

MAJORITY MEMBERSHIP OF THE UNITED CHURCH OF THE LORD,
INC., represented by BISHOP SAMUEL FAIWAY, Informant, v. MINORITY
MEMBERSHIP OF THE UNITED CHURCH OF THE LORD, INC.,
represented by BISHOP SIMEON DOE, et al., Respondents.

BILL OF INFORMATION. GROWING OUT OF PROHIBITION
PROCEEDINGS.

Heard: December 3, 1999. Decided: December 16, 1999.

1. Generally, information before the Full Bench will lie and is the proper form of action where it grows out of a pending action before the Full Bench or where a matter has been decided by the Full Bench and the mandate therefrom is being improperly executed by the lower court, or being impeded or obstructed by one or some of the parties.
2. If a party to a case before or decided by the Chambers Justice, and who does not appeal therefrom, feels aggrieved by the improper execution of the mandate of the Chambers Justice, or if a party is impeding or obstructing the enforcement of the mandate, a bill of information is the appropriate action to obtain relief, but the bill of information must be venued before the Chambers Justice, not the Full Bench of the Supreme Court.
3. Exception is defined as an objection to an order or ruling of a trial court; a formal objection to the action of the court implying that the party excepting does not acquiesce in the decision of the court and that he will seek to procure its reversal.
4. An exception shall be noted by a party at the time the court makes any order, decision, ruling or comment to which he objects, and his failure to note such exception shall prevent it being assigned as an error on review by the appellate court.
5. Appeal is defined as resort to a superior court to review the decision of an inferior court or administrative agency. It is a complaint to a higher tribunal of an error or injustice committed by a lower tribunal where the error is sought to be corrected or reversed.
6. Appeal is a right guaranteed by the Constitution and statutory laws and it is a process by which a higher tribunal conducts a review of a decision, judgment or order issued or given by a lower tribunal.

7. Even though appeal is a matter of right, there are certain procedural requisites, which must of necessity be employed. They include the oral announcement of an appeal in open court at the time of rendition of such judgment, the filing of a bill of exceptions, the filing an appeal bond, and the service and filing of a notice of completion of appeal.

8. An appeal from a ruling of the Chambers Justice to the Full Bench requires only the taking of exceptions to the ruling and the oral announcement of an appeal in open court at the time of rendition of the ruling. There are no other requirements.

9. Only the Chambers Justice who rendered a ruling can correct his own ruling in respect of alleged errors and irregularities on a bill of information, since no justice can review or overrule the decision of another justice of concurrent jurisdiction.

10. The failure to announce an appeal from the ruling of the Chambers Justice leaves the matter at the level of the Chambers Justice and a bill of information growing therefrom cannot be entertained by the Full Bench. Where, however, the Justice in Chambers who delivered the ruling is dead, or there exist some peculiar circumstance, the Supreme Court, in addition to denying the information, shall remand the case with instructions that the proceedings before the Chambers Justice be commenced anew.

A dispute arose between members of the United Church of the Lord, Inc. and this dispute culminated into a split of the membership of the Church between the majority, led by Bishop Faiway, informants, and the minority, led by Bishop Doe, respondents. As a consequence of the dispute, the informants filed an action of summary proceeding to recover possession of real property, the effect being to oust and evict Bishop Doe and his minority, respondents, from the Church's properties. Growing out of the summary proceeding to recover possession of real property at a magisterial court were a petition for the writ of prohibition and several bills of information. This proceeding also caused several investigations to be held by various assigned judges of the Civil Law Court for the Sixth Judicial Circuit over a substantial period of time with no end in sight.

The matter before the Supreme Court, subject of this opinion, are two bills of information growing out the prohibition proceeding before the Chambers Justice, which had led to the conducting of investigations at the Civil Law Court. Among other things, the bills of information complained that the referral by the Chambers Justice of the matter to the Civil Law Court for the Sixth Judicial Circuit for an

investigation of an alleged leadership dispute within the Church was not an issue before the Chambers Justice, that the investigation has been long-standing to the extent that the frustrations, extra-judicial actions and counter-actions are potential source of violence among the parties unless the Supreme Court took cognizance of the matter and placed the Church's properties under the control of the Marshall pending the completion of the investigations.

In disposing of the two bills of information and the motions accompanying them, the Supreme Court found that informants never announced appeal from the ruling of the Chambers Justice in the prohibition proceeding, even though they excepted thereto. The Supreme Court therefore ruled that the failure to announce an appeal from the ruling of the Chambers Justice left the matter at the level of the Chambers Justice and therefore a bill of information growing therefrom could not be entertained by the Full Bench of the Supreme Court. The Supreme Court further ruled that while all the steps required for the taking of a regular appeal from a court of record to the Supreme Court are not necessary for an appeal from a ruling of the Chambers Justice to the Full Bench of the Supreme Court, the taking of exceptions and the announcement of appeal in open court are absolutely necessary. For these reasons the Supreme Court denied the bills of information.

In denying the bills of information, the Supreme Court observed that were it to leave the denial as is, this would mean that the information proceedings would be placed before a Chambers Justice who did not rule on the prohibition proceeding, since the Chambers Justice who did was dead at the time of the hearing of the information proceeding by the Full Bench. This would obviously lead to the possibility of the new Chambers Justice reviewing and correcting the errors complained of by the informants; and this would be contrary to a fundamental principle of law that judge or justices may not review or modify the ruling of another judge or justice of concurrent jurisdiction, respectively. Accordingly, the Supreme Court not only denied the bills of information but remanded the matter to the Chambers Justice so that the prohibition proceeding could be heard anew, with the right reserved to the parties to amend their pleadings if they so desired. The Supreme Court determined that this was the only way that it could avoid the dilemma faced by it through the fact that this matter had remained with the Chambers Justice for so long, since it is the Chambers Justice who had ordered the investigation by the Civil Law Court, and which investigation had not been concluded up to the time of the hearing of the bills of information and the alleged irregularities and errors from the prohibition proceeding before the deceased Chambers Justice are issues in the bills of information.

The Supreme Court therefore *denied* the bills of information but *remanded* the prohibition proceeding to the Chambers Justice to be disposed of, with the right reserved to the parties to amend their pleadings.

Marcus R. Jones appeared for informants. *George S. B. Tulay* appeared for respondents.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

This opinion is a consolidated ruling on two bills of information, one motion to dismiss, a motion to strike and a review of a ruling made by the Chambers Justice.

According to the pleadings, sometime in 1994 a dispute arose between and among the parties hereto, they all being members of the United Church of the Lord, Inc. of Logan Town, Bushrod Island, Monrovia, Liberia. It was alleged that Bishop Simeon Doe, one of the respondents herein, raped a 13year old girl, who later gave birth to a girl child. Bishop Simeon Doe was arrested and imprisoned for commission of the crime of rape. It was also alleged that based upon the embarrassment and disgrace the Church underwent, a meeting of the trustees of the Church was convened on May 10, 1994, wherein it was decided that Bishop Doe be expelled from the office of bishop and barred from ever preaching.

The Bishop refused to abide by the decision to turn over the Church's properties and vacate the residence reserved for the office of Bishop when required to do so; and based upon this refusal, the Church instituted an action of summary proceeding to recover possession of real property against him on September 6, 1994 in the New Kru Town Magisterial Court, presided over by His Honour K. Karvin Zogan Sr., to have him evicted, ousted and ejected. The trial ended on September 13, 1994 in a judgment against Bishop Doe; to which judgment, he did not except nor did he appeal therefrom. Therefore the judgment was ordered enforced.

During the process of enforcing the judgment and putting out the personal properties of Bishop Doe from the house, Madam Agnes Doe, a paramour of the Bishop, filed a complaint against the Magistrate in summary proceedings before the Civil Law Court for the Sixth Judicial Circuit, sitting in its September 1994 Term, then presided over by His Honour Varney D. Cooper. Madam Agnes Doe, who is also one of the respondents herein, contended that she was an occupant in the house in which Bishop Doe lived and that she did not have her day in court, as she was not named a party in the writ of summons but yet she was being evicted. On November 16, 1994, Judge Cooper rendered a ruling granting summary proceedings and ordered the

magistrate to resume jurisdiction and join Madam Agnes Doe as a party, let her plead and have her day in court.

Magistrate Zogan appealed from Judge Cooper's ruling; but before perfecting his appeal to this Court, Magistrate Zogan withdrew his appeal and the case was remanded to the magisterial court, where Madam Agnes Doe was served with a writ of summons. However, when the case was called for hearing before the magistrate, Madam Agnes Doe did not appear and a default judgment was entered against her.

By this time Judge C. Alexander B. Zoe had assumed jurisdiction over the December 1994 Term of the Civil Law Court for the Sixth Judicial Circuit, succeeding Judge Cooper. While the judgment of the magisterial court was being enforced against Madam Agnes Doe, on February 20, 1995, her counsel, Counsellor S. Garyah Karmo, fled to the Chambers of Mr. Justice Frank W. Smith with a petition for a writ of prohibition and a stay order was issued.

Subsequently, Counsellor Karmo filed a bill of information before Mr. Justice Smith on March 27, 1995 to the effect that despite the issuance and service of the stay order, one Bishop Samuel Paiway, one of the respondents in the prohibition proceeding, and now one of the informants, organized and led a mob, who attacked, harassed and forcibly removed and evicted Madam Agnes Doe from the subject premises and damaged her properties on February 10, 1995; that also on March 5, 1995 said mob forcibly entered the church premises, disrupted the worship services and destroyed the altar. A similar conduct was of the mob was allegedly repeated on March 7, 1995; and for such conduct criminal mischief charges were preferred against one Solomon Fyneah in the New Kru Town Magisterial Court.

Based on this bill of information, Mr. Justice Smith ordered the issuance of the writ, accompanied by a stay order. A hearing of the information proceeding was conducted on April 18, 1995, at which time counsel for respondents in both the prohibition and the information proceedings, Counsellor Marcus Jones, moved the Court to consolidate both the prohibition and the information proceedings. This application was resisted by petitioners, who were also informants, on the ground that the two proceedings raised separate issues.

After arguments of the issue of consolidation, Mr. Justice Smith ruled that further hearing of the case, as it stood, would have been a fruitless exercise, without going into the core of the problem, which he determined was a leadership crisis, with a

power struggle. Therefore Justice Smith ruled, as follows, which we shall hereunder quote verbatim:

"From the records and argument in this case, it is crystal clear that the whole matter involves leadership crisis. There appears to be two groups claiming ownership of the Church and its properties, while in the meantime, it is alleged that others have left the Church to establish their own and hence they are no more members of the original Church - the United Church of the Lord, Inc.

"In order to fairly determine who are the proper leaders of the original Church, and because this Court does not take evidence, it is the order of this Court that the court below, be and the same is hereby mandated to resume jurisdiction and hear and determine the leadership crisis in the Church, as to who seceded from the Church, and establish another church, and whether or not the premises in question are private property of any individual or belong to the Church. Until this leadership crisis can be resolved, Bishop and Mrs. Doe, who presently occupy the premises, shall continue to occupy the same pending final determination of the matter. The Clerk of this Court is therefore hereby ordered to send a mandate down to the Court below commanding the judge therein presiding to give effect to this order and make his return to this mandate. And it is hereby so ordered.

"GIVEN UNDER MY HAND AND SEAL OF THIS HONOURABLE COURT
THIS 18TH DAY OF APRIL, A.D. 1995.
FRANK W. SMITH JUSTICE PRESIDING IN CHAMBERS"

Counsellor Marcus Jones, counsel for respondents, made the following record in response to the above-quoted ruling of Mr. Justice Smith:

"Respondents' counsel excepts to the portion of the Justice's order which clothes Bishop Doe, a non-party to these proceedings, with the right to remain in the premises when there is a judgment of the court below evicting him and from which judgment he did not appeal; and especially so when he is not a party to these proceedings before this Court. Counsel for respondents does not except to the portion of the Chambers Justice's order relative to the petitioner in these proceedings, Madam Agnes Doe. And submits."

Justice Smith closed the case saying: "The Court: Exception noted as a matter of right. Matter Suspended"

On the day following the above ruling, that is, on April 19, 1995, the Clerk of the Supreme Court sent a mandate down to the Civil Law Court, which, by this time in its March 1995 Term, was being presided over by Judge Sebron J. Hall, who had succeeded Judge C. Alexander Zoe, the latter having presided over the December 1994 Term. The Civil Law Court was ordered to resume jurisdiction and hear and determine the leadership crisis within the Church as stated in Justice Smith's ruling quoted supra. Judge Hall had the mandate read on May 8, 1995 and began the investigation on May 18, 1995 but could not conclude same, because of a motion for continuance filed on May 24, 1995 by counsel for Madam Agnes Does, in persons of Counsellors J. D. Gordon and S. Garyah Karmo to the effect that Counsellor Karmo was ill. Then on May 30, 1995, Madam Agnes Doe personally wrote Judge Hall informing him of being harassed by Magistrate A. Blamo Dixon of the New Kru Town Magisterial Court and therefore prayed for a stay order.

While the matter was still pending at the Civil Law Court, Judge Hall W. Badio succeeded Judge Sebron Hall, with a mandate to preside over the June, 1995 Term of the Civil Law Court. The case was assigned on June 13, 1995 for hearing on the 19th and then reassigned for the 20th, by two notices of assignment. When the case was called for hearing on June 20 1995, Counsellor Marcus Jones moved the court to invoke Rule 7 of the Circuit Court Rules on abandonment, owing to the absence of Madam Agnes Doe and her counsel of the Gordon Law Office. Respondents' counsel prayed the court to dismiss or terminate the investigation and order the Magisterial Court to resume jurisdiction and implement Judge Varney Cooper's order to have Madam Agnes Doe summoned in keep with law to participate in the case at the Magisterial Court and proceed. Judge Badio reserved ruling.

When this case resumed on June 29, 1995, Judge Badio dismissed the summary proceedings against the magistrate and ordered the magistrate to resume jurisdiction and include Madam Agnes Doe as party to the case before the Magisterial Court since counsel for Madam Agnes Doe, who had brought the summary proceeding, were employing undue delay tactics.

Counsellor Karmo, one of counsel for Madam Agnes Doe, filed a bill of information on July 4, 1995 praying Judge Badio to rescind his ruling of June 29th because the investigation ordered by the Chambers Justice had not been complied with and therefore the case could not be proceeded in the magisterial court. Judge Badio overruled the resistance and granted the bill of information on July 13, 1995, and both counsel for all sides being present, he immediately assigned the case for determination of the leadership crisis on July 18, 1995.

The investigation actually commenced on August 3, 1995 and continued on August 11th. Then on August 14th, counsel for Madam Agnes Doe again filed another bill of information informing Judge Badio that submissions made by respondents' counsel on the record of the court were prejudicial to her interest.

The case resumed on August 18, 1995, at which time respondents resisted the above information, which he contended was only a means of delay and therefore asked the court to deny same and allow respondents to present evidence on their side in the leadership investigation. Judge Badio ruled ordering the resumption of the main investigation so respondents could continue producing evidence.

The investigation remained inconclusive until the June 1995 Term of the Civil Law Court expired and Judge Badio was succeeded by another judge for the September 1995 Term. This newly assigned judge started his own investigation on November 4, 1995. The investigation continued on November 22nd, 24th, December 5th and 6th. Again, the investigation remained inconclusive until Judge Frances Johnson-Morris, upon mandate from the Chief Justice, assumed jurisdiction over the Civil Law Court for its December 1995 Term.

On December 29, 1995, respondents' counsel wrote a complaint to the Court reporting that Bishop Simeon Doe had damaged door locks and illegally evicted Emmanuel Swen and Emma Tugbe, members of the Church, and threw out their belongings. Respondents prayed that these people be repossessed and Bishop Doe cited to answer. On January 2, 1996, Judge Frances Johnson-Morris ordered the immediate repossession of Emmanuel Swen and Emma Tugbe back into their rooms in the Church's property.

On February 23, 1996, respondents in the court below filed a bill of information before the Full Bench of the Supreme Court bringing to this Court's attention the potential for violence and bloodshed between the majority group led by Bishop Samuel Paiway and the minority group led by Bishop Simeon Doe, owing to Bishop Doe's illegal eviction of other members of the Church and threats from one Mr. Adolphus Taylor, who goes on the Church's compound with armed men. Therefore, informants prayed this Court to evict all the occupants, i.e. both majority and minority groups from the premises and place same under the control of the Marshal of the Supreme Court, pending the determination of this information proceeding and a correction of the errors committed by Mr. Justice Smith in ordering an investigation of a leadership crisis, which was not the issue before him.

On March 11, 1996, respondents in this information proceeding before this Court filed their returns, essentially contending that information cannot lie because there is no case pending before the Supreme Court out of which a bill of information would grow, nor is there an issue of the improper execution of a mandate of the Supreme Court to give rise to information coming back to this Court.

Respondents contended that the issues raised in the bill of information are not properly before the Supreme Court because the informants, by their own admission in counts 6 and 7 of their bill of information, have established that their entire averments in said bill of information were a subject matter on remedial writ, which was disposed of by the Chambers Justice, and from which no appeal was taken and which was ordered enforced by a mandate to the Civil Law Court. Respondents further contended that informants were attempting to have the Supreme Court assume original jurisdiction and pass on a matter without final judgment or appeal from a lower court, and were this to be done, the Supreme Court would be violating Article 66 of the 1986 Constitution of Liberia.

Respondents submitted that informants only excepted to the Chambers Justice's ruling without appealing therefrom and therefore the Chamber Justice's ruling is final and binding. Respondents pointed out that the informants complied with the mandate of the Chambers Justice by returning to the lower court and fully participating in the investigation into the leadership crisis, and therefore informants are precluded from challenging the Justice's ruling, as they waived their right to have said ruling reviewed by both their failure to appeal therefrom, as well as their compliance with said ruling by taking part in the investigation ordered by the Chambers Justice.

Respondents therefore concluded that the fact that Justice Smith's mandate to the Civil Law Court is being implemented and still pending at said Civil Law Court, the only recourse or remedy open to the informants, if they are dissatisfied for any reason, is to go back to the Chambers Justice by way of a bill of information and not to the Full Bench, as there was no appeal from the Chambers Justice's ruling. Respondents therefore prayed this Court to deny the information.

While this information was still pending undetermined, informants filed a second bill of information on October 9, 1997, basically repeating the contents of the first bill of information as to the propensity of Mr. Justice Smith's ruling giving rise to violence and bloodshed between the feuding groups of the Church, and, so requesting this

Court to address the situation to avert unpleasant upheavals as the result of Bishop Doe's illegal eviction of other members of the Church, who were residents of the compound, and for the premises to be placed under the control of the Marshal of this Court until the information was heard by this Court.

Also, the information referred to the threats by one Adolphus Taylor, Deputy Director of the National Security Agency and his men against members of the Church. Informants thereupon prayed this Court to site the respondents to show why they should not be held in contempt for disobeying this Court's mandate as a result of the stay order in the first bill of information.

Again, the writ was issued in this second bill of information. The respondents appeared on May 2, 1998 and filed their returns to this second bill of information, along with a motion to dismiss, both of which pleadings were signed by Counsellor George S. B. Tulay.

In these returns to the second bill of information, respondents again repeated the same legal defenses raised in the returns to the first bill of information, to the effect that after Mr. Justice Smith ruled on April 18, 1995 in the prohibition proceeding, informants only excepted to said ruling but stopped short of appealing therefrom and therefore they waived their right to have the Full Bench review and/or correct same. Respondents also contended that informants suffered laches.

Another new issue raised by respondents in this second returns is that the informants are members of another church, separate and distinct from that of which respondents belong. Respondents contended that Bishop Samuel Paiway, along with informants, is member and Bishop of the St. Peter's United Church of the Lord, Inc., while respondent, Bishop Simeon Doe, is the bona fide leader and Bishop of the United Church of the Lord, Inc., in Liberia; and as such Bishop Simeon Doe is entitled to the properties of said United Church of the Lord, Inc.

Respondents denied all the factual issues relating to the expulsion of Bishop Simeon Doe on the criminal charge of rape, the withdrawal of the appeal by Magistrate Zogan from Judge Varney Cooper's ruling, and the misleading information to Judge Zoe, which led Judge Zoe to mandate Magistrate Zogan to resume jurisdiction and possess informants of the property. Respondents therefore prayed the denial and dismissal of the information.

In their motion to dismiss, respondents contended that informants had not filed their information pursuant to any appeal or a remedial process and therefore the Supreme Court lacks jurisdiction over the subject matter. Additionally, respondents contended that this Court also lacked jurisdiction over their persons because only some of them were served with a citation issued based on this bill of information, and therefore, the information should be dismissed as to those persons who were not served with the citation.

Informants then filed their resistance to respondents' motion to dismiss on May 4, 1998 and, in turn, filed their own motion on June 10, 1998 to strike the pleadings filed by Counsellor George S. B. Tulay, since Counsellor Tulay was not counsel of record in this case and the respondents had not filed any notice of change of counsel from the Gordon Law Firm or notice of additional counsel. So, according to informants, all pleadings filed by Counsellor Tulay in these proceedings are a legal nullity and should be stricken from the record.

When this case was called for hearing by this Court, the Court's attention was drawn to the fact that there were several pleadings on the file and the Court decided to consolidate all the pleadings, have one hearing and dispose of the entire case, instead of doing so in piecemeal. This action was taken by this Court in consideration of the fact that the parties were a religious entity and to avert the potential for violence or danger to life and property the longer the matter is permitted to drag.

In the brief filed and oral argument presented to this Court, counsel for informants conceded the correctness of the records that he did not announce any appeal from Mr. Justice Smith's ruling but rather he only announced his exception thereto. However, he argued that the procedure for appealing from the Chambers Justice to the Full Bench is not clearly stated in the statute as it is in the case of appeals from the lower courts to the Supreme Court. Counsel contended that, in his view, once a party announces his exception to the ruling of the Chambers Justice, it is to be taken or understood automatically as an appeal to the Full Bench.

The next defense by respondents is to the effect that information cannot lie before this Court because there is no main case pending in this Court nor is there the improper execution of a mandate from this Court. Further, the case out of which this information proceeding grew was a case before the Chambers Justice, in which a ruling was made, and informants did not appeal therefrom and so the Chambers Justice sent down a mandate to the Civil Law Court. So if any problem grew out of

the execution of said mandate, then the information should have been directed back to the Chambers Justice and not to the Full Bench.

To this last contention of respondents, informants' counsel conceded the legal soundness but told the Court that after Mr. Justice Smith rendered the ruling, though he only excepted thereto and did not announce any appeal therefrom, Mr. Justice Smith nevertheless noted his exception but proceeded to immediately send down a mandate to the Civil Law Court to conduct the investigation into the leadership crisis. Counsel said when he went back to see Mr. Justice Smith on the sending down of a mandate in face of an exception to the ruling, Mr. Justice Smith declined to take any action and in fact told him it was too late. So at that point the only forum to correct the error committed by Mr. Justice Smith is the Supreme Court *en bane*; and that is why the bill of information was filed in this Court.

Counsel argued that it was error for Mr. Justice Smith to have sent a mandate to the lower court to resume jurisdiction over the case when there was an exception announced and noted. He said it was also an error for Mr. Justice Smith to have decided the prohibition proceeding on an issue which was not raised by any of the parties.

This long narration was required to set out the background of events in this case and to discern a basis for the determination of same.

In our opinion, the fundamental question to answer is whether this bill of information is properly before the Full Bench. The answer to this question depends on and relates to the facts and circumstances in this case, and we shall appropriately address them later in this opinion.

Generally, information before the Full Bench will lie and is the proper form of action where it grows out of a pending action before the Full Bench or where a matter has been decided and the mandate therefrom is being improperly executed by the lower court, or being impeded or obstructed by one or more of the parties.

In the instant case, the prohibition proceeding out of which the two bills of information grew was venued before and disposed of by the Chambers Justice, and never reached the Full Bench since no appeal was taken from his ruling. Counsel for informants tried to impress this Court that from the Chambers Justice to the Full Bench, an exception to a ruling is the same as an appeal therefrom. We are not

persuaded by that argument because by their very definition, which can be ordinarily discerned by even a person not a lawyer, these two words are not one and the same.

Exception is defined as an objection to order or ruling of the trial court; a formal objection to the action of the court implying that the party excepting does not acquiesce in the decision of the court but will seek to procure its reversal. BLACK'S LAW DICTIONARY 559 (6thed).

Appeal is defined as resort to a superior (i.e. appellate) court to review the decision of an inferior (i.e. trial) court or administrative agency; a complaint to a higher tribunal of an error or injustice committed by a lower tribunal where the error is sought to be corrected or reversed. BLACK'S LAW DICTIONARY 96 (6th ed).

In Liberia, appeal is a right guaranteed by our Constitution and statutory laws and it is a process by which a higher tribunal conducts a review of a decision, judgment or order issued or given by a lower tribunal. Art. 20(b), 1986 Constitution; Civil Procedure Law, Rev. Code 1:51.2.

Our law provides that an exception shall be noted by a party at the time the court makes any order, decision, ruling or comment to which he objects, and his failure to note such exception shall prevent it being assigned as an error on review by the appellate court. *Ibid.*, 1:21.3.

Exception is the objection to, or disagreement with, a ruling, while appeal is the process of having said ruling reviewed and possibly reversed. However, even though appeal is a matter of right, there are certain procedural requisites, which must of necessity be employed. For example, the dissatisfied party must orally announced an appeal in open court at the time of rendition of such judgment. *Ibid.*, 1:51.6. The other procedural requisites, such as filing bill of exceptions, filing an appeal bond and service of notice of completion of appeal need not be employed in the case of an appeal from a Chambers Justice to the Full Bench, but oral announcement of appeal in open court upon rendition of the ruling is a must and cannot be dispensed with. *Ibid.*, 1:51.4.

Therefore, this Court hereby overrules and dismisses the arguments of the informants' counsel that his exception to Mr. Justice Smith's ruling was equal to and should have served as appeal therefrom. As such, his neglect as discussed above, deprived informants of having this Court review Mr. Justice Smith's ruling, and therefore kept this case a matter at the Chambers Justice's level.

We have ruled that informants' failure to announce an appeal from the ruling of Mr. Justice Smith left the case with the Chambers Justice. We have also held that information can only be cognizable before a forum before which a main suit is pending or has been decided and a mandate therefrom is being impeded. Against that background, and applying same to the instant case, if informants felt aggrieved by some improper execution of Mr. Justice Smith's mandate or that violence or upheavals could have arisen therefrom, their bills of information should have properly laid before the Chambers Justice.

Further, informants complained that Justice Smith erred by ruling on an issue which was not raised by any of the parties, when he ordered an investigation into a leadership crisis among members of the Church; and that Mr. Justice Smith further erred when he sent a mandate down to the lower court even though he had noted informants' exception to his said ruling. Under our holding above, only Mr. Justice Smith himself could have corrected his own ruling in those two respects since informants did not appeal from his ruling. Counsel for informants told this Court that when he went back to Mr. Justice Smith, he was told by the Justice that it was too late and he could not do anything about it. Counsel said that he left the offices of the Chambers Justice with the only alternative of coming up to the Full Bench.

Since there was no appeal from Mr. Justice Smith's ruling, this Court *en bane is* reluctant to set the precedent (in violation of the law) that it can legally assume jurisdiction over these bills of information and we herein reaffirm that the matter was left at the level of the Chambers Justice and so the only logical and legal thing to do is to have this matter returned to the Chambers Justice.

However, we are mindful and we herein reaffirm the age old holding of this Court that one judge or justice does not have the authority to review and/or set aside or reverse the act or ruling of his colleague of concurrent jurisdiction, which in the instance case, would be the result if we now return this case to the Chambers Justice. This case however presents a peculiar circumstance in that Justice Smith is no longer with us (i.e. he died a couple of years ago while still in active service on this Bench) and so if we were to send this case back to the Chambers Justice as is, the new Chambers Justice could not legally review and correct the error complained of by informants to have been allegedly committed by Mr. Justice Smith and so this case would be left in limbo.

Therefore, to cure this dilemma, this Court hereby sets aside the ruling and the entire proceeding conducted by Mr. Justice Smith, since it is not possible for him to correct his own ruling at this time, and hereby orders this case remanded to the office of the Chambers Justice with the specific instructions, that the Chambers Justice coming in, would resume jurisdiction over this matter and commence the prohibition proceeding anew, and make a determination of the issues involved, without prejudice to the parties to amend the petition and returns, if they so desire.

Before ending this opinion, we wish to observe that the respondents filed a motion to dismiss the second bill of information and the informants filed a motion to strike the returns to the second bill of information as well as the motion to dismiss, both signed by Counsellor Tulay. Were this case being handled in the normal course of business, then we would have separately gone into and passed on each of the motions but we precluded when we decided to consolidate all aspects of this case. And so, by implication, once consolidation was ordered it meant that tacitly, these motions were ignored or denied, hence the ruling as it turned out.

The Clerk of this Court is hereby ordered to send a mandate to the Chambers Justice commanding him to resume jurisdiction and conduct a new investigation into the prohibition proceeding, make a determination thereof and thereafter let the law take its course. Cost to abide final determination. And it is hereby so ordered.

Information denied; prohibition proceeding remanded to the Chambers Justice.