

E ALHAJI SAIBU WAGGAY, of Holiday Inn Hotel (Liberia) Inc., Petitioner, v. **HIS HONOUR J. HENRIC PEARSON**, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, **HAFEZ H. JAWHARY**, and the Sheriff for Montserrado County et al., Respondents.

PETITION FOR A WRIT OF PROHIBITION TO THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided May 30, 1983.

1. Prohibition is a special proceeding to obtain a writ ordering respondent to refrain from further pursuing a judicial action or proceeding specified therein.
2. Prohibition will not lie where the tribunal has not exceeded its jurisdiction or proceeded by wrong rules.
3. One of the requisites for granting the common law writ of prohibition is that the relator must show that the act of the tribunal complained against will result in injury for which there is no other adequate remedy.
4. The adequacy of the remedy available is essential in determining whether or not the writ of prohibition should be granted.
5. The mere existence and availability of another remedy is not, in itself, necessarily sufficient to warrant denial of the writ of prohibition; such other remedy must be plain, speedy and adequate in the circumstances of the particular case. Hence, the question for determination is not whether the other remedy is adequate generally, but whether in view of the precise circumstances in which the petitioner for prohibition finds himself, the other remedy is adequate in the particular instance.
6. A preliminary injunction may be granted in an action where it appears that the defendant threatens or is favour to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission of continuance of act which, if committed during the pendency of the action, would produce injury to plaintiff.

The petitioner sought a writ of prohibition to prohibit the co-respondent judge from issuing the writ of preliminary injunction in an action of ejectment in the lower court, contending that not only was there no legal basis for the issuance of the writ of preliminary injunction, but that the same was designed merely to harass, embarrass and frustrate the petitioner, since any order dissolving the injunction was appealable and that an appeal, being a supersedeas, would thereby leave the injunction in effect. The co-respondent, Jawhary, who had instituted the action of ejectment, had filed a motion for a preliminary injunction against the petitioner,

posting a bond of one million dollars in support of the motion. The petition for prohibition was filed in response to the motion for a preliminary injunction.

Co-respondent Jawhary, in responding to the petition for a writ of prohibition, argued that it not be granted since the trial court had not exceeded its jurisdiction or proceeded by wrong rules.

The Justice in Chambers, while agreeing that the trial judge had not exceeded his jurisdiction or proceeded by any wrong rules, held that the plaintiff in ejectment had failed to allege or show any irreparable harm which was likely to come to him as a result of the petitioner's continued use of the hotel, to warrant the issuance of the writ of preliminary injunction. The Justice noted that the allegations stated in the motion for preliminary injunction were the same as those stated in the complaint in the ejectment action, and for which the law provided an adequate remedy in case he succeeded in pursuing his case.

The Justice further held that given the high bond filed by the plaintiff in the injunction case, seemingly designed to embarrass and harass the petitioner in prohibition, and that the effect which the preliminary injunction was likely to have on the public and the government tourism program, justified the issuance of the writ of prohibition. He therefore granted the petition and ordered that the co-respondent judge be restrained and prohibited from issuing a preliminary injunction in the ejectment suit.

Nelson W. Broderick appeared for petitioner. Joseph Williamson appeared for respondents.

SMITH J., presiding in Chambers.

Alhaji Saibu Waggay, of Holiday Inn Hotel (Liberia) Inc., defendant in an action of ejectment instituted against him in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, filed a petition against the respondents, praying this Court for the issuance and service of the alternative writ of prohibition, restraining and prohibiting the respondents from pursuing a judicial action which he claimed to be patently against public policy.

The six-count petition alleged substantially that petitioner was the owner of the Holiday Inn Hotel (Liberia) Inc., situated on 100 Carey Street, Monrovia, Liberia, by virtue of a bill of sale and assignment of lease agreement executed by and between him and Co-respondent Hafez H. Jawhary, who has instituted the ejectment suit against him to repossess the said hotel; that in spite of the fact that the said Co-respondent Hafez H. Jawhary had an adequate remedy at law for whatever wrong or injury he claimed to have been done to him, yet, he contemplated issuing a writ of injunction against the petitioner to restrain and enjoin him from the use of the hotel, contrary to public policy and amounting to the trial court proceeding by wrong rules.

The petitioner further alleged in his petition that the hotel, the use of which he was sought to be enjoined and restrained by a writ of injunction, rendered public service not only to citizens of the Republic of Liberia, but also to visitors from all lands and nations, that service being part of the Government's tourist attraction program; that the injunction bond filed by co-respondent Jawhary was over and above a million dollars and therefore excessive and contrary to law; that the intent of the respondents was to harass, embarrass and inconvenience the petitioner, especially because a ruling dissolving the injunction is appealable, and since the appeal serves as a supersedeas, this would result in perpetuating the order granting the preliminary injunction.

In a ten-count returns, the respondents contended, and their counsel has strongly argued before us, that the co-respondent judge had jurisdiction over action of injunction and the issuance of a writ of injunction or proceeding by wrong rules, and that as the co-respondent trial judge had not proceeded by any wrong rules, the court could not be enjoined and restrained from exercising its judicial functions and power. They therefore asserted that the petition for a writ of prohibition was unmeritorious and should therefore be dismissed. The respondents also argued that as there was a main suit of ejectment pending, an action of injunction would lie since it was a remedy provided by law. Resorting to this ancillary action, they argued, did not amount to proceeding by wrong rules.

Both counsel for petitioner and respondents cited legal citations which, in their opinion, supported their respective positions.

Prohibition is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein. Civil Procedure Law, Rev. Code 1: 16.21 (3). Therefore, the argument of counsel for the respondents that prohibition will not lie to restrain and enjoin a court from exercising its judicial power and function cannot be sustained.

Generally, prohibition will not lie where the tribunal has not exceeded its jurisdiction or proceeded by wrong rules, and since in the instant case, the want of jurisdiction or its excess or abuse has not been brought into issue, the argument of respondents' counsel has legal weight and ought to prevail to defeat the petition. But the issues which have arisen and which we believe transcends the respondents' argument, are the following: (1) the necessity to seek equitable relief during the pendency of an action at law by means of a writ of injunction where there is adequate remedy at law and where there is no showing of any act that would cause irreparable injury to the plaintiff in ejectment during the pendency of the ejectment suit; (2) the oppressiveness and harassment of the writ of injunction by reason of the injunction bond posted by Co-respondent Jawhary, which is over one million dollars; and (3) the serious effect which will occur where the writ of injunction is issued, that is, it would restrain and enjoin the use of the hotel where there is a great number of tourists and

other guests lodging therein. Associated with this effect is also the frustrating effect which the order of preliminary injunction will have on the Government of Liberia's tourism program. These are questions which have confronted us in considering the granting or denial of the petition, since it can be shown that the trial court has not exceeded its jurisdiction or proceeded by rules other than those which ought to be observed at all times.

One of the requisites for granting the common law writ of prohibition is that the relator must show that the act of the tribunal complained against will result in injury for which there is no other adequate remedy. 63 AM. JUR. 2d., Prohibition, § 6. Petitioner averred in counts four and six of his petition, and his counsel strongly argued before us, that the hotel, the use and operation of which were sought to be enjoined, was rendering public service not only to Liberians but also to foreign visitors, and was part of the Government's tourist attraction program, and that if the writ of prohibition is not granted, petitioner will be without a remedy since a ruling dissolving the injunction is appealable and as the appeal serves as a supersedeas, this would in turn perpetuate the order granting the preliminary injunction for time indefinite. This argument, in our opinion, is tenable.

The adequacy of the remedy available is essential in determining whether or not the writ should be granted. Here is the legal authority on the point:

"There is no general rule or universal application by which the adequacy or inadequacy of a remedy can be ascertained, but the question is one to be determined on the facts of each particular case, and rests, in large part, in the discretion of the court. The delay and expense of an appeal or other available remedy ordinarily furnish no sufficient reasons for holding that the remedy by appeal is not adequate or speedy, although there are many instances in which the expense and delay of an appeal have, in part at least, impelled the superior court to grant the writ. But whenever, as incidental to the action of the court, there is involved an infringement of property rights, or a subjection to a multiplicity of suits in such a way as to make acts oppressive, there is no adequate remedy by appeal, and it is proper to issue the writ of prohibition, and this is true whether the court in which the proceeding is instituted has acted or not, if the effect of the void authority under which it is assuming to act stands as a vexatious menace to personal liberty or the destruction of property rights.

The mere existence and availability of another remedy is not, in itself, necessarily sufficient to warrant denial of the writ of prohibition, such other remedy must be plain, speedy and adequate in the circumstances of the particular case. The question for determination is not whether the other remedy is adequate generally, but whether in view of the precise circumstances in which the petitioner for prohibition finds himself, the other remedy is adequate in the particular instance." 63 AM. JUR. 2d , Prohibition, § 9.

Another thing is that where there is no legal ground for the motion for a writ of injunction, and the co-respondent judge ordered the issuance of the writ and the writ was issued and/or

served on the defendant, the same can only be vacated or modified by the defendant filing a motion and posting a defendant's bond of one and one-half times the one million dollars bond furnished by Co-respondent Hafez H. Jawhary. Petitioner considered this to be harsh and oppressive and merely intended to defeat the ends of justice. For the benefit of this ruling, I quote hereunder count five of the petition for a writ of prohibition.

"Petitioner says further that in order to harass, embarrass and inconvenience petitioner, the respondents are requiring a bond in an amount in excess of one million dollars, contrary to the provisions of the law which stipulate that excessive bail shall not be required, thereby proceeding by wrong rule, for which prohibition will lie."

Furthermore, a preliminary injunction may be granted in an action where it appears that the defendant threatens or is favour to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiffs rights respecting the subject of the action, and tending to render the judgment in effectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of act which, if committed or continued during the pendency of the action, would produce injury to the plaintiff: Civil Procedure Law, Rev. Code 1: 7.61, Ground for preliminary Injunction.

There is no averment in the four-count motion for preliminary injunction, or in the applicatory affidavit made profert by co-respondent Jawhary that while the action of ejectment was pending before the court, the defendant had done, or was about to do, or was causing to be done any act in violation of plaintiffs rights respecting the action of ejectment, or any act tending to render the judgment ineffectual. In fact, there was no judgment at the stage of the proceeding, and there was no averment that the defendant was doing or had caused to be done any act which would have rendered the pending judgment in the ejectment suit ineffectual, except that the defendant had continued to unlawfully withhold and detained the subject of the ejectment suit. In reality therefore, there was no further act on the part of the defendant tending to produce injury or render the judgment in the ejectment action ineffectual except in respect of the same allegations for which the ejectment suit was filed and in which the plaintiff had an adequate remedy if he were successful in proving his title to the property, subject of the ejectment action.

It is therefore my opinion that there is no ground for any injunction proceeding. Hence, allowing such proceeding to be instituted was to merely harass, embarrass and inconvenience the petitioner, defendant in the ejectment suit, as well as the public in general. Above all, it was designed to defeat the ends of justice.

In view of the foregoing, it is my considered opinion that there exists adequate reason for the writ of prohibition to be granted against the order for the trial court for the issuance of a writ of preliminary injunction against the petitioner during the pendency of the ejectment

action. The petition for a writ of prohibition is therefore ordered issued, commanding the judge presiding in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, to refrain from the issuance of a writ of preliminary injunction against the petitioner during the pendency of the ejectment suit, and ordering him further to immediately and without delay, proceed to hear the ejectment suit and render judgment according to the evidence. Because of the exigency of the matter, the ejectment suit must have priority over all other proceedings pending before the judge presiding. Costs to abide final determination of the case. And it is hereby so ordered.

Petition granted.