

HIS HONOUR JOHN H. MATHIES, Judge, Debt Court for Montserrado County, The Sheriff of the Debt Court, Montserrado County, **ELIAS HAGE**, and **ST. MICHAEL AGRICULTURAL COMPANY**, Informants/Respondents/Appellees, v. **LIBERIA AGRICULTURAL COMPANY (LAC)**, represented by its Comptroller, **GEORGE Q. MENSAH**, Appellant/Petitioner/Appellant.

APPEAL FROM THE DEBT COURT FOR MONTSERRADO COUNTY, PETITION FOR A WRIT OF PROHIBITION AND INFORMATION PROCEEDINGS.

Heard: July 30, 1997. Decided: August 15, 1997.

1. Ordinarily, an appeal is the proper remedy available to a party aggrieved by a final judgment of a court except the Supreme Court, but an appeal taken from a "final judgment" executing a mandate of the Supreme Court has the tendency to frustrate the execution of that Court's mandate and therefore cannot be given consideration as would obtain in an ordinary appeal.
2. A party wishing to call the Supreme Court's attention to the improper execution of its mandate by an inferior court must do so through a bill of information.
3. Prohibition will not lie where the execution of the Supreme Court's mandate is involved, no matter how the execution proceeding is disguised.
4. Where the Supreme Court authorizes the lower court to have a party itemize expenses incurred in a proceeding for payment by the other party, the lower court must call a conference of the parties to agree on the true figure after the list of expenses has been submitted.
5. Where the Supreme Court mandates that a party itemizes expenses and costs in a case, that mandate has reference to those expenses and costs (including interest) authorized by statute.
6. Although the Supreme Court may not grant a writ of prohibition where the application therefor violates the statute, the Court has a duty to give such ruling as would correct patent miscarriage of justice in the lower court.

In an action of debt in which judgment had been entered against the petitioner/appellant and its assets exposed to sale for only a small fraction of their true value, and which assets had been purchased by Co-informant St. Michael Agricultural Company, owned by Co-informant Elias Hage, plaintiff in the debt action, the Supreme Court had cancelled the sale and mandated the debt court to have the plaintiff itemize expenses and costs incurred in the case to be reimbursed along with the value of the debt sued for. Upon Co-informant Hage's submission of the itemized expenses, the debt court judge, without calling a conference of the parties to harmonize an agreement, proceeded to enter a "final judgment"

on the amount which only Co-informant Hage had agreed to. From this "final judgment", an appeal was announced and a petition for a writ of prohibition filed by the informant. In response to these actions, the informants filed a bill of information in which they alleged that the appellant/petitioner obstructed the execution of the mandate of the Supreme Court. The Supreme Court consolidated the three proceedings—the information, the appeal and the prohibition—and ruled disposing of all.

On the appeal taken, the Court held that an appeal cannot be taken from a action taken by a trial court in execution of a mandate received from the Supreme Court, and that the appeal should therefore be dismissed. The Court opined that the proper remedy available to a party aggrieved by the manner in which a trial court executes the mandate of the Supreme Court is information and not appeal. The Court wondered, however, how the aggrieved party could proceed by information from a ruling which the trial court had characterized as a "final judgment". Such characterization, the Court said, was an error on the part of the trial court. Thus, while it dismissed the appeal, the Court held that it had the duty to ensure that substantial justice prevailed.

Regarding the filing of a petition for a writ of prohibition, the Court opined that the same was tantamount to seeking to prevent the execution of its mandate, which was not within the province of the writ of prohibition. The Court therefore dismissed the petition. Nevertheless, the Court held that the lower court acted erroneously in accepting the itemized expenses submitted by Co-informant Hage without inviting the petitioner/appellant to a conference to harmonize and reach an agreement with the co-informant as to the exact expenses. The Court, viewing the itemized expenses submitted by the co-informant to be excessive, clarified what it had intended in the mandate sent to the lower court. The Court observed that itemized expenses meant only those expenses and costs (including the 6% interest per annum) allowed by statute, and it directed that the expenses should be based on that standard.

On the information filed by the informants, the Court opined that the same had basis in that the course adopted by the petitioner/appellant had the tendency to frustrate the execution of the mandate of the Court. The Court rejected the contention of the petitioner that the trial court should have conducted a full hearing on the issues of the expenses and make a final ruling thereon, from which an appeal could be taken. The Court held, however, that a conference should have been held to give the petitioner/appellant an opportunity to respond to the expenses itemized by Co-informant Hage, and that the failure of the trial judge to conduct such a conference constituted an improper execution of the Court's mandate. It also rejected the contention of the informants that the failure by petitioner/ appellant to tax the bill of costs prepared by the trial court was to its own detriment and that under the circumstances the trial court was correct in approving the said bill of costs. The Court reiterated that it was error for the judge to proceed as he did.

Accordingly, while granting the information, the Court, stating that it had the authority to correct patent miscarriage of justice, ordered that the "final judgment" of the debt court, growing out of the execution of the mandate of the Supreme Court, be quashed and vacated and that the petition for the writ of prohibition be denied, but that the trial court proceeds to execute the mandate only as was consistent with the clarification provided by the Appellate Court.

Farmere Stubblefield of the Simpson and Associates Law Firm for the informants/appellees. *H Varney G. Sherman* of the Sherman and Sherman Law Office for the petitioner/ appellant.

MRS. CHIEF JUSTICE JOHNSON-MORRIS delivered the opinion of the Court.

The subject matters of this opinion are (a) an appeal from a "final judgment" growing out of the execution of the mandate of this Court, as contained in its opinion of December 11, 1996; (b) a petition for the writ of prohibition which sought to restrain the enforcement of the aforesaid "final judgment" and (c) an amended bill of information.

Considering the protracted length of time it has taken to resolve this case and the multiplicity of collateral issues which have cropped up just at the stage of the enforcement of this Court's mandate, we ordered the consolidation of the above mentioned appeal, the petition for a writ of prohibition and the amended bill of information for argument. Hence, this opinion embraces all of them.

Firstly, we shall proceed to address the appeal by Appellant Liberia Agricultural Company (LAC). The records showed that on 2nd January 1997, the debt court judge for Montserrado County, His Honour John H. Mathies, proceeded to enter a "final judgment" in which Appellant LAC was held liable to Elias Hage in the amount of US\$1.6 million, in addition to costs of the proceedings. The said "final judgment" of the debt court judge grew out of an attempt to execute the mandate of the Supreme Court, which mandate ordered, among other things, that the debt court resumes jurisdiction and obtain from Elias Hage a comprehensive listing of funds expended during the process of litigation, to be added to the money judgment, and the total amount ordered paid without delay. The judge indicated in the said final judgment that Elias Hage's counsel requested and was granted 10 working days to submit his comprehensive list of expenses and he did so on December 30, 1996, as per the mandate of this Court. The "final judgment" did not state the amount of the expenses contained in the list submitted by Mr. Hage.

It is from this "final judgment" that Appellant LAC appealed to this Court for review of the said "final judgment". On the other hand, the debt court judge, His Honour John H. Mathies, in a letter dated January 6, 1997, to Counsellor Varfie F. Williams of the Sherman & Sherman Law Firm denied that any appeal was announced in open court by Counsellor Williams, as alleged by him. Interestingly, however, Judge Mathies approved the bill of

exceptions submitted by Counsellor Williams on January 9, 1997, with the notations "Approved as a matter of right and as far as supported by the records" We fail to understand how the judge could adopt such contradictory positions on the issue of the appeal by LAC from his "final judgment". This is just one of the many instances which has created complications in the resolution of this simple action of debt.

Another factor which has defied the speedy execution of this Court's mandate of December 11, 1996, in the debt action, is the problematic mandate itself. The mandate is not specific, it is general, and it ignored the specific statutory provision regarding money judgments, as provided for under Chapter 45 of the Civil Procedure Law, Rev. Code 1.

In the first place, there was no need to enter a "final judgment" during the execution of the mandate. This is what gave rise to the strange procedure of taking an appeal from the execution of this Court's mandate. Ordinarily, an appeal is the proper remedy available to a party aggrieved by a final judgment of a court except that of the Supreme Court, but under the circumstances of the instant case, the appeal taken from the "final judgment" of the debt court judge has a tendency to undermine and frustrate the execution of this Court's mandate. Hence we cannot give the said appeal any consideration as would generally obtain in an ordinary appeal case. Besides, a perusal of the said "final judgment" showed merely a recitation of the steps taken by the debt court judge to execute the mandate and his conclusion which led to an award of US\$1.6 million in favor of appellee/informant and against appellant/respondent, LAC.

What then is the effect of the "final judgment" and the appeal therefrom under the circumstances narrated above? We say that the whole proceeding is a novelty and has a tendency to confuse the practice hoary with age in this jurisdiction regarding the execution of this Court's mandate. Consequently, we are left with no alternative but to declare the said "final judgment" and appeal null and void and without any legal effect in order to preserve the sanctity of the final appellate jurisdiction of this Honourable Court.

Generally, a party wishing to call the attention of this Court to the improper execution of its mandate by an inferior court must do so through a bill of information, but, in the instant case, it would have been absurd to counter a final judgment with a bill of information.

We shall now consider the petition for prohibition filed by LAC allegedly against the enforcement of the "final judgment" rather than the execution of this Court's mandate, which in our view amounts to the same thing. Prohibition also cannot lie where the execution of this Court's mandate is involved as in the instant case, no matter how the execution proceeding is disguised.

This now brings us to the amended bill of information which was filed by informants, Judge Mathies, Elias Hage et al. and the returns thereto. The bill of information essentially brings

to the attention of this Court that Respondent LAC resorted to other proceedings aimed at frustrating and impeding the execution of this Court's mandate i.e. the taking of an appeal from the "final judgment" of the debt court emanating from the execution of the mandate, and the institution of prohibition proceeding. As we have already addressed these issues herein above, there is no further need to expound on them.

We will now take a look at the returns of respondent to the amended bill of information. The 51-count returns gave the genesis of this case up to its present stage. However, we do not wish to resurrect the entire case as many of the issues raised and discussed in the returns have already been passed upon and laid to rest by our predecessors, especially regarding the sale of the concession agreement and the realty of LAC. We shall therefore confine ourselves to the manner of execution of this Court's mandate of December 11, 1996, which is the bone of contention between the parties.

In Count 11 of the returns, respondent averred that after the Supreme Court's mandate of December 11, 1996 was read in open court, the debt court judge gave Co-informant Hage a period of time to submit its comprehensive listing of funds expended during the process of litigation, and that respondent expected that upon the filing of the submission by informant, a copy would have been served on respondent so that respondent would be able to file returns thereto. Respondent further stated that from the language of the mandate, it was clear that this Court intended for a hearing to be held on the expenses submitted by the informant as his expenses during the course of litigation, and that growing out of that hearing a judgment would have been entered against Respondent LAC. In support of this assertion, respondent cited Article 20(a) of the Constitution, which provides that no person shall be deprived of life, liberty, security of the person, property, privilege or any other rights except as the outcome of a hearing and judgment. Respondent concluded the said count 11 by saying that any order to respondent to pay a certain sum of money to informant to cover expenses incurred during the period of litigation must be based on a hearing consistent with Article 20(a) of the Constitution.

We concur with this argument of Respondent LAC in so far as it relates to the intent of this Court's mandate of December 11, 1996 and the execution thereof. When this Court ordered in its said opinion that Respondent LAC was obligated to pay the judgment debt, including the *relevant and legitimate* (Emphasis ours) expenses incurred by Co-informant Hage, it was obvious that this Court intended that at least a conference would have been called by the judge with the parties to reach an agreement as to the "relevant and legitimate" expenses incurred by Co-informant Hage before proceeding to incorporate the said expenses in the bill of costs for satisfaction by Respondent LAC. This was mandatory in order to have effectively implemented the mandate and brought the case to a close.

We, however, disagree with the suggestion of Respondent LAC that a hearing as such should have been had on the issue of the relevant and legitimate expenses and thereafter a judgment entered. In our view, this would have had the tendency to reopen the case when, in fact, this Court had already rendered its final judgment, and all that was left to be done by the trial court was to obtain from Co-informant Hage his "relevant and legitimate" expenses to be added to the money judgment as per the mandate of this Court. We therefore maintain that a conference with the parties to settle the expenses would have sufficed rather than a regular hearing.

We accordingly hold that this Court's mandate was improperly executed by the trial judge who proceeded to enter a "final judgment" in executing the mandate and ordered issued a bill of costs in the amount of US \$1.6 million against LAC without affording the said Respondent LAC the opportunity to respond to the comprehensive listing of funds expended during the process of the litigation.

Informants argued that the respondent failed to tax the bill of costs and therefore the judge was forced to approve same as taxed by informant's counsel. (See count 5 of the amended bill of information). On the other hand, Respondent LAC contended in counts 24 and 25 that the taking of an appeal suspended all further proceeding in the case, and that therefore the judge erred when he ordered the issuance and service of the bill of costs, notwithstanding the appeal.

At this juncture, let us consider the contention of the informants that the refusal by Respondent LAC to tax the bill of costs constitutes a fatal error which cannot be remedied by this Court and therefore said bill of costs amounting to US\$1.6 million should be enforced against respondent as is. With this argument, one wonders what if informant had not opted to accept a compromise amount of 1.6 million United States dollars, would respondent be expected to pay the full amount of the comprehensive listing of expenses of nearly US\$7.8 million from an original judgment debt of US\$240.803.40 as entered by the debt court on 30th August, 1994? This brings us to a consideration of the functions of an appellate court such as this Court. The first and foremost function of an appellate court is to review and correct errors of inferior courts that would otherwise work injustice to party litigants. This function is so crucial that this Court has occasionally seen the wisdom in recalling some of its own opinions.

Reverting now to the mandate, it is our candid opinion that by a comprehensive listing of relevant and legitimate expenses, this Court meant those expenses or costs authorized by statute in an action of debt and nothing more. This Court could not have meant by any stretch of the imagination that damages be awarded to informant who purchased the Respondent LAC Concession Agreement at a judicial sale but which sale was declared illegal by this Court in its December 11, 1996 opinion.

Therefore, it is the holding of this Court that the relevant and legitimate expenses referred to by this Court include interest at the rate of six percent per annum as of the date of entry of the judgment which is August 30, 1994, as the records showed, and costs in accordance with sections 45.1, 45.61, and 45.6 of the Civil Procedure Law, Rev. Code 1. These constitute the legal expenses which must be added to the original judgment debt of US \$240,803.40. to be paid by Respondent LAC to Co-informant Hage. Anything in excess of these would amount to damages, a subject matter over which the debt court lacks jurisdiction.

Equally, the counterclaim interposed by Respondent LAC against Co-informant Hage, subsequent to the reading of the mandate, could not be entertained at that stage of the case, also because it amounts to damages as well. The conclusion we have arrived at in this case is supported by the reasoning of the case *Kartawaty et al. v. King*, 14 LLR 241, wherein this Court held, at page 245, as follows:

"Under the law controlling, we could not grant the writ of prohibition requested by an application which had so flagrantly violated the controlling statute. On the other hand, we feel that it is our duty to take such action and give such a ruling as would correct patent miscarriage of justice in the court below. We also feel that to fail to give some relief would be perpetuating the gross injustice already committed against the petitioner and would also deprive the plaintiff-respondent of that proper legal redress which his action of debt sought in the court below. The courts of this country have a solemn duty to litigants coming before them and the performance of that duty should be executed in keeping with law and procedure."

In view of the foregoing analysis of this case, it is our firm conviction that the facts and circumstances of this case dictate that both the "final judgment" of the debt court, emanating from the execution of this Court's mandate and the appeal therefore be quashed and vacated, and the petition for a writ of prohibition be denied. Accordingly, the amended bill of information is granted but with modification, in the interest of justice and fair play, and in keeping with the decision of *Kanawaty et al. v. King*, quoted above.

Wherefore, and in view of all the facts and circumstances of this case and the legal authorities cited and relied upon, the debt court is directed to resume jurisdiction and enforce the original debt judgment of that court in the amount of US \$240,803.00, plus the statutory interest and costs as stated in this opinion. Costs are disallowed. And it is hereby so ordered.

Appeal denied; information granted with modification.