

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2024

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

Her Honor Nancy Finda Sammy, Assigned Circuit Judge, Sixth)
Judicial Circuit, sitting in its June Term A.D. 2022, and the)
Intestate Estate of Abraham Jalloh, represented by and thru its)
Administratrix, Edith Johnson, of the City of Monrovia,)
Montserrado County, Liberia..... Appellants)

VERSUS)

CHICO Company, by and thru its General Manager, Site)
Manager, Project Manager, including all other authorized)
officers acting under their control, of Oldest Congo Town,)
Monrovia, Liberia..... Appellee)

GROWING OUT OF THE CASE :)

CHICO Company, by and thru its General Manager, Site)
Manager, Project Manager, including all other authorized)
officers acting under their control, of Oldest Congo Town,)
Monrovia, Liberia..... Petitioner)

VERSUS)

PETITION FOR A)
WRIT OF)
PROHIBITION)

Her Honor Nancy Finda Sammy, Assigned Circuit Judge, Sixth)
Judicial Circuit, sitting in its June Term A.D. 2022, City of)
Monrovia, Republic of Liberia, 1st Respondent)

AND)

The Intestate Estate of Abraham Jalloh, represented by and thru)
its Administratrix, Edith Johnson, of the City of Paynesville,)
Montserrado County, Liberia,2nd Respondent)

GROWING OUT OF THE CASE:)

CHICO Company, by and thru its General Manager, Site)
Manager, Project Manager, including all other authorized)
officers acting under their control, of Oldest Congo Town,)
Monrovia, Liberia..... Movant)

VERSUS)

MOTION TO)
DISMISS)

The Intestate Estate of Abraham Jalloh, represented by and thru)
its Administratrix, Edith Johnson, of the City of Paynesville,)
Montserrado County, Liberia, Respondent)

GROWING OUT OF THE CASE:

The Intestate Estate of Abraham Jalloh, represented by and thru)
its Administratrix, Edith Johnson, of the City of Paynesville,)
Montserrado County, Liberia, Plaintiff)

) ACTION OF
) DAMAGES FOR
) WRONGFUL DEATH

VERSUS)

CHICO Company, by and thru its General Manager, Site)
Manager, Project Manager, including all other authorized)
officers acting under their control, of Oldest Congo Town,)
Monrovia, Liberia, Defendant)

Heard: October 25, 2023

Decided: August 28, 2024

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This appeal presents a question of whether the Sixth Judicial Circuit, Civil Law Court, has subject matter jurisdiction over an action of wrongful death, where the said death resulted from occupational injury; and, the applicable laws *viz.*: the “Decent Work Act” *vis-a-vis* the “Private Wrongs Law”.

The records show that on August 17, 2022, the appellee herein, CHICO Company, filed a petition for the writ of prohibition before Madam Justice Jamesetta H. Wolokolie, the Associate Justice presiding in the Chambers of the Supreme Court for the March Term, A. D. 2022. Following a conference with the parties, the Justice ordered the issuance of the alternative writ of prohibition, mandating the appellant herein, the Intestate Estate of Abraham Jalloh, to file its returns.

On September 9, 2022, arguments were entertained on the petition for the writ of prohibition and thereafter the Justice ruled granting the peremptory writ of prohibition and sustaining the alternative writ she had ordered issued. The appellant noted exceptions to the Ruling and announced an appeal to the Supreme Court *en banc*, hence this appeal.

Having reviewed the Ruling of the Justice in Chambers wherein she succinctly narrated the facts and circumstances leading to the prohibition proceedings, juxtaposing therein the applicability of the Decent Work Act, *vis-à-vis* the Private Wrongs Law to an employer-employee relationship, and to avoid the burdening of this Opinion with a repetition of the same facts and circumstances, we quote verbatim the said Ruling hereunder, to wit:

“This petition for the writ of prohibition presents the question of whether the Civil Law Court has jurisdiction over an action of damages for wrongful death arising out of the death of an employee from injury sustained in the course of his employment.

The records show that the late Abraham Jalloh was employed by the petitioner CHICO Company and assigned as a crane operator engaged in the dismantling of an old steel bridge during the construction and pavement of the Main Highway in River Gee County. In the course of the performance of his assigned task, Abraham Jalloh was struck by a steel rod on his head and thereby sustained severe injuries which resulted to his death.

On February 10, 2022, the Intestate Estate of Abraham Jalloh, respondent herein, instituted an action of damages for wrongful death at the Civil Law Court, Sixth Judicial Circuit Montserrado County, against the petitioner CHICO Company for the death of Abraham Jalloh, alleging that his death was caused by the petitioner’s negligence and failure to exercise a duty of care in providing the deceased employee with safety gear such as helmet and other safety protection devices, a failure which ultimately led to his death from the injuries sustained.

In response to the respondent’s complaint, the petitioner filed its answer along with a motion to dismiss the complaint. The crux of the petitioner’s motion to dismiss the respondent’s action of damages is that the Civil Law Court lacks subject matter jurisdiction over the case because the case grows out of an employment relationship between the decedent and the petitioner, and therefore, in accordance with the Supreme Court Opinion in the case *Stephen S. Nahn v. Arcelor Mittal Liberia Limited*, the appropriate forum for the respondent’s claim is the Ministry of Labor or the National Labor Court. The respondent filed resistance to the motion to dismiss, and after entertaining arguments thereon, the court denied the motion. The petitioner excepted to the denial of its motion to dismiss and filed this petition for the writ of prohibition before this chambers.

The petition for the writ of prohibition essentially advanced the position contained in the petitioner’s motion to dismiss, that is, that because the injury which caused the death of Abraham Jalloh was sustained in the course of his employment with the petitioner, the applicable law is the Decent Work Act (2015) and the forum for the adjudication of such claims arising out of occupational injury or death is the Ministry of Labor and not the Civil Law Court.

On August 23, 2022, a conference was held with the parties to the petition, and thereafter, we ordered the issuance of the alternative writ of prohibition and commanded the respondent to file its returns to the petition.

On September 2, 2022, the respondent filed returns to the petition, contending therein that because the petitioner failed to exercise the duty of care it owed the late Abraham Jalloh, this failure led to his death, and this entitles the respondent to claim for damages for wrongful death against the petitioner under the Private

Wrongs Law; that the petitioner's reliance on the *Stephen S. Nahn* case is not tenable because the facts and circumstances of that case are not similar to the respondent's case in that Stephen Nahn injury wasn't fatal and did not lead to his immediate death unlike the decedent; that Stephen Nahn suffered injuries, commenced receiving benefits for a protracted period under Section 89.26 of the National Social Security & Welfare Corporation Act (2016) and section 30.1(b) of the Decent Work Act (2015) before commencing the action of damages against his employer; on the contrary, the decedent was fatally hit with a metal on his head on February 10, 2019 while he worked without a helmet, and he died on February 12, 2019, without receiving benefits from his employer or under the National Social Security & Welfare Act (2016) and Section 30.1(b) of the Decent Work Act(2015). The respondent further contends that the Private Wrongs Law which was enacted in 1977, serves as the exclusive legal authority for representatives and survivors of victims or employees to recover in damages for wrongful death resulting from injuries or death sustained in the course of employment, tort or otherwise; that it is not within the jurisdiction of the Decent Work Act (2015) vis-à-vis the Labor Ministry and the Labor Court to administer or adjudicate the subject matter of wrongful death; that Chapter 3, section 3.7, *Exclusive Remedy*, of the Private Wrongs Law provides that "*this chapter provides the exclusive remedy to recover for wrongful death and supersedes any other law creating such a right of action.*" The respondent concluded that the Civil Law Court has jurisdiction over the case in keeping with Chapter 3, section 3.2 of the New Judiciary Law.

Upon the filing of the respondent's resistance, a hearing was had on the petition and the resistance on September 9, 2022. During the hearing, the respondent counsel fervently argued that the Private Wrongs Law is the applicable law under the facts of this case; that Abraham Jalloh's injury and death were caused by the petitioner's negligence in failing to provide him with safety equipment, including helmet on the job; that this case is distinguished from the Stephen S. Nahn case because Stephen Nahn commenced receiving benefits before instituting the suit against his employer, unlike Abraham Jalloh who died two days after sustaining injuries.

As stated above, the issue we are called upon to decide is whether the Civil Law Court has jurisdiction over the action of damages for wrongful death filed by the respondent against the petitioner.

In the case, *His Honor Ousman F. Feika and Stephen S. Nahn v. ArcelorMittal Liberia Limited*, Supreme Court Opinion Term, 2021 (delivered on February 17, 2022), the Supreme Court was confronted with the question of whether the Circuit Courts have jurisdiction over cases arising out of labor matter. The Stephen Nahn case grew out of an action of damages for wrong filed by Stephen Nahn before the 2nd Judicial Circuit Court against his employer ArcelorMittal Liberia Limited for injuries sustained in the course of his employment. A motion to dismiss the case for lack of subject matter jurisdiction was filed by Arcelor Mittal and denied by the court. Thereupon, the case travelled to the Supreme Court on a petition for the writ of certiorari. In disposing of the jurisdictional

question presented, the Supreme Court surveyed the relevant provisions of the Decent Work Act (2015) bearing on employers' liability to employees for injuries suffered on the job, compensation for occupational injuries and the existence of alternative remedies for occupational injuries or death of employees on the job. The Supreme Court then concluded as follows:

*“In the present case, the Legislature has already adopted and passed Part IV, Chapters 30, 31 and 33 of the Decent Work Act (2015) which deal with Workers' Compensation, Compensation for Occupational Injury, and the Procedure for Compensations, respectively, as the **controlling law in matters relating to injuries arising during the course of employment.**”* [emphasis mine].

Based on the above conclusion, the Court held in the case that disputes arising out of labor matters are not cognizable before the Circuit Courts, but rather the Labor Court or the Ministry of Labor.

We note that Chapter 31 of the Decent Work Act (2015) governs compensation for occupational injury, including death. Section 31.2 of Chapter 31 provides for payment of compensation for the death of an employee in consequence of an occupational injury. Section 31.2 of Chapter 31 of the Decent Work Act (2015) states:

‘§ 31.2 Compensation for death

- a) When an employee dies as the consequence of a compensable occupational injury, compensation shall be paid as set forth in this section.
- b) If the deceased employee leaves any dependent wholly dependent upon his or her earnings, the amount of compensation shall be a sum equal to 48 months' earning...”

The 2nd respondent argues that its contention is not the same as that in the Stephen Nahn case where Nahn's injury was a consequence of an occupational injury not attributed to the negligence of the employer. In this case, the decedent of the 2nd respondent estate died because the petitioner failed to provide him (decedent) with the necessary safety gear, and this the 2nd respondent says will place its claim for damages due to negligence under section 3.7 of the Private Wrongs Law.

Section 33.16 “Alternative Remedies” of the Decent Work Act (2015) states:

“The liability of an employer under this chapter shall be exclusive and in lieu of any other liability whatsoever on his or her part, under the laws of Liberia or of any other country, to his or her disabled or deceased employee and to the employee's personal or other legal representatives, his or her spouse, children, parents, dependents; or next of kin, or to anyone otherwise entitled to recover damages, at common law, on account of such disability or death.”

In view of the clear language of the Decent Work Act (2015) above, the respondent's argument that the Private Wrongs Law is the controlling law in this labor dispute is untenable and erroneous. As the records show, the injury which caused the death of Abraham Jalloh is an injury covered under the Decent Work

Act (2015) since it occurred during the course of the performance of his duties as the petitioner's employee.

The applicable and controlling statute in the instant case is the Decent Work Act (2015), which places all labor injuries before the labor court. The Private Wrongs Law enacted in 1977 deals generally with liabilities occasioned by the negligent conduct of a person in relation to another person and not in the case of an employer employee relations.

Therefore, as the Supreme Court has held "where the two legislative acts [Private Wrongs Law (1977) and Decent Work Act (2015) are repugnant to, or in conflict with each other, the last one enacted [the Decent Work Act] will govern, control or prevail and supersede". *The Management of the Liberia Coca-Cola Bottling Company v. Her Honor Comfort S. Natt and Ezekiel Doweh*, Supreme Court Opinion, March Term 2021. In this case, the Decent Work Act (2015), setting claims for labor related injury and death cases, is clearly within the jurisdiction of the labor courts; the Civil Law Court has no jurisdiction over the matter. Accordingly, Judge Nancy Finda Sammy erred when she denied the petitioner's motion to dismiss the action of damages for wrongful death filed by the respondent before the Civil Law Court..."

The records show that the prohibition proceedings from which this appeal emanates was filed before the Chambers Justice on the basis of the trial court's denial of the appellee's motion to dismiss.

The statute specifically states that "*Prohibition 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). Further, the Supreme Court has held that prohibition may not be used as a process for the review of a final judgment and correction of errors committed in the trial of a cause **for which other remedies are available**, *LPRC v. Comfort et al* 42 LLR 62, 72 (2004) [emphasis ours]; but where the issuance of the writ is sought to challenge a final judgment on ground that said judgment was rendered contrary to law, prohibition may lie. *Boye v. Nelson*, 27 LLR 174, 178 (1978); *Western Steel Inc. v RL et al*, Supreme Court Opinion, March Term, 2015.

In the instant case, the trial court's ruling denying the appellee's motion to dismiss did not bring finality to the issue in dispute, thus squarely placing same within the ambit of the remedial writ of certiorari.

It is the law that "certiorari is a special proceeding to review and correct decisions of officials, boards, or agencies acting in a judicial capacity, or to review an intermediate or interlocutory judgment of a court." *Civil Procedure* Law, Rev. Code 1:16.21(1). Moreover, the Supreme Court has opined that "the writ of certiorari is for the purpose of correcting errors committed by a subordinate court or other body while a matter is pending, and when such errors materially prejudice or injure the rights of a party." *Madam Kortu Carmmo v. The Intestate Estate of the Late Mabutu Vlah Nyanpan et al.*, Supreme Court Opinion, March Term, 2023; *Friends of Liberia Association v. Thompson et al*, 41 LLR 174, 179 (2002).

Ordinarily, we would proceed no further in making a determination of this appeal given that the appellant failed to pursue the appropriate remedial writ. However, our esteemed

colleague, Madam Justice Wolokolie, then presiding in Chambers, having entertained the petition for the writ of prohibition as filed by the appellee, we will proceed to make a determination thereof based on the merits of the appeal.

This Court notes that the while the appellee's five count motion to dismiss filed before the trial court challenged the jurisdiction of the trial court to entertain the appellant's complaint, contending that it resulted from an employer-employee relationship, the appellant's resistance was to the effect that the injury and subsequent death of the Intestate, Abraham Jalloh, was a result of the appellee's negligence by failing to supply the decedent with "PPE" (Personal Protective Equipment); hence, the Civil Law Court had subject matter jurisdiction pursuant to the Private Wrongs Law.

It is the law that "whenever the issue of a court's jurisdiction is raised, the court must not delve into the matter unless and until it ascertains the issue surrounding its jurisdiction" *Scanship (Liberia) Inc./LMSC v. Flomo*, 41 LLR 181, 186 (2002); *The Intestate Estate of Murphy-Vey John et. al v. Bendu Kaidii and Greaves*, 41 LLR 277, 282 (2002); *Lonestar Cell Communication Corporation v. His Honor Chesson et. al*, Supreme Court Opinion, March Term, 2016.

Additionally, this Court notes that the appellant in its amended brief filed before this Court, cited the case *Mamba Point Hotel v. Janneh Dee*, Supreme Court Opinion, March Term, 2023, contending that it is analogous to the instant case on the basis that the said case was also based on an employer-employee relationship and the Supreme Court allowed the action of wrongful death.

In the *Mamba Point Hotel case*, the Supreme Court clearly distinguished the applicability of the Private Wrongs Law *vis-a-vis* the Decent Work Act when it opined that pursuant to Part IV, Chapters 30, 31 and 33 of the Decent Work Act (2015), claims for labor related injury and death which result directly from and are traceable to the performance of the duty for which an employee is hired by an employer is squarely cognizable before the Labor Courts and the Ministry of Labor; but where the injury sustained by an employee during the course of his/her employment is attributable to the negligence or carelessness of the employer, and said injury is not traceable to the performance of the duty for which said employee was hired by the employer, the applicable law is the Private Wrongs Law, and the matter is cognizable before the Circuit Courts and not the Labor Courts or Ministry of Labor

As the basis of its motion to dismiss, the appellee cited the case *His Honor Ousman F. Feika and Stephen S. Nahn v. ArcelorMittal Liberia Ltd.*, Supreme Court Opinion, October Term, 2021.

In the *Stephen Nahn case*, the injury to the employee, Stephen Nahn, occurred while he was performing the duties for which he was employed by Arcelor Mittal Liberia Ltd. In its pleadings, the appellant did not allege any negligence on the part of the employer, but only that benefits under the Decent Work Act were nominal. Moreover, the accident that resulted to Mr. Nahn's injury was not attributable to any negligence of the employer. Therefore, the Supreme Court opined that in such circumstances, the Circuit Court lacks subject matter jurisdiction to entertain any proceeding for damages. We herewith affirm our decisions in both the *Jenny Dee* and *Stephen Nahn cases*.

Howbeit, although a motion to dismiss is a question of law, Section 11.2, sub-section 3 of the Civil Procedure Law also provides for the presentment of evidence in a motion to dismiss where it becomes necessary, as in the instant case. The said section states that “*upon the hearing of the motion, either party may submit affidavits, depositions, admissions, and documentary evidence to be considered by the court with the pleadings.*”

In the instant case, the “necessity”, which required taking of evidence, was determination of the issue of negligence; the respective cases relied on by the appellant and appellee indicate when the Private Wrongs Law become applicable to an employer-employee relationship and when the Decent Work Act applies.

Moreover, Section 11.2, sub-section 2 of the same Civil Procedure Law states thus:

“Deferring hearing permitted. A motion under this section shall be heard and determined before trial on application of either party, unless the court for good cause orders that the hearing and determination thereof be deferred until the trial.”

Given that both the Decent Work Act (2015) and the Private Wrongs Law being applicable to labor related injury, a complaint in an action of damages filed before a Circuit Court is not *ipso facto* dismissible for lack of jurisdiction, given that in such instances, jurisdiction must be determined based on evidence. Hence, given the facts and circumstances of the present case, it was incumbent upon the trial judge to defer the hearing on the motion to dismiss and hear the merits of the complaint in order to determine which law is applicable to the case.

Accordingly, we hold that the trial court’s ruling on the motion to dismiss being interlocutory as same did not bring finality to the case, prohibition will not lie.

WHEREFORE AND IN VIEW OF THE FOREGOING, the Ruling of the Justice in Chambers is reversed, the alternative writ quashed and the peremptory writ denied. The Clerk of this Court is hereby ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over this case and proceed to hear the merits thereof as stated in the Opinion of this case. Costs are disallowed. AND IT IS HEREBY SO ORDERED.

Reversed

When this case was called for hearing, Counsellor Charles D. F. Karmo, II of the Millennium Legal Group appeared for the appellant. Counsellor Levela B. Walker of the Galaxy and Associates, Inc. appeared for the appellee.