

IN THE COURT OF THE APPEAL OF THE SUPREME COURT OF  
JUDICATURE

APPELLATE JURISDICTION

GUYANA

CIVIL APPEAL NO. 8 OF 1996

**In the matter of American Life Insurance  
And North American Life Insurance  
Company Limited.**

- and -

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**In the matter of the Insurance Act,  
Chapter 91:02.**

BEFORE:

<b>Hon. Madam Justice Desiree P. Bernard</b>	-	<b>Chancellor</b>
<b>Hon. Mr. Justice Nandram Kissoon</b>	-	<b>Justice of Appeal</b>
<b>Hon. Mr. Justice Ian Chang</b>	-	<b>Justice of Appeal</b>

Mr. R. Stoby, SC & Mr. R. Poonai for Appellants  
Mr. A. Chase, SC & Ms. P. Chase for Respondents

2002: April, 15, 16  
May, 10, 22  
July, 12  
October, 11

RULING

BERNARD, C.: *delivered the judgment of the court:*

On 22<sup>nd</sup> October, 1990 two insurance companies – American Life Insurance and North American Life Insurance – filed a petition in the High Court seeking sanction of an agreement for the transfer of insurance policies of American Life Insurance Company to North American Life Insurance Co. Ltd. pursuant to Section 43 of the Insurance Act, Cap. 91:02. Copies of the petition were served on the Commissioner of Insurance, and later on the Respondents who were employees of American Life Insurance Co.

On 14<sup>th</sup> January, 1992 after hearing all parties Small, J. sanctioned the agreement and ordered the transfer of the assets, rights and obligations of American Life to North American Life. He gave liberty to the parties to apply further to the Court.

The Respondents being dissatisfied with discussions with North American Life concerning their continued employment, on 30<sup>th</sup> March, 1992 filed a summons no doubt in pursuance of the liberty to apply granted by the learned trial judge, seeking a stay of the Court's order or alternatively cancellation of the said order approving the transfer to North American Life, and an order that North American Life be required to settle by mutual agreement their terms of engagement before the Court's approval of the said transfer is put into operation. In the meantime the Respondents entered an opposition to the passing of conveyance of immovable property of American Life to North American Life, and on 2<sup>nd</sup> April, 1992 the sum of \$18,500,000. was lodged with the Registrar of Deeds. This cleared the way for the passing of the conveyance which was effected on 15<sup>th</sup> April, 1992.

After a protracted hearing the learned trial judge on 13<sup>th</sup> November, 1995 ordered American Life to pay their former employees in certain categories benefits which had been worked out by a Court appointed expert, Mr. Hans Barrow, out of their assets. This order is now the subject of this appeal.

The notice of appeal erroneously referred to the action in which the order was made as No. 4129 of 1990 when in fact it was 3948 of 1990.

At the commencement of the hearing of the appeal Counsel for the Respondents raised preliminary objections among these being that this Court has no jurisdiction as the matter having been heard and determined in Chambers the appeal should have been made to the Full Court; further North

American Life has no locus standi to pursue the appeal as the order appealed against was not made against that company but against American Life; further, there is no authority on record for Mr. R. Poonai to act as attorney on behalf of American Life in this appeal. These are the main objections of Counsel for the Respondents who cited authorities to support his contentions.

In reply Counsel for the Appellants contended that the petition for the transfer though heard in Chambers was by its nature a matter which ought to have been heard in open court as all petitions are. The order made was final and not interlocutory, as it finally determined the rights of the parties; hence under **Section 6** of the **Court of Appeal Act, Cap. 3:01** an appeal lies to this Court from an order that is final. The order made by the learned trial judge gave the Respondents a monetary judgment and determined their rights against American Life which was filed seeking the Court's sanction of an agreement to transfer the assets of American Life to North American Life. He conceded that the number of the action mentioned in the notice of appeal was wrong, but contended it is a mere irregularity which is not fatal.

Several issues fall to be determined at this stage of the appeal, and I shall consider first the question whether this Court has jurisdiction to hear the appeal, i.e. whether the matter was one which could have been heard in Chambers in which case the appeal should have been to the Full Court, or it was one which ought to have been heard in open court in which case an appeal would lie to this court. In effect, we have to determine the nature of the proceedings.

**Section 43(1)** of the **Insurance Act, Cap. 91:02** provides as follows:-

“Where it is intended to amalgamate two or more insurance companies, or to transfer the insurance business of one company to another, the

directors of anyone or more of such companies may apply to the court, by petition, to sanction the proposed arrangement.” (Emphasis mine).

This Section was duly complied with by American Life when it filed a petition for the sanction of the Court of its agreement to transfer its assets to North American Life.

Proceedings in the High Court can be commenced by petition or by action as provided by Order 2 of the Rules of the High Court, and Order 58 regulates the procedure to be followed in the filing of petitions.

Order 41 provides for summonses to be heard in chambers, and Order 43 stipulates the applications which can be disposed of in chambers. Rule 1(3) empowers a Judge to dispose of such other matters in chambers as he/she may think fit. Petitions are not listed specifically as matters which can be disposed of in chambers, and since they are akin to actions which commence proceedings it seems that they are by nature to be heard in open court.

In keeping with Order 43 Rule 1(3) a judge may if he/she thinks fit dispose of a matter in chambers, that is, by adjourning from open court in to chambers. However, the matter does not lose its character of being one which ought to be heard in open court by being heard in chambers.

In the circumstances of this appeal the fact that the petition was heard by the learned trial judge in chambers does not make it a matter which could be heard in chambers. It remained at all times a petition which ought to have been heard in open court. The orders of court ought not to have reflected the fact that the petition was heard in chambers which was done no doubt for convenience. The order even though physically made in chambers was not pursuant to a chamber application. This satisfies Section 6 (2) (a) (i) of the Court of Appeal Act, Cap. 3:01 which provides that an appeal

