

**DIANA MOORT-HORACE**, Informant, v. **HIS HONOUR H. SOE BAILEY**, Judge,  
Monthly and Probate Court, Montserrado County, Respondent.

INFORMATION PROCEEDINGS.

Heard May 20, 1989. Decided July 14, 1989.

1. The Supreme Court shall from time to time make rules of courts for the purpose of regulating the practice, procedures and manner by which cases shall be commenced and heard before it and all other subordinate courts.
2. The judge of a court is not merely an officer, but he is also elevated to a dignity. As such, he is dedicated and consecrated to the adjudication of the rights of litigants, and hence must avoid any course of conduct which cause his impartiality to be questioned.
3. Trial judges should follow strictly, both in the spirit as well as in the letter, all opinions given by the Supreme Court as one of the most potent means of unifying the practice.
4. An act which is calculated to embarrass, hinder or obstruct the Court's administration of justice or which is calculated to lessen its authority or its dignity is contemptuous.
5. Generally speaking, he whose conduct tends to bring the authority and administration of the law into disrespect, or disregards, interferes with or prejudices parties or their interests during a litigation, or otherwise tends to impede, embarrass or obstruct the court in the discharge of its duties, is guilty of contempt.
6. A judge of an inferior court, who disobeys the mandate of the Supreme Court, will be adjudged in contempt and punished.

A bill of information grew out of the enforcement of the judgment of the Supreme Court in a certiorari proceeding decided by the Supreme Court, where a mandate was sent to the monthly and probate court with instructions to resume jurisdiction and proceed to dispose of the case in keeping with law.

When the mandate of the Supreme Court was received by the co-respondent judge of the Monthly and Probate Court for Montserrado County, he failed and refused to carry out the instructions of the Supreme Court as embodied in the mandate addressed to said court. Instead, he proceeded to raise his own legal issues and pass upon them. Predicated upon this act of the co-respondent judge, a bill of information was filed before the Supreme Court which, after a hearing, determined that the act of the probate judge was contemptuous. Consequently, the Supreme Court adjudged the co-respondent judge *guilty* of contempt and levied a fine of \$500.00 against him.

*Emmanuel R. Berry* appeared for Informant. *His Honour Harper S. Bailey* appeared for himself .

MR. JUSTICE AZANGO delivered the opinion of the Court.

This case grew out of a certiorari proceeding which was heard and determined by this Honourable Court *en banc*, and the following mandate was sent to the Monthly and Probate Court for Montserrado county, with instructions that it should resume jurisdiction and proceed to dispose of the case in keeping with law. Here is the mandate:

"That the ruling of the Chambers Justice appealed from be and the same is hereby affirmed and confirmed. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding it to resume jurisdiction, and dispose of the case according to law. Costs to abide final determination."

Upon the receipt of the aforementioned mandate of this Honourable Court, the trial judge, His Honour Harper S. Bailey, without legally resuming jurisdiction over the cause of action and disposing of the same as mandated by this Court, arrogantly proceeded to take actions and conducted himself in a manner inconsistent with the Rules of Court, which have been formulated to govern all subordinate courts within this Republic, and their relations to the Honourable Supreme Court of Liberia. His Honour, Judge Bailey, not having the fear of God Almighty within him, and not further realizing the role and authority of this Honourable Court or the Court of last resort, decided to proceed by raising issues against the mandate of this Court by way of attacking the caption of the case and charging that the mandate has departed from the usual norms of pleadings. Here is the substance of what Judge Bailey said:

"The court refused jurisdiction for the trial of this case on the following legal and equitable grounds:

1. That the petition that was filed in this court on the 10<sup>th</sup> day of September, A. D. 1985, lacking a caption as to who is the petitioner and who is the respondent, nor does it carry any title of the action".
2. That the words "petition to award the estate of the late Sarah Joan Moort to her only lineal surviving daughter" is a foreign title in our statute of the Decedents Estates Law Including Probate Court Procedure Code which only give us the jurisdictional power in the cases consisting of the following pleadings:
  - (a) Petition for an accounting;
  - (b) Petition for revocation of letters of administration;
  - (c) Petition for revocation of letters testamentary and
  - (d) Petition of claimant's claim against the estate and objections that should follow after the filing of such petition.
3. That in keeping with our Civil Procedure Law, 1 LCLR, page 196, Section 25.1, subsections 1 and 2, In Re: "Judicial Notice of Law". . . Every court of the Republic of

Liberia should without request take judicial notice of the Constitution and the public statutes and common law of the Republic . . . Every court may take judicial notice, without request, of private act and resolution of the Liberian Legislature, etc., etc., Probate Court Procedure Code, Chapter 103, page 46, sec. 103.4 In Re: Contents of Petition, paragraph (a), title of a proceeding, the name and domicile of the person in whose estate or person the proceedings relates and of the petitioner. I LCLR, page 60, Sec. 5.1, In Re: Designation of Parties... In actions generally. Except as otherwise specifically provided by law, a person who brings a civil action in court against another should be called the plaintiff and the person against whom it is brought should be called the defendant. Sec. 5.2 "Fictitious party abolished", just as in this case. We also take recourse to Probate Court Procedure Code, page 86, chapter 111, In Re: Intestate administration section 101.1, In Re: "Order of priority for granting letters of administration, subsection 1 "Standard sequence . . . Letters of administration should be granted to the distributees of the estate and who are eligible and qualified.

"IN VIEW OF THE FOREGOING, because of the above legal authorities and due to the petitioner's failure to exhibit before court letters of administration upon which strength this court may know the standing of the petitioner, whether administratrix or what, coupled with absence of caption and title of the purported pleading filed on the 10th day of September, A. D. 1985, which is a departure from the judgment without opinion sent down by the Supreme Court as to who were petitioner and respondent, this court has no trial jurisdiction over this case. Until there can be further clarification as to this point, the said petition is hereby dismissed by this court due to lack of our trial jurisdiction. And it is hereby so ruled.

GIVEN UNDER MY HAND AND SEAL OF COURT,  
THIS 10TH DAY OF AUGUST, A. D. 1988.

/t/Harper S. Bailey

/s/Harper S. Bailey

PROBATE JUDGE"

The informant having observed that the trial judge was incorrectly carrying out the intent of the said mandate, quickly filed the following bill of information:

1. "That on the 10th day of August, A. D. 1988, the probate court upon the mandate of this Honourable Court resumed jurisdiction of the case *Diana Moort-Horace v. Euphernia Lomax Brumskine* and *Louise Flemings*, respondents, her only lineal surviving daughter out of which case Respondents Brumskine and Fleemings petitioned the Chambers of this Honourable Court for a writ of certiorari, following the disposition of the issues of law raised in the petition, answer and reply. And informant further submits that on the 4th day of September, A. D. 1985, she petitioned the Probate Court for Montserrado County presided over by Her Honour Luvenia Ash-Thompson, judge of said court to award petitioner the

entire estate of her late mother, Sarah Jean Moort who had died intestate, leaving only petitioner as the lone legal surviving heir.

2. That following the filing of said petition, Respondents Euphemia Lomax Brumskine and Louise Fleemings appeared and filed returns by and thru the Philip J. L. Brumskine Law Chambers and the Findley & Associates Law Firm on the 14th day of October, A. D. 1985. And Bendu Sirleaf, Maibe Chea, et. al. appeared by and thru the Johnson and Barnes Law Firm and also filed returns, to which petitioner filed her reply.

3. That pleadings having rested, Her Honour Ash-Thompson heard the law issues and ruled the case to trial, from which ruling Respondents Euphemia Lomax Brumskine and Louise Fleemings petitioned the Chambers of His Honour Justice Jangaba for the issuance of a writ of certiorari. The said certiorari proceedings was heard by Justice Tulay and ruling was given on March 23, 1987 from which ruling the petitioners appealed to the Bench *en bane*, sitting in its October Term, A. D. 1987.

4. Informant further submits that when the case was called for hearing for the March Term, A.D. 1988 of this Honourable Court, the petitioners/appellants by and thru their Counsel, Counsellor P. Edwin Gausi of the Philip J. L. Brumskine Law Chambers spread petitioners/appellants' withdrawal of appeal on the minutes of this Honourable Court upon which this Honourable Court rendered judgment without opinion during the same March Term of Court and mandated the probate court to resume jurisdiction and proceed with the case.

5. That after the reading of this Court's mandate by the Probate Court, the respondent judge, His Honour Soe Bailey, in total disregard of this Honourable Court's mandate, spread on record that he "refused jurisdiction for the trial of this case on the following legal and equitable grounds: That the petition that was filed in this Court on the 10th day of September, A. D. 1985, lacked the caption as to who is the petitioner and who is the respondent, nor does it carry any title of the action. (2)"That the word petition to award the estate of the late Sarah Jean Moort to her only lineal surviving daughter" is foreign title in our statute of the Decedents Estates Law including Probate Court Procedure Code which only give us the jurisdiction power, in the cases consisting of the following pleadings:

(1) Petition for an accounting; (2) petition for revocation of letters of administration; (3) petition for claimant's claim against the estate and objections that should follow after the filing of such petition; and (4) petition for revocation of letters of testamentary.

6. That in keeping with our Civil Procedure Law, Rev. Code 1: 25.1(1) & (2), In Re: "Judicial Notice of Law ...Every Court of the Republic of Liberia should without request take judicial notice of the Constitution, of the public statute, and common law of the Republic ....Every court may take judicial notice without request of private act and resolution of the Liberian

Legislature, etc., etc. Probate Court Procedure Code, Chapter 103, page 46, Sec. 103.4. In Re: Contents of petition, paragraph (a) title of a proceeding, the name and domicile of the petitioner. Civil Procedure Law, Rev. Code 1: 5.1. In Re: "Designation of parties... In actions generally, except as otherwise especially provided by law, a person who brings a civil action in court against another should be called the plaintiff and the person against whom it is brought should be called the defendant, Sec. 5.2 "Fictitious party abolished", just as in this case. We also take recourse to the Decedents Estates Law Including Probate Court Procedure Code, ch. 111. In Re: 'Order of priority for granting letters of administration, subsection 1 "Standard sequence . . . . Letters of Administration should be granted to the distributees of the estate and those who are eligible and qualified.

"IN VIEW OF THE FOREGOING, because of the above cited legal authorities, due to the petitioners' failure to exhibit before court letters of administration upon which strength this court may know the standing of the petitioner whether administratrix or what coupled with the absence of caption and title of the purported pleading filed on the 10th day of September, A. D. 1985, which is a departure from the judgment without opinion sent down by the Supreme Court as to who were petitioner and respondent, this court has no trial jurisdiction over this case. Until there is further clarification as to this point, the said petition is hereby dismissed by this court due to lack of our trial jurisdiction. AND IT IS HEREBY SO RULED."

The respondent judge concluded by arbitrarily dismissing the petition which this court had mandated him to resume jurisdiction over and proceed to try. Informant submits that the conduct of the respondent judge is seriously reprehensible as he was left with no discretion after this Court had mandated him to resume jurisdiction and proceed to try the petition. Informant submits that the act of the respondent judge is moreover an affront to this Honourable Court which in keeping with law exercises superior, appellate and final jurisdiction over the said probate court. Consequently, the rebuffing of its mandate is highly contemptuous.

"WHEREFORE, informant brings this bill of information and prays that Your Honours will order the respondent judge to appear on a day and a date to be named by Your Honours to show cause, if any he has, why he should not answer in contempt for the manner hereinabove indicated, and because of the prejudicial manner in which he has proceeded with this case which shows prejudice and bias on his part against informants. Informant also prays that Your Honours will mandate a Judge to hear the petition out of which this bill of information grows and grant unto informant such other relief as unto Your Honours may seem just and legal.

“At the call of this case, Judge Bailey, again not observing the priority of the nature of the case, appeared in person to represent himself, while Counsellor J. Emmanuel R. Berry represented the informant.

The respondent judge appeared, filed returns to the information followed by a respondent's motion to dismiss the bill of information, which we quote hereunder. The returns to the bill of information read thus:

1. Respondent say that as to counts one (1), two (2), three (3), four (4) and five (5) contained in the informant's phantom information, same are foreign to the respondent as these counts are mere rehearsals of what had transpired in the past. Respondent need not give any countenance to such counts."

2. "That as to count six (6) of the informant's information, respondent admit same on grounds that the mandate which was sent to the respondent judge, dated 29<sup>th</sup> day of July, A. D. 1988 simply mandated the respondent judge to "resume jurisdiction and dispose of the case according to law" and so after both parties were cited and appeared before the respondent judge on the 10<sup>th</sup> day of August, A. D. 1988, ordered the clerk to read the mandate, and it was read, and same was affirmed and confirmed. That since it was not a mandate to enforce a ruling or decree, respondent called for the case file and when same was presented to him, behold it carried a different face other than that of the caption and title contained in the mandate which was sent to the respondent judge, requesting him to resume jurisdiction and to dispose of same according to law. On the grounds that the purported petition did not contain complete caption or title of the case as required by the statutory laws of this country, respondent ordered that such deficiency in the pleading is duplicitous and that the form of action chosen was the wrong form of action, as would more fully appear from the photocopy of the said purported petition.

3. That the informant, after having quoted the respondent judge's ruling that was entered on the 10<sup>th</sup> day of August, A. D. 1988, laid emphasis in his prayer before Your Honours, falsely accused the respondent judge of having refused to resume jurisdiction and proceed to try the petition, forgetting to know that the respondent judge was never mandated to enforce the probate court's previous ruling or decree, but rather to, and I quote excerpts of the very mandate, *inter alia*:

-ADJUDGED-

"That the ruling of the Chambers Justice appealed from be, and the same is hereby affirmed and confirmed. The Clerk of this Court is hereby ordered to send a Mandate to the Trial Court commanding it to resume jurisdiction and dispose of the case according to law". Seeing that the caption and title of the case contained in the said mandate were not identical to the purported petition that was filed before the probate court on the 10<sup>th</sup> day of

September, A. D. 1985, the court refused its trial jurisdiction according to statutory laws, especially so when such petition lacked a valid affidavit.

Wherefore, and in view of the foregoing, respondent probate judge respectfully prays Your Honours *en banc* for October Term, A. D. 1988 not to give legal credence to the phantom, sham, fabricated and baseless information of the informant, and that the said purported information be denied, vacated and quashed. The respondent judge also prays Your Honours to deny the award of the peremptory information, and that the respondent judge be absolved of answering such information to the ends of transparent and impartial justice, as law and equity dictate.

Respondent/movant's motion to dismiss reads thus:

1. "That the said purported information lacks legal substance and presents an unprecedented character; by that, movant says that pleadings such as information and injunction, among others, are not actions *per se*, but are mere auxiliaries to a pleading or pleadings. For the informant who had excepted to the court's decree, announced and prayed for appeal on the 10th day of August, A. D. 1988, and which appeal was granted to have shifted to the filing of an Information before this Honourable Supreme Court of Liberia which had earlier surrendered its judicial reviewing jurisdiction as appellate court from the time and date it remanded the case on the 20th day of July, A. D. 1988 to the monthly and probate court over which the movant judge is the presiding incumbent, that alone is *sui generis* in the history of this Honourable Supreme Court. Therefore, respondent/movant prays this Honorable Supreme Court of Liberia, and Your Honours now in session *en banc*, to deny and out rightly dismiss informant's sham plea entitled "information".

2. And also because the movant further submits, contends and says that the purported information filed against him by the informant lacks any legal and equitable substance, has no weight that would warrant this Honourable Supreme Court of Liberia, which has only appellate jurisdiction except in special proceedings, to again resume jurisdiction over a case which it had lost hearing jurisdiction as of the 29th day of July, A. D. 1988, by its mandate, which requested the monthly and probate court, over which the movant is the incumbent judge, to "resume jurisdiction and dispose of the case according to law". The implementation of this very mandate, the movant judge in exercising the mandatory duties of a court wholly and solely devolves upon him in the administration of substantial justice, having diligently traversed and analyzed the petition that was filed by the petitioner, now informant, Diana Moort-Horace, on the 10th day of September, A. D. 1985, found it to contain numerous legal irreparable blunders and deficiencies in violation of the statutory laws made and provided for in such cases. And so the movant judge decidedly denied and dismissed said petition. In the mind of the respondent/movant judge, the informant ought to have sought special proceedings basically, a petition for a writ of mandamus, and not information; and

because of the informant's failure to seek such a special proceedings, application, her information is a fit subject for dismissal from any further legal consideration by this famous Honorable Supreme Court of Liberia which is of *dernier resort* for lawyers who have become slumberous and reckless in the handling of their clients' cases. WHEREFORE, and in view of the foregoing legal expatiation and clarity, your most movant servant judge respectfully prays of Your Honours now sitting *en banc*, to deny and dismiss the purported and baseless information filed by the informant who had made a willful departure from perfecting the appeal, she had announced and prayed for and was granted unto her, since the 10th day of August, A.D. 1988. The movant judge prays that Your Honours deny the awarding of special proceedings affecting this identical case; and that the movant judge be absolved from answering such sham plea information to the ends of transparent and impartial justice and as the law and equity dictate."

Upon being called to argue the returns to the bill of information and the motion to dismiss the bill of information, followed by questions from the Bench as to whether or not he legally resumed jurisdiction over the cause of action to dispose of same, as mandated by the Supreme Court, that is, whether or not he regularly cited the parties to appear in his court to hear the reading of the mandate of this court and have same recorded as is the procedure and practice in this jurisdiction, Judge Bailey vaguely, vainly and ridiculously answered in the negative. Above all, he admitted that he erred by not following this procedure, hence by legal conclusion, he had erred in all subsequent actions and therefore, there was no further need for argument.

However, what we wish to emphasize in this opinion are the duties and responsibilities of a judge of an inferior court to the Honourable Supreme Court, which has been constitutionally empowered to formulate rules and regulations that will govern the practice, procedures and manner of all inferior courts. This Honourable Court can in no way tolerate or condone any act from an inferior judge, which is aimed at disregarding, underestimating or belittling this Court in the eyes of the public. Moreover, the constitutional functions of this Court being clearly spelled out in plain and understandable words, we cannot in any way permit its authority to be disregarded in any form, shape or fashion. For the constitutional duties of this Court, see *Article 75* of the 1986 Constitution, which provides:

"The Supreme Court shall from time to time, make rules of court for the purpose of regulating the practice, procedure and manner by which cases shall be commenced and heard before it and all other subordinate courts. It shall prescribe such code of conduct for lawyers appearing before it and all other subordinate courts as may be necessary to the proper discharge of the Court's functions. Such rules and code, however, shall not contravene any statutory provisions or any provisions of the Constitution".



This Court, realizing its constitutional duties, held in the case *Ware v. Republic*, 5 LLR 50 (1935) that: "The judge of a court is not merely appointed to an office, but he is also elevated to a dignity. As such, he is dedicated and consecrated to the adjudication of the rights of litigants, and hence, must avoid any course of conduct which would cause his impartiality to be questioned"

Moreover, in the case *Richards v. McGill and McGill-Hilton*, 6 LLR 81 (1937), this Honourable Court held that: "Trial judges should follow strictly both in the spirit as well as in the letter all opinions given by this Court, as one of the most potent means of unifying the practice".

Contrary to these duties, spelled in the above cited case laws, the trial judge, His Honour Harper S. Bailey, being one of the old Counsellors of this Bar and one of the old legal practitioners who is in full knowledge of the constitutional duties and authority of the Honourable Supreme Court of Liberia as well as the obligations of a trial judge or inferior court judges to strictly follow the opinions given by this Court, elected to ridicule this Court by setting aside its mandate and worst of all, attacking it by saying "that the mandate had departed from the regular pattern of the entire pleading; and proceeding to dismiss the said mandate and the entire cause of action in the most illegal and unethical manner. This act 'raises series of questions as to his competency, proficiency, impartiality and due respect for this Honourable Court.

We are shocked by the deliberate act of disobedience reflected in the conduct of this judge and his attitude of outright disregard for the authority of the Supreme Court. It is elementary that neither the law nor the practice of our courts will permit a subordinate court to depart from the strict wordings of opinion or mandate of the Supreme Court; there is no precedent for this at all according to our procedure. And therefore, we are astonished by the gross insubordination shown this Court by respondent judge, His Honour Harper S. Bailey. His gross refusal to take jurisdiction over the instant case and to proceed with its hearing and final determination as mandated by this Court is an act, we believe that was highly contemptuous.

According to Black's Law Dictionary 288 (5th ed.), contempt of court is defined as:

"Any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority or its dignity ...."

Furthermore, 12 Am Jur 2d, *Contempt*, § 3, defines contempt as:

"Generally speaking, he whose conduct tends to bring the authority and administration of the law into disrespect, or disregards, interferes with or prejudices parties or their interests during a litigation, or otherwise tends to impede, embarrass, or obstruct the court in the discharge of its duties is guilty of contempt".

Having observed the high level of embarrassment this Court suffered by the gross disrespect shown to this Court by Respondent Judge Harper S. Bailey, and since the precedence of this Honourable Court has been to cite any person whose acts have embarrassed, degraded and impeded the authority and dignity of this Court to show cause why he/she should not be held in contempt, we cited the said respondent judge to show cause why he should not be held in contempt. The respondent judge appeared before this Court in person and told the Court "that he had erred in the entire proceeding and therefore, pled for mercy.

We have painfully observed the acts of the respondent judge and considered the fact that we are sworn to protect the Constitution and laws of the Republic as well as the dignity of this Court, and that we must do so without any fear or favor. Therefore, we shall continue to vindicate and establish the authority of this Court as long as people continue to disregard and disobey its orders or mandates in an attempt to uphold its authority up to public ridicule.

This Court held in the case *Wolo v. Simpson*, 20 LLR 24 (1970) that:

"A judge of an inferior court who disobeys the mandate of the Supreme Court, will be adjudged in contempt of the Supreme Court and punished ...."

The facts and circumstances in the instant case having evidently shown the respondent judge's gross disrespect and disregard for the authority of this Honourable Court, the said respondent judge of the monthly and probate court, His Honour Harper S. Bailey is accordingly hereby adjudged guilty of contempt of the Honourable Supreme Court of Liberia and is hereby fined the sum of Five Hundred (\$500.00) Dollars to be paid within forty-eight (48) hours after rendition of this judgment. He is also commanded to immediately resume jurisdiction over the instant case and dispose of it as he was so commanded to do. And it is hereby so ordered.

*Information granted.*