

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC  
OF LIBERIA, SITTING IN ITS OCTOBER TERM, A.D. 2024

BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....CHIEF JUSTICE  
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE  
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE  
BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE  
BEFORE HER HONOR: CEATNEH D. CLINTON JOHNSON...ASSOCIATE JUSTICE

Almaz Kadiatu Jalloh of Heuvelstraat, 18, 2530 )  
Beuichot, Belgium.....Appellant )  
Versus ) APPEAL

His Honor J. Kennedy Peabody, Resident Circuit Judge, )  
Sixth Judicial Circuit, Civil Law Court, His Honor, Peter )  
W. Gbeneweleh, Assigned Circuit Judge, Sixth Judicial )  
Circuit, Civil Law Court and Dr. C Nelson Oniyama of )  
the City of Monrovia, Liberia..... Respondents )

GROWING OUT OF THE CASE:

Almaz Kadiatu Jalloh of Heuvelstraat, 18, 2530 )  
Beuichot, Belgium..... Petitioner )  
Versus ) PETITION FOR A WRIT OF  
PROHIBITION )  
Dr. C. Nelson Oniyama, of the City of Monrovia, )  
Liberia..... Respondent )

Heard: October 30, 2024

Decided: December 19, 2024

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This appeal emanates from the Ruling of our Colleague, Madam Justice Jamesetta H. Wolokolie, when she presided as Justice in Chambers during the March Term of the Supreme Court, 2022, wherein she quashed the alternative writ and denied the peremptory writ of prohibition prayed for by the appellant herein, Almaz Kadiatu Jalloh.

The records show that on February 21, 2019, the appellee herein, Dr. C. Nelson Oniyama, instituted an action of damages for wrong (defamation) before the Sixth Judicial Circuit, Civil Law Court, Montserrado County, against the appellant and one Courage Boyonnoh Sundberg, co-defendant in the defamation action. The appellee alleged that the appellant and the co-defendant falsely accused him of committing the crimes of rape, bribery, and attempting to facilitate an abortion. He contended that these accusations severely injured his reputation, thereby entitling him to compensatory damages.

Following the issuance of the writ of summons by the clerk of the trial court, and the placing of same in the hands of the sheriff, it was discovered that the appellant was without the

bailiwick of the Republic, hence, she could not be served. A writ of re-summons was subsequently issued but likewise failed to be served for the same reason as in the case of the original summons. Thereafter, the appellee resorted to service by publication in an attempt to bring the appellant under the trial court's jurisdiction.

Co-defendant Courage Boyonnoh Sundberg, who was properly served, appeared and filed an answer along with a motion for severance. The court granted the severance, and the trial proceeded solely against co-defendant Sundberg. However, at the conclusion of the trial, the jury returned a liable verdict against both defendants, awarding the appellee damages in the amount of One Million Five Hundred Thousand United States Dollars (US\$1,500,000.00), and same was affirmed by the trial court.

The appellant subsequently filed a petition for a writ of error, contending therein that she was not properly brought under the trial court's jurisdiction and had thus been denied her constitutional right to a fair trial. The matter was filed before Madam Justice Jamesetta H. Wolokolie, who was then presiding in Chambers, who thereafter convened a conference with the parties to assess the legal and factual issues raised in the petition. During the said conference, the appellee conceded that the appellant had not been properly brought under the jurisdiction of the trial court in contravention of the Civil Procedure Statute. Based on this admission, Justice Wolokolie issued a mandate nullifying the judgment for lack of jurisdiction over the appellant.

On June 19, 2020, the appellee filed a new action of damages for wrong against the appellant in the Sixth Judicial Circuit, Civil Law Court, Montserrado County. A new writ of summons was issued and served on the appellant in accordance with the Civil Procedure Law, thereby properly subjecting her to the court's jurisdiction.

In response to the appellee's complaint, the appellant filed her answer along with a motion to dismiss the new action. She argued that the initial case filed on February 21, 2019, was still pending before the trial court, and that the doctrine of *lis pendens* will lie to bar the new action. The motion was resisted by the appellee to the effect that based upon the Mandate of Madam Justice Wolokolie, nullifying the final ruling of the trial court against the appellant, the action was completely abated, and there was nothing left pending before the trial court. Following hearing on the motion, *pro et con*, the trial court denied the motion to dismiss. The appellant noted exceptions to the denial of her motion and subsequently filed a petition for the writ of prohibition before Mr. Justice Joseph N. Nagbe (of sainted memory), who then ordered the issuance of the alternative writ; but unfortunately, the hearing on the petition remained pending until the demise of Mr. Justice Nagbe.

The records show that although Mr. Justice Yussif D. Kaba, who had succeeded Mr. Justice Nagbe in Chambers, issued notices of assignment for the hearing on the petition, the said hearing was not had.

Subsequently, Madam Justice Wolokolie, who was then the Justice presiding in Chambers for the March Term, 2022 conducted a hearing on the petition, and ruled thereon denying the peremptory writ of prohibition prayed for by the appellant. The appellant noted her exceptions to the Ruling of the Justice in Chambers and announced an appeal to the Supreme Court *en Banc*; thus the present appeal.

When the appeal was called for hearing before the full bench, the appellant's counsel entered a submission on the records waiving oral argument and submitting her side of the case for determination on her brief. Pursuant to Section VIII, Part 2 of the Revised Rules of the Supreme Court, which provides that a "*party may with leave of Court submit the case without argument*", this Court granted the appellant's counsel submission and proceeded to hear the appellee's argument.

Having entertained arguments and reviewed the Ruling of our Colleague, which is the subject of this appeal, we find that the only question for our attention and consideration is whether the doctrine of *lis pendens* is applicable as an estoppel to the subsequent action of damages filed by the appellee on the basis that the previous action remained pending notwithstanding the nullification of the final ruling therefrom; and if so, whether prohibition will lie?

The doctrine of *lis pendens* finds its statutory basis in the Civil Procedure Law. Chapter 11.2 and sub-section 1 (d) thereof states that "*at the time of service of his responsive pleading, a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint or counterclaim on any of the following grounds... that there is another action pending between the same parties for the same cause in a court in the Republic of Liberia*"

Additionally, the Supreme Court has consistently held that when two actions are pending between the same parties for the same cause, the subsequent action must be abated for lack of jurisdiction. *Vickery et al. v. Chinneh*, Supreme Court Opinion, October Term 2014; *Hage v Jones et al.*, Supreme Court Opinion, October Term, 2007; *Harding v. Harding*, 32 LLR 582, 587 (1985).

In both her petition and oral arguments, the appellant argued that the mandate issued by the Justice in Chambers, nullifying the final ruling of the Sixth Judicial Circuit, Civil Law Court, Montserrado County, rendered on August 5, 2019, did not result in the abatement of the original action of damages filed by the appellee. Instead, she contends that the mandate left the original action pending before the trial court, awaiting proper service of the summons to bring her under the court's jurisdiction. Hence, she argued that the subsequent action filed by the appellee should be dismissed under the doctrine of *lis pendens*.

On the other hand, the appellee argued that the Mandate of the Chambers Justice nullifying the trial court's final ruling against the appellant, vacated the entire action before the trial court; that because no action was pending before the trial court involving the same parties and the same subject matter, the trial court's denial of the appellant's motion to dismiss on ground of *lis pendens* was proper and within the ambit of the law.

The certified records establish that in the first action, only co-defendant Sundberg was brought under the jurisdiction of the trial court and granted severance from being tried along with the appellant; that because the appellant was not properly brought under the jurisdiction of the trial court, she was therefore not a party to that suit, and the judgment therefrom could not legally bind her. However, because the trial court's final ruling adjudged both the appellant and co-defendant Sundberg jointly liable, although the appellant had not been brought under the jurisdiction of the trial court, the final ruling was nullified by the Justice in Chambers only as to the appellant, but remained binding and enforceable against co-defendant Sundberg who was properly brought under the jurisdiction of the trial court, and

accorded a full trial which culminated into a verdict of liable, and which verdict was affirmed by the trial court without any appeal announced therefrom.

It is worth noting that Madam Justice Wolokolie's Mandate did not direct that the case remain active for further proceedings but effectively terminated it. This Court says that when a final judgment is nullified, the case does not remain pending before the court that rendered the judgment unless explicitly directed by an appellate or reviewing court. *Cole v. Williams*, 11 LLR 95 (1952); *Salvation Army (Liberia) Inc. v. Tulay*, 39 LLR 387, 396 (1999) The effect of nullification depends on the mandate issued by the higher court or authority that nullifies the judgment. If the nullification is accompanied by an instruction for the case to continue, the matter is remanded to the lower court for further proceedings. Absent such instruction, the case is considered terminated, and a new action must be filed to pursue the same claims.

In the instant case, Madam Justice Wolokolie clearly mandated the trial court to resume jurisdiction and have its final ruling nullified. We are in agreement with our Colleague that this Mandate clearly anticipated the filing of a new action to bring the appellant properly under the trial court's jurisdiction. We therefore hold that there was no action pending before the trial court between the parties, hence the doctrine of *lis pendis* will not lie for the dismissal of the new action instituted by the appellee.

Accordingly, prohibition will also not lie to undo the ruling of the trial judge denying the appellant's motion to dismiss for the reasons stated herein. It remains the law that the writ of prohibition will not lie where the act complained of is neither wrong, nor illegal, but rather within the pale of the law. *Liberty Party v. NEC*, Supreme Court Opinion, March Term, 2011.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the Justice in Chambers denying the petition for the writ of prohibition is hereby affirmed. The alternative writ issued is ordered quashed and the peremptory writ denied. The Clerk of this Court is ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

*Affirmed*

*When this case was called for hearing, Counsellors J. Johnny Momoh, G. Moses Paegar and J. Bima Lassanah appeared for the appellee. Counsellor Denise Soka appeared for the appellant.*