

THE YAH RIVER LOGGING CORPORATION,
Plaintiff in error, *v.* UNITED LOGGING
CORPORATION, et al., Defendants in error.

APPEAL FROM RULING OF JUSTICE IN CHAMBERS.

Argued February 24, 1975. Decided March 3, 1975.

1. Errors and omissions by officers of a court should not prejudice the rights of parties.
2. An application based upon facts in a court of record should be in writing and supported by affidavits.

The plaintiff in error was a corporate concessionaire authorized by the Government to harvest timber. It had, in turn, entered into an agreement with a logging company to manage operations. Thereafter, the president of the concession entered into an agreement with another logging company to manage operations, thereby breaching the prior contract.

The plaintiff in error brought an action for an injunction against all parties adverse to its claimed rights. The judge in the circuit court ruled against the plaintiff in the absence of counsel. The plaintiff thereupon petitioned the Justice in chambers for a writ of error, alleging the foregoing as its basis for a writ of error. The petition was denied and the Justice ordered an injunction issued in favor of the second logging corporation. An appeal therefrom was taken by plaintiff in error to the full bench.

The Supreme Court considered the facts and the evidence proffered. It found no basis for denial of the injunction sought by the concession and ordered an injunction perpetuated, to restrain any other logging company from interfering with the Government approved agreement entered into between the concession and the initial logging company.

The Court, incidentally, discounted the bills of infor-

mation alleging violation by plaintiff in error's managing logging company of the Justice's injunctive ruling by continuing operations after issuance of the Justice's said ruling; the Court emphasized the lack of any ground for issuance of the injunction.

The ruling of the Justice was *reversed* and the injunction sought by plaintiff in error was *granted*.

Toye C. Barnard and *Moses Yangbe* for plaintiff in error. *Joseph Findley* and *Stephen Dunbar* for defendants in error.

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

In this case we are to consider an appeal in error proceedings taken from the ruling in chambers of Mr. Justice Horace, and two bills of information growing out of orders given by the Justice in chambers in respect to proceedings in error, heard and determined by him. All of these grow out of an action of injunction brought by the Yah River Logging Corporation against Samuel T. Voker, president of Yah River Logging Corporation and the United Logging Corporation. Because both bills of information allege violation of orders given in these cases, we have decided to begin at the beginning and review the whole matter.

According to the complaint, an injunction was sought to restrain and enjoin various acts.

“(1) Enjoin the defendant from entering into any agreement of management under the concession agreement between the Government of Liberia and the Yah River Logging Corporation which was duly assigned to the National Industrial Forest Corporation.

“(2) Restrain co-defendant R. F. D. Smallwood from acting as an officer of the Yah River Logging Corporation in view of the fact that his appointment

was illegal and contrary to the bylaws of the Yah River Logging Corporation.

“(3) Enjoined defendant Samuel T. Voker from acting in the name and on behalf of the Yah River Logging Corporation with third parties until such time when a three-member Board of Directors had been elected by the shareholders of the Yah River Logging Corporation, in keeping with the corporation laws of Liberia.”

It might be mentioned here that the Yah River Logging Corporation acting through its president, S. T. Voker, entered into an agreement on July 29, 1973, with the National Industrial Forest Corporation, acting through its president and general manager for the Andre Sahy Corporation, to manage the former's 51,000 acres of forest land, lying and being in Nimba County. The agreement was approved by James T. Philips, Jr., Minister of Agriculture, on behalf of the Government of Liberia.

But prior to the signing of this management agreement, the Government had, on November 21, 1972, granted a permit to the Yah River Logging Corporation, through the Bureau of Forest Conservation of the Ministry of Agriculture, for the corporation to conduct a forest survey; on May 31, 1973, the Government had also entered into a concession agreement with the Yah River Logging Corporation, which formed a part of the management agreement referred to earlier.

On November 4, 1974, the Government and the Yah River Logging Corporation signed an addendum to the concession agreement entered into on May 31, 1973. Because of the importance of this document, we will quote three of its relevant paragraphs.

“Whereas on the 31st of May, 1973, a timber concession agreement was executed by and between the Government of Liberia and the Yah River Logging Corporation, to harvest, process, transport, market and to conduct other related timbering operations within

a concession area totalling fifty-one thousand (51,000) acres of forest land which is located between the Ganta Saclepia Motor Road and LAMCO railroad north of Lofa Logging Company's area, Nimba County; and

"Whereas, the Concession now wishes to extend its area of operation over an additional sixty-three thousand seven hundred and fifty (63,750) acres, hereinafter referred to as Concession Area No. 2, located along the St. John River, Nimba County, thus bringing the total forest land of the concessionaire to one hundred fourteen thousand seven hundred and fifty (114,750), acres; and

"Whereas, the Government has agreed to grant to the concessionaire the additional sixty-three thousand seven hundred fifty (63,750) acres of forest land in accordance with the terms and conditions set forth in the timber concession agreement of May 31, 1973, . . ."

This addendum was signed by James T. Philips, Jr., Minister of Agriculture, and Stephen A. Tolbert, Minister of Finance on behalf of the Government, and Samuel T. Voker, president of the Yah River Logging Corporation. According to the addendum the Yah River Logging Corporation's two parcels of timber land were to be merged into one, containing one hundred and fourteen thousand seven hundred and fifty (114,750) acres. All documents necessary to validate the timber concession were processed and approved by the government, including a performance bond with an attached "clean letter of credit" for \$50,000 in favor of the Government. Hence, the Yah River Logging Corporation's concession, with its management in charge of the National Industrial Forest Corporation, had, by these documents, been approved by the Government.

It was at this stage that the management company, National Industrial Forest Corporation, filed suit to enjoin

the defendants, Samuel T. Voker, President of Yah River Logging Corporation, R. F. D. Smallwood and United Logging Corporation, from doing the things enumerated earlier in this opinion. This suit was filed on November 22, 1974, in the Civil Law Court in Monrovia, Judge Tilman Dunbar presiding.

Four days after the complaint was filed, the defendants filed an answer and simultaneously also filed a motion to vacate the injunction. The next day, November 27, 1974, the case was called for hearing of the issues of law. The following day, November 28, 1974, the case was resumed and the injunction vacated in the manner described later in this opinion.

We would here like to comment on the judge's order issued for the commencement of the suit, because this document was to play an important part in the handling of the case as will be seen later. In the first paragraph the clerk of the court was instructed to "issue forthwith a preliminary writ of injunction against the defendants," and in the second paragraph he was instructed to "insert a clause in the writ commanding the defendants to appear . . . to show cause why the writ . . . should not be issued." Two conflicting orders which could not consistently stand together. However, the clerk issued the writ and omitted to insert the clause for the defendants to show cause. As will be seen later it was because of this omission that the judge vacated the injunction in disregard of the maxim that errors and omissions of officers of a court should not prejudice the rights of parties.

According to the record of the trial court proferted and forwarded with the documents in these proceedings, on Wednesday, November 27, 1974, Judge Tilman Dunbar, presiding in the Sixth Judicial Circuit Court, spoke for the record.

"The Court: The injunction case brought by Yah River Logging Corporation against S. T. Voker and R. F. D. Smallwood in an injunction matter, is as-

signed for hearing on tomorrow morning at 9 o'clock, and inasmuch as counsel for plaintiff is present and in court there will be no necessity for further assignment. And since Counsellor Smallwood is also in court there will be no necessity to send out an assignment to him. Assignment in this case will only be sent to counsel for defendant or the party himself."

The record does not show what followed after the above recited ruling of the judge, but the very next lines of the same paragraph recited are interesting:

"The Court: Injunction matter is turned down and will be heard by our successor in office during the next term of court. Matter suspended."

Thus, by the record, the judge nullified the assignments which had been made in the same paragraph, immediately preceding this matter quoted, continuing the case for the December 1974 Term of Court. It is not usual for a judge to make such conflicting rulings in a case, at one and the same time and on the same day; however, that is the record. Parties on both sides were, by this latter part of the judge's ruling, notified that the hearing of their case would not take place till the following term of the court.

But quite strangely, the next day, Thursday, November 28, 1974, the following record appears.

"In re the case: Andre Sahyoun versus Samuel T. Voker et al., preliminary injunction, respecting the announcement made by Counsellor Smallwood requesting assignment of this case for Tuesday of next week, counsel for defendant is requesting the court to rescind its ruling and assign the hearing of this matter for this afternoon at 3 o'clock.

"The court: On yesterday the court turned down this case to be heard by the judge presiding at a subsequent term of court, but upon application made to us this morning by counsel for defendant, the court will give favorable consideration to said application, and hereby rescinds its ruling of yesterday's date,

which is being done during term time, and assigns this matter for hearing at three P.M. this afternoon. Counsel for both sides are directed to be notified by assignment. And it is hereby so ordered.”

We would like to comment at this stage that there is no showing in these minutes proferted with the record, that any opportunity was given for resistance by the plaintiff to the application for recision of the ruling of the previous day continuing the case for the next term of court. This was very necessary in view of the previous positions taken by the court the day before. Not only should the plaintiff have had notice of the application by the defendant for the judge to rescind his ruling continuing the case, but an opportunity should also have been afforded for him to resist the application to rescind. We shall say more about this later.

The record for November 28, 1974, shows that, in keeping with the judge's ruling rescinding his previous ruling, assignments were sent out for the afternoon hearing of the case. The bailiff, Henry Mitchell, who is supposed to have served the precepts, made returns to the effect that at his “attempt to serve the notice of assignment on plaintiff's counsel . . . both Counsellors Yangbe and Barnard refused to sign the assignment.” Based upon these returns the judge heard argument from defendant's counsel, and between three o'clock in the afternoon and closing time that day, vacated the injunction proceedings; because the plaintiff's counsel were absent, no appeal was taken.

Just at this point we would like to observe two things: (1) it seems unlikely that counsel for a plaintiff would refuse assignment of his case which he filed, when notice of its hearing was given to him; in fact, it is highly improbable that any lawyer for a plaintiff would do this. But let us give the bailiff the benefit of the doubt as to the returns made by the ministerial officer, since this is in keeping with precedence, with procedure, and with our practice; (2) we would like to observe that, if it is true that

counsel for the plaintiff refused the court's order to appear for the hearing of their case, it was a contemptuous act, and should have been disciplined. And it was not within the discretion of the judge to have waived proper discipline, because this disobedience of the court's order assailed and affronted not only the authority of Judge Dunbar's court, but the dignity of the Judiciary as well. Therefore, the judge should have compelled the appearance of counsel, and investigated the matter, and punished those at fault if the returns were found to be true.

In *International Trust Co. of Liberia v. Weah*, 15 LLR 568, 575 (1964) this Court made pertinent observations. "Every disobedience of a court's order constitutes contempt; and it is as much the duty of the inferior courts to demand and compel obedience of their orders as a first step to upholding the dignity of the judiciary and the authority of the courts of Liberia, as it is the responsibility of the Supreme Court to see that said dignity and authority are preserved." Of course, the certified record shows that plaintiff's counsel deny ever having been served with any notice of assignment for November 28, when their case was heard and dismissed; all the more reason why the judge should have instituted an investigation of the returns made by the Bailiff.

Coming back to the application of the defendant's counsel requesting the judge to rescind his ruling to continue the case till the next term of court, we are of the opinion that any application under the prevailing circumstances made in a court of record should be in writing, if what it asks for requires notice to the adverse party to either defend against the application or defend an interest which might not necessarily be adverse. In *Reeves v. Sherman*, 23 LLR 227 (1974), this Court held that an application based upon facts in a court of record should be in writing supported by affidavit, in keeping with Rule 8 of the Circuit Court Rules. In this case the record does not show the grounds upon which the application to rescind was

made; but we have to assume that some factual reason must have been given to have warranted the judge going diametrically against the ruling he had made only the day before, to continue the case till the next term of court. Why the sudden change in his decision to hear the case; and why in the absence of the plaintiff's counsel?

Because the plaintiff and his lawyers were absent when the court vacated the injunction, they petitioned the Justice in chambers for a writ-of-error. The Justice denied issuance of the peremptory writ, whereupon the plaintiff in error appealed to the bench *en banco*. The minutes of the hearing show that upon application of the defendant in error's counsel to be permitted to file a bond to enable the United Logging Corporation to harvest timber in the forest involved during the pendency of the appeal, the Justice made a ruling:

"The application of the defendants in error is granted, that is to say, that the appeal is granted subject to Rule XIII, Part 3 of the Supreme Court Rules; and the bond in the amount of \$10,000 to indemnify the plaintiff-in-error against any loss sustained as a result of this action, without prejudice to any action of damages brought for any loss sustained."

In view of the Government's grant of the two parcels of forest land to the Yah River Logging Corporation, for management by the National Industrial Forest Corporation, as shown by the several documents referred to earlier in this opinion, this was an unusual ruling. Among the documents made profert in the record before us, is one marked exhibit "B" addressed to Alexander Peal, Regional Forester in Nimba County. Because of the importance this letter has on the decision we have rendered in determining this case, we have quoted the letter verbatim.

"Dear Mr. Peal:

"By directive of the Minister of Agriculture you are hereby instructed to lift the suspension of all opera-

tions of National Industrial Forestry Corporation (NIFCO) in the concession area 1 and 2 of Yah River Logging Corporation.

"You are hereby further informed or reminded that NIFCO is the only corporation holding valid management agreement, dated 23 July 1973, to manage the concession areas of Yah River Logging Corporation. Until the expiration of this agreement, or unless NIFCO enters a management agreement with another company or corporation to manage a part or all of the concession areas of Yah River Logging, of which you will be informed, no other company or corporation should be allowed to enter and operate said areas.

"With kind regards,

"Very truly yours

[Sgd] J. MELVIN THORNES."

It is clear that the Government has, by several documents, some mentioned in this opinion and others which we have not mentioned, approved the management of the Yah River Logging Concession by the National Industrial Forest Corporation. Nowhere in any of the Government's approval documents has any mention been made of any grant of management to, or approval of, an agreement in favor of the United Logging Corporation. Nor has this corporation, one of the parties to these proceedings, made profert of any document which gives them any right to management of the Yah River Concession. During argument we inquired as to the documents which might have entitled United Logging to manage either or both of the areas concerned, and it was admitted it had not made profert of any such documents.

Moreover, could the courts grant permission, or order the United Logging Corporation to operate in the Yah River Logging Corporation's concession areas, in face of the Government's refusal to grant such permission? It is

not the duty of the courts to grant concessions; this is a function of the Executive branch of Government through the Ministry of Agriculture; that Ministry had already granted the concession to be managed by the National Industrial Forest Corporation. Therefore, it was error for the Justice in chambers to have ordered the defendants in error to file a bond and thereby permit it to operate in the concession area.

Furthermore, there was nothing in either of two cases, the injunction suit in the court below, or the error proceedings growing out of it, which forbade operation of the concession by either party. As far as is shown by the record in the two cases, NIFCO had never ceased its operation nor been ordered by any court to stop operating; nor had there been any such question raised in either the injunction suit or the error proceedings for the United Logging Corporation to be permitted to operate in the forest area involved.

The order given by the Justice in chambers for United Logging to operate, made no provision for it to file a performance bond, which is one of the prerequisites to operating a forest concession. Why would this corporation be allowed to perform without filing the bond, when every other company had been required to do so? During argument it came out that there had been only one performance bond filed, and that was the bond filed by NIFCO. Was it expected that United Logging, a rival of NIFCO, was to use the same bond for its operations? In a memorandum marked exhibit "D" attached to the returns of the respondents in the information proceedings which we shall address ourselves to later, John T. Wood of the Concession Secretariat made the following report to the Minister of Finance, when United Logging applied for permission to operate in part of the concession:

"If the management agreement between Yah River and United Logging Corporation is approved by the

Government, it would mean two managing companies for Yah River. It will also mean a duplication of the incentives such as duty free privilege.

“It could also mean a split of the concession obligations between two management companies. In case one management company defaulted and the penalty is imposed on the concessionaire, the other management company could suffer.”

Based on these grounds the Government refused to permit United Logging to have anything to do with the Yah River Logging Corporation's concession. How then could the court order them to operate? We must reverse the order given by the Justice in chambers, because the Government cannot violate the contract it had approved.

We come now to consider the two bills of information filed in these proceedings. Both allege violation by NIFCO of the order given by the Justice in chambers for United Logging to operate the No. 2 area of the Yah River concession. We have shown earlier that the two areas of the concession had been merged into one. We have also shown that United Logging had no authority to operate in either of the two areas of the concession, since the Government had refused it permission. But more than this, there is no showing that the order of the Justice in chambers had prohibited NIFCO from continuing its management operation, according to Government grant. Hence, there is no violation of any order forbidding NIFCO from operating in keeping with its management agreement approved by the Government. The two bills of information are, therefore, dismissed as unmeritorious.

We are of the opinion, in view of the circumstances stated herein, that there were proper grounds for the peremptory writ of error to have been issued. We are also of the opinion that the writ of injunction should not have been vacated, because the errors of the clerk in carrying out the instructions of the judge should not have prejudiced the rights of the plaintiff. To have allowed the

President of the Yah River Logging Corporation to give the management of a portion of the concession to a rival company would certainly have adversely affected the interests of the National Industrial Forest Corporation. Hence, seeking relief was justified, and as we have said earlier, the injunction should not have been vacated for this reason. Not only is this in accord with the position taken by the Ministry of Agriculture in respect to the United Logging Corporation, but we feel that this is simply right.

Therefore, until the expiration of the management agreement entered into between the Yah River Logging Corporation and the National Industrial Forest Corporation, the injunction is perpetuated, to restrain any other management company from interfering with the agreement approved by the Government. Costs against the defendants in error.

Reversed; injunction granted.