

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2023

BEFORE HER HONOR : SIE-A-NYENE G. YUOHCHIEF JUSTICE
BEFORE HER HONOR : JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR : JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR : YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

Joseph H. Younes of the City of Monrovia,)
Montserrado County, Republic of Liberia)
.....Appellant)

AND)

West African Contractors Corporation)
(WACCO), represented by and thru its)
President, Mr. Joseph H. Younes and all)
Authorized Officers acting under its)
Authority/control also of the City of)
Monrovia, Liberia Respondent)

Versus)

APPEAL)

His Honor James E. Jones, Judge Debt)
Court, Montserrado County, Liberia and)
Mohammed Housseini of the City of)
Monrovia, Liberia Respondents)
GROWING OUT OF THE CASE:)

Joseph H. Younes of the City of Monrovia,)
Montserrado County, Republic of Liberia)
.....Petitioner)

AND)

West African Contractors Corporation)
(WACCO), represented by and thru its)
President, Mr. Joseph H. Younes and all)
Authorized Officers acting under its)
Authority/control also of the City of)
Monrovia, Liberia Co-Petitioner)

Versus)

Petition for a Writ of Prohibition)

His Honor James E. Jones, Judge Debt)
Court, Montserrado County, Liberia and)
Mohammed Housseini of the City of)
Monrovia, Liberia Respondents)

Heard November 7, 2023

Decided February 7, 2024

MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

This Court has been called upon to review and reverse the ruling of former Associate Justice, Philip A.Z. Banks III, then presiding in Chambers in an action of debt by attachment filed by Mohammed Housseini against WACCO by and thru its President Joseph H. Yuones and Joseph H. Younes and all authorized officers of the said corporation. The action was filed on July 13, 2015 before the Debt Court of Montserrado County. The Sheriff's returns of July 28, 2015, on the writ of summons says that Joseph A. Yuones was not seen to be served and that the sheriff was told that he had travelled out of the country. The same returns was made August 11, 2015 to the effect that Mr. Joseph H. Younes was not seen to be served because he had travelled out of the country. The plaintiff made an application for resummons on July 30, 2015 and on July 31, 2015, the returns of the resummons also show that Mr. Joseph H. Yuones was not seen to be served.

Based on the returns of the resummons, an application for service by publication was made on August 12, 2015 and the publication made in accordance with the Civil Procedure Law. Based on the fact that the defendant did not appear and file a responsive pleading, a default judgment was entered on November 3, 2015 against the defendant and he was adjudged liable to pay Four Million One Hundred and Twenty Eight Thousand United States Dollars (US\$4,128,000.00) to the plaintiff. A bill of cost was duly issued and taken out to be served on the defendant who was not seen to be served.

As a consequence of the default judgment rendered against him, the Co-defendant, Joseph H. Yuones by and thru his Attorney-in-fact filed a petition for prohibition before Chambers Justice Philip A.Z. Banks, III. The petition for prohibition contends amongst other issues that the court lacks jurisdiction over WACCO in that WACCO was never served with the writ of summons and the complaint and as such, WACCO was not legally brought under the jurisdiction of the Debt Court. The petitioner contends that the sheriff returns is self-explanatory, that is to say, the sheriff returns on the writ of summons including the writ of re-summons say Joseph H. Younes was not seen to be served and that it did not mention anything whatsoever about WACCO. The petitioner/appellant also contends that the letter of assignment given to Mohammed Houssein by Joseph H. Younes is a mere communication and does not establish a contractual relationship between the parties that could lead to an action of debt in that there is no consideration. Appellant contends therefore that prohibition will lie since the Debt Court did not acquire jurisdiction over Co-defendant WACCO.

Following a conference, the Chambers Justice ordered the issuance of the appropriate writ and the respondent filed his returns and; argument was entertained pros et cons. The Chambers Justice entered a final ruling in which he quashed the alternative writ of prohibition and denied the preemptory writ prayed for.

It is from this ruling that the appellant has called upon the full bench of the Supreme Court to review and reverse contending that the Justice is in error.

The question dispositive of this case is, whether or not; the final ruling of the Justice in Chambers is consistent with the law extant and procedure in this jurisdiction?

To adequately discuss the answer to the question above, it is proper to dissect the ninety-page ruling of the Chambers Justice with specific reference to the two cardinal issues raised in said Opinion.

The two issues raised in the Justice's ruling were: whether or not the Debt Court acquired jurisdiction over the parties, WACCO first defendant and Joseph H. Younes, second defendant as a matter of law; and, whether or not the letter from WACCO addressed to the Ministry of Finance under the signature of the President of WACCO constitutes a contract of assignment and transfer the rights from WACCO as a corporate entity to Mr. Houseini to warrant an action of debt?

In addressing the first issue, the Court says that there is no doubt that a regular action of debt by attachment was filed accompanied by a writ of summons directed to WACCO as a company and Joseph H. Younes in his capacity as the president and founder of WACCO. In other words, Joseph H. Younes and WACCO were jointly sued in a debt action. The sheriff returns shows that when the complaint accompanied with the writ of summons were taken for service, the sheriff returns clearly states that Mr. Joseph H. Younes was not seen to be served and that the sheriff was told that he had traveled out of the country. The Sheriff wrote "On the 15th day of July A.D. 2015, Archie Toteh, Bailiff of the Debt Court for Montserrat County carried out this writ of summons to be served on the defendant Joseph H. Younes, President of West African Contractors Corporation. But the defendant was not seen to be served. He is said to be out of the Country. This is my official returns to the Clerk of this Honorable Debt Court for Montserrat County dated this 23rd day of July A.D. 2015. Signed Maj. Robert B. Toe". Subsequently an attempt was also made to serve a writ of re-summons which return also says that the precepts were taken to Mr. Joseph H. Younes but he was not seen to be served and the Sheriff's Returns states "On the 31st day of July A.D. 2015, Court's Bailiff Archie Toteh of the Debt Court for Montserrat County carried this Writ of Resummons to be served on Mr. Joseph H. Younes, President of West African Contractors Corporation

(WACCO). But (he) could not be seen to be served. I was told that the defendant is out of the country. This I make as my official returns to the clerk of this Honorable Debt Court for Montserrado County dated this 10th day of August A.D. 2015. Signed Maj. Robert B. Toe". In line with our procedure horary with time in this jurisdiction, counsel for plaintiff applied for service by publication which request was granted and service by publication was regularly commenced and ended without a response from Mr. Joseph H. Younes, or WACCO. Consequently, the trial was heard, and an imperfect judgment was entered and made perfect by the plaintiff thereby awarding the plaintiff Four Million One Hundred Twenty-Eight Thousand United States Dollars. (US\$4,128,000.00)

The records further show that a bill of cost was prepared and issued; that it was at this point that Mr. Joseph H. Younes acting thru his attorney-in-fact fled to the Justice in Chambers with a petition for a writ of prohibition. In said petition, petitioner contends that the Debt Court did not properly and legally acquired jurisdiction over Co-defendant WACCO which is a corporate entity and as such any judgment obtained cannot be applied to Co-defendant WACCO. Petitioner maintained that there are two separate and distinct defendants, and they are WACCO and Joseph H. Younes and that the sheriff's returns on the writ of summons to include the writ of re-summons made no reference to WACCO. It simply says that Mr. Joseph H. Younes was not found to be served and that the sheriff was told that he had travelled out of the country. Petitioner says that with such returns, the court had not properly acquired jurisdiction over WACCO, as corporate entity separate and distinct from its shareholders.

Petitioner further contends and argues that the letter of assignment over the signature of Mr. Joseph H. Younes as president of WACCO in which he assigned the debt owed him by the Government of Liberia to Mr. Houseini is a mere communication and does not amount to contractual obligation, because there is no consideration, as such if there is any issue, that issue is a business transaction that needs to be venued before the Commercial Court and not the Debt Court. Petitioner therefore prayed the Chambers Justice to issue the appropriate writ to halt the Debt Court from enforcing the judgment. Petitioner heavily relied on Civil Procedure Law, section 3.38 (1) (2) (3), personal service of summons within Liberia on domestic and foreign corporations.

To this petition, the respondent filed his returns, contending and vehemently argued that Mr. Joseph H.-Yuones being the founder and President of WACCO who managed WACCO personally, service made on him is the same as service made on WACCO, since WACCO is a legal person and the law requires that it must be served through a natural person. Section 3.6 of the Civil Procedure Law read thus "Personal service shall be made upon a domestic or foreign corporation by reading and personally delivering the summons within Liberia to an officer, or managing or general agent, or to any other agent authorized by appointment or by statute to receive service of process, and if the summons is delivered to a statutory agent, by, in addition, mailing a copy thereof to the defendant". Section 3.2 of the Civil Procedure Law also reads thus "When

Minister of Foreign Affairs is agent for service. Whenever a domestic corporation or foreign corporation authorized to do business in Liberia or a foreign maritime entity registered under section 13.1 or a corporation which has de-registered upon re-registration as another legal entity or re-domiciled out of Liberia fails to maintain a registered agent in Liberia, or whenever its registered agent cannot with reasonable diligence be found at his business address, then the Minister of Foreign Affairs shall be an agent of such corporation upon whom any process or notice or demand required or permitted by law to be served may be served in respect of actions arising out of the time that the entity was registered in Liberia". Respondent maintained that in the instant case there is no other natural person other than Joseph H. Younes. The respondent also vehemently argued that the letter written by Mr. Joseph H. Younes in which he assigned his debt to Houseini is not a mere communication but an assignment which amounts to debt.

The Justice in Chambers exhaustibly dealt with the issue. The Chambers Justice espoused that he agreed with the statute on personal service relied upon by the petitioner and also agreed that the sheriff's returns made no reference to WACCO. But the Chambers Justice stated that the scenario in this particular case presents a rather peculiar situation, in that the undisputed fact is that WACCO was founded by Mr. Joseph H. Younes and that there is no showing that he has a board of directors organized, other shareholders, managers and other corporate officers in Liberia or elsewhere. The records further shows that though WACCO is designated as a corporate entity, but Mr. Joseph H. Younes deals with WACCO in a manner and form as though it is a single proprietorship as evidenced by the letter written by him to the Ministry of Finance and the power of attorney issued by him to his agent to represent him in this case. The Justice explained that there is no difference between Mr. Joseph H. Younes as president of WACCO and WACCO because Mr. Joseph H. Younes being the only corporate officer known, assuming that WACCO was to be served he would have been the only natural human being to receive the court's precepts on behalf of WACCO. The Justice explained further that with reference to the petitioner's contention that the proper thing to do was to serve the corporation through the Ministry of Foreign Affairs, the Justice also indicated that he agreed that service of precepts on domestic or foreign corporation who cannot be located should be through the Ministry of Foreign Affairs but contends that service on the Ministry of Foreign Affairs is not an end in itself. The Justice espoused that the law went beyond and obligates the Ministry of Foreign Affairs to search for, locate and identify a corporate officer or agent to be ultimately served with the court's precepts. In the instant case, even if the Ministry of Foreign Affairs had been served, the Minister would have been under a duty to find a corporate officer of WACCO and have him served; and that the only corporate officer that could have been found would have been Mr. Joseph H. Younes who was not available in the country and therefore was served by publication. Under the circumstances, since Mr. Younes could not be found and the office of WACCO was not available in Liberia and that there are no other corporate officers known to the court, the proper service on Mr. Joseph H.

Younes as an individual and as a president for WACCO through publication and this obviously brought Mr. Younes and WACCO under the jurisdiction of the court. The Chambers Justice noted that to agree with the legal technicalities being pursued by petitioner will certainly defeat the purpose of the statute on personal service of writ of summons on a corporation through its manager or agent.

This Court is constrained to agree with the Chambers Justice on this issue, because the Appellant failed to establish by way of the petition for Prohibition that besides Joseph H. Younes, there are other shareholders, other corporate officers and registered agent of WACCO and therefore Joseph H. Younes is not the only one officer of WACCO and that his absence from Liberia the other corporate officers would have been served. Co-Appellant Joseph H. Younes action throughout this case demonstrated that through WACCO is a corporation, but same is a corporation owned wholly and solely by him individually. For the purpose of clarity of this opinion we deem it necessary to quote the January 15, 2015 letter from Mr. Joseph H. Younes to the Clerk of the Debt Court to illustrate this point. The letter read thus

"Dear Clerk of Court:

Mr. Joseph H. Younes, Your Honor, I request for Clerk certificate, because the plaintiff, Mr. Mohammed Housseini, the law suit was between and the Ministry of Finance, R/L. He has never took an appeal to the Honorable Supreme Court of Liberia, since its sitting in its October Term A.D. 2013. I therefore, ask the Honorable Court for the clerk certificate for future record to be kept to avoid any future embarrassment.

Sincerely yours,
Joseph H. Younes
Owner of WACCO".

The content of the above letter clearly, undoubtly state that Mr. Joseph H. Younes is the owner of WACCO. In other words, WACCO though, incorporated is personally own by Mr. Joseph H. Younes which is permissible under the Association Law of Liberia, meaning he is a sole shareholder and no one else. By this understanding, there is no other shareholder and there is no showing in the petition for prohibition that there is any other corporate officer or a registered agent to receive court's precept for and on behalf of WACCO.

The object and purpose of personal service of a corporation under section 3.38 of the Civil Procedure Law is for a corporate officer, registered agent to receive a court's precept to ensure that a natural person receive the precept. From the above facts and circumstances, the only natural personal available to have been legally served is Mr. Joseph H. Younes who established WACCO apparently as a single shareholder and president without anybody else. Service made on him should be, and therefore is a service made on WACCO in that he and WACCO are inseparable. The appellant contention and argument that WACCO was not

served and brought under the jurisdiction of the debt court perhaps would have persuaded the court had he demonstrated that besides Joseph H. Younes there are other shareholders and corporate officers who would have been served through Ministry of Foreign Affairs. To agree with Appellant in the face of the fact that Joseph H. Younes is the only natural person to receive court's precept on behalf of WACCO, while Joseph H. Younes was served with the court precept through publication will defeat the purpose and intent of the legislature in establishing the Act that says a Corporation must be served through a natural person.

We hold therefore that co-petitioner Joseph H. Younes, president of WACCO having been served and brought under the jurisdiction of the Debt Court, said service constitutes a constructive service upon WACCO. Hence, we disagree with the contentions of the appellant that WACCO was not brought under the jurisdiction of the Debt Court of Montserrado County. Consequently, the judgment obtained though without WACCO participation should be, and same is binding on WACCO on the theory that Joseph H. Younes is the alter ego of the company.

To address the second issue raised by the Chambers Justice, that is to say: whether or not the letter from WACCO addressed to the Ministry of Finance under the signature of the president of WACCO constitute a contract of assignment and transfer the rights from WACCO as a corporate entity to Mr. Houseini to warrant an action of debt?

The Court answers in the affirmative. The Court says that the content of the letter itself is self-explanatory; we re-produce the relevant portion of said letter below for clarity of this opinion:

"WACCO has the honor to inform you that on this day and date, for consideration received, WACCO has irrevocably assigned and transferred to Mr. Mohammed Houseini, WACCO's Claim against the Government of Liberia, in the sum of Four Million One Hundred Twenty-Eight Thousand United States Dollars (US\$4,128,000.00)...."

The perusal of the letter clearly indicates that WACCO received consideration and that an assignment is a negotiable instrument under the law. The Black's Law Dictionary Deluxe 11th Edition, defines assignment as follows: "The transfer of rights or property or setting over a property, or of some right or interest therein, from person to another, the term denoting not only the act or transfer but also the instrument by which it is effected. Besides, the appellant, himself admitted in his pleading that the letter of assignment from Mr. Joseph H. Younes to the government of Liberia was a negotiable instrument.

The Commercial Code of Liberia defines a negotiable instrument as follow "except as provided in subsection (2) and (3), a negotiable instrument is an

unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

- a. Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- b. It is payable on demand or at a definite time; and
- c. Does not state any other undertaking or instruction by the promising or ordering payment to any act in addition to the payment of money, but the promise or order may contain". In this jurisdiction, all admissions made by a party himself or by his agent acting within the scope of his authority are admissible. 1LCL Rev. Section 25.8 @ page 200. The appellant's Counsel having admitted that the letter of assignment written by Joseph H. Younes is a negotiable instrument; same is construed as an admission.

From the above definition, an assignment letter which set no pre-condition or limit, as in the instant case, is more than a mere communication as contended by the appellant's counsel. It is an instrument which transfers rights from one person to another.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the Justice in Chambers being supported by the law, same is hereby affirmed. The Clerk of this court is ordered to send a mandate to the court below commanding the judge therein to resume jurisdiction over this case and enforce its final judgment. Costs are ruled against the appellants. AND IT IS SO ORDERED

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR BENEDICT F. SANNOH APPEARED FOR APPELLANTS. COUNSELLOR ABRAHIM B. SILLAH, SR. APPEARED FOR APPELLEES.