IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2021

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR… ..... CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE… .....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE…..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA… ..... ASSOCIATE JUSTICE

Messrs. Varney Lartey Kiadii and Adama Shannon, all of the City of Monrovia, Liberia ……INFORMANTS	)	
Versus	)	BILL OF INFORMATION
His Honor James E. Jones, Judge, and the heirs of the late John P. Smith, also of the City of Monrovia, Liberia ……RESPONDENTS	)	
GROWING OUT OF THE CASE	)	
The Heirs of the late John P. Smith, represented by Rev. Harry Smith of the City of Monrovia Liberia…… PLAINTIFFS	)	
Versus	)	
Elias Antoine, also of the City of Monrovia, Liberia ……1ST DEFENDANT	)	
AND	)	ACTION OF DEBT
Messrs. Varney Lartey Kaidii and Adama Shannon, all of the City of Monrovia, Liberia ……. 2ND DEFENDANTS	)	

Heard: November 4, 2020 Decide: August 11, 2021

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

On January 12, 2010, Messrs. Varney Lartey Kiadii and Adama Shannon, informants herein, filed an eight count bill of information before the Supreme Court of Liberia. The full text of the bill of information gives insight on the allegation of facts and contentions of the informants as follows:

"BILL OF INFORMATION

AND NOW COMES the above named Informants and inform Your Honors in manner and form as follows to wit:

1. That Informants are intervenors and Co-Defendants in the Court below in a debt action instituted by the heirs of the Late John P. Smith represented by Rev. Larry Smith against Elias Antoine, principal Defendant. See attached hereto copies of Intervenors' Motion and Answer as Informants' Exhibit "1/1" in bulk to form a cogent part hereof to substantiate Informants' contention.

2. That Informant/Movants' Motion and Intervenors' Answer, it was highly contended that the subject property from which the Debt Action grows is the property owned by the Intestate Estate of the Late Chief Murphey and Vey John, the Supreme Court having declared the said Intestate Estate to be owner of the twenty five (25) acres of land lying and situated in the Vai Town Area in its July 29, 1989 Opinion. That predicated upon the Mandate of the Supreme Court of Liberia and the Order of the Civil Law Court to enforce the Supreme Court mandate, the principal Defendant, Elias Antoine executed a lease agreement with the Intestate Estate of the Late Chief Murphey and Vey John thru its Administrators. Copies of the 1989 opinion of the Supreme Court and Order of the Civil Law Court to persons residing within the twenty five (25) acres of land, as well as the Lease Agreement executed by and between the Principal Defendant, Elias Antoine and the heirs of the Late Chief Murphey and Vey John Estate are hereto attached as Informants' Exhibit "1/2" in bulk to form a cogent part hereof.

3. That notwithstanding the contention of Informants that they are beneficiaries of rental income emanating from the Lease Agreement executed between the Intestate Estate of the Late Chief Murphey and Vey John and the Principal Defendant, Elias Antoine, by virtue of the assignment of rental income in their favor as well as the contention that by the Co-Respondent Judge entertaining the debt action would constitute an interference with the Mandate and/or Judgment of the Honorable Supreme Court of Liberia, the Co-Respondent Judge disregarded the Mandate of the Supreme Court and proceeded to hear the Debt Action and to enforce payment of the award over the objection of the Informants/Intervenors. See copy of the Assignment of Rental Income hereto attached as Informants Exhibit "1/3" in bulk to form a cogent part hereof in support of the Bill of Information.

4. In keeping with the **Code for the Rules for Procedures in Courts, Part XXII (b) at page 71,** it is clearly stated therein that Information will lie to prevent anyone whomsoever from interfering with the judgment and Mandate of the Honorable Supreme Court. Also in the case, **Intrusco Corporation versus Firetex Inc. 36LLR page 36,** it was decided by the Supreme Court that in order for Information to be granted, it must be shown that Respondent has disobey, obstructed or interfered with the enforcement of the Supreme Court Mandate. In the instant case, the failure of the Co-Respondent Judge to obey the Mandate and/or Judgment of the Supreme Court by his insistence to hear the Debt Action and enter final judgment gives justification to the filing of the Bill of Information. Hence, Information will lie to

prevent the Co-Respondent Judge from interfering with the mandate of the Honorable Supreme Court of Liberia in its July 29, 1989 Opinion.

5. That Information will lie because the attempt by the Co-Respondent Judge to entertain a debt action which is an offspring of a matter has been settled by the Honorable Supreme Court is an interference with the Mandate of the Supreme Court as well as attempt on the part of the Co-Respondent Judge to review the act of the Supreme Court of Liberia, the final arbiter of matters in accordance with Article 66 of the constitution of the Republic of Liberia which state thus "The Supreme Court shall be final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of records, courts not of record, administrative agencies, autonomous agencies or any other authority, both as to law and fact except cases involving ambassadors, ministers, or cases in which a county is a party. In such cases, the Supreme Court shall exercise original jurisdiction. The Legislature shall make no law nor create any exception as would deprive the Supreme Court of any of the powers granted herein". In the instant case, the Supreme Court of Liberia having put to rest the question of ownership of the twenty five acres of land, thereby declaring the Chief Murphey and Vey John Estate legitimate owner of the said parcel of land, it is not only an interference with the judgment of the Supreme Court but also an affront to the Honorable Supreme Court of Liberia for which the Co-Respondent Judge should be held in contempt. Hence, Information will lie to halt the enforcement of the judgment of the Debt Court.

6. Informants submit that Information will lie because in the final judgment of the Co-Respondent judge, he attempted to review the act of the Supreme Court by stating thus "…this court says that only a Court of competent jurisdiction petitioned by Declaratory Judgment or Action of Ejectment to which Plaintiff is, could have entered a ruling destroying Plaintiff's legitimacy as Owners of its 4.5 acres of land which was not done;." (**Page 5, paragraph 2 of the Co-Respondent Judge's Ruling.)** Hence, the act of the Co-Respondent Judge is an interference with the Mandate and/or judgment of the Honorable Supreme Court. Copy of said final judgment is hereto attached as Informants' Exhibit "1/4" in bulk to form a cogent part hereof.

7. Information will lie because the subject matter of the Lease Agreement between the principal defendant, Elias Antoine and the heirs of the late John P. Smith ceased to exist when the Supreme Court in 1989 declared the Intestate Estate of the Late Chief Murphey and Vey John as legitimate owner of the said property, thereby divesting the Smith Estate of ownership to the property which is party of the twenty five (25) acres of land owned by the Chief Murphey and Vey John Estate. In keeping with the law controlling, where the subject matter of a contract ceases to exist, the contract by operation of law is cancelled and therefore unenforceable. Notwithstanding this cardinal principle of law controlling in the instant case, the Co-

Respondent Judge in his further interference with the judgment or opinion of the Supreme Court held thus "….and the Court further says that even if this were done, the lease agreement existing between plaintiff and defendant would still have to be cancelled in a court of law before defendant would be considered relieved of his rental obligation under the lease agreement." This assertion of the Co-Respondent Judge is indeed an interference with the decision of the Supreme Court, declaring the legitimate owners of the 25 acres of land in Vai Town, Bushrod Island to be the heirs of the Late Chief Murphey and Vey John. Hence, Information will lie.

8. That further to count seven (7) hereof, Informants say as a general rule, in the absence of a provision to the contrary in the contract, if the act to be performed is necessarily dependent on the continued existence of a specific thing, the promisor will excuse non-performance of the contract. The ground on which this rule is generally based is that there is implied condition in this respect; the position is taken, as a matter of construction that in contract the performance of which requires the continued existence of a particular thing, as a condition is implied that the destruction or cessation of existence of such excuses performance. See for reliance, **17 Am. Jur. 2d, Contract Pages 860-961, Section 411; cessation of specific thing.**

In this case, the existence of the subject matter of the Lease Agreement between the principal defendant and the Smith Estate ceased when the opinion of the Supreme Court dated July 29, 1989 declared the Chief Murphey and Vey John Estate the owner of the twenty five (25) acres of land in Vai Town, within which the parcel of land which is subject matter of the Lease Agreement between the principal defendant and the Smith Estate is situated. Hence, Information will lie.

WHEREFORE AND IN VIEW of the foregoing, Informants pray Your Honor and this Honorable Court to grant their Information, thereby ordering the Co-respondent Judge to halt further proceeding with the matter, to appear and show cause why his action should be considered contemptuous; that Your Honors will grant unto Informants that which is just, legal and equitable in the premises.

RESPECTFULLY SUBMITTED
INFORMANTS

BY AND THRU THEIR COUNSEL:

ZOE, GREAVES AND PARTNERS
BARCLAY BUILDING, CORNER OF
CAREY AND
JOHNSON STREETS
MONROVIA, LIBERIA

C. ALEXANDER B. ZOE

COUNSELLOR-AT-LAW"

In obedience to the writ commanding the respondents to file their returns to the bill of information, on the January 23, 2010, the heirs of the late John P. Smith, co-respondents herein, filed their returns. Similarly, the returns to the bill of information are insightful as follows:

"**RESPONDENTS' RETURNS**

Respondents in the above entitled proceedings pray Your Honors to deny and dismiss the Informants' Bill of Information and showeth the following legal and factual reasons to wit:

1. As to Informants' entire Bill of Information, respondents say that same should be denied and dismissed as a matter of law because it is settled law in this jurisdiction that the Supreme Court lacks jurisdiction to review by Information the judgment of a lower court, from which a regular appeal or remedial process should have been [pursued]. **Liberia Aggregate Cor. Vs. taylor, 35 LLR 3 (1988).** Respondents say that final judgment in the debt action, out of which this Bill of Information grows, was rendered by the Debt Court on November 19, 2009; because neither the defendants nor their counsel were present, even though duly notified by a regular notice of assignment, the court appointed Attorney Sayma Serenius Cephus to take the judgment for and on behalf of the absent counsels. Atty. Cephus excepted to the final judgment and announced an appeal to the Honorable Supreme Court of Liberia. Copies of the Courts' final judgment, the minutes of court for November 19, 2009 and receipts issued by the counsel of informants, acknowledging receipt of the court's final judgment are attached hereto in bulk as Respondent's Exhibit "RE/1.

2. Further to count 1 above, Respondents say that the court's final judgment was served on the defendants, the principal defendant, Elias Antoine, promptly filed his approved Bill of Exceptions with the Clerk of Court, thereby taking the first mandatory step to perfect his appeal. Copy of Bill of Exception is attached hereto as Respondents' Exhibit "RE/2." Bill of Exceptions with the trial court; instead he proceeded to file a petition for a writ of prohibition with Her Honor Gladys K. Johnson, the Justice in Chambers, seeking to restrain the trial court from enforcing its final judgment. Copies of the petition and the citation from the Justice in Chambers,, and the mandate from the Justice in Chambers to the trial judge are attached hereto in bulk as respondents' Exhibit "RE/3".

3. Having failed to perfect their appeal, and upon the denial of their petition for a writ of prohibition, the informants have now resorted to

filing this unmeritorious Bill of Information for the sole purpose of delaying the administration of justice. Respondents submit that it is settled law in this jurisdiction that an attorney who files an unmeritorious petition for a peremptory [writ] for the sole purpose of the delaying the administration of justice may be disciplined by the Supreme Court. **Franco-Liberia Transport Company vs. R.L 34 LLR 85 (1986).** In the instant case, no mandate has been sent from this Honorable Court to the trial court in respect of the main debt action; hence, Information cannot lie because the trial court is not wrongly executing any mandate from this court.

4. Further to count 3 above, respondents says that for information to lie in the Supreme Court, there must either be a matter pending before the Supreme Court, or already disposed of, and the court's mandate therein is being obstructed or improperly executed. **Vargas vs. Mathies, 39 LLR 18 (1998).** In the instant case, the debt action, out of which this Information grows, has never reached the Supreme Court. Consequently, no mandate has been sent by this Honorable Court to the Debt Court in connection with this debt action to warrant the filing of a Bill of Information. Respondents say the sole purpose of this Bill of Information is to prevent the judgment from which an appeal was announced but which Informants failed to file a Bill of Exceptions with the trial court. This Honorable Court held in **Nyumah vs. Kontoe, 40 LLR 14 (2000)** that a Bill of Information cannot be used as a substitute for a regular appeal. Having abandoned their own appeal, Informants have now resorted to a Bill of Information to seek a review of the Court's final judgment by this Honorable Court.

5. Further to count 4 above, respondents say the law extant in this jurisdiction is that where there is no obstruction in the execution of the mandate of the Supreme Court, or refusal to carry out its orders, information cannot lie and the Supreme Court cannot exercise jurisdiction over it. **Nimley vs. Yancy, 30 LLR 403 (1982).** Respondents say that since the rendition of final judgment on November 19, 2009, none of the defendants have perfected their appeal. Moreover, the full bench has not sent any mandate to the trial court in connection with the debt action.

6. As to count 1 of the Informants' Bill of Information, respondents say that same does not present any traversable issue.

7. As to counts 2 and 3 of the Informants' Bill of Information, Respondents say that the principal debt action grows out of the lease agreements executed between defendant Elias Antoine and the Heirs of the Late John P. Smith, some dating as far back as 1957.

Respondents say that they do not derive their title from any of the contending parties in the Vai Town Land dispute which was decided by the Supreme Court in 1989. A copy of respondents' title deed is attached hereto as respondents' "Exhibit RE/4".

7. Further to count 7 above, Respondents say the question of whether respondents were bound by the Supreme Court's judgment in the Vai Town case was decided by her Honor Jamesetta Wolokolie, Supreme Court Justice in Chambers, in a Petition for a Writ of Certiorari filed by the Intestate Estate of the Late Chief Murphy and Vey John. Respondent says that Informants are privies of the Intestate Estate of the Late Murphy Vey, as such, the ruling of this court denying the Murphy Vey estate's Motion to Intervene, which was subsequently confirmed by the Supreme Court's Justice in Chambers, dated January 9, 2009, is binding on Informants under the principle of res judicata. The law in this jurisdiction is that a person who is not a party, but who is in privity with the parties in an action terminating in a valid judgment is bound by and entitled to the application of the principle of the principle of res Judicata. **Jackson vs. Mason 24 LLR 97, 106-107 (1975).** A copy of the final judgment of the Chambers Justice is attached hereto as respondent's Exhibit "RE/5". The estate did not appeal form the Justice in Chambers' final ruling, hence the ruling is binding on Informants because they are privies of the estate.

8. As to counts 4 and 5 of the Informants' Bill of Information, respondents say that the co-respondent trial court judge did not interfere with any mandate of the Supreme Court in the debt action. Having intervened and proceeded to trial, Informants are estopped from contending that by entertaining the debt action, the trial court judge was interfering with the Supreme Court mandate that was sent to the Civil Law Court in a completely different matter in which neither the Heirs of the Late John P. smith nor their tenant, Mr. Elias Antoine, was a party.

9. As to counts 6, 7, and 9 of the Informants' Bill of Information, respondents say the law in this jurisdiction is that a party who is not a party to an action nor claims to derive title from a party, nor is privy to a party, is not bound by a final judgment against such other party. **Dwalubor vs. Good-Wesley, 21 LLR 43 (1972).** As stated in previous count of these Returns, respondents were not party to the case that was decided by the Supreme Court in 1989, nor do they derive their title from any of the contesting parties. Respondents are therefore taken aback by informants continuous reference to the Vai Town case; as this case has absolutely nothing to do with the debt action before the trial court. Moreover, this question was dealt with extensively by Justice Wolokolie in her January 9, 2009 ruling,

respondents' Exhibit "RE/5", from which no appeal was taken by the Estate of the Late Chief Murphy. For informants' counsel, who was also the attorney for the estate in the certiorari proceeding, to start raising the same issue in a Bill of Information before this court is highly contemptuous.

10. Respondents deny all and singular the allegations of both law and facts contained in the Informants' Bill of Information which have not be specifically traversed in these returns.

WHEREFORE, and in view of the foregoing, respondents pray Your Honors to deny and dismiss the Informants' unmeritorious Bill of Information and order the trial court to resume jurisdiction and proceed with the enforcement of its final judgment, and grant unto respondents any and all further relief that Your Honors may deem just and legal.

Respectfully submitted:
The above named respondents
By and thru their counsel:
Pierre, Tweh & Associates
Palm Hotel Building
Monrovia, Liberia.
COUNSELLORS &
ATTORNEYS-AT-LAW"

From the reading of the bill of information, the returns thereto and the arguments of the parties, this Court gather that the informants are contending that in 1988 and 1989, the Supreme Court delivered Judgments in the case between the Intestate Estate of the Chief Murphey and Vey John and Alhaji Varmuyah Cornel et al; that said Judgments concluded and extinguished the property interest of the co-respondents over 4.75 acres of land allegedly situated within the 25 acres adjudicated by this Court; that as the result of the decisions of this Court, the Civil Law Court, Sixth Judicial Circuit for Montserrado County under the gavel of Judge J. Henric Pearson, a writ of possession was issued for the said 25 acres of land and a survey conducted to the knowledge of the respondents; that in the clear view of the public notice and survey of the 25 acres, the co-respondents supine and failed to assert claim over the 4.75 acres of land allegedly within the 25 acres decided by this Court thereby suffering waiver and laches; that the co-respondents filed a bill of information concerning the enforcement of the Supreme Court's mandate growing out of the July 14, 1989 Judgment still pending before the Court; and that

the action of debt filed by the co-respondents before the Debt Court for Montserrado County against Elias Antoine, a tenant on the said 4.75 acres of land, for unpaid rents couple with the refusal of Judge James E. Jones, also co-respondent herein, to dismiss said action of debt on the intervention of the informants, and proceeding to enforce final judgement against the informants' tenant amount to interfering with the mandate of the Supreme Court. The crux of the informants' contention is that the Supreme Court having quieted title over the 25 acres of land in the notorious Vai Town case, the action of debt filed by the co-respondents against Elias Antoine for unpaid rents is a legal nullity. Therefore, the co-respondent judge's attempt to enforce judgment against Elias Antoine is tantamount to interfering with the mandate of this Court for which information will lie.

On the other hand, the respondents argue that they were neither party to the Vai Town case nor privies to the parties in that case nor do they derive their title from any of the parties in the said case, hence their property interest in the 4.75 acres of land is not extinguished or concluded by the Judgment of the Supreme Court in 1989; that informants intervened and participated in the trial of the action of debt, but failed to take steps to perfect their appeal; that the informants are not permitted under existing laws in this jurisdiction to substitute their appeal for a bill of information; that the informants filed petition for a writ of certiorari before Madam Justice Jamesetta Howard Wolokolie, presiding in the Chambers of the Supreme Court, who heard and denied the petition, but the informants or their privy, the Intestate Estate of Chief Murphey and Vey John, opted to not pursue an appeal from the Justice in Chambers' ruling; that subsequently, when the co-respondent judge ordered the judgment of the lower court enforced, the informants took flight on a petition for a writ of prohibition to Madam Justice Gladys Johnson, then presiding in the Chambers of this Court, who declined to issue the alternative writ; that the respondents have not disobeyed or interfered with any Judgment growing out of the action of debt for which information will lie; that there is no appeal growing out of the debt action pending before the Supreme Court to warrant the filing of the bill of information against the respondents; and that the filing of the bill of information was unmeritorious and intended to delay the administration of justice, hence contemptuous. Conclusively, the main contention gather from the respondents' returns, brief and argument during hearing before this Court is that the action of debt filed by them against Elias Antoine for unpaid rents growing out

of a lease agreement is unrelated to the decisions of the Supreme Court in the Vai Town case, particularly so when the co-respondents were neither party to the said case nor privies to any of the parties in that case nor did the respondents derive their title from the parties in the cancellation of title proceedings of the said case.

Before proceeding to identify the issue(s) determinative of this bill of information, we note that the co-respondents urge upon this Court to take judicial notice of the ruling of the Madam Justice Wolokolie in the certiorari proceedings and we note as follows:

> "Co-respondent/Plaintiff intestate estate [denies] that its property is part and parcel of the ejectment action by and between the heirs of Chief Murphy and the Corneh families, or that a survey was ever done to include its property. That in fact its 4.75 lots [acres] are separate and distinct from the subject of the ejectment action between the parties who claimed title from the State. As co-respondent was not a party to the action nor did it derive title from any of the parties, it cannot be bound by the judgment of the court. To support this point, a letter from the Civil Law Court to one of the co-respondents' tenants, Mr. P.K. Hage, dated January 23, 1990, was proffered. It reads as follows:
>
> Mr. P.K. Hage
> P & G West Brand
> Monrovia, Liberia.
>
> Dear Mr. Hage:
>
> His Honour J. Henric Pearson, Presiding Judge of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, sitting in its December Term, A.D. 1990, has ordered me to inform you that in view of the fact that the estates of the late S.B. Nagbe, John P. Smith, Joseph Dunbar and Mr. Toh were not parties to the Ejectment Action brought by Bolma Larty and J.D. Lasana et al against Varmuyah Corneh et al, and also because the Supreme Court's Decision of July 14, 1989 did not include them, his orders of September 6, 1988 that the rent arrears be paid to Boima Lartey and J.D. Lasanna is hereby revoked.
>
> In view of the above, you are ordered to pay all rents arrears and future rents to the heirs of the Late John P. Smith, Joseph Dunbar, S.B Nagbe and Mr. Toh upon receipt of this order until otherwise ordered by the Supreme Court.
>
> Upon your failure to obey those orders you shall be held in contempt.
> Irene Ross-Railey
> Clerk, Civil Law Court, Mont.
> Approved:

J. Henric Pearson, JUDGE PRESIDING.

In showing that defendant's allegation is clearly false and misleading, co-respondents attached to their answer a copy of an Action for Specific Performance of Contract filed by the defendant in November 2007 against them and is now pending in the Civil Law Court, and a letter from Counsellor John E. Newon of the Gbaintor and Associates Law Firm, dated March 27, 2004, recognizing the co-respondents as lessors even after the Supreme Court cases of 1988 and 1989 referred to by the defendant.

The Debt Court Judge dismissed both a Motion to Dismiss and a Bill of Information filed by the defendant and proceeded to hear the matter, when the petitioners, the heirs of the intestate estate of the late Chief Murphy Vey and the Vai Town people, filed a motion to intervene stating that they had just been made aware of the pending debt action against their tenant by the co-respondent Smith's intestate estate. That the property claimed by the Smiths forms part of the Chief Murphy Vey and the Vai Town people estate of twenty five acres that had been settled by the Supreme Court in a previous action as has been mentioned. They allege that the representation by the defendant below may be inadequate, and that the intervenors may be bound by a judgment in the said action if they are not permitted by the court to intervene; that intervenors might be adversely affected by the decision of the court; and that intervenors had decided to intervene at the time they became aware of the action so as not to suffer laches.

The court denied the motion to intervene. The intervenors have come up on a petition for a writ of certiorari against the judge's ruling requesting this court to review and correct the ruling of the judge below which states: "The court has sought diligently but cannot find any legally recognized reason to allow Movants' intervention in this debt action."

The co-respondent, plaintiff below, counters in its returns to the petition that the trial court's ruling was final and not interlocutory; therefore, the petitioners should have taken an appeal; that petitioners having failed to appeal as required by our law, they are legally estopped to seek a review of the trial court's ruling by certiorari. Besides, the intervenors did not file an answer along with their motion to intervene.

This matter brought up on this writ being for the review of the judge's ruling denying petitioners' motion to intervene, we shall limit ourselves to the issue raised by the co-respondent, John P. Smith's intestate estate:

1. Whether or not the Judge erred when he denied the Petitioners' motion to intervene.

2. Whether the motion having been denied, the remedy therefrom is the issuance of a writ of certiorari?

The co-respondent contends that the judge properly denied the motion to intervene because co-respondent's property was never a subject of any court action. The decisions made by the Supreme Court were in regard to a matter between the petitioners, heirs of Chief Murphy and the Corneh families, and the co-respondent was no party to these suits. Besides, the Corneh/Lartey families were not grantors of co-respondent property and the co-respondent not having been a party to the suits referred to by the petitioner, the co-respondent estate could not be bound by these rulings.

We agreed with the co-respondent because for the debt court judge to allow the intervention it would be getting involve in deciding property rights of the parties since the estates of the petitioners and the co-respondents are different estates and the co-respondent's grantor is separate and distinct from Corneh/Lartey's whom the petitioners had won in the Supreme Court in a land dispute. This court has said that a court cannot exercise jurisdiction not conferred on it by law. Willaims et. al. vs. Fred Smith et. al., 30 LLR 633, 650, (1983). Since the debt court is without jurisdiction to decide property matter, it could not allow the petitioners to intervene, especially where the co-respondent had not been party to the land dispute by and between the petitioners and the Corneh/Lartey people. This court has said that the rights of no one shall be concluded by a judgment rendered in a suit to which he is not a party, and a party cannot be bound by a judgment without being allowed its day in court. Boye vs. Nelson, 27 1 LLR 174, 175m (1978); Youkon vs. Tulay, 33 LLR 227, 233, (1985)….

In the matter before us, interstate estate of the late Murphy Veh John has requested the debt court judge to allow it to intervene in a matter involving a debt action by and between the intestate estate of the late John Smith and Elias Antoine based on a lease agreement. The Murphy estate alleges that the subject property for which a debt action was instituted against Elias Antoine was portion of the property of the 25 acres of the Murphy estate which was finally adjudicated by the Supreme Court in 1988 and 1989, when an action for cancellation of deed was instituted in court by and between the Murphy estate and the Alhaji Varmuyah Corneh et. al. That based upon an execution of possession by the court which was carried out by a survey, portion of the Smith property fell within the 25 acres of the Murphy's estate. After having been placed in possession, the petitioners approached the defendant below and entered a lease agreement within him for the said property. The defendant having been paying rent to the petitioners' intestate estate over the years, the petitioners feel that it is only right that they intervene so that their interest be adequately protected.

We believe that the intervention sought by the petitioners falls under Section 5.62 of our 1 LCLR in which case it is stated that the judge in exercising his discretion to allow intervention shall consider whether the intervention shall prejudice the adjudication of the rights of the original parties, and said intervention if denied brings a finality to the case, in which case the intervenors must appeal.

We say that the petitioners should have taken steps to dispossess the co-respondent if the co-respondent's intestate estate was found to be part and parcel of petitioner's 25 acres. In such case, the [co-

respondent] would have had an opportunity to defend rights to its property which defense may have been separate and distinct from that of the Konneh/Larteys in the 1988 and 1989 cases; especially when the co-respondent grantor was not the Konneh/Larteys. The petitioners not having made the co-respondent a party in their action against the Konneh/Larteys, nor filed an action [to] eject the co-respondents from their estate, to allow the petitioners to intervene in a debt action between co-respondent and its tenant would raise new matters of property rights which would not be a fit subject for the jurisdiction of the debt court and such intervention being improper would delay and prejudice the rights of the co-respondent, plaintiff below. Having the debt court decide property rights is clearly out of its subject matter jurisdiction and we must agree with the judge in denying the intervention of the petitioner.

The intervention sought by the petitioners, when denied, brought a finality to the matter and the petitioners should have excepted and announced an appeal. The writ of certiorari being a petition to review an interlocutory ruling and the ruling of the judge being final, we must deny the writ.

In face of the opinion stated above, we hereby quash the alternative writ, deny the peremptory writ of certiorari, upholding the decision of the debt court judge denying petitioners right to intervene. The Clerk of this court is hereby ordered to send a mandate to the court below, ordering the respondent judge to resume jurisdiction and give effect to this ruling. AND IT IS HEREBY SO ORDERED.

GIVEN UNDER MY HAND AND THE SEAL OF THIS HONORABLE COURT, THIS__DAY OF JANAURY, A.D. 2009.JAMESETTA HOWARD WOLOKOLIE ASSOCIATE JUSTICE PRESIDING IN CHAMBERS..” *Italics supplied*

It is worth noting in passing that the informants who are privies to the Intestate Estate of Chief Murphey and Vey John filed another motion to intervene contending that they are beneficiaries under an assignment of a lease agreement by and between the said estate and Elias Antoine. The co-respondent judge granted the informants’ motion to intervene in the face of the Justice in Chambers’ ruling *supra.* We are at a loss as to the legal basis for the co-respondent judge’s latter ruling to grant the informants’ motion to intervene. This Court has determined that privity in its broadest sense is a mutual or successive relationship to the same right of property, or such an identification of interest of one person with another as to represent the same legal right; derivative interest founded on or growing out of contract, connection or bond of union between parties, mutuality of interest. Thus, the executor is in privity with the testator; the heir with the ancestor, the assignee with the assignor, the donee with the donor, and the lessee with the lessor. *Mahmoud v. Pearson et al 37LLR 3 (1992)* This Court says that the granting of the informants’ motion to intervene in the face of the Justice in Chambers’ ruling

which was not appealed by the informants' privy was an error. The informants were bind by the ruling of our colleague.

Notwithstanding the above, the single issue that disposes of this case is: whether the bill of information will lie?

Although this bill of information grows out of an action of debt filed before the Debt Court for Montserrado County, the averments therein transcend and raise the underlying issue whether the co-respondents were concluded by the Judgments of the Supreme Court in the Vai Town case *ibid.* To answer this single important issue, we take judicial notice of the parties to the Vai Town case, the ruling of our colleague *supra* and the records of these proceedings. We learn from the records before us that it is undisputed that the co-respondents, heirs of John P. Smith, were neither party to the Vai Town case nor privies to any parties in that case in any forms as listed in *Mahmoud v. Pearson et al supra.*

In her ruling, our colleague went to a great length in addressing the underlying contention and we cannot agree more with her conclusion. *The petitioners (informants' privy) not having made the co-respondent a party in their action against the Konneh/Larteys, nor filed an action [to] eject the co-respondents from their estate, to allow the petitioners to intervene in a debt action between co-respondent and its tenant would raise new matters of property rights which would not be a fit subject for the jurisdiction of the debt court and such intervention being improper would delay and prejudice the rights of the co-respondent, plaintiff below. Having the debt court decide property rights is clearly out of its subject matter jurisdiction and we must agree with the judge in denying the intervention of the petitioner.* We should add that Judge J. Henric Pearson's letter dated January 23, 1990, recited by our colleague in her ruling, was instructive and we also quote the same as follows:

> In view of the above, you are ordered to pay all rents arrears and future rents to the heirs of the Late John P. Smith, Joseph Dunbar, S.B Nagbe and Mr. Toh upon receipt of this order until otherwise ordered by the Supreme Court.

To the mind of this Court, the above quoted order of the trial court in 1990 was a proper subject for a bill of information by the Intestate Estate of Chief Murphey and Vey John to seek the Supreme Court's clarification on the question whether its mandate of 1989 affected the co-respondents as listed in the court's order. But, to wait until after twenty years, that is from 1989 up to 2010, when the co-

respondents pursued an action of debt against their tenant up to and including the entry of final judgment, and having participated in the trial of the debt action, the informants are barred from asserting the doctrine of waiver and laches against the co-respondents, that the latter waited supinely and failed to assert their claim over the 4.75 acres of land in 1989 when the mandate of the Supreme Court was enforced. To the contrary, the evidence gleaned from the records before this Court reveal that at no time was the mandate of the Supreme Court enforced against the co-respondents. This allegation of the informants that the mandate of the Supreme Court in 1989 was enforced against the co-respondents to their assent, *sub silentio,* is not only unsupported by records, but it is grossly misleading.

This Court has long pronounced and settled on the common law principle of equity which states that one who comes to equity, comes with clean hands. So, we are not persuaded by the informants' contention that the action of debt filed by the co-respondents for unpaid rents in 2007 growing out of a 1957 lease agreement was based on antiquated demands; therefore, the co-respondents assented when they remained silent at the time the mandate of the Supreme Court was enforced.

Now proceeding to address the main issue whether the bill of information will lie, we shall now explore the province of the bill of information. Rule IV, Part 12 of the Revised Rules of the Supreme Court is clear, concise and direct as follows:

> "(a) A Bill of Information will lie to prevent a Judge or any Judicial Officer who attempts to execute the mandate of the Supreme Court in an improper manner from doing so, with the Judgment and/or Mandate of the Supreme Court.
>
> (b) A Bill of Information will also lie to prevent any one whomsoever from interfering with the Judgment and/or Mandate of the Supreme Court…
>
> (e) Any counsellor who files a Bill of Information before this Court assigning reasons therefor other than the reason expressly prescribed by these Rules shall be penalized by the imposition of a fine, suspension or disbarment."

Pursuant to the above quoted rule, this Supreme Court has enunciated in a long line of opinions including the *Intestate Estate of the late Sarah Sirleaf v. El-Bim et al, Supreme Court Opinion, March Term, A.D. 2013* that in order for a bill of information to lie, the matter forming the basis of the information must have been pending before the Supreme Court, or decided by it; there must be an act to usurp the province of the Court; there must exist some irregularities or obstruction in the

execution of the Supreme Court's mandate or there must have been a refusal to carry out the Supreme Court's mandate. It should be noted that prior to the Supreme Court's opinion in 2013, The Court had expanded the office of a bill of information in the case *the Liberia Petroleum Refining Company v. Tulay, 36 LLR 467 (1999)* case. Also In 2012, the Court further articulated on the expanded office of the bill of information that a justice presiding in Chambers of the Supreme Court may be properly summoned before the Court *en banc* for the purpose of appellate review of the action taken by the justice allegedly prejudicial to the interest of a party. Affirming its uncompromising position on the adherence to the due process right of a party and the appellate authority of the Supreme Court under the 1986 Constitution, this Court pronounced an exception to the general rule as set out in preceding discussions in *Bassan H. Jawalry, Executor of the Testate Estate of the late Milad R. Hage v. His Honor, Kabineh M. Ja'neh et al, Supreme Court Opinion, March Term, A.D. 2012.* The exception to the general rule is that a party may sue a bill of information before the Full Bench of the Supreme Court against the mandate or decision of a Justice in Chambers where the party's right to due process was not accorded, or where the mandate or decision of the Justice in Chambers deprives the Supreme Court of its authority as the final arbiter of all cases in the land – the sacrosanct of constitutional due process and appeal.

We are appalled to note that the facts and circumstances of the instant case failed to support any of the principles of a bill of information as outlined hereinabove. The informants, through their counsel, disingenuously elected to flagrantly disregard the order of Judge J. Henric Pearson dated January 23, 1990 as to the manner of the execution of the Supreme Court's mandate. The informants also ignored the caution of our colleague, Madam Justice Jamesetta H. Wolokolie, in the 2009 ruling when she opined that: "to allow the petitioners to intervene in a debt action between co-respondent and its tenant would raise new matters of property rights which would not be a fit subject for the jurisdiction of the debt court and such intervention being improper would delay and prejudice the rights of the co-respondent, the plaintiff below". It must be noted that the informants' bill of information was filed in 2010 in clear breach of the trial judge's order in 1990 and the ruling of our colleague in 2009. It goes without saying that the delay that has occasioned the determination of this bill of information clearly prejudiced the rights of the co-respondents, heirs of the late John P. Smith.

As though the gross disregard and neglect demonstrated by the informants respecting the manner of execution of the Supreme Court's mandate in 1990 and further amplification of said disregard by ignoring the warning as contained in our colleague's ruling in 2009 was not sufficient, the informants have urged this Court to depart from its settled principle on the adequacy of appeal upon the entry of final judgment followed by an announcement of appeal by an aggrieved party. This Court has determined that where a party, for good reason, complained of not having had the opportunity to announce an appeal, the only substitute available for an appeal is the writ of error. *Bah et al v. Henries et al 41 LLR 87 (2002)*. In other instances, the Court has articulated that a remedial writ, for example a petition for a writ of prohibition, will not lie where adequate remedy lies in appeal. *LIMINCO v. Judge Paye et al, Supreme Court Opinion, October Term, A.D. 2016, Sawan v. Cooper et al, 39 LLR 598 (1999), Chariff Pharmacy v. Pharmacy Board of Liberia et al, 37 LLR 135 (1993).* In further addressing the various remedial processes available to a party litigant for a temporary relief from an order, ruling or judgment of an inferior tribunal that materially prejudiced that party's rights, the Supreme Court has also held that one remedial writ cannot obtain the object of or substitute for another. *Liberia Fisheries Incorporated v. Badio et al, 36 LLR 277 (1989)*

The dissection of the facts and circumstances of the instant case pointedly demonstrates the informants' machination to mislead this Court by departing from these settled laws in this jurisdiction. The records show that the informants participated in the trial of the debt action before the co-respondent judge who entered final judgment. Although, the informants were absent at the rendition of the final judgment, the trial court appointed Attorney Sayma Serenius Cephus who received the final judgment, announced appeal therefrom and have same delivered to the informants. The informants took no step to perfect their appeal. Surprisingly, when a question was posed to the informants' counsel during the hearing of these information proceedings, whether he participated in a trial growing out of which a final judgment was entered and he failed to perfect an appeal from the said final judgment of the trial court, he answered in the affirmative and added that because the informants believe that they had other option, that is, the filing of this bill of information. Not only do we disagree with the informants' misguided answer, but note that the prosecution of such unmeritorious information proceeding before the highest court of the land was contemplated by the framers of the Revised Rules of

the Supreme Court who therefore prescribed various penalties for such misconduct under Rule IV, Part 12 (e) *supra*.

Considering the informants' egregious departure and violation of the settled laws in this jurisdiction in the matter of a bill of information, this Court holds that the bill of information will not lie. Furthermore, the Court is of the considered opinion that the counsels who aided and abetted the informants in flouting the office of the bill of information are punishable to a fine. Therefore, Counsellors C. Alexander B. Zoe and J. Bima Lansanah are each fined US$300.00 (Three Hundred United States Dollars) to be paid into government's coffer within 72 hours upon the delivery of this Opinion and official flag receipt filed with the Marshall of this Court.

WHEREFORE and in view of the foregoing, the bill of information will not lie. The alternative writ issued is ordered quashed and vacated and peremptory writ is denied. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over the case and give effect to the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor J. Bima Lansanah appeared for the informants. Counsellor Zaiye B. Dehkee of Pierre Twen and Associates appeared for respondents.