

JAMES CHELLEY et al., Appellants, v. REPUBLIC  
OF LIBERIA, by and through PHILIP KAMAH,  
Minister of National Security, and FREDDIE  
TAYLOR, National Security Agency, Appellees.

NOTICE OF WITHDRAWAL OF APPEAL FROM THE JUDGMENT OF THE CIRCUIT  
COURT FOR THE FIRST JUDICIAL CIRCUIT, CRIMINAL ASSIZES "A",  
MONTERRADO COUNTY.

Heard: November 22, 1999. Decided: December 16, 1999.

1. A notice of withdrawal of appeal does not *ipso facto* oust the jurisdiction of the Supreme Court over the appeal; the right and power are reserved to the Supreme Court to grant or deny a notice of withdrawal of an appeal.
2. A withdrawal of an appeal is by leave and approval of the Court *en banc* or a justice thereof.
3. The rationale for the Supreme Court reserving to itself the power and authority to grant or deny the withdrawal of an appeal is, firstly, to ensure that the rights of party litigants and other persons are not compromised; and secondly, it is intended to correct statutory and other legal irregularities committed at the trial.
4. The Supreme Court has an inherent duty to protect the practice of law and the procedure of trial courts.
5. The Supreme Court will not grant the leave for withdrawal of an appeal, where to do so would compromise the rights of others or where the proceeding in the court below is fraught with errors and irregularities, contrary to the laws, which ought to be corrected.
6. Once an appellee objects to the withdrawal of an appeal on the ground that the trial was fraught with errors and irregularities contrary to law, the Supreme Court will exercise its discretion whether to grant or deny the appeal, the intention being that if any such errors or irregularities were actually committed, only a review of the entire case would correct them and thereby protect the practice of law and procedure in the trial courts.

Appellants were found guilty of commission of the crime of treason and sentenced to ten years imprisonment. They appealed to the Supreme Court for a review of the conviction, while the appellee, the Republic of Liberia, noted exceptions to the final judgment of the trial court. After perfecting their appeal, appellants filed a notice of withdrawal of their appeal; and in response, appellee objected.

Appellee submitted that treason being a crime provided for

in the Constitution, unlike other crimes, the judgment in a treason case should mandatorily be reviewed by the Supreme Court as the Supreme Court is constitutionally empowered to review all issues involving the Constitution. Appellee also submitted that several errors and irregularities contrary to law were committed by the trial judge and the Supreme Court should therefore deny the withdrawal of the appeal and correct these errors and irregularities.

In response, appellants' counsel submitted that appellee is statutorily barred from appealing a judgment of the trial court based on a jury verdict in a criminal case, and that appellee cannot and should not be allowed to overcome this statutory bar and exercise the right of appeal through appellee's objection to appellants' notice of withdrawal.

The Supreme Court held that withdrawal of appeal is only by its leave and that it will not grant the leave for withdrawal where to do so would compromise the rights of others or where the proceeding in the court below is fraught with errors and irregularities, contrary to the laws, which ought to be corrected. The Supreme Court held that in exercise of its inherent power and duty to protect the practice of law and procedure in all courts of Liberia, where the appellee, in response to a notice of withdrawal by the appellant, claims that errors and irregularities inconsistent with the laws were committed, the withdrawal will be denied. The denial will give the Supreme Court the opportunity to review the entire case and correct the errors and irregularities, if any.

Accordingly, the Supreme Court denied the application contained in the notice of withdrawal of the appeal.

*Emmanuel S. Koroma* and *Benedict F. Sannoh* appeared for appellants. *A. W. Wallace Octavius Obey, Sr.*, Solicitor General, and *Flaawgaa R. McFarland* appeared for appellee.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

The records reveal that appellants were indicted for the

crime of treason and a trial was held at the First Judicial Circuit Court, Criminal Assizes "A" of Montserrado County during the February A.D. 1999 Term of that court. The jury returned a verdict of guilty. The assigned trial judge, His Honor William B. Metzger, confirmed the verdict of the jury and sentenced appellants to ten (10) yeas imprisonment. Appellants noted their exceptions and announced appeal to the Honourable Supreme Court of Liberia. Appellee, the Republic of Liberia, represented by state prosecutors, also noted exceptions to the final judgment of the assigned trial judge.

Appellants thereafter perfected their appeal and a notice of completion of appeal was duly served on appellee.

On July 5, 1999, appellants filed a notice of withdrawal of appeal in the office of the Clerk of the Honourable Supreme Court and a copy of said notice of withdrawal of appeal was served on the Solicitor General of the Republic of Liberia.

Attached to the said notice of withdrawal is a written letter signed by appellants individually, and addressed to one of counsel for appellants, Counsellor Benedict F. Sannoh, which informed the said counsel that appellants had collectively and individually reached the decision voluntarily and without undue influence not to proceed with the hearing of their appeal pending before the Honourable Supreme Court. In the said letter, appellants authorized their counsel to file the appropriate notice of withdrawal of appeal and cause the said notice to be served on appellee, the Republic of Liberia.

After appellee was served a copy of the notice of withdrawal of appeal, on July 20, 1999, appellee filed with the Clerk of the Honourable Supreme Court a sixteen-count objection. As far as this Court is concerned, the salient issue of objection raised by appellee is that the granting of this notice of withdrawal of appeal would deny this Court the opportunity to review the final judgment as handed down by the presiding judge. Appellee contended in its objection that the sentence of ten (10) years imprisonment imposed by the trial judge was contrary to the statutory penalty for the crime of treason, which is life imprisonment or death by hanging.

During oral arguments of this case before this Court,

appellant contended that under the revised Criminal Procedure Law, the right to appeal is reserved only to defendants when a regular trial has been held and final judgement rendered by the trial judge. Therefore, appellants concluded, appellee did not have the right to object to appellants' notice of withdrawal of appeal on the grounds that the withdrawal of the appeal would prevent this Court from reviewing legal and reversible errors and irregularities committed by the trial judge in favor of appellants.

When this case was called for hearing before this Court, counsel for appellants requested the Court to hear arguments only on the notice of withdrawal of appeal. On the other hand, counsel for appellee prayed for consolidation of the appeal and the notice of withdrawal of appeal. Appellants' counsel resisted the prayer made by appellee's counsel.

This Court granted the application made by counsel for appellants and denied the application made by counsel for appellee.

From the foregoing, the issue to be decided by this Court is: Whether or not a withdrawal of an appeal *ipso facto* ousts the appellate court of jurisdiction or whether the appellate court reserves the right and power to hear an appeal notwithstanding a notice of withdrawal of the appeal.

This Court resoundingly holds that a notice of withdrawal of appeal does not *ipso facto* ousts the jurisdiction of this Court over the appeal; the right and power are reserved to the Supreme Court to grant or deny a notice of withdrawal of an appeal.

In several opinions rendered by this Court, it was held that a withdrawal of an appeal is by leave and approval of this Court *en banc* or a justice thereof. For reliance, see *New York v. Seabreeze*, 2 LLR 26 (undated); *Hill v. Republic*, 13 LLR 381 (1959); *Tarpeh v. Republic*, 13 LLR 383 (1959); *Liberia Tractor Corporation v. Abi-Jaoudi*; 14 LLR 43 (1960); *International Trust Company of Liberia v. Weah*, 15 LLR 568 (1964); *Murray Hunter Real Estate, Ltd. v. Dunbar and Meinecke, Koerner and Co.*, 19 LLR 217 (1969); *Cooper v. Dunbar and Reeves*, 21 LLR 295 (1972); *Nyepon v. Reeves, et al.*, 21 LLR

406 (1972); *Baky v. George, et al.*, 24 LLR 387 (1975); *Union Maritime et Commerciale Corporation (UMARCO) v. Dennis and American Marine Supply, Inc.*, 25 LLR 267 (1976); *Brown Boverie Cie A.G. v. Lewis, et al.*, 26 LLR 170 (1977); *Dhaliwal International Trading Company (DITCO), et al. v. King*, 26 LLR 195 (1977).

From the foregoing, the logical question is what is the rationale for the authority of this Court to grant or deny a withdrawal of appeal, which is tantamount to the appellant's withdrawal of his constitutional right to appeal.

As already cited herein, this Court has, in several of its opinions, reserved unto itself the authority to grant or deny the withdrawal or waiver of an appeal, notwithstanding the party's constitutional right of appeal, and the right, which obviously flows therefrom, to assert same or to waive same. The rationale for the reservation of this authority to review all matters or causes, which have been appealed to the Supreme Court, is twofold. Firstly, the rationale is to ensure that the rights of party litigants and other persons are not compromised; and secondly, it is intended to correct statutory and other legal irregularities committed at the trial.

In the case, *Union Maritime et Commerciale Corporation (UMARCO) v. Dennis and American Marine Supply, Inc.*, 25 LLR 267 (1976), Mr. Chief Justice Pierre, speaking for this Court on this issue of the withdrawal of an appeal already perfected with this Court, and relying on a previous opinion of this Court, *International Trust Company of Liberia v. Weah*, 15 LLR 568 (1964), said, among other things, the following:

“The Court went further in that opinion to put on record and thereby set the precedent that withdrawal of an appeal in the Supreme Court will only be allowed when and where such withdrawal does not compromise the right of others.”

Mr. Chief Justice Pierre continued in the same *Union Maritime et Commerciale Corporation (UMARCO)* case with the following words:

“These are a few of the questions posed by the several irregularities and illegalities which appear in this case,

and which would have gone uncorrected had withdrawal of the appeal from Mr. Justice Henriques' ruling been allowed. And the courts of Liberia would have thereby been made to look most ridiculous.

The Supreme Court has an inherent duty to protect the practice of law and the procedure of our courts. In the exercise of that duty, we shall not condone any practice which shall not square with our rules of moral and ethical conduct, the Constitution, and the statute laws of Liberia."

It should be recalled that after service of appellants' notice of withdrawal of their appeal, appellee objected to it. In its objection, appellee contended that the crime or offense of treason, which appellants were adjudged by the trial court guilty of committing is a constitutional crime; that is, the crime is provided for by the Constitution. Appellee therefore submitted that any judgment on that crime must be reviewed by the Supreme Court, since the Supreme Court is the arbiter of constitutional issues and matters.

Appellee also contended in its objection to appellants' notice of withdrawal of appeal that reversible errors and irregularities, contrary to law, were committed by the trial judge.

Appellants' counsel argued that appellee is under a statutory bar of the right to appeal; and hence, appellee cannot raise issues of errors and irregularities allegedly committed by the trial judge and seek a review thereof by this Court through the objection to the notice of withdrawal of appeal.

It is appellee's submission in its objection to appellants' notice of withdrawal that errors and irregularities contrary to law were committed by the trial judge, which has resulted into the resolve of this Court to consider the full spectrum of the objection filed by appellee, and if any such alleged errors and irregularities are found, to correct same in the performance of its duty to protect the practice of law and procedure in all courts in this Republic.

We therefore confirm and affirm the several opinions delivered by this Court on the issue of withdrawal of appeal, with particular emphasis on the holdings in the *Union Mari-*

*time et Commerciale Corporation (UMARCO)* case; and accordingly, we deny the withdrawal of the appeal.

Wherefore and in view of the foregoing, the application or request contained in the notice of withdrawal is denied; and the appeal, as perfected by appellants, shall remain docketed for review by this Court. And it is hereby so ordered.

*Withdrawal of appeal denied.*