

THE INTESTATE ESTATE OF THE LATE JOSIAH S. KARPEH, thru its Administrator,
HOWARD S. KARPEH, and AUGUSTUS S. KARPEH, Informants, v. JUDGE YUSSIF D.
KABA and CHARLIE D. JACKSON, Respondents.

Karpeh et al v Kaba et al [2000] LRSC 27; 40 LLR 256 (2000) (21 December 2000)

INFORMATION PROCEEDINGS

Heard: November 30, 2000. Decided: December 21, 2000.

1. Decisions of the Supreme Court are absolute and final, and a trial judge proceeds improperly in executing the Court's mandate if after the determination of the case by the Supreme Court the judge appoints an arbitration board to demarcate anew land already decided upon and affirmed by the Supreme Court.
2. A party in whose favour a judgment is rendered in an action of ejectment is entitled to a writ of possession to recover the property from a defendant against whom a judgment is rendered.
3. If a judge or any judicial officer attempts to execute a mandate of the Supreme Court in an improper manner, the correct remedy is by a bill of information to the Court.
4. Where the information brought emanates from a mandate of the Supreme Court, the bill of information is cognizable before and must be filed in the Supreme Court and not the lower court.
5. The decisions and mandates of the Supreme Court should always be strictly enforced by judges of subordinate courts for the promotion and administration of justice, and for the preservation of the authority, integrity, and dignity of the Supreme Court.

In an action of ejectment commenced by the Josiah S. Karpeh, deceased, judgment was rendered against the co-respondent Charlie D. Jackson. An appeal taken from the said judgment was subsequently withdrawn and judgment without opinion entered by the Supreme Court ordering the trial court to resume jurisdiction over the matter and place the plaintiff therein in possession of the premises, subject of the ejectment action. On information filed before the lower court by the co-respondent herein that the informants herein had encroached upon his premises which were not involved in the ejectment action, the trial judge ordered a surveyor to demarcate the premises, to oust the informants therefrom, and to place Co-respondent Jackson in possession thereof, if the survey showed that the informants had in fact encroached on the property of the co-respondent. From this action of the trial judge, the informant filed a bill of information in the Supreme Court.

The Supreme Court determined that the trial judge had acted improperly in appointing a board of arbitration to demarcate the premises and to issue a writ of possession in favour of the defendant in the ejectment case after the matter had already been previously decided by the trial court and affirmed by the Supreme Court. The Court also noted that where a trial judge in executing the mandate of the Supreme Court proceeds improperly, the proper remedy is Information before the Supreme Court, not the trial court, as was done in the instant case by the co-respondent, and upon which the trial court had issued the writ of possession ousting the informants from the premises. The Court observed that lower courts were obligated to strictly enforce its decisions and mandates for the promotion of administration of justice and to preserve its authority, integrity and dignity. As to the action

by the trial court, the Supreme Court held that in ejectment, writs of possession are issued in favor of the plaintiff not the defendant, as was done by the judge, and it opined that such action violated the mandate of the appellate court.

Having determined that the trial judge had proceeded im-properly in executing its mandate, the Supreme Court reversed the judgment of the lower court, ordered the reinstatement of the previous judgment of that court, and directed that the informants be put back in possession of their premises, with the proviso that the co-respondent's premises, which did not form a part of the disputed parcel of land, be preserved to him.

Roger Martin of the Martin Law Offices appeared for the informant. *Jamesetta E. Howard* of the Cooper & Togbah Law Firm appeared for the respondents.

MR. JUSTICE SACKOR delivered the opinion of the Court.

These information proceedings emanate from the enforce-ment of this Court's mandate of February 18, 1994 in favor of informant, plaintiff in an action of ejectment in the trial court. The facts in this case, as gathered from the certified records forwarded to this Court, reveal that the late Josiah S. Karpeh instituted an action of ejectment against Charlie D. Jackson in the Civil Law Court, Sixth Judicial Circuit Court, Montserrado County, during its March Term, A. D. 1977, to recover one (1) lot, situated and lying within Central Monrovia. He annexed a title deed to his complaint. Pleadings in the case progressed to the filing of an answer and rested with the filing of a reply.

The case was tried by an empaneled jury, which having retired to its room of deliberation, returned a unanimous verdict in favor of the informant. Whereupon, the co-respondent filed a motion for a new trial, which was resisted, heard and denied. On the 15th day of December, A. D. 1978, Her Honour Emma Shannon-Walser, then presiding by assignment over the trial court, rendered final judgment, confirming the verdict of the jury. This Court deems it necessary to hereunder quote the relevant portion of the trial judge's final judgment for the benefit of this opinion.

"It is hereby adjudged that the verdict of the empaneled jury be and the same is hereby ordered affirmed and confirmed; and that the plaintiff be placed in possession of the property covered by the deed pleaded and offered into evidence. This shall be done with the assistance of a competent surveyor. The clerk of court is hereby instructed to issue a writ of possession in accordance with this judgment and place same in the hands of the sheriff for service. Cost is ruled against the defendant. AND IT IS HEREBY SO ORDERED.

Given under my hand and seal in open court this 15th day of Dec., A. D. 1978.
Emma Shannon-Walser,
Assigned Judge Presiding, signed."

Co-respondent Charlie D. Jackson, defendant in the trial court, excepted to this judgment and announced an appeal to this Court of last resort. At the call of the case during the October Term, A. D. 1993 of this Court, the co-respondent made an application for the withdrawal of his appeal, to which application, Mr. Karpeh interposed no objection. Whereupon, the Supreme Court rendered a "judgment without opinion" on the 18th day of February, A. D. 1994, granting appellant's application withdrawing his appeal and commanded the trial court to give effect to the judgment. The records do not show that the co-informant, the intestate

estate of the deceased plaintiff in the court below, has been placed in possession of the subject property pursuant to the mandate of this Honourable Court. The records reveal, however, that the defendant in the ejectment action, Charlie D. Jackson, filed a nine-count bill of information on May 21, 1999 in the trial court, before His Honour Wynston O. Henriess, Resident Circuit Court Judge, presiding over the March Term, A. D. 1999, of the court. In the information, the defendant informed the trial court that the plaintiff therein had taken possession of not only the zinc shack on the lot he had claimed in his compliant, but also that the estate had taken possession of his entire lots with houses thereon. The defendant prayed the trial court for a competent surveyor to survey the property and to repossess him of his property which was not the subject of ejectment action. The plaintiff therein filed a seven-count returns to the bill of information, pleading the principle of *res judicata* and the supremacy of the mandate of this Honourable Court. The plaintiff also informed the trial court that the defendant had never purchased a separate 1½ lots from the Republic of Liberia other than the 1½ lots with a zinc shack constructed thereon and legally owned by the late Josiah S. Karpeh, which was subsequently leased to Co-respondent Jackson as evidenced by the copy of a lease agreement and flag receipts indicating payment of real estate taxes.

On the 19th day of July, A. D. 1999, His Honour Yussif D. Kaba, assigned circuit judge of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, granted the defendant's information and ordered a surveyor to proceed to the subject property along with the sheriff of the trial court to demarcate said property and place the defendant in possession thereof if survey showed that the plaintiff therein had encroached on the property of the defendant. The trial judge also ordered that the plaintiff be evicted from the subject property and ordered that the defendant be placed in possession thereof.

Thereafter, the plaintiff filed a bill of information before this Court on the 21st day of May 1999, contending among other things, that he was evicted from the subject property by the lower court upon a writ of possession issued in favour of Co-respondent Charlie D. Jackson against whom judgment had been rendered in the court below. The informant also contended that the judgment of Judge Emma Shannon-Walser was reviewed and modified by Judge Yussif Kaba when, contrary to the judgment of Judge Shannon-Walser and the mandate of this Honourable Court, he ordered the eviction of the informants from the premises. The informants further argued that the mandate of the Supreme Court was absolute and final and that the setting up of a board of arbitration subsequent to the mandate was illegal and unlawful. The information filed in the trial court, they said, should have been denied by Judge Kaba. Additionally, the informants asserted that the information filed by Co-respondent Jackson in the court below was cognizable before the Supreme Court since it emanated from the mandate of the Supreme Court. The informants therefore prayed this Honourable Court to grant the information and to order the presiding judge of the Sixth Judicial Circuit Court to resume jurisdiction over the case and repossess him of the premises in keeping with the judgment of Judge Shannon-Walser and the judgment without opinion of this Honourable Court.

Co-respondent Jackson, in his returns to the information, basically contended that the informant did not only occupy the disputed lot, but had moved beyond the one and one-half lots and occupied his premises situated on his half lot. He also contended that there had been no survey conducted and that no writ of possession had been issued to evict Josiah S. Karpeh. Co-respondent Jackson stated further that he had filed a bill of information before the lower court requesting that the court orders the demarcation of the property with the aid of competent surveyors so as to place him in possession of the property which was not a part of

the final judgment in the ejectment case. The respondents argued that the ruling of Judge Kaba was therefore in conformity with the final judgment of his predecessor and the Supreme Court mandate. Hence, they prayed this Honourable Court to deny the informant's bill of information.

The decisive issue for the determination of this case is whether or not the trial judge improperly executed the mandate of the Supreme Court. The answer to this question is in the affirmative.

We observe from the records that the trial judge, upon the information of Co-respondent Jackson, set up a board of arbitration to demarcate and determine the property rights of the parties to this litigation and issued a writ of possession in favour of Co-respondent Charlie D. Jackson against whom a final judgment had been rendered and confirmed by this Honourable Court.

The Supreme Court decision is absolute and final; hence, the trial judge, in executing the mandate of this Court, improperly proceeded to appoint a board of arbitration after the case had been determined by the trial court and confirmed by the Supreme Court. Civil Procedure Law, Rev. Code 1:51.2, 1 LCLR, page 249.

It is the recognized principle of law, practice and procedure in this jurisdiction that a party in whose favour a judgment is rendered in an action of ejectment is entitled to a writ of possession to recover the property from a defendant against whom a judgment is rendered. In the case at bar, the records reveal that the trial court issued a writ of possession in favour of the defendant against whom final judgment had been rendered, thereby evicting and ousting the plaintiff from the disputed property.

This Court has held that if a judge or any judicial officer attempts to execute a mandate of the Supreme Court in an improper manner, the correct remedy is by a bill of information to the Court". *Raymond International Liberia Ltd. v. Dennis*, [24 LLR 131](#), Syl. 6 (1976); *Massaquoi-Fahnbulleh et al. v. Urey* [[1977\] LRSC 5](#); , [25 LLR 432](#), Syl. 1 (1977); *Barbour-Tarpeh v. Dennis et al.* [[1977\] LRSC 11](#); , [25 LLR 468](#), Syl. 1 (1977). This Court holds that the bill of information filed by Co-respondent Jackson in the court below was not cognizable before the trial court, but before the Supreme Court because said information emanates from the mandate of this Honorable Court. The assertion by Co-respondent Jackson that the information was filed in the trial court upon the advice of the Chief Justice is not supported by the records. It is therefore untenable.

The decisions and mandates of the Supreme Court should always be strictly enforced by judges of our subordinate courts, for the promotion and the administration of justice, and for the preservation of the authority, integrity, and dignity of the Supreme Court. The board of arbitration cannot determine the property rights of the parties litigant in this case subsequent to the mandate of the Supreme Court. A writ of possession should have been issued to place the plaintiff in possession of the premises, subject of the ejectment action, with the aid of a competent surveyor in accordance with the judgment of the trial court, confirmed by this Court.

Wherefore, and in view of the foregoing, it is the considered opinion of this Honourable Court that the judgment of the trial court setting up the board of arbitration dispossessing the informant of his property is hereby reversed. The informant is hereby ordered repossessed of

his one lot only and no more, and Co-respondent Charlie D. Jackson is also ordered put in possession of his 0.4 lot. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the presiding judge to resume jurisdiction over the case and enforce the judgment of Judge Emma Shannon-Walser, as well as the judgment without opinion of this Honourable Court. Costs are disallowed. And it is hereby so ordered.

Information granted; judgment reversed.