

YOUSEF MAHMOUD, Petitioner/Informant, v. **HIS HONOUR J. HENRIC PEARSON**, Assigned Circuit Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, **MOHAMMED JALLOH et al.**, Respondents.

APPEAL FROM A RULING OF THE JUSTICE IN CHAMBERS GRANTING
THE WRIT OF PROHIBITION, AND INFORMATION
PROCEEDINGS.

Heard: May 18, 1992. Decided: September 4, 1992.

1. The doctrine of *res judicata* requires that an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction is conclusive of rights, questions, and facts in issue, as to the parties and their privies in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.
2. Privity is defined as mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right... Thus, the executor is in privity with the testator, the heir with the ancestor, the assignee with the assignor and the lessee with the lessor.
3. No single Justice of the Supreme Court can legally issue any restraining writ to adversely affect any decision of the Court *en bane*.
4. In the hearing and determination of cases before the Supreme Court of Liberia, each of the five justices carries a one-fifth responsibility vested in him by the one vote which he controls over the particular case. No one of those five votes is superior to the others in any manner.
5. According to public policy, there must be an end to litigation. It has been held that to require courts to consider and reconsider cases at the will of litigants would deprive the courts of that stability which is necessary in the administration of justice.
6. An application based upon facts in a court of record should be in writing and supported by affidavit.
7. It is a well settled practice in this jurisdiction that the returns of ministerial officers of the court are presumed to *be* correct.

This is a writ of prohibition in which the aggrieved party sought to prevent the lower court judge from issuing a writ of possession on the ground that the Supreme Court's

mandate was being improperly enforced.

In the mid eighties, one Senesee Carew filed an action of ejectment for lot 58 on Randall Street, Monrovia, Liberia. The lower court ruled in favor of the plaintiff and on January 23, 1987 the Supreme Court affirmed the ruling and sent a mandate back to the trial court judge to place the plaintiff in possession of the property. On that same date, when the trial court attempted to enforce the mandate, Alhaji Momo Lamine Sheriff filed a bill of information claiming that the Court's mandate was not being properly carried out in that the plaintiff was put in possession of lots 55/56 and not lot 58 as mandated. On July 29, 1988, the Supreme Court ruled on the information against petitioner Sheriff and mandated the trial court to resume jurisdiction and carry out the mandate.

Meanwhile, one Yousef Mahmoud, a tenant of Alhaji Momo Sheriff, on February 20, 1987, filed a writ of prohibition on grounds that the Supreme Court's mandate was not being properly carried out. On March 21, 1989, Mr. Justice Junius, who was then in Chambers, granted the writ on the basis that the petitioner, Yousef Mahmoud, should not be affected by the Supreme Court's mandate as he was not a party to the main suit. The respondents appealed to the full bench. Thereupon the petitioner also filed information to the Supreme Court maintaining *inter alia* that the lower court judge was disobeying the writ of prohibition issued by Justice Junius.

The Supreme Court reversed the Chambers Justice's ruling, holding that the petitioner had no basis for his claim since in its ruling in the main action it was determined that Alhaji Momo Sheriff was not the owner of lot 58. Further, the Court was astounded that the Chambers Justice had granted the writ knowing that the full bench had denied information a few of years earlier on the same issue.

Prohibition denied

Johnnie N. Lewis for petitioner. *Francis N. Torpor* for respondents.

MR. JUSTICE HNE DELIVERED the opinion of the Court.

Yousef Mahmoud, the above named petitioner, filed a petition on February 20, 1987, for a writ of prohibition before Mr. Justice Frederick K. Tulay who was then presiding in Chambers. He alleged that he was not a party to the main suit of ejectment and that the mandate of the Supreme Court, which emanated from the Supreme Court's judgment of January 23, 1987, deciding the main suit of ejectment, was improperly executed.

The records show the history of this case to be as follows: Senessee Carew filed an action of ejectment against Alhaji Momo Lamine Sheriff in the Civil Law Court, Sixth Judicial Circuit. The plaintiff prevailed in that action wherein he was awarded general damages of \$700,000.00, in addition to Lot No. 58, located on Randall Street. Whereupon, Alhaji Momo Lamine Sheriff announced an appeal, which he prosecuted in the Supreme Court. There again, Senessee Carew received a judgment in his favour when the Supreme Court gave a judgment without opinion on the case on January 23, 1987.

During the March 1988 Term of the Supreme Court, Alhaji Momo Lamine Sheriff, against whom judgment was rendered by the Supreme Court on January 23, 1987, also filed a bill of information alleging that the mandate of the Supreme Court was not properly carried out. On July 28, 1988, the Supreme Court delivered an opinion denying the information of Alhaji Momo Lamine Sheriff and instructed the Clerk to send a mandate to the lower court to resume jurisdiction and give effect to the Supreme Court's judgment.

On February 20, 1987, Yousef Mahmoud filed a petition for a writ of prohibition against His Honour J. Henric Pearson, then presiding judge of the Sixth Judicial Circuit, Montserrado County, the sheriff for Montserrado County, and Senessee Carew, the plaintiff in the court below, alleging that the mandate of the Supreme Court was improperly carried out in that the writ of possession of designated and purported to place the plaintiff in possession of Lots No. 55/56 and rather than Lot No. 58, the lot sued for.

Mr. Justice Tulay on 18th March, 1987, issued an alternative writ of prohibition in favor of Yousef Mahmoud, the present petitioner, against the enforcement of the Supreme Court's mandate. He did not hear the case for some unexplained reason. Mr. Justice Junius, who was the Chambers Justice during the October 1988 Term of Court, heard the case and entered a ruling on the 21st day of March, 1989, granting the peremptory writ of prohibition. It should be noted here that this was after the full bench had handed down a judgment on July 29, 1988, denying the information of Alhaji Momo Lamine Sheriff. The crux of Justice Junius' ruling is that the petitioner, Yousef Mahmoud, was not a party to the ejectment case and therefore the judgment in the said case could not be enforced against him.

The respondents appealed from Mr. Justice Junius's ruling and have now come before us for a review in the prohibition proceedings. Thus, for the fourth time, this

Court is being called upon to render a judgment in the self-same case. It is indeed unfortunate that this Court allowed itself to be so manipulated. What a travesty!

In addition to his petition, Mr. Yousef Mahmoud filed a bill of information alleging that the peremptory writ of prohibition was being disobeyed by the respondents.

This Court heard the information of the petitioner on the 18th day of May, 1992. After delving further into the records, it was apparent to us that it was well to hear the prohibition itself and to decide the information and the prohibition jointly. Accordingly, on June 2, 1992, we heard the petition for a writ of prohibition.

The main contention of the information is that although Mr. Justice Junius had ruled granting a peremptory writ in the prohibition proceedings, the respondents had moved into the premises in disobedience of the prohibition, for which they should be held in contempt of this Court.

It is well to observe here that the full bench had rendered an opinion on July 29, 1988, denying the information filed by Alhaji Momo Lamine Sheriff on the same subject. When asked during the argument before us who was the grantor and under whose title Petitioner Yousef Mahmoud was claiming, the petitioner's counsel replied that the petitioner was claiming under the title of Alhaji Momo Lamine Sheriff. It is the same Alhaji Momo Lamine Sheriff against whom the Supreme Court had rendered two judgments extinguishing his title.

In the petition for prohibition, now before us for appellate review from the ruling of Mr. Justice Junius as aforesaid, the petitioner contends (1) that he was not a party to the suit in the court below and therefore cannot be bound by the court's judgment; and (2) that the Supreme Court's mandate was not properly carried out. The issues to be considered therefore are:

(1) Whether the judgment in this case is enforceable against the petitioner?

(2) Whether the mandate of this Court was properly executed?

Taken in the reverse order, it suffices to say that this same issue, that is, whether the mandate of this Court was properly carried out, was part of this Court's decision in the information filed by Alhaji Momo Lamine Sheriff, the grantor under whom the petitioner claims. In this Court's opinion of July 29, 1988 disposing of the said information, Mr. Chief Justice Gbalazeh said:

"On January 23, 1987, this Court rendered a judgment without opinion confirming the trial court's judgment, and it thereupon mandated the judge presiding therein to resume jurisdiction over the case and to enforce its judgment rendered on March 10, 1986. On February 18, 1987, His Honour J. Henric Pearson, the presiding judge, executed the said mandate of the Supreme Court, while on February 19, 1987, upon the orders of the said Court, issued the writ of possession for Lot No. 58 and placed same in the hands of the Sheriff for Montserrado County to evict the defendant and to place the plaintiff in possession thereof. The Sheriff, having served the writ of possession, made his official returns that he had accordingly served the writ of possession with the aid of a public land surveyor. The records further show that after the plaintiff had been placed in possession of his property without any objection, and thus being so possessed, he entered into lease agreements with several tenants for Lot No. 58 and received rentals from them.

Several attempts were belatedly made by the defendant to file a bill of information, but all were later abandoned.

However, after one year and two months, defendant finally filed this bill of information alleging, among other things, that Judge J. Henric Pearson had failed to properly carry out the Supreme Court's mandate in conformity with its terms, in that plaintiff was placed in possession of the M.I.C. building and premises, namely: Lot Nos. 55/56, and not Lot No. 58, the subject of the mandate. Informant also alleged that Judge Pearson had failed to include in his orders that the sheriff be assisted by a Public Land Surveyor, as contained in Judge Hall Badio' s original judgment of March 10, 1986.

A perusal of the records shows that the writ of possession mentioned Lot No. 58, situated on Randall Street, Monrovia, Liberia, which writ was acknowledged by one of the informant's counsels, Counsellor M. Fahnbulleh Jones, who affixed his signature at the bottom of the certified copy of the writ. The Sheriff said in his returns that plaintiff was placed in possession of his property with the assistance of a surveyor in keeping with the metes and bounds as contained in Judge Badio's judgment. Informant in no way objected and/or excepted to any of these acts in any form or manner.

According to well settled practice in this jurisdiction, the returns of ministerial officers of the court are presumed to be correct". *Perry v. Ammons*, 16 LLR, 268 (1965); *Eitner v. Sawyer*, 26 LLR 247 (1977).

Informant's mere allegation that plaintiff was placed in possession of Lot No. 55/56 only contradicts contrary evidence, but does nothing to overcome it. In order to do so, informant needed to file along with this information a sworn statement in support of the said allegation. This Court has held repeatedly that an application based upon facts in a court of record should be in writing supported by an affidavit. *Y. L. River Logging Corporation v. United Logging Corporation*, 24 LLR 57 (1975). Hence, the presumption arising out of the sheriff's returns to the effect that the writ of possession was properly executed stands.

Badio and El Nasr Export and Import Corporation v. The Liberia Industrial Development Corporation, 35 LLR 229 (1988); *Sheriff v. Pearson et al.*, 35 LLR 355 (1988)."

We feel that this settles and concludes issue (2) above.

Now to the other issue raised by the petitioner, that he was not a party to the ejectment suit and, consequently, the judgment of the lower court is not enforceable against him. As stated earlier in this opinion, this is the central theme of Mr. Justice Junius's ruling, i.e. that the petitioner was not a party to the said suit and cannot be subject to the judgment of the court below.

When asked under whom was petitioner claiming, counsel for Petitioner Yousef Mahmoud responded that the petitioner was claiming under the title of Alhaji Momo Lamine Sheriff. In his information filed before this Court, as earlier stated herein above, Alhaji Momo Lamine Sheriff gave the same factual information as now presented by him as petitioner. That information was denied by this Court by the judgment given on July 29, 1988. Why then does the petitioner again come to this Court when the same contention he raises now was raised by his original grantor in the said bill of information which was decided adversely to him by this Court's decision of July 29, 1988?

Claiming as he does under the title of Alhaji Momo Lamine Sheriff, we need to ascertain what is the effect on petitioner of the judgment against Alhaji Momo Lamine Sheriff under whose title the petitioner claims. The respondents maintained in their brief and argument before this Court that the petitioner is a privy of Alhaji Momo Lamine Sheriff and consequently suffers from the disability of estoppel, and therefore cannot relitigate the case in the manner he now attempts to do by way of prohibition. They contend further that the judgments against Alhaji Momo Lamine Sheriff by the court below, as well as this Court, are subject to the doctrine *res judicata*.

The doctrine of *res judicata* holds that an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of the rights, questions, and facts in issue, as to the parties and their privies in all other actions in the same or any other judicial tribunal of concurrent jurisdiction. *Branly v. Vamply of Liberia*, 22 LLR 337 (1973), text at 354.

Let us now see what law writers say about privity to determine the status of the petitioner, Yousef Mahmoud, vis-a-vis Alhaji Momo Lamine Sheriff, the defendant in the ejectment suit.

"Privity - Mutual or Successive Relationship to the Rights of Property. In its broadest sense, 'privity' is defined as mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right; derivative interest founded on or growing out of contract, connection or bond of union between parties, mutuality of interest. Thus, the executor is in privity with the testator; the heir with the ancestor, the assignee with the assignor, the donee with the donor, and the lessee with the lessor.

"Privity of Estate. That which exists between lessor and lessee, tenant for life and remainderman or reversioner, etc., and their respective assignees, and between joint tenants and coparceners". "BLACK'S LAW DICTIONARY 107980 (5th ed.)

Also, in 25 AM. JUR 2d, *Ejectment*, we find the following:

"It may be laid down as a general rule admitting of no exception that after the recovery of a judgment in favor of the plaintiff in an action of ejectment the defendant and all those in privity with him may be dispossessed under the writ of possession issued thereon, and that all persons acquiring possession from and under the defendant during the pendency of the action, whether as vendees, lessees, or otherwise are privies within the meaning of the rule. The parties defendant, their families, servants and tenants at sufferance are, of course, bound to the judgment in ejectment and may be dispossessed under the execution issued thereon, and this rule has in some jurisdictions been pushed to such an extent to hold that the wife of a defendant cannot prevent the execution of the writ by setting up title in herself, because it was the duty of her husband to have defendant his possession under her title. The justness of such decisions has been questioned, however, and the better doctrine is considered to be that under such circumstances the wife who sets up title in herself cannot be dispossessed under a judgment against her husband." 25 AM

JUR 2d., *Ejectment*, § 135, pp. 627-28 (1966 ed.)

We therefore hold that the petitioner/appellee, as an assignee of the leasehold on the property, is a privy of Alhaji Momo Lamine Sheriff, the defendant in the trial court, and therefore is bound by the judgment of that court, as well as the judgments of this Court handed down on January 23, 1987 and July 29, 1988; consequently, he is subject to dispossession under the writ of possession.

As we have stated before in this opinion, Mr. Justice Tulay granted an alternative writ of prohibition to restrain the enforcement of this Court's mandate in this case upon the petition of the petitioner for a writ of prohibition. There is a line of cases against this action of Mr. Justice Tulay to the effect that: "No single Justice of the Supreme Court can legally issue any restraining writ to adversely affect any decision of the Court *en banc*." *Wolo v. Wolo*, 8 LLR 453 (1944). This position was reiterated by the Court as follows:

"A Justice of the Supreme Court cannot issue a writ of prohibition restraining execution of a prior mandate by the full Court to an inferior court. An attorney who attempts to frustrate the execution of a mandate of the Supreme Court by applying to the Justice presiding in Chambers for a writ of prohibition to the full Court will be punished for contempt." *Smith v. Stubblefield*, 15 LLR 582 (1964).

"In the hearing and determination of cases before the Supreme Court of Liberia, each of the five Justices carries a one-fifth responsibility vested in him by the one vote which he controls over the particular case. No one of those five votes is superior to the others in any manner. In order to nullify or reverse any order or ruling of any one of the five, there must be a decision by a quorum, which is a majority of the five. And when the majority decides, or gives an order, or makes a ruling, no single one of the five Justices is unilaterally competent to review that decision." *Smith v. Stubblefield*, 15 LLR 582, 589 (1964).

"It is true that each of the five Justices of the Supreme Court is sovereign in his own individual right; but, insofar as the preeminence of his views, and the supremacy of the authority of those views are concerned, his views are in no way superior to those of his colleagues, they all being coequal in preeminence, in the excellence of their greatness, and in the supremacy of their authority. Hence, the inconsistency and the legal fallacy of the contention that any one of the five Supreme Court Justices could be clothed with authority to undo what the majority of his colleagues had done." *Smith v. Stubblefield*, 15 LLR 582, 589 (1964).

Both Chambers Justices, Mr. Justice Tulay who granted the alternative writ and Mr. Justice Junius who granted the peremptory writ of prohibition, must have known of the above quoted decisions of this Court. They must have known also of the judgment without opinion handed down by this Court on January 23, 1987 and the opinion of Mr. Justice Gbalazeh, when he spoke for the Court on July 29, 1988 denying the information of Alhaji Momo Lamine Sheriff, the original grantor of the petitioner/appellee, Yousef Mahmoud. This also applies to the counsel for the petitioner. Yet, in his bill of information and argument before us, the petitioner's counsel strenuously urged that the respondents be held in contempt for disobeying the peremptory writ of prohibition. It appears to us that it is the said counsel who should be held in contempt on the strength of the decisions of this Court cited above.

Considering the number of the appellate decisions rendered in this case, which does not augur well for this Court, we revert to the opinion of Mr. Chief Justice Gbalazeh when he spoke for the Court on July 29, 1988 and said:

"On the last issue, we say that informant is guilty of laches and waiver, for he supinely and conveniently waited one year and two months, during which plaintiff's position had changed substantially by leasing Lot No. 58 to tenants whose rental payments he had already received, before filing this information.

According to public policy, there must be an end to litigation. It has been held that to require courts to consider and reconsider cases at the will of litigants would deprive the courts of that stability which is necessary in the administration of justice".

This case is therefore hereby put to a final rest and no further proceedings arising therefrom will be entertained by this Court. The ruling of the Chambers Justice, Mr. Justice Junius, from which the respondents have come to us for appellate review, is hereby reversed and the alternative and peremptory writs of prohibition quashed. Costs of these proceedings are ruled against the petitioner. And it is hereby so ordered.

Petition denied