

**JEFF, JOH, FORKPAH, et al.**, Informants, v. **HIS HONOUR SEBRON J. HALL** and **HER HONOUR AMYMUSU K. JONES**, Assigned Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, and Stipendiary Magistrate, Monrovia City Corporation,  
Respondents.

INFORMATION PROCEEDINGS.

Heard: May 28, 1997. Decided: July 1997.

1. A party litigant in a judicial proceeding before a magistrate or justice of the peace, whose rights have been abridged by the arbitrary action of such magistrate or justice of the peace, is entitled to institute summary proceedings against such magistrate or justice of the peace in the circuit court of the county where the action occurs.
2. The circuit judges have the power, authority and jurisdiction exclusively to issue or order the issuance of writs of injunction and writs of summary proceedings, in the nature of prohibition, addressed to inferior courts and their officers in exercise or aid of their appellate jurisdiction over them.
3. Summary proceedings against magistrates and justices of the peace and summary proceedings to recover the possession of real property are two different proceedings under the statutes; the former being a remedial process dealing with arbitrary and irregular acts of justices of the peace and magistrates brought to a circuit court by a party whose legal rights are violated, and the latter dealing with possessory rights to recover possession of real property.
4. A Chambers Justice errs legally in ordering the enforcement of a ruling after an appeal from said ruling has been announced and granted.
5. An appeal, when announced, serves as a supersedeas to any further disposition of the particular matter by the court from whose judgment the appeal has been announced.
6. An order granting a provisional remedy is annulled immediately on judgment for the defendant unless an appeal is taken.
7. The taking of an appeal continues a provisional remedy in effect until a final judgment is rendered.
8. On announcement of an appeal by a defendant, no execution shall issue on a judgment against him, nor shall any proceedings be taken for its enforcement until final judgment is rendered, except that on an appeal from an order dissolving an order granting a preliminary injunction, such preliminary injunction shall be in force pending decision on the appeal.

Informants filed a bill of information before the full bench of the Supreme Court against the decision of the Justice in Chambers to order the enforcement of his ruling notwithstanding the announcement and granting of an appeal. An action of summary proceedings to recover possession of real property had been instituted against the informants by one Mamadee Daramie, administrator of the intestate estate of his late wife, in the magisterial court of the City of Monrovia. Prior to the hearing of the case, a motion to intervene was filed by Ciatta Sherman, claiming to be a niece of the deceased. Following the granting of the motion to intervene, Ciatta Sherman informed the magisterial court that an action was pending in the Monthly and Probate Court for Montserrado County to revoke the letters of administration issued to Mamadee Daramie. Based on this, the magistrate suspended hearing of the case pending disposition of the revocation proceedings in the probate court. From this decision, Mamadee Daramie sought summary proceedings in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, against the magistrate.

The circuit court judge granted the summary proceedings against the magistrate and ordered that the magistrate proceed with the disposition of the summary proceedings to recover real property. When the magistrate tried to enforce the ruling of the circuit court, the informants filed prohibition before the Justice in Chambers. Following a hearing, the Justice in Chambers denied the petition. From this ruling, an appeal was taken and granted. Notwithstanding the appeal, the Justice in Chambers, on application of the respondents therein, ordered the magistrate to resume jurisdiction over the summary proceedings to recover real property and enforce its judgment. It was from this latter ruling that the informants filed a bill of information.

The Supreme Court granted the information, holding that once the appeal had been announced and granted, the Justice in Chambers, could not thereafter order the enforcement of his ruling. The Court noted that the matter against which the petition for a writ of prohibition was filed was the summary proceedings (investigation) against the magistrate which was determined by the circuit court, as distinguished from the summary proceedings to recover possession of real property which was not before the Chambers Justice. Hence, the Court said, the announcement and granting of the appeal by the Chambers Justice served as a supersedeas to any further action. The Court therefore concluded that the Chambers Justice acted without the law when he ordered the enforcement of the judgment. The Court therefore *ordered* that the parties remain in *status quo* until the appeal taken from the ruling of the Chambers Justice was determined.

*Frederick A. B. Jayweh* of the Civil Rights Association of Liberia appeared for the informants. *Joseph Constance* of the Laws Chambers of White and Associates.

MR. JUSTICE TULAY delivered the opinion of the Court.

This bill of information comes to us as a result of an appeal from the ruling of the Chambers Justice rendered on the 17<sup>th</sup> day of January A. D. 1996 in a prohibition proceeding filed before him by the informants herein.

Upon the complaint of Mamadee Daramie of the City of Monrovia, Liberia, an action of summary proceedings to recover possession of real property was instituted against informants herein in the Monrovia City Magisterial Court on August 28, 1995. The prayer of the summary proceedings to recover possession of real property was to oust, evict and eject the informants from a house lying and situated at the corner of Benson and Newport Streets, Monrovia, Liberia, owned by the Late Madam Kutu Koiwoin, wife of respondent herein, Mamadee Daramie.

When the summary proceedings to recover possession of real property case was called for hearing by the Monrovia City Magisterial Court, Temple of Justice, one Ciatta Sherman, claiming to be a niece of the Late Kutu Koiwoin, filed a motion to intervene for and on behalf of the informants herein, then defendants. This motion was granted by the magisterial court.

Following the granting of her motion to intervene, Ciatta Sherman informed the said court that there was pending before the Monthly and Probate Court for Montserrado County, Temple of Justice, a petition for the revocation of the letters of administration issued in favour of Mamadee Daramie to administer the intestate estate of the late Kutu Koiwoin which was awaiting determination by that court. Upon receiving the information about the pendency of another case between the parties before the Monthly and Probate Court for Montserrado County, the magistrate suspended the hearing of the summary proceedings to recover possession of real property action and referred the parties to the Monthly and Probate Court for the hearing of the revocation proceedings. From the ruling of the magistrate, Mamadee Daramie fled to the Sixth Judicial Circuit, Civil Law Court, Montserrado County, where he filed a petition for summary proceedings against the Magistrate. Returns were filed by the informants to this petition, along with a motion to strike the petition.

The judge, His Honour Sebron J. Hall, then presiding by assignment over the Sixth Judicial Circuit Court, Montserrado County, assigned the case for hearing. Informants and their counsel failed to appear although the notice of assignment was acknowledged and signed by informants' counsel. Judge Sebron J. Hall heard the case, as per assignment, granted the petition for the summary proceedings, and ordered the clerk of court to send a mandate to the magisterial court to resume jurisdiction over the summary proceedings to recover real property and to oust, evict and eject the informants therefrom and place Mamadee Daramie in possession of the house in question.

The Magistrate, Her Honour Amymusu Jones, upon receiving the mandate from the Civil Law Court, proceeded to execute same by ousting, evicting and ejecting the informants from the subject premises.

Informants then fled to the Justice in Chambers, His Honour Fulton W. Yancy, Jr., praying for the issuance of a writ of prohibition. The alternative writ was ordered issued, but on January 17, 1996, the petition for the writ of prohibition was denied by Justice Yancy, Jr. Informants announced an appeal from said ruling to the full bench and same was granted.

Respondent's counsel in the prohibition proceedings then requested the Chambers Justice to order the enforcement of the ruling appealed from by the informants on the ground that an appeal is not a supersedeas in summary proceedings to recover possession of real property. The Chambers Justice granted the request and ordered the enforcement of his ruling. It was from this latter decision that informants then and there filed this bill of information.

The issue for consideration by this Court in determining the information is whether the Chambers Justice erred when he ordered the enforcement of the ruling appealed from after he had granted the appeal?

In answer to the question, and from the facts herein stated, it is very clear that the case that was before the Chambers Justice was the petition for prohibition against ousting and evicting the informants as a result of the judgment entered in the summary proceedings case against the magistrate, and not the summary proceedings to recover the possession of real property, as the latter was and still remains before the magisterial court, Temple of Justice, undetermined. For the purpose of this opinion, we deem it necessary to quote the statutes on summary proceedings/investigations and summary proceedings to recover possession of real property.

#### SUMMARY PROCEEDINGS/INVESTIGATION

"A person or party litigant in a judicial proceeding before a magistrate or justice of the peace whose rights shall be abridged by the arbitrary action of such magistrate or justice of the peace shall be entitled to institute summary proceedings against such magistrate or justice of the peace in the circuit court of the county where the action occurs. If such action occurs in any of the territories, summary proceedings shall be instituted in the Provisional Monthly and Probate Court. As used in this section, arbitrary action shall be any act or action on the part of a magistrate or justice of the peace which violates the legal right of a party litigant or which is not in keeping with law or judicial practice under the statute." Judiciary Law, Rev. Code 17:8.12 (*Summary Proceedings Against Magistrate and Justice of the Peace*).

THE NATURE OF SUMMARY PROCEEDINGS AND POWER OF CIRCUIT COURT JUDGES.

"The circuit judges shall have the power, authority and jurisdiction exclusively, to issue or order the issuance of writs of injunction and writs of summary proceedings, in the nature of prohibition, addressed to inferior courts and their officers in exercise or aid of their appellate jurisdiction over them." Judiciary Law, Rev. Code 17:3.3 (*Circuit judges to issue writs of injunction and writs for summary proceedings in nature of prohibition*).

#### SUMMARY PROCEEDINGS TO RECOVER POSSESSION OF REAL PROPERTY

"Where title is not in issue, a special proceeding to recover possession of real property may be maintained in a circuit court or a court of a justice of the peace or a magistrate. The court of the justice of the peace or magistrate shall have jurisdiction only of cases in which the amount of judgment demanded does not exceed three hundred dollars." Civil Procedure Law, Rev. Code 1: 62.21 (Right to maintain summary proceedings to recover possession of real property).

We have quoted these statutes to distinguish summary proceedings from summary proceedings to recover possession of real property.

From the above quoted statutes, it is very clear that summary proceedings against a magistrate or justice of the peace and summary proceedings to recover possession of real property are two separate and distinct proceedings under our statutes. Summary proceedings deal with arbitrary acts and irregular acts of justices of the peace or magistrates brought to a circuit judge by a party whose legal rights are violated by such justices of the peace or magistrates. Summary proceeding is a remedial process. In the case *Smith v. Stubblefield and Brown*, 15 LLR 338 (1963), this Court held: "Summary proceeding investigation is a proceeding by circuit courts against justices of the peace, magistrates and constables and are criminal in nature." Also, in the case *King v. Ledlow*, 2 LLR

283 (1916), this Court held that "the Act of 1902 providing for summary proceedings against justices of the peace, city magistrates and constables, is intended to give the judges of the circuit courts jurisdiction to investigate the actions of said officers and to give immediate relief to all concerned." *Id.* at 284. The Court further elaborated as follows: "Summary proceeding is a proceeding controlled by the state, prosecuted upon information of the informant. The penalty in cases of conviction is a fine to be paid immediately or be imprisoned and suspended from office." *Id.* at 285.

On the other hand, summary proceedings to recover possession of real property deal with possessory rights of party litigants to a piece of land and/or a house or houses. As we said earlier, and considering the differences and functions between and of summary proceedings against justices of the peace and magistrates, and summary proceedings to recover the possession of real property, we are of the opinion that the Chambers Justice erred when he ordered the enforcement of his ruling after granting the appeal. We hold this view because

the appeal announced by the informants herein and granted by the Chambers Justice was from the ruling growing out of the circuit judge's ruling on the summary proceedings against the magistrate for some alleged illegal and/or irregular acts, but not from the ruling or judgment in the summary proceedings to recover possession of real property between the informants and Mamadee Daramie, since that case is still pending before the Monrovia City Magisterial Court at the Temple of Justice, undetermined.

We find support for our position in the case *Sadatonou, Hall et al. v. Bank of Liberia, Inc.*, 20 LLR 517 (1971), wherein, at Syl. 1, this Court said: "An appeal, when announced, serves as a supersedeas to any further disposition of the particular matter by the court from whose judgment the appeal has been announced." The Court further held in the said case that: "An order granting a provisional remedy is annulled immediately on judgment for the defendant unless an appeal is taken. The taking of an appeal continues a provisional remedy in effect until final judgment is rendered."

*Id.*, at 516. In the instant case, an appeal was taken by the informants and same was granted by the Chambers Justice; yet, the said Chambers Justice ordered the enforcement of the judgment appealed from. We feel and hold that once the Chambers Justice had granted the appeal prayed for by the informants, he could not legally order the enforcement of said judgment. By ordering the enforcement of the judgment appealed from, the Chambers Justice erred, and by such act, he tampered with the legal right of a party to appeal, especially since the case before him was not the summary proceedings to recover possession of real property. Thus, the act of the Chambers Justice violated the statute. The Civil Procedure Law, Rev. Code 1:51.20, under the caption "*Effect of Appeal as a Stay*", states: "On announcement of an appeal by a defendant, no execution shall issue on a judgment against him, nor shall any proceedings be taken for its enforcement until final judgment is rendered, except that on an appeal from an order dissolving an order granting a preliminary injunction, such preliminary injunction shall be in force pending a decision on the appeal."

Wherefore, and in view of the above, and the laws cited and quoted herein, it is our considered opinion that the information should be granted. The information is therefore granted. The parties are to remain in *status quo* until the appeal is determined by this Court. And it is hereby so ordered.

*Information granted.*