

**FLOMO JARKONNIE**, Petitioner, v. **JOHN B. AKOI**, Land Commissioner, Lofa County, and **FLOMO POROPEAYEA**, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE  
ISSUANCE OF 'HIE WRIT OF PROHIBITION.

Heard: June 1. 1989. Decided: July 14. 1989.

1. Damages is pecuniary compensation or indemnity which may be recovered in the courts by any person who has suffered loss, detriment or injury, whether to the person, property or rights, through the unlawful act or omission or negligence of another.
2. Expense is the cost generally allowed to the successful party; all the expenses which the property owner is put to by the litigation.
3. A citizen desiring to purchase public land in the county area shall apply to the land commissioner of the county in which the land is located: and the land commissioner. if satisfied that the land in question is not privately owned and is unencumbered, shall issue a certificate to that effect.
4. A land commissioner has jurisdiction to hear and determine cases arising from the sale of public lands, as he is required by law to ascertain that the land sought to be bought or sold is unencumbered.
5. In an investigation by the land commissioner of a dispute over land claimed pursuant to tribal certificate, in addition to finding a party liable, the land commissioner may impose a fine and enforce payment of the fine to cover the expenses of the successful party.
4. A writ of prohibition will not be issued to a court or tribunal which has neither exceeded its jurisdiction nor attempted to proceed by a wrong rule.

Flomo Jarkonnio, the petitioner, in January 1988 engaged the services of one George A. Corbin, a public land surveyor resident in Monrovia, Montserrado County, to survey a parcel of land for him in Kpaiyea Town, Salayea District, Lofa County, and which parcel of land was adjoining that of Co-respondent Flomo Poropeyeya, also of Kpaiyea Town. Surveyor George A. Corbin is said to have put up public notices for the survey of the land but without any reference to the land commissioner of Lofa County. The co-respondent, owner of the adjoining land, immediately protested against the survey and filed a complaint before the superintendent of Lofa County. Predicated upon the said complaint, the superintendent ordered the land commissioner to conduct an investigation. At the conclusion of said investigation, the land commissioner found appellant administratively liable and ruled him to pay the expenses incurred by the co-respondent, which resulted from the complaint filed and the investigation conducted, which expenses amounted to \$220.00.

Against this ruling, and to prevent the payment of this amount, the petitioner fled to the Chambers Justice and applied for a writ of prohibition. The petition was heard and denied and the appellant appealed to the Court *en banc*.

In finally deciding the case, the Supreme Court opined that a land commissioner, who is a member of the Executive Branch of Government, may entertain complaints growing out of land disputes involving tribal elements, whose claims are not predicated upon title deeds; and equally so, he is clothed with authority to enforce administrative decisions as an outcome of such claims. Consequently, the writ of prohibition could not lie. The petition was *denied* and the ruling of the Chambers Justice affirmed with costs against the appellant.

*Boima K. Morris* appeared for petitioner. *J. Edward Koenig* and *Henrietta M Koenig* appeared for respondents.

MR. JUSTICE BELLEH delivered the opinion of the Court.

Following a ruling on the petition for a writ of prohibition by our distinguished colleague, Mr. Justice Junius, who presided over the Chambers of this Court during the October, Term, A. D. 1988, petitioner herein excepted to the said ruling and announced an appeal to this Court sitting *en banc* for our consideration and final determination of the issues presented in petitioner's brief, which form the factual and legal basis for this appeal.

For the benefit of this opinion, we hereunder quote word for word petitioner's petition for the writ of prohibition as submitted to the Chambers Justice of this Court:

"PETITIONER'S PETITION"

"1. That your petitioner, having obtained a tribal certificate for his farm land and an executive survey order to survey said farm land, secured the services of a surveyor from Monrovia to survey his farm land situated in Kpaiyea Town, Salayea District, Lofa County. The surveyor, prior to surveying the land, gave two weeks notice over the radio and in the town to all those who had land adjacent or within the vicinity to come with either their deeds or tribal certificates on the day of the survey, but no one brought any deed or tribal certificate. The surveyor then surveyed his land. To his greatest surprise and dismay, Co-Respondent Flomo Poropeyeya carried a complaint to Co-Respondent John B. Akoi to the effect that he, the petitioner, had surveyed Flomo Poropeyeya's sugar cane farm and cash crop after his deed had been prepared by the land commissioner and forwarded to the superintendent. The land commissioner then withheld all his papers, the prepared deed, the tribal certificate, survey order, and has had them up to the filing of this petition.

2. That the co-respondent is now trying to enforce the execution of this illegal judgment by compelling the petitioner to pay what he termed "expenses" in the amount of \$220.00 (Two Hundred Twenty Dollars) when in fact and in truth as a land commissioner, he has no jurisdiction to try and determine an action of damages to personal or real property or

criminal mischief. For, the Co-respondent Flomo Poropeayea should have gone to a court of competent jurisdiction to file his complaint if he felt that the petitioner, in surveying his farm, damaged any property of his, including sugar cane farm and other cash crops but not the land commissioner or to any administrative forum. The land commissioner has no trial jurisdiction to try and determine action of damages or criminal mischief. Therefore, prohibition will lie to restrain a void and an illegal judgment. See exhibit "A".

The gist of the petition for writ of prohibition is that on January 14, 1988, Petitioner Flomo Jarkonnio of Kpaiyea Town, an adjoining land owner ordered the survey of his portion of land by one George A. Corbin of Monrovia, Montserrado County, a public land surveyor, who is said to have put up a notice for the survey of the said land without any reference to the land commissioner of Lofa County. Whereupon, the co-respondent immediately protested against the survey and filed a complaint before the superintendent of Lofa County, who ordered the land commissioner to conduct an investigation, and as a result of the investigation, petitioner was administratively found liable and a decision was accordingly rendered against petitioner. Consequently, petitioner was ordered to pay all expenses incurred by appellee in the sum of \$220.00. There is no showing that petitioner ever appealed from the decision of the land commissioner; instead, petitioner elected to file a petition for a writ of prohibition before the Justice presiding in Chambers, our former colleague, Mr. Justice Biddle, who ordered the issuance of the alternative writ of prohibition.

The respondents having been served with the alternative writ of prohibition, filed a four-count returns contending, among other things, that:

1. The land commissioner is authorized under the law to conduct an investigation growing out of land dispute among elements within his assigned area, especially so where said dispute is based upon mere tribal certificates and no deed is involved; and that the land commissioner being an administrator, he is legally authorized under the law to probe into administrative matters, assess expenses incurred against the losing party to the extent of imposing administrative fines, subject to appeal under the doctrine of chain of command and administrative procedure; and
2. The proceedings and/or investigation had by the land commissioner was solely an administrative matter growing out of land dispute and not an action of damages as alleged by the petitioner, and therefore prohibition will not lie.

The Justice in Chambers ruled denying the petition. Petitioner, being dissatisfied with the ruling of the Chambers Justice, excepted to same and announced an appeal to this Court sitting *en banc* for review.

There are two issues presented for our consideration and final determination. They are:

1. Whether or not the complaint filed before the land commissioner was for damages; and

2. Whether or not the land commissioner who is a member of the Executive Branch of Government may entertain complaints growing out of land dispute involving tribal elements whose claims are not predicated upon title deeds.

*"Damages"* is defined as "a pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another. A sum of money awarded to a person injured by the tort of another."

*"Damages"* may be compensatory or punitive according to whether they are awarded as the measure of actual loss suffered or as punishment for outrageous conduct and to deter future transgressions. Nominal damages are awarded for the vindication of a right where no real loss or injury can be proved. Generally, punitive or exemplary damages are awarded only if compensatory or actual damages have been sustained."

*"Compensatory or actual damages"* consist of both general and special damages. General damages are the natural, necessary, and usual result of the wrongful act or occurrence in question. Special damages are those "which are the natural, but not the necessary and inevitable result of the wrongful act." BLACK'S LAW DICTIONARY 351-352 (5<sup>th</sup>ed.).

*"Damages"* connotes the character of relief afforded to an injured party for the injury suffered, that the amount which will compensate the injured party for all detriment which was proximately caused by the unlawful act of defendant."

"The term 'damages' is to be distinguished from other terms such as debt, expenses, interest penalty, salary value, and verdict." 25 C. J. S., *Damages*, § 1(b).

*"Expenses"* as used in a legal sense, is the expense of the suit the cost which are generally allowed to the successful party; all the expenses which the property owner is put to by the litigation." 35 C. J. S., at page 235.

The records reveal that predicated upon the complaint filed in the office of the superintendent of Lofa County by the co-respondent herein, protesting the signing of any public land sale deed by the superintendent of Lofa County, covering portions of 'parcel of land' which had allegedly given to the co-respondent and his family by the tribal authorities of Lofa County, Honourable Gayflor Johnson, the superintendent of Lofa County mandated the land commissioner of Lofa County, co-respondent herein, to conduct an investigation.

After investigating the said protest, the co-respondent land commissioner made a ruling. For the benefit of this opinion, we hereunder quote the relevant portions of the ruling of the co-respondent land commissioner:

"In lieu of all stated above, Defendant Flomo Jarkonnie is hereby ruled guilty and requested to defray all expenses of protesters through the office of the land commissioner of this County, Lofa, and it is hereby ordered:"

According to the decision of the co-respondent land commissioner, quoted *supra*, there is no indication that besides ruling petitioner guilty of the protest, the co-respondent land commissioner awarded damages in favor of Co-respondent Poropeayea for the cash crop trees which were included in the survey conducted at the instance of petitioner. Instead, the corespondent land commissioner ruled simply that petitioner be required to pay the expenses incurred by Co-respondent Porpopeayea during the investigation which is a normal procedure in administrative courts. In short, we are of the opinion that the land commissioner did not award damages in favour of the corespondent as erroneously contended by counsel for petitioner.

The second issue to be determined is whether or not the land commissioner who is a member of the executive branch of government may entertain complaints growing out of land dispute involving tribal elements whose claims are not predicated upon title deeds.

The Public Land Law, 1956 Code 34:30, provides:

"A citizen desiring to purchase public land in the county area, shall apply to the land commissioner of the county in which the land is located and the land commissioner if satisfied that the land in question is not privately owned and is unencumbered shall issue a certificate to that effect." In respect to the office and functions of the land commissioner, the Public Lands Law, 1956 Code, 34:1 & 2 provide, as follows:

"The President by and with the advice and consent of the Senate, shall appoint a land commissioner in each county. The duties performed in the counties by the land commissioners shall be performed in the hinterland by the district commissioners."

Each land commissioner, if satisfied, that the public land about to be sold is not privately owned and is unencumbered, shall issue a certificate to a prospective purchaser to that effect. He shall also under the circumstances required by law draw up deeds of public lands sold under the procedure prescribed in section 30 of this title or allotted under the provisions of chapter 14 thereof." The office of the writ of prohibition, according to section 16.21(3), Civil Procedure Law, Rev. Code 1, is a "special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding as specified therein."

In the case *Bryant v. Morris and Darby*, 12 LLR 198 (1954), this Court held that "a writ of prohibition will not be granted to a court which has neither exceeded its jurisdiction nor attempted to proceed by a wrong rule."

In view of the functions and duties of land commissioners as herein specified, coupled with the controlling laws, we are of the opinion that the land commissioner does have jurisdiction to hear and determine cases arising from the sale of public lands, as he is required by law to ascertain that the land sought to be bought or sold is unencumbered ., hence, prohibition will not lie to refrain the co-respondent land commissioner from enforcing his decision.

We therefore hold that the ruling of the Chambers Justice be, and the same is hereby affirmed. The Clerk of this Court is hereby ordered to send a mandate to the office of the land commissioner of Lofa County instructing the said land commissioner to resume jurisdiction over the matter and enforce his decision. Costs are ruled against the petitioner. And it is hereby so ordered.

*Petition denied*