

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

BEFORE HER HONOR: SIE-A-NYENE G. YUOH .....CHIEF 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

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Stoner Liberia Inc., by and through the Chief )  
Executive Officer Rev. Fidel C. Onyekwelu and )  
Executive Director, Sam Famakiwa, all of the )  
City of Monrovia, Liberia.....Appellant )

Versus )

Her Honor Eva Mappy Morgan, Chief Judge )  
Commercial Court of Liberia )

And )

Ecobank Liberia Limited by and through the )  
Managing Director/CEO, Managers, Officers )  
and all those acting under its authority of the )  
City of Monrovia, Liberia.....Appellees )

GROWING OUT OF THE CASE: )

Stoner Liberia, Inc., by and through the Chief )  
Executive Officer, Rev. Fidel C. Onyekwelu and )  
Executive Director, Sam Famakiwwa, all of the )  
City of Monrovia, Liberia.....Petitioner )

Versus )

Her Honor Eva Mappy Morgan, Chief Judge )  
Commercial Court of Liberia.... 1<sup>st</sup> Respondent )

And )

Ecobank Liberia Limited by and through the )  
Managing Director/CEO, Managers, Officers )  
and all those acting under its authority of the )  
City of Monrovia, Liberia.....2<sup>nd</sup> Respondent )

GROWING OUT OF THE CASE: )

Ecobank Liberia Limited by and through the )  
Managing Director/CEO, Manager, Officers and )  
and all those acting under its authority of the )  
City of Monrovia, Liberia.....Movant )

Versus )

Stoner Liberia, Inc., by and through the Chief )  
Executive Officer, Rev. Fidel C. Onyekwelu and )  
Executive Director, Sam Famakinwa, of the )

APPEAL

PETITION FOR THE WRIT  
OF PROHIBITION

MOTION FOR SUMMARY  
JUDGMENT

City of Monrovia, Liberia.....Respondent	)	
	)	
<u>GROWING OUT OF THE CASE:</u>	)	
	)	
Stoner Liberia, Inc., by and through its Chief	)	
Executive Officer, Rev. Fidel C. Onyekwelu and	)	MOTION TO JOIN
Executive Director, Sam Famakinwa of the City	)	
of Monrovia, Liberia.....Movant	)	
	)	
Versus	)	
	)	
Total Liberia, Inc., represented by its Manager	)	
Director of the City of Liberia.....Respondent	)	
	)	
<u>GROWING OUT OF THE CASE:</u>	)	
	)	
Ecobank Liberia Limited by and through its	)	
Managing Director/CEO, Manager, Officers and	)	
all those acting under its authority of the City	)	
of Monrovia, Liberia.....Plaintiff	)	
	)	
Versus	)	ACTION OF DEBT BY
	)	ATTACHMENT
	)	
Stoner Liberia, Inc., by and through its Chief	)	
Executive Officer, Rev. Fidel C. Onyekwelu and	)	
Executive Director, Sam Famakinwa, of the	)	
City of Monrovia, Liberia.....Defendant	)	

Heard: July 24, 2023

Decided: August 11, 2023

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The appellant, Stoner Liberia, Inc. (Stoner), requests this Court to review and reverse the ruling entered by the Justice in Chambers, denying the petition for the writ of prohibition filed by the appellant against the conduct of Judge Eva Mappy Morgan of the Commercial Court of Liberia. We are to determine whether the Justice’s ruling is erroneous and reversible as a matter of law as alleged by the appellant.

The undisputed facts as revealed by the records are that on July 3, 2018, the Co-appellee Ecobank Liberia Limited (Ecobank) filed an action of debt by attachment against the appellant Stoner before the Commercial Court of Liberia, alleging that the appellant Stoner is indebted to it in the sum of US\$946,787.04 (Nine Hundred Forty-six Thousand Seven Hundred Eighty-seven Dollars Four Cents United States Dollars); that this amount derived from a loan facility secured by the appellant and which loan the appellant had failed to liquidate in full and in keeping with the agreement executed

between the parties. The Co-appellee Bank prayed the court to adjudge the appellant liable and order it to pay the said amount.

The appellant filed its answer to the complaint, essentially not denying the claim of debt asserted against it by the Co-appellee Ecobank; rather, the appellant averred that it secured the loan on the instruction of Total Liberia, Inc. (Total), and that Total guaranteed the repayment of the loan by a commitment to utilize the services of the trucks which the appellant purchased with the loan amount. The appellant further contended that its failure to liquidate the loan facility was due to the unilateral termination of the transport agreement executed between it and Total Liberia since the proceeds from that agreement was to be used in repaying the loan facility. The appellant filed along with its answer a motion to join Total Liberia as a party defendant, arguing therein that because the loan facility was secured through the instrumentality of Total Liberia, and that Total guaranteed the repayment of the loan amount by undertaking to utilize the appellant's trucks until the loan is liquidated, full relief cannot be had in the case without Total Liberia being joined as a party defendant.

When pleadings rested, Her Honor Eva Mappy Morgan, Chief Judge of the Commercial Court of Liberia who presided over the case, convened a pre-trial conference between the parties in order to find a settlement in the case, but the parties failed to reach an agreement. Thereafter, the appellant's motion to join Total Liberia was heard and ruling reserved thereon by the Judge.

While the appellant's motion to join was pending undetermined, the Co-appellee Ecobank, on September 21, 2021, filed a motion for summary judgment, stating that it is entitled to judgment as a matter of law because the case contained no genuine issue as to any material fact. As the basis for claiming that it is entitled to summary judgment, the Co-appellee Bank stated that the appellant had averred in its answer that Total Liberia had unilaterally terminated the transport agreement between the appellant and Total, and that the appellant had filed an action of damages for wrong against Total Liberia, which case is pending before the Supreme Court of Liberia and that the amount involved in that case is sufficient to pay any obligation owed to the Co-appellee Bank. The Co-appellee contended that the action of damages filed by the appellant against Total Liberia as referenced in the appellant's answer was disposed by the Supreme Court of Liberia on August 26, 2021, and the appellant was awarded the amount of US\$551,461.00 (Five Hundred Fifty-one Thousand Four Hundred Sixty-one

United States Dollars) as special and general damages for the wrongful suspension of the appellant's contract with Total Liberia. The Co-appellee therefore prayed that the appellant not having disputed or denied that it is indebted to the Co-appellee, and the case between the appellant and Total Liberia having been disposed by the Supreme Court, there exists no material issue for determination in the action of debt filed by the Co-appellee; hence, it is entitled to summary judgment as a matter of law.

The Commercial Court commenced hearing into the motion for summary judgment filed by the Co-appellee Ecobank. When the case was called for hearing, the appellant's counsel made a submission on the records, informing the court that the appellant had filed a motion to join and the ruling on that motion remains pending before the court. The appellant's counsel prayed the court to defer hearing of the motion for summary judgment until the motion to join is disposed by the court. The Co-appellee Ecobank counsel resisted the appellant's counsel submission, arguing that the motion to join should be dismissed because it had become moot by operation of law in view of the Supreme Court disposition of the action of damages filed by the appellant against Total Liberia.

The court ruled on the motion to join, denying same on ground that the Supreme Court of Liberia had already satisfied the demand of the appellant by awarding it special and general damages against Total Liberia, Inc., hence, the Supreme Court's Judgment precludes the need for the joinder of Total Liberia in the case.

The appellant excepted to the ruling and give notice that it would take advantage of the statute controlling. However, the court proceeded thereafter to entertain hearing on the motion for summary judgment filed by the Co-appellee Bank. After the hearing, the court entered a ruling, granting the motion for summary judgment and entering judgment in favor of the Co-appellee Ecobank. The court held that consistent with the appellant's admission that it is indebted to the Co-appellee Bank, and the appellant's affirmation of responsibility to the Co-appellee as contained in its answer, there is no genuine issue as to any material fact in the case.

The appellant excepted to the ruling on the motion for summary judgment and announced an appeal to the Supreme Court.

On September 29, 2021, the appellant filed a petition for the writ of prohibition before the Justice in Chambers, praying for the issuance of the peremptory writ of prohibition to prohibit and restrain Judge Eva Mappy Morgan from proceeding by the wrong rules in the disposition of the case.

The appellant contended in its petition that Judge Mappy Morgan proceeded by the wrong rules when she denied the appellant's motion to join and which ruling was excepted to by the appellant but the Judge immediately thereafter heard and ruled on the Co-appellee Ecobank's motion for summary judgment granting same. This conduct of Judge Mappy Morgan, the appellant alleged, denied the appellant the opportunity to have the ruling on the motion to join reviewed by the three-judge panel of the Commercial Court.

The Chambers Justice issued the alternative writ of prohibition, ordering the named respondents, Judge Eva Mappy Morgan and the Co-appellee Bank, to file their returns. In obedience thereto, the Co-appellee Ecobank filed a returns contending therein that the appellant's petition was filed in bad faith to circumvent justice and hinder the appellant's fulfillment of its debt obligation to the Co-appellee Bank; that the object of the petition was to obtain a stay order to prevent the Co-appellee Bank from obtaining from the Commercial Court a Writ of Garnishment/Restraining Notice to have the amount awarded to the appellant by the Supreme Court turned over to the Commercial Court for satisfaction of the judgment against the appellant. The Co-appellee Bank further stated that there is no law which requires a judge to suspend hearing in a matter after an interlocutory ruling is entered to give a party litigant the opportunity to determine whether to file a remedial process for review of said ruling; that all errors committed by the trial judge in the case are reviewable on appeal; that in the instant case, the appellant has already announced an appeal from the final ruling in the case; therefore, prohibition cannot lie to review any matter which forms the basis of the appellant's appeal.

The Chambers Justice entertained hearing on the petition and returns filed thereto, and on February 8, 2022, entered ruling thereon, declining the issuance of the peremptory writ of prohibition and quashing the alternative writ. The Justice determined that in light of the facts and circumstances of the case, Judge Mappy Morgan's disposition of the motion to join and determination of the motion for summary judgment immediately thereafter is contrary to the spirit and letters of Article III (4) of the Act Establishing the Commercial Court which provides that "exceptions to interlocutory rulings made by a judge of the Commercial Court shall be reviewed by the full three (3) judge panel". However, the Justice concluded that the appellant having announced an appeal from the final ruling entered by the court on the motion for summary judgment, prohibition cannot lie to substitute the appeal.

The appellant excepted to the Chambers Justice ruling and file this appeal before this Court, alleging that the ruling is erroneous and reversible as a matter of law.

The mainstay of the appellant's argument in this appeal is that it was denied the opportunity to take advantage of Article III (4) of the Act Establishing the Commercial Court by Judge Mappy Morgan because she ruled on the motion to join and the motion for summary judgment on the same day and thereby denied the appellant an opportunity to appeal to the three-judge panel for review of the denial of the motion to join. The appellant argues that this conduct of Judge Eva Mappy Morgan is contrary to law and furnishes a ground for the issuance of the peremptory writ of prohibition.

This Court has held that prohibition is the proper remedial process to restrain an inferior court or administrative tribunal from taking action in a case over which it does not have jurisdiction, or where it acts beyond its jurisdiction, or attempts to proceed by rules different from those which ought to be observed at all times. *The Dennis Family et al. v. Othello Parker*, Supreme Court Opinion, October Term, 2022; *Meridien BIAO Bank Liberia Limited v. His Honor Joseph Andrews at al.*, 40 LLR 111 (2000).

In the ruling on the petition for prohibition, the Chambers Justice wrote:

"The respondents (appellees) have argued that there is no rule which requires a trial judge to suspend a hearing upon the entry of an interlocutory ruling in order to afford the party against whom the ruling is made to decide to avail itself of a remedial process of review. This Court says that it cannot fathom the rationale of the respondents' argument in clear view of the language of Article III (4) of the Act of the Commercial Court which provides that "exceptions to interlocutory rulings made by a judge of the Commercial Court shall be reviewed by the full three (3) judge panel." It implies that such window for an aggrieved party to seek a review of interlocutory ruling before the three judge panel be accorded in a timely fashion. It can also be said that it was not the contemplation of our law writers that a judge of the Commercial Court will assign a motion for hearing, decide on a pending motion which has been heard prior, and proceed to entertain arguments in the assigned motion and forthwith enter a final ruling without the opportunity for judicial review by the three judge panel. While we recognize however, that the same Article III of the Commercial

Court Act provides for the prompt determination of commercial disputes in keeping with law, the Supreme Court of Liberia in a long line of cases including *Wuo v. Wardsworth et al* 30 LLR 106 (1982), has admonished judges of inferior tribunals to take cautious and responsible speed in the proceedings of civil cases to avoid the deprivation of protected rights. "Speedy trial, when pursued with violation of the rights of any party, is as damaging to a fair and just trial as an unusual delay is suppressive of the rights and grievances of a party. Both actions are provocative and incoherent with the concept of justice", the Supreme Court has opined. It is therefore incumbent upon a judge to strike a balance between speed and delay in the interest of justice. In light of the facts and circumstances of the respondent judge's disposition of the motion to join and motion for summary judgment in no time, we are of the view that said disposition ran contrary to the spirit and letters of Article III (4) of the Act of the Commercial Court. We must frown and discourage against such disposition.

Notwithstanding the above, the records reveal that after entry of final judgment on the motion for summary judgment, the petitioner (appellant) noted exception and announced appeal to the Supreme Court of Liberia. It is the position of the respondents that petitioner having announced appeal, prohibition cannot serve as a substitute for the appeal. We agree. It is a well settled law in this jurisdiction that prohibition is the proper remedial process to restrain an inferior court from taking action in a case beyond its jurisdiction; or having jurisdiction the court has attempted to proceed by rules different from those ought to be observed at all times. *Parker v. Worrell*, 2 LLR 525 (1925). It is also the law extant in this jurisdiction that prohibition extends only to restraining a tribunal from usurpation and cannot substitute for an appeal. *Chariff Pharmacy v. Pharmacy Board of Liberia et al*, 37 LLR 135 (1993). This Court therefore holds that the petitioner having announced an appeal from the final judgment of the Commercial Court, prohibition will not lie for there is adequate remedy in the appeal."

We agree on the general statement of the law on the application of Article III(4) of the Act Establishing the Commercial Court which requires a judge to provide a window of opportunity for an aggrieved party to seek a review of

an interlocutory ruling to the three judge panel. However, we believe that this does not apply under the facts and circumstances of this case.

In this case, Ecobank, the co-appellee herein, filed an action of debt by attachment against Stoner (Liberia) Inc., appellant, in the Commercial Court in July 2018, claiming an outstanding loan amount of US\$946,787.04 (United States Dollars Nine Hundred Forty Six Thousand Seven Hundred Eighty-seven Dollars Four Cents) owed by the appellant plus an award of 6% interest on the outstanding amount.

As the records of the Commercial Court indicate, the appellant in its answer stated that Total Liberia, Inc., who requested and recommended the appellant to the Co-appellee Bank to take the loan, had without any justification illegally terminated the services of the appellant's trucks that were used to raise money to service the debt; that to show to the Co-appellee Bank that the appellant did not deliberately refuse to make payment to the bank, the appellant had instituted an action of damages against Total Liberia, Inc. for the illegal termination of the appellant's services; that the matter had been adjudicated in the lower court and the appellant awarded US\$3,080,000.00 (Three Million Eighty Thousand United States Dollars) against Total Liberia, Inc. and that Total Liberia, Inc. had appealed the lower court's ruling to the Supreme Court and same is pending. The appellant stated in count 4 of its answer that the ruling obtained from the lower court was sufficient to pay whatever outstanding amount against the subject loan without any other legal action because the appellant was sincere about whatever arrangements that were made in the proceedings. The appellant further filed a motion to join Total Liberia, Inc. as a party defendant because Total Liberia, Inc. had unjustifiably stopped utilizing the appellant trucks thereby making it impossible for the appellant to service the debt owed to the Co-appellee Bank. In essence, the appellant answer and motion to join Total Liberia were premised on two grounds: 1) that Total Liberia action of terminating the contract for the usage of the appellant's trucks made it impossible for the appellant to generate funds to service the loan amount owed to the Co-appellee Ecobank, and 2) that the appellant had filed an action of damages against Total Liberia which was still pending on appeal before the Supreme Court, and the determination of that matter in favor of the appellant would enable it to pay whatever amount it owed the Co-appellee Ecobank.

The case between the appellant and Total Liberia which was referenced in the appellant's answer was heard by the Supreme Court and an Opinion



handed down in the matter on August 26, 2021, adjudging Total Liberia, Inc. liable in damages to Stoner Liberia Inc., the appellant, awarding the appellant general and special damages in the amount of US\$551,461.00 (Five Hundred Fifty-one Thousand Four Hundred Sixty-one United States Dollars). The Supreme Court's Opinion awarding damages to the appellant against Total Liberia, Inc. effectively settled the issue raised by the appellant in its answer and in the motion to join regarding its inability to pay the appellee because of the breach by Total and that it would settle its obligation to the Co-appellee Bank once its case against Total was settled. The Court's Opinion declaring Total Liberia conduct against the appellant as wrongful and illegal and its Judgment thereon provided the appellant the award the Court found fair and just under the situation; thus, the appellant's sole purpose for the application to join Total Liberia, Inc. as a party defendant in the action of debt by attachment, being to again litigate the issue of the award of damages for Total's termination of its contract with the appellant, and said issue having been heard and determined by the Supreme Court and damages awarded in favor of the appellant, that decision rendered the appellant's motion moot by operation of law.

This Court has held that courts of law have the authority, and may dismiss a case or pass on an issue on their own initiatives, without any application from the parties, where the matter has become moot, abstract or irrelevant. *National Chronicles Newspaper & Browne v. RL*, Supreme Court Opinion, March Term 2015.

In this case, Judge Eva Mappy Morgan, taking judicial notice of the Supreme Court's Opinion, should have as a matter of law proceeded to sua sponte dismiss the appellant's motion to join Total Liberia immediately following the Supreme Court's decision because that decision brought to finality the issues raised by the appellant for which it was urging the judge to join Total Liberia as a party defendant in the action of debt filed by the Co-appellee Ecobank. The ruling which was rendered by the Judge on the motion to join after the Supreme Court's decision was a mere legal formality since the only path available to the Judge at that juncture was to dismiss the motion as any other action would have been legally untenable. The Co-appellee Judge in proceeding thereafter to rule on the motion for summary judgment after having denied the motion to join was therefore in no error.

The Chambers Justice recognized in his ruling, and we do concur, that Article III of the Act Establishing the Commercial Court provides for the prompt

determination of commercial disputes in keeping with law. In fact, the prompt determination of commercial disputes is the principal reason behind the establishment of the Commercial Court of Liberia. Thus, every provision of the Act Establishing the Commercial Court, including Article III (4), must be construed to promote the objective underlining the establishment of the court. It would therefore be contrary to the objective of prompt determination of commercial disputes if Article III (4) of the Act Establishing the Commercial Court were to be construed as requiring that even interlocutory rulings made on issues that have become moot by operation of law are to be appealed to the three judge panel of the court for review. This would effectively provide a viable avenue of delay in the adjudication of commercial disputes contrary to the spirit and intent behind the establishment of the Commercial Court. We do not think that the framers of the law intended that the law be construed in such manner.

In view of the foregoing, we do not see how Judge Eva Mappy Morgan proceeded by the wrong rules when she ruled denying the appellant's motion to join and thereafter proceeded to hear and determine the motion for summary judgment filed by the Co-appellee Ecobank. As the Chambers Justice ruled, the appellant having announced an appeal from the final ruling entered by the court on the motion for summary judgment, prohibition cannot lie to substitute the appeal. The appellant must proceed to perfect its appeal, if any, as prescribed by Article IV of the Act Establishing the Commercial Court.

WHEREFORE AND IN VIEW OF THE FOREGOING, the Chambers Justice ruling quashing the alternative writ and denying the peremptory writ of prohibition is hereby affirmed. The Clerk of this Court is hereby ordered to send a Mandate to the court below to resume jurisdiction over this case and give effect to the Judgment emanating from this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

**WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLORS COOPER W. KRUAH, OTHELLO KRUAH AND PRINCE M. KRUAH OF THE HENRIES, KRUAH AND ASSOCIATES LAW FIRM APPEARED FOR THE APPELLANT. COUNSELLOR ALBERT S. SIMS APPEARED FOR THE APPELLEES.**