

**FOUAD ASHKAR**, Petitioner, *v.* **HIS HONOUR HALL W. BADIO**, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, **SAMUEL JOHNSON et. al.**, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE PETITION FOR A WRIT OF PROHIBITION.

Heard: June 6, 1984. Decided: June 29, 1984.

1. Prohibition is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein.
2. Three things are necessary to justify the issuance of a writ of prohibition: that the court, officer or other person against whom it is directed has no jurisdiction to exercise judicial or quasi-judicial power; that the exercise of such power by such court, officer, or other person is unauthorized by law; and, that it will result into injury for which there is no other adequate remedy.
3. A writ of prohibition will issue only in cases of manifest, extreme, absolute, great, or unusual necessity, or great urgency, or in case of a special emergency.
4. Where an attempt is made to levy execution against the property of a nonparty to a judgment, the court which rendered such judgment must pass upon a claim of title by the nonparty to the property in question.
5. The due process right of a petitioner is violated when a judge issues a writ of possession in an ejectment action without first disposing of a pending bill of information filed by the petitioner, relating to the same matter.
6. Prohibition will lie to prevent the execution of a judgment in ejectment by writ of possession directed to property held by a person who was not a party to the ejectment action where, although the parties to the action have taken appeals from the judgment, no proceeding has been instituted to correct errors of the trial court and no other remedy is available to the affected property holder.
7. Prohibition will lie to give relief whenever a subordinate court proceeds in the hearing of a case in a manner which is contrary to known and accepted practices and

in violation of proper and ethical procedure.

A writ of execution growing out of a matter to which petitioner was not a party was served upon him. When the petitioner, who had leasehold interest in the subject matter of the proceedings, failed to obey the writ, contempt proceedings were instituted against him. Upon his appearance, he was advised by the trial judge to file a bill of information in regard to his interest in the property against which execution was ordered. Although he filed the bill of information, as directed, the trial judge nonetheless issued a writ of possession in favor of the buyer of the property at an earlier judicial sale without a prior hearing of the bill of information.

The petitioner then applied to the Justice in Chambers for a writ of prohibition to prevent his ouster from the premises. The petition for the writ of prohibition was heard and denied by the Justice in Chambers on the grounds that he cannot solely issue said writ against an act which had already been finally adjudicated by the Supreme Court *en banc*. The Chambers Justice had reference to the fact that an action of ejectment against Igal Ammons, lessor of the petitioner, had earlier been determined by the Supreme Court *en banc*, and therefore a single Justice of the Supreme Court could not properly restrain its execution.

The Supreme Court reversed the ruling of the Chambers Justice, granted the writ of prohibition, and ordered the respondent judge to refrain from issuing a writ of possession against the petitioner's leasehold rights, and to hear and determine the bill of information.

*Ephraim Winfred Smallwood* appeared for petitioner/ appellant. *M. M. Perry* for respondent/appellee.

MR CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

The present suit grows out of attempts by the sheriff of Montserrado County to effect a writ of execution against petitioner predicated upon an earlier judgment against the latter's real property to which he was not a party. When the petitioner, who had leasehold interest in the property in question, refused to cooperate with the ministerial officer, contempt proceedings were instituted against him in the Sixth Judicial Circuit, and he was cited to appear. When he finally appeared with counsel, he was advised by the trial judge to file a bill of information regarding his interest in the property against which execution was ordered. Said bill of information was seasonably filed, but before hearing could be had thereon, His Honour Judge Hall Badio issued a writ of possession in favor of the buyer of the property at an earlier judicial sale.

At this juncture, petitioner fled to the Justice in Chambers on a writ of prohibition against the judge and the ministerial officers to restrain them from ousting him from the premises while the bill of information was still pending before that Court. The petition for the writ of prohibition was heard and denied by the Justice in Chambers on the grounds that he cannot solely issue the writ regarding a matter which had already been finally adjudicated by the Supreme Court *en banc*. The Justice in Chambers specifically meant that the judgment of ejectment against one Igal Ammons, pertaining to the same property, had earlier been determined by the Supreme Court *en banc*, and therefore a single Justice of the Supreme Court could not properly restrain its execution. It is against this judgment of the Justice that the petitioner in prohibition has now appealed to this Court *en banc*.

The main issues on this appeal are the following:

- 1) Whether or not there was a final adjudication by the Supreme Court affecting the property which petitioner claims have been leased from Igal Ammons against which a writ of possession was being brought?
- 2) Whether or not the act of the trial court complained of by the petitioner warranted a restraining order to prevent any injury or hardship?

In disposing of the first issue, it is clear from the records in this case that the judgment of the Supreme Court in the case of *Perry v. Azango and Ammons*, 16 LLR 268 (1965) affected property other than that of the petitioner. Even though the leasehold property of petitioner is owned in fee by the said Igal Ammons, it is merely proceeded against in order to satisfy costs and damages awarded in the earlier judgment, since other properties owned by Igal Ammons were inadequate to satisfy the judgment in the case. Prohibition is sought by petitioner in this case against the writ of possession which the judge below sought to issue against another property of Igal Ammons leased to the petitioner. The Justice in Chambers was therefore in error when he denied the petitioner the writ on the ground that the Supreme Court *en banc* had passed on the matter.

Proceeding to the second issue concerning whether or not the act of the trial court was injurious to the petitioner for which prohibition will lie, we will first of all resort to our statute on the subject. The statute defines prohibition as "a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein" Civil Procedure Law, Rev. Code 1: 16.21.

Other authorities share the view that in general three things are necessary to justify the issuance of a writ of prohibition: 1) that the court, officer, or person against whom it is

directed has no jurisdiction to exercise judicial or quasi-judicial power; 2) that the exercise of such power by such court, officer, or person is unauthorized by law; and 3) that it will result into injury for which there is no other adequate remedy. 73 C. J. S., *Prohibition*, § 8. Said authority further maintains that a writ of prohibition will issue only in cases of manifest, extreme, absolute, great, or unusual necessity, or great urgency, or in cases of a special emergency. 73 C. J. S., *Prohibition*, § 9.

This compels us to find out whether or not there was such an act, or pending act, which would have done serious hardship to the petitioner, and which was therefore such an emergency, urgency or unusual necessity for which prohibition would lie. The petitioner had first appeared in the court below in contempt proceedings, and was instructed to file a bill of information to explain his case. While the bill of information was yet to be heard, the respondent judge threatened to issue a writ of possession in favor of the purchaser at the judicial sale, which would have, no doubt, affected the petitioner's leasehold interest. According to Black's Law Dictionary, "a writ of possession is the writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment." BLACK'S LAW DICTIONARY 1786 (4<sup>th</sup> ed). In this case, there was a writ of possession pending against petitioner, which would have forcefully removed him from his leasehold and put the judicial buyer in possession when, in fact, petitioner was never a party to the action in the court below. Moreover, the judge was threatening to issue a writ of possession, knowing fully that the petitioner had filed a bill of information in respect of the said property, which had not been heard. The petitioner had no means of appeal against the judgment necessitating the execution on his leasehold since he was not a party below. The petitioner had no other way open to him by which he could have stopped the issuance and service of a writ of possession, but by the remedial process of prohibition.

It has been held in several cases, that "where an attempt is made to levy execution against the property of a nonparty to a judgment, the court which rendered such judgment must pass upon a claim of the nonparty with title to the property in question." *Jantzen et al. v. Modern Housing Construction Company*, 14 LLR 508 (1961). In another case, *Davies-Johnson v. Alpha et. al.*, it was also held that "prohibition will lie to prevent the execution of a judgment in ejectment by writ of possession directed to property held by a person who was not a party to the ejectment action where, although the parties to the action have taken appeals from the judgment, no proceeding has been instituted to correct errors of the trial court and no other remedy is available to the affected property holder." 13 LLR 573 (1960).

In the instant case, the petitioner had no means of appeal or other means by which the court could afford him an opportunity to establish his leasehold interest in said property. The bill

of information was filed, but remained unheard, when His Honour Hall W. Badio threatened to issue a writ of possession which, it goes without saying, would have done serious injustice and hardship to petitioner. In our opinion, the respondent judge had a duty to first dispose of the application before him, the bill of information, and rule thereon either for or against petitioner, before proceeding to issue a writ of possession against the petitioner, a person with leasehold interest. By denying the petitioner the right to have his application heard, the respondent judge had thus denied the petitioner due process of law. The “due process of law” has been described as synonymous with the “law of the land” and it seeks to give a hearing before it condemns; it proceeds upon inquiry and renders judgment only after trial. *Wolo v. Wolo* 5 LLR 423 (1937).

Black’s Law Dictionary states that, “the essential elements of ‘due process of law’ are notice and opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case, and the guarantee of the process requires that every man will have protection of his day in court and benefit of general law.” BLACK’S LAW DICTIONARY 590. Further, it is the law in this jurisdiction that prohibition will lie to give relief whenever a subordinate court proceeds in the hearing of a case in a manner which is contrary to known and accepted practice, and in violation of proper and ethical procedure. *Montgomery v. Findley and Haddard*, 14 LLR 463 (1961); *Tubman v. Murdoch*, 4 LLR 179 (1934).

We feel there was such violation of proper and ethical procedure when the respondent judge neglected the petitioner’s bill of information, and when, thereafter, he threatened to issue a writ of possession in respect of the petitioner's leasehold interest which would have caused the latter great injustice and hardship against which there was no other remedy but prohibition.

Consequently, even though the issuance of the writ lies in the sound discretion of the Justice in Chambers, yet for all the acts done or threatened against the petitioner in the lower court, and in consideration of the relevant laws cited above, we have thought it fit to overrule our colleague, being convinced beyond an iota of doubt that the petitioner's situation in the court below was a proper ground for the issuance of a writ of prohibition.

Therefore, the writ of prohibition sought is hereby granted, and the respondent judge is ordered to refrain from issuing a writ of possession against the petitioner’s leasehold, and to promptly proceed to hear and determine the bill of information. Costs to abide final determination. And it is hereby so ordered.

*Petition granted.*