

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2022

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
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

Guaranty Trust Bank (LIBERIA) Limited, represented)
by its Managing Director, Mr. Ikenna Anekwe and its)
corporate officers of 12th Street, Tubman Boulevard,)
Monrovia, Liberia.....Appellant)

VERSUS)

APPEAL)

Her Honor Eva Mappy Morgan, Chief Judge representing)
the Commercial Court of Liberia, Temple of Justice,)
Monrovia, Liberia, and the Petroleum Distribution)
Company by and thru its CEO, Abraham Kaydea of the)
City of Monrovia.....Appellee)

GROWING OUT OF THE CASE:)

Guaranty Trust Bank (LIBERIA) Limited, represented)
by its Managing Director, Mr. Ikenna Anekwe and its)
corporate officers of 12th Street, Tubman Boulevard,)
Monrovia, Liberia.....Petitioner)

VERSUS)

PETITION FOR A WRIT
OF PROHIBITION)

The Liberia Petroleum Distribution Company by and thru)
its CEO Abraham Kaydea and all those under his authority)
of the City of Monrovia, Republic of Liberia)
.....Respondent)

GROWING OUT OF THE CASE:)

The Liberia Petroleum Distribution Company by and thru)
its CEO Abraham Kaydea and all those under his authority)
of the City of Monrovia, Republic of Liberia)
.....Plaintiff)

VERSUS)

ACTION OF DEBT)

Guaranty Trust Bank (LIBERIA) Limited, represented)
by its Managing Director, Mr. Ikenna Anekwe and its)
corporate officers of 12th Street, Tubman Boulevard,)
Monrovia, Liberia.....Defendant)

Heard: April 5, 2022

Decided: September 5, 2022

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This appeal emanates from a Ruling of our esteemed Colleague, Mr. Justice Yussif D. Kaba, granting the preemptory writ of prohibition while presiding over the Supreme Court Chambers during the October Term, A.D. 2021. The records show

that the Liberia Petroleum Distribution Company, the appellee, instituted an action of debt in the Commercial Court against Guaranty Trust Bank (Liberia) Limited, the appellant, for the amount of Two Hundred Eighty-Seven Thousand United States Dollars (US\$287,000.00). After a regular trial the Commercial Court held the appellant liable to the appellee and thereafter, prepared a bill of costs in the amount of Four Hundred Forty-Seven Thousand Nine Hundred Twenty-Five United States Dollars (US\$447,925.00) as the total judgment amount. The amount constituting the total judgment sum represents the principle loan amount of Two Hundred Eighty-Seven Thousand United States Dollars (US\$287,000.00); One Hundred Thirty-Seven Thousand Seven Hundred Sixty United States Dollars (US\$137,760.00) representing 6% interest on the amounts that the appellant allegedly used to pay off the debts of its delinquent customers; 2% successful attorney fees in the amount of Five Thousand Seven Hundred Forty (US\$5,740.00); Five United States Dollars (US\$5.00) Government tax; Seventeen Thousand Two Hundred Twenty United States Dollars (US\$17,220.00) sheriff's fee; and, Two Hundred United States Dollars (US\$200.00), the cost for filing the complaint.

The appellant filed its bill of exceptions, which was accordingly approved by the Commercial Court, deposited the amount of Two Hundred Eighty-Seven Thousand United States Dollars (US\$287,000.00) into an escrow account designated by the Commercial Court pursuant to Article IV of the Commercial Court Act, filed an approved appeal bond, and thereafter filed and served the notice of completion of appeal. The records show that notwithstanding the aforesaid, the Commercial Court ordered the closure and did close the appellant's business on the basis that the appellant failed to deposit the full judgment amount of Four Hundred Forty-Seven Thousand Nine Hundred Twenty-Five United States Dollars (US\$447,925.00) stated in the bill of costs, which the trial court deemed a violation of the appeal statute of the Commercial Court; that the failure to pay the full judgment amount rendered the appeal not perfected, and therefore could not stay the enforcement of the trial court's final ruling.

Based upon the Commercial Court's closure orders of the appellant's business, on November 9, 2021, the appellant filed a petition for prohibition before Mr. Justice Yussif D. Kaba alleging *inter alia* that it had complied with the relevant provisions of Article IV of the Commercial Court Act by filing its bill of exceptions, depositing the judgment sum of Two Hundred Eighty-Seven Thousand United States Dollars (US\$287,000.00) into an interest bearing escrow account designated by the Commercial Court, and the filing of an appeal bond along with the service and filing of the notice of completion of appeal; but notwithstanding, the Commercial Court still proceeded to order the closure of its business.

On November 9, 2021, the Justice in Chambers reviewed the petition and cited the parties to a conference scheduled on November 10, 2021, and at which time, the Justice made an interim order placing a stay on all proceedings and/or actions pertaining to the case, and mandated that the appellant's business be reopened

pending the outcome of the conference. Thereafter, on November 15, 2021, the Justice ordered the Clerk of the Supreme Court to issue the alternative writ of prohibition, ordering the respondents to file returns to the petition on or before November 25, 2021.

In compliance with the Justice's order, the respondents filed returns alleging *inter alia*, that the appellant is in violation of Article IV of the Commercial Court Act by failing to deposit the full judgment amount of Four Hundred Forty-Seven Thousand Nine Hundred Twenty-Five United States Dollars (US\$447,925.00) into the escrow account designated by the Commercial Court but had instead, deposited the amount of Two Hundred Eighty-Seven Thousand United States Dollars (US\$287,000.00) into the escrow account which is far less than the judgment amount stated in the bill of costs.

On December 6, 2021, the Justice in Chambers listened to oral arguments on the petition and the returns thereto, and on February 8, 2022, he affirmed the alternative writ and granted the peremptory writ of prohibition. The Justice primarily relied on the case: *Pioneer Construction Company v Her Honor Morgan et al*, Supreme Court Opinion, March Term, A.D. 2015, and ruled that the full judgment amount is US\$287,000.00 (United States Dollars Two Hundred Eighty Seven Thousand), plus the 6% interest; that the Commercial Court committed reversible error by including the costs of court, and successful attorney fees in the judgment amount. The Chamber Justice than instructed the Commercial Court to calculate the interest as of the date the appellant paid the money out to its two delinquent customers, Smart Engineering and the Liberia Commodity Trading Company, respectively. Relevant excerpt of the Chambers Justice's Ruling on this point is quoted herein below, to wit:

“...The judgment amount in this case was US\$287,000.00 (United States Dollars Two Hundred Eighty Seven Thousand), plus interest of 6%. The Petitioner deposited US\$287,000.00 (United States Dollars Two Hundred Eighty Seven Thousand) without adding the interest. This also does not constitute the deposit requirement of the statute. However, due to the erroneous calculation of what constitutes the judgment amount by the lower court, confusion on what was to be deposited ensued. In our mind and in order to ensure that legal technicalities are not allowed to defeat the ends of justice, and because the petitioner filed an indemnity bond in the amount of US\$430,000.00, which co-respondent Liberia Petroleum Distribution Company did not challenge, it will be only fair to have the lower court to determine the 6% interest on the UD\$130,000.00 and US\$157,000.00 paid to the Smart Engineering and the Liberia Commodity Trading Company, respectively, as of the dates those interests started to run, and to require the petitioner to have that amount deposited in the account in which the judgment amount was deposited...”

The appellant partly noted exceptions to the Chambers Justice's Ruling regarding the computation of the 6% interest and announced an appeal to the Supreme Court *en banc* to review that aspect of the Ruling relating to the 6% interest. The appellee

for its part agreed with the entire points of law, analysis and determination contained in the Chambers Justice's Ruling.

This Court, having carefully examined the facts contained in the records, listened to the arguments of the parties and reviewed the applicable laws, is of the considered opinion that the only issue presented is when does the computation or application of the 6% statutory interest commences; is it at the time the interests accrued or begin to run on the money paid out, or at the time when final ruling of the trial court is entered?

We note that the appellant has argued that the 6% interest should be computed at the time the Commercial Court entered final ruling rather than computing the 6% interest at the time the interest accrued on the money paid out in 2013. In making its case, the appellant relied on Section 45.62 of the Civil Procedure Law, which states that "every money judgment shall bear interest from the date of its entry" and asked this Court to apply the said provision of the law rather than computing the 6% interests as of 2013.

The appellee for its part disagrees and has counter-argued that the 6% interest should be computed as of 2013 when the appellant paid out the money. The appellee in making its case relied on Section 45.61(2) of the Civil Procedure Law which states *inter alia* that "interest should be computed from the earliest ascertainable date the claim existed, except that interest upon damages incurred thereafter shall be computed from the date incurred..."

Now, before proceeding to further address these core contentions of the parties, this Court says that it is in full agreement with the Chambers Justice's Ruling to the effect that the judgment amount is Two Hundred Eighty-Seven Thousand United States Dollars (US\$287,000.00) plus the 6% interest and hereby confirms the Supreme Court holding enounced in the case *Pioneer Construction Company v. Her Honor Morgan et al*, Supreme Court Opinion, March Term, A.D. 2015.

That being said, we shall now determine the computation of the 6% statutory interest given the facts and circumstances of the case and the requisite law.

We take judicial notice that this case originates from an action of debt instituted by the appellee; and that the purpose of the said debt action was to obtain a money judgment which the appellee believed it is entitled to. We also take judicial notice that although Section 45.61 of the Civil Procedure Law deals with interest pertaining to judgments, the caption of Section 45.61 deals specifically with verdicts, reports, or decisions. As a matter of fact, the entire provisions of Section 45.61 of the Civil Procedure Law speaks to interest incurring from claims arising out of breach of performance in a contract, damages award, and the determination thereof by a jury's verdict.

Unlike section 45.61, section 45.62 of the Civil Procedure Law speaks specifically to interests upon money judgment and makes no mention of interest arising out of damages claims, or claims arising out of breach of contract, etc., This provision, in distinct terms, states that: “every money judgment shall bear interest from the date of its entry;” and nothing more.

Therefore, the final ruling of the Commercial Court being a money judgment, we hold here that the applicable law is section 45.62 and not 45.61 of the Civil Procedure Law. Hence, the interest on the money judgment is computed as of the date of entry of the final ruling of the Commercial Court, that is on August 2, 2021.

Having stated the above, will prohibition lie? Prohibition, says the law, is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein. Civil Procedure Law, Rev. Code 16:21(3). In the case: *Boye v. Nelson* 27 LLR 174, 178 (1978) the Supreme Court held that

“the writ of prohibition is not one of right, but one of sound judicial discretion, to be granted or refused according to the facts and circumstances of the particular case...In such a case [where the writ is granted], the writ will not only prohibit the doing of an unlawful act but goes to the extent of undoing what has already been done”

Applying these legal principles to the present case, this Court says that the amounts constituting the full judgment for deposit into the designated escrow account is the aggregate of the principal amount of US\$287,000.00 (United States Dollars Two Hundred Eighty-Seven Thousand) and the 6% statutory interest, computed as of the date of entry of the trial court’s judgment; that is, 6% per annum of the principal amount of US\$287,000.00 (United States Dollars Two Hundred Eighty-Seven Thousand); and all other related court costs are to abide the final determination of the case.

As we have held herein that the judgment amount is restricted only to the amount sued for plus the 6% interest, this Court hereby affirms the Ruling of the Justice in Chambers granting the peremptory writ of prohibition but with modification that the 6% interest commences as of the date judgment is entered.

In concluding this Opinion, we note that the appeal process governing this case is controlled by Article IV of the Commercial Court Act which we quote herein below to wit:

“... (2) An appeal from judgment of the Commercial Court shall not serve as a stay on enforcement of the judgment provided that the amount of judgment paid shall be placed in an interest bearing escrow account with a commercial bank to be designated by the Commercial Court pending disposition of the appeal.

- (3) Payment of the full amount of judgment shall be a condition precedent to the completion of an appeal from a judgment of the Commercial Court, but the appeal bond which may be required of the appellant shall be exclusive of the amount of judgment paid.”

While we acknowledge the exigency for the issuance of the writ and the corresponding stay order to arrest the closure of the appellant’s business by the Commercial Court, the issuance of the writ and the stay order is not intended and cannot be used as a means to defeat the objective of the appeal statute quoted herein above. Rather, the issuance of the writ and the corresponding stay order is only to perfect the administration of justice and allow the Supreme Court to speak only to the issue of what constituted the full judgment amount in this particular case. *Togba v. Republic 35 LLR 389 (1988)*. Hence, we hold that within one week, as of rendition of this Opinion and Judgment, the appellant shall comply with the determination made herein, by paying the 6% statutory interest into the escrow account already containing the principal amount of US\$287,000.00 (United States Dollars Two Hundred Eighty-Seven Thousand); and the Commercial Court shall allow the appellant to perfect its appeal *nunc pro tunc*. Failure on the part of the appellant to comply with this Court’s Mandate, the Commercial Court is to enforce its final ruling.

WHEREFORE AND IN VIEW OF THE FOREGOING, the alternative writ of prohibition is affirmed and the peremptory writ ordered issued. The Ruling of the Justice in Chambers is affirmed with the modifications stated herein. The Clerk of this Court is ordered to send a mandate to the Commercial Court to resume jurisdiction over this case and give effect to this Judgment.

Chambers Ruling Affirmed with Modification

When this case was called for hearing, Counsellor Sunifu S. Sheriff of the Just Legal Services, Inc. appeared for the appellant. Counsellor Aloysius Jappah appeared for the appellee.