

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

Mr. Massaquoi M. Kamara of the City of Paynesville,)
 Montserrado County, Liberia.....Appellant)
)
 Versus) APPEAL
)

International Bank (Liberia) Limited, represented by its)
 General Manager, Mr. Joseph K. Amin and Chief Executive)
 Officer, Mr. Henry G. Saamoi, of the City of Monrovia,)
 Montserrado County, Republic of Liberia.....Appellee)
)

GROWING OUT OF THE CASE:)
)

International Bank (Liberia) Limited, represented by its)
 General Manager, Mr. Joseph K. Amin and Chief Executive)
 Officer, Mr. Henry G. Saamoi, of the City of Monrovia,)
 Montserrado County, Republic of Liberia.....Petitioner)
)

Versus) PETITION FOR THE WRIT
) OF CERTIORARI
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His Honor, Yussif Kaba, Resident Judge, Civil Law Court,)
 Sixth Judicial Circuit, Montserrado County, Republic of)
 Liberia.....1st Respondent)
)

And)
)

Mr. Massaquoi M. Kamara of the City of Paynesville,)
 Montserrado County, Liberia.....2nd Respondent)
)

GROWING OUT OF THE CASE:)
)

International Bank (Liberia) Limited, represented by its)
 General Manager, Mr. Joseph K. Amin and Chief Executive)
 Officer, Mr. Henry G. Saamoi, of the City of Monrovia,)
 Montserrado County, Republic of Liberia.....Movant)
)

Versus) MOTION TO RESCIND
) JUDGMENT
)

Mr. Massaquoi M. Kamara of the City of Paynesville,)
 Montserrado County, Liberia.....Respondent)

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This appeal calls for a review of a Chambers ruling of our colleague, now of sainted memory, Mr. Justice Joseph N. Nagbe, in which he granted the writ of certiorari prayed for by the appellee, the International Bank (Liberia) Limited (IBB), rescinding the erroneous ruling of Judge Peter W. Gbenewelleh in a petition for foreclosure of mortgage filed by the appellee.

The writ of certiorari centered around an uncontested error said to have been committed by His Honor, Judge Peter W. Gbenewelleh in a ruling made during the December 2015 Term of the Sixth Judicial Circuit, Civil Law Court, Montserrado County. However, a motion to rescind his ruling filed during the March 2016 Term of court by the appellee, was denied by the Judge on the ground that his rescission would be an error since to consider rescinding said ruling, it had to be made during the same term.

The error committed by the Judge that necessitated the filing of the motion to rescind his ruling is credited to the Judge's decision to have Mr. William Wilson join as co-respondent in the foreclosure proceedings filed by the appellee Bank in the Civil Law Court against the appellant Massaquoi M. Kamara, and to order the appellee to terminate its lawsuit against the said William Wilson at the Commercial Court since it bordered on the same averments contained in the foreclosure proceedings at the Civil Law Court.

The uncontested facts, relative to the motion to rescind are that a petition for foreclosure on a mortgage agreement was filed in the March Term A.D. 2015 at the Civil Law Court by the appellee Bank against the appellant, Mr. Massaquoi M. Kamara and his wife, Mrs. Florence Amba Kamara. The appellee Bank sought to recover unpaid loan facility totaling United States Four Hundred Eighty-Six Thousand Nine Hundred Fifty-Eight Dollars Thirteen Cents (US\$486,958.13) against the appellant Kamara, predicated upon the failure, refusal, and neglect of his company, Georgia Enterprises, to settle its indebtedness with the co-appellee Bank, and to foreclose the mortgage given by the appellant as security for the loan in the Civil Law Court.

The appellant filed a motion before the court to dismiss the foreclosure on the basis of *lis pendis* and unjust enrichment, alleging that he and Mr. William H. Wilson, as co-owners of Georgia Enterprise, Inc., with thirty percent (30%) share each, jointly executed the overdraft agreement with the appellee-Bank, and had both signed mortgage agreements on their properties as collateral for the loan taken; that they had failed on the loan agreement and the appellee Bank had sued to foreclose mortgage on appellant's property in the Civil Law Court for the subject

amount of indebtedness, and had similarly proceeded to foreclose the mortgage on William H. Wilson property at the Commercial Court for the same amount. The appellant prayed the court to take judicial notice of the appellee's claim in both courts since if the appellee bank succeeds in both courts it stands to be unjustly enriched.

In countering the motion to dismiss for *lis pendis* and unjust enrichment, the appellee contended that the petition filed in the Commercial Court against William Wilson and Taah Wilson neither involves the same parties in the case at the Civil Law Court, nor the same mortgage deed agreement; that the Wilsons in the case before the Commercial Court had executed and signed in favor of the appellee a separate and distinct mortgage deed agreement; and assuming that the appellee bank stands to be unjustly enriched were it to prevail in both cases, same is a factual issue which cannot be determined by way of a pre-trial motion.

Judge Gbenewelleh ruled denying the appellant's motion to dismiss on the basis of *lis pendis*, and ordered that Mr. William H. Wilson be joined in the law suit pending undetermined before the Civil Law Court, and that the appellee terminates its action at the Commercial Court. His ruling is quoted in part, as follows:

“This court says that the motion to dismiss for *lis pendis* and unjust enrichment is cognizable before the commercial court where this same action was subsequently instituted for the recovery of the amount of the loan since indeed and in truth, the first petition was filed with the Civil Law Court in March 2015. The motion to dismiss for *lis pendis* can be filed before the second tribunal or the second court adjusting the claim of the pendency of an action pending between the same parties for the same purpose in this Republic. In other words, the motion to dismiss for *lis pendis* cannot be instituted before the same court where the action was first filed because the first court has resumed jurisdiction over the parties and the second court cannot again assume jurisdiction over the same parties that are before the first court of competent jurisdiction in the Republic.”

In concluding his ruling, however, the judge noted, “this Court on its own can join William Wilson as co-respondent and he is hereby so joined as co-respondent in these foreclosure proceedings. The clerk is hereby ordered to serve him with the writ of summons along with the complaint to enable him file his returns to enable this Court give a complete relief to the parties and to avoid multiplicity of suits and unjust enrichment. The petitioner/bank should therefore terminate its petition before the Commercial Court. So Ordered.”

The appellee Bank took exception to this ruling and filed a petition for the writ of certiorari before the Chambers Justice. The Chambers Justice called for a conference with the parties and during the conference, His Honor Judge Gbenewelleh conceded his misunderstanding of the facts of the case, and agreed to rescind said ruling upon the petitioner filing a motion

to rescind ruling. However, when the motion to rescind was filed, the judge denied same on grounds that it had been filed out of term time. For emphasis, we quote the relevant portion of Judge Gbenewelleh's ruling:

“At the call of the motion to rescind the judgment hearing, counsel for respondent spread his resistance on the records contending among other things that the motion should be denied because the judgment for the motion to rescind was rendered during the December Term A.D. 2015; contrary to practice and procedure hoary with age, this court says it observed its mistake in that ruling and is under obligation to rescind said ruling, but the movant did not timely move the court to rescind the judgment during the December Term A.D. 2015 until the succeeding term of court of this Honorable Court. This court says that the contention of the respondent counsel is supported by law in this jurisdiction. Wherefore, and in view of the foregoing, the motion to rescind is hereby denied and the resistance thereto sustained.”

We see from the records that thereafter the appellee filed a second motion to rescind, this time, before His Honor Yussif D. Kaba during the March Term of the Civil Law Court, A.D. 2017. This motion, the records show, was heard and denied on the principle that a judge of concurrent jurisdiction cannot review or rescind the decision of his predecessor, no matter how erroneous the decision. The appellee bank then proceeded to file another petition for a writ of certiorari, seeking to correct the errors in judge Kaba's ruling and contending principally that a judge of concurrent jurisdiction may be allowed to rescind or review the ruling/decision of another where the certified records establish that the ruling/decision entered is as a consequence of a mistake, and provided further that the authority for such a review is grounded in a mandate from the Supreme Court. The appellant relied on Section 41.7 (2) of the Civil Procedure Law.

The Chambers Justice issued the alternative writ and the respondent having filed its resistance to the petition as commanded, the Chambers Justice heard the petition and ruled declaring that Judge Peter Gbenewelleh's ruling of February 9, 2016, wherein he, on his own, consolidated two actions in two separate courts, was wrong; however, Judge Kaba's ruling denying the motion to rescind judgment filed by the appellee was done in keeping with law as this Court has continuously held that no circuit judge has the power to review, modify, or rescind any decision or act by another circuit judge who is of the same official hierarchy no matter how erroneous the act of his colleague may be.

We note that the appellant Kamara excepted to the Chambers Justice's ruling and appeal to the Full Bench of the Supreme Court; however, he failed to follow up with his appeal. The Court, during the call of the case having noticed the numerous absences of the appellant when it calls for hearing of his appeal, ruled that the Court would enter upon the records and

ruled as the case had been pending on the docket far too long. Based on the records reviewed by the Court, the issues we find determinative for the resolution of this matter are as follows:

- 1) Whether Judge Kaba, under the facts and circumstances, could have reviewed the ruling of Judge Peter W. Gbenewelleh, a predecessor judge of concurrent jurisdiction?
- 2) Whether Judge Peter W. Gbenewelleh having admitted in Chambers to error made in his ruling, and the matter sent back for rescission of his ruling, could have subsequently denied said motion to rescind his ruling on grounds that it was filed out of term time, when he was the same judge presiding when the motion was filed?

As to whether Judge Kaba under the facts and circumstances of the case could have reviewed the ruling of Judge Peter W. Gbenewelleh, this Court holds that it is a law extant in our jurisdiction that no judge of concurrent jurisdiction can review, modify or rescind any decision of a predecessor judge who is of the same official hierarchy, whether that decision is right or wrong, except the records show that the act or judgment of his colleague is void ab initio and has support under our Civil Procedure Law Rev. Code 1: 41.7 (2), or by a Mandate of the Supreme Court.” (*The Intestate Estate of the Late Alhaji Massaquoi v. A.M.E. Church*, Supreme Court Opinion, October Term, A.D. 2014; *Sarnon v. Sherman*, Supreme Court Opinion, March Term, A.D. 2012; *Kpoto v. Kpoto*, 34 LLR 371, 382 (1981). This Court says that it therefore agrees with the Chambers Justice’s ruling, upholding that Judge Kaba correctly applied the law in declining to review his predecessor’s ruling.

Speaking to the second issue, this Court says that Judge Peter W. Gbenewelleh, in a conference called by the Justice in Chambers, admitted to error being made in his ruling of December 2015, and an understanding was reached that the matter would go back to the court below for the appellee to file a motion to rescind Judge Gbenewelleh’s ruling and the motion to rescind would be entertained and acted upon by the Judge. The trial Judge’s dismissal of the appellee bank motion to rescind that was subsequently filed was unfair and erroneous. The Judge’s admission of a mistake made in his ruling of December 2015, which prompted the Chambers Justice to send back the matter to the court below, said ruling constituted a constructive Mandate from the Supreme Court for the Judge to proceed with the matter and have the appellee file its motion to rescind and have it heard. Therefore, Judge Gbenewelleh denial to entertain the motion to rescind on the grounds that it was filed out of term time, especially where he was the same Judge reassigned and presiding in the term constituted a disobedience of the Court’s Mandate. His refusal to entertain the

appellee's motion to rescind illustrates how wrongly judges use procedural technicality, and thereby contribute to an endless cesspool of litigation.

This Court has held that no litigant should be made to suffer on account of acts done or omitted to be done by a judicial official or officer. *Municipal District of Buchana et al., v. Bridgeway Corporation*, 36 LLR 470, 481 (1989); *Sauid v. Gebara*, 15 LLR 598 (1964).

Recently, in an ejectment action, *Rocky Marshall et al v. The Intestate Estate of Solomon Edward et al*, Supreme Court Opinion, October Term, A.D. 2023, Judge Dunbar presiding over said case during the June Term 2018, heard evidence as well as arguments on the motion for new trial but failed to render judgment during the end of the term time; he was subsequently reassigned to the same court during its next term, September 2018 Term of Court and a challenge was posed to him rendering a final judgment in the case during the succeeding term. Upon appeal, the Court held that it was irrational to require that the Judge hear the case anew simply because he did not render the ruling on the motion for new trial during the previous term. In its Opinion, the Court rationalized that once a judge is reassigned to the same court, he must not use procedural technicality to stifle the effective management of the court's docket by avoiding ruling on matters that he had heard during a previous term. The circumstances of this case not being dissimilar, we so hold that Judge Gbenewelleh was even more in a compelling position to grant the motion to rescind his erroneous decision.

As to the appellant's contention of unjust enrichment, we hold that same is untenable in that our laws controlling on mortgage provides that a mortgagee is only entitled to the proceeds of the mortgaged property that includes the principal debt amount as well as all accrued interests and penalties and other expenses incidental to the foreclosure proceedings. *Commercial Code*, Title 7, Chapter 6:6.25. Therefore, any excess of the loan amount outstanding from sales of the foreclosure property should be paid back to the appellant.

This Court has held that certiorari is a special proceeding to review and correct prejudicial errors of a trial court during the pendency of a case. *Vargas v. Reeves et al.*, 39 LLR 368 (1999); *Wright v. Reeves*, 26 LLR 38 (1977). Hence, the ruling of our colleague granting the appellee's application for the writ of certiorari will not be disturbed.

WHEREFORE AND IN VIEW OF THE FOREGOING, the Clerk of this Court is ordered to send a Mandate to the court below, ordering the judge presiding therein to rescind the December 2015 Ruling of Judge Peter W. Gbenewelleh, and to proceed with the hearing on the petition for foreclosure of the mortgage. Costs to abide final determination. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR FOR THE APPELLANT FAILED TO APPEAR. COUNSELLOR ABRAHAM B. SILLAH SR. OF THE HERITAGE PARTNERS AND ASSOCIATES LLC APPEARED FOR THE APPELLEE.