuting their client's interests, this does not provide a justification for overreaching and being overbearing to the extent of unlawfully and unnecessarily impinging upon the rights of others with impunity.
16. Judges should not allow themselves to be put in positions of great embarrassment or to compromise the cool neutrality which at all time should be exhibited by them.
17. Ruthlessness and harsh behaviour by the courts cannot be tolerated, and it cannot be an excuse that the behavior was prompted by lawyers, since judges should

be well versed in the law. For judges to behave otherwise is an abuse of judicial discretion.

The appellants, petitioners in prohibition, sought from the Supreme Court Chambers Justice a writ of prohibition to restrain the trial court judge from proceeding with enforcement proceedings in which the appellants had been summoned to show cause why they should not be held to ensure the payment of a money judgment entered against their principal. The appellants contended that as they were not parties to the trial in the lower court in which their principal had been held liable, the judgment could not be enforced against them. The appellees, on the other hand contended that the appellants should be held liable because they had violated the Insurance Law of Liberia by remitting to the principal's office abroad all premiums collected for the principal, in that law required that at least ten percent of such premium should be retained in Liberia in order to meet the principal's obligations, including satisfaction of a judgment.

The appellees also attacked the petition on the ground that the lawyer who had signed the petition did not have a valid lawyer's license for the year, and hence, was not authorized to practice law in Liberia. As such, they said, the pleading signed by him was null and void. In response to this claim, the appellants withdrew the petition and filed an amended petition which was signed by a licensed lawyer. The appellees replied that the amended petition was also invalid since the original petition which was sought to be amended was itself invalid.

The Justice in Chambers agreed and denied the petition, prompting an appeal to the Supreme Court *en banc*. The Supreme Court agreed with the ruling of the Justice in Chambers and therefore affirmed the said ruling. The

Court noted that the statutes provides that as a condition to practicing law in Liberia a lawyer or law firm shall obtain a lawyer's license. Further, the Court said, the Rules of Court provide that a lawyer or law firm must procure the required lawyer's license not later than the second Monday in March. The Court noted that where a lawyer fails to secure the lawyer's license, he lacks the capacity to commence or defend any suit on behalf of a client. The Court reasoned further that because the lawyer is an agent of the client, the client would also lack the capacity to maintain or defend a suit, traceable to the lawyer's lack of a valid lawyer's license.

The Court also held that the petition was dismissible since the issues raised therein should have been raised in the lower court. The Court reiterated the principle that a party was not permitted to raise for the first time, in the Supreme Court, issues which he or she had failed to raise in the lower court and which the lower court did not have the opportunity to passed upon. The Court cited as a further basis for the denial of the petition that it had been filed prematurely and was predicated upon presumptions or threats of possible action rather than on clearly taken judicial actions or decisions.

However, notwithstanding the denial of the petition, the Court examined the circumstances surrounding the arrest of Co-appellant Reinhard F. Reichter who had not been charged with the commission of any criminal offense but had merely been named as a party to an action which had not even been ruled to trial. The Court held that the arrest of Mr. Reichter, in the circumstances presented, was a denial his constitutional right to due process of law. It observed that Co-appellee Abi Jaoudi and Azar Trading Corporation had not posted a bond for the issuance of the writ of *ne exeat republica*, as required by law, to effect the arrest of Co-appellant Reichter, and it directed that the co-

appellee be required to post such bond within ten days of the date of the judgment, and that if he failed to do so, the trial court should return to Co-appellant Reichter his passport, which the trial court had seized under the writ of *ne exeat republica* to prevent his departure from Liberia.

The Court pointed out further that the question of whether the appellants should be held to ensure that the judgment against their principal was satisfied by the said principal was a question of fact which needed to be determined by the admission of evidence in the trial court. That evidence, the Court noted, must show that the appellants had acted outside of their scope of duty and that their action had rendered the attempt to enforce the judgment against their principal ineffectual.

*C. Alexander B. Zoe* of Providence Law Associates appeared for the appellants. *G. Moses Paegar* and *J. Johnny Momoh* of Sherman and Sherman, Inc., appeared for the appellees.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

This Court *en banc* sits in review of a ruling made by our distinguished colleague, His Honour Karmo G. Soko Sackor, Sr., then presiding in Chambers, wherein he granted the respondents' motion to dismiss, and, as a consequence thereof, denied the petition for the writ of prohibition. The sole ground for the granting of the motion to dismiss and the denial of the petition was that the petition was signed by a lawyer who, at the time, did not have a current and valid professional license to practice law in Liberia. The petitioners, aggrieved by the ruling of the Chambers Justice, appealed to the Full Bench for a review of the said ruling.

The fact that the counsel who signed the petition had not then procured his professional license as a lawyer at the time he prepared and filed the petition is not disputed by the appellants. They, however, seek to justify or excuse the same by the argument that the appellees did not show how they had been adversely affected by the counsel's neglect. The appellants also contended that the interest of a party should not suffer because of the neglect of his lawyer and that the proper thing to have done in such a case was to exclude the lawyer from the proceedings and to allow the party or client to retain other counsel.

Because we are in complete agreement with the ruling of the Chambers Justice, as same is in harmony with the statutory and decisional laws of Liberia, we have found no reason to disturb the said ruling and we hereby confirm and affirm the same.

The records in this case revealed that on October 24, 2000, Lone Star Insurance Company, represented by its General Manager, Reinhard F. Reichter, and Mr. Reinhard F. Reichter, for himself, filed a six-count petition for a writ of prohibition. The petition carried the typewritten names of two counsellors, but only one counsel actually signed his name, while the other did not sign.

The appellees filed returns to the petition and, along with it, a motion to dismiss the petition, wherein they requested the dismissal of the petition on the ground that the lone counsel who signed the petition had not obtained his professional license to practice law in Liberia.

On November 16, 2000, the petitioners withdrew their petition and filed an amended petition. This time, the amended petition was signed by both counsels. Again, the appellees filed returns and another motion to dismiss the amended petition, contending that as the initial petition was a legal nullity, its withdrawal and amendment was equally

ineffectual and void. The appellees therefore prayed that the amended petition be denied and that the trial judge be ordered to resume jurisdiction over the case and proceed therewith in keeping with law.

The petitioners, on the other hand, contended that the amended petition should be allowed because one of the lawyers who signed it possessed a valid professional license. They argued that the counsellor who did not sign the original petition fully participated in the conference prior to the issuance of the alternative writ and that his failure to sign the said original petition, due to the fact that he was hospitalized at the time, was a harmless error. They prayed therefore that the Court would proceed to hear the arguments on the amended petition.

Our laws are clear and straightforward on this point. The statute provides that no person shall practice law or appear before any court as an attorney or counsellor-at-law without a lawyer's license. Judiciary Law, Rev. Code 17:17.9(1) (1972). This age-old principle has been repeatedly confirmed in many opinions of this Court. See *Kanna v. Smith et al.*, 24 LLR 359 (1975); *M. 1. M. Timber Company v. Bayeh*, 20 LLR 357 (1971); *Buchanan v. Raymond Concrete Pile Company*, 20 LLR 330 (1971); *Johnson v. Smith*, 26 LLR 331 (1976). The *New Rules of Courts Amended and Revised January 1999*. Specifically, see *Rule 5* of the General Rules applicable in all courts of Liberia, which also upholds the foregoing principle, and even goes further to prescribe the deadline for lawyers and law firms to obtain annual licenses in order to practice law and to operate law firms. It states that the deadline for obtaining a lawyer's license for the year is the Second Monday in March of each year, and that after that date no lawyer who does not have his lawyer's license for the year shall be permitted to practice law in any court in Liberia. *Rule 5* stipulates a further requirement that lawyers



pay annual dues to the Liberia National Bar Association.

Another issue we wish to comment on relates to the contention that the motion to dismiss was not founded on any of the five statutory grounds laid down in section 11.2 (a-e) of the Civil Procedure Law. The motion alleged that the counsel who signed the original petition did not possess his annual lawyer's license at the time he prepared, signed, and filed the said petition, and thus, he was unqualified to practice law in Liberia. It therefore argued that any action taken in the case by the said lawyer was void.

Recourse to the statute relied upon reveals that among the grounds listed is one which states that a case may be dismissed where the party asserting the claim has no legal capacity to sue. See Civil Procedure Law, Rev. Code 1:11.2(e). The instant case borders on this theory because the lawyer is the agent and representative of the client, a private party, and any act of his, within the scope of his duty, is binding upon the party or client. Certainly to file pleadings for a client is clearly within the scope of authority and duty of a lawyer. Hence, any defect in the institution or prosecution of the cause of action or other neglect of the counsel directly affects and impacts upon the rights and interests of the client. This is the theory we are applying to this case and, as such, it is our holding that counsel for the appellants, not having procured his lawyer's license by October 24, 2000, when he signed and filed the petition in violation of the laws cited above (i.e. the deadline or Second Monday in March), did not have the standing or legal authority to perform any legal act and, as agent for the co-appellants, to assert the claim laid in the petition.

The appellants raised a second issue which we need to address in this opinion. That issue, set out in the petition and written brief, and addressed in the oral arguments before this Bench, related to the contention, strenuously

argued by the appellants, that they were never named as parties to the main suit, the action of damages, and that therefore they were being unlawfully joined since they were not parties to the suit. They asserted that they could not be compelled or expected to comply with or be bound by the judgment in a suit to which they were not parties. Further, they contended that they were mere agents for CIGNA Worldwide Insurance Company and that they performed that sole role, which was the limit of their involvement and responsibility. Therefore, they said, they could not be held for the act or liability of the principal.

In response, the appellees contended that they had named the appellants, in their capacity as agents for the principal defendant and judgment debtor, as party respondents in the special proceedings for enforcement of a money judgment against their principal. The appellees asserted that they had joined the appellants as parties to the enforcement proceedings because, in their capacity as agents for the principal defendant in the damages case, they had violated section 5.3 of the Insurance Law of Liberia which required the Lone Star Insurance Company, a Liberian company, acting as agent of CIGNA Worldwide Insurance Company, a foreign non-domiciliary corporation with no assets in Liberia, to retain and invest at least ten (10%) percent of its premiums collected from insurance business conducted in Liberia. That retention, the appellees said, should have been done by the appellants, and that in failing to do so, the appellants had violated the requirement by sending all monies collected to CIGNA in the United States. The appellees stated that the purpose of the requirement to retain at least 10% of the premiums in Liberia was to ensure that a foreign insurance company would be able to settle claims and satisfy judgments against it in Liberia through the use of assets retained in Liberia.

The appellees argued that since the appellants had violated section 5.3 of the Insurance Law they, as agents for CIGNA, should be required to “ensure” that the judgment is satisfied by its foreign principal. The appellees relied on this Court’s holding in the case *The International Trust Company of Liberia v. Buchanan-Horton et al.*, 39 LLR 169 (1998), decided at the March Term, 1998, of this Court, wherein this Court declared that when an agent goes beyond the scope of his duty and in so doing makes it impossible for a judgment of a court of law to be executed because the judgment debtor has no assets in Liberia, when said judgment debtor should have had assets in Liberia, and might have had assets in Liberia had it not been for the role played by the agent outside the scope of his legal duty, then such an agent will be required to ensure that the judgment is satisfied.

The conditions set by the Supreme Court in its holding enunciated in the *Buchanan-Horton* case, present issues of fact which have to be established by the production of evidence in a competent forum, which thus compels this Court to remand this case to the trial court to conduct a hearing into the special proceedings for the enforcement of money judgment and determine the role played by Co-appellant Lone Insurance Company which will then form the basis of deciding whether or not to hold them to ensure that CIGNA satisfies the judgment in the damages suit.

In addition to denying the petition and dismissing the prohibition proceeding because the lawyer who signed it did not have his lawyer’s license, there is another very potent basis, well supported by law and reasoning and in the interest of justice to the parties. The Court observed that all the positive issues raised and affirmative defenses interposed by the appellants in their petition and brief before this Court are being raised for the first time in the

Supreme Court and not earlier in the trial court. This Court has persistently and consistently held that it is not permissible and will not be permitted. The cases are numerous on this subject. *Cooper v. Davis*, 27 LLR 310 (1978); *Benson v. Johnson*, 23 LLR 290 (1974).

During oral arguments before us, it was discovered that after the co-appellee Abi Jaoudi and Azar Trading Corporation, who was plaintiff in the trial court, had obtained a verdict and judgment in its favor and against CIGNA, it had there and then filed special proceedings in the trial court for the enforcement of money judgment for all the reasons enumerated in the complaint or petition therefor. We observed also that upon being served with the writ, the respondents therein, who are now appellants in these prohibition proceedings, Lone Star Insurance Company and Reinhard Reichter, did not file returns to the petition for enforcement of the money judgment, but rather elected to file a petition for the writ of prohibition, which was heard and denied. But even if the petition had not been denied and dismissed, because of the lack of a lawyer's license by the appellants' counsel, the prohibition proceedings would still have been dismissible because the issues raised therein had never been raised in the trial court and passed upon. Therefore, we herein at this time decline to comment on the positive issues raised by the appellants and remand the case for those issues to be squarely raised before the trial court and disposed of, and then qualify them for appellate review.

Also, the petition was premature, in that the appellants may have been confused as to what they sought to prohibit. They were of the mistaken belief that their petition would restrain the enforcement of a judgment against them when they were never named and cited as party defendants to the main damages suit. But in reality, at the stage of the

proceedings, when the petition for prohibition was filed, the only thing before the court was the petition for enforcement and the only action taken by the court thus far was the issuance and service of the writ of summons or citation to appear and file an answer or returns to show cause why the petition for enforcement should not be granted. It was therefore the hearing of the appellees petition for enforcement that was effectively being restrained by the prohibition, which petition had not even been responded to, assigned, heard, or ruled upon.

Thus, even though prohibition is preventive, we believe and hold that the petition was rather premature. Prohibition will restrain acts in progress or already completed. It will not act on presumptions or threats of possible actions, but rather on clearly taken decisions or actions. It is for these reasons that prohibition is denied and these proceedings dismissed.

Finally, the appellants raised the issue of the passport of Co-appellant Reinhard F. Reichter having been seized from him under duress of arrest and possible imprisonment. The appellants contended that the trial court committed a reversible error when it issued the writ of *ne exeat republica* against Co-appellant Reinhard F. Reichter without first requiring Co-appellee Abi-Jaoudi and Azar Trading Corporation to file a bond; and further, that the forcible arrest of Co-appellant Reichter in the full view of the public and his office staff subjected him to humiliation, disgrace, and embarrassment.

This Court is in total agreement with the contention of the appellants that the manner of arrest of Mr. Reinhard F. Reichter, who had committed no criminal offense but was merely named as a party to a suit that had not even been called for hearing was indeed violative of his constitutional right of due process. We acknowledge that lawyers are to be

zealous and meticulous in prosecuting their clients' interest, but we caution that this cannot serve as a justification for over-reaching and being overbearing to the extent of unlawfully and unnecessarily impinging upon the rights of others with impunity. And judges ought not to allow themselves to be put in positions of great embarrassment or to compromise the cool neutrality which should at all times be exhibited by them. We deplore and condemn this vehemently and warn our judges to refrain from such conduct. This Court will not take very kindly to ruthlessness and harsh behavior by our courts; it can be no excuse that such behavior was prompted by lawyers because judges ought to be well learned in the law. We view this as an abuse of judicial discretion. Accordingly, we hereby order that both parties to the *ne exeat republica* action be required and are hereby ordered to file appropriate bonds which meet the requirements of the law, commencing with applicant, Abi-Jaoudi and Azar Trading Corporation, and thereafter that Co-appellant Reinhard F. Reichter be allowed to file his bond in keeping with law. However, if Abi-Jaoudi and Azar Trading Corporation fails to file a bond within ten (10) days from the rendition of this judgment, then the trial court is hereby ordered to immediately turn over and release unto Mr. Reinhard F. Reichter his passport and lift the travel restriction on his movement.

Wherefore, and in view of the foregoing laws, facts, and circumstances, it is the ruling and holding of this Court that the ruling of the Chambers Justice, being supported by the law and being in harmony with the view of the Full Bench, the same is hereby affirmed and confirmed, and the petition for the writ of prohibition is denied. The petition is hereby further denied for having been filed prematurely, as there was nothing to restrain, and for raising issues and defenses in this Court not first raised in the trial court. Accordingly, the peremptory writ is refused, the alternative writ is quashed, and these prohibition proceedings are dismissed. The case is remanded to the trial court to resume jurisdiction over the same and to dispose of the special proceedings to enforce money judgment, commencing from requiring the appellants herein to file their returns within ten (10) days, and thereafter to let the law take its normal course. Additionally, the trial judge is ordered to require the applicant for the writ of *ne exeat republica*, Abi Jaoudi and Azar Trading Corporation, to file its bond within ten (10) days, and that the Co-appellant Reinhard F. Reichter be allowed equal time to file his bond in keeping with law, and thereafter to have his passport returned to him. Should the applicant for the writ of *ne exeat republica* fail to tender his bond within the ten (10) days herein allowed, the trial judge shall immediately return to Mr. Reinhard F. Reichter his passport and thereby remove the travel restriction on his personal freedom of movement.

The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, commanding the judge presiding therein to resume jurisdiction over this case and proceed to dispose of the special proceedings to enforce money judgment, consistent with the various holdings and rulings hereinabove made, and to give effect to this opinion. Costs of these proceedings are ruled against the appellants. And it is hereby so ordered.

*Petition denied.*