

ALHAJI BANKOLLIE KROMAH, Informant, v. **HIS HONOUR HALL W. BADIO**, Resident Circuit Judge, Sixth Judicial Circuit, Civil Law Court, Montserrat County, and **MARTHA M. HILL**, Respondents.

INFORMATION PROCEEDINGS.

Heard: June 17, 1986. Decided: July 31, 1986.

1 The purpose of a bill of information is to review and correct any irregularity in the execution of a mandate from the Supreme Court to a lower court.

2 Courts will only decide issues that are specifically set forth in the pleadings before them. That is, defenses not set up in the answer will not be allowed.

3 A party should provide notice in its pleadings of all matters of fact or law relied upon in prosecuting an action.

4 Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Whereas, averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided.

5 Substitution of parties is permissible upon application of a party or the court may *sua sponte* order such substitution.

6 That which is not legally done is not done at all.

7 When the statutes provide a mode of procedure the same should be strictly conformed to. It is the responsibility of the sheriff of court, to whom the writ of possession is directed, to place a successful party in possession of real property. In so doing, the sheriff may, if necessary, secure the services of qualified surveyors and make the appropriate returns to the court. But the court should not appoint surveyors except in the case of arbitration.

Judgment was rendered against the informant in an ejectment action before the trial

court. Although the informant did not appeal the judgment to the Supreme Court, the matter nevertheless ended up in the Supreme Court after an injunction, and later prohibition, to prevent the trial judge from enforcing his judgment evicting the informant. The Supreme Court, on review of the prohibition proceeding, upheld the ruling of the trial judge evicting the informant. When the trial court attempted to execute the mandate of the Supreme Court, the informant filed this bill of information, bringing to the attention of the Court that it was legally impossible to execute its mandate because the informant's building, the subject of the ejectment proceeding, was only partly situated on co-respondent's land.

The Supreme Court denied the bill of information but with modification of its mandate.

Emmanuel Berry appeared for the informant. *The Johnson and Barnes Law Firm* appeared for the respondents.

MR. JUSTICE DENNIS delivered the opinion of the Court.

This is a peculiar and special proceeding because it is not listed among the causes of actions in our statute as a relief for litigants, or party litigants who are brought under the jurisdiction of the court by a writ of summons, based upon written directions. This information proceeding is an outgrowth of an action of ejectment between the late Martha M. Hill of the City of Lower Buchanan, Grand Bassa County, plaintiff versus Alhaji Bankollie Kromah of the City of Monrovia, Liberia, defendant. This bill of information was preceded by a writ of prohibition filed by informant to stop the lower court judge from evicting him from real property owned by the co-respondent, which was heard and denied by former Mr. Justice Boima Morris, and appealed therefrom to this Court *en banc*.

This information proceeding as aforesaid is peculiar in that it is allowed only by the full Bench either when a matter decided by it is pending or if the mandate to the trial court was irregularly and incorrectly executed, as in the instant case. Vide: *Nimley et. al.*

v. Yancy, et. al., 30 LLR (1982).

The legal scope and purpose of allowing information proceeding is to review and correct any irregularity in the execution of a mandate from this appellate Court to the lower court in this, or any other, case finally decided by this Court *en banc* and/or is pending.

The contents of this bill of information, consisting of nine counts and a prayer, substantially aver the following:

a) That on the 19th day of February A. D. 1969, the afore-named informant acquired by honorable purchase from the late Edward L. Dunn a certain parcel of land lying and being in the City of Monrovia, more detailed in informant's title deed annexed to the bill of information as exhibit "A"

b) Informant further alleges that he developed the subject property by the construction or erection thereon of a three storey concrete building.

c) That after the expiration of eight consecutive years and the completion of the said building, the above named late co-respondent, Martha M. Hill, instituted an action of ejectment against informant in order to evict him therefrom alleging that she is the bona fide owner of the land on which informant had erected his three storey building.

d) And also because informant alleges that he engaged the services of the P. Amos George Law Firm to defend his legal interest in the ejectment suit. The result of the trial was a verdict against informant on the 4th day of November, 1980 which was excepted to and appealed therefrom, but for some unexplained reason since the appeal was not couched in the records, it was not perfected.

e) Furthermore, informant submits that the late co-respondent, Martha M. Hill, did not notify him during the three-year period his three storey building was under

construction that she was the alleged owner of the land and that he was encroaching thereon. Not until after the completion thereof did she commence a suit at law, an action of ejectment, in the Civil Law Court, Montserrado County, to recover the said disputed real property and to evict him therefrom

f) Informant also alleges that the said three storey building only occupies a very small portion of the late corespondent Martha M. Hill's half lot of land which is impracticable to partition with said building thereon. Informant therefore prays the court to enter an equitable ruling whereupon informant may have the privilege and opportunity to compensate the heirs of the late corespondent Martha M. Hill for the negligible tract of said disputed realty "being 34-41.35" feet of land which informant three storey building is occupying, the fault not being attributable to informant.

g) The above named informant also submits that in an effort to enforce the mandate of this Court, growing out of a prohibition proceeding filed in this Court, the co-respondent Judge Badio requested the Ministry of Lands and Mines to designate surveyors to survey the disputed property so as to place the late co-respondent Martha M. Hill's heirs in possession of her alleged property.

h) The survey which was conducted by the Ministry of Lands and Mines observed a total overlapping of 110.13 lot or 34-41.25 feet or 10.15 sq. feet."

i) Informant prays for relief because it is impracticable in keeping with the engineers' report to place the late corespondent Martha M. Hill's heirs in possession thereof in keeping with the metes and bounds of said deed, the report of the surveyors, and the layout of the three (3) storey building.

In response to the bill of information, respondents filed and submitted for the consideration of this Court the below returns, resisting and refuting the bill of information below to wit:

1 That the aforementioned parties in interest being the late Martha M. Hill did acquire

by purchase said realty from the late Edward L. Dunn, lying and being on Clay Street, Monrovia, Liberia in the year 1969 and annexed her title deed in support thereof.

2 That the informant has constructed a three-storey building thereon. Prior to the commencement of the construction, informant's attention was called thereto.

3 And also because respondents aver that upon the insistence of informant to continue the construction of the said building, the late co-respondent Martha M. Hill instituted the action of ejectment and injunction so as to prohibit the aforesaid informant from the continuation of the said construction of the three (3) storey building.

4 And also because respondents deny the expiration of a period of eight years prior to the filing of her action of ejectment but rather, through her counsel, addressed a letter to the informant through his counsel, the P. Amos George Law Firm.

5 And also because co-respondent Martha M. Hill further submits that she obtained final judgment in the ejectment suit filed by her long before her demise on the 4th day of November A. D. 1980.

6 Further resisting the said bill of information, respondents contend that the ruling was rendered in the injunction proceeding in favor of petitioner now the late co-respondent Martha M. Hill from which ruling informant announced an appeal to this appellate Court, which was not perfected, and in support thereof proffered a photocopy of said ruling of the injunction proceeding.

7 Further refuting and resisting the narrative of the bill of information, the late co-respondent Martha M. Hill's executrixes applied to the lower court for the enforcement of the final judgment rendered in favor of the testatrix, Martha M. Hill, plaintiff in the ejectment suit filed against informant, Alhaji Bankollie Kromah, which was heard and denied on the basis of the absence of an application for the

substitution of parties as well as the absence of a pending suit.

8 In further resistance to the information, the subject matter of this opinion, respondents maintain that a petition for prohibition was filed in the Chambers of the former Justice Morris in March 1984 when the ruling was rendered in favor of the late co-respondent Martha M. Hill's executrixes from which an appeal was announced to the bench *en banc*. The effect of said ruling being an order to the court below to enforce its judgment.

9 Still, in further resisting the said bill of information, respondents submit that the action of ejectment and injunction having been finally adjudicated in the lower court between the aforementioned parties could not be revived or reopened; but rather to dismiss the information with cost against the informants.

Having detailed both the bill of information and resistance with a view to ascertaining and resolving the controversial issues we hereby do so by examining and applying the relevant statutes that we have come to consider the mode of procedure and practice in such matters. In the case *Clark v. Barbour*, 2 LLR 15

(1909), we note the following:

"(1) Courts will only decide upon issues joined between the parties specifically set forth in their pleadings. (2) Matters of defense not set up in defendant's plea shall not be allowed. (3) Notice should be given by one party to the other of all matters of fact or law relied upon in prosecuting an action."

In the seven-count bill of information and prayer, together with the seven-count returns, history, and the brief in this case, we conclude that the most salient issues to be decided are:

1 What is the legal scope and function of a bill of information as well as whether or not it would lie from the allegations contained therein?

2 Whether or not the correct legal procedure was adopted in placing the Executrices of the late Martha M. Hill in possession of the disputed realty on which it is alleged a three storey building is constructed?

3 And whether or not the late co-respondent Martha M. Hill's heirs have been placed in possession of the subject property and if not why not?

As earlier stated in this opinion, entertaining a bill of information, which is now becoming very prevalent, in this Court requires that the action should either have been decided by this appellate Court or its mandate is pending or has been irregularly and incorrectly executed. The current matter was decided by this Court, having been withdrawn according to the records and is pending enforcement of this Court's mandate in the execution of the writ of possession. It is clearly stated in count seven of the bill of information and the respondents do not deny, that the disputed property is indivisible and to divide it is almost impracticable.

Informant prays an equitable adjudication thereof. Count seven and the prayer are quoted below to wit:

"And informant further submits that it is impracticable for the Civil Law Court to enforce its final judgment from an inspection of Exhibit "B" hereto annexed, in that informant's three storey building only occupies a portion of Martha M. Hill's half (1/2) lot and it not being practical to partition a three storey building informant prays that this Honorable Court will enter an equitable ruling 'whereupon informant may have the opportunity to compensate Martha Hill's heirs for the 34' by 41.25' feet of land which informant's three storey concrete building is occupying due to no fault of informant."

"WHEREFORE, informant prays that it being impracticable in keeping with the survey engineer's report to put Martha M. Hill's heirs in possession of the land covered by Martha M. Hill's deed due to the overlap caused by the surveyor who

surveyed the adjoining parcels of land owned by informant and co-respondent Martha M. Hill, respectively, and also because of the condition which informant's three storey concrete building is situated on the land, that is to say, both the disputed portion, as well as the other portion owned by informant, which is not in dispute, Your Honours will order an equitable settlement and grant unto informant such other relief as justice and right demand."

The records before us revealed that the trial court in obedience to this Court's mandate endeavored to enforce its judgment against informant, defendant in the court below, by requesting the Ministry of Lands, Mines and Survey to dispatch a team of surveyors to aid the sheriff in putting the plaintiff co-respondent Martha M. Hill's heirs in possession of her property in keeping with the metes and bounds of her deed. A survey-of the disputed property was accordingly conducted, and the surveyors reported to the court that the informants three storey concrete building occupies only a portion of the said disputed property, thereby rendering it impracticable to put the plaintiff in physical possession of that portion of her property for which judgment was entered in her favor.

Against the foregoing background, it is our considered opinion that in order that transparent justice may be equally meted to both parties and the matter concluded, the informant/ defendant should be required, and he is hereby ordered, to adequately compensate plaintiff/co-respondent Martha M. Hill's heirs for that portion of her property on which a portion of the informant's building is located.

This holding is predicated upon the legal premises that courts of justice do not delight in doing or adjudicating matters by halves or incomplete. More so, when it is averred in count seven

(7) and the prayer of the information, not specifically denied by respondents in their returns, that the tract of land in dispute does not admit of partitioning.

Failure to deny any allegation of a pleading is deemed admitted. For reliance: Civil

Procedure Law, Rev. Code 1: 9.8.

(3) "Effect of failure to deny. "Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided.

In passing, suffice it to say that substitution of parties is permissible upon application of a party or the court may *sua sponte* do so. Vide: Civil Procedure Law, Rev. Code 1: 5.36 (2).

With reference to the incorrect procedure employed in an effort to put the late co-respondent Martha M. Hill's heirs in possession of the said subject property, this Court holds very steadfastly and firmly to the maxim: "that which is not legally done is not done at all." When the statutes provide a mode of procedure the same should be strictly conformed to. It is the sole and absolute responsibility of the sheriff of court to whom the writ of possession is directed to place a successful party in possession of real property. He may do so by calling to his aid competent or qualified surveyors to effectuate the execution thereof, and make his returns to the court and indicate if he is in need of the court's assistance or cooperation. But the court should not appoint surveyors unless the case progresses to where it requires the setting up of a board of arbitration, which was not the case here.

Reverting to the last or third issue of whether or not the corespondent Martha M. Hill's heirs have been put in possession of the subject property, and if not, why not? The answer is in the negative because it is alleged in count (7) seven of the returns and the prayer of the respondents that placing the respondents in possession will be impracticable.

In view of the facts and the law controlling, and limiting ourselves to issues raised in the written pleadings, the bill of information is denied with modification mainly to have the corespondent Martha M. Hill's heirs justly and adequately compensated

since it is not denied that the co-respondent, Hill's heirs, cannot be put in possession thereof. Vide: *Pennob v. Brown*, 15 LLR 237 (1963).

There being precedence for the Court to both deny or dismiss and modify a ruling or judgment, it is the holding of this Court, that the bill of information is denied with the modification that informant is ordered forthwith to compensate co-respondent Martha Hill's heirs for that portion of the land, being indivisible, whereon is a part of informant's three (3) storey building for an amount not to exceed the present marketable value. Vide: *Helou Brothers v. Kiazolu Wabab and Hunter*, 17 LLR 520 (1966).
And it is hereby so ordered.

Information denied.