

E. G. SALEEBY, Informant, *v.* **KAMIL AJAMI** and **ALI and HUSSEIN AJAMI**, and
HIS HONOUR FREDERICK K. TULAY, Resident Judge, Sixth Judicial Circuit,
Montserrado County, Monrovia, Respondents.

INFORMATION PROCEEDINGS.

Heard: April 10, 1985. Decided: June 21, 1985.

1. Information will not lie where a party who complains that a judge has acted contrary to the mandate of the Supreme Court proceeds first by a motion to vacate the decision of the trial judge. The remedy available to a party in such a case is an appeal from the ruling on the motion and not to proceed by information to the Supreme Court.
2. It is the duty of a party who seeks execution against another party to prove that the party against whom execution is sought is the party against whom the main suit was brought.
3. The ruling on a motion to vacate an execution is a final judgment in all aspects.
4. Every person against whom a final judgment is rendered shall have the right to appeal from the judgment of the court, except in the case of a judgment rendered by the Supreme Court.

Informant, in whose favor a verdict was returned after an *ex parte* hearing and a judgment rendered thereon, secured execution of the judgment on one Ali Kamal Ajami who claimed that he was not any of the defendants in the ejection proceedings. The defendants in the ejection case had petitioned the Supreme Court for a writ of error, claiming that they had been denied their day in court since they had not been given the opportunity to be present at the rendition of the court judgment and to appeal therefrom. The petition was heard and denied by the Justice in Chambers. On appeal, the full Bench of the Supreme Court reversed the Chambers Justice ruling, ordered the writ issued, and directed the trial court to allow the plaintiffs-in-error to perfect their appeal *nunc pro tunc*. When plaintiffs-in-error failed to perfect their appeal, the Supreme Court, on the motion of the defendant-in-error/appellee, dismissed the appeal and ordered enforcement of its judgment by the lower court. It was this execution, issued in obedience to the Supreme Court's mandate and in enforcement of the judgment, that was served on Ali Kamal Ajami.

In response to the service on him of the execution, informant filed a motion to vacate,

stating as the basis therefor that he was not a party to the ejectment suit. The trial court, being satisfied that the informant was not a party to the ejectment suit, vacated the writ of execution against the informant. Plaintiff thereupon excepted to the ruling of the judge and proceeded to the Supreme Court for a review thereof by way of information, claiming that the trial judge had acted contrary to the mandate of the Supreme Court when he entertained the motion to vacate.

The Supreme Court rejected the arguments of the informant, holding that the contention raised in the information should have been raised in the resistance to the motion to vacate; and, that in any case, if the informant felt at the time that the trial judge was acting contrary to the mandate of the Supreme Court in entertaining the motion to vacate, he should have, at that juncture, filed a bill of information before the Bench *en banc* rather than file a resistance to the motion and participate in the hearing thereon. The Court further opined that the informant, having resisted the motion and participated in the hearing for the disposition thereof, the only remedy available to him for review of the ruling was an appeal.

Additionally, the Court held that as the informant had not proved that Ali Kamal Ajami was one of the defendants in the ejectment suit, the trial court did not commit any irregularity in granting the motion to vacate. The *information* was therefore *dismissed*.

Stephen B. Dunbar, Sr. appeared for the informant. *M. Fabnbulleb Jones* appeared for the respondents.

MR. JUSTICE SMITH delivered the opinion of the Court.

This case has come before this Court on several prior occasions, but on each such occasion the Court was not given jurisdiction to review the case on its merits.

For the benefit of this opinion, we deem it appropriate to take a retrospective look at the various issues which form the basis of the appellate review sought in this case since its commencement.

The ejectment action out of which the several proceedings have grown was heard *ex parte* on April 7, 1980. Thereafter, the empaneled jury returned a verdict finding for the plaintiff. On April 10, 1980, that is to say, two days before the April 12, 1980 military coup d'etat, the trial court entered judgment confirming the verdict of the empaneled jury.

The defendants, represented by the Peter Amos George Law Firm as counsel, filed a petition for a writ of error on May 26, 1980, before the Chambers of Member M. Kron

Yangbe, of the then People's Supreme Tribunal (now the People's Supreme Court), contending that they were not given their day in court. The alternative writ was issued and served and returns thereto filed. When the proceeding was called for argument, Justice Yangbe discovered that the records in the case before him were incomplete. The Justice thereupon ordered that a mandate be sent to the trial court to send up the complete records in the case. When the records were sent up and the Chief Justice, His Honour Emmanuel N. Gbalazeh, who had succeeded Justice Yangbe in Chambers, heard the error proceeding, denied the petition and quashed the alternative writ. The plaintiffs-in-error excepted to the ruling and appealed to the full bench.

During the October 1982 Term of this Court, when the error proceeding was called for argument, the Court was without a quorum, because Mr. Chief Justice Gbalazeh and Mr. Justice Yangbe respectively had heard the proceeding in Chambers, and Mr. Justice Koroma was the trial judge in the court below prior to his elevation on the Supreme Court Bench. This left only two Justices, in persons of Mr. Justice Morris and Mr. Justice Smith. By reason of this lack of a quorum, His Honour Napoleon B. Thorpe, Resident Circuit Judge for the People's First Judicial Circuit Court, Criminal Assizes "B", Montserrado County, was appointed by the Head of State to serve as *ad hoc* Justice in order to constitute a quorum for the hearing of the case. The Court having obtained a quorum, the error proceeding was heard and the ruling of the Justice in Chambers reversed. Consequently, the trial court was ordered to resume jurisdiction and allow the plaintiffs-in-error to perfect their appeal as announced, *nunc pro tunc*, within ten days from the date of the reading of the Supreme Court's mandate.

The mandate having been read, the defendants/appellants accordingly filed their bill of exceptions within the ten day period allowed them but failed to file an appeal bond and notice of completion of appeal as required by law. The plain-tiff/appellee thereupon moved the appellate Court to dismiss the appeal and order the trial court to resume jurisdiction and enforce its judgment. During the October 1983 Term of this Court, the motion was heard and granted, and, in a judgment without opinion, this Court mandated the trial court to resume jurisdiction and enforce its judgment.

During the December 1983 Term of the trial court, presided over by His Honour Frederick K. Tulay, the mandate of the Supreme Court was read. In enforcing its judgment, as mandated by the Supreme court, the trial court issued out a writ of execution which was served on one Ali Kamel Ajami. Ali Kamel Ajami filed a motion before the trial court to vacate the writ of execution served on him because, he alleged, he was not a party to the

ejectment action; that the party-defendants in the ejectment action were Kamel Ajami, Ali Ajami and Hussein Ajami, and not him (Ali Kamel Ajami). He showed to the court his passport, bearing No. 465189, and his resident permit, bearing No. 17126, to establish that his name was not Kamel Ajami, Ali Ajami or Hussein Ajami, all of whom were defendants in the ejectment suit. The motion was resisted by the plaintiff/appellee, and the court, after hearing arguments *pro et con* entered a ruling thereon, which is hereunder quoted verbatim:

"Movant Ali Kamel Ajami, not being Kamel Ajami, Ali Ajami nor Hussein Ajami who are defendants in the ejectment suit, cannot be and is not arrested by the judgment in that case; hence, no execution can obtain against him. His store house must therefore be opened at once by the sheriff who must go in search of Kamel Ajami, Ali Ajami and Hussein Ajami, the real defendants in the ejectment case. For reliance, see the case *Eitner v. Sanyer*, 26 LLR 247 (1977). So ordered."

To this ruling of the court, plaintiff/appellee noted exception as follows:

"To which ruling counsel for plaintiff/appellee excepts and gives notice that he shall file a bill of information to the Honourable Supreme Court, sitting in its October Term, A. D. 1984, and submits."

Based upon this announcement, which was noted by the court, plaintiff/appellee has brought the case back to this Court on a bill of information, in spite of the fact that the case was decided during the October 1983 Term of this Court and was, therefore, no longer pending before this Court.

In the ruling on the motion to vacate the execution, the presiding judge ordered the sheriff to enforce the judgment against the proper defendants, and so nothing was done contrary to the mandate. However, the bill of information and the returns thereto were argued by counsel on both sides. The question which has yet to be answered is whether a bill of information is the proper remedy for this Court to review the ruling of the trial court?

The only act of the respondent judge complained of in counts six and seven of the bill of information is that it was contrary to the mandate of the Supreme Court for him, the respondent judge, to have entertained the motion to vacate and rule thereon to the effect that the movant was not one of the party-defendants. In our opinion, this contention should have been raised in the four-count resistance to the motion to vacate, but instead plaintiff/appellee denied the averments of the motion count by count, raising only factual issues which he was duty bound to establish at the hearing of the motion. On the other hand, if informant was of the opinion that by the respondent judge entertaining and hearing the motion to vacate the judgment in the ejectment case, he had acted contrary to the

mandate of the Supreme Court. Informant should have, at that juncture, file his bill of information before the Court en banc without filing a resistance to the motion and participating in the hearing. The informant having resisted the motion and participated in the hearing, it is our opinion that his only remedy was to appeal from the ruling against him in order for this Court to review the same, but not to proceed by information. It is our further opinion that informant should have proved to the trial court that Ali Kamel Ajami who sought the execution against him to be vacated was in fact one of the defendants in the ejectment suit. The ruling on the motion to vacate the execution, filed by one who had alleged that he was not a party to the ejectment suit, was a final judgment in all respects as to movant's claim, and any party being dissatisfied with such a ruling had the right of an appeal. Under our appeal statute, every person against whom a final judgment is rendered shall have the right to appeal from the judgment of the, court except from that of the Supreme Court. Rev. Code 1:51.2.

There being no proved irregularities on the part of the respondent judge, or any officer of the trial court for that matter, in the execution of the mandate of this Court, it is our candid opinion that the bill of information should be, and the same is hereby dismissed, with costs against the informant. And it is hereby so ordered.

Information dismissed.

