

IN RE: Judicial Inquiry Commission (JIC) Report [2017] LRSC 4 (24 February, 2017)

IN RE: JUDICIAL INQUIRY COMMISSION (JIC) REPORT: COMPLAINT OF MAHN WEESECTION REPRESENTED BY MESSERS. J. AUGUSTUS ARTIS AND B. OBADIAH GOFFA AGAINST HIS HONOR JOE PAYGAR, ASSOCIATE MAGISTRATE, SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

IN THE HONORABLE SUPREME COURT OF LIBERIA SITTING IN ITS OCTOBER TERM, A.D. 2016

HEARD: September 7, 2016

DECIDED: February 24, 2017

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

On March 25, 2015, Messrs. J. Augustus Artis and B. Obadiah Goffa of Mahn Wee Section, Wee Statutory District #3, Grand Bassa County, Republic of Liberia, filed a complaint with the Office of the Chief Justice of the Honorable Supreme Court of Liberia against His Honor Joe Paygar, Associate Magistrate, 2nd Judicial Circuit Court, Grand Bassa County, Republic of Liberia. They alleged in their complaint that the respondent Associate Magistrate, Joe Paygar, sold about eighty (80%) of their customary and/or ancestral land; that despite several interventions on the part of the authorities of Grand Bassa County, especially Honorables Jeh Byron Browne, Representative of District #3; Etweda Cooper, County Superintendent; James Harris, County Land Commissioner; and Zanzan Karwor, Chairman of the Traditional Council of Liberia, to dissuade Associate Magistrate Paygar from carrying out this alleged act, the Associate Magistrate has failed to refrain from selling their ancestral land, using his position and authority as an Associate Magistrate to perpetrate the said act. For the benefit of this opinion, we herewith quote verbatim the petitioners' letter of complaint as follows, to wit:

Mahn Wee Section

Wee Statutory District District #3
Grand Bassa County
Republic of Liberia

March 25, 2015

His Honor
Francis Korkpor
Chief Justice
Supreme Court of Liberia
Republic of Liberia

Dear Chief Justice Korkpor:

Complaint against Stipendiary Magistrate Joe Paygar

On behalf of the people of Mahn Wee Section, District #3A, Grand Bassa County, I am pleased to extend heartfelt felicitations, and to complain against Stipendiary Magistrate Joe Paygar of District #3.

Your Honor, the elders and citizens of said Section deem it appropriate, at this time, to complain against Magistrate Paygar because he has almost sold the entire customary land of our people. Magistrate Paygar, who is a citizen of Gorblee Section, has left his Section and intruded our ancestral land in our Section, and has sold about eighty (80%) percent of it. One of the deeds signed by Magistrate Paygar is attached to this letter for your information.

Though we have used other means to dissuade Magistrate Paygar from carrying on his act, he continues to do so under the color of his official position, as he says he is untouchable because he is a Magistrate. In our quest to make Magistrate Paygar reason with us, we complained him to Hon. Jeh Byron Browne, Representative of Electoral District 4, Grand Bassa County, Hon. Etweda Cooper, Superintendent of Grand Bassa County, Hon. James Harris, County Land Commissioner and Hon. Zanzan Karwor, Chairman of the Traditional Council of Liberia. Even with the intervention of these high profile personalities, Magistrate Paygar is not willing to stop his unlawful actions.

In continuation of his land grabbing spree, the Magistrate, without any color of rights sold more than (2000) acres of our land to some employees of the Liberia Agricultural Company (LAC), the Kissi Community and some businesspeople.

It is unbelievable, Your Honor, that the Magistrate is selling the land, using fake deeds to carry out his illegal actions, although the properties contain live trees, graves of our ancestors, and a Sandee Bush. However, Your Honor, with these many provocations, our people have remained law-abiding as we believe that we are beyond hostility, and that we believe in the rule of law of this country.

Wherefore, and in view of the foregoing, and on behalf of the people of Mahn Wee section, we humbly pray your Honor to investigate the unlawful acts of Magistrate Paygar, which has made it impossible for him to continue to serve the District as an impartial magistrate.

Please accept our gratitude in advance for saving our remaining land from the tyrannical hands of Magistrate Joe Paygar.

Kind regards.

Sincerely yours,

Signed: _____

J. Augustus Artis

Spokesman

Mahn Wee Section

Approved: _____

B. Obadiah Goffa

General Council of Chiefs

Wee Statutory District

Upon receipt of the petitioners' complaint, His Honor Francis S. Korkpor, Sr., Chief Justice, transmitted it to the Judicial Inquiry Commission (JIC), then presided over by His Honor Kabineh M. Ja'neh, Associate Justice, to conduct an investigation into the allegations set forth in the complaint and submit its findings and recommendations to the Supreme Court. However, as per the procedure adopted by the Commission, and consistent with the due process requirements laid down in the Constitution and espoused in several opinions of this Court, a self-explanatory letter, dated May 7, 2015, with the complaint attached thereto, was directed by the JIC, through His Honor Kabineh M. Ja'neh, to the Associate Magistrate requesting him to file his response thereto within seven (7) days of the receipt of the communication.

Our review of the records revealed that the Magistrate filed his response to the complaint on May 18, 2015, contending, amongst other things, that the complaint filed by the complainant(s) pertaining to a customary land being intruded into is false and misleading in that the Mahn Wee Section is not separate and distinct from Gorblee his ancestral town to be owned by complainant(s); that the complainants have no legal capacity to complain and as such said complaint should be dismissed; that the allegation that the County Superintendent, Honorable Etweda Cooper, has been mounting several effort to halt the illegal sale of their so-called Manwee Section is malicious; that the property in question (customary land) belongs to the people of Gorblee for whence an Aborigines Deed was acquired; that the Judiciary Inquiry Commission (JIC) should dismiss the complaint since indeed the complainants are not the proper owners of said property. We herewith quote verbatim the Associate Magistrate's returns:

Compound #3 District

Grand Bassa County

May 18, 2015

Yamah V. Willie

Administrative Assistant

Justice Ja'neh's Chamber

Dear Administrative Assistant:

DEFENDANT'S RESPONSE:

AND NOW COMES MY RESPONSE IN THE ENTITLED CAUSE OF ACTION MOST RESPECTFULLY praying this Judiciary Inquiry Commission and His Honor to dismiss the complaint of the complainants for the following legal and factual to wit:

1. That as to count one (1) I defendant says the complaint filed by the complainants pertaining to a customary land being intruded, it is false and misleading in that the Mahn Wee Section is not separate and distinct from Gorblee to be owned by complainant; hence, the complainants have no legal capacity to complain. Therefore, a dismissal of said action will lie.

2. That as to count two (2), I, the defendant, denies their claim and further say that the property in question (customary land) belongs to the people of Gorblee for whence an aborigines Deed was acquired. I, defendant, attached a 1926 Aborigines Deed awarded by the Republic of Liberia, back by letter of Administration" and a Decree of sale, marked exhibit D/1.

3. That as to count three (3) on the Kissi Community, Hon. Jeh Byron Browne, the Representative of Electoral District #3, Grand Bassa County, wrote a letter to Mr. Milton B. Paygar on the 10th day of February A. D. 2009, to assist the Kissi Community with (30) thirty acres. Mr. Milton B. Paygar, Senior Elder of Gorblee called an Elder meeting that included Complainant B. Obediah Goffa, and we all agreed and token was given, even Hon. Abel Nyounbol, District Superintendent of Wee Statutory District received some of the token given. Copy of the receipt attached as exhibit, marked D/2. D/3 is the letter written by the Honorable.

4. The same count two(2) concerning the County Superintendent, Honorable Etweda Cooper, being mounting several effort to halt the illegal sale of their so-called Mahn Wee Section, it is malicious, because according to their complaint filed to the District Superintendent, Hon. Abel Nyounbol, dated the 27th of June 2013, a copy was submitted to the County Superintendent only. Attached is copy, marked exhibit D/4.

Thereafter, the first hearing by the District Superintendent, Hon. Nyounboi, established a poro- society magnitude and forwarded the same to the Supreme Grand

Zoe, Elder Edward Garmah. The said matter was handled by the Supreme Grand Zoe for the first and second hearing and later postponed for the Ebola epidemic.

The matter was resurrected by them and it was re-assigned on 17th day of April 2015, in Zoe Town, Neekren Township, the case was heard and each party paid \$250.00 USD for the production of witnesses. The letter of assignment, exhibit D/5.

That, as to count (4), B. Obediah Goffa, the General Council of Chief of Gorblee, and not for his so-called Mahn Wee Section, he mentioned in his complained that, I sold his Sande Society Bush and the graves of his ancestors. I believe that the Sande Society and ancestors' grave issues belong to the Zoe, and in his capacity as General Council of Chief I shall be culturally summoned by him.

That to count one (1) additionally concerning the copy of Administrator Deed attached, the country authority through the Development Superintendent, Hon. Adonie Greaves asked the people of Gorblee to assist with a parcel of land to build a mini stadium. Honorable Nyounbol, District Superintendent called an Elder meeting, including Obediah Goffa. According to the meeting, we all agreed and provided the land (4.5) acres.

Thereafter, the then Senior Senator and pro-tempore of the Liberian Senate, ordered Mr. David R. Biaye, the then resident surveyor, and he conducted the survey, parcel the said Deed and signature by the three Administrators. Honorable Jeh Byron Browne is aware.

That as to count one (1), two (2), three (3) and four (4) I defendant says that we the people of Gorblee I were representing, have the legal rights over the said property by virtue of title being vested in us and also all other allegations are false and intended to insinuate, degrade and disrepute my character with my position.

Therefore and in the view of the foregoing, I defendant most respectfully request the Judiciary Inquiry Commission and His Honor to dismiss the action of the complaint since indeed the complainants are not the proper owners of said property.

I submit.

Hon. Joe S. Paygar
Stipendiary Magistrate/Defendant”

The Judiciary Inquiry Commission, upon receipt of the Associate Magistrate’s response, conducted an investigation into the matter. This body being a fact finding investigative forum, the parties were allowed to expound on their complaint and response thereto and to answer questions put forward by the members of the Commission. They were also allowed to bring witnesses to buttress and support their respective positions. At the conclusion of the investigation, the Commission handed down its findings and made recommendations to the Supreme Court. Hereinunder is the Commission’s report.

**JUDICIAL INQUIRY COMMISSION
SUPREME COURT OF LIBERIA
TEMPLE OF JUSTICE, MONROVIA, LIBERIA
OCTOBER TERM 2015**

Heard October 1st, 2015

INVESTIGATIVE REPORT

Predicated upon a formal complaint filed with His Honor Francis S. Korkpor, Sr., Chief Justice, Supreme Court of Liberia, and subsequently transmitted to it for investigation, the Judicial Inquiry Commission (JIC), on October 1, A.D. 2015, convened and conducted regular hearing. The following members of the Committee were present:

1. His Honor Justice Kabineh M. Ja'neh.....Chairman
2. Judge James Jones.....Member
3. Judge J. BoimaKontoe.....Member
4. Judge Joseph S. Fayiah.....Member
5. Sis. Mary Laurene Browne..... Member

Messrs. J. Augustus Artis and B. Obediah Goffa represented and spoke on behalf of the complainants, a group of citizens of Mahn Wee Section, Wee Statutory District #3, Grand Bassa County, Republic of Liberia. The Respondent Magistrate Joe Paygar, represented himself. Consistent with practice and procedure, the Commission's Chairman summarized the functions of the Commission and introduced its members. Thereafter, the complainants were requested to state in summary, their complaint lodged against the respondent magistrate.

The representatives of the complainants informed the Commission that their district is composed of five (5) sections. They accused Respondent Magistrate Joe Paygar of selling about eighty percent (80%) of the land belonging to Mahn Wee Section from where they hailed.

The complainants alleged that Respondent Joe Paygar sold two thousand (2000) acres of their land to Mittal Steel and some employees of the Liberia Agriculture Company and that he insulted them when they protested his action. They further claimed to have filed a complaint against the respondent to all the authorities, but that nothing had been done about it, as he remained defiant, boasting that no one can do anything to him.

The Complainants stated further that Respondent Joe Paygar has made himself an administrator over their land, engaging in politicization of the court's operations. According to the complainants, Respondent Magistrate Paygar, had been in the business of threatening all those who voted against his Magistrate Paygar's preferred candidate and no such persons get justice from his court. The Complainants also alleged that Magistrate Joe Paygar turned the courthouse into a fraternity initiation ground and facilitated threats to other society activities. According to the complainants, Magistrate Paygar was wearing two caps, one as judicial officer and the other as administrator; that he used his function as a magistrate to facilitate his land grab.

Defending himself, the respondent, Magistrate Joe Paygar, told the Commission that the complaint filed against him was false and misleading. This is because, according to him, the complainants hold no title to the land they were accusing him of selling. Magistrate Joe Paygar further narrated that the land in question is owned by their ancestors and that he is one of three (3) administrators selected by the sections to

administer and execute the sales of land belonging to the people of the sections. In other words, Respondent Magistrate did not deny that he had been involved in business transaction on behalf of the 'sections'.

The Commission asked Magistrate Joe Paygar to provide explanation(s) how he became head of the Chieftdom and to provide evidence of his authority to sell land which he claimed to be for their ancestor. Responding to this question, Magistrate Paygar stated that he was duly granted letters of administration but that he left said instrument in his office and he therefore could not display it. The Commission noted that letters of administration vests in a person the authority to administer estate of a deceased person(s). In the instant case, Magistrate Paygar alleged to be operating under such authority yet could not produce any supporting evidence to that effect. One may wonder why Magistrate Paygar would elect not to produce any evidence of his authority to sell the "ancestral land". The magistrate may have also forgotten to have attached it to his returns filed to the complaint.

Commissioner Mary Laurent Brown asked Magistrate Joe Paygar whether the land transactions he was carrying out met the consent of the people in the chieftdom. Magistrate Paygar answered in the affirmative, an answer, we note, unsubstantiated by any evidence proffered by the Respondent Paygar.

As any experienced magistrate would know that he/she is not allowed to engage in any business transaction, especially those involving sale, the Commission asked Magistrate Joe Paygar when he became a magistrate. Magistrate Paygar could not remember when he was appointed and commissioned but said it could be sometime around July of 2011. He also informed the Commission that based on similar complaint, the Chief Justice, in 2013, had advised him to desist from all land transactions in the section as a sitting magistrate. This was an advice he admittedly has not heeded. The Commission again asked Magistrate Paygar if he had participated in the sale of land since 2013, to which Magistrate Paygar confirmed affirmatively. Also asked whether he saw anything wrong with his conduct of participating in the sale of land while serving as a judicial officer, Magistrate Paygar answered, no, because he did not personally benefit financially from the transactions."

Following the parties explanations and responses to questions posed to them, the matter was suspended pending the submission of the Commission's Report to the Supreme Court through His Honour, the Chief Justice.

It is most interesting to note that the respondent magistrate exhibited marginal understanding of the law. When asked whether as a sitting Magistrate he saw anything wrong with his commercial participation in land sale, Magistrate Paygar said that he did nothing wrong because, "I did not personally benefit from the proceeds." This position leaves a lot to be desired. It most regrettably demonstrates Magistrate Paygar's poor insight and understanding of his duties. To suggest that he not having benefitted from the transactions exempts him from wrong doing is simply absurd. A proposition of this sort should not have come from a judicial officer in whose hands lie the power and authority to protect the general public.

Findings

Magistrate Joe Paygar admitted his involvement in commercial activities by personally selling large acres of land. The land in question is situated in Grand Bassa County, Wee Statutory District #3. He admitted that he was warned by the Chief Justice to desist from this conduct. He however continued until a formal complaint was filed against the respondent. Clearly, Magistrate Paygar used his office primarily as a cover to engage in selling land. As a sitting magistrate, it would be difficult to get any redress in that area. His involvement in business dealings as revealed by this investigation constitutes an ethical breach of significant proportion.

Judicial Canon Thirty One states as follows:

"A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success or private business therefore, enter into such private business ventures, or to charitable enterprises. He should not therefore, enter into such private business or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office the influence of his name to promote the business interest of others; he should not solicit for charities nor should he enter into any business relation which would in the normal course of events, reasonably bring his personal interest into any business relation which would in the normal course of

events, reasonably bring his personal interest into conflict with the impartial performance of his official duties."

We note also that Magistrate Joe Paygar lied to the Commission that he was one of three administrators of the ancestral land without an iota proof. That the Chief Justice had also cautioned him not to get involved in land transaction, which he ignored, points to his dishonesty. Judicial Canon Six "JUDGE AS A GOVERNMENTAL PAID OFFICIAL" describes a judge, "as a priest of justice, a judge should not be given the cause to be corrupted in the performance of his judicial duties as to be justified for any disciplinary actions taken against him it found deficient in these qualities" and Judicial Canon Seven PUBLIC BEHAVIOUR "A Judge should conduct himself in a decent and honorable manner in society".

Conclusion/Recommendation:

The ethical breach and professional misconduct detailed herein above constitute multiple violations of the Judicial Cannon. It having been Provided under Judicial Canon Thirty Nine that "The penalty for violation of any provision of the Judicial Canon shall be either fine, suspension, impeachment and/or prosecution in a court of law according to the gravity of the violation.", we hereby recommend that Magistrate Paygar be suspended for six months and be made to attend the J.I. for three months.

DONE UNDER OUR HAND THIS 29th DAY OF FEBRUARY, A. D. 2016.

Names of members of the Commission who signed the report:

1. ASSOCIATE JUSTICE KABINEH M. JANEH.....CHAIRMAN
2. HIS HONOR JUDGE JOSEPH S. FAYIAH.....MEMBER
3. HIS HONOR JUDGE JAMES JONES.....MEMBER
4. SISTER MARY LAURENE ROWNE.....MEMBER
5. HIS HONOR JUDGE BOIMA KONTTOE.....MEMBER

We note that Rev. Emmanuel Bowier, Counsellors Theophilus Gould and George Henries, members of the Judicial Inquiry Commission, did not sit on this investigation and hence did not sign the report.

Consistent with the elements of due process of law, when the Commission's report was forwarded to members of the Supreme Court, a copy of the report was forwarded to Associate Magistrate Paygar and a request made that he appears before the Court en banc to put up any defense he might have against the findings and conclusions reached by the Commission. Simultaneously, the Supreme Court also wrote to Counsellors Tiawon Gongloe, Oswald N. Tweh and Kathleen T. Payne-Makor, all members of the Supreme Court Bar and in good standing with the Liberian National Bar Association (LNBA), requesting them to serve as amici curiae in advising the Court on the matter and of the decision and recommendations made by the Commission. The amici curiae, as per the request of the Court, prepared an amici brief which was duly filed with the Court and supportive of the Commission's findings and recommendations that the Associate magistrate violated Canon Thirty-One. The Court is grateful to these counsellors for their assistance as friends of the Court, and in assisting the Court to make a reasoned and informed decision in this matter brought before it.

Our review of the certified records reveals that the crux of the investigation delved into the complaint of the Magistrate's sale of the complainants' ancestral land. The respondent, Magistrate Joe Paygar, when he appeared before the Commission in his defense, told the Commission that the complaint filed against him was false and misleading in that the complainants held no title to the land they were accusing him of selling. He further narrated that the land in question is owned by their ancestors and that he is one of three (3) administrators selected by the sections to administer and execute the sale of land belonging to the people of the sections. In other words, the Respondent Associate Magistrate did not deny that he had been involved in business transaction on behalf of the "sections". His assertion that he is one of the three (3) administrators appointed to administer and execute the sale of land belonging to the people of the sections of the area was trashed since he provided no evidence of his said Letters of Administration or authority to sell land which he claimed to be for his ancestors. He stated that the Letters of administration was left at home but we wonder why the Respondent Associate Magistrate elected not to bring the purported letters of administration granted him [them] by the court to the investigation knowing very well that the said Letters of Administration was essential to his defense especially where the primary accusation was his illegal sale of the complainants land.

From the records, Magistrate Joe Paygar did admit his involvement in commercial activities by personally selling large tracts of land situated in Wee Statutory District #3, Grand Bassa County, Republic of Liberia which action he tried to justify. He further admitted that he was warned by the Chief Justice and Associate Justice Ja'neh to desist from such conduct but he continued such behavior until a formal complaint was filed against him.

We are disheartened that Magistrate Paygar would use his office primarily as a medium to engage in the illegal sale of land in violation of the Judicial Canons governing the conduct of judges and/or magistrates. It is also worth noting that the Respondent Magistrate exhibited marginal understanding of the law. When asked whether as a sitting magistrate he did not see anything wrong with his commercial participation in the land sale, Magistrate Paygar responded that "he did nothing wrong because he did not personally benefit from the proceeds." This response of Magistrate Paygar regrettably demonstrates his poor insight and understanding of his duties and responsibilities. The fact that the Respondent Associate Magistrate did not benefit from the transactions does not exempt him from wrongdoing, as the issue is not him benefitting from his action, but using his authority in a form and manner violative of the Judicial Code of Ethics.

Judicial Canon Twenty-Five states that "a judge should be mindful that our government is that of law and not of men, and that he violates his duty as an administrator of justice under such system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become precedent, unsettling accepted principle and may have detrimental consequences beyond the immediate controversy. He should administer his office with due regard to the integrity of the system of the law itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law." Also, our Judicial Canon Seven requires a judge to conduct himself in a decent and honorable manner in society".

Accordingly, this Court endorses the findings and the recommendations of the Judicial Inquiry Commission that Associate Magistrate Joe Paygar be suspended for a period of six (6) months as was recommended by the Judiciary Inquiry Commission. While the Magistrate remains suspended, he shall forfeit salary and all emoluments for the period under which he serves his suspension.

The Clerk of Court is ordered to communicate this to the Court Administrator's Office. The Clerk is further ordered to send to all courts of the Republic informing them of the decision of this Court and the suspension of the Respondent Associate Magistrate. **AND IT IS HEREBY SO ORDERED.**

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLORS TIAWAN S. GONGLOE, N. OSWALD TWEH AND KATHLEEN P. MAKOR APPEARED AS AMICI CURIAE. THE RESPONDENT MAGISTRATE DID NOT APPEAR NEITHER WAS HE REPRESENTED BY COUNSEL.