

LONE STAR TRANSPORT LINES, INC., by and thru its General Manager, HENRY V. SKINNER, Petitioner, *v.* **HIS HONOUR E. S. KOROMA**, Assigned Circuit Judge, People's Civil Law Court, Sixth Judicial Circuit, Montserrado County, sitting in its June term, A. D. 1982, and **A & C. ENTERPRISES, BUTCHERY and HOUSEWIVES CENTER**, by and thru its Manager, ARTHUR S. FARHAT, Respondents.

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

Heard: October 28, 1982. Decided: February 3, 1983.

1. The trial court loses jurisdiction over a case upon approval of the bill of exceptions and is precluded from performing judicial function in the case thereafter.
2. A petitioner in a prohibition proceeding need not be a party to the proceedings to be restrained.
3. To warrant the granting of the writ of prohibition, the petitioner's right must be adversely affected by the act sought to be prohibited.

Respondents instituted an action of damages for breach of contract against the petitioner in the Civil Law Court of the Sixth Judicial Circuit. Pleadings rested, law issues disposed of, and a regular trial was begun. During the trial, petitioner moved the court for continuance on the grounds that petitioner's material and indispensable witness, in person of Mr. P. B. Korvah, was presently out of the country. Co-respondent A & C Enterprises, in resisting the petition, contended that petitioner had failed to put the machinery of court in motion by way of applying for a subpoena to ensure the presence of the witness, and hence cannot benefit from the petition. The co-respondent further contended that the averments that the witness was out of the country was not true, in that the said witness had just testified in a case in the Civil Law Court; hence, it challenged the correctness of the returns of the sheriff. The judge thereafter instituted an investigation, after which he denied the motion for continuance and fined the counsel for petitioner for misleading the court.

Petitioner excepted to the ruling denying the motion for continuance. With respect to the ruling imposing a fine, petitioner also excepted to the same and announced an appeal to the Supreme Court. The judge granted the appeal but ordered the judgment enforced. From this ruling of the trial judge ordering the enforcement of the judgment, petitioner petitioned the Justice in Chambers for prohibition to prevent the enforcement of the ruling, and for a

writ of mandamus to compel the approval of defendant's bill of exceptions *nunc pro tunc*. The mandamus was granted but the prohibition was denied on the grounds that the counsellor, on whom the fine was imposed and who announced an appeal therefrom, was not the petitioner and that he was never joined as a co-petitioner. On appeal, the *ruling* of the Chambers Justice was *affirmed* by the Supreme Court

John T. Teewia appeared for petitioner. *George E. Henriès* appeared for respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

Co-respondent A & C Enterprises, Butchery and House-wives Center by and through its manager, Arthur S. Farhat, of Paynesville, instituted an action of damages against the petitioner, the Lone Star Transport Lines, Inc., by and through its general manager, Henry V. Skinner of Harbel, Liberia. Pleadings rested, law issues disposed of and regular trial was begun during the June A. D. 1982 Term of the Sixth Judicial Civil Law Court. During the progress of the trial, the petitioner filed a motion for continuance requesting court to have said case continued for the September 1982 Term of the Court, because, according to count one of said motion, petitioner's material and indispensable witness in person of Mr. P. B. Kovah, manager of Insurance Adjusters (Liberia) Inc., was on leave and out of the country. Defendant, now petitioner, also claimed in said count one of the motions that this witness was to testify to all essential facts which would lead to the proving of non liability of the petitioner in this action and without his testimony petitioner would not get a fair and impartial trial.

The motion was resisted by the respondent then plaintiff, in which he contended among other things that the notice of assignment was issued on the 8th of July 1982 and was returned served on the self-same day and date. The petitioner did not pray for the subpoena of the witness until after six days that is on the 14th of July 1982 when the case was assigned for hearing on the 16th day of July 1982. Plaintiff, now co-respondent, therefore contended that the petitioner did not exercise the necessary prudence and therefore could not be benefitted by the motion. The co-respondent further contended in the resistance that the witness, P. B. Kovah, was not out of Liberia because on July 13, 1982 he had testified in the case *African Trading Company v. Insurance Company of Africa*, in an action of damages. Hence the co-respondent challenged the correctness of the sheriffs returns.

The trial judge instituted an investigation after which he denied the motion for continuance and fined Bailiff Alice Matthew \$25.00 and Counselor Teewia \$100.00 for misleading the court. Both were ordered to pay the fine by 10:00 a.m. the next day, and that if they failed to do so, they would be committed to jail. We quote the exception taken by defendant now

petitioner to the ruling of the trial judge on the motion for continuance and the fine:

"To which ruling denying the motion for continuance defendant movant excepts; and to which ruling fining Counsellor Teewia in the sum of \$100.00 Counsellor Teewia excepts, announces an appeal to the People's Supreme Court and respectfully submits."

The court then said "the appeal is granted but our judgment stands enforced. And it is so ordered, matter suspended."

Not being satisfied with this ruling, the petitioner, Lone Star Transport Line, Inc., unilaterally filed a petition for a writ of prohibition, mainly to prevent an enforcement of the court's ruling on the fine imposed on Counsellor Teewia as culled from the prayer which we quote:

"WHEREFORE and in view of the foregoing, petitioner respectfully prays this Honorable Court for the issuance of an alternative writ of prohibition ordering the respondents herein to desist from further enforcing the trial judge's ruling fining Counsellor John T. Teewia and to appear before this Honorable Court on a day and time to be named by Your Honour, to show cause if indeed they have any, why the peremptory writ of prohibition should not be issued; and to grant unto petitioner any other and further relief as the nature of this petition demands."

The petitioner also filed a mandamus to compel the judge to have his bill of exceptions approved. Our distinguished colleague, Mr. Justice Smith, then presiding in Chambers consolidated the two petitions, and ruled ordering the issuance of the peremptory writ of mandamus commanding the presiding judge in the People's Civil Law Court to approve the bill of exceptions *nunc pro tunc* since the respondent judge, E. S. Koroma, was incapacitated by virtue of his elevation to this Bench, and in light of the fact that an appeal was a matter of right. The Chamber Justice in ruling on the prohibition observed that Counsellor Teewia was not the petitioner nor was he joined as co-petitioner who prayed for the issuance of the writ of prohibition; instead, it is the Lone Star Transport Lines, Inc., which was not fined and which did not announce the appeal that has filed the petition. He also observed that the A & C Enterprises Butchery House-wives Center which was no party to the alleged misconduct of Counsellor Teewia, is also made party respondent. He therefore held that the two companies not being parties to the act or conduct of Counsellor Teewia which necessitated the imposition of the \$100.00 fine were misjoined to the prohibition proceedings and therefore they were ordered dropped. The Chamber Justice also quashed the alternative writ of prohibition because according to him the proper party who should have petitioned this Court for writ of prohibition was Counsellor Teewia and not the Lone

Star Transport Line, Inc. The petitioner appealed from this ruling of the Chamber Justice to the Full Bench.

During the hearing of this case, the counsel for petitioner, in person of Counselor John Teewia, informed Court that they conceded the legal soundness of the Justice's ruling on the petition for mandamus and had only appealed from his ruling on the prohibition.

The office of prohibition is directed to a court or official board which had exceeded its jurisdiction or which having jurisdiction proceeded contrary to procedures to be observed at all times and therefore the writ is being requested to restrain the proceedings.

In the instant case, the act complained of is the co-respondent judge's decision to enforce his judgment fining Counselor Teewia in the sum of \$100.00, even though Counsellor Teewia excepted to said judgment and announced an appeal to the People's Supreme Court, and which said appeal was granted by the co-respondent judge. To the mind of this Court, the issue of prohibiting the enforcement of the judgment fining Counselor Teewia is the main issue in the whole case. This issue has been remedied or taken care of by the ruling in the mandamus proceedings, in which the presiding judge of the People's Civil Law Court, Sixth Judicial Circuit, was ordered by the Chambers Justice to approve the bill of exceptions *nunc pro tunc* as a result of which the lower court lost jurisdiction over said case.

When a judge approves a bill of exceptions, he loses jurisdiction over the cause thereby precluding him from performing any judicial function in said case. Under the circumstances, if there are any motions to be filed for failure to proceed, they must be filed before the appellate court. Civil Procedure Law, Rev. Code 1: 51.16. The Chambers Justice rightly ruled quashing the alternative writ of prohibition since the act to be prohibited was the enforcement of the judgment for the payment of the \$100.00 fine imposed on Counselor Teewia which has been appealed and which appeal must now be heard by this Court before any action is taken thereon. We therefore do not see the necessity for the office of prohibition in this case. We also hold that the fine imposed by the trial judge on Counselor Teewia, was purely due to his alleged conduct. Therefore, the two companies were not parties to the contempt proceedings growing out of the alleged personal misconduct of Counselor Teewia and could not legally be parties to both the prohibition and mandamus proceedings. Hence, the Chambers Justice acted within the pale of the law when he ordered them dropped as provided by our statute. *Ibid.*, 1:5.56.

A petitioner in prohibition proceedings need not be a party to the proceedings to be restrained but once his interest is affected or injured, he may petition for the writ to prevent or restrain such proceedings. *Davies-Johnson v. Alpha et al.*, 13 LLR 573 (1960).

To warrant the granting of the writ of prohibition, the petitioner must be adversely affected by the prohibited act. *Dweb v. Findley et al.*, 15 LLR 638 (1964). In the case at bar, the petitioner has not shown in what way or manner the payment of the fine by Counsellor Teewia would adversely affect his rights. When no basis for the issuance of a writ of prohibition has been shown to the Justice in Chambers denying the petition, the ruling will be affirmed upon appeal. *Alraine (Liberia) Ltd. v. Koroma*, 22 LLR 308 (1973).

In view of the facts mentioned and the law cited *supra*, the ruling of the Chamber Justice is hereby affirmed. And it is hereby so ordered.

Ruling affirmed.