

**AUGUSTINE NYUMAH and ALFRED FREEMAN, Informants, v. HIS HONOUR J. BOIMA KONTAE, Assigned Circuit Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, Sitting in its December Term, A. D. 1999, and JESSIE PAYNE, Respondents.**

**The Nyumah et al v Kontoe et al. [2000] LRSC 2; 40 LLR 14 (2000) (12 May 2000)**

Heard: March 30, 2000. Decided: May 12, 2000.

**INFORMATION PROCEEDINGS.**

1. Information is the proper remedy where the mandate of the Supreme Court is being executed in an improper manner.
2. Admissions by respondents in their returns to a bill of information are admissible and binding on them and are deemed supportive of the informants' averments on the matter.
3. All admissions by a party or his agent acting within the scope of his authority are admissible.
4. A verdict must show what was awarded and must not be uncertain, such that a writ of possession cannot be issued upon it.
5. Land should be described and designated with certainty, sufficient to enable a writ of possession to be executed.
6. In the determination of what constitutes legal and valid execution of a writ, the officer to whom the writ is entrusted must place the plaintiff in full, actual, and peaceable possession of the premises recovered.
7. In order to satisfy a judgment, the execution of a writ must be thorough, complete, and effectual, and not merely formal.
8. A bill of information cannot be used as a substitute for a regular appeal.

The informants, against whom default judgment had been entered in an action of ejectment instituted in the trial court, sought prohibition against the trial court. On motion filed in the Supreme Court in response to the petition for a writ of prohibition, the Supreme Court dismissed the proceedings on the ground that the petition was not accompanied by an affidavit as required by law. The Supreme Court therefore mandated the trial court to enforce its judgment. The present information grows out of the trial court's enforcement of that mandate. In their challenge to the attempted enforcement, the informants contended that the property involved was not designated with any degree of certainty in the trial court's judgment. The Supreme Court agreed with the informants, noting that the respondents had admitted in their returns that the judgment had failed to describe the property in question with certainty, that the admissions were

admissible against the respondents, and that the admissions rendered the averments in the information as true.

The Court rejected the respondents request to dismiss the information, holding that information was the proper course since it grew out of the enforcement of the Court's mandate. The Court opined that in order for the trial court to properly enforce its mandate, the property must have been sufficiently described in the writ of possession to enable the ministerial officer to execute the writ. The Court observed that the records failed to show that the trial court had made any effort to have a surveyor designate or describe the plaintiff's 48 acres of land. In such circumstances, the Court said, the ministerial officer could not place the plaintiff in full, actual, complete and peaceable possession of the property. The Court therefore granted the information and ordered the trial court to describe or designate the property with the required certainty to enable the sheriff to effectively execute the writ of possession.

**MR. JUSTICE SACKOR delivered the opinion of the Court.**

This Court, on December 16, 1999, during its October Term, A. D. 1999, mandated the trial court to resume jurisdiction and enforce its judgment in an action of ejectment. It is from the enforcement of the mandate of this Court that the defendants, against whom final judgment was rendered, fled to this Court upon a five-count bill of information.

We shall digress for a moment to give a synopsis of the facts of the case before delving into the merits of the information proceedings before us. The records show that one Jessie Payne instituted an action of ejectment against Augustine Nyumah and Alfred Freeman, informants herein, to oust and evict them from the premises occupied by them and to place Plaintiff Jessie Payne, co-respondent herein, in possession thereof, alleging that the occupied premises were part of 48 acres of land owned by plaintiff. The records further show that the trial judge, His Honour George B. S. Tulay, rendered a default judgment against the informants on the 17th day of February, A. D. 1989. The clerk of the trial court accordingly issued a writ of possession on the 20th day of February, A. D. 1989 directing the sheriff to oust the informants and place the plaintiff in possession of the premises containing 48 acres of land and no more. Whereupon, the informants fled to this Court on a writ of prohibition. In response thereto, Co-respondent Payne filed a two-count motion to dismiss the prohibition proceedings stating, as ground therefor, that the informants had failed to verify the affidavit that accompanied their petition.

The then presiding Chambers Justice, Mr. Justice Junius, heard the motion to dismiss and granted the same on the 19th day of February, A. D. 1990, dismissing the prohibition proceedings. From the dismissal of their petition, the informants appealed to this Court en banc. This Court, during its October Term, A. D. 1999, affirmed the ruling of Mr. Justice Junius granting the motion to dismiss the prohibition proceedings. The case is again before us, this time upon a bill of information emanating from the execution of this Court's mandate.

This Court deems only count 4 of the bill of information to be worthy of consideration for the final determination of this case. We hereunder quote the said count for the benefit of this opinion.

"4. Informants say and contend that where the claim to title of plaintiff in an ejectment action is based upon a judgment awarding title to the disputed property, the property must be designated with certainty in the judgment. In the instant case, the writ of possession issued against the informants called for 48 acres of land and there is no showing that the informants lot is situated within the plaintiff's 48 acres of land and same half lot has not been designated with certainty. The judgment is therefore uncertain and the writ of possession cannot be served on informants without clearly showing that informants are occupying plaintiff's 48 acres of land sued for, especially so when informants bought their half lot from Charles Johnson in fee simple who is not any agent to any person or persons."

In response to the bill of information, the respondents filed a four-count returns, count two of which this Court considers relevant, and therefore hereunder quotes for the benefit of this opinion.

"2. And also because respondents say that from the returns to the writ the informants should have moved the circuit court, presided over by Judge J. Boima Kontoe, requesting him to grant their information so that the property sued for can be made certain in keeping with the said judgment, so that the informants' property cannot be taken away from them as a result of the erroneous and uncertain judgment made by the court below, and grant unto informants any and all further relief as justice requires. Instead of making it this way, the informants have come by information, removing the sheriff's returns from the trial court to this Honourable Court, an exercise which is contemptuous. Whereupon respondents pray Your Honours to have the information dismissed."

The facts and circumstances stated hereinabove present two salient issues for the final determination of this case. They are:

1. Whether or not the property involved in a summary proceeding to recover possession of real property must be designated and described with a certain degree of certainty in order for a writ of possession to be issued upon it?
2. Whether or not information will lie under the facts and circumstances in this case?

The informants contended in count 4 of their information that the judgment awarding the plaintiff 48 acres of land was uncertain in that the plaintiff's property was not designated with certainty in the judgment. Informants also argued that there is no showing that their one-half lot, lawfully acquired from one Charles Johnson, was situated within the plaintiff's 48 acres of land. The informants further contended in their brief and argued before this Court that they had purchased one-half and one-fourth lots respectively from Charles Johnson, and that the property

of the plaintiff was not designated with certainty in the judgment so as to indicate that their lawful properties were within the 48 acres of land claimed by and awarded to the plaintiff.

In count two of their returns, the respondents conceded the uncertainty and erroneousness of the judgment, but contended that the informants should have filed their information before the trial court so as to make said judgment certain and thereby prevent the trial court from taking informants' property away from them. The respondents did not deny in their returns that the judgment of the trial court was uncertain; instead, they only challenged the jurisdiction of this Court over the information proceedings.

We disagree with the contention of the respondents that the information proceedings are cognizable before the trial court. We hold that the proceedings before us emanate from the execution of this Court's mandate, and that information is the proper remedy where a mandate of this Court is being executed in an improper manner. Thus, these information proceedings are cognizable before this Court and not the trial court, as contended by the respondents in count two of their returns.

The averment of respondents in count 2 of their returns that the judgment awarding the plaintiff 48 acres of land is erroneous and uncertain is an admission of the informants' averments in their information. In other words, the respondents' admission is admissible and binding on them, and is deemed by this Court to be supportive of informants' assertion that the judgment is uncertain, especially since the property awarded to the plaintiff is not described with any certainty. The Civil Procedure Law, at section 25.8, provides that "all admissions by a party himself or his agent acting within the scope of his authority are admissible." Civil Procedure Law, Rev. Code 1:25.8.

As to the issue of the judgment being uncertain, this Court held in the case *Duncan v. Perry*, 13 LLR 510 (1960), Syl. 8, text at 516, that "a verdict must show what was awarded and must not be so uncertain that a writ of possession cannot be issued upon it." This Court also held in that case, at page 516, that "the land should be described or designated with certainty sufficient to enable a writ of possession to be executed."

In the instant case, there is no showing that the trial court made any effort to have a surveyor designate or describe the 48 acres of land awarded plaintiff in the judgment before placing him in possession of the said property. The property awarded the plaintiff should have been described or designated with certainty so as to enable the ministerial officer of the trial court to execute the writ of possession properly in enforcement of this Court's mandate. Thus, we uphold our holding in the *Duncan* case, cited *supra*.

It is a universal principle of law that "in the determination of what constitutes a legal and valid execution of the writ, it may be stated in general terms that the officer to whom such writ is entrusted must place the plaintiff in the full, actual, and peaceable possession of the premises recovered. The execution of the writ, in order to satisfy the judgment, must be thorough,

complete, and effectual, and not merely formal." 25 AM JUR 2d, Ejectment, § 136, pages 628-629 (1966).

We observe from the above quoted principle of law that the execution of a writ of possession is legal and valid where the ministerial officer or sheriff places the plaintiff in full, actual, and peaceable possession of the property awarded him in a judgment. The execution of a writ of possession must also be thorough, complete, and effectual in satisfying the judgment. We hold that the plaintiff can only be placed in full, actual, and peaceable possession of the 48 acres of land awarded him in the judgment when such property is described and designated with certainty sufficient to enable the sheriff to execute properly the writ of possession issued by the trial court. It therefore follows that the trial court should have instructed a surveyor to designate and describe plaintiff's 48 acres of land with certain-ty, so as to place him in full, actual, and peaceful possession of the property claimed by him. In that way, the writ of execution would have been thorough, complete, effectual, and in full satisfaction of the judgment.

In their prayer, the informants requested this Honourable Court to reverse the judgment of the lower court and remand the case for a regular trial. This Court holds that the case is not before it on a regular appeal from the final judgment of the trial court, but on a bill of information predicated upon the execution of the mandate of this Honourable Court. This Court has consistently held that a bill of information is the proper remedy available to a party litigant to seek the aid of this Court where its mandate is being improperly enforced by a trial court. *Raymond International v. Dennis*, 25 LLR 131, Syl. 6 (1976); *Massaquoi-Fahnbulleh v. Urey*, 25 LLR 432, Syl. 1 (1977); *Barbour-Tarpeh v. Dennis*, 25 LLR 468, Syl. 1 (1977); *National Port Authority v. The Executive Committee on the Six Consolidated Group of Retirees and Compulsory Employees of the National Port Authority*, 39 LLR 244 (1999). A bill of information therefore cannot be used as a substitute for a regular appeal as prayed for by the informants. The prayer of the informants is accordingly hereby denied in so far as it requests this Court to reverse the judgment of the trial court and remand this case for a regular trial. This Court is only concerned with the uncertainty of the judgment, as contended by the informants.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the bill of information should be, and the same is hereby granted in so far as it relates to the uncertainty of the judgment. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and enforce its judgment to the extent that the 48 acres awarded the plaintiff should be described or designated with certainty to enable the sheriff to execute the writ of possession in satisfying the judgment. Costs of these proceedings are disallowed.

**Information granted.**