

JOSEPH A. SODATONOU, HON. SEBRON J.  
HALL, Judge of the Debt Court, Montserrado  
County, and the SHERIFF of said Debt Court,  
Appellants, v. BANK OF LIBERIA, INC., Appellee.

APPEAL FROM RULING OF CHIEF JUSTICE PRESIDING IN CHAMBERS,  
GRANTING A WRIT OF PROBATION TO THE DEBT COURT,  
MONTSERRADO COUNTY.

Argued December 9, 1971. Decided December 22, 1971.

1. An appeal when announced serves as a supersedeas to any further disposition of the particular matter by the court from whose judgment an appeal has been so announced.
2. When a writ of attachment, sometimes also known as garnishment proceedings, is applied for, a main suit need not be pending in that court between the same parties for the writ of attachment to issue.
3. Prohibition will not lie to undo an act already completed, for the remedy is preventive in nature, but, as in the present case, where a judge can obey the writ by undoing what he has ordered, prohibition will lie and the judge of the lower court held accountable for disobeying such order, even if the writ issues from the chambers of a Justice of the Supreme Court and not the full Court.
4. The petition for a writ of prohibition need no longer be verified by the petitioner himself, but if it were still required the Supreme Court would not enforce the technical requirement if to do so would mean that an unconscionable act against the judiciary would be thus countenanced.

Joseph Sodatonou, a respondent in prohibition proceedings, had recovered a \$37,000.00 judgment in the Debt Court. The petitioner herein sought to attach \$25,000.00 thereof, basing its contention on the facts that Sodatonou was a foreigner and that the amount sought in attachment would guarantee financial responsibility in its suit pending against Sodatanou in the circuit court, in which petitioner was the plaintiff in a debt action. The Debt Court judge dismissed the application for attachment on the grounds that Sodatonou's counsel, who had his client's power of attorney to act for him, was alone served with process, and that no main suit was pending between the parties in the Debt Court. Petitioner an-

nounced its intention to appeal from the court's decision, which ordered the \$25,000.00 turned over to Sodatonou's counsel. On the day thereafter, following an application filed in the chambers of Mr. Justice Wardsworth in prohibition, an order, in effect, staying all proceedings in the matter, including disposition of the funds at issue, was sent to the Debt Court. Nonetheless, the lower court turned over the \$25,000.00 to counsel. A hearing was thereafter held by the Chief Justice in chambers, in which he ordered the issuance of a peremptory writ which directed that the \$25,000.00 be returned to the Debt Court and all further consideration of its disposition stayed until the Supreme Court adjudicated the appeal in the garnishment, or attachment, proceedings. An appeal was taken to the full Court. *Affirmed.*

MR. JUSTICE AZANGO delivered the opinion of the Court.

The respondents have appealed from a ruling of Mr. Chief Justice Pierre in chambers on December 7, 1971.

For the purpose of considering the merits, we have set forth portions of the Chief Justice's ruling.

"A petition for prohibition was filed by the Bank of Liberia to stop delivery to one Joseph Sodatonou in the amount of \$25,000.00, a sum of money claimed by the bank in an action of debt by attachment, pending in the Sixth Judicial Circuit Court, and held by the Debt Court in garnishment proceedings. The petition, briefly stated, alleges:

"That growing out of another action brought by the said Joseph Sodatonou, a Togolese national, against the AGIP (Liberia) Corporation, the courts awarded him \$37,856.67. This amount was by mandate of the Supreme Court ordered to be paid to the aforesaid Joseph Sodatonou, plaintiff in the action of debt

against AGIP. Knowing that their action of debt against Sodatonou was still pending in another court, and also knowing that the money was then held by the Debt Court judge, the bank filed garnishment proceedings in the Debt Court, and prayed that the \$25,000.00 they had sued Sadotonou for in the Sixth Judicial Court, be sequestrated and held in escrow until their case could be determined. The respondent Judge Sebron Hall of the Debt Court ordered issuance of the writ of garnishment on February 4, 1971, and it was served on Counsellor Joseph J. F. Chesson, attorney for Sodatonou and AGIP Corporation. . . .” [Judge Hall dismissed the application for sequestration on April 19, 1971. Applicant excepted and announced intention to appeal to the Supreme Court at its October Term, 1971.]

“An appeal when announced serves as a supersedeas to any further handling of the particular case by the court from whose judgment an appeal has been so announced. Therefore, the actions of Judge Hall, in granting the appeal asked for, and in the same sentence ordering delivery of the \$25,000.00 sought in sequestration to Sodatonou, in violation of the very appeal he had granted, leaves one reflective.

“This ruling was made on April 19, 1971, and on the same day the Bank of Liberia applied for prohibition to stop the delivery of the money involved, until the Supreme Court decided the matter. The stay order sent down the next day, April 20, from the Chambers of Mr. Justice Wardsworth ordered Judge Hall not to turn over the \$25,000.00 until the Supreme Court otherwise ordered. . . .

“During argument before us, we inquired of Counsellor Chesson if he had obtained and had filed a power of attorney in the Debt Court authorizing him to act on behalf of Joseph Sodatonou, who is a foreign

national and was out of the country when the money was ordered delivered to him. He assured us that he had done so. We also inquired of Counsellor Chesson what he had done with the money received. He informed us that he had kept the money till Joseph Sodatonou came back to Liberia, and had delivered it to him in person. We also inquired of him if he could remember the time Joseph Sodatonou returned to Liberia, after Judge Hall's ruling. His reply was not definite, but he stated that it was some time after the ruling, and earlier this year. His return to Liberia was certainly more than 4 hours after the ruling, more than sufficient time for the judge still to have obeyed the stay order and the supersedeas resulting from the announced appeal, even if the funds had been turned over to Chesson. . . .

"There are two main bases upon which the judge dismissed the garnishment proceedings: (1) that Sodatonou as respondent in garnishment, had not been served with process to put him under the jurisdiction of the court; and (2) that there was no main suit of debt against Sodatonou pending in the Debt Court, to which garnishment could be ancillary.

"I am in agreement with the judge when he states that garnishment is a provisional remedy. We have not been able to find any statute which refers to a main suit, which must be pending in the court in which the garnishment proceedings are brought. . . .

"The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated by the procedure of the courts of Liberia and regardless of whether the remedies are ancillary to the action or must be obtained by an independent action.' 1956 Code, 6:380.

"Section 402 and 403 of the same Title relied upon

in the judge's ruling, do not require that there must be a main suit pending in the court in which the garnishment proceedings are brought.

"But, be all of this as it may, the Civil Procedure Law, L. 1963-64, ch. III, § 705, states that 'An order granting a provisional remedy is annulled immediately on judgment for the defendant unless an appeal is taken. The taking of an appeal continues a provisional remedy in effect until final judgment is rendered.' Appeal was taken in this case by the defendant, but the judge refused to allow the provisional remedy to continue in effect in keeping with the statute, when he invalidated the effect of the appeal by ordering the money delivered to respondent. Moreover, the judge did not seem to have any legal authority for dismissing the proceedings on the ground that the applicant did not have a main suit pending before him against Joseph Sodatonou, as he did not have authority for delivering the money by reason of the bank's appeal, which he had granted.

"We come now to the first reason given for dismissing the writ. That Sodatonou was not under his court's jurisdiction because the writ of garnishment was not served upon him personally. It must be noted that the only respondent before him in the garnishment proceedings was Sodatonou, to whom he directed the Sheriff, over the bank's appeal, to deliver the \$25,000.00, the subject of the garnishment. How could he then rule that the money should be delivered to a party not under his jurisdiction, in a matter pending in his court? But let us see if Sodatonou was or was not really under his court's jurisdiction.

"We have said earlier that in answer to questions put to him, counsellor Chesson admitted during argument before this Court that he had a power of attorney from Joseph Sodatonou, authorizing him to

receive the \$25,000.00, the subject of the garnishment proceedings. In his capacity as agent for his principal, Joseph Sodatonou, not only did he appear in court and accept the service of process for him to appear, but he did appear in the garnishment proceedings, in which his principal was respondent. He also filed the motion to dismiss the proceedings, which the judge granted.

"In count one of the returns of the respondents, it is contended that prohibition can not lie because the affidavit is not by the petitioner but by his counsel, contrary to law as provided in applications for such relief. 1956 Code, 6:1221. Notwithstanding, we still have an abiding duty to the judiciary of Liberia to protect it against unconscionable practices. *Kanawaty et al v. King*, 14 LLR 240,245-6 (1960), on the excuse that a petition exposing these acts has not been verified by the correct party. However, by the new Civil Procedure Law, petitions in prohibition are not required to be verified by the petitioner. Hence, this is no longer a ground for dismissal of a petition for prohibition.

"The respondents have also contended in their returns that prohibition will not lie to undo an act already accomplished, since the remedy is preventive in character. We are in full agreement with this assessment of the function of the writ of prohibition, only this principle is not applicable in this case, since the money had not as yet been delivered to Sodatonou when the Supreme Court's order staying proceedings reached Judge Hall. In the circumstances, the judge should have taken immediate steps to retrieve the money, wherever it was at the time, irrespective of whatever orders he had already given concerning it.

"There are numerous decided cases where the Supreme Court has held in contempt subordinate courts which have disobeyed orders issued out its chambers.

*In re Caranda*, 9 LLR 240, 249 (1947). We do not hesitate to say that the record in this case shows a deliberate and intentional disobedience of Mr. Justice Wardsworth's order that the \$25,000.00, the subject of the garnishment proceedings, be held until the Supreme Court could give subsequent instructions.

"In view of the circumstances related hereinabove, we do not feel that it would be proper for Judge Hall to continue to handle this matter. We find that there are proper grounds for granting the peremptory writ of prohibition, therefore, it is hereby granted. And the Clerk of this Court is ordered to send a mandate to the judge whose appointment to the Debt Court for the purpose of hearing and determining this case we are requesting the Chief Executive to make.

"It is also our determination that the Debt Court resume jurisdiction over the garnishment proceedings, and grant *nunc pro tunc* the appeal announced by the applicant in garnishment; in the meantime respondent Joseph Sodatonou, or his attorney is ordered to return to the Debt Court the \$25,000.00 which is the subject of the garnishment proceedings, until such time as the Supreme Court can finally decide the case. Costs of these proceedings will await final determination of the garnishment case on appeal."

When this case was called for argument counsellor O. Natty B. Davis, representing respondents, presented several arguments which we feel were of no legal potency.

From a careful examination of the ruling of the Chief Justice, its conclusions are sound, and being in complete and absolute agreement therewith we uphold and confirm the said ruling to all intents and purposes; and the Debt Court is hereby ordered immediately to resume jurisdiction over the garnishment proceedings, and grant *nunc pro tunc* the appeal announced by the applicant in garnishment. In the meantime Joseph Sodatonou, or his

attorney, counsellor J. F. Chesson, is ordered within ten days of the date hereof to return to the Debt Court of Montserrado County, the \$25,000.00 which was the subject of the garnishment proceedings, and it is to remain there until such time as the Supreme Court can finally decide the case. In the event of failure to return the said \$25,000.00 within the time specified, the Debt Court is hereby authorized and empowered to have Joseph Soda-tonou or his attorney counsellor Joseph J. F. Chesson, arrested and imprisoned until the said \$25,000.00 is returned as directed.

Costs of these proceedings to await final determination of the garnishment case on appeal.

*Affirmed.*