

**UNIVERSAL PRESS CORPORATION**, represented by and thru its General Manager,  
HASSAN M. FAHS, Petitioner/Appellant, **v. HIS HONOUR WILLIAM H.  
KENNEDY**, Judge Debt Court, Montserrado County, and SCAI SCAMBI  
INTERNATIONAL, by and through its Attorney-In-Fact, CHRISTIAN D. MAXWELL,  
Respondents/Appellees.

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

Heard: October 25, 1979. Decided: December 21, 1979.

1. A motion or application must be in writing, unless it is made during a hearing or trial.
2. A court may alter its judgment at any time before it is entered or, if it is entered, before it is made final; but it should not be allowed without notice to both parties.
3. A trial court may not entertain oral application after rendition of final judgment.
4. It is settled that if an instrument is for the payment of money only, it is not material whether it is the money of one country or the money of another country.
5. A bank draft issued by a Liberian bank, on and payable by a foreign bank, is legally sufficient to justify a judgment rendered by a Liberian court in favour of a foreigner domiciled out of Liberia.
6. A bank draft being a negotiable instrument payable in the specific money of a foreign country may be used to satisfy a Liberian judgment.
7. A court has authority to issue such orders as may be necessary to effectuate its judgment and render it binding and operative, or issue orders to prevent an improper enforcement of its judgment.

In satisfaction of a judgment in favour of a corporation domiciled in Italy, petitioner/appellant issued a bank draft drawn on an Italian bank, but the draft was refused and one drawn on a Liberian bank demanded instead. The trial judge granted an oral application of the co-respondent/co-appellee, in the absence of the petitioner/appellant, ordering petitioner/appellant to pay a draft drawn on a Liberian bank in satisfaction of the judgment. Petitioner/appellant moved by prohibition to the Chambers Justice, but after a hearing, the petition was denied. On appeal, the ruling of the Chambers Justice was reversed and the petition granted. The Supreme Court held that the trial court's entertain-ment of an oral application after the rendition of trial judgment in the absence of petitioner/appellant was contrary to the statutes on motion and the statutes providing for modification of a ruling. The Supreme Court then ruled that a Liberian judgment in favour of a

foreigner domiciled out of Liberia may be satisfied by a draft drawn on a foreign bank, since the draft is a negotiable instrument payable in specific money.

*Julius Adigbibe* appeared for petitioner/appellant. *Christian D. Maxwell* appeared for respondents/appellees.

MR. JUSTICE HENRIES delivered the opinion of the Court.

The appellee instituted an action of debt in the Debt Court for Montserrado County against the petitioner/appellant for \$18,878.89. The petitioner/appellant admitted liability, and judgment was rendered against it in the amount of \$20,044.00 including costs and interest. Petitioner/appellant requested the Court to allow it to make an immediate payment of 25% or \$5,011.11, and to enter into stipulation with the co-respondent/ appellee to pay the balance in six equal monthly installments. The request was granted, and petitioner/appellant presented to the sheriff of the lower court, and obtained a receipt for, a draft of \$5,011.00 issued by Tradevco Bank in Monrovia, drawn on the Banc Commerciale Italiana in Milano, Italy, payable to co-respondent/appellee also of Milano, Italy. Petitioner/appellant also paid separately, and in full, the costs of court.

A week later, counsel for co-respondent/appellee informed the court that petitioner/appellant had issued a draft payable in Milan, even though the case was tried in Liberia, and prayed that since it cannot be sure that the draft will be honored in Italy, and since the court's jurisdiction does not extend to Italy to enforce payment, the draft made payable in Italy should be reissued in favour of the sheriff for co-respondent/appellee, and henceforth all payments in satisfaction of the judgment should be made to the sheriff. The court ruled that the issuance of a bank draft payable in Italy was contrary to the statute relating to the enforcement of judgment, and it would prevent the court from enforcing its judgment in the event the draft is not honoured. The court then ordered the draft reissued in the name of the sheriff. It is important to note here that this application and the court's ruling thereon were made without notice to and in the absence of petitioner/appellant.

The appellant appeared in court the next day and was ordered to issue the draft; it refused, excepted to the ruling, and applied for a writ of prohibition contending that the co-respondent/appellee's application was made in violation of the statute on motions, which provides that motions should be made in writing, and a copy served on the other party unless made during a hearing or trial when it would be spread on the record; and that the court proceeded by wrong rules when it took cognizance of the motion and granted it in the absence of the petitioner/ appellant. The Justice presiding in Chambers heard the petition for prohibition, and ruled that the judgment sum should not be paid to the principal in Italy when its attorney in fact lives in Monrovia; and that although the court erred in passing upon the application in the absence of the petitioner/appellant, it was

harmless error. The appellant also excepted to this ruling and hence this appeal to the Bench *en banc*.

The parties have raised the following issues which shall be traversed in the reverse order:

- 1) whether a draft issued by a Liberian bank, on and payable by, a foreign bank is legally sufficient to satisfy a judgment rendered by a Liberian court?
- 2) whether the lower court erred when it passed upon the co-respondent/appellee's application in the absence of, and without notice to, the petitioner/appellant, especially after judgment had been rendered and attempts had been made to comply with the said judgment? and
- 3) whether it was proper for the court to hear an oral application after judgment had been rendered in the case?

Taking the last issue first, the statute, Civil Procedure Law, Rev. Code 1:10(1), (2), states clearly that a motion or application must be in writing, unless it is made during a hearing or trial. The trial of the case having been concluded by the rendition of a judgment, it was error for the trial court to entertain an oral application.

Moving on to the second issue, the court compounded its first error when it proceeded to pass upon the oral application without notice to, and in the absence of the petitioner/appellant, who should have been given an opportunity to resist it. In the instant case, the application was passed upon without such an opportunity, and all that was left to the petitioner/appellant was to except to the ruling. In *Voss v. Hooke*, 2 LLR 183 (1915) and *Yangah v. Melton*, 12 LLR 178 (1954), this Court held that a court may alter its judgment at any time before it is entered or, if it is entered, before it is made final; but it should not be allowed without notice to both parties.

As to the issue of whether the bank draft was legally sufficient to satisfy the judgment, we hold that it was because a bank draft is a negotiable instrument, and in view of the international character of the law merchant it is settled that if an instrument is for the payment of money only, it is not material whether it is the money of one country or the money of another country." A bill or note payable in specific foreign money is negotiable, even though the instrument is payable in one country in the money of another country. An instrument payable in foreign currency may be payable in such currency, or in dollars measured by the foreign country." 11 AM. JUR. 2d, *Bills & Notes*, §154.

However, where the draft is presented and is not accepted or is dishonoured by the drawer, the judgment remains unsatisfied, and the maker of the instrument is still liable to make the payment for satisfaction of the judgment in addition to whatever damages the payee may have incurred as a result of the non-acceptance or non payment of the instrument; and in this case the judgment debtor being a Liberian corporation, the lower court would have jurisdiction to enforce its judgment. In the instant case, the draft was never presented for payment, and therefore the question of non-satisfaction of the judgment is not in issue.

In view of the foregoing, we find nothing wrong or improper about satisfying the judgment by a

bank draft drawn on an Italian bank and made payable to a creditor corporation domiciled in Italy. Similarly, if the amount had been paid in cash, that too would have been in order. The petitioner/appellant would have aroused suspicion if both parties were domiciled in Liberia, and the judgment debtor had attempted to satisfy the judgment in currency other than Liberian currency.

There is no doubt that a court has authority to issue such orders as may be necessary to effectuate its judgment and render it binding and operative, or issue orders to prevent an improper enforcement of its judgment, but we are not convinced that the circumstances in this case warrant the orders given by the lower court. The ruling of the Chambers Justice is therefore reversed, the peremptory writ of prohibition is granted, and the Clerk of this Court is ordered to send a mandate to the lower court commanding it to resume jurisdiction over this matter and proceed to enforce its judgment in conformity with this ruling. Costs against co-respondent/appellee. And it is hereby so ordered.

*Prohibition granted; ruling reversed.*

