

NAJIB SAAB, et. al., Petitioners, v. METRIC HARB
AND FRANK W. SMITH, Circuit Judge presiding
by assignment, Civil Law Court, Sixth Judicial
Circuit, Montserrado County, Respondents.

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

Heard: June 6, 1981. Decided: July 30, 1981.

1. The right of a Justice in Chambers to grant or not to grant a petition for a remedial writ is a discretionary exercise of his authority and that such a authority cannot be questioned. However, where the Justice in Chambers denies the granting of such writ after conducting a full hearing before all the parties concerned, such decision is appealable to the full bench.
2. A remedial writ shall not be issued in any case in which it appears that the petition is devoid of legal merits and is made solely for the purpose of delay.
3. No appeal can be taken from the refusal of a Justice presiding in Chambers to order issuance of an alternative writ upon presentation of a petition for a remedial writ.
4. Where a Justice in Chambers refuses to grant a petition for a remedial writ, the party so affected is by no means left without a legal redress. He still has the right to take a regular appeal after trial in the trial court.
5. Applications for any of the remedial writs shall be addressed to the Justice then presiding in Chambers and that only the Justice in Chambers is vested with the legal authority to grant or not to grant a remedial writ.
6. At all times, in term and out of term, there shall be a Justice presiding in the Chambers of the Supreme Court who shall be designated by the Chief Justice in regular rotation from among the Associate Justices, and no such Associate Justice designated shall delegate his powers to another.
7. Pursuant to the new judiciary law, the Chief Justice cannot preside in Chambers; as such, he is without legal authority to order the issuance of a remedial writ.
8. Where a Justice refuses to issue the alternative writ, the remedy available is not a "submission" to the full bench; for a submission is not a substitute for a remedial process or a regular appeal.
9. Where a Justice in Chambers has heard a petition for a remedial writ and denied it, such adverse ruling is appealable to and the same can be heard by the Supreme Court *en banc* and in that case, the Supreme Court will have jurisdiction *in rem and in personam* over the subject matter and the parties, respectively.
10. Where the Justice in Chambers has refused, after inspection of the records, to grant the writ for want of legal merits, the Supreme Court *en banc* does not have jurisdiction over the petition for the granting of the remedial writ.

Petitioners, Najib Saab and others, were defendants in an

action of damages for injuries to the reputation. Trial of the case commenced after the disposition of the law issues, and progressed up to the stage where the parties rested evidence, at which time petitioners appealed to the Justice in Chambers for a writ of prohibition alleging irregularities on the part of the trial judge. The Justice in Chambers refused to issue the writ, whereupon the petitioners filed a submission before the full bench, complaining and questioning the refusal of the Justice in Chambers to issue the writ. The Chief Justice ordered the alternative writ issued and docketed the petition for hearing by the full bench.

The Supreme Court held that only the Justice in Chambers is vested with authority to grant or deny a remedial writ, and that where the Justice refuses to grant the writ, the remedy available is not a submission to the full bench, but rather to proceed with the principal by announcement and processing of a regular appeal. The Supreme Court also held that the Chief Justice was without authority to order the issuance of the remedial writ, and that the Court lacks jurisdiction over remedial processes, except upon appeal from the ruling of the Chambers Justice. Accordingly, the Court ordered the alternative writ issued by the Chief Justice *revoked* and *canceled* and ordered the trial court to resume jurisdiction over the case and proceed with the trial.

Cooper & Togbah Law Office appeared for petitioners. *Carlor, Gordon, Hne and Teewia Law Offices* appeared for respondents.

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

An action of damages for injuries to the reputation was filed by one Metric Harb of the City of Monrovia in the Sixth Judicial Circuit Court, Montserrado County, against Messrs. Najib Saab, Kamil Farhart, Faoud Eldine et al; all of the City of Lower Buchanan, Grand Bassa County. Pleadings progressed as far as the reply and the issues of law were disposed of accordingly. The trial of the case commenced and after all

the parties had rested evidence, petitioners petitioned the Justice in Chambers for a writ of prohibition against the trial judge for alleged irregularities which the petition did not specify. The Justice in Chambers, then in the person of Associate Justice Angie Brooks-Randolph, refused to issue the requested writ after inspection of the records in the case. Whereupon, the petitioners filed a submission before the full bench, complaining and questioning the refusal of the Justice in Chambers to issue the writ. Consequently, the Chief Justice, then the late James A. A. Pierre, ordered the issuance of the writ of prohibition, as a result of which the proceedings in the trial court was stayed.

From this factual background, we have the following principal issues of law for our consideration and disposal: (1) Whether an appeal will lie from the refusal of a Justice in Chambers to grant an alternative writ upon presentation of a petition? (2) Whether or not a party is without a legal remedy where a Justice in Chambers refuses to grant a remedial writ? (3) Whether the Chief Justice (Chairman) can legally order the issuance of a writ of prohibition? (4) Whether or not there is a law that provides for a submission as a substitute for a remedial process or an appeal? (5) Whether the People's Supreme Tribunal has jurisdiction over this matter?

We shall deal with the issues in their chronological order. Addressing himself to the first issue, counsel for petitioners contended and argued before this Bench that the refusal of the Justice in Chambers to grant the requested remedial writ was a violation of the statutory rights of appeal. This Tribunal takes the position that the right of a Justice in Chambers to grant or deny a petition for a remedial writ is a discretionary exercise of his authority and that such authority cannot be questioned. However, where the Justice in Chambers denies the granting of such writ after conducting a full hearing before all the parties concerned, such decision is appealable to the Bench *en banc*. *Mitchell and Sons Distillery v. Nelson*, 22 LLR 67 (1973).

Also, the Civil Procedure Law, Rev. Code 1:16.27, states that a remedial writ shall not "issue in any case in which it appears that the petition is devoid of legal merit and is made

solely for the purpose of delay."

It is clear from the laws cited that a remedial writ shall under no circumstances issue as a matter of right. This being the case, the right of discretion exercised by the Justice in Chambers in the case at bar was a valid and legitimate one. In *Browne et. al. v. Republic of Liberia*, 22 LLR 121 (1973), this Court held that:

"No appeal can be taken from the refusal of a Justice presiding in Chambers to order issuance of an alternative writ upon presentation of a petition for a remedial writ."

As already mentioned hereinabove, where a Justice in Chambers refuses to grant a petition for a remedial writ, the party so affected is by no means left without a legal redress. He still has the right to take a regular appeal after trial in the trial court. The petitioners in the instant case, having failed and neglected to state the irregularities allegedly committed by the trial judge for the purpose of giving notice to respondents of what the application is all about, the Justice in Chambers was, therefore, legally correct in refusing to grant the writ and, hence, the petitioners should have proceeded on a normal appeal after trial, instead of interrupting the trial proceedings for no just cause.

This Court has always held that applications for any of the remedial writs shall be addressed to the Justice then presiding in Chambers and that only the Justice in Chambers is vested with the legal authority to grant or deny a remedial writ.

The late Chief Justice, not being the Justice presiding then in Chambers, coupled with the fact that as Chief Justice, he could not preside in Chambers, he was without legal authority to order the issuance of the remedial writ of prohibition.

The New Judiciary Law states that:

"At all times, in term and out of term, there shall be a Justice presiding in the Chambers of the Supreme Court who shall be designated by the Chief Justice in regular rotation from among the Associate Justices, and no such Associate Justice designated shall delegate his powers to another." Judiciary Law, Rev. Code 17:2.6.

The act of the late Chief Justice has become even more *ultra petita* when it is observed that the petitioners proceeded

to this Court from the Justice in Chambers on what they termed a "Submission."

Besides, there is no law whatsoever in the statute of this Republic providing for a "submission" as a substitute for a remedial process or a regular appeal.

Now addressing ourselves to the last issue, to wit: whether the People's Supreme Tribunal has original jurisdiction over this matter? In keeping with the law and our judicial practice, we hold that where a Justice in Chambers has heard a petition for a remedial writ and denied it, such adverse ruling is appealable to the Supreme Court, and the same can be heard by this Court *en banc* and that in such a case, this Court has jurisdiction *in rem and in personam* over the subject matter and the parties, respectively. On the other hand, we also hold that where the Justice in Chambers has refused, after an inspection of the records, to grant the writ for want of legal merit, this Court does not have jurisdiction over the petition, for the granting of a remedial writ by the Justice in Chambers, after inspection of the records, is discretionary and cannot *a fortiori* be appealed from. The People's Supreme Tribunal, therefore, lacks original jurisdiction over the instant petition for a remedial writ.

From the foregoing, it should accordingly be noted that the People's Supreme Tribunal sitting *en banc* can neither order respondents to file returns, nor can it order the Clerk of this Court to issue stay orders in proceedings pending before any inferior court. These functions are inherent in the office of the Justice presiding in Chambers and cannot be exercised by this Court without unduly violating the constitutional and statutory provisions appertaining to original jurisdiction.

It therefore goes without saying that in the absence of any action taken by the Justice in Chambers on the petition for the writ of prohibition in the case at bar, the submission growing out of the refusal by the Justice to grant the alternative writ was a legal nullity and thus void *ab initio*. This Court, therefore, cannot review a matter venued before the Justice in Chambers. There is no showing from the facts given in this case, that Associate Justice Angie Brooks-Randolph, then presiding in Chambers, acted or assumed jurisdiction over the

subject matter and denied the issuance of the writ.

The People's Supreme Tribunal cannot assume and exercise original jurisdiction over the petition because the Justice in Chambers, by mere inspection, refused to grant the same for want of legal merit. The People's Supreme Tribunal cannot do so without necessarily violating the statutory laws of this Republic now in force and the common law governing judicial practice of this Court.

We wish to reiterate the fact that the laws extant in this jurisdiction are silent on whether a submission is a substitute for remedial process; nor is this deficiency cured by the common law. There is no statute providing for a "submission" as being a judicial remedy. As already indicated in this opinion, our statute dictates that only a Justice in Chambers has the authority to order the issuance of a remedial writ. The writ of prohibition, out of which the submission grew, not having been issued on the orders of Madam Justice Angie Brooks-Randolph, then presiding in Chambers, was illegal and hence invalid.

In view of the above, the purported writ of prohibition ordered issued by the late Chief Justice James A. A. Pierre, is hereby revoked and canceled with costs against petitioners. The trial court is therefore ordered to resume jurisdiction over the case and of the parties and that this case shall have priority consideration over all cases now pending in the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County. And it is so ordered.

Prohibition denied; alternative writ revoked.