IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2019

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE

Eco Fuel, by and thru its authorized representatives of the City of Monrovia, Liberia..... Appellant

versus

SRIMEX Oil & Gas, represented by and thru it's Chairman, Musa Hassan Bility, and Chief Executive Officer, Wadei H. Powell, of the City of Monrovia, Liberia.....Appellee

Appeal

GROWING OUT OF THE CASE :

Eco Fuel, by and thru its authorized representatives of the City of Monrovia, Liberia..... Petitioner

versus

His Honor Yussif D. Kaba, Resident Circuit Judge Sixth Judicial Circuit, Montserrado County also of the City of Monrovia, Liberia ..... 1st Respondent

and

SRIMEX Oil & Gas, represented by and thru its Chairman, Musa Hassan Bility, and Chief Executive Officer, Wadei H. Powell, of the City of Monrovia, Liberia.....2nd Respondent

Petition for the Writ of Mandamus

GROWING OUT OF THE CASE:

SRIMEX Oil & Gas, represented by and thru its Chairman, Musa Hassan Bility, and Chief Executive Officer, Wadei H. Powell, of the City of Monrovia, Liberia.....Movant

versus

Eco Fuel, by and thru its authorized representatives of the City of Monrovia, Liberia.....Respondent

Motion for Preliminary Injunction

GROWING OUT OF THE CASE:

SRIMEX Oil & Gas, represented by and thru its Chairman, Musa Hassan Bility, and Chief Executive Officer, Wadei H. Powell of the City of Monrovia, Liberia.....Petitioner

versus

National Port Authority (NPA) by and thru its Managing Director, Liberia Petroleum Refining Company (LPRC), by and thru its Managing Director, and Eco Fuel, by and thru its Authorized Rep. all of the City of Monrovia, Liberia.....Respondents

Petition for Declaratory Judgment

Heard: January 8, 2019

Decided: August 16, 2019

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

This case is before us from an appeal taken from the decision of our Colleague, Madam Justice Sie-A-Nyene G. Yuoh, who presided in Chambers during the October, A.D. 2018 Term of this Court. The facts as gathered from the records reveal that on November 9, 2018, SRIMEX Oil & Gas Company, (appellee) filed with the Sixth Judicial Circuit, Civil Law Court for Montserrado County, a petition for declaratory judgment against the National Port Authority (NPA), the Liberia Petroleum Refining Company (LPRC) and Eco Fuel. In the petition for declaratory judgment, the appellee alleged that it entered into a lease agreement with the NPA covering a certain parcel of land belonging to the latter located at the Freeport of Monrovia and that the parties subsequently signed an addendum extending the lease agreement. The appellee also alleged in its petition for declaratory judgment that it entered into a Petroleum Storage Agreement with the LPRC; that under the Petroleum Storage Agreement, the appellee was authorized to construct a storage and loading facility for petroleum products imported into Liberia; that its leasehold rights under the lease agreement with the NPA and the Petroleum Storage Agreement with the LPRC were being threatened by Eco Fuel. The appellee therefore petitioned the Six Judicial Circuit, Civil Law Court for Montserrado County, to declare its rights under the lease agreement with the NPA as well as the Petroleum Storage Agreement and the Addendum thereto signed with the LPRC. Along with the petition for declaratory judgment, the appellee filed a motion for preliminary injunction requesting the trial court to enjoin Eco Fuel from taking further actions on the premises and prohibiting Eco Fuel's further entry on the Petroleum Storage Terminal pending the disposition of the petition for declaratory judgment proceedings. The appellee filed an injunction bond in the amount of US$8, 000,000.00. The appellee then applied for a Temporary Restraining Order (TRO) to restrain, prevent and restrict Eco Fuel from performing any further action on the premises. The trial court judge granted the application and ordered Eco Fuel restrained and enjoined from pursuing any action on the premises.

On November 13, 2018, Eco Fuel filed a motion to vacate the preliminary injunction and attached to its motion, an indemnity bond in the amount of US$8, 000,000.00, the same amount on the bond filed by the appellee. The trial judge approved the indemnity bond offered by Eco Fuel but did not sign the judge's order for the lifting of the temporary restraining order and the preliminary injunction. Because of the refusal of the trial court judge to sign the judge's order after he had approved the bond, Eco Fuel filed a petition for the writ of mandamus with the Justice presiding in the Chambers of this Court to compel the trial court judge to sign the judge's order attached to the indemnity bond filed by Eco Fuel. In the petition for the writ of mandamus Eco Fuel contended essentially as follows: a)that

the trial court judge was under obligation to sign the judge's order after he had approved the indemnity bond attached to the motion to vacate the preliminary injunction and the temporary restraining order issued by the trial court judge; b)that contrary to the express order contained in the writ of injunction, the ministerial officer of the Civil Law Court ousted and dispossessed Eco Fuel from the petroleum storage facility and allowed the appellee to move in and take actual possession of the premises as though the writ of injunction can be used to dispossess one party and give possession to another party; c) that the appellee did take over and has been in actual possession of the subject storage facility to the detriment of Eco Fuel; d) that it filed a motion to vacate the injunction along with the requisite counter indemnity bond which was presented to the trial court judge for his approval; e) that having had the bond for his review for a couple days, the judge signed the bond on Friday, November 16, 2018, but failed to sign the judge's order which is necessary to effectuate the vacating of the existing injunction and the temporary restraining order; f) that the conduct of the trial court judge by approving the indemnity bond but refusing to sign the order to lift the injunction is irregular, illegal and reversible; g) that the approval of an indemnity bond goes hand-in-hand, and is, as a matter of practice and law, inseparable, since one is needed to complete the other, and the approval of one means and includes the approval of the other; h) that where a trial court judge has reviewed and is satisfied with the content, adequacy and sufficiency of an indemnity bond in a motion to vacate a preliminary injunction, that judge is required to sign the accompanying judge's order to lift the injunction and the restraining order. Eco Fuel therefore requested the Justice in Chambers to order the issuance of the alternative writ of Mandamus against the trial court judge and order him to sign the judge's order attached to the motion to vacate the injunction.

We should note, at this juncture, that during the October, 2018 Term of this Court when the petition for the writ of mandamus was filed, it was Associate Justice Sie-A-Nyene G. Yuoh who was officially assigned by the Chief Justice as the Justice in Chambers. But because she had to travel outside of Liberia on a pressing matter, the Chief Justice appointed Associate Justice Jamesetta H. Wolokolie to sit and conduct affairs as Justice in Chambers pending the return of Justice Yuoh to Liberia. At the time of filing the petition for the writ of mandamus, it was Justice Wolokolie who was conducting the affairs of Chambers and the petition for the writ of mandamus was venued before her. Upon the receipt of the writ, Associate Justice Wolokolie sent an order to the Clerk of the Supreme Court on November 16, 2018, which reads as follows:

"Mr. Clerk,

> Kindly issue the alternative writ of mandamus and instruct the respondents to file their returns on or before November 26, 2018. In the meantime, the first Respondent Judge having signed the bond to vacate the preliminary injunction filed before him, you are to instruct him to sign the Judge's Order to effectuate the indemnity bond to vacate the injunction."

We should note, also, that the Clerk of the Supreme Court carried out the order of Justice Wolokolie by instructing the trial court judge to sign the indemnity bond attached to the motion to vacate the preliminary injunction and the trial court judge executed that order. The appellee filed returns to the petition for the writ of mandamus as directed by Justice Wolokolie by and through the Clerk of the Supreme Court.

In its returns, the appellee contended that a) the order given by Justice Wolokolie on November 16, 2018, to vacate the preliminary injunction was factually erroneous because there was no preliminary injunction in place to be ordered vacated; what was in effect on November 16, 2018, according to the appellee, was the temporary restraining order issued by the trial court judge on November 9, 2018, growing out of the motion for preliminary injunction; b) that the preliminary injunction was not and could not have been in effect before November 19, 2018, because the temporary restraining order continued to remain in effect legally for ten days from the time it was issued until it expired on November 19, 2018; c) that after the expiration of the temporary restraining order, it was required that a hearing be had on the motion for preliminary injunction and the motion to vacate the preliminary injunction in order to afford the appellee the opportunity to challenge the indemnity bond attached to the motion to vacate the preliminary injunction; and d) that the trial court judge was not mandatorily required by law to vacate the temporary restraining order at the time he signed the indemnity bond because vacating a temporary restraining order before its expiration in ten days is discretionary with the trial court judge.

Before Justice Wolokolie could hear and make ruling in the petition for writ of mandamus she had ordered issued, Justice Yuoh returned to Liberia and resumed her post as the Associate Justice officially assigned in Chambers. Justice Yuoh assigned, heard arguments *pro and con* from the lawyers representing both parties and on December 5, 2018, entered a ruling denying the writ of mandamus. Here is an excerpt from Justice Yuoh's Ruling:

> "WHEREFORE, and in view of the foregoing, the alternative writ of mandamus issued on November 16, 2018, is hereby quashed and the peremptory writ is denied. The parties are hereby ordered returned to *status quo ante*; that is, the petitioner is enjoined as per the TRO from any operation on the disputed premises pending the trial court's hearing and disposition of the motion for preliminary injunction and the motion to vacate the said preliminary injunction, as both parties have already filed indemnity bonds. The Clerk of this Court is hereby ordered to send a mandate to the

trial court ordering the judge presiding therein to resume jurisdiction over the cause and proceed according to this Ruling."

To the ruling of Madam Justice Yuoh, Eco Fuel (appellant) noted exception and announced an appeal to this Court sitting *en banc*. The appeal was granted as a matter of right as provided for under the Constitution of Liberia. While the appeal was pending to be determined by the Full Bench of this Court, the appellant, through its counsels, filed a bill of information which it withdrew and amended. In the amended bill of information, the appellant alleged *inter alias*, as follows:

1) That it noted exception and announced an appeal from the ruling of Justice Yuoh, the Justice in Chambers, who had denied and dismissed the petition for a writ of mandamus filed by the appellant;

2) That despite the taking of appeal from the ruling of Justice Yuoh, the Justice ignored the appeal which should have served as a stay to the enforcement of her ruling and sent an order to the trial court to enforce her ruling, which order reads:

> "You are hereby commanded to comply with the foregoing Ruling immediately in respect of the nullification of the order contained in the alternative writ of mandamus, and the parties ordered returned to status quo ante, that is, the petitioner is enjoined from operating the disputed premises pending the hearing and determination of the appeal before the Full Bench. You will file your RETURNS to this Mandate as to how it was executed.
>
> AND FOR SO DOING, THIS SHALL CONSTITUTE YOUR LEGAL AND SUFFICIENT AUTHORITY.
>
> GIVEN UNDER MY HAND AND SEAL OF THE HONORABLE SUPREME COURT THIS 7TH DAY OF DECEMBER A.D. 2018;"

3) That as a result of the order given by Justice Yuoh, the property rights of the appellant were violated as the appellant was dispossessed, evicted, ejected and removed from the subject premises which it occupied prior to the filing of the petition for the writ of mandamus and the appellee was placed in possession of the disputed property, when in law and in fact a temporary restraining order or preliminary injunction is not intended to evict and/or place a party in possession;

4) That by the action of the lower court as ordered by the Justice in Chambers, the appellee has not only occupied and taken over the appellant's property but has commenced operating the storage terminal;

5) That the appellee, during the week of December 17, 2018, broke into and interfered with the appellant's server, including computer hardware and subsequently gained access to the appellant's server and other equipment protecting the storage terminal with the sole purpose of operating the terminal;

6) That the appellee, with the express acquiescence of the management of the LPRC, caused an international vessel MT NORDIC LYNX-IMO #9043093 to

discharge 8,000 metric tons of Premium Motor Spirit (PMS) into the bulk fuel storage terminal of the facility and is now distributing the product on the Liberian Market to the detriment of the appellant who singlehandedly spent more than US$25,000,000.00 to build the facility;

7) That the facility of the appellant has become vulnerable to explosion due to the fact that the appellant's security personnel who were trained not only to protect the facility against theft and unauthorized entry but also against fire and explosion, have been removed and evicted from the facility; and

8) That those who have been put in control of the facility are mere private security guards who do not have the requisite training, skills and expertise to effectively respond to and put under control any disaster that may occur as a result of tank explosion.

The appellant requested this Court for an interim order directed to the trial court judge to prohibit and enjoin the appellee and the management of LPRC from occupying, possessing and operating the Petroleum Storage Terminal (PST) and that all parties be returned to *status quo ante* pending the disposition and determination of the petition for declaratory judgment.

The appellee filed returns to the amended bill of information denying the veracity of the allegations contained therein. The appellee contended essentially as follows:

1) That when Justice Wolokolie ordered the Clerk of the Supreme Court to issue the alternative writ of mandamus, she acted in the name and stead of Justice Yuoh. Therefore, when Justice Yuoh heard and quashed the alternative writ of mandamus, her action was tantamount to rescinding her own orders; that Justice Yuoh's ruling re-instating the temporary restraining order and returning the matter to *status quo ante* meant that the personnel of both appellee and appellant were to remain on the premises for safety and security purposes;

2) That Justice Yuoh's ruling and the execution thereof did not dispossess the appellant of the premises but rather carried out the command of the temporary restraining order which restrained and prohibited the appellant from entering upon the premises and operating thereon;

3) That the contention of the appellant that the appellee had transferred its interest in the underlying lease agreement to the appellant's subsidiary, Eco Holding Limited, clearly raises issue for determination by the trial court which must first be heard and disposed of before the temporary restraining order can be lifted; and

4) That the allegations contained in the appellant's bill of information are mere allegations of scare tactics to cause the premature determination of the preliminary injunction without a hearing.

Having carefully perused the entire records which include the petition for the writ of mandamus and the returns thereto; the bill of information and the returns thereto; and the

briefs filed by the parties; and having listened to the oral arguments presented by the counsels representing the parties, we have determined that there are three cardinal issues for the determination of this case. They are:

1. Whether or not a trial court judge who approves an indemnity bond in a motion to vacate a preliminary injunction can refuse to sign the judge's order for the lifting of the temporary restraining order?

2. Whether or not under the facts and circumstances of this case, Justice Sie-A-Nyene Yuoh was justified in quashing the alternative writ of mandamus ordered issued by her Colleague, Justice Jamesetta H. Wolokolie?

3. Whether or not the appeal announced from the ruling of Justice Yuoh quashing the alternative writ of mandamus and denying the peremptory writ of mandamus should have served as a stay on enjoining the appellant(Eco Fuel) from the subject premises pending the hearing and determination of the case by the Supreme Court?

We shall proceed to address the issues in the order in which they are presented, beginning with the first issue - whether or not a trial court judge who approves an indemnity bond in a motion to vacate a preliminary injunction can refuse to sign the judge's order for the lifting of the temporary restraining order? We hold no.

Section 7.64(1), 1LCL Revised, Civil Procedure Law provides:

Temporary restraining order.

> "1. *Prerequisite for issuance.* If, on a motion for a preliminary injunction, the plaintiff shall show that immediate an irreparable injury, loss, or damages will result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice. Prior to the granting of a motion for a temporary restraining order, the plaintiff shall give a bond in an amount to be fixed by the court, to the effect that the plaintiff, if it is finally determined that he was not entitled to a restraining order, will pay all damages and costs which may be incurred by any party who is found to have been wrongfully restrained."

And *Sections 7.65(2) & (3), 1LCL Revised, Civil Procedure Law provides*:

Vacating or modifying preliminary injunction or temporary restraining order.

> *"2.Temporary restraining order.* On motion, without notice, made by a defendant enjoined by a temporary restraining order, the judge who granted it, or in his absence or disability, another judge, may vacate or modify the order without notice. An order granted without notice and vacating or modifying a temporary restraining order shall be effective when, together with the papers on which it is based, is filed with the clerk of the trial court and served on the plaintiff. "
>
> 3. *Bond as prerequisite for vacating or modifying.* As a condition to granting an order vacating or modifying a preliminary injunction or a temporary restraining order, a court may require the defendant to give a bond, in an amount to be fixed by the

court, that the defendant will pay the plaintiff any loss sustained by reason of the vacating or modifying order."

From the reading of *Section 7.64(1), 1LCL Revised, Civil Procedure Law* quoted above, it seems clear to us that the trial judge has the discretionary power to grant a temporary restraining order growing out of a motion for preliminary injunction without notice and without conducting a hearing. The plaintiff seeking preliminary injunction needs only show to the judge that immediate and irreparable injury, loss, or damages will result unless the defendant is restrained before a hearing can be had on the motion for preliminary injunction. In such a case the judge makes an *ex parte* determination without hearing from the defendant that there is a need to grant the temporary restraining order. The temporary restraining order is designed to restrain the defendant for a brief period pending the hearing of the motion for preliminary injunction. The order is needed to preserve the *status quo* until a determination is made on the motion for preliminary injunction. This is precisely what the trial court judge did in the case before us; he granted the request of the appellee and enjoined the appellant from entry upon the premises, subject of dispute, pending the hearing of the motion for preliminary injunction.

Then, the appellant countered the motion for preliminary injunction. The appellant presented reasons to the trial judge why the motion for preliminary injunction should not be granted. More than this, the appellant filed an indemnity bond as a prerequisite for vacating the preliminary injunction or restraining order. The purpose of the bond is for the appellant to pay the appellee any loss sustained by reason of vacating or modifying the preliminary injunction or restraining order. Having received the appellant's motion to vacate the preliminary injunction and temporary restraining order together with the indemnity bond, the trial court judge was in a more informed position to decide whether to lift or sustain the temporary restraining order he issued growing out of the motion for preliminary injunction. The trial court judge carefully perused, and being satisfied with the appellant's indemnity bond approved the said bond. Once he was satisfied that the appellant's bond met the full requirement of an indemnity bond in the instant case and gave approbation, the trial court judge was required to sign the judge's order to give effect to the bond.

The argument that in order for the trial court judge to sign the judge's order to lift the temporary restraining order there must first be a hearing of the motion for preliminary injunction is not tenable in law. Under *Section 7.64(1), 1LCL Revised, Civil Procedure Law,* before a hearing can be had, a temporary restraining order may be granted without notice.

And under *Sections 7.65(2) & (3), 1LCL Revised, Civil Procedure Law,* on a motion, without notice, made by a defendant enjoined by a temporary restraining order, the judge who granted it, or in his absence or disability, another judge, may vacate or modify the order without notice ..." [Emphasis supplied.]

As it is clearly provided, the trial court judge may grant a preliminary injunction and/or a restraining order without a notice or hearing just as he may vacate or modify the same without a notice or hearing. So the trial court judge in this case did not need to first conduct a hearing before vacating the temporary restraining order he issued against the appellant. Once he was satisfied that the conditions were ripe for vacating the temporary restraining order, the judge was required to lift the said temporary restraining order without conducting a hearing. And it appears to us that the trial court judge in this case was indeed satisfied that the appellant met the requirements for the lifting of the temporary restraining order, otherwise, he would not have approved the appellant's indemnity bond. We hold that the failure or refusal of the trial court judge to sign the judge's order to vacate the temporary restraining order against the appellant after signing the appellant's indemnity bond was an abuse of discretion.

We should note that the issue of whether the trial court judge should vacate the restraining order or not was decided by Justice Jamesetta H. Wolokolie, who, while presiding in Chambers, ordered the Clerk of the Supreme Court to instruct the trial court judge in the following words: "In the meantime, the first Respondent Judge having signed the bond to vacate the preliminary injunction filed before him, you are to instruct him to sign the Judge's Order to effectuate the indemnity bond to vacate the injunction." As a matter of law and procedure, whether the trial court judge was in agreement with Justice Wolokolie's mandate or not, he was under a duty to comply. And the records show that the trial court judge indeed complied with the instruction of Justice Wolokolie thereby lifting the restraining order. This is the stage the case was at when Justice Yuoh took over. After taking over, she assigned the case, heard arguments *pro and con* from the lawyers representing both parties and on December 5, 2018, entered a ruling denying and quashing the alternative writ of mandamus which Justice Wolokolie had ordered issued.

This brings us to the second issue – whether or not under the facts and circumstances of this case, Justice Sie-A-Nyene Yuoh was justified in quashing the alternative writ of mandamus ordered issued by her Colleague, Justice Jamesetta H. Wolokolie? We hold yes. In keeping with the practice and procedure in vogue, when a petition for a remedial writ is filed before a Justice in Chambers by a petitioner, the Justice is required to make an

exparte determination without the benefit of a response as to whether the alternative writ prayed for should be ordered issued. The Justice may decline to order the alternative writ issued. This Court has held in numerous opinions that from the refusal of a Justice to order issued an alternative writ in any remedial writ, there can be no appeal. *Kpadeh v, Republic of Liberia et al. [1973] LRSC 43, 22 LLR 211 (1973); Saah et al. v. Harb et.al. [1981] LRSC 10; 29 LLR 113 (1981); Brown et al. v. RL [1973] LRSC 43, 22 LLR, 212.*

However, the Justice may determine, after perusing the petition, that there are good and sufficient reasons to order the alternative writ issued. Again, we reiterate that at that point, the decision of the Justice to order issued the alternative writ requested in the petition is made without the benefit of a response. When the Justice orders the issuance of the alternative writ requested in a remedial writ, that Justice may give an interim order directing a party to carry out or refrain from carrying out certain act(s). The respondent is then ordered to file returns traversing the allegations in the petition after which a full hearing is had to determine whether the alternative writ issued should be granted or quashed. After a careful review of the petition and the response thereto and the arguments presented by the counsels representing the parties, the Justice may grant or quash the alternative writ. Although most often a Justice who orders the alternative writ issued will grant that alternative writ and order issued the peremptory writ, we are in agreement with the position of the appellee's counsels that there is no legal prohibition against a Chambers Justice who ordered the issuance of an alternative from quashing the alternative writ as having been improvidently ordered issued after a review of the respondent's returns in opposition to the petition; and after the Justice had conducted full hearing on the merits of the pleadings of the parties which the Justice was not able to do prior to the *exparte* order for the issuance of the alternative writ.

In the case before us, when Justice Yuoh had the opportunity and benefit of perusing the petition and the returns thereto and after entertaining arguments on both sides, she determined that there was no legal basis for granting the alternative writ of mandamus. In our view, this cannot be construed as reviewing and undoing the decision of her Colleague of concurrent jurisdiction since Justice Wolokolie did not grant the alternative writ of mandamus, which act could only be done after duly hearing the petition for mandamus. Justice Wolokolie only ordered that the writ of mandamus be issued; the decision to grant the writ comes after a full hearing is conducted. It is important to note that Justice Wolokolie herself could have, after reviewing the returns filed in opposition to the petition for mandamus, and after hearing arguments on both sides, denied and quashed the alternative

writ of mandamus, even though that writ was ordered issued by her. So, in respect of whether or not the writ of mandamus should be granted, no decision was made by Justice Wolokolie. As the facts reveal, before she could hear and determine the writ of mandamus, Justice Yuoh returned to Liberia and resumed her position as the Chambers Justice officially assigned in Chambers by the Chief Justice for the October, 2018, Term of the Supreme Court. Since there was no decision made by Justice Wolokolie on the granting of the alternative writ of mandamus, it cannot be said that the decision of Justice Yuoh denying the writ of mandamus was a review of the act of her Colleague of the same standing and status. We hold, therefore, that Justice Yuoh was legally justified when she quashed the alternative writ of mandamus.

We should say in passing, however, that while we agree that Justice Yuoh was justified in quashing the alternative writ of mandamus ordered issued by Justice Wolokolie for reasons we have already stated, we do not agree with the contention of the appellee that at the time she was in Chambers, Justice Wolokolie was acting strictly as if she were Justice Yuoh; that Justice Wolokolie was not acting as a Colleague independent of Justice Yuoh; that legally, she was acting as Justice Yuoh's *alter ego* and her designated representative while she was away from the country, therefore, as a Justice can rescind her action in term time, Justice Yuoh was justified in quashing the alternative writ of mandamus ordered issued by Justice Wolokolie. This statement is farfetched, to say the least. We hold that when the Chief Justice designates a Justice (other than the Justice officially appointed in Chambers for a Term of Court) to conduct the affairs of Chambers for reason that the officially appointed Justice is ill or has travelled, as the case may be, the designated Justice acts independently of the officially appointed Justice. All acts done or omitted by the designated Justice are in his/her own name and cannot be attributed to the officially appointed Justice in Chambers. The term *alter ego* is used in corporate parlance and defined as: "A corporation used by an individual in conducting personal business, the result being that a court may impose liability on the individual by piercing the corporate veil when fraud has been perpetrated on someone dealing with the corporation." *Black's Law Dictionary, 9th Edition.* From this definition, for one to be an *alter ego* of another, the latter must personally designate and appoint the former who must give consent. This is not the case with the Chief Justice designating a Justice to temporarily conduct the affairs of Chambers. The designated Justice does not have a saying in which of the four Associate Justices should be appointed by the Chief Justice; neither does he/she have the power ask another Associate Justice to act in his/her stead. And unless for compelling reason(s), the designated Justice cannot refuse to act.

Section 2.6 of the New Judiciary Law (1972) provides:

> "At all times, in term and out of term, there shall be a Justice presiding in the Chambers of the Supreme Court who shall be designated by the Chief Justice in regular rotation from among the Associate Justices, and no such Associate Justice designated shall delegate his power to another." [Emphasis supplied.]

We reiterate that the actions taken by the designated Justice is independent of the Justice officially appointed to preside in Chambers for that Term of the Supreme Court.

We address last the issue - whether or not the appeal announced from the ruling of Justice Yuoh quashing the alternative writ of mandamus and denying the peremptory writ of mandamus should have served as a stay on enjoining the appellant (Eco Fuel) from the subject premises pending the hearing and determination of the case by the Supreme Court. We hold yes. Article 20(b) of the Constitution of Liberia (1986) provides:

> "The right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable..."

Also, consistent with the Constitution, the appeal statute, Section 51.20, 1LCL Revised, Civil Procedure, provides:

> "On announcement of an appeal by a defendant, no execution shall issue on a judgment against him or shall any proceedings be taken for its enforcement until final judgment is rendered, except that on an appeal from an order dissolving an order granting a preliminary injunction, such preliminary injunction shall be in force pending decision on the appeal."

The Constitution and the statute are clear that the right to appeal shall be held inviolable; that generally, the announcement of an appeal from a decision serves as a stay to the enforcement of that decision until a final decision is made by the appellate court, except in few cases as provided by law. We take note that under *Section 51.20, 1LCL Revised, Civil Procedure Law* quoted above, an exception to the law on announcement of an appeal serving as a stay to the enforcement of that decision applies to an appeal from an order dissolving an order granting a preliminary injunction; in other words, in an appeal from a decision granting a preliminary injunction, such preliminary injunction shall remain in force pending the final decision of the appellate court. But the appeal announced from the ruling of Justice Yuoh in retrospect, is not an appeal from an order dissolving an order granting a preliminary injunction; it is a ruling quashing the alternative writ of mandamus. So, for all intents and purposes, the appeal taken from her ruling should have served as a stay to her order enjoining the appellant from operating the disputed premises pending determination by the Supreme Court. We note that Justice Yuoh, after entering a ruling quashing the

alternative writ of mandamus on December 5, 2018, to which ruling the appellant noted exception and announced an appeal to the Full Bench of the Supreme Court, sent an order two days later on December 7, 2018, ordering the trial judge to enforce her ruling. In what appears to be a clarification to her earlier order retuning the parties to *status quo ante*, she specifically ordered that the appellant be enjoined from operating the disputed premises pending the hearing and determination of the appeal before the Full Bench of the Supreme Court. The question we ask is – what is the *status quo ante* that the parties to this case should return to and remain in pending the determination of this case by the Supreme Court? Lest we forget, Madam Justice Wolokolie, while presiding in Chambers and upon ordering the alternative writ of mandamus issued, gave an interim order to the trial court judge to sign the appellant's indemnity bond and vacate the temporary restraining order enjoining the appellant from entering on the disputed premises. And the trial court judge executed the order of Justice Wolokolie by vacating the temporary restraining order. This was the position of the parties before Justice Yuoh returned to Liberia and took over the case. So, when she heard and quashed the alternative writ of mandamus and the appellant announced an appeal from her ruling to this Court, the appeal announced should have served as a stay to her ruling, including her order of December 7, 2018, to have the appellant enjoined from entering and operating the premises in question pending the hearing and determination of this case. As we see it, the parties should remain in the position when Justice Wolokolie ordered the temporary restraining vacated and that order was carried out.

Before concluding this opinion, we take note of the following assertion of the appellee in the third paragraph of its brief filed to the mandamus proceedings:

> "...That prior to the service of the preliminary injunction on the appellant on November 9, 2018, both the 2nd appellee [Srimex & Gas Oil] and the appellant had personnel at the terminal. Based on the arrangements and understandings between the parties, under the terms of the importation license from LPRC, the 2ND Appellee had the exclusive right to import and store fuel products in the terminal tanks. Therefore all of the fuel products which were stored in the terminal tanks were in the name of the 2nd Appellee. The Appellant was responsible for the sale of the products on behalf of the 2nd Appellee because the fuel had been imported in the name and on behalf of the 2nd Appellee. "

To the above assertion, we say that this Court is not in the position to confirm or deny its truthfulness, since neither the issue nor the evidence is before us. In our view, the affirmation of this statement would be made by the trial court upon the hearing and determination of the petition for declaratory judgment filed by the appellee. We say, however, that an agreement made by two parties to a transaction to do or refrain from doing

something is a contract. A contract is also defined as "a private voluntary allocation by which two or more parties distribute specific entitlements and obligations." *Section 1, 17 AMJUR Contract.* A contract may be written or oral. Under *Article 25 of the Constitution of Liberia,* it is provided that: "[the] obligation of contract shall be guaranteed by the Republic and no laws shall be passed by the Legislature to impair this right." So, if, as stated by the appellee, there were indeed arrangements and understandings between the appellee and appellant wherein both parties mutually consented to have their respective personnel at the storage terminal, the arrangements and understandings ought to continue as contemplated by the two parties. But, as we have said, we cannot confirm nor deny the statement of the appellee at this point.

WHEREFORE and in view of the foregoing, the ruling of Madam Justice Yuoh, Justice in Chambers, enjoining the appellant from the premises, subject of dispute between the parties, pending the disposition of the appeal taken from the said ruling is reversed. The alternative writ of mandamus issued is sustained and the peremptory writ prayed for is hereby granted. The temporary restraining order placed on the appellant, Eco Fuel, enjoining it from entering the petroleum storage terminal, subject of these proceedings, is forthwith lifted and the appellant is allowed unhindered entry at the terminal. The Clerk of this Court is ordered to send a mandate to the trial court to resume jurisdiction over this case and give effect to the Judgment growing out of this Opinion. The Clerk is further ordered to instruct the trial court judge to expeditiously hear and determine the appellee's petition for declaratory judgment. Costs are ruled against the appellee. IT IS SO ORDERED.

Counsellors T. Negbalee Warner and Abraham B. Sillah, Sr. of the Heritage Partners & Associates Inc. appeared for the appellant.

Counsellors James E. Pierre of Pierre, Tweh & Associates Inc. and Molley N. Gray, Sr. of Jones & Jones Law Firm appeared for the appellee.

Petition granted.