

**LIBERIA AGRICULTURAL COMPANY**, Petitioner/Appellant, v. **ELIAS T. HAGE, ST. MICHAEL AGRICULTURAL COMPANY**, and the **JUDGE OF THE DEBT COURT FOR MONTSERRADO COMPANY**, and **THE SHERIFF OF THE DEBT COURT FOR MONTSERRADO CO.**,

Respondents/Appellees.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING A  
PETITION FOR A WRIT OF PROHIBITION.

Heard: November 27, 1995. Decided: December 7, 1995.

1. Irregularities in the service of the writ of the execution and an auction sale can only be reviewed by appeal or error and not by prohibition.
2. Prohibition cannot assume the function of an appeal to revoke a bill of sale that has been issued.
3. The purchaser of property sold by a sheriff pursuant to execution may recover the purchase price from the judgment creditor who receives the proceeds if the property is recovered from such purchaser in consequence of an irregularity in the sale or a ruling vacating, reversing, or setting aside of the judgment upon which the execution was based.
4. The issuance and delivery of a bill of sale to the highest bidder as well as the deed executed and delivered in pursuance thereof, does not preclude the judgment debtor from seeking a relief in the court from which the execution issued.
5. Where there are irregularities in the execution of a judgment, relief should be sought in the court from which the execution issued.
6. The fact that there is a valid judgment does not preclude an attack upon an execution sale held thereunder and the deed executed and delivered in pursuance thereof.
7. A court having jurisdiction to hear and determine civil cases has general supervisory control over the process of execution, and the power to determine every question of fact and law which may be involved.
8. A judgment debtor whose property is seized by an execution sale may either

directly or collaterally attack the execution by a motion to vacate the sale or by the institution of an action to recover the possession of the property from the execution purchaser.

9. It is the duty of litigants, for their own interest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage of justice and thereby pave the way to secure the great benefits which they seek to obtain under the law. Litigants must not expect the courts to do for them that which is their duty to do for themselves.

10. A writ of prohibition to a court of first instance will be issued only where the court exceeded its jurisdiction or proceeded in a novel or unheard of manner. It will not be issued merely to correct a party's neglect to act in his own interest.

11. Prohibition will be granted when the trial court is without, or exceeds its jurisdiction, or proceeds contrary to rules which ought to be observed at all times, or where a party litigant is not afforded due process of law.

12. Prohibition cannot revoke a bill of sale from an execution sale, where the petitioner failed to file either a motion to set aside the bill of sale or a complaint for the recovery of the property so seized.

These prohibition proceedings emanate from alleged irregularities in the service of the writ of execution, the auction of the goods, chattels, and lands of petitioner, and the transfer of title of petitioner's rubber plantation to respondent growing out of a final judgment of the Debt Court for Montserrado County. Petitioner contends that the service of the writ of execution was contrary to law; that its rubber plantation and the concession rights thereto granted by the government of Liberia should not have been included in the sale; and that the transfer of title to its rubber plantation pursuant to the said execution sale to respondent, was illegal.

The Chambers Justice denied the petition holding that in as much as there seem to have been some irregularities in the service of the writ of execution, the auction and the transfer of title, these irregularities can only be reviewed by appeal or error and not by prohibition. On appeal, the Supreme Court confirmed and affirmed the ruling of the Chambers Justice.

In affirming the ruling, the Supreme Court held that prohibition cannot lie to revoke the bill of sale or the transfer of title to respondent and that the procedure for

petitioner to have followed was either to file a motion to set aside the sale or a complaint in the debt court for the recovery of the properties seized.

*Wiefur Seyieb*, in association with *H. Varney G. Sherman* appeared for the petitioner. *Clarence L. Simpson, Jr.*, and *Farmere G. Stubblefield* appeared for the respondents.

MR. JUSTICE SACKOR delivered the opinion of the Court.

This case is one that has caused quite a bit of media sensation in the country. We believed that the nature and scope of the property rights herein involved have given rise to such public attention. However, in our capacity as referees, we are duty bound to look solely at the facts as transcribed and properly transmitted to us in due course of appellate review, and ultimately take recourse to applicable law in adjudicating the principal issues presented.

The co-respondent in this prohibition proceeding, Elias T. Hage, instituted an action of debt on June 2, 1994 against the petitioner herein, the Liberian Agricultural Company(LAC), at the Debt Court for Montserrado County for the sum of US\$218,584.00. The action was heard and final judgment entered on August 30, 1994 against the defendant company to pay the amount of US\$ 218,584.00 plus interest. There was no appeal taken. The records before us disclose that the defendant company, upon rendition of final the judgment, filed a motion for a deferred payment. Notice of said motion was issued and acknowledged by counsels of both parties, but movant and his counsel did not appear on the day for hearing of the motion for deferred payment, as provided by statute on default on motion.

The defendant company filed a motion for the court to rescind its ruling dismissing the motion for deferred payment. This motion was resisted, heard and denied. Defendant company appealed from said ruling but failed and neglected to take any necessary jurisdictional steps to perfect the appeal. The trial court dismissed the appeal and proceeded to enforce its judgment. The clerk of the debt court was accordingly directed to prepare a writ of execution to be served on the defendant company for the collection of US\$218,584.00 plus six percent interest per annum. The Debt Court Judge further directed that failure of defendant to pay this judgement, the clerk should issue notices of sale of the personal property of defendant. The trial judge relied on the statute relating to the sale of personal property. Civil Procedure Law, Rev. Code 1:44. 41(1)(2).

On the 27th day of October, A. D. 1994, the clerk of the debt court issued a writ of

execution commanding and authorizing the co-respondent sheriff to levy on the "goods, chattels and lands" of the judgment debtor and sell them at a public auction. The sheriff thereupon on the same date issued a notice of sale pursuant to the judgment, and a writ of execution to sell the subject properties to the highest bidder on the ground of defendant's premises on the 6th day of November, A. D. 1994 at 10:00 in the morning to raise the amount of US\$240,803.40 including principal, interest and other charges. On the 8th day of November, 1994, the co-respondent sheriff, by a letter, informed the co-respondent judge of the form and manner of the sale indicating co-respondent Elias T. Hage, as the highest bidder with the sum of US\$255,000.00.

On the 10th Day of February A. D. 1995, the defendant company being dissatisfied with the form and manner of the sale of its premises, filed a petition for prohibition before Mr. Justice Frank W. Smith, then Chambers Justice presiding over the court at the time, requesting this court to order the respondent judge to revoke the bill of sale. The petition was resisted, argued and denied by the Chambers Justice. The Chambers Justice ruled as follows:

"As much as there seem to have been some irregularities in the service of the writ of the execution, the auction sale and the manner in which title to the LAC Rubber Plantation was acquired, such irregularities were taken against the court prior to the satisfaction of the judgment. Irregularities committed by the trial court may only be reviewed by appeal or error and not by prohibition. There remaining nothing further to be done by the court below in this matter, and the judgment which was not appealed from having being completely enforced and satisfied, we find no legal ground on which to grant the peremptory writ of prohibition. Prohibition will not assume the function of appeal to revoke the bill of sale that had been issued."

It is from this ruling that the petitioner, defendant company in the court below, appealed to this court *en banc*, for a review and final determination of this case. During the pendency of the appeal before this court, the Government of Liberia by and thru the Ministry of Justice, filed a motion to intervene in the prohibition proceedings along with a petition for prohibition to protect the equitable interest of the Liberian Government in the defendant company (LAC), and requested this Court to reverse the execution of the judgment debt and or set aside and vacate the execution sale. But the Government of Liberia by and thru the Minister of Justice, Counsellor Francis Y. S. Garlawulo, subsequently withdrew said motion and the petition without prejudice to the state.

The petitioner contended that the writ of execution was served on its corporate assets

located in Grand Bassa County which writ was endorsed by the purported debt court judge, Nathaniel K. Hodge, when in fact the Debt Court for Grand Bassa County had not been reactivated. Petitioner also argued that the writ of execution should have been served on any of its corporate officers as provided by law, and that the service of the execution was contrary to law.

Petitioner further contends that after service was made on the corporate assets of the defendant company, the sheriff did not make any schedule of the properties seized with an itemized appraised value; which properties included the rubber plantations valued at over Thirty million United States Dollars(US\$30,000,000.00), together with the value of the stock or processed rubber which was also seized, valued about 1.5 Million United States Dollars, plus other personal properties. Petitioner contends that the value of the defendant's company's assets seized and exposed for sale are in excess of the amount of the US\$240,803.40 awarded to the respondent by the debt court judge.

Petitioner strongly argues that the rubber plantations of the defendant and the concession rights granted by the Government of Liberia should not have been repealed, and that the auction sale was not conducted in Grand Bassa County where the properties are located and where they were levied upon; instead, the sale was done in the City of Monrovia, Montserrado County, and only those who were connected with Mr. Hage, the judgement creditor, and himself participated in the bid. Petitioner succinctly maintains that the auction was not public as required by law. He therefore prays that the Supreme Court grant the writ of prohibition ordering the co-respondent judge to revoke the bill of sale and any other rights acquired by any purchaser at the execution sale; that the petitioner be restored to the rights of its concession agreement and that the co-respondent judge may order the issuance of another writ of execution, if the petitioner does not satisfy the judgement debt upon the service of the writ of execution on petitioner's personal properties before its real property interest.

The respondents on the other hand contend that the debt action being closed and nothing left to prohibit, prohibition will not lie after three months and six days when the judgment was satisfied. Respondents also argued that the debt court judge had jurisdiction over the subject matter and the defendant company and that said trial judge did not exceed his jurisdiction nor did he proceed by any rule contrary to those which ought to be observed at all times. Respondents maintain that the alleged errors and irregularities complained of by the petitioner company can be reviewed and corrected either by writ of error, certiorari, or a regular appeal but not prohibition as

requested by the petitioner.

Respondents strongly maintain that Article XI, Paragraph Three (3), of the concession agreement between the Government of Liberia and the defendant LAC provides for the transfer of the said concession agreement and that the incorporeal assets of LAC are transferrable to any party(ies) and not restricted only to LAC' s subsidiaries. Respondents also argue that the incorporeal assets of LAC within the concession agreement with the Liberian Government, contain no real property, but such assets that are limited to the personal rights of LAC to operate the concession area, its accessory works, installations, produce and equipment used to operate within the concession area. Further, respondents contend that there is no transfer of realty as the realty in the concession area continues to be the property of the Liberian Government, except for the concession rights carved out of the fee leaving unto the government its reversionary interest.

Respondents argue that due to armed hostilities in LAC' s former concession area, and given that some of the properties auctioned, like the rights to operate the concession area, the Debt Court was given the right by the statute to auction such personal property(ies) of LAC without being in the view of those attending the sale. Respondents strongly maintain that the subsequent consent from the appropriate agencies of the Liberian Government (Ministries of Justice, Commerce, Agriculture and Foreign Affairs) granting the respondent company the right to operate the concession area legally, it acquired the property rights once held by LAC in the concession agreement of the Government of Liberia, and that respondents cannot be deprived of its property rights without a due process of law. Respondents therefore request this court to uphold the ruling of the Chambers Justice denying the issuance of the writ of prohibition.

The decisive issues relevant to the final determination of these prohibition proceedings are:

- (1) Whether or not prohibition is the proper remedy to set aside a bill of sale of an alleged irregular and excessive execution sale in a regular trial?
- (2) Whether or not the petitioner had other remedies available at the trial court to relief itself from the execution sale?

We shall firstly discuss what the petitioner asserts in Part II, Sub-sections 2.1 and 2.2, Page 3 of his amended brief as the purpose of and the basis for the writ of

prohibition, so as to safeguard and confine ourselves to such purpose and basis for the determination of this prohibition proceeding. We shall hereunder quote word for word said purpose and basis of the petition for the benefit of this opinion.

## "II. PURPOSE AND BASIS FOR THE PETITION FOR THE WRIT OF PROHIBITION.

2.1. It should be established here very clearly that at the time of the filing of the petition for the writ of prohibition, petitioner was not, and still is not questioning the trial and the judgment; petitioner is merely questioning the execution and the execution sale. It should also be established here that most of the irregularities complained of in the writ of prohibition are irregularities that petitioner could not have become aware of until subsequent to the execution sale and the issuance of a bill of sale to the highest bidder.

2.2. It is this bill of sale that petitioner seeks to have this honourable court revoked and declared null and void for substantive legal reasons. And petitioner believes that the only remedy available to it to undo that which has been illegally done by the trial court or court officials is the writ of prohibition."

It is clearly shown that the trial of the debt court was regular and the judgment was sound in law and not subject for review before this court, but that the form and manner of the execution sale was allegedly irregular, which irregularities petitioner alleges before this court that he was not aware of until subsequent to the execution sale and the issuance of a bill of sale to the highest bidder and judgment creditor, Elias T. Hage. Petitioner therefore requests this court of last resort to revoke the bill of sale and declare same null and void for substantive legal reasons. Petitioner relies on *Dweh v. Findley et al.*, 15 LLR 638 (1964), in which this court held that where there is no statute or precedent to support an act of an inferior court, prohibition will lie if it can be shown that such acts adversely affects the rights of the petitioning party. In that case, the trial judge denied a motion to dissolve an injunction in an ejectment action wherein an appeal to this court was pending. This court granted prohibition against the execution of a judge's oral instruction to a sheriff which was contrary to the judges formal ruling on the same matter which this court felt was prejudicial to the petitioning party. In the instant case, the trial judge's instructions to the sheriff for the issuance of an execution is in conformity with his formal ruling and the trial judge never proceeded contrary to rules which ought to be observed at all times. There is also a statutory provision for the recovery of a purchase money from the judgment creditor for the property sold by the sheriff pursuant to execution.

Petitioner cites in support of his argument *Boye v. Nelson*, 27 LLR 174 (1978) which says that "prohibition is a proper remedy not only to prohibit the doing of an unlawful act by a lower court but also for undoing what has already been unlawfully done under authority of the Court." In that case, the writ was against the enforcement of a void judgment against a stranger who was not a party to the action or brought under the jurisdiction of the court, thereby denying him his day in court and a due process of law. In this case, the defendant company was brought under the jurisdiction of the lower court and had its day in court as well as satisfying with the judgment of the debt Court.

Petitioner also cited the case *Aminata Shipping Lines v. Hellenic Cruising Holidays*, 37 LLR 91 (1992), wherein Mr. Chief Justice Bull said, as follows:

"Further, in as much as the judge below attempted to proceed by rules different from those which ought to be followed and observed, prohibition will not only prohibit the doing of an unlawful act, but will undo what has been already been done. It is our holding therefore that the judgment dismissing the damage suit in this case is declared null and void and that the said damage suit remains as it was when it was originally filed." In the above cited case, the trial judge refused to recuse himself from hearing the motion to dismiss an action of damages and subsequently dismissed the action prior to ten (10) days before the opening of his court contrary to statute, and further attempted to enforce his final ruling dismissing the action in spite of an announcement of an appeal from the ruling This Court therefore granted prohibition for lack of jurisdiction, for proceeding by wrong rules contrary to statute, as well as for denying the petitioners right of appeal as provided for by the Constitution.

We shall now discuss the issue whether or not the petitioner had other remedies available at the trial court to relieve itself from the execution sale. Petitioner vehemently contends that the execution and the execution sale were irregular and should therefore be declared null and void in this prohibition proceedings because it does not have any other remedy to relieve itself from the execution sale. The petitioner avers that he became aware of the bill of sale after the execution sale before applying for the writ of prohibition. As stated earlier in this opinion, our statutes provide a remedy to recover from a purchaser in consequence of an irregularity in the sale pursuant to execution by a sheriff. The relevant statute is hereunder quoted for the benefit of this opinion:

"The purchaser of property sold by a sheriff pursuant to execution, may recover the

purchase money from the judgment creditor who receives the proceeds if the property is recovered from such purchaser in consequence of an irregularity in the sale or vacating, reversal, or setting aside of the judgment upon which the execution was based." Civil Procedure Law, Rev. Code 1:44.45.

The issuance and delivery of the bill of sale to the highest bidder as well as the deed executed and delivered in pursuance thereof does not preclude the judgment debtor from seeking relief in the court from which the execution issued. It is a fundamental principle of law that:

"Generally, relief should be sought, if at all, in the court from which the execution issued. The fact that there is a valid judgment does not, of course, preclude an attack upon an execution sale held thereunder and the deed executed and delivered in pursuance thereof " 30 AM JUR 2d., *Executions*, § 607, pp. 788-789

The Supreme Court is a constitutional court whose jurisdiction is constitutionally restricted. The circuit court is created by statute and its jurisdiction is also prescribed by statute. The debt court has jurisdiction in civil cases for debt and therefore has a general supervisory control over its process of execution and execution sale. As such, it is clothed with authority to determine upon a complaint by either party, of any irregularity resulting from the issuance of an execution and execution sale, as in this instant case. It is further held that:

"A court having jurisdiction to hear and determine civil cases, has general supervisory control over its process of execution, and that for all its purpose of preventing injustice, an execution is within the inherent, equitable control of the court. This power carries with it the right to determine, in a summary manner, and without the intervention of a jury, every question of fact and law which may be involved. The control of the Court continues until all orders concerning the property of the execution debtor have been obeyed. Moreover, writs of execution and proceedings thereunder only come under judicial supervision on complaint of either party." 30 AM. JUR. 2d., *Execution*, § 3, pp. 447. A judgment debtor whose property is so seized by an execution sale may either directly or collaterally attack the execution by a motion to vacate the sale by institution of an action to recover the possession of real estate from the execution purchaser. See 30 AM JUR 2d., *Execution*, § 622.

It was incumbent upon the aggrieved judgment debtor to have availed itself of the statutory provision in this jurisdiction as well as the fundamental laws, in conformity

with our statute, to relieve itself from the execution sale. This Court has held that:

"It is the duty of litigants, for their own interest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage and thereby pave the way to securing of the great benefits which they seek to obtain under the law. Litigants must not expect the courts to do for them that which is their duty to do for themselves." *Bryant et al. v. Harmon and Oost Afrikaansche Compagnie*, 12 LLR 405, 409 (1957) This Court is mindful of its constitutional obligations to render a fair and impartial judgement in causes over which it has both original and appellate jurisdiction to enhance a smooth operation of a good government, but it cannot render such judgment where it does not have jurisdiction over such causes as may be brought before this court, as in the instant case. Further, we wonder why lawyers practicing before this court are hiding their negligence and carelessness in handling the interest of their clients who are injured and expected to deserve a fair and transparent judgment by failing to avail themselves of remedies available to their clients' interests and expect the court to usurp the jurisdictional functions of the lower courts as in this case.

We shall now discuss the issues whether or not prohibition is the proper remedy to set aside a bill of sale of an alleged irregular and execution sale in a regular trial. Petitioner in this prohibition proceedings basically requests this court to declare null and void the execution sale and revoke the bill of sale issued in pursuance thereof for alleged irregularities with respect to the issuance and service of the writ of execution and the auctioning of the judgment debtor's properties in excess of the judgment amount awarded.

This Court has held that:

"A writ of prohibition to a court of first instance will be issued only where the court exceeded its jurisdiction or proceeded in a novel or unheard of manner. It will not be issued merely to correct a party's neglect to act in his own interest." *Francis v. Pynches et al.*, 15 LLR 224, 226 (1963).

The Supreme Court of Liberia by virtue of its statutory and constitutional appellate jurisdiction over remedial writs, will not hesitate in granting such writs, especially prohibition, when the trial court is without, or exceeds its jurisdiction or proceeds contrary to rule which ought to be observed at all times; and where a party litigant is not afforded a due process of law. See *Boye v. Nelson*, 27 LLR 174 (1978); *Ayad v. Dennis*, 23 LLR 165 (1974), *Aminata Shipping Lines v. Hellenic Cruising Holidays*; 37 LLR 91 (1992). Prohibition cannot revoke the bill of sale as requested by counsel for

petitioner as said counsel neglected to act in the interest of his client by filing either a motion to set aside the bill of sale or a complaint at the debt court which supervises the execution sale for the recovery of the property(ies) so seized.

The debt court having jurisdiction over the subject matter and the defendant company, and the trial being regular, without denial of petitioner's right of due process of law, this Court is reluctant to disturb the sound ruling of the Chambers Justice; but to deny this petition for want of jurisdiction and the availability of other remedies for the petitioner to relieve itself from the execution sale at the debt court in accordance with the statute. Civil Procedure Law, Rev. Code 1:44.45.

Wherefore and in view of all we have said herein above, the ruling of the Chambers Justice appealed from, is hereby confirmed and affirmed. The alternative writ is hereby quashed and the petition is hereby denied with costs against the petitioner. The Clerk of this Court is hereby ordered, absent any revocation of the bill of sale, to notify the respondent to take possession of the properties so seized by the execution sale and to further notify the court below by sending a copy of this opinion for its files. And it is hereby so ordered.

*Petition denied.*