

ESTHER ETHEL MASSAQUOI, Informant, v. **ASIA MASSAQUOI**,
Respondent.

INFORMATION PROCEEDINGS.

Heard: October 31, 1988. Decided: December 29, 1988.

1. A bill of information is the proper action opened to a dissatisfied party contending that a mandate of the Supreme Court is being wrongfully or erroneously enforced
2. The original jurisdiction of the Supreme Court is limited exclusively to those issues stated in the Constitution.
3. Rendition of a judgment by a court that does not have jurisdiction over the issue is a usurpation of power, has no legal effect, and is void.
4. Information will not lie where a party fails to accept to a ruling and announcing an appeal, the party having acquiesced to such a ruling.
5. Fraud must be established by proof; it is not sufficient that a party merely pleads fraud.

In the trial court, informant prevailed in an action brought against her seeking revocation of letters testamentary that had been issued to her. Respondent then appealed to the Supreme Court. While the appeal was pending before the Supreme Court, informant filed a bill of information to the Court praying it to send a mandate to the trial court, ordering it to resume jurisdiction to afford informant an opportunity to introduce evidence not available to informant at the time of the original petition. The Supreme Court found that information was not the proper remedy available under the circumstances, where there was a regular appeal before the Court; and moreover, that for it to hear the issues informant raised in the information would be to assume original jurisdiction over an issue not previously raised in the trial court, which it could not legally do. Denied.

S. Raymond Horace and James D. Gordon for informant. Joseph P. H. Findley for respondent.

MR. JUSTICE JUNIUS delivered the opinion of the court.

Informant Esther Ethel Massaquoi is respondent/appellee in a petition for revocation of letters testamentary which was filed before the Monthly and Probate Court, District of Careysburg, Montserrado County. The petition was denied and petitioner (in the trial court) Dasia Massaquoi appealed to this honorable Court. While the appeal is pending for hearing, respondent/ appellee has filed before us a bill of information which contains seven counts, praying that a mandate be sent to the court below to resume jurisdiction ordering the parties to replead to afford respondent/appellee, now informant, to introduce evidence that was not available at the time of the original pleading.

The counts of the bill of information argued are as follows:

1. That it would be right under the law for this case to be remanded to the court below in order for the informant to be permitted to produce documents which are material and pertinent to the trial connected with the petition of revocation of letters testamentary.
2. That they did not know of these facts during the trial of the case in the court below and since they have discovered these facts, it is their right to file this bill of information because of the fraudulent act which had been committed upon the issuance of the court's decree of legitimization in favor of Dasia Massaquoi.
3. That granting the information will allow the lower court to resume jurisdiction to permit the parties to replead and thereafter, the lower court would conduct a thorough investigation so as to afford the parties to squarely present their side of the case in order that substantial justice may be done in the premises.
4. That information will lie, since indeed and in truth, fraud has been exercise by respondent Dasia Massaquoi in the matter of the issuance of the decree of legitimization on his behalf, in that, the late Arthur Massaquoi died in February, A. D. 1984 and Dasia Massaquoi was in Liberia when the will was read in open court before his departure to foreign parts.

To this information petitioner/appellant has filed a resistance and argued as follows:

1. That the informant's failure to entitle the information as a "bill of information," it should be denied and dismissed in its entirety, especially so since informant is seeking relief to introduce newly discovered evidence, which under our law should have been brought out before the lower court which rendered judgment against the informant.

2. That information will not lie before the Supreme Court, since the lower court had already made final judgment in the case, from which judgment an appeal was announced to the Supreme Court for same to be reviewed by said forum. Hence, it would be in violation of the statutory laws in Liberia for this Court to hear informant's information and thereafter issue an order remanding the case to the lower court for introduction of some newly discovered evidence.

3. That there had been no fraud proven during the trial of this case in the court below as to the legitimization decree issued by court's decree to Dasia Massaquoi. However, if a fraudulent act had been discovered to be introduced into evidence, this is not the right place, but rather in the court below. Hence, for the Supreme Court to remand this case predicated upon the information filed by the appellee for repleading would be completely out of context and thereby set a dangerous precedence, which is not acceptable by law and procedure.

4. That the certificate issued and signed by the Ministry of Foreign Affairs on the 25th of October A. D. 1984 and the judge of the Monthly & Probate Court having already ruled that the decree of legitimization is correct, and no exception to the ruling having been taken by informant, at this stage, the ruling of the lower court cannot be tempered with, and therefore information should be denied.

From a careful perusal of the records, arguments as well as legal citations the issues to be considered are:

1. Can the Supreme Court grant information to remand for repleading in a case that is regularly before it on appeal because of alleged newly discovered evidence?

2. What is the office of a bill of information before the Supreme Court?

Counsel for informant maintained that at the trial below, the documents (evidence) to be introduced for which the remanding request is now being made was not available to them, hence, could not have been introduced. On the contrary, respondent argued that information is not the proper remedy; there is an appeal regularly pending before this Court to which he is the appellant. Moreover, respondent here argue, that the issue of fraud was never brought before the lower court and even if it had been raised she (informant) is now estopped from raising it, because she forfeited her right in the court below.

We hold, that in this jurisdiction, where a mandate of this Court of last resort is being wrongly or erroneously enforced, the cause opened to a party dissatisfied is a bill of information. *Massaquoi-Fahnbulleh v. Urey*, 25 LLR 432 (1977) *Raymond International Limited v. Dennis*, 25 LLR 131 (1976). The Supreme Court cannot take original jurisdiction over any issue except those stated in the Constitution. The rendition of a judgment without jurisdiction is a usurpation of power and makes the judgment itself coram non judice and ipso facto void. And further, where a party does not except to a ruling and announce an appeal, it is an indication of acquiescence to the said ruling, and therefore information will not lie. We find ourselves paralyzed to entertain such information. *Nimley et al v. Yancy et el*, 30 LLR 403 (1982).

We observe that informant here is the appellee in the pending case. We are puzzled as to what informant/appellee is attempting to do; we strongly feel that she is resorting to delay tactics which this Court frowns upon. We are once again compelled to warn members of the legal profession against such unethical behavior and urge them to respect their professional oath. It would certainly be improper to remand said case by bill of information.

Informant mentioned that the request is being made so that an investigation may be conducted concerning an alleged fraud. Is this the forum to raise the issue of fraud? This Court is the court of last resort. Moreover, we have held: "It is not sufficient to merely plead fraud as a basis of relief. It must be established by proof." *Francis v. The Mesurado Fishing Company, Ltd.*, 20 LLR 542 (1971).

Hence, the bill of information is denied and the appeal ordered proceeded with. And it is hereby so ordered.

Information denied.