

SILIB INTERNATIONAL LTD., Petitioner, v. WILLIAM H. KENNEDY, Judge of the Debt Court  
for Montserrado County, and WILLIAM SLOCUM, Sheriff of the Debt Court for Montserrado  
County, Respondents.

APPEAL FROM RULING OF JUSTICE IN CHAMBERS DENYING  
ISSUANCE OF WRIT OF MANDAMUS.

Argued April 6, 1978. Decided April 28, 1978.

1 Counsel for plaintiff in an action of debt is without right to order release of a chattel which was  
seized on writ of attachment when the client had not consented to the release and no security was  
required of defendant.

2 A client has a right to change his attorney at any stage in the proceeding.

3 A change of attorney is effectuated by a notice of change given to the opposing side and filed in  
the office of the clerk of court, and the court then orders the change noted in the records; consent of  
the dismissed attorney is unnecessary to terminate the relationship.

4 A petition in a mandamus proceeding instituted by an attorney on behalf of a client who had  
previously dismissed him is invalid and will be denied.

5 A writ of mandamus will not issue if its issuance would be useless to accomplish its purpose.

This was an action of mandamus to compel the sheriff of the Debt Court to deliver to the petitioner  
a Caterpillar tractor which had been attached in an action of debt brought by the petitioner corporation  
against another corporation. At issue was the authority of the attorney who claimed to represent  
petitioner in bringing the action of mandamus to act for petitioner, since petitioner had previously  
dismissed him by letter and by notice filed in the Debt Court. The attorney claimed that the dismissal  
was ineffectual because he had not consented.

The case was heard by the Justice in chambers who denied the petition and ordered the respondent  
judge of the Debt Court to resume jurisdiction over the action of debt and proceed to determine it.  
The Supreme Court held that consent of the attorney was not necessary to effectuate

termination of his services. The attorney therefore did not represent the nominal petitioner in bringing the mandamus proceeding, which was consequently invalid. Moreover, since the attached property was no longer in the possession of the sheriff, who had released it to the defendant in the debt action on order of the plaintiff petitioner's attorney, the Court would not order the doing of an impossible act. The *ruling* in chambers was accordingly *affirmed*.

*Samuel E. H. Pelham* for petitioner. *M. M. Perry* and *Urias Brooks* for respondents.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.

These proceedings have come up to us on appeal from a ruling in chambers. The history of this case, as we have been able to gather it from the record before us is as follows:

Silib International Ltd., by and through its manager, sued the Liberian Ivorian Logging Corporation in an action of debt by attachment. The writ was issued by the clerk of the Debt Court in Monrovia, and on the strength of the writ a D-8 Caterpillar tractor was levied upon and seized from the defendant by the Montserrado County Debt Court sheriff. Thus, this piece of equipment was supposed to have been seized and held by the court through the sheriff's custody of it in keeping with the statute governing attachment, Rev. Code 1: 7.19; and it should have been held until the Court could give some order. The statute reads as follows:

*"Retention of property.* The sheriff shall hold and safely keep all property or debts paid, transferred, assigned, or delivered to him or taken into his custody to answer any judgment that may be obtained against the defendant in the action, unless otherwise directed by

the court or the plaintiff, subject to the payment of the sheriff's fees and expenses. If the urgency of the case requires, the court may direct sale or other disposition of property, specify the manner and terms thereof, with or without notice." Rev. Code: 7.21 (I).

It is not reasonable to believe that a chattel seized by the Debt Court on a writ of attachment could be released except upon an order of court. Yet this is what happened; on March 4, 1977, Counselor Samuel E. H. Pelham, retained counsel for the plaintiff who had filed the suit by attachment, wrote to the commanding officer at Toe-Town police substation in Grand Gedeh County the following letter:

"Dear Sir:

"Upon the receipt of this letter, you will please release the Caterpillar under attachment to the Liberian Ivorian Logging Corporation to continue her operations till the r 5th instant at which time the matter will be settled and finally closed.

"You will further be advised on the r5th of March. And for so doing this shall constitute your legal and sufficient authority.

"Kindest regards, "Very truly yours, "[Sgd.] SAMUEL E. H. PELHAM."

On the strength of this letter from plaintiff's counsel, the defendant, from whom it had been seized, took delivery of the D-8 Caterpillar, the subject of the attachment proceedings; and this was done without the defendant company having filed a bond as the attachment law mandatorily requires. The relevant law reads:

"A defendant whose property has been levied upon under an order of attachment may move, upon notice to the plaintiff and the sheriff, for an order discharging the attachment as to all or a part of the property upon payment of the sheriff's fees and expenses. On such a motion, the defendant shall give a bond, in an amount equal to the value of the property sought to be discharge

that the defendant will pay to the plaintiff the amount of any judgment which may be recovered in the action against him, not exceeding the amount of the bond." Rev. Code: 7.26. This attachment procedure was known to our courts from the earliest time, and it is difficult to believe that a practicing lawyer would not be conversant with it.

The legal representative of a party cannot, acting on his own and without his client's authority, release a chattel seized on the strength of a suit filed by him on behalf of his client, without arousing the client's suspicion that the said unauthorized act was professionally questionable. Such conduct impairs the client's confidence in his lawyer, and confidence should be the basis of the lawyer-client relationship. It has been stated that "an attorney has no implied power to release his client's claim, and where there is security for the client's demand cannot surrender it to his client's detriment." 4 CYC. 949 (1902). We hold therefore that the counsel was without legal right to have unauthorized written the letter releasing the chattel which he had seized on behalf of his client without legally protecting his client's interest; the statute requires that in order to release the chattel in attachment, the defendant should have filed a bond. We know that no such bond was demanded or filed. "An attorney . . . has the authority to release an attachment on realty or personality, at least where he takes other security. It has been held, however, that an attorney may release a garnishee from his attachment only by special authority from the client." 5 AM. Jun., *Attorneys at Law*, § 89 (1936).

When Counselor Pelham's client, Silib International Ltd., got to know of this unauthorized act of its lawyer, one of its officers wrote to him on March 16, 1977, to give him notice that his services were terminated and that he should send the corporation all of the documents in the case. That letter reads as follows:

"Dear Counselor Pelham:

"We have observed that you are not handling our

case in our best interest, as you have without our knowledge and consent authorized the use of the attached Caterpillar through a written authority to be used by LILCO—Defendant. Also, you have conferred with representatives of the said LILCO during our absence and made concessions to them without our knowledge.

"In view of the above, we ask that you turn over to us all pertinent documents so that we can get another counsel.

"Kindest regards."Very truly yours, "[Sgd.] PATRIZIO FEDI,  
*Executive Manager, Silib International Ltd."*

Just at this point we would like to refer to another document found in the record certified by the clerk of the Debt Court; it is not dated but it also relates to termination by the plaintiff of its lawyer's services. The text shows that it must have been written before the letter to Counselor Pelham quoted above; it is addressed to the clerk of the Debt Court, and it reads as follows:

"Dear Mr. Johnson:

"Please take due note and spread upon the records of Debt Court that the plaintiff in the above entitled cause of action hereby gives notice that they have changed counsel from Counselor Samuel E. H. Pelham to Attorney Daniel Tolbert.

"And for so doing this shall constitute your legal authority. "Respectfully submitted, "Silib International Ltd., by and through its Manager. "[Sgd.] PATRIZIO FEDI,  
*Executive Manager, Silib International Ltd."*

So that, whether this latter letter was written before or on the 16th of March, it is certain that on that date the plaintiff

had already notified the Debt Court that it had changed counsel from Counselor Samuel E. H. Pelham, who had filed its case, to Attorney Daniel Tolbert. In a report made to the Justice in chambers, the respondent judge had already filed a report found in the record to the effect that Silib International Ltd. had filed change of counsel in the Debt Court on the 15th of March, a day before they wrote to Counselor Pelham dispensing with his services. This is a very important point, as will be seen later in this opinion.

Another document found in the record certified to us is Counselor Pelham's notice of withdrawal of his client's case; that notice reads

"Mr. Clerk of Court:

"Please take due and timely notice and spread upon the records of the Debt Court for Montserrado County that the plaintiff in the above entitled cause on this day and date withdraws the action of debt by attachment without reservation.

"And for so doing this shall constitute your legal and sufficient authority.

"Respectfully submitted,

"Silib International Ltd.,

by and through his counsel

The Mississippi Law and

Accounting Firm.

"[Sgd.] SAMUEL E. H. PELHAM,

*Counselor-at-Law.*"

"Dated this 16th day of

March, 1977, Monrovia."

We have not been able to find anything in the record to explain or justify what took place next; but on the 23rd of March, that is to say seven days after plaintiff had filed withdrawal of the case in the Debt Court, and had also notified the court of change of counsel, it appears that information was filed by Counselor Pelham on behalf of plaintiff and was heard by the court. The relevant portion of the minutes taken at this hearing is as follows:

"Plaintiff is represented by Counselor Samuel E. H.

Pelham and begs leave of court to make the following observation: that said counsel Samuel E. H. Pelham filed an action against the defendant and has withdrawn said action by notice of withdrawal filed with the clerk of court. Upon filing of the withdrawal, this case has been terminated and defendant is at liberty to take delivery of the Caterpillar."

We have omitted the other portion of the very lengthy minutes of this hearing, because it is not relevant to these mandamus proceedings. But what seems confusing from this part of the minutes quoted above is that: (1) although Counselor Pelham had on the 15th of March withdrawn the case on behalf of his client, Silib International Ltd., yet on the 23rd he had appeared and announced representation for the same client in the same case; and (2) although according to his own submission, quoted from the minutes above, the case had been terminated, he was appearing in the same case supposed to be no longer in court.

The other strange thing about this hearing of the 23rd of March is that although the court had been notified of the change of counsel filed by the plaintiff, which change is supposed to have terminated Counselor Pelham's representation and appointed Attorney Daniel Tolbert as plaintiff's new counsel, yet the court had allowed Counselor Pelham to file information on behalf of his former client who had terminated his services. This phase of the matter is to play an important part in the determination of the case, as will be seen later.

The matter was recessed until the 29th of March, when it was resumed and the question of the change of counsel was taken up. Attorney Daniel Tolbert, who had been named as the new counsel for the plaintiff, made record to the effect that he had been retained by Silib International Ltd., and that the law firm of which he is a member was thereupon representing the plaintiff. The court then asked the following question: "Please say for the benefit of the court whether the change of counsel was filed before the notice of withdrawal, and if so was a copy of the notice ... served on

Counselor Pelham who instituted the action for the plaintiff in this case?" The following answer was made by Attorney Daniel Tolbert:

"The notice of change of counsel was served on Counselor Pelham, it was filed with the court, and then he was given notice accordingly. A letter was written to Counselor Pelham notifying him of the reason for the change of counsel, of which I herewith present a copy to the court and the notice of the change of counsel was before that letter; the date of the letter is March 16, 1977, and the date of the filing of the change of counsel is in the court's record. That Counselor Pelham received seven million five hundred thousand francs representing defendant's indebtedness to Silib International, copy of which receipt is also presented to the court. The plaintiff wants to emphasize that Counselor Pelham was not authorized to withdraw the matter; neither did he consult the plaintiff."

The judge of the Debt Court thereupon made the following ruling in the court's minutes for March 29, 1977: "In view of the record made *supra* together with the documents presented by Attorney Daniel Tolbert, the clerk of court is hereby [ordered] to make certified copies of these letters and attach them to the record in this case without delay, and the matter is suspended until the order given the clerk is executed. And it is so ordered. Matter suspended."

But before this ruling of the judge was made on the 29th of March, Counselor Pelham had on the 23rd of March, the same day of the hearing held respecting the change of counsel, filed on behalf of the plaintiff a petition in the chambers of the Supreme Court praying the issuance of a writ of mandamus against the judge and sheriff of the Debt Court, "requiring the sheriff of the court to forthwith deliver the said subject property to the petitioner/plaintiff being the D-8 Caterpillar, since the withdrawal of the said action of debt by attachment."

Remember that, in the first place, on the 16th of March,



seven days earlier, the plaintiff, in whose behalf he now filed petition for mandamus, had terminated his services by letter, and had also notified him and the Debt Court of their change of counsel. Secondly, according to the record he himself had made earlier in the minutes of court, this case in which he now petitioned for mandamus he had already withdrawn ; and finally, in the face of the Counselor's letter of the 4th of March quoted earlier in this opinion and addressed to the commanding officer of the police substation at Toe-Town in Grand Gedeh County authorizing the release of the Caterpillar held by the sheriff under the writ of attachment, it seems strange that he would now seek to have the sheriff deliver the same chattel he had already ordered released to the "Liberian Ivorian Logging Corporation, the defendant for the said corporation to continue its operations."

It is difficult to understand therefore upon what authority he continued to act as counsel for Silib International Ltd., by filing on their behalf this petition for mandamus, and in a case he claims he had withdrawn seven days earlier. The conduct certainly appears to be very unethical; but since this phase of the matter is the subject of investigation by the Grievance and Ethics Committee, we will refrain from further comment upon it in this opinion.

The judge and sheriff named in the petition as sole respondents filed a return wherein they have raised several issues; and for the benefit of this opinion we will quote five of the eleven counts of their return word for word:

"1. Respondents say that from the submission filed in this Court by Silib International whose name appears in these proceedings as the petitioner, these proceedings were unauthorizedly instituted. Respondents ask this Court to take judicial notice of said sub-mission disclaiming any knowledge of these proceedings and deny giving any instructions to Counselor Samuel E. H. Pelham to institute same.

"2. Respondents further aver and say that the entire

procedure is tainted with fraud and deception on the part of the counsel who filed the petition ; that is to say, according to facts supported by record in the case, Silib International Ltd. employed the services of Counselor Samuel E. H. Pelham to file an action of debt by attachment against the Liberian Ivorian Logging Corporation, which necessitated the seizure and transportation of one Caterpillar from Grand Gedeh County to Monrovia by a lowboy at the expense of Silib International Ltd. Respondents submit and say that before the machine could be brought down to Monrovia, and although the said machine had been seized by order of the Debt Court below, without knowledge of Silib International and apparent collusion with the defendants in the court below, Counselor Pelham wrote a letter for the release of the attached property to the defendant who had filed no bond in keeping with law.

"3. Silib International Ltd., having learned of the fraudulent acts of the counsel, decided to change from him to Attorney Daniel F. Tolbert, as appears from the records of the court below. Respondents submit that they [respondents] came to discover that Counselor Pelham had collected out of court the sum of seven million five hundred thousand CFA francs from the Liberian Ivorian Logging Corporation as appears from the attached copy of a receipt signed by Counselor Samuel Pelham, but Silib International Ltd. denies that it has received one cent from the counsel at the time.

"4. Respondents submit that mandamus will not lie because it would work injury to the interest of innocent parties especially the plaintiff in the court below (Silib International), who is disclaiming that the institution of these proceedings against respondents, besides being against their interest, is without their knowledge, consent and authority.

"5. Respondents further submit and contend that the

Writ of mandamus as prayed for is further unreasonable and inequitable. Plaintiff in attachment proceedings is not entitled to the possession as erroneously prayed for in the petition now before this Court. Respondents aver and say that the prevailing procedure in the courts is that after rendition of final judgment in the main case to which the attachment is ancillary, if the defendant is unable to satisfy the judgment, then and in that case the property attached is subject to auction and sale, and the highest bidder is always the preferred person to whom the delivery of the attached property is made."

To this very strongly worded document petitioner's counsel filed no answering affidavit, which was his right had he cared to deny or traverse anything which was written therein. The case was heard, and on May **31, 1977**, the Justice in chambers ruled denying the petition and ordered the respondent judge of the Debt Court to resume jurisdiction over the action of debt by attachment, and proceed to determine it according to law. With that ruling we are in agreement.

But as we have stated earlier in this opinion, because that aspect of this matter which relates to unethical and unprofessional behavior is being handled by the Grievance and Ethics Committee to whom it was referred, we will confine ourselves in this opinion only to the merits or demerits of the petition for mandamus. However, we will state it as our opinion that the lawyer-client relationship, which was established between Counselor Pelham and Silib International Ltd., when he was retained by it to file the action of debt by attachment, ceased with its letter to him of March 16, 1977, and with its notice to him and to the Debt Court that it had terminated his services and retained another lawyer, Attorney Daniel Tolbert, in his stead.

We have not been able to agree with Counselor Pelham's argument that unless he agreed and gave his consent his clients could not terminate his professional services.

Especially are we of this conviction when the Counselor has not contended that his clients did not pay him in full for his services. But even if he had been retained and had served and had not been paid, he had redress in an action of debt against his clients to collect his earned fees. But according to the record, his professional fees were paid in full.

The Counselor has based his contention on the following provision of the Civil Procedure Law: "An attorney of record may be changed by court order or, unless the party is an infant or an incompetent person, by filing with the clerk of the court a notice of change together with a statement of consent to the change signed by the attorney and the other party." Rev. Code 1:1.8 (2). We are in agreement with this law insofar as it relates to normal lawyer-client relationship; but where a client is compelled to dismiss his lawyer for unethical, unprofessional, dishonest, or any other behavior adverse to the client's interest, it is our opinion that this law could not reasonably apply. What a terrible precedent would be set if no matter how dishonest, unethical, or unprofessional a lawyer might be shown to be in the handling of his client's case, the client could not dispense with his services unless he agreed! To hold that this should be so, would be to completely undermine every vestige of morality and decency in the legal profession; and would establish for the unprincipled lawyer a haven wherein to practice his wiles. Certainly the law writers could not have meant that, and at the same time hope to preserve a decent society.

"The client has a right to change his attorney at any stage in the proceeding, and without assigning any cause or reason for so doing, even though an irrevocable power of attorney has been given. The client himself, however, must desire the change." 4 CYC. 954 (1902) .

"One has, subject to exception in a case where the attorney has an interest in the subject matter of the suit, the right to change his attorney of record at any stage of

the cause, and substitute another, provided he secures the consent of the court, which must be obtained by a proper proceeding for the purpose, as by motion, and provided further that he pays the attorney or secures to him the fees he has already earned and to which he is rightfully entitled." 5 AM. JUR. *rittorneys at Law*,

§44 (1936). Under our law and according to our practice, no special proceeding is required to change counsel; a notice of change of counsel is given to the opposing side and filed in the office of the clerk of court, and upon this the court orders the change noted in the records. This was done in this case as can be seen from the minutes of court for the 29th of March already quoted in this opinion. As we have said earlier, the record shows that Silib International Ltd. paid counsel fees in full for the case. We have no difficulty therefore in coming to the conclusion that the change of counsel in the debt case was effected according to law on March 16, 1977.

Therefore the acts of Counselor Pelham in (1 ) withdrawing his former client's case after the termination of his services and their announcement of change of counsel ; (2) his appearing before the Debt Court on the 23rd of March and announcing himself as counsel for the plaintiff in debt ; and (3) his filing of these mandamus proceedings on behalf of his former client after his dismissal and the change of counsel, were all acts unauthorized, which have been repudiated by his former client, whom he has unauthorizedly named as petitioner in these proceedings. In effect we have no authorized or valid petition before us. But be that as it may, let us now look into the grounds upon which the petition has been filed to see if there could be any merit in the document had the counselor been authorized to file it. In the first place, mandamus is a proceeding which commands the performance of a lawful duty requested and refused; the writ is sought to compel

the official or tribunal to perform a lawful duty in accordance with law. But this extraordinary writ will not issue if its issuance would be ineffectual and unavailing. *Davidson v. Worrell*, 3 LLR 362, 368 (1932). In this case Counselor Pelham had previously, on March 4, 1977, ordered the release of the chattel (the D-8 Caterpillar) held by the sheriff under the writ of attachment; how could it be possible then for the same sheriff to "forthwith deliver. the said subject property to the petitioner/plaintiff" as he had prayed in his petition, when he knew full well it was no longer in the sheriff's custody? And moreover, when its removal from the sheriff's custody was at his (Counselor Pelham's) insistence? Mandamus will not compel the performance of an act made impossible to be performed by the petitioner.

"It is apparent from the drastic and extraordinary character of the writ of mandamus that courts act with caution in respect to it and award it only in cases where it clearly appears that under the law it ought to issue. The right and the duty must be clear; for the writ will not be granted in a doubtful case, and especially not where, if granted, it would not be effectual.

"It is a fundamental principle that courts will not employ their coercive process to compel the doing of a useless thing. Particularly is this true with respect to such a summary and expeditious process as mandamus. The writ is invariably withheld where it would be unavailing, nugatory, or useless and its issuance an idle act. Accordingly, the writ will be denied where it would be ineffectual to accomplish the object in view because of want of power in the court to enforce performance of the act in question, or because of inability of the respondent to comply with the mandate, or where the act to be performed would be unlawful." 34 AM. JUR., *Mandamus*, § 36, 37 (1941) .

In view of the foregoing it is our opinion that the ruling

of the Justice in chamber denying the peremptory writ was sound, and therefore we affirm it. The Clerk of this Court is ordered to send a mandate down to the court below commanding the judge therein to resume jurisdiction over the action of debt, and hear it and determine it according to law. And it is so ordered.

*Ruling affirmed.*