

DAVID PADMORE, JR., Appellant, *v.* **LAMCO J. V. OPERATING COMPANY**, represented by its Resident Manager, **MRS. THELMA GOLL**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT, CRIMINAL ASSIZES, MONTSERRADO COUNTY

Heard: April 4, 1984. Decided: May 10, 1984.

1. A motion filed in court must be based on an action already pending before the court.
2. A motion is an application for an order granting relief incidental to the main relief sought in the action or proceeding in which the motion is brought.
3. A motion in an action or proceeding in the circuit court shall be made in the circuit court or before the resident or assigned judge of the judicial district where the action is pending or has been tried, or in the case of an action not yet commenced, in any judicial district where venue is proper.

The appellant was declared redundant by the appellee company and asked to move out of the company's house, which appellant did shortly thereafter. The appellee subsequently inspected the premises and discovered that some personal properties belonging to the company were missing from the house. The appellee reported the matter to the Criminal Investigation Division (CID) of the Liberian National Police, whereupon the CID obtained a search warrant from the magisterial court in Bensonville, Montserrado County (the new residence of the appellant) to conduct a search of the appellant's home. Pursuant to the search warrant, which was served on January 27, 1983, personal properties believed to be the missing properties were seized by the police. During the February, 1983 Term of court, appellant filed a motion in the First Judicial Criminal Court, Criminal Assizes "A" for the return of the property and to suppress evidence. It is noteworthy that at the time the motion was filed there was no other matter involving the parties pending in this or any other court. The motion was heard and denied. Hence, this appeal to the Supreme Court. The Court had to decide: (1) whether the motion filed by the appellant/plaintiff was the proper remedy and, (2) whether the First Judicial Circuit, Montserrado County, was the proper venue?

The records certified to this Court reveal, and the arguments of both counsels in the case confirm, that there was no action pending before the court below out of which the motion grew. The records however show that the appellant in this case, who was employed by the appellee company (Lance), was declared redundant and paid off, and that he requested appellee's permission to remain in the company's house for two weeks to arrange his departure from Grand Bassa County where he was employed by the appellee. This permission was granted but, before the end of the two weeks, appellant left the house without any notice to the appellee and without delivering the keys for the house to appellee, except that he left said keys with one Fred Joseph who delivered them. Subsequently, it was discovered that some personal properties of the company had disappeared from the house and the theft was reported to the agents of the Criminal Investigation Division (CID) of the Liberian National Police. An investigation was commenced with a view to retrieving the missing properties. Appellant having taken up residence in Bensonville, Montserrado County, a search warrant was obtained by the police from the Magisterial Court of Bentonville to search the home of the appellant where sundry items or personal properties, believed to be the missing properties of Lamco, were seized and turned over by the police to its CID unit in Grand Bassa County. The search warrant was served on January 27, 1983.

During the February 1983 Term of the First Judicial Circuit Court, Criminal Assizes "A", appellant filed the a motion for return of property and to suppress evidence. The motion was resisted, heard and ruled upon by the court, with exceptions and appeal announced by appellant. For the benefit of this opinion, we quote a relevant portion of said ruling, as follows:

"Be it as it may, the court is convinced that the warrant of search having been directed to Sgt. Collins, a member of the Liberia National Police, and not to the Lamco Plant Protection Force, whatever act was committed by Sgt. Collins during the execution of the search warrant, in the opinion of the court, should not be considered the responsibility of the respondent but rather, the responsibility of the Republic of Liberia since Sgt. Collins is the agent of the Ministry of Justice, Republic of Liberia.

Wherefore, and in view of the foregoing, the motion is hereby denied for want of sufficient proof as well as legal merits. And it is hereby so ordered.

"Given under my hand this 16th

that issued the writ or the court to which it was made returnable. The question of whether the motion was the proper remedy for the recovery of the seized property is another mystery.

In our opinion, a motion to a court must be based on an action already pending before the court. Here is our statute on the point:

"A motion is an application for an order granting relief incidental to the main relief sought in the action or proceeding in which the motion is brought . . ." Civil procedure Law, Rev. Code 1: 10.1(1).
"A motion in an action or proceeding in the circuit court shall be made in the circuit court or before the resident or assigned judge of the judicial district where the action is pending or has been tried, or in the case of an action not yet commenced, in any judicial district where venue is proper." Civil Procedure Law, Rev. Code 1: 10.3(1).

The theft which resulted in the issuance and service of the search warrant was committed in Lamco, Grand Bassa County. The property was seized and turned over to the CID unit in Grand Bassa County where same was taken by the CID. Theft committed in Grand Bassa County by one who once lived there, and subsequently took residence in Montserrado County, could not be prosecuted in Montserrado County. No one in Montserrado County within the territorial jurisdiction of the First Judicial Circuit Court was in possession of the property in question over which the court could exercise jurisdiction.

In view of the foregoing, and the legal authorities cited in support thereof, it is our candid opinion that the movant had no standing before the trial court. The ruling of the court is therefore hereby confirmed and affirmed. And it is hereby so ordered.

Ruling affirmed.