

George S. Wiles, Sr. of the City of Monrovia, Liberia PETITIONER VERSUS
Edward Mwah, Alice Mwah et al, Administrators of the Intestate Estate of the late
M.W.Mwah of the city of Monrovia, and His Honour **Joseph Seakor Doe**, Associate
Magistrate, Gardnersville Magisterial Court RESPONDENTS

PETITION FOR REARGUMENT

HEARD APRIL 3, 2007. DECIDED MAY 11, 2007.

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT.

Petitioner George S. Wiles, Sr., filed a petition for Re-Argument before this Honourable Court on the 27th day of December 2006. The petitioner's petition was predicated upon the Honourable Supreme Court's opinion delivered on December 22, 2006, reversing the ruling of Associate Justice Presiding in Chambers, His Honour John L. Greaves. The Chambers Justice had ruled on March 1, 2005 denying Petitioner's (respondent herein) petition in Certiorari Proceedings, had ordered the Alternative Writ quashed and the Peremptory Writ refused. In the ruling aforementioned, the Chambers Justice also ordered the Clerk of the Supreme Court to send a mandate to the Civil Law Court ordering the judge therein presiding "to resume jurisdiction and in turn send a mandate to the Gardnersville Magisterial Court, ordering the Stipendiary Magistrate to resume jurisdiction. Further, the Chambers Justice ordered the Magistrate to set aside all the previous proceedings, repossess Mr. George S. Wiles, Sr. [petitioner herein] of the premises on the Original Writ of Summons commencing with the issuance of a new notice of assignment for trial and proceed therefrom as the law directs and provides..."

It was to this Chambers Justice's ruling, Petitioners Mwah et al (respondents herein) excepted and announced an appeal to this Court of last resort. On appeal, the Supreme Court en banc carefully reviewed the March 1, 2006 ruling of Justice Greaves, and in said opinion of December 22, 2006, reversed said ruling.

In reversing the Chambers Justice, the Supreme Court declared as erroneous Judge Hall Badio's order of July 28, 1995, an order referred to in a letter from the Civil Law Court. The said letter dated August 4, 1995, over the signature of Irene Ross Railey, Clerk, Civil Law Court, Montserrado County, was addressed to His Honour Joseph Sackor Doe, Associate Magistrate, Gardnersville. This letter, in part, read as follows:

"On the 28th day of July, 1995, a Writ of Summons was issued on you for you to appear on the 31st day of July, 1995 for hearing; in the main time you were commanded that immediately upon receipt of the Summons to re-possess Defendant/Petitioner. You were further ordered to desist further from exercising jurisdiction in the case."

In the December 22, 2006 opinion, the Supreme Court observed that the certified records in the case reveal that Judge Badio never cited the parties to a conference prior to issuance of the writ in which he [Badio] ordered Associate Magistrate Doe to "undo what had already been done". The Supreme Court said further that Judge Badio's order of July 28, 1995 to the Magistrate and confirmed by the Chambers Justice in certiorari proceedings, thereby prompting the Petitioner (Respondent herein) to appeal, also constituted reversible error. The Supreme Court opined that Judge Badio was in error because the said Judge ordered Associate Magistrate Doe "to place Petitioner/Corespondent Wiles in immediate possession of the property *prior to citing the parties to a conference.*" [Emphasis supplied].

The Supreme Court also stated that Co-respondent Judge Sebron J. Hall was equally in error when he too attempted to enforce those same orders growing out of Judge Badio's error referenced therein. Consequently, this Court in the December 22 opinion, referred to supra, declared all those orders to be legally erroneous as they were all in violation of rule 33 of the Circuit Court Rules as Revised (1999).

Rule 33 of the Circuit Court Rules provides that "[u]pon the application of a party by petition for Summary Proceedings against a magistrate or justice of the peace, the judge shall cite the parties to a conference *prior to issuing the writ which contains a stay order.*" [Emphasis Ours].

At this stage, it is important to emphasize a point. That is, in its December 22, 2006 opinion, the Supreme Court cited "*violation of Rule 33 as the sole ground*" or basis for reversing the Chambers Justice's ruling and for its order to the Clerk of the Supreme Court to issue the Peremptory Writ against Judge Badio's orders to the Associate Magistrate.

On December 27, 2006, Petitioner Wiles therefore filed a five (5)-count petition for Re-Argument apparently convinced that the Supreme Court had inadvertently relied on the wrong legal ground to reversing the judges' orders of July 28, 1995.

The Petition for Re-Argument contends substantially as follows:

1. *"And also because Petitioner says the certiorari case was heard and denied by the Justice in Chambers from which said case was reviewed by the Supreme Court en bac on appeal and the ruling of the Chambers Justice reversed on the "sole ground" that Judge Hall W. Badio and later Judge Sebron J. Hall erred when they ordered Magistrate J. Sackor Doe to place George S. Wiles, Sr. in immediate possession of the subject property prior to citing the parties to a conference, in violation of Rule 33 of the Circuit Court Rules as Revised (1999)."*

2. *"Petitioner says he now brings this petition for Re-Argument because Your Honour inadvertently overlooked and did not take into account that the Rule relied on by this Court as the basis for the error of the Circuit Judge(s) and the basis for reversing the Justice in Chambers Ruling, was promulgated by the Supreme Court in January 1999, whereas the act identified by Your Honour to be the error for which the ruling was reversed, was committed and the case decided in August/September 1995. Petitioner most respectfully says Your Honour inadvertently applied the 1999 Rule retroactively to a decision made or an action taken in 1995."*

3. *"Petitioner says Re-Argument will lie because under the Constitution, statutes and decisional laws in this jurisdiction, laws made are not applied retroactively as mistakenly done in this case by Your Honours. Petitioner says when the decision was made or when the action was taken by the Circuit Judge(s) in 1995, the 1972 Rules were still then in full force and effect, and said 1972 Rules permitted such orders without conference; even if there was not an express provision allowing it, at least there was also no clear cut express prohibition against it, as specifically prohibited in the 1999 Rules. In fact, because there was no prohibition against such conduct and because it was widely being done - i.e, that was the norm, practice and procedure in vogue at the time, that was the very reason why the 1999 Rule was included and promulgated."*

4. *"For the reason stated in counts [two (2) and three (3)] hereof above, Petitioner says it is clear that the decision rendered by Your Honours on December 22, 2006 ruling the way you did was due to inadvertence and mistake of law that said Rule 33 was the law at the time the action by the Circuit Judge(s) was taken which is not the case.*

Petitioner says for this mistake of law and inadvertence and oversight by Your Honours, Re-Argument will lie and should be granted, because if Your Honours were conscious of the fact that the law/Rule of 1999 was not in existence in 1995 when the act it sought to correct in 2006 was committed, then Petitioner believes and strongly contends that the ruling or decision of Your Honours would have been different."

But countering the legal and factual arguments as contained in the petition for Re Argument, the respondents also filed a seven (7)-count Resistance thereto. Five (5)

counts thereof which have been determined by this Court as substantive are hereunder stated to wit:

1. *"Respondents resist and argue that the opinion of this Honourable Court delivered December 22, 2006 did not overlook any legal principle or fact which it should have taken into consideration; but failed. Accordingly, the Ruling in the petition for a writ of Certiorari and confirming Justice Coleman's Ruling constituted a corrective mechanism in order to correct the constitutional violation of due process left unguided in the 1972 revised Rules of the Circuit Courts which was wrongly applied by the respondent Judges in this case, vis-a-vis, denying co-respondent Mwah his constitutional right of being heard before losing his property rights under the Liberian constitution due process clause."*

2. *"Respondents further resist and contend that the 1999 Revised Rules can effect an action taken in 1995, if said action was unconstitutional and a violation of any provision of the Liberian constitution and including the due process clause taken into consideration in the Wolo V. Wolo (index due process principle contained therein.)"*

3. *"Respondents resisting further and arguing say, the third issue of legal concern raised in this case is, besides the 1972 Revised Circuit Court Rules, which grant Circuit Judge the right to issue stay order without hearing or a conference, is such action on the part of the judge not a violation of the party litigant due process under the Liberian Constitution? Certainly it is. When the case Wolo V. Wolo is brought into question the judgment therefrom in 1937, becomes law ever since covering any act in 1995. Accordingly the Respondent argues herein that the judgment delivered in this case by His Honour Johnnie N. Lewis in the Certiorari case did not have to depend upon the 1999 revised rules of court #33, as there was already a Supreme Court opinion holding that a violation of a party litigant due process constitutes a reversible error in our jurisdiction; accordingly if the 1972 revised rule of court did not specifically require the due process, the case Wolo V. Wolo decided in 1937 had already laid down the ground work through the Supreme Court opinion of 1937.*

4. *The judgment reversing the John L. Greaves judgment in Chambers had the backing in the judgment Wolo V. Wolo and accordingly there were no error[s] in the judgment. It was sound and legal"*

5. *"That further to the above, Respondents resist and argue that the ruling in the petition for Certiorari delivered December 22, [2006] should be upheld as the same is pro constitutional, civilized, just and modern while the 1972 revised rules are violative of due process right protected in the 1937 Wolo V. Wolo case which holds, "The essential elements of due process of law are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case. In fact one of the most famous and perhaps the most often quoted definition of due process of law is that of Daniel Webster in his argument in the Dartmouth College case, in which he declared that*

due process of law was meant "a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial". Somewhat similar is the statement that it is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity-to be heard...5 LLR pages 4.2.8. 4 429."

6. *"Finally Respondents argue and resist that even with reference to the 1972 revised rule of court granting power and authority and jurisdiction exclusively to circuit courts to issue writs and stay order, yet these powers do not necessarily mean power and authority without sound discretion of the party litigant's due process right, as was violated by the Co-Respondents judges in this case."*

Having carefully examined the facts and circumstances obtaining herein, there is but one salient issue determinative of the critical question presented by this case. This question is:

Whether application of Rule 33 of Circuit Court Revised (1999) to disposition of a case commenced previous thereto, contravenes the principle of ex post facto, which is forbidden by law, practice and procedure in this jurisdiction?

Or put differently, does application of Rule 33 which became law in 1999 to disposition of a 1995 case when said rule #33 was theretofore non-existent, violate the essence of ex post facto principle of law?

We revert again to the case file as well as to the historical events appertaining hereto. It is an incontrovertible fact supported by public knowledge as to the manner Circuit Judges exercise appellate authority over subordinate courts. In such exercise, Circuit Court Judges have relied on Section 3.3 of the Judiciary Law, titled: Power of Circuit Judges to issue writs of injunction and writs for Summary Proceedings in nature of Prohibition.

This law provides:

"The Circuit Judges shall have the power, authority and jurisdiction, exclusively, to issue or order the issuance of Writ of Injunction, and writs for Summary Proceedings in the nature of Prohibition addressed to inferior courts and their officers in exercise of and their appellate jurisdiction over them."[Emphasis supplied]. Liberian Codes Revised Vol. IV pp 67-68, (1972).

It is a well known fact in this jurisdiction that Section 3.3 of the Judiciary Law has often been notoriously abused since its enactment in the early 1970's. This law was

widely used by Circuit Judges often in manners that were highly degrading and reprehensibly questionable. The practice was that at the instance of an aggrieved party from ruling of a Justice of the Peace or Magistrate, said party would file a complaint before a Circuit Judge substantially alleging irregularities in proceedings before the Magistrate or Justice of the Peace.

Past records are replete with summary proceedings where Circuit Judges in their misapplication of the powers provided under section 3.3 unwittingly issued orders to the magistrates and justices of the peace to undo what had been judicially undertaken, prior to the conduct of hearing into the alleged irregularities complained of . By this exercise, circuit judges ran the avoidable risks of violating the rights of parties to fair and impartial trial, guaranteed under the laws of the land.

As can be seen from all that has been enumerated herein, the strong contention advanced in the petition for Re-Argument is that Section 3.3 of the Judiciary Law was the law controlling at the time. The Petitioner arguing further says that even if the above quoted section contains no express provision allowing a Circuit Judge to issue orders to a Magistrate or Justice of the Peace, it is the Petitioner's argument still that equally there was no clear statement of law or rule prohibiting issuance of such orders prior to citing a Magistrate, as opposed to such mandatory requirement set out in Rule 33 from 1999. The petitioner also argued that Section 3.3 of the Judiciary Law (1972) referred to supra was the controlling and applicable law from 1972 up to and including 1975 when this case became a subject for judicial determination. The petitioner therefore strongly argued that this being the case, the Supreme Court would be in contravention of the ex post facto principle of law, if it were to uphold, affirm and reaffirm its holding, as contained in the December 22, 2006 opinion. Therein this Court held that Judge Badio erred in 1995 as a matter of law when the said Judge issued a writ to Associate Magistrate Doe "to undo what had already been done" *without first citing the parties to a conference, as expressly required under Rule 33 of Circuit Court Rules revised (1999)*.

This Court agrees with the petitioner's argument that read literally, Section 3.3 of the Judiciary Law (1972), does not expressly impose judicial duty on a Circuit Judge to cite judges of inferior courts to a hearing as a legal pre-condition to issuance of a writ containing an order. While in clear contrast, Rule 33 of Circuit Courts Rules (1999) does clearly and expressly require a Circuit Judge to cite the parties to a hearing into a complaint filed before him, as a mandatory prerequisite to issuance by said Judge of a writ containing an order to a Justice of the Peace or a Magistrate,.

But we equally disagree with the substantive legal reasoning driving the Petitioner's argument. We also equally decline to subscribe to the belief that application of Circuit Rule 33 of 1999 to a case commenced in 1995, violates the principle of ex post facto, which is otherwise forbidden by law and practice hoary with time in this jurisdiction.

This Court says that from the founding of this Country as a nation-state, Liberia's Constitution guaranteed every person the right to impartial trial. Inherent in this right under the law of the land has always been that imposition of duty on all judicial officers to "hear before condemnation" *Wolo versus Wolo*, 5 LLR 423, 427 (1937).

We note the strong contention of Petitioner that a long standing rule both as a legal principle as well as a constitutional safeguard dictates that no person shall be subject to application of a law or punishment which was not in existence at the time of commission of the offense. This doctrine, referred to as ex post facto, is recognized in Article 21 (a) of the Liberian Constitution (1986). It has been a doctrinal principle or a corner stone of our jurisprudence since the founding of the Republic.

But in the mind of this Court, the constitutional safeguard to impartial trial, or due process of law, both in principle and in substance, cannot be materially considered as in conflict with the principle of ex post facto.

The legal principle which entitles every person to an impartial trial could not have been, nor does this Court believe same was ever set aside by Section 3.3 of the Judiciary Law (1972). In effect Section 3.3 by not expressing a citation requirement does not constitutionally permit abuse of the due process principle, which in the instant case, was abused by Circuit Judges, Badio and Hall.

Mandatory observance of due process of law has been and shall remain the jealously guiding principle of Liberian Jurisprudence superseding any and all rules, ordinances, statutes, decrees or executive orders.

This principle ought to be meticulously observed by all judicial officers at all times in all judicial proceedings, exceptions being only in matters of extra ordinary emergency, recognized under such peculiar instances. The instant case of Judge Badio not such emergency, we hold that Judge Badio proceeded in violation of the due process clause that ought to be observed at all times.

As far back as the Liberian Constitution of 1847 (with amendments through 1972), impartial trial was embedded in the principle of due process of law, otherwise called

the law of the land. Since then, it has always remained a fundamental requirement to deprivation of a person's right to life, property or privilege, or for seeking remedy for injury suffered.

Article 1 Sections 6th and 8th of the constitution of 1847, read respectively; Section 6th *"Every person injured shall have remedy thereof by due course of law"* [Our emphasis].

Section 8th *"No person shall be deprived of life, liberty, property or privilege, but by judgment of his peers, or the law of the land"* Emphasis supplied.

Also the Constitution of the Republic of Liberia adopted in 1984 subsequent to that of 1847 constitution, and now commonly referred to as the 1986 Constitution of Liberia, reinforces the principle of hearing before deciding, which essentially is the principle of due process. Article 20 (a) of our 1986 Constitution reads;

"No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law...."

The adoption of the principle of due process in this jurisdiction is as old as our jurisprudence. It is a principle of law that shall be observed at all times in all proceedings. No judicial proceedings can satisfy the material and substantive requirement of impartial trial, contemplated under the Liberian Constitution, without strictly observing this principle.

This Court has commented on the operational meaning of the phrase proceeding by rules different from those which ought to be observed at all times; or rules that are to be observed at all time in a judicial trial.

Commenting on this principle, Justice Davis speaking for this Court in 1949 said: "According to the provision of our Constitution there are two outstanding rules which apply to all causes, civil or criminal, and these rules must be observed and strictly adhered to at all times in judicial trials. The two rules are an opportunity to be heard, and an impartial trial. Gittens and Davies Vs. Yanfor et al. 10 LLR, 176, 180 (1949).

Reverting again to the petition for Re-Argument, application of Rule 33 of the Circuit Court Rule has been vehemently attacked by petitioner on what has been termed by said petitioner as retroactive application of said Rule. The Petitioner has argued that

the December 22, 2006 Opinion which holds that an order to a Magistrate be subsequent to citing said magistrate or justice of the peace, a process expressly required by Rule 33, is infact application of said Rule 33 to a 1995 case. Such application, the petitioner says, is violative of the ex post facto principle of law as stipulated under our Organic Law.

This Court says that truly, Article 21 (a) of the 1986 Constitution reads; "*No person shall be made subject to any law or punishment which was not in effect at the time of commission of an offense, nor shall the legislative enact any bill of attainder or ex post facto law*" This Court however has not been able to see how this law would apply to the case at bar. The Black's Law Dictionary (Sixth Edition) 1995, at page 580 defines ex post facto as a "law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed."

It also says that "A law is constitutionally ex post facto" if it deprives the defendant of a defense to criminal liability that he had prior to enactment of the law every law which, in relation to the offense or the consequences alters the situation of a person to his disadvantage." [emphasis supplied].

This Court has searched but in vain to arrive at a conclusion, as the petitioner desires, that application of the long held principle of right to impartial trial upon which the Supreme Court opinion of December 22, 2006 was essentially founded, contravenes the ex post facto principle of law. Also, applying the Black's Law definition, as aforementioned, this Court believes that upholding the sacred principle of due process, as expressly stated in Rule 33, does in no way alter the position of the herein Petitioner to his disadvantage.

We are in full accord with petitioner's contention that the December 22, 2006 opinion should not have been expressly based on a rule of court per se. Indeed, the authority or due process of law which is the foundation of our jurisprudence was the determining factor and driving force behind the December 22, 2006 decision. Put simply, with or without rule 33 of the Circuit Court Rules Revised of 1999, this Court would have based its decision on the constitution rather than on Rule 33 of the Circuit Courts.

The real issue here is not Rule 33 (1999). For Rules of court, as held by this Honorable Court, are simply for the purpose of aiding in speedy determination of Causes. Where the strict enforcement of the letter of a rule would tend to prevent or jeopardize the administration or justice, the rule must yield to the higher purpose and

be relaxed by the Court. Pratt versus Phillips and Summerville, 10 LLR 147, 151 (1949), Harris Vs. Caranda, 29 LLR 355, 358 (1981). Within this pale of reasoning, section 3.3 of the Judiciary Law on which Judge Badio relied when "administering justice" was applied contrary to the due process clause enshrined in constitution of Liberia. Rule 33 as a principle requiring that a court sitting in judgment must hear before deciding, could not have by any force or authority, superseded the due process clause of the constitution.

This Court therefore holds that Rule 33 of 1999 has simply aided the Court in administering justice emphasizing strict compliance with the principle of due process.

We also modify this Court's December 22, 2006 opinion basing its decision solely on application of Rule 33, thereby violating the principle of ex post facto. It is our holding that the December 22 decision of the Supreme Court of Liberia was based on the authority of the due process clause which is clearly reflected and embedded in Rule 33 of the Circuit Court Rules Revised of 1999.

A settled principle as due process being not expressly stated does not negate its full application as a fundamental principle to all rules of courts and statute laws in the administration of justice in this jurisdiction. In the mind of this Court, granting petitioner's petition in effect would amount to what law writers best describe as "freezing due process of law at some fixed stage of time." It is therefore our unanimous opinion that this Court's reference to Rule 33 as the rule on which the December 22, 2006 decision was based is to say that said decision grew out of the principle of due process of law as further reflected in Rule 33.

WHEREFORE AND IN VIEW OF ALL the relevant laws herein cited, we hold that the December 22, 2006 opinion of this Court, enhancing the application of the principle of due process is hereby confirmed and reconfirmed. We hold further that Rule 33 of the Circuit Court Rules (1999) duly expresses both the letter and spirit of the due process principle, hence application of the said Rule 33 of 1999 to a 1995 case, as in the instant matter, does not violate the principle of ex post facto, otherwise forbidden by the law of the land. The December 22, 2006 opinion of this Court is therefore re-affirmed and the petition for Re-Argument is hereby denied.

The Clerk of this Court is hereby ordered to send a mandate to the court below to resume jurisdiction and give effect to this judgment. Costs against Petitioner. AND IT IS HEREBY SO ORDERED.