

IN THE HONORABLE 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 : YAMEI QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

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, R.L )  
.....Appellant )

Versus )

Appeal )

Quality Group Construction, represented by its )  
Chief Executive Officer Jakona Kelvin Buima )  
And all its Corporate Officers of the )  
City of Monrovia, Liberia.....Appellee )

GROWING OUT OF THE CASE: )

Quality Group of Construction Companies, )  
represented by its Chief Executive Officer, )  
Jakon Kelvin Buima, Sr., and Chief Operations )  
Officer, Mrs. Mayatu J. M. Buima and all of its )  
Corporate Officers, also of the City of Monrovia, )  
Montserrado, County, Republic of Liberia )  
.....Petitioner )

Versus )

Petition for the )  
Writ of Prohibition )

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 of its )  
Corporate Officers, of the City of Monrovia, )  
Montserrado County, Republic of Liberia )  
.....Respondents )

GROWING OUT OF THE CASE: )

S.S. F. Entrepreneur Inc., represented by its )  
Finance Officer, Arif Ghana and all of its )  
Corporate Officers, of the City of Monrovia, )  
Montserrado County, Republic of Liberia )  
.....Plaintiff )

Versus )

Action of Damages for Wrong )  
and Debt by Attachment and )  
Garnishment )

Quality Group of Construction Companies, )

Represented by its Chief Executive Officer, )  
Jakona Kelvin Buima, Sr., and Chief Operations )  
Officer, Mrs. Mayatu J. M. Buima and all of its )  
Corporate Officers, also of the City of Monrovia, )  
Montserrado, County, Republic of Liberia )  
.....Defendant )

Heard: June 24, 2024

Delivered: August 27, 2024

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This appeal has come before us for final determination from a ruling of the Justice in Chambers, in a petition for a writ of prohibition filed by the appellee, Quality Group Construction Company, essentially praying the Chambers Justice to restrain, restrict and prohibit the enforcement of the judgment of the trial court judge for want of subject matter jurisdiction.

Summarizing the facts, the appellee, Quality Group Construction Company, was adjudged liable at the Commercial Court to the co-appellant, S.S.F. Entrepreneur Inc., for an action filed by the co-appellant to recover the amount of Eighty Thousand United States Dollars (USD\$80,000.00). 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" and "Insufficient Funds".

The appellant 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 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 the already compacted road in keeping with the technical specification provided by the Ministry of Public Works, also that the Government paid 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 Commercial Court Judge called for a pretrial conference which was held. The Judge thereafter ruled the case to trial in order for the co-appellant to establish its 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.

A trial was regularly held and at the conclusion of the trial, the Commercial Court Judge rendered a final judgment on the 25<sup>th</sup> day of April, 2023. The co-appellant Judge, His Honor Othello S. Payman adjudged the appellee liable to the co-appellant SSF Entrepreneur, Inc. 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 see however in the records a bill of costs taxed and signed by both counsels for the appellant and appellee on April 26, 2023, and April 27, 2023 respectively. The Commercial Court Judge, His Honor Othello S. Payman, I approved the bill of cost on April 27, 2023.

Interestingly, the appellee on May 11, 2023, filed a petition for prohibition before the Justice in Chambers alleging that the Commercial Court Judge Othello S. Payman presiding lacked subject matter jurisdiction over what it termed as a vague and indistinct cause of action designated by the co-appellant as 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 respondent 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 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.

The Justice in Chambers after a hearing ruled granting the peremptory writ of prohibition. He held in his ruling 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 *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).

It is from this decision of the Chambers Justice ordering issued the peremptory writ of prohibition mandating the commercial court to vacate jurisdiction of this case that the co-appellant, S.S.F. Entrepreneur Inc., appealed to the full bench of this Court to review the Chambers Justice’s ruling.

We are now faced with determining whether our Colleague upholding the appellee’s petition and granting the peremptory writ mandating the Commercial Court to vacate jurisdiction because the court lacked Jurisdiction, should be upheld?

In answering this question, we must take recourse to the contention questioning the jurisdiction of the Commercial Court in this matter. The co-appellant argues that from the facts and circumstances pleaded, the wordings, structure and format of its complaint before the Commercial Court, when taken and read in totality, essentially triggered an action of debt in an amount far above the Fifteen-Thousand (USD\$15,000) threshold of the Commercial Court;

thus, its action filed was a fit subject for judicial determination of that Court. The appellee, on the other hand, contends that the caption and title of the complaint stating a breach of contract meant that the Commercial Court did not have the jurisdiction to hear the case, since matters of breach of contract is triable by a jury.

Referring to the caption of the case filed before the Commercial Court, we note the contention regarding the caption which is written: "Action of damages for Breach of Contract and Debt by Attachment and Garnishment". A damage claim relates to monetary compensation for loss or injury to a person or property; whereas, a debt claim is for a specific sum of money due by agreement or otherwise. (*Black's Law Dictionary*, 9<sup>th</sup> Edition).

Though the caption of the case filed reads, "Action of damages for Breach of Contract and Debt by Attachment and Garnishment," however, the averments of the complaint (counts 2 thru 7), filed by the co-appellant in the Commercial Court, distinctly allege that the appellee failed and refused to settle its indebtedness of US\$80,000.00 to the co-appellant for contract services.

This Court has espoused in several of its Opinions that it is not the title or caption of an action which is controlling, but rather the averments in the complaint which determined the form of the action. *Blamo v. Zulu et al* 30 LLR 586, 597 (1983); *Mathies and Fima Corp. Ltd. Vs. Alpha International Investment Ltd.* 40 LLR 561, 570 (2001). Additionally, none of the parties have disavowed the contract agreement and the prior disbursement of Twenty Thousand United States Dollar (US\$20,000.00) that the appellee made to the co-appellant against the One Hundred Thousand United States Dollars (USD\$100,000.00) that was agreed to be paid to the co-appellant. The appellee not denying the claim but only alleging that the work done was defective, the matter went to full trial which the appellee participated in, and was found liable to the co-appellant.

Article II, Section (2) of the Act Establishing the Commercial Court confers concurrent jurisdiction on the Commercial Court over actions to obtain payment of debt subject to the threshold of at least Fifteen Thousand US Dollars (US\$15,000). The complaint filed by the co-appellant having averred an action of debt, the court could make the proper order for the prosecution of the case. Section 1.2.2 of the Civil Procedure Law "Error in Form of Application for Relief", provides: "If a court has obtained jurisdiction over the parties, an application for relief shall not be dismissed because not brought as an action or special proceeding or motion, whichever may be proper, but the court shall make whatever order is required for its proper prosecution."

We must emphasize that our Civil Procedure Law (1973) was adopted for the speedy disposition of cases, and in this regard, the Court has held that it is not the caption of an action which controls an action but rather the averments in the body of the case to which the courts must look to determine the cause of action. *Mathies, FIMA Corporation. Ltd. (FCC) v. Alpha Intl Investment. Ltd.*, 40 LLR 561, 570 (2001); *Harouni v. Grieger*, Supreme Court Opinion, March Term, 2011; *Blamo v. Zulu et al*, 30 LLR 586, 597 (1983).

Further, as stated previously, not only did the appellee participate in the trial which held him liable to the co-appellant, but his counsel announced an appeal which he abandoned and proceeded to tax the bill of costs which was signed also by the co-appellant's counsel, and approved by the Judge. This Court has held that prohibition cannot be substituted for an appeal, and that prohibition cannot lie to prohibit acts already completed. *Chariff Pharmacy v. the Pharmacy Board of Liberia and Haddad*, 37 LLR 135,144, 150 (1993).

We must therefore say that the appellee having abandoned his appeal and thereafter taxed and signed the court's bill of costs, his action in proceeding to file a petition for a writ of prohibition thereafter, was an attempt to evade Article IV, Sections 2 and 3 of the Commercial Code, which state:

- 2) An appeal from a judgment of the Commercial Court shall not serve as a stay on enforcement of the judgment, provided that the amount of the judgment paid shall be placed in an interest-bearing escrow account with a commercial bank to be designated by the Commercial Court pending disposition of the appeal.
- 3) Payment of the full amount of judgment shall be a condition precedent for the completion of an appeal from a judgment of the Commercial Court, but the appeal bond, which may be required of the appellant, shall be exclusive of the amount of the judgment paid.

The co-appellant complaint averred debt. The Ministry of Public Works, which was responsible to examine the road works, certificated the appellee for the road work and had it paid. The appellee thereafter wrote out a check to the co-appellant, who upon presentment of the check to the appellee's bank was told that there were insufficient funds. The appellee's act in filing a petition for prohibition was, therefore, merely to avoid making payments after the lower court had found appellee liable to the co-appellant for the outstanding debt of Eighty-Thousand (USD\$80,000) plus six percent interest on the amount.

In view of all said above, we hold that the ruling of our Colleague, Justice in Chambers, was in error. We believe that the Commercial Court 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 averments alleged debt, and considering that the Commercial Code Art II (1) – Jurisdiction of the Commercial Court states:

“The Commercial Court shall have jurisdiction over and in all civil actions arising out of or in relation to commercial transactions in which the claim is at least Fifteen Thousand United States Dollars (\$15,000.00), and all cases of admiralty.”

Realizing that the Commercial Court has Jurisdiction for all debt claim of Fifteen Thousand United States Dollars (US\$15,000.00) and above, and in this case, the amount sought was for Eighty Thousand United States Dollars, we hold that the Commercial Court Judge properly entertained the case before the Commercial Court.

WHEREFORE AND IN VIEW OF THE FOREGOING, the peremptory writ of prohibition is denied and the alternative writ quashed and vacated. The Clerk of Court is ordered to send a Mandate to the court below to resume jurisdiction of this case and proceed with the enforcement of the Court’s Judgment. AND IT IS HEREBY SO ORDERED.

**WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR J. JOHNNY MOMOH OF THE J. JOHNNY MOMMO AND ASSOCIATES LEGAL CHAMBERS APPEARED FOR THE APPELLANT, WHILE COUNSELLOR SAYMA SYRENIUS CEPHUS, COUNSEL FOR THE APPELLEE, WHO SUBMITTED HIS BRIEF, WAIVED ARGUMENT.**