

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,  
SITTING IN ITS MARCH TERM, A.D. 2025

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  
BEFORE HER HONOR: CEANEH D. CLINTON JOHNSON.....ASSOCIATE JUSTICE

Abi Jaoudi Supermarket & Azar Trading Corporation of the City )  
of Monrovia, Liberia.....Appellant )

Versus )

) APPEAL

His Honor Yamie Quiqui Gbeisay, Sr., Assigned Circuit Judge, )  
Sixth Judicial Circuit, Montserrado County, and the Testate )  
Estate of Etmonia L. King, represented by Olubanke King Akerele )  
and Charles T. O. King, the Testate Estate of Nancy E. Cooper, the )  
Testate Estate of John H. Richards, represented by Matilda )  
Richards-Outland and Walker Richards, and the Testate Estate of )  
Joseph G. Richards, represented by Marbue Richards, all of the )  
City of Monrovia, Liberia.....Appellees )

GROWING OUT OF THE CASE: )

Abi Jaoudi Supermarket & Azar Trading Corporation of the City )  
of Monrovia, Liberia.....Petitioner )

Versus )

) PETITION FOR THE  
) WRIT OF CERTIORARI

His Honor Yamie Quiqui Gbeisay, Sr., Assigned Circuit Judge, )  
Sixth Judicial Circuit, Montserrado County, and the Testate )  
Estate of Etmonia L. King, represented by Olubanke King Akerele )  
and Charles T. O. King, the Testate Estate of Nancy E. Cooper, the )  
Testate Estate of John H. Richards, represented by Matilda )  
Richards-Outland and Walker Richards, and the Testate Estate of )  
Joseph G. Richards, represented by Marbue Richards, all of the )  
City of Monrovia, Liberia.....Respondents )

GROWING OUT OF THE CASE: )

The Testate Estate of Etmonia L. King, represented by Olubanke )  
King Akerele and Charles T. O. King, the Testate Estate of Nancy )  
E. Cooper, the Testate Estate of John H. Richards, represented by )  
Matilda Richards-Outland and Walker Richards, and the Testate )  
Estate of Joseph G. Richards, represented by Marbue Richards, )  
all of the City of Monrovia, Liberia.....Petitioners )

) SUMMARY  
) PROCEEDINGS  
) TO RECOVER  
) POSSESSION  
) OF REAL PROPERTY

Versus )

Abi Jaoudi Supermarket & Azar Trading Corporation of the City )  
of Monrovia, Liberia.....Respondent )

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This appeal is from the ruling of our esteemed Colleague, Madam Justice Jamesetta H. Wolokolie, who presided in Chambers during the March Term of Court, A.D. 2022. The Justice in Chambers, upon hearing had on the petition for the issuance of the writ of certiorari, quashed the alternative writ, and denied the issuance of the peremptory writ of certiorari prayed for by the appellant, Abi Jaoudi Supermarket & Azar Trading Corporation.

The pertinent facts as culled from the records reveal that on January 6, 2021, the appellees, the Testate Estates of Etmonia L. King, Nancy E. Cooper, John H. Richards, and Joseph G. Richards, filed an action of summary proceedings to recover possession of real property before the Sixth Judicial Circuit, Civil Law Court, Montserrado County, against the appellant, Abi Jaoudi Supermarket & Azar Trading Corporation, claiming a parcel of land measuring 4.32 lots with buildings constructed thereon, lying and situated on Randall Street, Monrovia, Liberia.

On January 27, 2021, the appellant, Abi Jaoudi Supermarket & Azar Trading Corporation, filed along with its answer, a motion to dismiss the action of summary proceedings to recover possession of real property on grounds that the issues raised therein had been decided by the Full Bench of the Supreme Court in the case: *The General Services Agency (GSA) v. the Testate Estate of John H. Richards*, Supreme Court Opinion, March Term 2018. The said case grew out of a petition for the writ of prohibition filed directly with the full bench of the Supreme Court at first instance, by the Testate Estate of John H. Richards against the Government of Liberia by and thru the General Services Agency (GSA), seeking to prohibit the GSA from further collecting rent from Abi Jaoudi Supermarket & Azar Trading Corporation, claiming title to the property of the said Corporation.

In their motion to dismiss the action of summary proceedings to recover possession of real property, the appellant alleged that the 2018 case was between the same parties in the summary proceedings; and that assuming without admitting that the property subject of the action of summary proceedings to recover possession of real property was not legitimately owned by the Government of Liberia, the appellant also has a valid lease agreement with Madam Odell Padmore for the selfsame property; therefore, title is in issue and summary proceedings to recover possession of real property will not lie as a matter of law. Hence, the appellants requested that based on the doctrines of *lis pendens* and *res judicata*, the lower court should dismiss the action of summary proceedings to recover possession of real property.

On April 22, 2021, the trial judge, having entertained arguments from the counsels representing the parties and having taken judicial cognizance of the evidence presented, ruled denying the appellant's motion to dismiss the action of summary proceedings to recover possession of real property. In his April 22, 2021 ruling, the trial judge held that title to the subject property was not at issue between the present appellant and the appellees; that the doctrine of *lis pendens* would not lie in the instant case because it was legally impossible for a matter to be decided by the Supreme Court and at the same time be pending before the Sixth

Judicial Circuit, Civil Law Court, Montserrado County, and that the property subject of the instant dispute is separate and distinct from the property awarded to the Government of Liberia in the Supreme Court Opinion of 2018.

The appellant noted exceptions to the said ruling of the trial judge on the motion to dismiss, and on May 4, 2021, filed before the Justice in Chambers a petition for a writ of certiorari, for a review thereof.

Mr. Justice Joseph N. Nagbe of sainted memory, presiding in Chambers during the March Term 2021, at the time, ordered issued the alternative writ, but did not hear the matter until the expiry of that Term. Subsequently, Mr. Justice Yussif D. Kaba, presiding in Chambers, during the October Term 2021 entertained arguments from the counsels representing the parties, did not make any determination of the matter, hence, the matter remained pending undetermined.

On March 23, 2022, Madam Justice Wolokolie, who succeeded Justice Kaba as the Justice in Chambers, conducted full hearing into the petition and thereafter, on May 13, 2022, upheld the ruling of the trial judge, quashed the alternative writ and denied the issuance of the peremptory writ of certiorari, and from which ruling the present appeal emanates. We quote herein below pertinent excerpts from the ruling of Madam Justice Wolokolie as follows, to wit:

“Undoubtedly, the Opinion of the Supreme Court rendered in the case referenced above concluded the issue of title to the 0.717 acre of land expropriated from Mr. John H. Richards in 1955, and which was subsequently occupied by the petitioners herein, Abi Jaoudi and Azar Trading Corporation. By that Opinion, the occupancy of the entire 0.717 acre of land by the Abi Jaoudi and Azar Trading Corporation is justified as such occupancy is derived from a lease agreement executed between the petitioners and the Government of Liberia that legitimately owns that parcel of land. It follows then that as to the 0.717 acre of land expropriated by the Government of Liberia and now occupied by the Abi Jaoudi and Azar Trading Corporation, the doctrine of *res judicata* applies to preclude the Testate Estate of John H. Richards from asserting any right of ownership as title has been conclusively adjudged as vested in the Government of Liberia.

In this case, however, the respondents are not asserting ownership to the particular parcel of land which was subject of the Supreme Court’s Opinion in 2018. As the records show, the complaint of summary proceedings to recover possession of real property filed by the respondents, essentially claims that the petitioners Abi Jaoudi and Azar Trading Corporation are illegally occupying 4.32 lots of land which is separate and distinct from the area of land included in the Supreme Court’s Opinion of 2018. This is confirmed in count 2 of the appellants/respondents’ resistance to the motion to dismiss filed by the petitioners/defendants in the court below, wherein they stated, “the subject matter of the prohibition proceedings involved only 0.57 acre or 2.28 lots of the property of the respondents which was leased by the Government of Liberia to Abi Jaoudi and Azar Trading Corporation, whereas the respondents’ current action is based on the unauthorized, illegal and wrongful entry by the movant[petitioners] on

additional 4.32 lots of respondents' property. This has nothing to do with the subject matter of the prohibition proceedings of 2018 as erroneously asserted by the movant [petitioners]". Thus, the gravamen of the respondents' case is that the petitioners have extended their occupancy beyond the parcel of land leased to them by the Government of Liberia.

Under the given facts and circumstances as herein presented, the petitioners' argument about and reliance on the principle of *res judicata* as a basis for seeking a dismissal of the respondents' complaint of summary proceedings to recover possession of real property is unmeritorious and untenable as the property subject of the summary proceedings is quite different and distinct from the property which was subject of the Supreme Court's Opinion of 2018. We therefore hold that the principle of *res judicata* is inapplicable in this case as this case is distinguishable from the case decided by the Supreme Court in 2018.

The petitioners' next contention is that title is at issue because the respondents acknowledged that the petitioner has a lease agreement with Odell Padmore for and in respect to one (1) town lot in addition to the property leased from the Government of Liberia through the General Services Agency. The petitioners therefore argued that summary proceedings to recover possession of real property will not lie.

The records show that in their complaint for summary proceedings, the respondents made reference to a lease agreement entered into between the petitioners and Odell Padmore of Texas, USA on June 1, 2005, under which lease agreement Odell Padmore granted to the petitioners one (1) town lot of land for a period of twenty (20) years. This reference, however, was made by the respondents in substantiation of their allegation that the petitioners were occupying more than the parcel of land legally given to them by Odell Padmore. At count 3 of their complaint of summary proceedings, the respondents referred to a survey of the Abi Jaoudi Supermarket land conducted upon the request of the General Services Agency by the Bureau of Land Information and Training Department of Lands, Surveys and Cartography of the Ministry of Lands, Mines and Energy (now the Ministry of Mines and Energy) on July 15, 2011, which showed that the Abi Jaoudi Supermarket was occupying 1.08 acres of land more than what the lease contained. This report and the acknowledgement of the petitioners lease with Odell Padmore were intended to establish the extent to which the petitioners have extended beyond the original limits of the parcel of land leased to them by Odell Padmore, and to also unmistakably show that the respondents' complaint of summary proceedings did not include the parcel of land leased to the petitioner by Odell Padmore and the Government of Liberia. I therefore disagree with the petitioners' contention that the acknowledgement made by the respondents to the lease agreement existing between the petitioners and Odell Padmore suffice to put title in issue in the court below.

WHEREFORE, AND IN VIEW OF THE FOREGOING, the alternative writ issued is quashed and the peremptory writ of certiorari denied. The Clerk is

ordered to send the mandate to the court below to resume jurisdiction and give effect to this ruling. AND IT IS HEREBY SO ORDERED”.

The appeal is now before the Supreme Court *en banc* for review of the ruling of the Justice in Chambers on the question of whether the doctrine of *res judicata* is applicable under the facts and circumstances of this case, and whether, as a matter of law, certiorari should lie.

The doctrine of *res judicata* serves two principal purposes, *viz.*: it bars a party from being sued twice on the same cause that has already been litigated, and it promotes the public interest in bringing litigation on a particular subject matter to a final conclusion.

The principle applies where there has been a determination on the merits and a final judgment rendered by a court of competent jurisdiction, which is conclusive as to the rights, questions, and facts at issue among the parties.

For the doctrine of *res judicata* to lie, three elements must be satisfied: (a) identity of the subject matter; (b) identity of the cause of action; and (c) identity of the parties or their privies. *Ministry of Finance v. Former Retirees of Bong Mining Co.*, Supreme Court Opinion, October Term, 2008; *Maryland Wood Processing Industries v. American Insurance Management Inc.*, 41 LLR 327, 329 (2003); *Liberia Mining Co. Ltd v. Lebbi*, 29 LLR 237, 245 (1981).

Our review of the records shows that the crux of the appellant’s motion to dismiss the action of summary proceedings to recover possession of real property, which motion was denied, thus giving rise to the present petition for a writ of certiorari, and the resistance thereto, is the contention that the ownership of the subject property has already been conclusively determined by the Supreme Court Opinion, March Term 2018 Opinion between the same parties, and therefore cannot be re-litigated in contravention of that judgment.

In our determination to resolve this controversy as the forum of last resort, we first take recourse to the Supreme Court’s 2018 Opinion.

The records reflect that the Testate Estate of John H. Richards, one of the co-appellees herein, on July 4, 2012, filed a petition for a writ of prohibition before the Justice in Chambers against the General Services Agency (GSA), acting on behalf of the Government of Liberia. The petition sought to restrain the Government from collecting lease rental payments from Abi Jaoudi and Azar Trading Corporation, the present appellants, pursuant to a 2001 lease agreement between the Government of Liberia and Abi Jaoudi. Following a hearing, the Justice in Chambers granted the petition and ordered the issuance of the peremptory writ of prohibition.

However, upon review by the Supreme Court *en banc*, following an appeal by the General Services Agency, and after due consideration of the record, the Court reversed the ruling of the Justice in Chambers in favor of the Testate Estate. The Supreme Court held, in essence, that prohibition would not lie to divest a party of title to real property, as only an action of ejectment is the proper remedy to establish title; and that the records contained evidence confirming that the Government of Liberia had paid compensation to the Testate Estate for

the same parcel of land. Accordingly, the Supreme Court's 2018 Opinion was clear and unambiguous in concluding that title to the 0.717 acre parcel of land described in the lease agreement vested in the Government of Liberia.

Regarding the present case, which emanates from the denial of the motion to dismiss, we have indicated that for the doctrine of *res judicata* to apply, three elements must be established: (a) identity of the subject matter; (b) identity of the cause of action; and (c) identity of the parties or their privies.

We must now apply these principles to the ruling of the Justice in Chambers, which affirmed the trial judge's decision denying the appellant's motion to dismiss the action of summary proceedings to recover possession of real property, to determine whether certiorari will lie under the facts and circumstances of this case.

First, for the doctrine of *res judicata* to attach, there must be identity of the subject matter. In determining whether the property in dispute in the present action is identical to that adjudicated in the Supreme Court's 2018 Opinion, we examine the nature of the actions in both proceedings. The 2018 Opinion arose from a petition for a writ of prohibition filed by the Testate Estate of John H. Richards against the General Services Agency (GSA) to restrain the collection of lease rentals for 0.717 acre of land leased to Abi Jaoudi and Azar Trading Corporation. In contrast, the present action is an action of summary proceedings to recover possession of real property measuring 4.34 lots, allegedly unlawfully occupied by the appellant. Moreover, in this case, the appellant asserts not only its leasehold rights under the 2001 lease with the Government but also claims rights pursuant to a separate lease agreement with Madam Odell Padmore.

Second, there must be identity of the cause of action. The records reflect that the 2018 matter involved a prohibition proceeding challenging the GSA's collection of lease rentals. The current proceeding is an action to recover possession of real property, initiated by four testate estates, including the Testate Estate of John H. Richards, against the appellant for alleged unlawful occupation of a different and larger parcel of land. This distinction demonstrates that the causes of action are not the same, defeating the second requirement of *res judicata*, and we so hold.

Third, there must be identity of the parties or their privies. In the 2018 case, the only parties were the General Services Agency and the Testate Estate of John H. Richards. In the instant matter, four testate estates, the Estates of Etmonia L. King, Nancy E. Cooper, John H. Richards, and Joseph G. Richards are the claimants, while the appellant is Abi Jaoudi and Azar Trading Corporation. Because three of the four estates were not parties to the 2018 proceeding, and because the Government of Liberia, through the GSA, was the opposing party in that case, the identities of the parties are clearly dissimilar.

Additionally, the appellant contends that it holds a lease agreement with Madam Odell Padmore for one lot of land, in addition to the lease agreement with the Government of Liberia, and thus title is in dispute, rendering summary proceedings to recover possession of real property unavailable as a matter of law. However, this Court notes that the matter is before us

on certiorari and not on regular appeal; we therefore cannot address the merits of the pending action.

It is settled law that *res judicata* does not apply where the current and prior cases are distinguishable in subject matter, cause of action, or parties. *Harding v. Harding*, 32 LLR 582, 586 (1985). In view of the clear distinctions between the prior prohibition proceeding and the present summary proceedings action, and absent any evidence offered by the appellant showing that the present claim was previously determined on the merits, this Court finds no basis to uphold the plea of *res judicata*.

As this Court has reiterated, *res judicata* can be invoked only where there has been a final judgment rendered upon the merits by a court of competent jurisdiction, conclusively resolving the rights, questions, and facts in dispute. *Maryland Wood Processing Industries v. American Insurance Management Inc.*, 41 LLR 327, 337 (2003); *Kiazolu v. Pearson*, 35 LLR 550, 562 (1988). Further, it is well established that a party relying on *res judicata* bears the burden of introducing evidence proving that the issue was actually litigated and necessarily determined in the prior action. *Liberia Mining Co. Ltd. v. Lebbi*, 29 LLR 237, 245 (1981).

Hence, noting the clear distinctions between the prior prohibition proceeding in the case *The General Services Agency (GSA) v. Testate Estate of John H. Richards*, Supreme Court Opinion, March Term, 2018 and the present action of summary proceedings to recover possession of real property, and absent any evidence proffered by the appellant showing that the present claim was previously determined on the merits, the doctrine of *res judicata* is inapplicable and we so hold.

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. Civil Procedure Law, Rev. Code 1:16.21(1); *Jawhary v. Greaves*, 40 LLR 489, 491 (2001). It also concerns itself only with records; it is to review records and correct prejudicial errors of a trial court during the pendency of a case. *Jidsanc Inc. et al v. Pearson et al*, 35 LLR 742, 752 (1988). Hence, this Court having held that the ruling of the Justice in Chambers, affirming the ruling of the trial judge was proper, and that the doctrine of *res judicata* is inapplicable to the instant case, certiorari will not lie to review the said ruling as a matter of law.

WHEREFORE, AND IN VIEW OF THE FOREGOING, the Ruling of the Chambers Justice confirming the ruling of the trial judge in which he denied the petitioner's motion to dismiss is affirmed. The alternative writ issued is quashed and the peremptory writ of certiorari is denied. The Clerk of this Court is 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. Costs to abide final determination. AND IT IS HEREBY SO ORDERED.

*Affirmed.*

*When this case was called for hearing, Counsellor J. Johnny Momo appeared for the appellant. Counsellor Frances Johnson Allison appeared for the appellee.*