

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: CEATNEH D. CLINTON JOHNSON.....ASSOCIATE JUSTICE

Quality Group Construction, represented by its )  
Chief Executive Officer Jakona Kelvin Buima, )  
and all its corporate officers of the City of )  
Monrovia, Liberia.....Petitioner )

Versus ) Petition for Re-argument

His Honor Othello S. Payman, Associate Judge )  
Commercial Court of Liberia and S.S.F. )  
Entrepreneur Inc. represented by its Chief )  
Financial Officer, Arif Ghani, and all its )  
corporate officers of the City of Monrovia, )  
Republic of Liberia.....,,,,,,.....Respondents )

GROWING OUT OF THE CASE: )

His Honor Othello S. Payman, Associate Judge )  
Commercial Court of Liberia and S.S.F. )  
Entrepreneur, Inc., represented by its Chief )  
Finance Officer, Arif Ghana, and all its corporate )  
officers, of the City of Monrovia, Republic of )  
Liberia.....Appellants )

Versus ) Appeal

Quality Group of Construction Companies, )  
represented by its Chief Executive Officer, )  
Jakon Kelvin Buima, Sr., and all its corporate )  
officers of the City of Monrovia, Liberia )  
.....Appellee )

Heard: January 14, 2025

Delivered: May 28, 2025

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

On July 23, 2024 the Supreme Court *en banc* heard arguments on an appeal arising from a ruling of the Justice in Chambers, in a petition for a writ of prohibition filed by the appellee, Quality Group Construction Company, which essentially prayed the Chambers Justice to restrain, restrict and prohibit the enforcement of the judgment of the trial court judge for want

of subject matter jurisdiction as the appellant had filed an action for damages for breach of contract and debt by attachment and garnishment against the appellee before the Commercial Court after the co-appellant had requested the appellee to make good his check but the appellee failed to do so.

The Justice in Chambers issued the alternative writ and ordered the appellant to file its returns; subsequently he had a hearing and ruled granting the peremptory writ of prohibition. The Justice ruled that the language of the Act Creating the Commercial Court is clear as to its purpose and intent, and is void of any ambiguity, and taking cue from what has been espoused in the Act, he was in full agreement with the appellee that an action of damages for breach of contract is not triable by the Commercial Court of Liberia, and therefore held that the trial judge acted outside the province of his court. The presiding Justice relied on the cases, *Scanship (Lib) Inc. v. Flomo*, 41 LLR 181 (2002); *Dwanyen et al v. RL et al*, 3 LLR 354 (1987), and *MIM Liberia Corp v. Toweh*, 30 LLR 611 (1983).

The S.S.F. Entrepreneur Inc., appealed the Justice in Chambers' ruling to the Full Bench for its review, and the Court, on August 27, 2024, ruled overturning the Chambers Justice's ruling, and the appeal on the following 2 grounds:

“That this Court has held that a cause of action is determined by the averments in the pleadings and not the caption or title of said case; hence, the trial court properly assumed jurisdiction and tried the case as an action of debt; and

That the trial court having entered final ruling in the case, the remedy available to the appellee was an appeal and not prohibition; as such, the ruling of the trial court is binding upon the appellee.”

The petitioner herein, Quality Group of Constructions Companies, filed before us a petition for re-argument, alleging that the Supreme Court made a palpable mistake when it ruled as it did on August 7, 2024. His Honor Justice Yussif D. Kaba, in accordance with the Revised Rules of the Supreme Court, signed the petition for re-argument thereby making said case re-docketed for hearing a second time.

The Revised Rules of the Supreme Court on re-argument states:

“Part 1. Permission for - For good cause shown to the Court by petition, a re-argument of a cause may be allowed only once when some palpable substantial mistake is made by inadvertently overlooking some facts or point of law.”

We note that Counsellor Sayma Syrenius Cephus, who waived argument of this case when it was heard on June 24, 2024, has now come in this petition for re-argument before this Court, contending the following:

3. Petitioner [Quality Group of Construction Companies] submits that the Opinion out of which this petition grows for re-argument is for a petition for a writ of prohibition which was determined by His Honor Yamie Quiqui Gbeisay Sr., presiding in Chambers by assignment, growing out of an action of damages for wrong and debt by attachment which was heard and determined by the Commercial Court of Liberia. See sheets 187-201 of the certified records.
4. Petitioner submits and says the controversy that this matter generates is not necessarily over the caption of the case; instead, the controversy is over claims and counterclaims regarding performance and non-performance growing out of a clause in the agreement which reads: "Tidy up site after completion to the satisfaction of the main Contractor." The main contractor in the subcontract was the appellee [Quality Group of Construction Companies] which after the alleged completion of the contract conducted a careful inspection of the road and found out that appellant did not "ensure that all safety measures were strictly adhered to on the site", and therefore, the work was not done to the satisfaction of appellee [Quality Group of Construction Companies] as required under the "Scope of Works." The Court inadvertently overlooked this controversy which is purely a contractual argument bordered on performance and non-performance.
5. The appellee maintained that contrary to the technical specification of the contract the appellant laid the asphalt that resulted to defects on the road with visible potholes. This was the critical argument that appellee proffered as in keeping with the terms and condition of the agreement as incomplete performance of the contract which is an issue of fact and should have been determined by a trial jury. Had the Court not inadvertently overlooked this part of the argument, it would have ruled in favor of appellee...See sheet 77 of the certified records.
6. The issue of the poor laying of asphalt that resulted to defects on the road with visible potholes was never rebutted, instead, the appellant based the theory of its entire case on the payment of US\$576,000.00 made, to the appellee, although with the proviso of correcting all of the defects, as a basis of its action of damages for breach of contract, debt by attachment and garnishment. The Court inadvertently overlooked the fact that the agreement between appellee and appellant did not state that when Ministry of Finance makes full payment to appellee under any condition, appellant is automatically entitled to payment whether or not it has satisfactorily completed the road contract to the satisfaction of appellee. Had the court not inadvertently overlooked this part of their agreement, it would have ruled in favor of appellee [Quality Group of Construction Companies].
7. Further, it is the law that instructs that all issues presented before the lower court must be passed upon. In the instant case, there is no showing or any records to prove that a ruling for 'action of damages for breach of contract' a suit in equity was ever rendered by the lower court. This court inadvertently overlooked this issue and ruled that "We believe that the Commercial Judge recognized from the complaint filed by the Co-appellant that the caption thereon was ambiguous as it claimed alleged

damages and debt, but however, he proceeded to hear the case since the averment alleged debt...". See page 6 of the ruling.

8. This court inadvertently overlooked the lower court's ruling that tend to combine two separate actions into one action, and render a single ruling thereto, when in fact an action of damages for breach of contract and action of debt and garnishment are not twin or actions as they are separate and distinct with different reliefs, and the former is a suit in equity, and the latter a debt action and none is subservient to the other, and none can absorb the other and the dismissal of one or the granting of one does not automatically dismiss the other.
9. This Court inadvertently over-sighted the fact the Appellant became the lone and rebuttal witness and did not contradict or disprove the allegations of appellee's two witnesses who corroborated each other in their testimonies. Had the Court not inadvertently over-sighted part of the testimony that consultants from BK Enterprise and ministry of public works and appellee's engineers visited the road and noticed defects and potholes, which is factual issue, and can only be addressed in action of damages for breach of contract, the court would have ruled in favor of petitioner.
10. Further, the Court inadvertently over-looked the fact that the testimonies of appellee's witnesses were never denied or rebutted, and therefore, are deemed to be true and correct. Had the court not inadvertently over-sighted the fact that appellant woefully failed to rebut appellee witnesses' testimonies, it would have ruled in favor of appellee. See 1LCL Revised 9.8(3), defenses and objections.

The petitioner contents that had the Court not inadvertently and mistakenly overlooked the points of law and facts as stated in its petition, a different result would have obtained in the case out of which the petition grows; that the Supreme Court's had ruled on the issue of the caption of the case and not on the substantial issue that the work done was not done as anticipated.

We must revisit the facts and petition filed by the appellee before the Chambers Justice Gbeisay and his ruling thereon which was reviewed and overturn by the Bench and see whether this Court did in fact overlooked any issue as alleged by the appellee that would have brought a different result in the Court's ruling.

The facts as narrated in our previous Opinion of August 27, 2024, are that the Co-appellant S.S.F. Entrepreneur Inc. alleged that it was subcontracted by the appellee to lay out an asphalt pavement of one (1) layer of a road having a length of 2.0KM and width of 7.0m to be done within 10 days and for the consideration of United States One Hundred Thousand Dollars (USD\$100,000.00); that the payment of the agreed amount by the appellee to the co-appellant would be made upon the appellee's receipt from the Ministry of Public Works of eighty percent (80%) payment milestone on its implemented contract between the appellee and Public Works; the co-appellant admitted to receiving from the appellee the sum

of Twenty Thousand United States Dollars (USD20,000.00) against the One Hundred Thousand payment agreed to by the parties; thereby, leaving a balance payment of Eighty Thousand United States Dollar (USD\$80,000.00). The appellant alleged that subsequently, on July 2, 2022, the appellee received the amount of Five Hundred and Seventy-Five Thousand United States Dollars (USD\$576,000.00), representing the eighty percent (80%) payment milestone on the implemented project from the Ministry of Public Works after the latter had examined the road works and certificated the appellee for the completion of the work. The appellee then issued a check of Eighty Thousand United States Dollar (US\$80,000.00) to the appellant who took it to the International Bank, Liberia Limited (IBLL) for payment. The IBLL had the check returned with notations, "Refer to Maker"/ "Insufficient Funds".

The appellee filed its answer along with a motion to vacate, contending that it does not deny that it subcontracted the co-appellant to lay out 1 layer of asphalt pavement on an already compacted road (emphasis ours) in keeping with the technical specification provided by the Ministry of Public Works, also that the Government did pay the appellee Five-Hundred and Seventy Six Thousand United States Dollars (US\$576,000.00) representing 80% payment milestone on the implemented contract; that the appellee's only contention is that it inspected the road and discovered pot holes due to substandard asphalt used by the co-appellant and orally requested the co-appellant, S.S.F. Entrepreneur, Inc. to cure the defect but the co-appellant refused to do so.

The appellant filed its reply countering the appellees answer, stating that the road on which it was requested to carry out asphalt pavement was not constructed, treated and compacted by the appellant, but that said road was constructed, treated, and compacted by the appellee; that the sub-contract between the parties only agreed that the appellant would carry out one(1) layer of asphalt pavement on an already treated and compacted road in keeping with the technical specification provided by the Ministry of Public Works, said road having a length of 2.0KM and width of 7.0m, to be done within 10 days within ten (10) days; that the appellant could not have been contracted to construct, treat and compact the said road within ten days. The appellant submits that it did carry out the asphalt pavement as it was contracted to do on the already constructed road mentioned, within ten (10) days, and in consequence of which the Ministry of Public Works issued appellant a certificate of completion of work, that the appellee then, upon payment from public works, proceeded to pay the appellant, but upon presentation of the appellee's check for payment to the bank, the check was rejected with the notation, "Refer to Maker"/ "Insufficient Funds"; that neither the appellee nor Public Works had raised issues in respect of the any defects in the asphalt pavement done by the appellant

and when the appellant wrote to the appellee demanding the balance payment of United States Eighty Thousand (US\$80,000.00) the appellee did not raise the issue of defects in the appellant's work, especially when it was the appellant that constructed, treated and compacted the road. The appellant submitted that the answer of the appellee was false, misleading, and only intended to deny the appellant its legitimate earned funds which the appellant prayed that a court of justice should not countenance.

Pleadings having rested, the records of the case reveal that the Commercial Court Judge called for a pretrial and after which the Judge ruled and forwarding the case to trial in order for the appellant to establish the claim of debt for satisfactory completion of the scope of work as per its contract with the appellee, and on the other hand, for the appellee to establish that the co-appellant did not satisfactorily do its work under the contract. At the conclusion of the trial, the Commercial Court Judge rendered a final judgment on the 25<sup>th</sup> day of April, 2023, finding the appellee liable to the co-appellant SSF Entrepreneur, Inc. in the amount of United States Dollars Eighty Thousand (US\$80,000.00) representing the balance indebtedness of the appellee to the co-appellant under their contract, plus six percent (6%) statutory interest.

The appellee excepted to the Commercial Court Judge's final ruling and announced an appeal to this Honorable Court. We saw in the records that the appellee subsequently taxed and signed the bill of costs on April 27, 2023 after the appellant had taxed and signed same on April 26, 2023. The Commercial Court Judge, His Honor Othello S. Payman, had approved the bill of costs on April 27, 2023; that despite taxing the bill of costs and signing same, the appellee, thereafter, on May 11, 2023, filed a petition for a writ of prohibition before the Justice in Chambers, basically contesting the caption of the appellant S.S.F. Entrepreneur, Inc.'s case filed before the Commercial Court. The appellee alleged that the Commercial Court lacks jurisdiction over a vague and indistinct cause of action designated as "Action of damages for breach of contract and debt by action and garnishment"; that Judge Othello S. Payman of the Commercial Court should not have entertained the matter since an Action of Damages for Breach of Contract/Debt by Attachment and Garnishment. The appellee argued that a Breach of Contract would require fact finding which is the office of a trial jury in such cases; hence, the Commercial Court lacked jurisdiction to have entertained the co-appellant's action.

The Justice in Chambers after a conference with the parties, had the alternative writ issued requesting the co-appellant to file its returns.

The appellant filed its returns and cited Article II of the Act creating the Commercial Court, particularly Part 4(d), which provides, "*Commercial claims and matters over which the*

*Commercial Court shall have jurisdiction to include without limitation: d) a business document or contract.*” The co-appellant argued that its complaint outlining the facts and circumstances surrounding how and why the appellee is indebted to it for contract services done cannot simply be set aside on the basis that the structure, format and wordings of its caption failed to demonstrate the intent of the case filed, which was debt. Furthermore, the co-appellant argued that the court’s jurisdiction and authority to adjudicate this controversy can be gleaned from the averments contained in its pleadings and briefs. Therefore, it concluded that the Commercial Court Judge ruled properly when he awarded the co-appellant judgment, and found the appellee liable to the co-appellant for the unpaid balance of Eighty-Thousand (USD\$80,000), for which said court had jurisdiction to hear and rule on.

As stated *supra*, the Justice in Chambers ruled that that the language of the Act Creating the Commercial Court is clear as to its purpose and intent, and is void of any ambiguity, and taking cue from what has been espoused in the Act, he was in full agreement with the appellee that an action of damages for breach of contract is not triable by the Commercial Court of Liberia, and therefore held that the trial judge acted outside the province of his court.

This Court says that it did deal with the issue ruled on by the Chambers Justice. In settling the issue, of jurisdiction, we held that the Supreme Court has held that a cause of action is determined by the averments in the pleadings and not the caption or title of said case; hence, the trial court properly assumed jurisdiction and tried the case as an action of debt.

Besides the Court also held that the trial court having entered a final ruling in the case, and the appellant announced an appeal therefrom, the appellee should have pursued its appeal as it is a trite law by this Court that prohibition cannot be substituted for an appeal.

Where the appellee announced an appeal, taxed and signed the bill of costs, when it had a change of mind regarding the ruling of the Commercial Court, the appellee should have then pursued its appeal, and not seek a remedial writ after a final judgment was made, an appeal announced and the bill of costs taxed and signed. This Court therefore maintains its previous judgment under the circumstances of the case, that prohibition will not lie in such instances.

The Court therefore holds that the petitioner’s petition for re-argument not having set forth any facts or point of law overlooked by this Court, the Court’s Judgment of August 27, 2024, will not be disturbed.

WHEREFORE AND IN VIEW OF THE FOREGOING, the petition for re-argument is hereby 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 proceed with the

enforcement of this Court's Judgment of August 27, 2024. Costs are ruled against the petitioner. AND IT IS HEREBY SO ORDERED.

**WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR SAYMA SYRENIUS CEPHUS, APPEARED FOR THE APPELLEE. COUNSELLOR J. JOHNNY MOMOH OF THE J. JOHNNY MOMMO AND ASSOCIATES LEGAL CHAMBERS APPEARED FOR THE APPELLANT.**