

Jin Soo Kyung and **Universal Forestry Corporation** and **WARCO** of the City of Monrovia, Liberia PETITIONER VERSUS His Honour **John H. Mathies**, Debt Court Judge, Montserrado County and **Kamal Arnous** also of the City of Monrovia, Liberia RESPONDENTS

PETITION FOR A WRIT OF PROHIBITION. PROHIBITION DENIED

HEARD: March 20, 2006 DECIDED: August 18, 2006

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

On two separate occasions, the petitioners herein, who are defendants in an action of debt in the Debt Court for Montserrado County, fled to two different Justices in Chambers of this Court, each time praying for the issuance of the writ of prohibition. The first time was on August 23, 1999. At that time, the petitioners contended that they had requested a jury trial due to issues of fraud and forgery raised in their answer to the complaint, but that the Debt Court Judge denied them their constitutional right of trial by jury. The Chambers Justice at the time upheld the ruling of the Debt Court and dismissed the petition.

An appeal was announced to the Full Bench. The Supreme Court, while agreeing with the position of both the Debt Court and the Chambers Justice that the request for a trial by jury was not timely made, however remanded the case with instructions that the trial court should try the case with the aid of the trial jury, to dispose of the issues of fraud and forgery that had been pleaded.

The trial by jury was not had because the Petitioners/Defendants, who had demanded a jury trial surprisingly filed a motion waiving the trial by jury. To that motion, the Respondent/Plaintiff interposed no objection except to say that by waiving jury trial the Petitioners/Defendants had also waived the issues of fraud and forgery raised in their answer. Thereafter, the Debt Court Judge heard the case and ruled in favor of the Respondent/Plaintiff thereby adjudging Petitioners/Defendants liable to the Respondent/Plaintiff in the amount of Fifty Eight Thousand, Three Hundred Forty Two United States Dollars (US\$58,342.00), including costs and six percent (6%) interest per annum. To this ruling, the Court appointed Counsel who took the ruling for the Respondents/Defendants who were absent excepted to the judgment and announced an appeal to the Supreme Court. We must note at this juncture, that the Petitioners/Defendants subsequently filed their Bill of Exceptions

in statutory time, but they failed to file an Appeal Bond and a Notice of Completion of Appeal.

When the Trial Court ordered that the judgment be enforced against the Petitioners/Defendants despite the announcement of an appeal, the Petitioners/Defendants again fled to the Chambers of this Court on yet another Petition for a Writ of Prohibition. The records show that Mr. Justice M. Wilkins Wright, then presiding in Chambers, declined to issue the alternative writ prayed for and on April 22, 2003, ordered the Clerk of the Supreme Court to inform the Judge of the Debt Court to resume jurisdiction in the case and proceed in keeping with law.

However, on April 23, 2003, a day after Justice Wright refused to issue the alternative Writ of Prohibition, the Petitioner withdrew its original Petition and filed a "Petitioner's Amended Petition" to which the Respondents filed "Amended Returns". Later in this Opinion, we shall comment on the so-called "Petitioner's "Amended Petition."

On the basis of the "Amended Petition", Mr. Justice Wright ordered the Clerk of the Supreme Court to issue the alternative writ and stay all further proceedings, and to have the Respondents file their Returns.

The second Petition for Prohibition which emanates from the same debt action is before the Full Bench because a succeeding Justice in Chambers determined, and rightly so, that the constitutionality of an Act of the Legislature having been challenged, the matter should be forwarded to the Full Bench of the Supreme Court for determination.

Although there are several other issues raised on the alleged wrongful acts of the Trial Court, this being a petition for the Writ of Prohibition, we shall consider only counts 2, 4, 7 and the prayer of the petition which we feel are relevant for the determination of this matter.

"2. That the Co-Respondent Judge having rendered a Judgment against Petitioners, an appeal was announced and same granted and a Bill of Exceptions accordingly filed and approved within statutory period, as will appear from photocopy of the Final Judgment marked Exhibit "B" hereof"

"4. That notwithstanding the approval of the Bill of Exceptions which divests the Respondent Judge of further jurisdiction over the subject matter, the said Respondent Judge is still retaining trial jurisdiction over the matter by issuing a summons against Petitioners to appear on September 12,

2002 to satisfy the Judgment, as will appear from the photocopy of said Writ of Summons, marked Exhibit "C" hereof"

"7. That the decree which denies Petitioners the right to an appeal is unconstitutional and should be declared as such."

Prayer:

"WHEREFORE, Petitioners pray for a Restraining Order, thus prohibiting Respondents from further proceeding with the matter in the wake of the appeal and to further grant unto Petitioners such relief justice, and right may demand in the premises."

The basic contention of the Petitioner's counsel, during argument before this Court, was that the Petitioner having appealed from the final judgment of Debt Court, said appeal served as a stay against the enforcement of the Court's Final Judgment until the appeal is heard and determined by the Supreme Court. Counsel for the Petitioners has raised the issue in their brief as follows:

"The Constitution of the Republic of Liberia vouchsafes unto every individual the right to an appeal, which, indeed, is so pivotal to the extent that it is inviolable. The INA Decree No. 12, which qualifies or limits the right of an individual to take an appeal from the Debt Court is inconsistent with the Constitution of Liberia with respect to the right to an appeal and therefore null and void as provided for under Article 20(b) of the said Constitution. Hence, Petitioners request this Court to recall any previous opinion of this Court upholding the said INA Decree No. 12, thereby declaring it unconstitutional to all intents and purposes."

The Respondents deny that an appeal from the Debt Court, as in the case before us, can serve as a stay to the enforcement of the judgment.

The Respondents contend that INA Decree No.12 does not violate any Constitutional provision because the losing party in an action of debt not only has the chance, but also the right to recover against the successful party in the Debt Court if the decision of the said Debt Court is reversed upon determination of the appeal by the Supreme Court. The Respondents further contend that the "Amended Petition" filed by Petitioners should not have been entertained because it was not filed in keeping with statute. Respondents argued that after Mr. Justice Wright refused and declined to issue the alternative writ in the original Petition for Prohibition and ordered the Lower Court to resume jurisdiction over the case, there was no petition left before the Chambers Justice to be amended. Respondents therefore maintained that the so- called Amended Petition was a complete nullity.

The pertinent issues in this case are:

1. Whether or not INA Decree No. 12 violates the right of appeal guaranteed by the Liberian Constitution?
2. Whether or not Prohibition will lie in this case?

Our answer to the two questions is no!

On October 24, 1985, the Interim National Assembly (INA) of the Republic of Liberia amending Section 4.2 of the New Judiciary Law as earlier amended by Decree No. 6 with respect to action of debt, promulgated INA Decree No. 12 which reads as follows:

"It is hereby decreed by the Interim National Assembly of the Republic of Liberia as follows:

SECTION 1. Section 4.2 of The New Judiciary Law, as last amended by Decree No. 6, is hereby further amended to read as follows:

SECTION 4.2 JURISDICTION AND PROCEDURE

The Debt Court shall have exclusive original jurisdiction of all civil actions to obtain payment of a debt in which the amount is \$2,000.01 or more. It shall not exercise original jurisdiction where the amount involved is less than \$2,000.01. The procedure of the Debt Court and the method of enforcement of its judgment shall be the same as the Circuit Court in civil actions. Appeal from a judgment of the Debt Court in an action of debt shall not operate as a stay in the enforcement of the judgment thereof except where the other party was denied his day in court; or where the amount of the indebtedness is in dispute. Nor shall the institution of remedial proceedings operate as a stay in the enforcement of such judgment except where the other party was denied his day in court or where the amount of the indebtedness is in dispute. And the Debt Court shall exercise concurrent jurisdiction with the Circuit Courts in the issuance of the Writ of NE EXERT REPUBLICA in matters arising out of debt cases.

Assignment for trial or the hearing of law issues in debt cases shall be limited to two (2) and all interlocutory motions or pleadings shall be entertained only on the following grounds:

- a. Illness of counsel (if there is only one) authenticated by a certificate from a licensed medical doctor.*
- b. Absence of material witnesses when verified or as provided by existing law.*

SECTION 2. This Decree shall take effect immediately upon the signature of the Head of State and President of the Interim National Assembly,

ANY LAW TO THE CONTRARY NOTWITHSTANDING."

As of the date INA Decree No. 12 became law in our jurisdiction, the announcement and granting of appeals in debt actions no longer served as stay to the enforcement of the Debt Court's Judgment, except where the other party was denied his day in court, or where the amount of indebtedness is in dispute. There is nothing in the records before us to indicate that the Petitioners, who are Defendants in the court below, did not have their day in court, and while the Petitioners claim that they disputed the amount of indebtedness, there is irrefutable evidence that the Petitioners made part payment to the Respondents in two separate checks totaling Thirty Two Thousand, Five Hundred United States Dollars (USD32,500.00) and Petitioners did not stop the checks from been paid to Respondents. Therefore, we hold that none of the exceptions provided for in the Decree exists in the case before us so as to allow the appeal taken to serve as a stay against the enforcement of the judgment.

On whether or not INA Decree No. 12 violates the right of appeal guaranteed by the Constitution, this Court says that the INA Decree # 12 does not violate the Constitutional right of an appeal; all it does is to allow settlement of a judgment in an action of debt while the appeal is being pursued at the Supreme Court, and in the event the appealing party is successful, in other words if the appeal is granted, the appellant recovers against the Appellee. Therefore, the fact that an appeal from a judgment in an action of debt does not serve as a stay of enforcement of said judgment does not mean that the right of appeal is violated.

The intent of INA Decree #12 was to arrest the situation of incessant nonpayment of debt which had become prevalent at the time in our society. At that time, creditors and lenders were complaining that the determination of debt cases filed in Courts were taking too long mainly due to the procedural nature of appeals. Hence, there was wide spread reluctance and hesitation on the part of lending institutions and creditors to provide lending facilities to businesses and individuals. No doubt, this problem had serious economic effect on our society.

In **Farhat et al. vs. Gemaval, Reeves, et al., 34 LLR 24 (1986)**, this Court held:

"The Constitution and Statutory Laws are made to serve the need of the people and the benefit of the society. As times progress, they are refined and made consistent. Thus, the Constitution and

Statutory Laws are usually amended for improvement in the lives and for better regulations of the affairs of the people for whom they are made. As the need arises and as a result of experience, laws are adjusted to answer the needs of the people."

The Court further held in the same case that:

"When rigidity of the law and legal technicalities prevent social justice, the Legislature will enact amendments so as to make way for equitable adjustment. Thus in 1935 the Legislature saw the need to amend the Maintenance and Support Statute to provide for the enforcement of a judgment thereunder while an appeal was pending so that the abandoned mother with a child could receive support and have their basic needs met until the appeal was determined".

Before the amendment of the Maintenance and Support Statute by the Legislature, the practice was for irresponsible fathers to abandon their wives with children, and when maintenance and support suits were instituted and judgments rendered against them, they took refuge in appeals while the children and their mothers suffered. It was to curb this kind of problem in our society that the amendment was passed.

It appears that the circumstances and considerations which gave rise to the amendment of the Maintenance and Support Statute are similar to those which obtained in the passage of Decree No. 12.

We have another instance in which appeal does not serve as a stay. The statute on Summary Proceedings to Recover Possession of Real Property says that appeal shall not serve as a stay in judgments rendered in the Circuit Courts. The purpose of this statute was to curb the abuse of the right of appeal by tenants-at-will against property owners. Therefore, INA Decree No. 12 is not the only statute on our books which provide that appeal from judgment in certain instances will not serve as a stay to the enforcement of judgments. In the other Statutes, as in INA Decree No. 12, the right of appeal guaranteed by the Constitution is preserved.

We must now comment on the so-called "Amended Petition" filed by the Petitioners. And we start by out rightly agreeing with the Respondents' Counsel that the "Amended Petition" is a legal nullity. Our Statute on Amendment **Section 9.10, 1LCLR Civil Procedure Law** provides that:

"At any time before trial any party may, insofar as it does not unreasonably delay trial once amend any pleading by him."

In the instant case, the Petition for Prohibition was refused by Mr. Justice Wright on the 22nd day of April 2003 and the Court below was ordered to resume jurisdiction and proceed according to law which was done. At that point, we hold that there was no Petition left before the Chambers Justice to be amended. The statute permitting amendment presupposes that there is a pleading to be amended, but when the matter is concluded and there is nothing left before a judge, the issue of amendment does not arise. In other words, there has to be a petition before an amended petition can be filed. We hold therefore, that the "Amended Petition" filed by the Petitioners is a legal nullity and should not have been entertained. It follows that the alternative writ issued based on such "Amended Petition" was an error.

Finally, on the question of whether prohibition will lie in this case we hold no. The Supreme Court of Liberia has held that prohibition will not lie where the petitioner has adequate remedy of appeal, and prohibition cannot be used as a substitute for appeal or another remedial writ. **Tradevco vs. His Honour John Matthies and Brasilia Travel Agency 39 LLR 272 (1998); Liberia Fisheries Incorporated v. Badio, et al. 36 LLR 277 (1989).** The records show that when the judgment was entered, the Petitioners announced an appeal to the Supreme Court, filed their bill of exceptions within statutory time, but failed to file an appeal bond and a notice of completion of appeal. Having failed to perfect their appeal, this writ of prohibition was filed merely to delay the enforcement of the Debt Court's judgment, and this is exactly what INA Decree No. 12 was promulgated to guard against.

Based on what we have said, prohibition will not lie in this case. The alternative writ issued is therefore quashed and the peremptory writ sought is denied. The Clerk of this Court is hereby ordered to inform the Debt Court of Montserrado County to resume jurisdiction in this case and enforce its ruling. Costs against Petitioners. AND IT IS HEREBY SO ORDERED.