

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

BEFORE HER HONOR : SIE-A-NYENE G. YUOH.....CHIEF JUSTICE
BEFORE HER HONOR : JAMESETTA H. WOLOKOLLIE..... ASSOCIATE JUSTICE
BEFORE H I S HONOR : YUSSIF D. KABA ASSOCIATE JUSTICE
BEFORE H I S HONOR : YAMIE QUIQUI GBEISAY, SR..... ASSOCIATE JUSTICE
BEFORE HER HONOR : CEANEH D. CLINTON-JOHNSON..... ASSOCIATE JUSTICE

Martin Misoschewsk and Mr. Pavel Miloschewsk by and thru)
Their Attorney-In-Fact, Hans amstrong of the City of Monrovia)
Montserrado County, Republic of Liberia.....Appellant)

And)

His Honor J. Kennedy Peabody, Resident Circuit Judge Six)
Judicial Circuit, Civil Law Court, Montserrado County, Republic)
Republic of Liberia.....2nd Appellant)

APPEAL

Versus)

Afriland First Bank, by and thru its Chief Executive Officer, Mr.)
Robert Nkous, and all officers in authority at the Afriland First)
Bank, also of the City of Monrovia, Montserado County,)
Republic of Liberia.....Appellee)

GROWING OUT OF THE CASE:)

Afriland First Bank, by and thru its Chief Executive Officer, Mr.)
Robert Nkous, and all officers in authority at the Afriland First)
Bank, also of the City of Monrovia, Montserado County,)
Republic of Liberia.....Petitioner)

Versus)

His Honor J. Kennedy Peabody, Resident Circuit Judge Six)
Judicial Circuit, Civil Law Court, Montserrado County, Republic)
Republic of Liberia.....1st Respondent)

PETITION FOR A WRIT
OF CERTIORARI

And)

Martin Misoschewsk and Mr. Pavel Miloschewsk by and thru)
Their Attorney-In-Fact, Hans amstrong of the City of Monrovia)
Montserrado County, Republic of Liberia.....2nd Respondent)

GROWING OUT OF THE CASE:)

Afriland First Bank, by and thru its Chief Executive Officer, Mr.)
Robert Nkous, and all officers in authority at the Afriland First)
Bank, also of the City of Monrovia, Montserado County,)
Republic of Liberia.....Movant)

Versus)

MOTION TO DISMISS

Afriland First Bank, by and thru its Chief Executive Officer, Mr. Robert Nkous, and all officers in authority at the Afriland First Bank, also of the City of Monrovia, Montserado County, Republic of Liberia.....2 nd Respondent)	
)	
<u>GROWING OUT OF THE CASE:</u>)	
)	
Martin Misoschewsk and Mr. Pavel Miloschewsk by and thru Their Attorney-In-Fact, Hans amstrong of the City of Monrovia Montserrado County, Republic of Liberia.....Plaintiff)	
)	
Versus)	ACTION OF BREACH
)	OF DEPOSIT CONTRACT
Afriland First Bank, by and thru its Chief Executive Officer, Mr. Robert Nkous, and all officers in authority at the Afriland First Bank, also of the City of Monrovia, Liberia.....Defendant)	

HEARD: October 30, 2024

DECIDED: DECEMBER 19, 2024

MADAM JUSTICE CLINTON-JOHNSON DELIVERED THE OPINION OF THE COURT

This case grows out of an appeal taken from the ruling of our esteem colleague, Madam Justice Jamesetta Howard Wolokolie, when she served as Chambers Justice during the October 2023 Term of this Court. The Chambers Justice in her ruling dated February 8, 2024 sustained the alternative writ of certiorari issued and granted the peremptory writ. The appellant, being dissatisfied with the Chambers Justice's ruling, noted exceptions and announced an appeal to this Court *en banc* for review and final disposition.

The facts as curled from the certified records of this case revealed that the appellants, Martin Misoschewsk and Mr. Pavel Miloschewsk by and through their Attorney-In-Fact, Hans Amstrong filed an action of damages for breach of deposit contract against the appellee, Afriland First Bank, by and thru its Chief Executive Officer, Mr. Robert Nkous, and all officers in authority at the Afriland First Bank, basically contending in their complaint that they, in their personal capacity, transferred the amount of One Hundred Two Thousand United States United States Dollars (US\$102,000.00) to the appellee's bank in an account named MHM EKO Liberia, Inc., a registered business corporation operating under the laws of the Republic of Liberia. The appellant averred that the amount was intended to be used for investment activities in Liberia; that is, the money was wired to the appellee's bank in order to obtain their mining license for the operation of MHM EKO Liberia. The appellant maintained that in opening the account, the appellee willfully, intentionally and illegally abused all of the standing and mandatory banking policies and its own guidelines relating to the opening of corporate

accounts, and that the appellee's conduct created the opportunity for the illegal withdrawal of the appellant's money from the account. The appellant alleged that most of the money transferred by them to the appellee's bank, where this account was domiciled, was withdrawn by one Karen Sochor, a Czech national, who willfully and criminally took away the appellant's money without their knowledge. The appellant claimed that the action of the appellee caused funds belonging to them to be withdrawn from the bank account of MHM EKO Liberia Inc., which injured and caused damages to them for which liability will lie. The appellant prayed the court below to adjudge the appellee bank liable for breach of deposit contract and award the appellant special damages of One Hundred Two Thousand United States Dollars (US\$102,000.00); general damages of Three Million United States Dollars (US\$3,000,000.00) and punitive damages of Two Hundred Thousand United States Dollars (US\$200,000.00).

The appellee filed its answer to the appellant's complaint and filed along with its answer a motion to dismiss contending and vehemently denying the allegation that it ignored the guidelines and standing policies for the opening of a corporate account. The appellee asserted in its answer that the money deposited in the account is not owned by the appellant, rather the holder of the account, MHM EKO Liberia Inc., who had all rights to withdraw the money from its account. The appellee bank challenged the capacity of the appellant to institute the action base on the following: that there was no showing of personal injury inflicted upon the appellant by the appellee; that the appellant is not the holder of the account at the appellee's bank from which the US\$102,000.00 was withdrawn; that the holder of the account is MHM EKO Liberia, Inc.; that the withdrawal of the funds from the account was based on instruction from the authorized signatories to the account which is a standard practice in the banking sector in Liberia; and that the appellant and their personal agent, Hans Armstrong, were not authorized to institute the suit on behalf of MHM EKO Liberia, Inc. as they were not issued a Board Resolution of the directors of the corporation. The appellee therefore requested the court below to dismiss the complaint for lack of capacity or standing to institute the said action.

The certified records before this Court show that the appellant filed its reply and resistance to the appellee's motion to dismiss his complaint. In its reply, the appellant restated all the allegations contained in the complaint. A further perusal of the appellant's reply and resistance to the appellee's motion to dismiss show that the appellant emphasized the following: that they have the capacity and standing to institute the action because the money was wired from their private company's account, and that they were not required to obtain a

board resolution; that the power of attorney issued to their Attorney-In-Fact was not done in a corporate capacity as majority shareholders, but rather on the strength of their personal natural capacities; that the allegation of dubious transaction orchestrated and sanctioned by the appellee, as well as the counter allegations advanced by the appellee require evidence taking to establish their truthfulness; that the issue of capacity was factual and should be determined by the jury. Therefore, a motion to dismiss will not lie.

When pleading rested, on June 23, 2023, the court below entertained arguments pro et con on the motion to dismiss. The trial court subsequently ruled denying the appellee's motion to dismiss, holding that the Articles of Incorporation of MHM EKO Liberia Inc. was never amended; that the amended Articles of Incorporation submitted to the appellee's bank for the opening of the account in the name of MHM EKO Liberia, Inc. never existed; that the appellant in their private capacities as investors wired the money to the appellee's bank; that the appellee carried out "improper transaction" on the account which is the subject of this case; that the issue of capacity is a factual issue to be determined by the trial of fact, and that the appellant has capacity to sue because the amended Articles of Incorporation never existed.

The appellee being dissatisfied with the ruling of the trial court, noted exception and filed a petition for the Writ of Certiorari before the Justice in Chambers, requesting the Chambers Justice to review and correct the erroneous ruling of the trial judge, which it termed as erroneous and flawed. In the appellee's petition for the Writ of Certiorari, the appellee raised the same issue of the appellant's capacity and standing to file and/or institute the action of damages against the appellee in the court below. The appellee contended that the failure of the trial judge to dismiss the action for lack of capacity to sue is not only erroneous, but a misinterpretation of the laws controlling. The Chambers Justice at the time, His Honor Yamie Quiqui Gbeisay, Sr., upon receipt of the appellee's petition, cited the parties for a conference on August 11, 2023, and meanwhile ordered a stay on all further proceedings pending the outcome of the conference. However, due to intervening circumstances, the conference with Justice Gbeisay was not held until Her Honor, Jamesetta Howard Wolokolie succeeded him. Justice Wolokolie, recited the parties for conference on September 8, 2023, thereafter, issued the alternative writ. The appellant was ordered to file its returns in keeping with law.

In its returns, the appellants averred that they have the capacity to institute the action against the appellee because the money that was withdrawn from the account of MHM EKO Liberia Inc. was privately owned by them, and that they are 70% shareholders in MHM EKO Liberia Inc. They contended that they do not need board resolution to institute the action; that they

personally suffered injury as the result of the appellee's bank action in allowing their money to be illegally withdrawn from the account. The appellant argued that the trial judge was not in error when he denied the appellee's motion to dismiss, and ordered the matter proceeded with on its merits.

Argument on the appellee's petition and the resistance thereto were entertained. Thereafter, the Chambers Justice ruled granting the appellee's petition for the writ of certiorari. The justice held as follows:

1. That the funds, having been remitted to the corporation's account for its use and benefits, whatever fraud, if any that were allegedly committed, were committed against the corporation MHM EKO Liberia Inc. and not the appellant in their individual capacities;
2. That the decision of the trial judge denying and dismissing the appellee's motion to dismiss for lack of capacity and standing was erroneous, not supported by law, and was ordered set aside;
3. The alternative writ of certiorari issued was sustained, and the peremptory writ was granted.

The appellant noted exception to the Chambers Justice's ruling and announced an appeal to this Court *en banc*.

The case is now before us for review. We shall therefore decide this controversy on two issues:

1. Whether or not the trial judge erred in dismissing appellee's motion to dismiss appellant's complaint.
2. Whether or not certiorari will lie.

We shall firstly address the issue, Whether or not the trial judge erred in dismissing appellee's motion to dismiss appellant's complaint. WE ANSWER YES.

Standing involves jurisdictional issues which concerns the power of courts to hear and decide cases and does not concern the ultimate merits of substantive claims involved in the action. Where, as in this case, it is determined that the party lacks standing to institute the action, the action is dismissed without deciding the substantive issues, including constitutional issue raised in the case. *Chronicles Newspaper & Browne v RL* [2015] LRSC 31 (2 July 2015). In the case before us, the appellant admits that they wired the amount of One Hundred Two Thousand United States Dollars (US\$102,000.00) to the account of MHM EKO Liberia Inc. in furtherance of their investment activities in Liberia. The parties admit that MHM EKO Liberia Inc. is a legally established corporation existing under the laws of the Republic of Liberia, and that the appellant was shareholders of the said corporation, with their names written on the

original articles of incorporation and challenged the amended articles of incorporation. This means that both the appellee and the appellant do not challenge the existence of the corporation or its legality; and due to the legal and legitimate status of the corporation, they wired the amount of One Hundred Two Thousand United States Dollars (US\$102,000.00) to the corporation's account domicile with the appellee's bank, for use by the corporation. This court wonders why would the appellants seek relief for alleged injury cause to the account of a legally existing corporation through their personal representatives. The law in this jurisdiction is that, a corporation is a legal entity, considered in law as a fictional person distinct from its shareholders or members, and with separate rights and liabilities. The corporation is a proper plaintiff in a suit to assert a legal right of the corporation and a proper defendant in a suit to assert a legal right against the corporation. *Chapter 2, section 2.5. Associations Law, Title 5, LCLR. Effect of incorporation; Corporation as a proper Party to Action. The Intestate of the late Shad Kaydea v. The Turay Family [2015] LRSC 37 (2015).*

It is fully established that the appellants do not have a contract with the appellee's bank; instead, the appellee has an existing contract with MHM EKO Liberia inc. However, the appellants stated that they voluntarily remitted or caused funds to be remitted to the account of MHM EKO Liberia Inc, domiciled at the appellee's bank. Accordingly, there is no evidence before this Court indicating that the appellant requested the reversal of the transaction after the remittance of the money to the corporation's account. This means that, upon the transfer of the money into the account of the corporation, the money become the liquid assets of the corporation and that the corporation had the authority to use it or withdraw it in keeping with the guidelines of the appellee's bank. The appellants in their personal capacities had relinquished authority over the said funds upon its remittance to the corporation's account. Any and all issues growing out of the interaction or transition of the said account should be done within the context of the corporation laws of the Republic of Liberia.

We fully agree with the ruling of our distinguished colleague; precisely where she stated that:

“...the funds, having been sent to an account allegedly belonging to MHM EKO Liberia Inc., the corporation was properly situated to file the appropriate suit to recover the funds said to be illegally withdrawn from the corporation's account, where it is established that the funds were not received by the person intended by the corporation or that the corporation's name had been fraudulently used by third parties, and as alleged by the respondent, the petitioner's bank, to obtain benefits at the injury of the corporation.”

We believe that it is MHM EKO Liberia Inc. that may have suffered injury if that could be fully established; and not the appellants as they have alleged. From the facts and circumstances in this case, the appellants lacks standing and capacity to sue on behalf of the corporation in

their personal capacities. The appellants failed to show any specific actions or omission by the appellee against them personally for which an action of damages can be maintained. Under our statute, lack of legal capacity to sue is a ground for dismissal of an action. *Section 11.2(e) 1 LCLR*. We hold that the appellants, who are shareholders of the corporation, lack capacity and standing to bring the instant action in their private capacities, hence, the trial judge erred when he dismissed appellee's motion to dismiss appellant's complaint.

We shall now address the last issue, which is whether or not certiorari will lie. WE SAY YES. Certiorari is a writ issued from a superior court to an inferior court commanding the latter to send up its records for review to correct decisions of officials, boards or agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a trial court. *Jidsanc Inc. et al v Pearson et al [1988] LRSC 108; 35 LLR 742 (1988) (29 December 1988)*. Also in the case *Jawhary v Greaves [2001] LRSC 15; 40 LLR 489 (2001) (5 July 2001)*, this Court says 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 order or interlocutory judgment of a court. From the facts and circumstances in this case, we hold that certiorari will lie to correct the erroneous ruling of the judge of the trial court when he denied the appellee's motion to dismiss the appellants' complaint for lack of standing. Certiorari is the most appropriate remedy to correct the action of a judge in the conduct of a trial or to review intermediate order or interlocutory judgment of a court; the Justice in Chambers was therefore within the ambit of the law when she granted the writ of certiorari in this case. Hence, we hereby affirm the ruling of the Justice in Chambers in its entirety.

The Chambers Justice did not commit an error when she upheld the appellee's petition for the writ of certiorari, and overturned the ruling of the trial judge.

WHEREFORE, AND IN VIEW OF THE FOREGOING, the ruling of the Justice in Chambers reversing the trial judge's ruling is affirmed. The alternative writ of certiorari issued is affirmed and the peremptory writ is ordered issued. The Clerk of this Court is hereby ordered to send a Mandate to the court below, commanding the judge presiding therein to resume jurisdiction over this case, and give effect to the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

PETITION GRANTED.

When this case was called for hearing Counsellor J. Darku Mulbah of Lex Group Liberia LLC appeared for the Movant/appellee. Counsellor Amara Sheriff of Liberia Law Group appeared for the Respondent/appellant.