

**SAMUEL FORD DENNIS et al., Informants, v. AUGUSTUS BARBOUR  
TARPEH et al., Respondents.**

APPEAL FROM THE CHAMBERS JUSTICE RULING DENYING A BILL OF  
INFORMATION.

Heard: May 26, 1988. Decided: July 29, 1988.

1. Subordinate courts must execute the mandate of the Supreme Court in every case and make returns thereto.
2. An inferior court's disregard of the Supreme Court's mandate is contumacious.
3. Trial courts should follow strictly, both in the spirit as well as in the letter, all opinions given by the Supreme Court as one of the most patent means of unifying the practice.

Informant filed a bill of information before the Justice in Chambers contending that the trial judge had violated the mandate of the Chambers Justice who had ordered that the trial court proceed to put the parties in possession of their respective parcels of land based upon the report of a board of arbitration appointed by the trial court and the parties to demarcate the metes and bounds of land which was the subject of dispute in an action of ejectment. The Chambers Justice had also ordered that no new board of arbitration be set up but that the original board be used for the purpose of enforcing the trial court's judgment.

However, when the mandate was sent to the trial court, the respondents contended that the surveyors would be bias against their interest since the said respondents had refused to pay the additional charges requested by the surveyors as a condition to their having to go to the land and make the required demarcation. The respondents had therefore requested that the trial court appoint a new team of surveyors. The trial court granted the submission and ordered the appointment of a new team of surveyors. It was from this ruling that the informant filed the bill of information.

After a hearing, the Chambers Justice ruled that the trial judge had violated the mandate of the justice forbidden the appointment of any new surveyors board of arbitration and ordered that the trial judge be cited in contempt. From this ruling, an appeal was taken to the Full Bench.

The supreme Court affirmed the ruling of the Chambers justice, holding that subordinate courts were under a legal duty to follow strictly the spirit and letter of the opinions of the Supreme Court and that a failure to obey the mandate of the Court was contumacious. The Court determined that the act of the trial judge in appointing a new team of surveyors was a violation of the Court's mandate. The Court held nevertheless that because of the passage of time which had made it impossible to contact the original arbitrators, and in the interest of justice and a speedy disposition of the matter, a new team of arbitrators be appointed to have the respective parties placed in possession of their parcels of land shown in the original report of the board of arbitration.

M Kron Yangbe appeared for petitioners. Roger K Martin appeared for respondents.

This is an appeal from a ruling made on a bill of information by our distinguished colleague, Mr. Justice Junius, presiding in Chambers.

Samuel Ford Dennis et al., informants herein and plaintiff in the lower court, instituted an action of ejectment against respondents herein in the Sixth Judicial Circuit Court, Montserrado County, to recover possession of a certain parcel of land situated in Paynesville, Monrovia, which parcel of land respondents were alleged to have been withholding wrongfully from informants.

During the March, A. D. 1979 Term of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, when the action of ejectment was called for trial, predicated upon the joint request of counsel representing the various parties, the court constituted a board of arbitration comprising a team of surveyors, one of which was selected by the informants, one by the court, and one by the respondents, to study all of the documents relating to the properties and to conduct a survey of the said disputed. property and make a report to the court, along with their findings and recommendations. The records show that the board, after due consideration, submitted a report containing their findings and recommendations. It would seem that copies of the said report of the board of arbitration were served on all the parties concerned and that there was no legal objection interposed by any of the parties to the action of ejectment against the report. Hence, the court confirmed and affirmed said report, thereby making it a part of the records in the proceedings. Thereafter, the court rendered final judgment in the case and ordered the clerk to issue a writ of possession to be placed in the hands of the sheriff, with instructions that he proceed to the premises and place the parties in possession of their respective properties. The sheriff proceeded to the premises, but while attempting to place the parties in

possession of their respective properties, the respondents therein fled to the Chambers of our former colleague, Mr. Justice Morris, and filed a petition for a writ of prohibition. In response to the petition and writ, the respondents in the prohibition proceedings, now informants, filed their returns.

At the call of the petition for hearing before the Chambers Justice, the counsel representing the parties jointly requested the court to have the case remanded to the trial court to resume jurisdiction over the case and to enforce its judgment. Justice Morris, in granting the submission, said inter alia:

"When this case was called for hearing of the petition for a writ of prohibition, a submission was spread on the minutes of today's sitting by the petitioners' counsel informing us of the unanimous agreement reached between the both counsel praying for the remand of the case to the court below to resume jurisdiction. There being no objection interposed by the respondents' counsel to the contrary, it is our holding that the same is hereby granted and the peremptory writ ordered issued.

The Clerk of this Court is hereby instructed to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction and proceed to execute the mandate of this Court as in keeping with the report of the arbitration in conformity with the orders of the trial judge who accordingly passed upon same.

It is further commanded that this case be given priority by the judge presiding therein in the execution of our mandate. Costs disallowed. AND IT IS HEREBY ORDERED.

In keeping with the mandate of Justice Morris, the parties then proceeded to the Civil Law Court, whereupon they again requested the appointment of the board of arbitration. Informants herein appointed their surveyor and the court appointed a surveyor who was also to serve as chairman of the arbitration board. The respondents however, for reasons not apparent on the records before us, did not appoint a surveyor.

Consequently, on the 22nd day of October, 1986, Counsellor Moses K. Yangbe, counsel for informants, brought to the attention of the court the continued attitude of the respondents in baffling the trial of the case by constantly applying to the Chambers Justice for remedial process even though final judgment had been rendered on the 26th day of April, 1979. The counsel noted that a bill of costs issued by the court had not been implemented because of the delay tactics practiced by the

respondents and that the respondents were requested to appear on the 22<sup>n</sup> d day of October 1986, and to bring a surveyor to represent them on the board of arbitration, but that they had failed to appear or to bring the said surveyor. The counsel therefore requested the court to order the clerk to issue and place in the hands of the sheriff a writ of possession as well as the bill of costs for the enforcement of the judgment of the court in keeping with the records.

His Honour Napoleon B. Thorpe, then presiding by assignment over the September A. D. 1986 Term of the Civil Law Court, Montserrado County, granted the request and ordered the clerk of court to issue the writ of possession in keeping with the board of arbitration report showing the metes and bounds of the area surveyed and shown in the said writ of possession and to place same in the hands of the sheriff for service in keeping with the ruling and mandate of the Supreme Court of Liberia. It is worthy to note that these prohibition proceedings are the second involving the issuance of a remedial writ in this case against the execution of the order of the trial court.

The issue presented before us is whether or not Judge Thorpe was legally correct in ordering a new writ of possession? In our opinion, the judge should have cited all the parties concerned to be present before the issuance of the writ of possession since the writ of possession had already been issued in the case by his predecessor, Judge Emma Shannon-Walser, who listened to the evidence and rendered final judgment in the case. We therefore hold that Judge Thorpe erred when he ordered the issuance of the second writ of possession.

Justice Tulay having heard the petition for a writ of prohibition, granted same, and in so doing, made the following ruling, to wit:

"In view of the above reasoning, we grant the writ of prohibition prayed for and order the alternative writ issued with the instruction to the court below that no further board of arbitration be set up and that the deeds be made to reflect the recommendation made in the report and the parties be placed in possession of their respective properties."

On the 25<sup>th</sup> day of June, 1987, when the trial court again resume jurisdiction to enforce its judgment in keeping with the mandate of Chambers Justice Frederick K. Tulay, counsels for respondents requested the trial court to replace the surveyors board of arbitration previously constituted, and based upon whose report and recommendations the case was decided and the writ of possession had been ordered

issued to place the parties in possession of their respective properties. The basis for this application was that the original surveyors had become bias to the interest of respondents since they had requested extra payment of \$1, 500.00 each in advance before proceeding to the disputed area to place the parties concerned in possession of their respective parcel of land. According to respondents, the payment for the services of the surveyors who were on the original board of arbitration of 1978 had already been made by respondents in the sum of \$750.00, which was respondents' share of the charge, but that because the said surveyors did not end the work at the time, the parties were not placed in possession of their respective parcels of land until after the reading of the mandate from Chambers Justice Tulay by the trial court. The Chairman of the board of arbitration confirmed that they had charged the sum of \$3,000.00 to be paid by both parties in order for them to proceed to the disputed area and place the parties in possession of their respective lands. The respondents contended that because of their inability to pay the additional charge of \$1,500.00, the surveyors had turned against them, and that therefore they, the respondents, feared that if the surveyors were to continue carrying on the assigned job, their (respondents) interest would be irreparably damaged. The respondents therefore prayed for the replacement of the original surveyors. To this application, the trial court made the following ruling:

"In view of the facts stated above of the surveyors that unless the said additional charge is agreed upon to be paid they will not proceed to the disputed area, and considering the position taken by defendants indicating their inability to pay the excessive charge, this court hereby orders the surveyors concerned discharged from further participation in the placement of the parties in possession of their respective parcels of land, and further orders that they be replaced by one surveyor to be named on each side and one appointed by the court to serve as chairman of the board so that the three surveyors may proceed to the .disputed area to place the respective parties in possession of their parcels of land. And it is so ordered."

The issue presented is whether or not the mandate of Chambers Justice Tulay was violated. According to the mandate, the trial court was required to continue with the original surveyors who constituted the original board of arbitration; that no further board of arbitration was to be set up; that deeds be made to reflect the recommendations contained in the 1978 board of arbitration report; and that the parties be placed in possession of their respective properties. Yet, Judge Thorpe undertook to grant the submission made by the respondents for the replacement of the original surveyors, contrary to the mandate of our former colleague, Mr. Justice Tulay, who was then presiding in Chambers. Informants not being satisfied with the

ruling of Judge Thorpe, excepted to the same, said exceptions being duly noted by the court.

During the current term of this Court, a bill of information was filed by informants before His Honour David D. Kpomakpor, and heard by our distinguished colleague, Mr. Justice Junius, who after the hearing, granted the information on the 25th day of April, A. D. 1988.

For the benefit of this opinion, we hereunder quote, word for word, the relevant portion of Justice Junius' ruling:

"In view of the foregoing, the information is hereby granted and the Clerk of this Court is ordered to communicate with the court below to inform His Honour Napoleon B. Thorpe to appear to show cause why he should not be held in contempt for going contrary to the mandate as the law requires. In the meantime, the Clerk is to inform the trial judge now presiding to resume jurisdiction and enforce the mandate of the Supreme Court of Liberia. Since the object of the law is to do justice and justice delayed is justice denied, and since to locate the former members of the board that had been dismissed by Judge Thorpe would bring hardship and undue delay, the Clerk is hereby ordered to inform the presiding judge to appoint a team of surveyors to implement the mandate. And it is so ordered."

Respondents not being satisfied with the ruling of Mr. Justice Junius, excepted to the same and announced and appeal there-from to this Court of diener resort.

As stated earlier, the issue presented is whether or not the mandate of Chambers Justice Tulay was fully executed or was violated by Judge Thorpe, who was then presiding over the Civil Law Court, Sixth Judicial Circuit, when the said mandate was sent from the Chambers of this Court to the trial court for implementation.

The records show that Chambers Justice Tulay's ruling specifically pointed out that no new surveyors should be appointed and that the original surveyors, upon whose report and recommendations the action of ejectment was decided, should continue with the final implementation of the mandate. Contrary to this mandate, Judge Thorpe elected to replace the original surveyors.

In the case *Thomas et al. v. Dayrell et al.*, 17 LLR 284 (1965), this Court held that "subordinate courts must execute the Supreme Court's mandate and make due returns." Also in the case *The National Industrial Forest Corporation v. Baysah et al.*,

25 LLR 74 (1976), decided on April 23, 1976, this Court held that an inferior court's disregard of the Supreme Court's mandate is contumacious." Similarly, in the case Richards v. McGill-Hilton, 6 LLR 81 (1937), decided December 10, 1937, this Court held that "trial judges should follow strictly both in the spirit as well as in the letter all opinions given by this Court, as one of the most patent means of unifying the practice:"

The ruling of our distinguished colleague, Mr. Justice Junius, was predicated upon the above mentioned decisions of this Honourable Court and we are in perfect agreement with the said ruling. Unfortunately, before the ruling of the Chambers Justice reached this Court en banc on appeal, Judge Thorpe, whom our colleague had ordered to appear, departed this world due to a protracted illness. Consequently, we are unable to affirm that aspect of the ruling ordering Judge Thorpe to appear and show cause why, if any, he should not be held in contempt "for going contrary to the mandate of this Honourable Court."

In our opinion, that portion of the ruling of Chambers Justice Junius ordering the trial court to resume jurisdiction over the case and enforce the mandate of this Court by the reconstitution of the board of arbitration since due to lapse of time it would be impossible to contact the members of the original board of arbitration to assist the court in implementing the mandate, should be and the same is hereby confirmed and affirmed. Costs are assessed against the respondents. The Clerk of this Court is hereby ordered to send a mandate to the trial court to resume jurisdiction over the case and enforce its judgment. And it is hereby so ordered.

*Information granted.*