19-6435 ORIGINAL

NO.

IN THE

SUPREME COURT OF UNITED STATES
OCTOBER TERM 2019

IN RE: INYANG PETER ODUOK
PETITIONER/APPLICANT FOR CERTIORARI

INYANG PETER ODUOK (PETITIONER/APPLICANT) V. FULTON DEKALB HOSPITAL AUTHORITY D/B/A AS GRADY MEMORIAL HOSPITAL; EMORY UNIVERSITY HOSPITAL; MICHAEL OSIPOW; NICHOLAS HENSON; AHMED Y. KHAN, KENCLIFF PALMER, ET AL (RESPONDENTS)

.....

REAL PARTIES IN INTERESTS

GEORGIA SUPREME COURT CASE NO. S. 19CO 431
GEORGIA COURT OF APPEALS CASE NO. A16A1582
GEORGIA SUPERIOR COURT CASE NO. 2015CV263891
CONSTANCE C. RUSSELL.....JUDGE

MODIFIED PETITION FOR A WRIT OF CERTIORARI TO GEORGIA SUPREME COURT.

Submitted By:

Inyang P. Oduok (Petitioner)
P.O. Box 370971, Decatur Ga. 30037
Tel: 678-368-6482

Comes Now Inyang Peter Oduok (Petitioner/Applicant) and files this petition for a writ of certiorari in the above styled case and for grounds thereof, shows the court the following.

QUESTIONS PRESENTED.

1.

Does Georgia Supreme Court Rule 38 Requirement that a Petition for a Writ of Certiorari be filed within twenty (20) days of disposition of a motion for reconsideration while its federal Supreme Court counterpart- Rule 13 requires the filing of such Petition within 90 days conflict with countervailing federal law and therefore preempts it rendering Georgia rule 38 a nullity?

2

Does Georgia Supreme Court rule 38 (20 day) requirement for filing a writ of certiorari so far apart from this court's requirement as to constitute a gross departure from the accepted and usual practice or course of judicial proceeding in this court as to call for an exercise of this Court's supervisory power?

3

Did Georgia Supreme Court violate the statutes and constitutions of United States and the State of Georgia by maintaining dual docketing system in this appeal - one secrete which Petitioner was not allowed to see nor provided a copy and the other open to the public?

Does Georgia Supreme Court Justices' dismissal of Petitioner's appeal and their characterization of Petitioner's motion for disclosure as "**unusual**" violate sixth amendment to United States Constitution, free speech right and whistle blower statute in bringing their unlawful and unethical practices to public light?

5.

Was Judge Constance Russell divested of subject matter jurisdiction in light of the facts and circumstances of this case including the fact that she stole or rigged the case from Judge Ural Glanville who was randomly assigned the case so as to render all orders issued by her null and void?

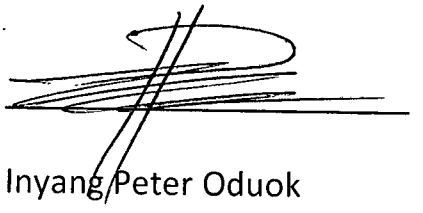
6.

Does Georgia law stating that "the filing of a motion for reconsideration does not extend the time for filing an appeal and an order disposing of such a motion is not appealable in its own right" so far apart from federal rule 59 motion to alter or amend judgments and Federal Rule of Appellate Procedure 4(a)(4)(B)(I) which effectively stays notice of appeal until the motion for reconsideration is ruled on, as to call for this court's exercise of its supervisory jurisdiction and declare conflicting Georgia law a nullity?

Are there compelling public interests for Georgia Supreme Court to have granted the writ of review that override technical grounds the court used to avoid holding Respondents, Judges Russell and Tusan accountable for their violations of state and federal laws and the constitutions?

CERTIFICATE OF COMPLIANCE:

Petitioner hereby certifies that this brief complies with type volume limitations set forth in Supreme Court Rule 14. It has been typed in Times New Roman 14 points font and contains 5, 817 words. Petitioner hereby states that in making this certificate, he has relied upon the "word count" program at the word processing system used to prepare this brief.



Inyang Peter Oduok

TABLE OF CONTENTS:

II

PAGES

111.

INDEX TO APPENDICES:

Appendix: D. Georgia Court of Appeals Order denying application for Discretionary appeal.

Appendix: E. Superior Court Order dismissing Petitioner's case for want of Prosecution.

Appendix: F. Superior Court Order denying Motion to Recuse.

Appendix: G. Superior Court Order Denying Motion to Reopen and to Set Aside Order of dismissal.

Appendix: "H" Respondent's Motion to Dismiss.

Appendix: "I" Judge Lagrua's order of recusal sua sponte.

Appendix: "J" docket entry closing case without a court order.

IV. **TABLE OF CITATIONS:**

CASES. **PAGES**

SUPREME COURT CASES:

CIRCUIT COURT OF APPEALS CASES:

GEORGIA SUPREME COURT CASES:

CASES. **PAGES**

STATUTE AND RULES:

FEDERAL: **PAGES**

STATE:

United States Supreme Court Rules:

Georgia Supreme Court Rules:

Uniform Superior Court Rule:

OTHER:

UNITED STATES CONSTITUION:

IN THE

SUPREME COURT OF THE UNITED STATES:

PETITION FOR A WRIT OF CERTIORARI:

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below:

V OPINION BELOW:

There was no opinion in the case. Rather, the Clerk of Georgia Supreme Court issued an order dismissing the writ of certiorari as untimely.

Appendix: "A" Georgia Supreme Court's Order dismissing Petitioner's Writ of certiorari as untimely.

Appendix: "B" Georgia Supreme Court's Order denying Petitioner's Motion for Reconsideration of the order of dismissal.

Appendix: "C" Georgia Supreme Court's characterization of Petitioner's motion for full Public disclosure of secrete entries targeting Petitioner's cases as unusual.

Appendix: "D" Order of the Georgia Court of Appeals denying Petitioner's Application.

Appendix: "E" Order of trial court dismissing Petitioner's case for Want of Prosecution.

Appendix: "F" Order of trial Court denying motion to recuse.

Appendix: "G" Orders of Trial Court denying Motions to reopen case and to set Aside order of dismissal.

Appendix: "H" Respondent's Motion to Dismiss.

Appendix: "I" Judge Lagrua's Order of recusal sua sponte.

Appendix: "J" docket entry closing case without a court order.

VI. JURISDICTION:

The Georgia Supreme Court Order dismissing the certiorari was filed on July 1, 2019. Petitioner filed a timely Motion for Reconsideration with same contention that are made in this petition for a writ of certiorari. Petitioner timely moved for an extension of time to file this Petition for a writ of certiorari. The motion was not ruled upon as of the time of filing this certiorari.

Within the 90 days provided by Rule 13, Petitioner filed this Petition with this court. The writ is authorized pursuant to 28 U.S.C. Section 1254 (1). Furthermore, jurisdiction is conferred pursuant to 28 U.S.C. Section 2106.

VII. CONSTITUIONAL AND STATUTORY PROVISIONS INVOLVED.

First, Fifth, sixth, Fourteenth Amendment Due Process Clauses, Article III of United States Constitution.

28 U.S.C. Sections 144 and 455(a)

STATEMENT OF FACTS AND OF THE CASE:

Petitioner almost lost his life on August, 2013 in a botched biopsy of his lungs by students of entity defendants- Nicholas Levi Henson, (Henson) (Radiology Student Emory School of Medicine); Ahmed Y. Khan (Khan) (Pulmonary Student, Emory School of Medicine) and Kencliff Palmer (Palmer)(Radiology Student, Morehouse School of Medicine).

The Attending Radiologist- Michael Osipow was "supposed to perform the biopsy on Petitioner to find out if a mass on his right lung which Respondents discovered since 2005, was cancerous, while the students -Henson and Palmer watched the procedure or have the students Henson and Palmer perform the biopsy while he supervises them." But not only did Osipow fail to perform the biopsy, he was absent during and after the entire procedure and fraudulently signed the documents a day after the procedure was performed, falsely representing that he was present and supervised the procedure knowing same to be false and misleading.

As if that was not enough, Petitioner was discharged from the hospital two hours after the biopsy with collapsed lungs against instruction from his pulmonary surgeon -Eric Honig's "Order that he be admitted for 2-3 days following the biopsy for observation for pneumothorax." He has full insurance that covered the

procedure and any length of stay in the hospital. But Respondents refused to admit him because according to Henson, "**it involves too much paper work.**" Petitioner's lung collapsed shortly following his discharge after he got home. He was rushed back to the hospital for emergency surgery to revive his collapsed lung at a great risk to his life, expense, pain and suffering.

On July 30, 2015, Petitioner commenced a civil action for Intentional Misrepresentation; Racketeering Influence and Corrupt Organization (RICO); Breach of Contract; Breach of Warranty; Promise Made without Intention to Perform; Intentional Infliction of Emotional Distress; Negligent Retention, Hiring and Supervision; Negligence; Negligence Per Se and Civil Conspiracy against Respondents.

The complaint alleges also that Tuberculin tests was done on Petitioner and when he went for the test result, was arrested and quarantined in isolation ward for a week for no just cause. He was only able to regain his freedom when six physicians from infectious disease hospital ordered his release. See (Complaint page 16, para. 38-39). The complaint further alleges computer fraud in that respondents falsified the computer record to cover-up the mass on his lungs which they found since 2005 but failed to inform him about it until 2011. (Compl.

p 14 para 32). Respondents deploy cancer scare tactics to prey on minority patients who are mostly African Americans and Hispanics.

On September 23, 2015, Grady, Emory, Osipow subsequently moved to dismiss the complaint on grounds that "each claim rested upon medical malpractice and Petitioner was required to file an expert affidavit pursuant to O.C.G.A. 9-11-9.1 (a) along with the complaint but failed to do so."

Respondents Henson, Khan and Palmer did not join Grady, Emory and Osipow in filing the motion to dismiss. See (Appendix "H"). None of Respondents ever asserted service of process as grounds for dismissal in their motion to dismiss filed September 23, 2015. See (Appendix "H")

It appears Judge McBurney raised the service issue sua sponte and on October 1, 2015, held a no-service /default calendar hearing to address the service issue on Henson, Khan, Palmer and even Emory that the record clearly showed service had been perfected since August 28, 2015 and a copy of the certificate was attached as exhibit "A" to the motion to dismiss. See Appendix "H"

The record unequivocally shows that Petitioner did not receive the notice because it was sent to a wrong address and had been returned to the court undelivered. Knowing or having reason to know that the notice of hearing was returned to the court as undeliverable mail, Judge McBurney ordered the clerk of

court not to allow Petitioner access to his file so that he will not discover that the notice of hearing was returned to the court undelivered.

Service of process as to Respondents Henson, Khan and Palmer was not an issue in the case for the additional reason that they did not join Grady, Emory and Osipow in filing a motion to dismiss and asserting that they were making special appearance. See (Appendix "H"). Thus, waived any jurisdictional defect they may have had.

On October 7, 2015, Judge McBurney) dismissed the complaint with respect to Henson, Khan, Palmer and Emory on grounds of failure to prosecute leaving Respondents Grady Hospital and Osipow in the suit. **A year and two months later -December 16, 2016,** he issued a final order dismissing Grady and Osipow on grounds of failure to file expert affidavit. Petitioner moved to set aside or reconsider both dismissal orders and also filed a motion to recuse the trial judge. Judge McBurney denied all the motions. From the denial, Petitioner appealed to Georgia court of appeals.

On February 13, 2017, the Court of Appeals entered an order affirmed, vacated and reversed in part and remanded the case with direction. With regards to the claims against Osipow, Grady and Emory, the court of appeals reversed

Judge McBurney's order of dismissal except count -eight Medical Negligence Claim and count 3 breach of contract claim. See (COA) order p. 12)

On the dismissal of Emory, Henson, Khan and Palmer for want of prosecution on grounds that Petitioner failed to appear at the no-service /default calendar call, the (COA) held that "Georgia Uniform Superior Court Rule (USCR) 8.3 explicitly requires that pro se parties must be notified of calendar call by regular mail. Therefore, publication of the default calendar did not provide applicant proper notice." See (COA) order p 13.)

The (COA) also found that "Judge McBurney did not give applicant proper written notice by mail because the notice of hearing on No Service/ Default Calendar was returned as undeliverable mail." See (COA order p 14). Also, "that the record showed Emory University Hospital was served with process on August 28, 2015 which respondents acknowledged in their motion to dismiss filed on 23rd September, 2015. See (COA P 3). Consequently, the (COA) ordered the dismissal of the claims against Emory, Khan and Palmer vacated and remanded for further consideration as to **whether applicant received the required written notice of no service/default hearing.**" See (COA order p 15)

Upon remand, on August 15th, 2017, respondents again filed another frivolous motion to dismiss on same "service issue and failure to state a

recognizable claim" which the Georgia Court of Appeals had just ruled in Petitioner's favor. See (COA's) order pp 14-15). (It is axiomatic that the same issue cannot be re-litigated ad-infinitum. See Nally v. Bartow County Grand Jurors, 280 Ga. 790, 791 (3) (633 SE 2d 337) (2006)

Petitioner filed opposition to the motion arguing that the court of appeals ruling served as a final adjudication of the service of process and cognizable claim issues and cited Aetna Casualty & Surety Co. v. Bullington, 227 Ga. 485 (2) (181 S.E. 2d 495 (1971) which cannot be re-litigated by Respondents upon remand.

Petitioner further argued that once service was accomplished it related back to the date of filing the complaint under relation back doctrine. See FRCP (15)

On February 21, 2017, upon remand, Petitioner filed a renewed motion to recuse Judge McBurney. The motion was granted. The order granting recusal ordered the Clerk of Superior Court to "randomly reassign the case in accordance with standard operating procedure." But Judge Gail Tusan (Judge Tusan) and Judge McBurney's Staff attorney ignored the court's order and ransom assignment law and assigned the case to Judge Todd Markel (Judge Markel).

On April 24th, 2017, Petitioner discovered the violations of random assignment law and Judge McBurney's order by Judge Tusan and others and filed

a motion to recuse Judge Markel. On April 25th, 2017, Petitioner appeared before Judge Markel pursuant to case management order issued April 4, 2017. But discovered that Judge Markel had already granted respondents Motion to dismiss while at the same time noticing the conference on the case. The case management conference was cancelled. Petitioner subsequently filed a supplementary affidavit in support of his previous motion to recuse Judge Markel and the motion was granted.

Thereafter, the case was randomly reassigned to Judge Ural Glanville by the clerk of court. But Judges Constance Russell and Gail Tusan conspired and stole/rigged the case from Judge Glanville, deleted Judge Glanville's name from the computer completely as having been assigned the case and unlawfully assigned the case to Judge Russell who does not play by the rule and who will do their bidding.

On July 25, 2017, Judge Russell purports to have "filed and mailed notice of case management conference to Petitioner." But no such notice was ever mailed to Petitioner as claimed. As a consequence, Petitioner did not appear at the conference. The case was allegedly "placed on Judge Russell's No Service /Default /Dismissal Calendar and the hearing was set for September 25, 2017." Petitioner was again not served with the notice of the hearing. Judge Russell, eager to

protect her campaign contributors and to thwart Petitioner's chances of recovery for his injuries against them, with no subject matter jurisdiction over Petitioner's case, unlawfully dismissed his case for alleged "failure to prosecute." An entry "case closed" was unlawfully made in the docket with no order either from the court or even clerk of court to close the case. Petitioner subsequently filed a motion to reopen the case.

On December 26, 2017, Petitioner filed a Motion to Recuse Judge Russell and to Set Aside the Order of Dismissal. He subsequently filed a motion for expedited ruling after Judge Russell refused to rule on these motions and **sat on the motion to recuse her for over one year.** Still, she refused to rule on the motions despite motion for expedited ruling.

On October 2018, Petitioner filed a Petition for a Writ of Mandamus naming Judge Russell, Tusan and their staffers as parties. See (Oduok v. Constance Russell et al; civil action No. 2018 CV308896) The Petition was assigned to Judge Shawn Ellen Lagrua (Judge Lagrua) who on 15th August, 2018, issued an order recusing herself sua sponte and referred the matter to Chief Judge McBurney for recusal of all judges of the Fifth Judicial District. See Appendix "I")

On finding that Judge Lagrua had recused sua sponte and requested the Chief Judge -McBurney to recuse all judges of the fifth judicial district and transfer

the case to Fourth Judicial District (Appendix "I") she finally ruled denying all of Petitioner's motions.

Petitioner filed a motion for reconsideration of the orders of denials which is still pending before her till this day waiting to be ruled on.

Because under Georgia law, the Motion for reconsideration does not toll the running of time to file notice of appeal, Petitioner was compelled to file a timely application for discretionary review of her order of dismissal with Georgia court of appeals. He subsequently filed a motion at the court of appeals to remand the case to the trial court for completion of the record after Judge Russell might have ruled on the motion for reconsideration of orders denying Petitioner's motions to reopen, recuse and to set aside her dismissal orders.

The court of appeals surprisingly ignored the motion and issued a one line order denying the application without reasoning that Petitioner requested. See O.C.G.A. 5-6-48(c). See (Appendix "D").

Following the denial, on November 19, 2018, Petitioner filed a Petition for a writ of certiorari in Georgia Supreme Court.

On June 25, 2019, Petitioner went to the Supreme Court and requested a copy of the docket in this case to find out why it had taken so long to hear from the court. But the Clerk deputy declined the request on the basis that "there was

a secrete entry on Petitioner's case that staffers were warned not to allow Petitioner to see nor should he be provided with a copy of the docket so he may not see the entry."

On June 26, 2019, Petitioner filed a motion for disclosure of the secrete entry which Georgia Supreme Court has docketed as "unusual motion" and refuses to act on it." See (Appendix "C"). A few days later, July 1, 2019, the Georgia Supreme Court retaliated by "issuing an order dismissing the certiorari" See (Appendix "A "). Thereafter, Petitioner filed a timely motion of reconsideration of the order of dismissal which was denied on August 5th, 2019. See (Appendix "B"). From the denial, this Petition follows.

At issue is fraud on Petitioner and the court, obstruction of justice, violations of Petitioner's right of access to the court to seek relief, cover-up of criminal and unethical conducts by the very people entrusted by American people to dispense justice in our courts, earmarking and targeting Petitioner's cases for dismissal not on the merits but on other unlawful considerations. Public trust in our system of justice is at stake. Therefore, public interests, justice and fairness demands that this court grand certiorari to review this case.

REASONS FOR GRANTING THE WRIT:

STANDARD FOR GRANTING THE WRIT:

The Supreme Court of United States may review by certiorari cases in the United States Court of Appeals entered in conflict with the decision of another United States court of appeals on the same important matter; has decided important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure, as to call for the supreme court's exercise of its supervisory power ..." See Supreme Court Rule 10(a).

The court should grant certiorari and require Georgia Supreme Court to certify the case to the Supreme Court for Review and determination because the case involves issues of great concern - corruption by State Court Judges at all levels and their staffers, obstruction of justice, fraud on the court and the judicial system and is of gravity and public importance and should be addressed for the benefit of the public.

BRIEF IN SUPPORT OF CERTIORARI:

1.

SUPREME COURT RULE 13 TAKES PRESEDENCE OVER CONFLICTING STATE SUPREME COURT RULE AND RENDERS IT A NULITY:

Georgia Supreme Court Rule 38 Requirement that a Petition for a Writ of Certiorari be filed within twenty (20) days of disposition of a motion for reconsideration while its' federal Supreme Court counterpart- Rule 13 requires the filing of such Petition within 90 days conflicts and must yield to Rule 13 under Supremacy clause -Article VI clause 2 of the constitution.

Consequently, certiorari should issue so as to declare the conflicting state rule invalid.

2

Further, Georgia Supreme Court rule 38 (20 day) requirement for filing a writ of certiorari is so far apart from this court's requirement as to constitute a gross departure from this court's accepted and usual practice or course of judicial proceeding as to call for an exercise of this Court's supervisory power over inferior state court requiring this court to grant the certiorari.

3

DUAL DOCKETING SYTEM OFFEND THE CONSTITUTION

AND SHOULD BE DECLARED NULL AND VOID:

Keeping a dual docketing system on Petitioner's cases and targeting his cases for dismissal violate sixth, fourteenth amendment and Petitioner's right of access to the court. See United States v. Valenti, 987 F 2d 708, 715 (11th Cir 1993)

Rule 60(b)(4) vests the court with authority to vacate a judgment whenever such action is appropriate to accomplish justice. See Klapport v. United States, 335 U.S. 601, 615, (69 S. Ct. 384 (1949).

Georgia Supreme Court violated the statutes and constitutions of United States and the State of Georgia by maintaining dual docketing system in this case - one secrete which Petitioner was not allowed to see nor provided a copy and the other open to the public. This warrants the issuance of certiorari by this court to address the constitutional infringement.

4

DENIAL OF PETITIONER'S MOTION TO DISCLOSE THE SECRETE INFORMATION ON HIM VIOLATES SIXTH AMENDMENT WARRANTING THE ISSUANCE OF CERTIORARI:

The sixth amendment to the United States Constitution grants a litigant a right to compel a favorable evidence to be produced in his favor.

Also, the law is settled that failure to disclose what one ought to reveal is equivalent to an actual affirmative false representation. See Marris v. Jonston, 172 Ga. 598 (158 S.E 2d 308 (1931)

Here, there is evidence that the Petitioner's case was targeted for dismissal without its consideration on the merits by the trial court and appellate justices including Georgia Supreme Court because shortly after filing the motion to disclose the Secrete information on the docket on June 26th, 2019 – a motion the state supreme court docketed as "**unusual",** the justices "schemed to dismiss Petitioner's appeal on July 1st 2019 and his motion for reconsideration August 5th, 2019 in order to cover-up the incriminating evidence and their oppressive and discriminatory use of law against Petitioner. Therefore, certiorari should issue so that this court can get to the bottom of what went on in this appeal.

Also the Justices' dismissal of Petitioner's appeal under the facts and circumstances of this case and their characterization of Petitioner's motion for disclosure as "**unusual"** violate first amendment free speech right and whistle blower statutes which empowers him to bringing their unlawful and unethical practices to public light warranting the issuance of certiorari by this court.

5.

JUDGE RUSSELL'S ORDER OF DISMISSAL IS A NULLITY BECAUSE SHE LACKED SUBJECT MATTER JURISDICTION OVER THE CASE:

Judge Russell stole/rigged the case from Judge Ural Glanville who was randomly assigned the case by the Clerk of court.

The law is settled that a judgment is void if the court that rendered it lacked subject matter jurisdiction. See Johnson v. Mayor & City Council of the City of Carrolston, 249 Ga. 173, (288 S.E. 2d 565)(1982)

Acts specifically intended to influence, obstruct the due administration of justice are obviously wrongful just as they are necessarily corrupt."
See United States v. Oliver North, 910 F 2d 843 (1987).

Georgia Uniform Superior Court Rule (USCR) 3.1 authorizes the Clerk of Superior Court -Tina Robinson to randomly assign cases to Judges. Rule 25.4 authorizes the Clerk of superior court to assign cases in case of recusal motion filed against a judge to another Judge.

In this case, the record evidence indisputably shows that Judge Tusan, her case manager -Yolanda Lewis, Judge Russell and their staffers conspired with Respondents to delete Judge Ural Glanville's name as judicial officer who was randomly assigned the case by the clerk of superior court and assigned the case

to Judge Russell who will do their bidding. **There is no entry in the docket of Judge Glanville ever being assigned the case.**

Judge Russell recruited staff attorney- Jatrean Sanders who is currently staff attorney for Judge Kimberly Adams and her judicial assistant Moore to fake sending notices of the hearing on Status Conference and No Service/Default/ Calendar hearing knowing that no such notice was ever served on Petitioner.

Thereafter, Judge Russell and staff attorney Jatrean Sanders who was used to perpetrate the fraud, dismissed Petitioner's case not on the merits but on favoritism, friendship and other unlawful considerations.

This seems to be a pattern where cases involving institutions, their employees, corporations and businesses that cause harm to African Americans, Hispanics, other minorities and pro se litigants are routinely assigned to particular judges or law clerks in violation of Due Process and random assignment of cases laws who then dismiss the cases not on the merits. **There is a huge corruption of the judicial process that needs to be addressed by this court.**

Therefore, there are compelling public interests for Georgia Supreme Court to have granted certiorari that overrides any technical niceties that the court used to avoid addressing Respondents, Judges Russell and Tusans' unlawful and unethical conducts warranting the issuance of certiorari by this court.

6.

MOTION FOR RECONSIDERATION (RULE 37(e) DOES NOT STAY APPEAL UNDER STATE LAW WHEREAS FRCP 59 (e) MOTION TO AMEND JUDGMENT DOES STAY APPEAL THUS CREATING A CONFLICT LAWS.

Under Georgia law, the filing of a motion for reconsideration does not extend the time for filing an appeal, and an order disposing of such a motion is not appealable in its own right. See Bell v. Cohran, 244 Ga. App. 510, 510-511) (2000). There are two exceptions to this law neither of which applies here. See Ferguson v. Freeman, 282 Ga. 180, 181 (1) (646 SE 2d 65 (2007).

Federal Rules of Appellate Procedure discusses the district court's jurisdiction when a notice of appeal is filed before a motion for reconsideration is ruled on. Appellate Rule 4(a)(4) states that:

"If a party files a notice of appeal after the court announces a judgment but before it disposes of a motion under Federal FRCP 59 motion to alter or amend that judgment, then the notice becomes effective after the court has ruled on the motion to amend.

In order words, under federal law, the filing of a motion to (amend-reconsideration) stays an appeal until the motion is ruled on. State law conflicts with this rule thus rendering it a nullity under Supremacy clause of federal constitution. See Article VI Clause 2. It also offends the concept of uniformity required of our laws.

Furthermore, in this case, Petitioner was compelled to file an application while his post judgment motions for reconsideration of the order denying his motions to re-open, recuse the judge and to set aside the order of dismissal is still pending before the trial court because of the law set forth above. The motion to set aside is based on lack of subject matter jurisdiction (fraud). Petitioner then filed a motion at the court of appeals to remand the case for completion of the record after the trial court has ruled on these motions which the appellate court ignored. Instead, it ruled denying the application.

Petitioner challenges the propriety of the ruling denying the application while the motion to remand is still pending before the court of appeals.

Therefore, there are compelling public interests for the Supreme Court to grant certiorari that override technical grounds Georgia Supreme court used to avoid addressing the merit of the certiorari and holding Respondents, Judges Russell and Tusan accountable for their unlawful and unethical conducts.

7

RECUSAL OF JUDGE CONSTANCE RUSSELL IS PROPER:

Judge Russell cannot be a judge in her cause without violating fourteenth amendment due process of law and the authority of In re Murchison, 349 U.S. 133 (1955). See also (Litely v. U.S.) 114 S. Ct. 1147, 1162 (1994). This court has

repeatedly held that positive proof of the partiality of a judge is not required only a showing of appearance of impartiality. See (Lifeberg v. Health Services Acquisition Corp, 486 U.S. 846, 108 S. Ct 2194 (1988). The record does not support how she came into the case. Furthermore, she sat on Petitioner's motions –to recuse her and to set aside her order of dismissal for over a year and refused to rule on the motions until Judge Lagrua issued an order directing the chief Judge McBurney to recuse all the judges in the Fifth Judicial Circuit before she ruled denying the motions. See. USCR Rule 25.3 and FRCP 441 and 455(a) which required immediate ruling on the motion to recuse her.

Judge Russell caused her staffers to make false entries in the docket showing that Petitioner has been served with a copy of the Notice of No/Service/Default-dismissal hearing knowing or having reason to know that this was false and misleading. Her staffers made false entry in docket showing Petitioner's case is **closed** when there is no order from a court of competent jurisdiction or even clerk of court ordering the case to be closed. See (Appendix "J")

Her actions and inactions do not promote even an appearance of a neutral or detached judge. She is not credible and should not be allowed to continue to

preside over cases. She is biased against Petitioner who had sued her before. See (Oduok v. Russell Civil Action No. S03A0501)

Under Article 111 of United States Constitution, litigants enjoy personal right in being tried by impartial judge.

Also, the record impeaches her assertions and claims of transition to family court and Judge Glanville transitioning to that court. Judges must obey the law as must common folks. See Biven v. Six, unknown named agents of Federal Bureau of Narcotics, 403 U.S. 388)(1871) Transparency is required in conducting the business of the court. Secrecy harms public health, welfare and safety.

Respondents violated False Statements Accountability Act. 1966 Pub. Law. 104-292, 110 Stat. 3459 (October 1996). 28 U.S.C. Section 1001 by knowingly and falsely answering Petitioner's motion for disclosure with dismissal of his certiorari.

The law clearly required disclosure of the secrete entry in the docket targeting Petitioner's appeals for dismissal. This constitute obstruction of justice. Therefore, the writ should issue to hold them accountable.

Conclusion:

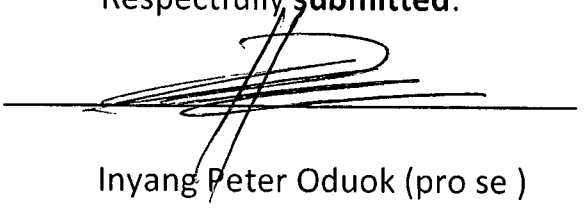
The lawsuit is railing against a pattern of callous abuses of judicial authority; misuse or abusive use of judicial power; unlawful and unethical conducts by judges and their staffers; fraud; conspiracy; computer fraud;

falsifying docket entries; perjury; cover-ups; shredding evidence; clouding true facts of a case with misinformation; manufacturing non-existent facts; deceptions; crafting rules to undermine state and federal statutes and the constitutions; corruption of the judicial process; obstruction of justice and other evils too numerous to lists.

There is evidence that a staffer/ document handler took upon herself to make false entry in the docket closing Petitioner's case when there is no valid court order closing the case.

Petitioner is a victim of fraud by the very judicial system intended to protect him. The issue of corruption by judges and their staffers arises with regularity and should be addressed by this court.

Respectfully **submitted**:



Inyang Peter Oduok (pro se)

P.O. Box. 370971

Decatur, Ga. 30037

Tel: 678-3686482