

ordered him to allow the parties to returned to *status quo ante* and grant Varcom Used Car its day in court.

The records show that on May 17, 2013, His Honor Nelson B. Chinneh, Stipendiary Magistrate of the Monrovia City Court issued another writ of possession in favor of Joseph and Martha Kangar, ordering that Varcom Used Car be evicted from the premises.

On June 5, 2013, Ophelia Hoff-Saytumah filed a motion for relief from judgment at the Monrovia City Magistrate Court on the ground that she is the bona fide owner of the subject property who leased the said property to Varcom Used Car Company; that she inherited the property from her parents, Henry D. Hoff and Carnetta O. Hoff, both deceased; that a court case ensued between the grantors of her parents (the Wilson Family) and another family (the Dennis Family) which travelled to the Supreme Court and the Dennis Family finally emerged as the rightful owners of the disputed property in keeping with the Supreme Court's Opinion in the case: *Frances C. Wilson vs. John L. Dennis*, as reported in *23LLR, 263 (1974)*. Ophelia Hoff-Saytumah also informed the Magistrate Court that following the Supreme Court's final Judgment she repurchased the property, subject of dispute from the Dennis Family more than forty years ago and had been in actual physical possession thereof up to and including the date of the filing of the motion for relief from judgment. The motion for relief from judgment was heard and granted by Stipendiary Magistrate Nelson B. Chinneh, who ordered Ophelia Hoff-Saytumah and her lessee, Varcom Used Car Company, repossessed.

On June 13, 2013, Praise Lawal, another claimant to the same property, filed a complaint against Stipendiary Magistrate Chinneh at the Civil Law Court, Sixth Judicial Circuit, Montserrado County for issuing the writ of possession in favor of Ophelia Hoff-Saytumah. Our Colleague, Mr. Justice Yussif D. Kaba, then Resident Circuit Judge, Sixth Judicial Circuit, Montserrado County, heard the complaint and ruled remanding the case to the Monrovia City Magisterial Court. He directed that the parties, that is to say, Ophelia Hoff-Saytumah and Praise Lawal be allowed to intervene in the matter.

When the matter was returned to the Monrovia City Magisterial Court, Ophelia Hoff-Saytumah filed a motion to intervene along with a motion to dismiss the action of summary proceedings to recover possession of real property. The motion to dismiss was heard and on November 17, 2016, His Honor J. Kennedy Peabody, Stipendiary Magistrate of the Monrovia City Court who succeeded Stipendiary Magistrate Nelson B. Chinneh, ruled that Ophelia Hoff-

Saytumah having presented title deed to the subject property, the action of summary proceedings to recover possession of real property could no longer hold.

Following the dismissal of the action of summary proceeding to recover possession of real property, Praise Lawal, who is currently occupying the subject property, refused to vacate the said property. This prompted Ophelia Hoff- Saytumah to file a bill of information with the Monrovia City Magisterial Court on December 2, 2016, which she withdrew and amended. The amended bill of information mainly contended that the action of summary proceedings to recover possession of real property filed by Joseph and Martha Kangar in 2008, having been dismissed, the parties were to return to *status quo ante*. That is to say that the parties were to return to their original position prior to the institution of the action of summary proceedings to recover possession of real property in March 2008 at which time Varcom Used Cars Company was in possession of the subject property based on the lease agreement it had with Ophelia Hoff- Saytumah .

On December 20, 2017 Stipendiary Magistrate Peabody ruled on the bill of information as follow:

“This Court says that prior to 2008, it was [the] defendant, the management of Varcom Used Cars that occupied the subject property, and the action of summary proceedings to recover possession of real property was filed against the management of Varcom Use Cars. Law is reasoning, that is to say, if Varcom Use Car has previously occupied the subject property and there were parties subsequently during trial who intervened and said case was dismissed, in order to have the parties returned to status quo ante, it is only legally proper that the party who was in possession before the Writ was issued remains in possession while they proceed to the Sixth Judicial Circuit of the Civil Law Court, where the fact finders will determine the true owner of the subject property by virtue of the fact that the both intervenors presented titles deeds. Hence, it is the holding of this Court that the Management of Varcom Used Cars, who was placed on the property by the intervenor, Ophelia Hoff-Saytumah, remains in possession of the property. Accordingly, the Clerk of this Court is therefore ordered to prepare all necessary documents, place same in the hands of the ministerial officer of the Court, since the Varcom Used Cars was previously evicted by the Court to have said Varcom Used Cars and [Ophelia Hoff-Saytumah] repossessed. AND SO ORDEREED.”

The court appointed counsel for Praise Lawal noted exception to the above quoted ruling and announced an appeal to the Sixth Judicial Circuit, Civil Law Court.

On May 18, 2018, His Honor Scheaplor R. Dunbar, Assigned Circuit Judge, Civil law Court Law “B,” after listening to arguments pro et con in the case ruled as follows:

“...the certified records showed that on November 17, 2016, the magisterial court heard appellee’s motion to dismiss and granted same, dismissing the summary ejectment action filed by Joseph and Martha Kangar against the Management of VARCOM used Cars Company. In that ruling, the magistrate advised the parties to proceed to the rightful forum where the facts finders will determine the rightful owner of the property. Upon the dismissal of the action, to which ruling both parties did not except, there was nothing left before the court in respect of the dispute between the parties over the parcel of land in question.

This court therefore wonders as to what was the legal basis of even entertaining and granting appellee’s bill of information on December 20, 2017, more than one (1) year after the Magisterial court had dismissed the main summary ejectment action and advise the parties to proceed to the rightful forum to determine the ownership of the disputed property.

It is the considered opinion of this court that no action was pending before the magisterial court on December 20, 2017 – over one (1) year after the court had dismissed the summary ejectment action because title was in issue – to warrant the hearing and granting of a bill of information growing out of the dismissed action. It is settled law that the court must consider primary its jurisdiction over any issue brought before it, since it is bound to take notice of the limit of its authority. *Ahmar vs. Gbortoe, 42 LLR 117 (2004)*. It is also settled law that a court must recognize a want of jurisdiction over the subject matter of a case, even if no objection is made by any of the parties. *The Intestate Estate of the late Chief Murphy-Vey John vs. The Intestate Estate of the late Bendu Kaidij, 41 LLR 277 (2002)*.

We hold that stipendiary magistrate had no authority on December 20, 2017 to entertain and grant a bill of information growing out of a dismissed and non-existent summary ejectment action. Where a court lacks jurisdiction over the subject matter of a case, the judgment rendered therein is void regardless of the consent of the parties. *Rogers vs. Universal Insurance Company, 40 LLR 609 (2001)*.

Wherefore, and in view of the reasons detailed above, the magisterial court’s ruling of December 20, 2017, granting appellee’s bill of information is reversed and set aside. Cost disallowed. And it is hereby so ordered.

Given under my hands and seal of court this 18th day of
May A.D. 2018
Scheaplor R. Dunbar
Assigned Circuit Judge
Civil Law Court “B”

Ophelia Hoff-Saytumah (appellant), by and through her counsel, noted exception to the ruling entered by Judge Dunbar and announced an appeal to the Supreme Court of Liberia on a five - count bill of exceptions which we quote below:

“Appellant’s Bill of Exceptions

And now comes Ophelia Hoff Saytumah, appellant in the above cause of action, who begs leave of your honor to approve her bill of exceptions... and showeth the following reasons:

1. That your Honor committed serious reversible error when your Honor ignored the principle of law which states “whenever an action of summary proceeding to recover possession of real property is instituted, and the question of title is put in issue, the case is taken from the category of summary proceedings to that of an action of ejectment”.
2. That your Honor committed serious reversible error when your Honor ignored and denied the practice in this jurisdiction that where an action of summary proceeding to recover possession of real property is dismissed because of title in issue, the parties are returned to status quo ante and that the defendant remains in possession if he/she is not ousted, or if he/she is ousted, is later repossessed if the court determines that title is in issue.
3. That your Honor committed serious reversible error when your Honor ignored that the writ of summons of March 10, 2008, which placed plaintiff/appellant in possession of the subject property was dismissed on November 17, 2016, by His Honor J. Kennedy Peabody, Stipendiary Magistrate of the Monrovia City Court, meaning that the parties return[ed] to their original positions, prior to the issuance of the writ of summons of March 10, 2008.
4. That your Honor committed serious reversible error when your Honor ignored and denied His Honor J. Kennedy Peabody’s ruling which states, “in order to have the parties return to status quo ante, it is only proper that the party who was in possession before the writ was issued, remains in possession while they proceed to the six judicial circuit court, where the fact finders will determine the true owner of the subject property. Hence, it is the holding of this court that the Management of VARCOM used cars, who was placed on the property by the intervener, Ophelia Hoff Saytumah, remains in possession of the property”
5. That your Honor committed serious reversible error when your Honor ignored and denied the ruling of the stipendiary Magistrate stating that the Magistrate Court lacks jurisdiction over the subject matter and that the judgment therefore rendered is void regardless of the consent of the parties, not realizing the fact that this case grows out of an action of summary proceeding to recover possession of real property.

Wherefore and in view of the foregoing, appellant presents this bill of exception for your Honor’s approval in order to have same filed and complete the final stage of the appeal process.

Respectfully submitted
Appellee by and thru her counsel:
DEAN & ASSOCIATES, Inc.

Necular Y. Edwards
COUNSELLOR-AT-LAW”

After carefully perusing the entire records in this case and listened to the arguments presented by the counsels representing the parties, we have determined that the lone issue we must consider in the determination of this case is - where an action for summary proceedings to recover possession of real property is dismissed for reason that the two parties to the action hold title to the disputed property, who remains in possession of the property

while the title suit of ejectment is pursued? In other words and within the context of this case, the question is, can the party who instituted an action of summary proceedings to recover possession of real property and who was not in physical possession of the property be placed in possession thereof while the case is on trial in an action of ejectment before the Circuit Court?

Before addressing the single issue determinative of this case, let us say, from the onset, that under Liberian law, upon timely application, any party shall be allowed to intervene in an action a) when a statute of this Republic confers an unconditional right to intervene; or b) when the representation of that party's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or c) when the party is so situated as to be adversely affected by a distribution or other disposition of the court or of an officer thereof. Reliance: *Section 5.61, 1LCL Revised, Civil Procedure Law*. No doubt, any decision from the magistrate court regarding or affecting the ownership of the disputed property in this case would have affected Ophelia Hoff Saytumah who claims that the said property belongs to her. Therefore, the ruling of Stipendiary Peabody permitting her to intervene in the case was proper and in keeping with law.

Furthermore, it is the law in this jurisdiction that summary proceedings to recover possession of real property will not lie where both parties in a real property case claim title. Instead of summary proceedings to recover possession of real property, our statute provides that any person who is rightfully entitled to the possession of a real property may bring an action of ejectment against any person who wrongfully withholds possession thereof under the color of title. Such action may be brought when title to a real property as well as the right to possession thereof is disputed. Reliance: *Section 62.1, 1 LCL Revised, Civil Procedure Law*.

In the instant case, the appellees filed an action of summary proceedings to recover possession of real property against Varcom Used Cars who were tenants of Ophelia Hoff-Saytumah. Ophelia Hoff-Saytumah subsequently filed a motion to dismiss the action of summary proceedings to recover possession of real property on the ground that she has title to the disputed property. Here again we hold that Stipendiary His Honor J. Kennedy Peabody, acted properly when he ruled granting the motion to dismiss.

The crucial and deciding question is - with the dismissal of the action of summary proceedings to recover possession of real property, which party should be in the possession of the property pending the outcome of the action of ejectment. We hold that given the facts and circumstance of this case, the Management of Varcom Used Cars, who was placed on the property by the intervener, Ophelia Hoff-Saytumah, and who was in physical possession of

the premises before the institution of the action of summary proceedings to recover possession of real property should remain in possession of the property. It is untenable and illogical in law for the appellees, whose action seeking to evict and remove the appellant from the property was denied and dismissed, to be placed in possession of the premises.

In the ruling entered by Stipendiary Peabody on the bill of information filed by Ophelia Hoff-Saymtumah, he specifically held that the management of Varcom Used Cars, who was placed on the property by the intervenor, Ophelia Hoff-Saytumah, should remain in possession of the property. But Judge Scheaplör R. Dunbar presiding over the Civil Law Court disagreed and held the position that Stipendiary Peabody had no authority to entertain and grant a bill of information growing out of a dismissed and non-existing action of summary proceedings to recover possession of real property. He also held that after the dismissal of the action of summary proceedings to recover possession of real property filed by the appellees, nothing remained pending before the magistrate court to warrant the granting of the bill of information wherein the management of Varcom Use Cars was ordered placed in possession of the premises, subject of these proceedings. He further held that where a court lacks jurisdiction over the subject matter of a case, the judgment rendered therein is void regardless of the consent of the parties and relied on the case: *Rogers vs. Universal Insurance Company*, 40 LLR 609 (2001).

We disagree. In our opinion, while it is true that the matter of summary proceedings to recover possession of real property had been dismissed, the magistrate court was not precluded from entertaining a bill of information which alleged that the decision of the magistrate court in respect of who remains on the premises was not carried out. Courts of law are duly authorized to enforce their own judgments, and where it has been established, as in the case before us, that the decision of the magistrate court was not carried out, it was within the authority of the magistrate court to entertain the bill of information and rule thereon.

We hold that Judge Dunbar's reliance on the *Rogers vs. Universal Insurance Company* is misplaced, as the facts in that case are not analogous to the facts in this case. In the Roger's case, appellant Rogers, Jr. was knocked down and injured by a vehicle owned by the insured of the appellee. The Ministry of Transport conducted an investigation into the case and made monetary award to Rogers. The appellee contested the jurisdiction of the Ministry of Transport over the case but this was denied by the Commissioner of Insurance. The appellee then filed a petition for the writ of probation which was granted by the Justice in Chambers. On appeal to the Supreme Court, the Court affirmed the decision of the Chambers Justice. The Court

held that as the case, a claim for damages, was a proper subject for the Circuit Court, the Commissioner of Insurance lacked jurisdiction over the subject matter. The Supreme Court opined that the jurisdiction of a court or administrative agency is conferred by law and not by the consent of the parties. We must say that quite notably, there is no issue of refusal by a party to obey a court's decision in the *Rogers* case as we have in this case.

WHEREFORE and in view of the foregoing, the ruling of the Judge of the Sixth Judicial Circuit, Civil Law Court, Montserrado, County is reversed, and the ruling of the Stipendiary Magistrate of the Monrovia City Court is affirmed.

The Clerk of this Court is hereby ordered to send a mandate to the Sixth Judicial Circuit, Civil Law Court, to send a mandate to the Monrovia City Magisterial Court to resume jurisdiction over this case and enforce its judgment, ousting, evicting and removing the appellees from the disputed property and placing the appellant in possession thereof. Costs are ruled against the appellees. IT IS HEREBY SO ORDER.

Judgment reversed.

Counsellor Arthur T. Johnson appeared for the appellees.
Counsellor Necular Y. Edwards appeared for the appellant.