

FRANCIS P. CARMO, Petitioner, v. **HIS HONOUR A. WALLACE**

OCTAVIUS OBEY, Assigned

Circuit Judge, People's Tenth Judicial Circuit, Lofa County, and **KORTU TAYLOR**,
Respondents.

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

Heard MAY 16, 1988. Decided JULY 29, 1988.

1. Prohibition is a proper remedy not only to prohibit or prevent the doing of an unlawful act by a lower court, but also to undo what has already been unlawfully done under the authority of the court, in so far as it can be achieved.

Petitioner in prohibition, who was plaintiff in the trial court, had instituted an action of summary ejectment to eject corespondent Kortu Taylor from certain premises. After a trial held before a trial jury, a verdict was returned in favour of corespondent Taylor. Upon the trial court's denial of a motion for a new trial and its rendition of final judgment confirming the verdict, petitioner noted exceptions and announced an appeal to the Supreme Court. However, when the case was called by the Supreme Court for hearing, petitioner entered a withdrawal of the appeal, having conceded the contention of a motion filed by co-respondent Taylor to dismiss the appeal on the ground of defect in the appeal bond. Based on the said withdrawal, the Supreme Court rendered a judgment without opinion, dismissing the appeal and ordering the trial court to resume jurisdiction and enforce its judgment. The judgment was enforced by the trial judge who ordered the preparation and service of a bill of costs which was paid by petitioner.

Seven years thereafter, co-respondent Taylor appeared before the presiding judge of the Circuit Court for the Tenth Judicial Circuit, wherein the ejectment action had been tried, and made a submission that the Supreme Court's mandate had not been fully enforced, in that the co-respondent had not been placed in possession of the subject premises in the ejectment suit, and that the petitioner had not been made to turn over to him, the corespondent, all rents collected from the premises. The co-respondent judge granted the submission and ordered that corespondent Taylor be placed in possession of the premises. It was from this ruling that petitioner sought prohibition from the justice in Chambers after a hearing, the petition was granted and the peremptory writ was ordered issued from this ruling of the Justice in Chambers, an appeal was announced to the Court en banc.

The Supreme Court affirmed the ruling of the Chambers Justice, holding that as the mandate of the Supreme Court had already been enforced by a previous trial judge, there was nothing that remained to be enforced by the co-respondent judge. The Court rejected the contention of the respondents that prohibition would not lie since the act complained of had already been done, noting that prohibition was designed not only to prohibit or prevent the doing of an unlawful act, but also to undo what had unlawfully been done by the lower court.

The Court observed that it was the petitioner who had instituted the summary ejection action in the trial court, and that the verdict of the trial jury and the judgment confirming the same did not give possession of the premises to Co-respondent Taylor or awarded him any amount in damages or otherwise. As such, the Court said, its mandate was circumscribed to only the payment of costs of the proceedings in the trial court. Once that had been done, the mandate had been enforced, and there was then nothing before the trial court for enforcement by the co-respondent judge. The Court opined that it was error for the trial judge to put co-respondent Taylor in possession of the premises under the guise of enforcing the Supreme Court's mandate. The Court concluded that under such circumstances prohibition would lie to correct the wrong committed by the co-respondent judge. It therefore affirmed the ruling of the Justice in Chambers and ordered that the peremptory writ be issued.

Roland Barnes appeared for the petitioner/appellee. J Emmanuel R. Berry appeared for respondents/appellants.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

This matter is on appeal from a ruling in Chambers on a writ of prohibition by petitioner against the presiding judge of the Tenth Judicial Circuit Court, Lofa County, His Honour A. Wallace Octavius Obey, and co-respondent Kortu Taylor.

The records before us are totally devoid of the proceedings in the action of summary ejection in a magistrate's court from which the series of other proceedings in the records have emanated. Notwithstanding, we have been able to ascertain from other records in the case from the Circuit Court for the Tenth Judicial Circuit, Lofa County, that on November 17, 1971, the co-respondent, Kortu Taylor, originally brought an action of summary proceedings to recover real property in the aforesaid Tenth Judicial Circuit Court for Lofa County, then presided over by His Honour Judge Frederick K. Tulay. The presiding judge heard and disposed of the issues of law, and ruled the matter to trial on the complaint only, the defendant, co-respondent

herein, having been ruled to a bare denial.

In June, 1972, when the case came for jury trial, it was heard by Judge John A. Dennis. After hearing the evidence, the jury brought a verdict in favour of co-respondent Taylor. A motion for new trial was filed, resisted, heard and denied. Judgment was then rendered confirming the said verdict. The petitioner, not being satisfied, excepted to the judgment and announced an appeal to this Court sitting in its October Term, 1972. However, on March 23, 1973, petitioner withdrew his appeal following the filing by co-respondent Taylor of a motion to dismiss the appeal on the ground that the appeal bond was defective. At that juncture, this Court rendered a judgment without opinion and ordered the trial judge to resume jurisdiction over the case and enforce the judgment.

The mandate to the judge of the Tenth Judicial Circuit was enforced by Judge Jeremiah Z. Reeves, during the February Term, 1973 of the court. A bill of costs was prepared in the amount of \$66.00 for settlement by the petitioner, then appellant, which amount was paid.

Thereafter, petitioner instituted a new action of ejectment. However, on March 30, 1981, while the new action of ejectment was pending, the attorney for co-respondent Taylor returned to the Tenth Judicial Circuit, after a seven year absence, and prayed for the complete enforcement of the mandate of the Supreme Court, alleging that only the portion of the Supreme Court mandate pertaining to the payment of costs by the petitioner had been enforced by the court. He contended that the judgment referred to in the said mandate included placing co-respondent Taylor in possession of the premises, and further giving him the money from rental payments held in escrow by the court. The petitioner resisted the submission on the ground that it had not been properly filed, that there was no Supreme Court mandate to enforce, and that the payment of costs by him had put finality to the mandate of this Court.

The arguments on the submission were entertained by Judge A. Wallace Octavius Obey who ruled that the submission was well taken and therefore granted the same. He therefore ordered that an appropriate writ of possession be issued and that the sheriff place Kortu Taylor, co-respondent, in possession of the property. The co-respondent judge stated that the order was in keeping with the mandate of the Supreme Court, handed down on January 30, 1974, and in keeping with the ruling of Judge Jeremiah Z. Reeves.

From this ruling of Judge Obey, petitioner proceeded to the Justice in Chambers in

May 1981, with a petition for a writ of prohibition. The petition was granted and the writ ordered issued. The Chambers Justice's ruling, made on February 2nd, 1981, stated as follows:

"Therefore and in view of all the facts, laws and circumstances herein narrated, it is our candid holding that the petition should be and same is hereby granted with costs against the Respondents. The Clerk of this Court is hereby ordered to issue the peremptory writ of prohibition restraining and prohibiting the enforcement of the ruling of the co-respondent judge, the Supreme Court mandate in the case of summary ejection having been fully executed by His Honour Jeremiah Z. Reeves."

The rationale for the said ruling was that petitioner was plaintiff/appellant in the summary proceedings and was therefor limited to paying only the costs of court, since in fact title was not involved in the matter. The Justice held that for the same reason co-respondent Taylor could not be placed in possession of the premises or given the proceeds which were being held in escrow by the trial court.

It is from this judgment of the Chambers Justice that this appeal was announced to the full Bench of this Court.

The relevant issues presented by the circumstances of this case are as follows:

1. Whether or not prohibition can undo what has already been erroneously done?
2. Whether or not the execution by Judge Reeves of the mandate of the Supreme Court, growing out of the appeal taken after the denial of motion for new trial in the summary ejection proceedings, put an end to said matter?
3. What were the errors committed by Judge Obey which the petition for a writ of prohibition seeks to prevent or undo in these proceedings?

Although this opinion seeks extensively to support the ruling made in Chambers, it is incumbent upon us to first of all treat each issue in our own way until we can establish our alignment with that ruling.

In attempting to arrive at a reasoned conclusion, we shall first deal with the question of prohibition. Our 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: 16.24(3).

Appellant in these prohibition proceedings contends that the writ merely prohibits and does not undo what has already been done. Thus, he says that since Judge A. Wallace Octavius Obey had placed him in lawful possession of the subject of the ejectment action, and had also turned over money held in escrow to him, it is absurd to attempt to use prohibition to require the undoing of the completed acts.

We disagree and hold the contrary view. We are convinced that this Court has in several opinions maintained that it is a custom that prohibition does not only prevent, but that it also seeks to undo what has already been done, in so far as it can be achieved. *Fazzah Bros. v. Collins and Central Industries, Ltd.*, 10 LLR 210 (1950); *Dweh v. Findley et al.*, 15 LLR 638 (1964). In the most recent case of *Boye v. Nelson*, 27 LLR 174 (1978), Mr. Justice Barnes, speaking for this Court, said that "Prohibition is a proper remedy not only to prohibit the doing of an unlawful act by a lower court but also for undoing what has already been unlawfully done under authority of the court." The dual capacity of the writ of prohibition to both prohibit and to undo is therefore conceded by this Court.

We next proceed to find out whether or not the acts of Judge Reeves, in merely requiring appellee to pay costs, put an end to the execution of the mandate of this Court and to the appeal.

The original action from which these proceedings grew was a summary ejectment to recover real property. The Court is satisfied that in the circumstances, where petitioner was plaintiff in the lower court, that when we ordered the lower court to resume jurisdiction over the case and enforce its judgment, our mandate would not have gone beyond ordering the payment of costs by the plaintiff. Thus, when Judge Reeves received that mandate and required plaintiff to pay costs, it was the termination of our mandate to the lower court in the matter.

Finally, let us enquire into the errors allegedly committed by Judge Obey and which the petition for the writ of prohibition seeks to put straight, as far as possible. About seven years after Judge Reeves action, which we have concluded was a final act, the case was reopened by Judge Obey upon the submission of co-respondent Taylor. Judge Obey then proceeded to issue a writ of possession in favour of co-respondent Taylor, placing him in possession of the property and giving him ownership thereto when the said property had merely been the subject of a summary ejectment action in the lower court. The Judge further ordered that the money held in escrow by the sheriff be turned over to the co-respondent. The co-respondent judge gave as reason for his action that he was completing of the mandate of this Court, of which we are

not aware, and which this Court obviously would not have ordered at all, especially where in the original action of summary ejection, the co-respondent, defendant therein, had made no counter claim. This act of the co-respondent judge necessarily exceeded his mandate and was therefor unlawful.

For the foregoing reasons, we are convinced that this appeal should fail. The Chambers Justice's ruling is upheld. We are therefor sending a mandate to the Tenth Judicial Circuit Court to cancel its former writ of possession in the matter and to require appellant herein to pay back into the custody of the sheriff of that court monies hitherto ordered paid to Co-respondent Taylor by Judge Obey. The said monies, being rents on the property, are to be held in escrow, the same as before Judge Obey's ruling. And it is hereby so ordered.

Petition denied.