

STATEMENT DELIVERED BY CLLR. GLORIA M. MUSU-SCOTT DURING THE
3RD NATIONAL JUDICIAL CONFERENCE HELD AT THE TEMPLE OF JUSTICE
ON THURSDAY, MARCH 11, 2010

TOPIC: JURISDICTION BEFORE HEARING

Felicitations/Salutations

Please join me to commend and congratulate the Supreme Court of Liberia for the convening of this 3rd Judicial Conference to discuss reforms within the Judicial Branch of Government.

I take this opportunity to express my thanks and appreciation to the Chief Justice and Associate Justices for the invitation to learn from such learned and distinguish participants and guests in attendance at this historic event/forum.

The Chairman of the steering Committee of this Judicial Conference, His Honour, Associate Justice Francis S. Korkpor, Sr. has assigned to me the Topic: **Jurisdiction Before Hearing**. I shall proceed with my discussion of this topic within the context and perspective of judicial reforms.

All of us who are legal practitioners and students of law know that jurisdiction is defined as... "(1) A court's power to decide a case or issue decree... (3) A geographic area within which political or judicial authority may be exercised..." (see the Seventh Edition of the Black's Law Dictionary, P. 855)

From the definition you will note that jurisdiction may also refer to the exercise of political authority or sovereign authority and the exercise of authority by an agency of government. In my reading of Liberian jurisprudence, I came upon the record of a case heard and determined by the Supreme Court of Liberia on February 9, 1841. The caption of the case is Commonwealth of Liberia vs. John G. Jackson, master of the British Schooner, Guineaman. The Supreme Court consisted of a Chief Justice with no Associate Justices. The Chief Justice was Joseph Jenkins Roberts who was Lieutenant Governor to Governor Thomas Buchanan. The object of this trial was to establish political jurisdiction through the collection of custom duty from foreign traders who engaged in trade and commerce within the territory known as the Commonwealth of Liberia. The Supreme Court adjudged Mr. Jackson guilty and ordered him to pay into the treasury of the Commonwealth an amount of \$273.00. Mr. Jackson's final words to the court were substantially that he would appeal the matter to his government and the British Parliament would ensure that he receive justice to the "great sorrow" of the authorities of the Commonwealth of Liberia. (see pp. 691 to 699 of the Legislative and Political History of Liberia).

In the writings of Governor Buchanan he explained this problem:

Foreign Traders

The West Coast of African had been visited by foreign merchants for the purposes of trade with the natives for more than a thousand years. Since the beginning of the nineteenth century this trade merchandise and slaves, was carried on principally by the English, French, Americans, Spanish and Portuguese, the two latter chiefly engaged in slave trade. These traders believed that they had acquired a prescriptive right to land their goods, trade with the natives in any articles of commerce, and establish trading posts, free of payment of any customs duties or other charges, except such dashes as they deemed it expedient to give to the native chiefs. They resented any extensions of the jurisdiction of organized governments over what they deemed their own domain. These traders, especially the British, particularly resented the extensions of jurisdiction by Liberia, and were supported by the officers of the British Navy. The British contended that Liberia was not a sovereign state, and, therefore. Could not subject non-Liberians to any restrictions, and that the American Colonization Society, as a purely philanthropic organization, could not exercise governmental powers..."(The Political and Legislative History of Liberia pp. 687-688). Many historians believe that it is this problem which accelerated the Declaration of Independence of the Republic of Liberia in 1847. I have brought this illustration to your attention to give a clear understanding of political jurisdiction.

For our purposes at this Judicial Conference, we shall discuss jurisdiction within the context of the exercise of judicial authority. Legal scholars have pointed out that jurisdiction is always fundamental and must always have its basis in law which will then determine the power, the authority and the right of a court to proceed to hear and determine a cause of action presented to it, make a determination thereto and consequently such decision, judgement or decree will have a binding effect on the adverse parties to the action. Simply said, the jurisdiction of a court over the subject matter, over the parties and in some instances over the territory must be established by law in order for the court's final determination to be legitimate and enforceable.

The New Judiciary Law of Liberia contains provisions which establish the various courts, excluding the Honourable Supreme Court, in the structure of the Liberian judicial system. This statute along with other such statutes which subsequently created courts, establish the jurisdiction of various courts within the various levels of the court system.

Statutes establishing these courts determine not only the jurisdiction over the subject matter but also the territorial jurisdiction of the courts. The Supreme Court's territorial jurisdiction is the entire Republic, while the circuits is broken into 15 circuits one per county except that Montserrado County has two circuits- the 1st and 6th Judicial Circuit. Specialized Courts established on the basis of subject matter (eg: Probate, Tax, etc). also have territorial jurisdiction on the basis of the county. Magisterial Courts within the Circuits have an eight miles radius territorial jurisdiction in addition to the subject matter. Justices of the Peace Courts which also have similar subject matter jurisdiction like the Magisterial Courts can operate only within territorial jurisdiction outside of the Magistrate Court's territorial jurisdiction.

The greater majority of the population's idea or concept of a court is the Magisterial Court or the Justice of the Peace Court. The manner, skill and integrity with which actions are determined in these courts of first instance leaves an impression with the population about the image of the judiciary. In many instances when people express that if you are poor you cannot get justice they are speaking about experiences in the Magisterial and Justice of Peace Courts to a greater degree and in the Circuit Courts to a lesser degree. This is why it is necessary to ensure judicial officials appointed to Courts of Records and Courts of no Records are trained and well versed in the law, have high integrity and proven ability and capacity to manage the courtroom. So as a reminder I shall quote section 7.3 of Chapter 7 of the New Judiciary Law as follow:

Jurisdiction of Magistrates' Courts

The Magisterial Courts shall be courts of limited jurisdiction wherein applicable matters shall be tried without a jury.

They shall exercise jurisdiction as follows:

(a) In civil cases. Except when another court shall have exclusive jurisdiction, the magisterial courts shall have original jurisdiction (1) of civil actions and proceedings for the recovery of money or chattels or to obtain payment of debt where the amount sought to be recovered of the value of the property does not exceed \$2, 000.01 (Two Thousand Dollars and one cent) exclusive of interest and cost; provided that such jurisdiction shall not extend to actions for injuries to domestic relations as those actions are defined in the Domestic Relations Law; and (2) of summary proceeding to recover possession of real property located in whole, or in part within their respective magisterial areas to remove tenants therefrom and to render judgment for rent due if such damages do not exceed \$500,00 exclusive of interest and costs; provided that, if two or more claims for relief are joined in an action or proceeding, the aggregate of the amounts sought to be recovered shall not exceed the monetary limitations herein set forth, or if counterclaim is interposed, the amount sought to be recovered, or if two or more claims for relief are joined herein, the aggregate of the amounts sought to recovered, shall not exceed the monetary limitations herein set forth;

(b) In criminal proceedings. The magisterial courts concurrently with justices of the peace courts shall exercise exclusive original jurisdiction of cases of petit larceny which shall be tried by a magistrate and associate magistrate and of no other misdemeanor, and of all offenses and violations of the Vehicles and Traffic Law constituting infraction thereof, except where another court in the same area or part of the same area has by law been given exclusive original jurisdiction of such infractions; and as provided in the Criminal Procedure Law, magistrates shall hold court for the examination of persons charged with an offense over which a superior court has original jurisdiction, alleged to have been committed at any place within their respective magisterial areas; provided that the jurisdiction over criminal proceedings herein set forth shall also extend to contiguous areas in which no magisterial or justice of the peace court is established.

(c) **In juvenile court proceedings.** Except when another court in the same Geographic area shall have exclusive jurisdiction, the magisterial court shall exercise juvenile court jurisdiction over special proceedings concerning juveniles duly brought within their respective magisterial areas in accordance with the provisions and procedures set forth in the Juvenile Court Procedural Code;

(d) **In filiation Proceedings.** The magisterial courts shall have jurisdiction of filiation proceedings duly brought within their respective magisterial areas in accordance with the provisions and procedures set forth in the Domestic Relations Law;

(e) **In tribal matrimonial causes in certain magisterial area.** The magisterial Courts in the following magisterial areas; Bondiway, Bomi Hill, Bong , Mano River, Lamco, Gedetarbo and African Fruit Company, in addition, shall have jurisdiction within their respective areas of matrimonial, shall have causes arising under tribal customary law, provided that appeals from decisions in each cause shall be taken within the tribal courts system as if each decisions had been made in the court of a Paramount Chief"

The Magisterial Court is an extremely important court and its importance is even greater outside of the Capital City. Though the jurisdiction of the magisterial Court is limited, this court can hear and determine debt actions up to \$2, 000.01, the recovery of possession of real property and rent due if damages do not exceed \$500.00 petit criminal actions violations of the Vehicles and Traffic Law if no traffic court exists in the jurisdiction and conduct preliminary examinations of persons charged with criminal offenses over which superior courts have original criminal jurisdiction.

The Magisterial Court may also exercise jurisdiction in juvenile proceedings when no such court has been established in the territorial jurisdiction of the Magisterial Court. This court is authorized to conduct filiation proceedings and to make determinations in tribal matrimonial matters provided that appeal from the Magisterial Court ruling in tribal matrimonial actions shall be taken to the Paramount Chief Court.

I am emphasizing the jurisdiction over the subject matter and the jurisdiction in rem of the Magisterial Court because many of us in these chambers have experiences where Stipendiary Magistrates and their Associates have heard and determined title to real property, divorce actions, criminal action beyond petty crimes and misdemeanors, all of which subject matters are far beyond their jurisdiction. In the city of Monrovia and its environs, aggrieved parties may seek relief and redress thru Summary Proceedings in the 1st and 6th Judicial Circuits to review the determinations of the magistrate who has proceeded beyond the jurisdiction of the Magisterial Court. Trying to take a magistrate on summary proceedings in rural Liberia is a high and awesome challenge.

The further away from the Capital City Monrovia, the more difficult it is and the more expensive to seek review and correction of the decision/ruling of the magistrates.

Up to this point, I have interchangeably changeably discussed a court's jurisdiction over the subject matter, in rem jurisdiction or jurisdiction over the thing and the territorial jurisdiction of the court.

I shall now discuss the need for a court to determine in personam jurisdiction or personal jurisdiction in order for its final judgement to be binding on the parties. The Seventh Edition of Black's Law Dictionary defines personal jurisdiction:

A Court's Power to bring a person into it's adjudicative process; jurisdiction over a defendant's personal rights, rather than merely property interests. Also termed ...jurisdiction of the person; jurisdiction over the person...p, 857.

The power to exercise personal jurisdiction must be grounded in the statutes and it is achieved by the due service of a court precept on an individual. The filing of a complaint whether oral or written and the subsequent issuance of a Writ of Arrest or Writ of Summons and the legal and Statutory Service of the court precept on the defendant brings the parties under the jurisdiction of the court and commences the cause of action. For reliance see Chapter 3 of the Civil Procedure Law of Liberia, Liberian Code of Law Revised Volume 1.

The Supreme Court has rendered several opinions to the effect that no court can render a decision, ruling or judgement against a party over whom personal jurisdiction has not been established.

The Constitution provides in Article 20(a):

"no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except at the outcome of a hearing and judgement consistent with the provisions laid down in this constitution and in accordance with due process of law...."

I believe that the objective of this constitutional provision is embedded in the topic **Jurisdiction Before Hearing**. My assignment is to convey to this audience that a court has the duty and responsibility to establish and ascertain in personam jurisdiction, jurisdiction over the subject matter, in rem jurisdiction, and territorial jurisdiction in order for the court's decree, ruling, decision, or judgement to have legitimacy, be binding and effective and consequently, be enforceable. Chapter 11, Section 11. 2 of the Liberian Code of Laws, recorded in volume 1, authorized that an action may be dismissed at the pre trial level on the grounds of insufficiency of jurisdiction.

An action may be dismissed for the lack of jurisdiction over the person or lack of jurisdiction over the subject matter, or over the thing or that the venue is non conforming. The Supreme Court of Liberia has held that jurisdictional issues may be raised at any stage or level of the hearing of a cause of action.

The quick summary on the issue of jurisdiction that I have heretofore stated is obvious and known to almost everyone in this room. So, the question is why is it necessary to discuss **Jurisdiction Before Hearing** at this all important 3rd Judicial Conference?

I believe the Honourable Supreme Court included this topic in these deliberations and proceedings for all of us who are stake holders and practitioners in the Rules of Law sector to focus on and debate the impact and effect jurisdiction has on equal access to justice.

On the question of access to justice like we stated before, the further away from the city of Monrovia the greater the impediments to justice. Monrovia and Montserrado County have greater access to justice because of comparatively better infrastructure, greater economic activities and better standard of living. Notwithstanding the improved conditions of living in Monrovia and its environs the high density of population poses a problem of crowded docket.

In rural Liberia, where infrastructure is either in ruins and disrepair and/or never existed, the existing structure of the courts and the requirements of territorial jurisdiction and the review and appeal procedures and processes hinder and impede access to justice. I am simply informing you that the lack of roads and steep poverty put justice out of the grasp and reach of the poor rural dwellers. These people have to walk dozens of miles to a Magisterial Court and if the magistrate is arbitrary and reckless in the determination of a matter, the party litigant will find it impossible to walk additional miles to the circuit court in the county capital to file summary proceedings against the magistrate.

As a result of the lack of access to justice, citizens and other residents who live in such remote and impoverished localities, lose faith in the justice system and the governance structure.

Therefore, the suggestions herein below are my contributions to improve access to justice in our nation through adjustment under the principle of jurisdiction"

- (a) The established territorial jurisdiction of courts should be reviewed regularly to take into consideration population density and the lack of infrastructure
- (b) In rural Liberia District courts should be established with the jurisdiction to hear summary proceedings against magistrates and to perform other intermediary functions higher than the jurisdiction of the Magisterial Court and lower than that of the circuit court.
- (c) The jurisdiction of the Magisterial Court over the thing should be increased taking into consideration the reality of the economic value of the currency.

The foregoing are my thoughts on the topic: **Jurisdiction Before Hearing**. I once again thank the Supreme Court for this opportunity to participate in this historic 3rd Judicial Conference of the Judiciary of the Republic of Liberia.

Thank you for your attention