BEATRICE N. KPOTO, Appellant, v. **KEKULA B. KPOTO**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: November 25, 1986. Decided: January 22, 1987.

1. Information is defined as an accusation exhibited against a person for criminal offense, without an indictment, or as communicated knowledge which is brought forward to the court in the form of a complaint by a relator.

2. In this jurisdiction, a bill of information is a special proceeding in the form of a complaint before a court where a matter is pending, or before a court which had earlier adjudicated a cause, invariably informing the court of a failure to do what it had ordered to be done, or of something which ought to be done or undone for one who is a party, or for one who was a party in or otherwise affected by a cause already adjudicated.

3. A bill of information is not a remedial writ which seeks review of the acts of a court or its officials, as other writs are available for that purpose.

4. A bill of information is not the proper course open to one who alleges that he had not had his day in court. The proper course opened to one who alleges that he has not had his day in court is the writ of error or a motion to vacate the judgment.

5. A trial judge's ruling is reviewed only when the same is on regular appeal and in which the errors complained of are encouched in a bill of exceptions presented to the trial judge for his approval; or alternatively, where a judge's ruling is submitted for review on a remedial process in which the acts or omissions complained of are contained in or grown out of his ruling, and he is named as a co-respondent to the remedial proceedings.

6. The means by which a court of record knows that there has been service of precepts in a particular case is the returns of the ministerial officer, which remains authentic evidence until the contrary is proved, at a time when the trial court still has jurisdiction over the matter.

7. The returns to a precept is evidence of service of the precept and service is presumed if it is so stated in said returns.

8. Where the sheriff in the execution or precepts commits any acts which are illegal or fraudulent, or which in any manner adversely affect the rights of a party, such acts, upon timely and proper representation to the court, shall be investigated and, where necessary, the affected party shall be accorded redress.

9. In all cases in which the sheriff is accused of illegal or fraudulent acts, the offending sheriff must be made a party to the proceedings in order to give the court jurisdiction over him in the investigation of the charge.

10. The parol evidence rule does not allow oral testimony to defeat or explain a written instrument, especially when the written document is extant, clear and unambiguous.

11. The Latin maxim "falsus in Uno, falsus in Omnibus" which means false in one thing, false in everything, is applicable in this jurisdiction to the testimony of a witness who, if he is shown to have sworn falsely in one detail, may be considered unworthy of belief as to the rest of his evidence.

12. A ministerial officer who represented in the returns to a precept that the precept had been served on a party, based upon which returns the presiding judge entered a judgment by default and final judgment, is estopped from later asserting, by uncorroborated oral testimony, that no precept had been served.

13. Admissions of law or fact, which have *been* acted upon by others, are conclusive evidence against the party making them.

14. No circuit judge had the power to review, modify, or rescind any decision by another circuit judge who is of the same official hierarchy on any point already passed upon by him, however erroneous the act of his colleague may be.

15. A judge or court of concurrent jurisdiction may be allowed to review the act of another provided the records show that the act or judgment of his colleague is void *ab initio,* or where there is no returns to show that the precept was served, or there is a glaring lack of jurisdiction over the subject matter in dispute, and provided further that the authority for such review is grounded in a mandate from the Supreme Court.

16. The oral testimony of a court officer stating that she had not served precept on a party cannot be used to defeat an earlier written testimony, especially where the latter testimony was not before the trial judge at the time of the rendition of final judgment in the matter.

17. A trial judge's ruling or judgment, entered in the absence of a defending party, may be reopened only upon a motion to vacate the judgment or on a writ of error.

Appellee, respondent herein, had instituted an action of divorce against the appellant for incompatibility of temper. Although the returns to the writ of summons showed that the appellant had been served with precept, no answer was filed to the complaint. When the case was called for hearing and the appellee failed to appear, the appellant applied to the court for a judgment by default. The application was granted and the appellee was permitted thereafter to present evidence in support of his complaint. A verdict was returned in his favor, judgment was thereafter entered confirming the same, and a bill of divorcement issued granting appellee his divorce from the appellant.

Several days later, the appellant filed a bill of information with the trial court, contending that she was never served with precept. However, the trial judge who had conducted the

divorce proceedings did not hear the information because prohibition filed against him prevented him hearing the

Information. Subsequently, the judge who succeeded him called the information for hearing. At the investigation conducted to ascertain the truthfulness of the allegations in the bill of information, the officer who had issued the returns to the writ in the divorce proceedings admitted that she had in fact not served the appellant with precept and that the returns was false. Whereupon, the judge entered a ruling setting aside the judgment in the divorce proceedings. From this ruling the appellee filed a writ of error, stating that he had not been served with precept for the hearing of the information.

The Justice in Chambers granted the error, reversed the ruling of the trial court, and ordered the judge presiding in the court to conduct a new investigation into the allegation in the information, at which all of the parties should be present. When the mandate reached the trial court, the judge who conducted the previous investigation was no longer in jurisdiction. Accordingly, the successor judge conducted the investigation. After hearing the testimonies of witnesses for the parties, including that of the court officer in which she admitted that the returns made be her was false, the judge dismissed the information and upheld the judgment of divorce. From this ruling, an appeal was taken to the Supreme Court.

The Supreme Court affirmed the ruling of the trial judge dismissing the information. The Court held that the information was justly dismissed since information was not the proper recourse to pursue by one who claimed that she had not had her day in court. The proper remedy, the Court said, was either a motion before the trial judge to vacate the judgment while he still has jurisdiction over the case, or alternatively, a petition for a writ of error to the Supreme Court. The informant had pursued neither of these courses. This, the Court concluded, rendered the information dismissible.

The Court further held that the oral testimony of the court officer, wherein she stated that the returns made by her to the effect that she had served summons on the appellant was false and that she had indeed not serve the appellant with precept, after judgment had been rendered in the divorce case and the trail judge who conducted the trial had left the jurisdiction, could not override the written returns made earlier and upon which the judge had relied in conducting the divorce trial. The Court noted that under the parole evidence rule, oral testimony cannot be used to defeat or explain a written instrument. The returns, it said, remained authentic evidence of actual service until the contrary was proved, and that proof had to be made while the trial judge who conducted the divorce trial still had jurisdiction over the matter. The Court opined further that once the trial judge had lost jurisdiction, another judge of concurrent jurisdiction was without the authority to review, modify or reverse the ruling or judgment of his colleague and that any such ruling or

judgment would be *void ab initio* and unenforceable, unless the latter judge conducted the said review on instructions from the Supreme Court.

The Court also observed that as to the testimony of the court officer regarding the falsity of the returns, it had no basis to believe her statement because once she had lied before, she is presumed to lie later. The Court said that it believed that the court officer, in asserting as the basis for the false returns that she had been instructed to do so by a lawyer who had died, was seeking to take advantage of the lawyer's death since he was not available to contest the assertion. In any event, it said, it would disregard the testimony of the court officer under the legal maxim which states that false in one thing, false in everything. The court officer having stated that she had lied before, it was believed that she was lying again.

On the basis of the foregoing, the Court found that the trial judge was correct in dismissing the information. The ruling of dismissal was therefore *affirmed.*

J.D. Gordon of the Gordon, Hne and Teewia Law Firm appeared for appellant. *Nelson Broderick* of the Tubman Law Firm appeared for the appellee.

MR JUSTICE JANGABA delivered the opinion of the Court.

Kekula B. Kpoto, plaintiff, now respondent/appellee, sued his wife, Beatrice N. Kpoto, defendant, now informant/ appellant, to obtain a divorce, citing as the ground therefor incompatibility of temper. There is no showing that any responsive pleading was ever filed by the appellant. The records show instead that the writ of summons was served on Mrs. Kpoto by bailiff Linda Freeman who made returns to said writ in her own handwriting to the effect that the writ was served on the person named therein as party defendant, and that she was furnished with a copy of the complaint. The returns were sanctioned by Sheriff Samuel Johnson who had endorsed the same. The case having been regularly assigned for hearing and the appellant having failed to appear, she was called three times at the door, as required by law. When she failed to answer and upon the request of counsel for the appellee, a judgment by default was entered against her, a plea of not liable was entered in her behalf, and a trial jury was selected, sworn and empanelled. The trial was had and a verdict entered in favor of the appellee. The verdict was recorded and final judgement was thereafter entered by the trial judge confirming and affirming the said verdict. Consequently, a bill of divorcement was issued, making the divorce complete and absolute.

Interestingly, after a few weeks, the appellant, through her counsel, Counsellor J. D. Gordon, filed a bill of information before His Honour J. Henric Pearson, the Assigned Circuit Judge who had heard the divorce case, contending that she had not had her day in court as no precepts were served on her. She therefore prayed that the judgment granting the divorce be set aside. The appellee filed his returns, stating in effect that information was not the proper remedy for one who had not had her day in court. The appellee therefore prayed that the

information be dismissed with costs against appellant. The appellee further contended that the returns of the ministerial officer of the court, being evidence of the highest grade, is paramount. Finally, he said, a judge could not set aside a judgment of his colleague of concurrent jurisdiction.

Before Judge Pearson could hear the information, a writ of prohibition was filed against him and was sustained by the Chambers Justice. Shortly thereafter, Judge Badio, whosucceeded Judge Pearson, heard the information and granted same. In granting the information, Judge Badio effectively set aside the final judgment of Judge Pearson in the divorce case, and he did so without first citing the appellee for a hearing. Consequently, the appellee filed a petition for a writ of error against the judge, complaining that he, the appellee, did not have his day in court. The petition was heard and granted, the ruling of Judge Badio was ordered set aside, and a mandate was ordered issued and sent to the then presiding Judge, His Honour Frederick K. Tulay, mandating him to resume jurisdiction over the bill of information and to summon the parties to appear for the hearing. During the investigation, bailiff Linda B. Freeman, who had in her own handwriting made the returns to the writ of summons to the effect that she had served the precepts on Mrs. Beatrice Kpoto and had furnished the latter with a copy of the said complaint, with the aforesaid summons being counter signed by sheriff Samuel, appeared in court and testified that she had not in fact served the writ of summons on appellant, as was previously reported in the returns.

After the hearing, Judge Tulay dismissed the information and maintained that the act complained of was not attributable to appellee and his counsel, and that he was highly incompetent to set aside the judgment of his colleague, Judge Pearson, who had granted the divorce. He therefore held that the judgment of Judge Pearson, which made null and void the marital ties between the appellant and appellee, should remain un-revoked. To this ruling, the appellant excepted and announced an appeal to this Court of last resort.

From the briefs, the arguments and the records certified to this Court, the salient issues for our

1. Whether or not information is the proper remedy for a person who claims not to have had his or her day in court;

2.Whether or not this Court, without a regular appeal having been taken, or a remedial process issued, can review the ruling of a trial judge who was not made a party to the proceedings and whose judgment is not in issue;

3. Whether or not a ministerial officer who makes his returns to precepts of court can question or repudiate his own acts as false and misleading;

4. Whether or not a circuit court judge can review the ruling of his colleague of concurrent jurisdiction;

5. Whether or not the judgment of Judge Pearson, granting appellee a divorce, was void *ab initio.*

As to the office of information, Ballentine's Law Dictionary, 4th ed., states that in common parlance, information is acquired knowledge or as knowledging of facts which advise and lead to the acquisition of knowledge. Black's Law Dictionary, on the other hand, defines it as an accusation exhibited against a person for criminal offense, without an indictment. It further says that the word is frequently used in the law in its sense of communicated knowledge which is brought forward to the court in the form of a complaint by a relator. This jurisdiction has no statutory definition of a bill of information, and our case law definition is too inadequate to give the full meaning for easier understanding. In *Pratt et. Al v. Kroma et. al.,* 26 LLR 64 (1977), a bill of information was defined as an application for relief in the nature of a special proceeding.

However, from the various cases hitherto decided by this Court, we gather that a bill of information is usually a special proceeding in the form of a complaint before a court where a matter is pending, or before a court which had earlier adjudicated a cause, invariably informing said court of a failure to do what it had ordered to be done, or of something which ought to be done or undone for one who is a party, or for one who was a party in or otherwise affected by a cause already adjudicated. A bill of information, however, is not a remedial writ which seeks review of the acts of a court or of its officials, as other writs are available for that purpose. A bill of information is not the proper course open to one who alleges that he had not had his day in court. It is an elementary principle in this jurisdiction that the proper course open to a litigant who had not had his day in court is the writ of error, and every counsellor who fails to know that fact is certainly guilty of negligence in the handling his client's cause.

What the appellant's bill of information sought to achieve was to have a circuit judge of concurrent jurisdiction set aside the ruling of his colleague in the divorce proceedings, not to reunite appellant and appellee as husband and wife, since the information claimed only that she was not served with precepts and that the ministerial officer had told a lie.

Next we proceed to the issue of whether or not this Court, without a regular appeal having been taken or remedial process issued, can review the ruling of a judge who was not made a party to the proceedings and whose judgment is not in issue before it. We do not believe that Judge Pearson's judgment is before us for review because normally a judge's ruling is reviewed only when the same is on regular appeal and in which the errors complained of are contained in the bill of exceptions presented to the trial judge for his approval; or alternatively, where a judge's ruling is submitted for review on remedial process, and in which the acts or omissions complained of are contained in or grow out of his ruling, and he is named as a corespondent to appear in the remedial proceedings. Otherwise, a judge's

ruling which is neither on regular appeal, nor brought by remedial process, cannot be reviewed by the appellate court.

This assumption is derived from the fact that on a regular appeal, the real defendant is the trial judge, so that he can properly be reviewed by the appellate court, even though he is not formally cited to appeal and to defend. The records in some of those cases were indeed sufficient, but in others such as this one, they are not. *Richard v. Coleman,* 6 LLR 285 (1938). Indeed, the judgment sought to be reviewed on this appeal is that of Judge Frederick K. Tulay and concerns his ruling in the bill of information proceedings in which he had conducted an investigation on the orders of the Justice in Chambers, growing out of a writ of error issued at the instance of the appellee.

We therefore find it improper to review Judge Pearson's judgment in the divorce proceedings from which this information grows. Instead, we shall concentrate on reviewing Judge Tulay's ruling in the information proceedings, which is the subject of this appeal.

We shall now discuss the issue of whether or not a ministerial officer who had made returns to the service of precepts of court to the effect that the precepts were served can, after the conclusion of the trial, question or repudiate his own acts by oral testimony, by asserting that in fact the precepts in question had not been served. Can this Court, or any other court for that matter, allow the written and verified returns of a ministerial officer, which states that summons had been served to be outweighed by his uncorroborated oral testimony at an investigation held after a judgment, in which he states that the summons in question was in fact not served?

The means by which this Court or any other courts of record know that there has been service of precepts in a particular case is the returns of the ministerial officer. Said returns remain authentic evidence of actual service until the contrary is proved, at time when the trial court still has jurisdiction over the matter. The returns are the evidence of service, and service is presumed if it is so stated in said returns. *LaFondiaria Insurance Companies v. Hevdakor,* 2OLLR 471 (1971); *Jeto Liberian Clothing v. Brackwoldt,* 20 LLR 509 (1971); *Perry v. Ammons,* 16 LLR 268, 273 (1965).

However, we are aware that where a sheriff, in the execution of courts precepts, commits any acts which are illegal or fraudulent, or which in any manner adversely affect the rights of a party, such acts, upon timely and proper representation to the court, shall be investigated and, where necessary, the affected party shall have redress. But it is important that in all such cases the offending sheriff is made a party to the proceedings in order to give the court jurisdiction over him in the investigation of the charge. *Donzoe v. Thorpe,* 27 LLR 166 (1978). In the instant case, the ministerial officers accused of failure to serve the writ of summons, contrary to what was stated in the returns, and which indicated actual service, were not made parties to the present information, but were instead called at the investigation of the

information by Judge Tulay to testify as to the truthfulness of their returns. One ministerial officer, Miss Linda B. Freeman, testified that in fact she was fooled by the late Counsellor Hoggard to make the returns in which she stated that she had served the writ of summons on Mrs. Kpoto to appear. The trial court did not give credence to that testimony. Indeed, the parol evidence rule does not allow oral testimony to defeat or explain a written instrument, especially when the written document is extant, clear and unambiguous. That was the holding of this Court in the case *Butcher's v. Today,* 13LLR 365 (1959). *See* also Civil Procedure Law, Rev. Code I: 25.9, *Parol Evidence.*

In the present information proceedings, this Court cannot accept the oral testimony of Linda B. Freeman, especially when she sat down supinely throughout the entire hearing of the divorce action without saying a word of her failure to serve Mrs. Kpoto, but waited until after the completion of the trial and final judgment, before coming out to say that she lied in her returns and that she had in fact never served Mrs. Kpoto with any precepts. Having lied once, what guarantee do we have in believing her oral testimony which uncorroborated by anyone? Counsellor Hoggard, whom she reported had fooled her, is now dead and gone and cannot be brought to answer or deny the allegations. Is it not that Linda B. Freeman took advantage of Counsellor Hoggard's death to tell another lie? This reminds us of the Latin Maxim: *Falsus in uno, falsus in omnibus,* meaning, false in one thing, false in everything. This maxim should always guide a court in sifting or weighing evidence of the nature given by Linda B. Freeman. This maxim is particularly applicable to the testimony of a witness who, if he is shown to have sworn falsely in one detail, may he considered unworthy of belief as to all the rest of his evidence. BLACK'S LAW DICTIONARY 727 (4th ed.).

In her returns, ministerial officer Freeman said she had served Mrs. Kpoto with precepts, and she allowed the presiding Judge to act on the strength of the returns made by her and to give a judgment by default. Under these circumstances, Linda B. Freeman is certainly *estopped* from later asserting, after final judgment in the matter to say, by her uncorroborated oral testimony that she had not served the appellant. Indeed,

the law recognizes that admissions, whether of law or fact, which have been acted upon by others, are conclusive evidence against the party making them. *Richard v. Coleman,* 6 LLR 285 (1938).

We will now review the issue of whether or not a circuit judge can review the act of his colleague of concurrent jurisdiction. Before addressing that issue however, we shall consider two questions touching on the fourth issue:

1. What did the bill of information seek to achieve?

2. What was the mandate issued by the Chambers Justice as a result of the writ of error filed by appellee against Judge Badio in the information proceedings held earlier.

The contention of the appellee in the bill of information is that she never had her day in court because she was never served with precepts by the ministerial officer of the trial court, and that the ruling of Judge Pearson nullifying her marriage should therefore be vacated. The information was heard by Judge Badio who granted the same. The appellee, not being satisfied, flew to the Chambers Justice on a writ of error, contending that he was not given the opportunity to appear. The Chambers Justice, His Honour E. S. Koroma granted the error, and on November 7, 1983, directed the Clerk of this Court to send a mandate to the court below to: (1) set aside the ruling of Judge Badio in the bill of information; and (2) cite the parties to the bill of information and conduct an investigation of the allegations made therein in keeping with law. By this mandate, Judge Tulay set aside the ruling of Judge Badio in the bill of information, cited the parties to appear, and, after the investigation, denied the information, refused to set aside or review the judgment of Judge Pearson as the informant had requested, and refused to accept the testimony of Linda B. Freeman which would have made void the evidence of the returns, filed before Judge Pearson. Of course, setting aside Judge Badio's ruling in the information was the mandate of the Chambers Justice; but certainly, we do not understand that mandate to have meant that Judge Tulay should also review Judge Pearson's ruling in the divorce proceedings, as counsel for appellee contends herein. As to whether Judge Tulay could have reviewed Judge Pearson's judgment, without a mandate of this Court, is the subject of the fourth issue.

As a general rule, no circuit judge has the power to review, modify or rescind any decision of any other circuit judge who is of the same official hierarchy on any point already passed upon by him. The only remedy is an appeal to an appellate court. However erroneous the act of his colleague might be, another circuit judge however sound is not clothed with any authority to review him. This Court has over and again emphasized this principle, so that judges of subordinate courts should understand the limitations of their jurisdiction and refrain from interfering in matters already disposed of by their colleagues. *Gaga v. Pratt et. al.,* 6 LLR 246, 254 (1938); *Republic of Liberia v. Aggrey* 13 LLR 469, 479 (1960); *Kanawaty et. al. v. King,* 14 LLR 241 (1960).

However, we remain aware of the fact that the rule can be set aside and a judge or court of concurrent jurisdiction allowed to review another, such as in the case where the record shows on its face that the judgment is *void ab initio;* or, as in a case where there is no returns to show that precepts have been served, or where there is a glaring lack of jurisdiction over the subject matter in dispute. But even in such cases the authority of another judge or court to review must be grounded in a mandate from a superior court. *Bracewell and Caranda v. Coleman et. aL,* 6 LLR 176, 181 (1938). In the case of *Samuels*

v. Samuels, relied upon by appellant in this case, the appellee had instituted divorce proceedings against the appellant. Although there was an irregular service of summons by publication, the divorce was nevertheless granted. The appellant thereupon moved the court

below to vacate the judgment but the motion was denied. On appeal from dismissal of the motion, the judgment was vacated by this Court. *Samuels v. Samuels, 11* LLR 276 (1952).

That case can however be distinguished from the instant case in several respects. Firstly, the *Samuels* case was brought up on appeal from a motion to vacate the judgment and not on a bill of information, as was done in this case. Secondly, in that case the judgment was *void ab initio,* because the writ of summons, issued February 21, was returned the same day while appellant was out of the country in Nigeria. Thirdly, the writ of re-summons in that case was immediately issued following the making of the returns and the sheriff, contrary to law, stated on the returns that he had published the writ of resummons in the Liberian Age Newspaper, when in fact no order for publication had been obtained from the court to bring the defendant within the jurisdiction of the court. In that case also, two weeks had not expired between the alleged publications, and no affidavit was filed by anyone connected with the newspaper. Moreover, no affidavit accompanied a copy of the writ which was published. All of these patent evidence were in the records before the trial judge, but he refused to look at them. The presence of anomalies in the records in the *Samuels* case, and complained of by the appellant, made the judgment void from the very beginning. In the case now before us, there was nothing in the records to show that appellant was not served with summons since the returns were there to see, or that she was served in an irregular manner. Judge Pearson acted on the strength of the records before him which were different from what Linda B. Freeman said about them afterwards. There was nothing in the records to alert Judge Pearson or to indicate to him that he had no jurisdiction over the matter.

This brings us to the final issue of whether or not Judge Pearson's judgment, the subject of review by his colleague, was *void ab initio.* From our discussions of the *Samuel case supra, we* again note that there was nothing in the records before Judge Pearson or anyone else to show that he had no jurisdiction over the cause by reason of the appellant not being served with precepts or being served improperly. The records showed that the precepts were served and the returns of the sheriff was the only available evidence before the trial judge. One cannot say therefore that under the circumstances, the judge acted illegally in arriving at his final judgment so as to make the said judgment void on its face. We have held elsewhere that the oral testimony of Linda B. Freeman cannot be used to defeat her earlier written testimony, especially since same was not before Judge Pearson at the time of the rendition of final judgment in the divorce matter. Her testimony dehors the records which existed before His Honour, Judge Pearson, at the time he rendered the final judgment in the divorce proceedings. It is therefore unreasonable to assume that Judge Pearson's judgment was void *ab initio.* Therefore, Judge Tulay could not have lawfully reviewed Judge Pearson.

What counsel for appellant has failed to understand in the present case is that he had an opportunity to have Judge Pearson's judgment reopened, but he misused it. If he had

proceeded on a writ of error or on a motion to vacate the judgment, our ruling might have been different.

It is our belief that in determining whether a default judgment should be set aside, the court is guided by equitable principles requiring that a defendant be given a fair opportunity to litigate a disputed obligation and that a plaintiff who has, according to regular and legal proceedings, secured a judgment be protected against a violation of the rule which requires the sanctity and security of a valid judgment. 46 AM JUR 2d, *Judgments,* § 686.

From what we have said and the authorities cited, we are of the opinion that a bill of information would not lie in favor of a person who claims not to have had her day in court. The proper course is the writ of error or a motion to vacate the judgment. The counsel for informant should therefore shoulder the full blame for the futility of the course he had taken.

In view of the foregoing, the ruling appealed from by the appellant is hereby affirmed. The Clerk of this Court is ordered to send a mandate to the court below to give effect to this judgment. And it is so ordered.

Ruling affirmed.