

HAJA MAKULA, Informant, *v.* **HIS HONOUR FULTON YANCY**, Assigned Circuit Judge, Ninth Judicial Circuit Court, or the Presiding Judge of said Court, the Sheriff of Bond County, and **JOHN D. VANPELT**, Respondents.

INFORMATION PROCEEDINGS FROM THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT, BONG COUNTY.

Heard: April 30 & May 1, 1984. Decided: May 11, 1984.

1. A judgment shall not be enforced against one who has been shown by clear and un-rebutted evidence not to be the proper party-defendant, especially where the proper party-defendant voluntarily appears, files an answer, and participates in the trial of the cause.

The informant/defendant, Haja Makula, was found liable for damages in an action of damages to personal property filed in the Ninth Judicial Circuit Court of Bong County by plaintiff, John VamPelt. The defendant appealed the decision to the then People's Supreme Court. However, upon a motion from plaintiff/ appellee, the appeal was dismissed in the October Term of 1982, for failure to meet the requirements under the statutes for filing an appeal. Accordingly, the lower court was ordered to resume jurisdiction and enforce its judgment against the defendant; whereupon defendant filed a bill of information with the People's Supreme Court maintaining that she was not a proper party to the suit, and that the proper party, one Jab (alias Brahim Kromah) had voluntarily filed a motion to intervene on March 16, 1981, with all supporting documents showing that he, and not defendant/informant, was the proper party to the suit. The motion to intervene was granted on June 26, 1981 by the then Circuit Judge of the Ninth Judicial Circuit, His Honour Galimah D. Baysah. Plaintiff/respondent however contended, *inter alia*, that the information should be dismissed because one who seeks to be dropped from a suit as a party should do so by filing a motion and not a bill of information. The Supreme Court, notwithstanding, granted the information and ordered the lower court to drop the informant/defendant as a party, and enforce its judgment against the intervener who was clearly the proper party to the suit.

Isaac C. Nyepku appeared for informant. *G. Bona Sagbe* appeared for respondents.

MR. JUSTICE SMITH, delivered the opinion of the Court

This is the second time that this case has come to this forum, the first being by a motion to dismiss the appeal as announced because of appellant's failure to complete the perfection of said appeal within the time allowed by statute by the filing of an approved appeal bond and

the service and filing of notice of completion of appeal. This motion to dismiss was heard and granted by us during the October 1982 Term of this Court, and the trial court was mandated to resume jurisdiction over the case and enforce its judgment. This judgment of the Supreme Court is in harmony with our appeal statute as found in the Civil Procedure Law, Rev. Code 1: 51.4, which reads thus:

"The following acts shall be necessary for the completion of an appeal:

- (a) announcement of the taking of the appeal;
- (b) filing of the bill of exceptions;
- (c) filing of an appeal bond;
- (d) service and filing of notice of completion of the appeal."

"Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal."

In the process of enforcing the judgment of the trial court, informant Haja Makula filed in this Court, a six-count bill of information in which she substantially alleged that she was erroneously made a party-defendant in the damages suit since she is not the owner of the vehicle involved in the automobile accident. Rather, the owner of the car is Jeba, alias Brahima Kromah, who presented himself to court by motion to intervene, alleging to be the owner of the vehicle, as evident by the bill of sale and the vehicle registration certificate. Therefore, she contended that she could not suffer for the act and in the place of another. For the benefit of this opinion, we recite hereunder count two of the six-count bill of information which, in our opinion, is decisive of the contention raised in the bill of information. It reads thus:

"Informant avers further that prior to the commencement of the trial, the owner of the vehicle that was involved in the accident with co-respondent John W. VamPelt's car, Mr. Jeba Kromah, filed an application to intervene as he was the rightful owner of the pick-up, and that informant herein, Madam Haja Makula, should be dropped from the case; for no one can be held liable or responsible for another's act. The said application was granted by court after same had been resisted by the counsel for plaintiff and argued by both counsels. Informant hereby attaches facsimile of the application to intervene as filed by Jeba Kromah, the rightful owner of the said pick-up and his (defendant/intervener's) answer to plaintiff's complaint, marked exhibits "C" and "D", forming a part of this bill of information."

The respondents filed returns but did not deny the allegation of the informant, that Jeba Kromah is the owner of the vehicle which was involved in the accident and not the informant. In the five-count returns, respondents substantially contended therein that the information should be dismissed because for a party to be dropped, it must be by motion and not information; that the bill of information was not verified because the affidavit is not signed by the affiant; that the judgment of the court was against both the defendant, Haja Makula, and the intervener, Jeba Kromah, who appealed but failed to perfect their appeal; therefore, informant is barred from bringing a bill of information.

Recourse to the record reveals that the action of damages for injury to personal property was brought against Haja Makula, the informant, who, after having been summoned, filed an answer dated March 16, 1981, and we quote counts 1 and 2 of her said answer for the benefit of this opinion:

"Defendant denies all and singular the right of plaintiff to recover in an action of damages to personal property against her, Madam Haja Makula, as she is not the owner of the car in question; instead, the owner of the car is one Reba Kromah, and therefore counts 1-5 of the complaint should be dismissed.

Defendant further avers that Jeba Kromah was physically present during the accident and became surety for his driver, Bangaly Kromah, which is evident from the police charge sheet and other records of the traffic court. The defendant therefore gives notice that she will apply for subpoena duces tecum for the police charge sheet and court records at the trial."

On the said 16th day of March, 1981, Jeba Kromah, the owner of the vehicle, filed a two-count motion to intervene which reads as follows:

"That he is owner of vehicle TP-1648 which was said to have been involved in a traffic accident with the plaintiff in these proceedings; and as such, the intervener, Jeba Kromah, should have been sued in an action of damages to personal property instead of Madam Haja Makula who is in no way connected with the ownership of intervener's vehicle.

Therefore, intervener contends that the suit, not being directed against him and he not having been brought under the jurisdiction of this Honourable Court, and having filed this notice to intervene, any judgment given against defend-ant Madam Haja Makula will not be enforceable against him, the intervener; and therefore moves this Honourable Court to dismiss the said action in favor of the defendant."

The motion to intervene was heard by His Honour Galimah D. Baysah, Resident Circuit Judge of the Ninth Judicial Circuit, who on the 26th day of June, 1981, granted the motion to intervene and concluded in these words:

". . . Intervention is a matter of right; the motion to intervene is hereby granted and the intervener is hereby ordered to file his answer not later than the 29th instant at the hour of 9:00 a.m. And it is hereby so ordered."

On the 27th day of June, 1981, that is the following day of the court's ruling on the motion to intervene, intervener filed an intervener's answer, a relevant portion of which reads as follows:

"AND NOW COMES JEBA alias BRAHIMA KROMAH in the above action for damages to personal property filed by plaintiff John W. Vampelt, against defendant Madam Haja Makula, in answer to plaintiff's complaint, and for cause showeth the following legal and factual reasons, to wit:

"1. That intervener is the owner of pick-up TP-1648 said to have hit and damaged plaintiff's vehicle, by virtue of attached bill of sale and registration certificate marked exhibits "A" and "B", respectively."

From the answer of defendant Haja Makula, substantiated by intervener's motion and answer, it is quite clear that defendant Haja Makula was not the owner of the vehicle and, hence, not the proper party to have been sued for damages to personal property.

Further recourse to the record also reveals that TP-1648 which was involved in the accident with TB-460 is owned by the intervener Brahima Kromah, as evidenced by a bill of sale dated March 16, 1979. The police charge sheet also indicates that the white Toyota pick-up bearing license plate No. TP-1648, driven by co-defendant Bangaly Kromah, is owned by Brahima Kromah. Throughout the record of the trial we found no evidence of ownership of the vehicle traceable to defendant Haja Makula. The record also does not show that during the trial Madam Hejaz Makula ever took part.

The fact that the trial court did not enter an order to drop defendant Haja Makula since she was not the proper party-defendant is puzzling. There is no parity of reasoning why the plaintiff must insist that the judgment be enforced against one who has been shown by clear and un-rebutted evidence not to be the proper party-defendant, especially so when the proper party-defendant, Brahima Kromah, voluntarily appeared, filed an answer and participated in the trial of the cause.

During argument before this bar, counsel for the respondents in answering questions from the bench as to whether there was any evidence in the record tending to connect informant with the ownership of the vehicle TP-1648 which was involved in the accident, and whether the trial judge was legally correct to have rendered judgment against both the intervener Brahima Kromah, owner of the vehicle, and the informant Haja Makula who was not the proper party, he answered in the negative and closed his argument by requesting this Court to order the enforcement of the judgment against Brahima Kromah.

In view of the revelation, as brought out in the bill of information and not denied by the respondents, it is our holding that it would be quite unfair and unjust to allow the judgment of the trial court to be enforced against Madam Haja Makula in place of Brahima Kromah, the rightful owner of the vehicle TP-1648 and the proper party-defendant who, not only participated in the trial, but was adjudged liable in damages to the plaintiff. The information is, therefore, hereby granted as against the resistance, and informant Haja Makula is hereby dropped from the case and adjudged not liable in damages since she is not the proper party defendant. The judgment of the trial court is ordered enforced against Jeba, alias Brahima Kromah, who is the proper party defendant in the damages suit. And it is hereby so ordered.

Information granted.