

CASES ADJUDGED

IN THE  
SUPREME COURT OF THE  
REPUBLIC OF LIBERIA  
IN THE  
OCTOBER TERM, 2001

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M. S. ROGERS, JR., represented by his father, M. S. ROGERS, SR., and the COMMISSIONER OF INSURANCE, Republic of Liberia, Appellants, v. UNIVERSAL INSURANCE COMPANY, by and thru its Managing Director, J. SANDO MOMOLU, Appellee.

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: November 26, 2001. Decided: December 20, 2001.

1. The jurisdiction of a court is conferred by law and not by the consent of the parties to a case.
2. The circuit courts have the power to exercise original general jurisdiction over all cases, including jurisdiction in admiralty cases, to which another court is not expressly given original jurisdiction by constitutional or statutory provisions.
3. The Ministry of Transport is an integral part of the Executive Branch of the government and, therefore, it is highly ultra vires for it to perform judicial functions not allotted to it by law.
4. Liberia has a republican form of government with three separate coordinate branches: The Legislative, the Executive, and the Judicial. Consistent with the principles of separation of powers and checks and balances, no person holding office in one of the

branches shall hold office in or exercise any of the powers assigned to either of the other two branches, unless otherwise provided for by the constitution.

5. Where a court or administrative agency lacks jurisdiction over the subject matter of a case, the judgment rendered therein is void regardless of the consent of the parties to the case.

6. A court has no authority to enter a decree against anyone over whom it has no jurisdiction.

7. It is a legal maxim that what is not done legally is not done at all.

8. The judgment of a court is final and binding upon the parties where neither of the parties excepted to or announced an appeal from said judgment.

The appellant, M. S. Rogers, Jr., who was knocked down and injured by a vehicle owned by the insured of the appellee, Universal Insurance Corporation (UNICO), filed summary investigation before the Commissioner of Insurance at the Ministry of Transport, through his father, M. S. Rogers, Sr., seeking to recover insurance claim from the appellee. The Commissioner of Insurance overruled appellee's challenge to the jurisdiction of the Ministry of Transport, awarded the appellant \$4,000.00. From the said ruling, the appellee appealed the ruling to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for judicial review.

Subsequently, the appellee withdrew the petition for judicial review and thereafter filed in the Supreme Court a petition for a writ of prohibition against the Commissioner of Insurance. In his ruling on the petition for a writ of prohibition, the Justice in Chambers ordered the parties to return to the Civil Law Court for argument of the judicial review petition or any amendments thereto which the parties were given the right to effect. The appellant, however, rather than filing a petition for judicial review, as mandated by the Chambers Justice, filed a petition in the trial court for enforcement of the decision of the Commissioner of Insurance. The petition was denied by the trial court.

On appeal, the Supreme Court affirmed the denial of the petition, holding that the Commissioner was a part of the Executive Branch of the government, he was precluded, under the doctrine of separation of powers, from exercising any judicial powers and awarding damages. The Court noted that as the case—a claim for damages—was a proper subject for the circuit court, the Commissioner of Insurance lacked jurisdiction over the subject matter. Accordingly, it declared the decision of the Commissioner to be void. The Court opined that the jurisdiction of a court or an administrative agency is conferred by law

and not by the consent of the parties, and hence, regardless of such consent, the judgment of such forum would still be void.

The Court also observed that the filing of the petition for enforcement of the decision of the Commissioner of Insurance was contrary to the decision of the Chambers Justice. That decision, the Court said, was binding on the parties as neither party had excepted to or announced an appeal therefrom.

Cooper Kruah appeared for the appellant. Nyenati Tuan appeared for the appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

On the 7th day of August, A. D. 1998, M. S. Rogers, Jr., a minor, was knocked down by a vehicle bearing license plate no. GTZ-9, on Sekou Toure Avenue, near the office complex of the National Security Agency. As a result of the injuries sustained, M. S. Rogers, Jr. was rushed to the St. Joseph's Catholic Hospital in Sinkor, where he was treated at the expense of the appellee and discharged four (4) days later. The driver of GTZ-9 was held responsible for the accident, while the parents of M. S. Roger, Jr. were charged with negligence.

On the 16th of November, A. D. 1998, the appellant instituted at the Ministry of Transport summary investigation proceedings against Universal Insurance Corporation (UNICO) to recover insurance claim for M. S. Roger, Jr., instead of bringing an action of damages in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, as required by law. The appellee, Universal Insurance Corporation, was cited by the Ministry of Transport for the investigation on the 24th day of November, A. D. 1999.

At the investigation, the representative of UNICO protested "that the investigation was without jurisdiction" to try the matter and "therefore should refuse jurisdiction" over the said matter."

Notwithstanding the protest by UNICO's representative, the Commissioner of Insurance, the late William H. Sherman, proceeded with the investigation and awarded appellant Four Thousand United States (US\$4,000.00).

It is from this award, made by the Commissioner of Insurance, co-appellant herein, that the appellee, on the 29th day of February, A. D. 2000, filed in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, a petition for judicial review. The appellant filed returns to the petition for judicial review and served the same on the appellee on the 9th day of March, A.

D. 2000. Thereafter, on the 27 th day of March, A. D. 2000, the appellee filed a notice of withdrawal of the petition for judicial review, paid the accrued costs, and proceeded to the Justice in Chambers where it filed a petition for a writ of prohibition.

On the 1st day of July, A. D. 2000, a conference was held by the Chambers Justice. At the end of the conference, the Chambers Justice ordered that the parties should return to the Civil Law Court, argue the petition for judicial review, and let the Civil Law Court pass on the same. The Chambers Justice further ruled that the parties could amend their respective pleadings, if they so desired. The mandate of the Chambers Justice is hereunder quoted verbatim, as follows:

“Office of the Clerk

Supreme Court of Liberia

Temple of Justice

Monrovia. Liberia

June 21, 2000

The Commissioner of Insurance

Ministry of Transport

Gurley Street

Monrovia, Liberia

Dear Mr. Commissioner:

IN RE: The Universal Insurance Company,) )

represented by and thru its Manager, )

Mr. J. Sando Momolu, of Monrovia, )

Liberia.....Petitioner )

Versus )

PETITION

Messrs. M. S. Rogers, Jr. ) FOR

represented by his father, Mr. M. S. ) JUDICIAL

Rogers, Sr., and the Commissioner ) REVIEW

of Insurance, Republic of Liberia )

.....Respondents )

By directive of His Honour M. Wilkins Wright, Associate Justice presiding in Chambers, you are hereby ordered to return to the Civil Law Court, let the parties argue the petition for judicial review, and let the court pass upon it. Thereafter, let the law take its course.

The Chambers Justice would have me further inform you that the parties may amend their pleadings, if they so desire.

Kind regards.

Very truly yours,

Martha G. Bryant

Clerk, Supreme Court of Liberia

SEAL”

On the 18th day of July, A. D. 2000, the appellee filed an amended petition, consistent with the order of the Justice in Chambers. However, in disregard for the order of the Justice in Chambers, the appellant filed a petition for enforcement of judgment in the identical case that was sent down to the Civil Law Court for a new hearing. On the 28th day of July, A. D. 2000, the co-appellee insurance company filed returns to the petition for enforcement of judgment and a motion to dismiss.

Since the petition for enforcement of judgment had grown out of the same case and the decision of the Justice in Chambers was accepted by all parties, there was no need for the appellee to file returns to the petition for enforcement of judgment. All that was required was the filing of a resistance to the motion to dismiss.

On the 29th day of August, A. D. 2000, when the petition for the enforcement of judgment was called for hearing, the appellee spread on the records of this Court that under the orders of the Justice in Chambers the parties were to argue the petition for judicial review and not the petition for the enforcement of judgment and, that as such, it would be a callous disrespect to the Justice’s instructions for them to do otherwise. However, since Co-appellant Rogers did not announce an appeal from the decision of the Justice in Chambers, he was estopped from raising what we consider an unwarranted contention. His Honour Varnie D. Cooper, assigned circuit judge presiding over the September Term, A. D. 2000 of the court, denied the petition for enforcement of judgment; hence, this appeal.

The case raises two (2) major issues, which are as follow:

1. Whether or not jurisdiction is conferred by consent of the parties to a suit?

2. Whether or not the trial court judge committed a reversible error when he dismissed the petition for the enforcement of judgment?

We shall address these issues in a chronological sequence. The first issue centers on whether or not the Ministry of Transport, and more specifically the Commissioner of Insurance, has the statutory authority to adjudicate cases involving damages for personal injury arising out of motor vehicle accidents? We hold, with regard to the said issue, that the statute vests no such authority in the Commissioner of Insurance or the Ministry of Transport. Jurisdiction is conferred by law and not by the consent of the parties. The Judiciary Law, at chapter 3, section 3.2, provides, *inter alia*:

“Original jurisdiction of the circuit courts. The circuit court shall exercise original general jurisdiction, including jurisdiction in admiralty cases, over all cases to which another court is not expressly given original jurisdiction by constitutional or statutory provision...” Judiciary Law, Rev. Code 17:3.2.

The Ministry of Transport is an integral part of the Executive Branch of the Government and, therefore, it is highly *ultra vires* for an agency or department of the Executive Branch of the Government (i.e. the Ministry of Transport) to perform a judicial function not allotted to it by law. Chapter one, article 3, of the Constitution of Liberia, which came into full force and effect on January 6, 1986, is clear on this matter. The article states thus:

“Liberia is a unitary sovereign state divided into counties for administrative purposes. The form of government is republican with three separate coordinate branches: The Legislative, the Executive and the Judiciary. Consistent with the principles of separation of powers and checks and balances, no person holding office in one of these branches shall hold office in or exercise any of the powers assigned to either of the other two branches except as otherwise provided in this Constitution; and no person holding office in one of said branches shall serve on any autonomous public agency”.

Moreover, according to section 2.3 of An Act Adopting an Insurance Law of Liberia, approved on the 7th day of March, A. D. 1973, and published on the 8th day October, A. D. 1998, the Commissioner, subject to the direction and control of the Minister of Commerce and Industry, shall exercise the following functions:

- a. Approve proposed incorporations of domestic insurers and applications of alien insurers to do business in Liberia complying with the requirement of chapter 3;
- b. Authorize qualified domestic and alien insurers to trans-act insurance in Liberia in accordance with chapter 4;
- c. Register and license qualified agents and brokers in accordance with chapter 5;

- d. Acquire and maintain all records, reports, audits and other information filed in accordance with the provisions of chapter 5 or otherwise officially obtained by the Commissioner;
- e. Make such examination, inspections, audits or investigations as are necessary to ensure compliance with the requirements of this title;
- f. Prepare an annual report to the Minister of Commerce and Industry (presently the Minister of Transport) containing the following information:
  - 1. names of authorized insurers, agents and brokers transacting insurance in Liberia, with such summary of their financial reports as the Commissioner deems proper;
  - ii. names of insurers whose business was closed during the year, the causes thereof and the amount of their assets and liabilities as are ascertainable;
  - iii. names of insurers, agents and brokers against whom disciplinary proceedings were instituted and a concise statement of facts with respect to each proceeding;
  - iv. comments and recommendations pertaining to amendment of this title, regulations thereunder, or the general manner of regulating the business of insurance in Liberia;
  - v. any further relevant and proper information.
- g. perform such other functions as may be assigned to the Commissioner by this title, or any other regulations made thereunder or reasonably inferred therefrom.”

These are the functions of the Commissioner of Insurance. It has been constantly held that where a court or administrative agency lacks jurisdiction of a subject matter, the judgment thereon is void regardless of the consent of the parties. *Tompo et al. v. Republic*, 13 LLR 207 (1958). Also, in the case *Donzo v. Thorpe*, 27 LLR 166 (1978), at Syl. 2, this Court said:

“a court has no authority to enter a decree against anyone over whom it has no jurisdiction.”

Given the statutory and case law hereinabove referred to and quoted, it is obvious that the Ministry of Transport (and specifically the Commissioner of Insurance) lacked the statutory authority to handle the matter, subject of these proceedings, in that this action is one for damages and therefore squarely falls within the purview of the circuit courts.

The Justice in Chambers acted judicially sound in mandating that the case be remanded to the lower court to dispose of the petition for judicial review. The position of the Chambers Justice was in consonance with the legal maxim which states that what is not done legally is not done at all. Furthermore, the decision of the Justice in Chambers was final and binding upon the parties since neither of them excepted to and appealed therefrom. Consequently,

the trial judge committed no reversible error in dismissing the petition for the enforcement of judgment.

Wherefore, and in view of the foregoing facts and circumstances, it is the considered opinion of this Court that the appeal be, and same is hereby, denied and the case remanded to the Civil Law Court, Sixth Judicial Circuit, Montserrado County, with instructions that the parties be allowed amend their pleadings and that the court should pass upon the petition for judicial review in keeping with law. The Clerk of this Court is hereby ordered to send a mandate to the court below, ordering the judge presiding therein to resume jurisdiction over the case and attend to this matter in compliance with this opinion. Costs of these proceedings are to abide the final determination of this case. And it is hereby so ordered.

Ruling affirmed; case remanded.

TROPICAL PRODUCE LIMITED, by and thru its General Manager, and LARRY JOHNSON, Operations Manager, Plaintiff-In-Error, v. HIS HONOUR YUSSIF KABA, Assigned Circuit Judge, HIS HONOUR EMMANUEL KOLLIE, Assigned Circuit Judge, August Term, A. D. 2000, the Clerk of Court, and the Sheriff, Ninth Judicial Circuit Court, Bong County, and WILLIE GOLL, Defendants-In-Error.

PETITION FOR A WRIT OF ERROR AGAINST THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT, BONG COUNTY.

Heard: December 3, 2001. Decided: December 20, 2001.

1. A writ of error is designed to call up for review the judgment of a lower court from which no appeal has been taken for good cause.
2. A writ of error will be granted when an inferior tribunal has denied a litigant his day in court.



3. The office of the writ of error is to review errors and irregularities committed by inferior courts; the writ is therefore granted only when a trial court has denied a party litigant his day in court.
4. The Supreme Court or an Associate Justice presiding in Chambers shall grant or deny an application for a writ of error for review of a judgment of an inferior court.
5. The Supreme Court, by statute, has the authority to review the ruling of an assigned Chambers Justice only upon an appeal to the Court en banc and not upon a remedial writ issued by the Supreme Court against the Justice assigned in Chambers.
6. The Justice of the Supreme Court presiding in Chambers exercises sole power and authority in all judicial matters during the recess of the Court and until it meets en banc. In such instance he exercises this sole power and authority until relieved by assignment of another justice at the close of the succeeding term of the Court.
7. The exercise by the Justice in Chambers of authority and power over judicial matters can only be reviewed or reversed by the d