

**ALFRED SAWAN**, Petitioner, v. **HIS HONOUR VARNEY D. COOPER**,  
Presiding Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, June  
Term, A. D. 1997, the Sheriff and all those working under his authority, the Clerk and  
Asst. Clerk of said Court, and **JENNEH KIAZOE TOLBERT**, thru her husband,  
**JESSE TOLBERT**, thru **MALISSA DARN**, Respondents.

APPEAL FROM RULING OF THE CHAMBERS JUSTICE GRANTING THE  
PETITION FOR ISSUANCE OF A WRIT OF PROHIBITION.

Heard: March 24, 1999. Decided: July 2, 1999.

1. A party cannot be concluded by a judgment without having his a day in court; and prohibition will lie to prohibit the unlawful act of a trial court and to undo what has already been unlawfully done.
2. The object of the letters of administration is to enable the administrator sue on behalf of the estate and defend suits against the estate as well as to administer its affairs, but such Letters of Administration do not constitute a title to the decedent's estate.
3. The writ of prohibition only extends to prohibit an inferior court from assuming jurisdiction not legally vested in it and cannot be sought and granted as a substitute for an appeal.

These proceedings emanate from an action of ejectment instituted by Madam Jenneh Kiazoe-Tolbert, in the Civil Law Court of the Sixth Judicial Circuit, Montserrado county against defendant, Peter Dahn. Defendant failed to file an answer and a default judgment was entered against him. Subsequently, defendant filed a bill of information before the presiding judge, contending that he had not been served with a notice of assignment for the hearing of the case. The information was heard and denied, whereupon defendant along with those listed on the writ of possession, applied to the Chambers Justice for a writ of prohibition. The Chambers Justice denied the prohibition with modification that those whose names were included on the writ of possession without being summoned should be excluded, except defendant who was duly summoned. Defendant took no appeal from this ruling, and was accordingly evicted.

Subsequently, one Alfred Sawan, claiming to be the administrator of the intestate estate of the late Moses Dahn, filed a bill of information and applied for a writ of prohibition, alleging among other things that the final judgment in the ejectment proceedings could not be legally enforced against him and the intestate estate since

neither him nor the intestate estate was brought under the jurisdiction of the court, and that prohibition will lie to halt the enforcement of the judgment, he not having had his day in court. The information was denied and the alternative writ of prohibition granted, to which the respondents excepted and appealed to the Supreme Court *en banc*.

The Supreme Court upon review of the records held that the judge did not deny the petitioner his day in court, and that the alleged irregularities complained of could only be corrected by way of a regular appeal, writ of error or certiorari, and not by writ of prohibition. Accordingly, the Court *reversed* the ruling of the Chambers Justice and *denied* the petition for prohibition without prejudice.

*Pei Edwin Gausi and Roland Dahn* of the Law Chambers of Gausi & Partners appeared for petitioner. *Roger K Martin, Sr.*, of the Martin Law Firm appeared for respondents.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This case is on appeal before this Honourable Court emanating from the ruling made by our distinguished colleague, Mr. Justice John Nathaniel Morris, Associate Justice presiding in Chambers during the October Term, A. D. 1997, granting the petition for a writ of prohibition filed by petitioner Alfred Sawan.

The records reveals that during the June, Term A. D. 1997 of the Civil Law Court, Sixth Judicial Circuit for Montserrado County, an action of ejectment was filed by Madam Jenneh Kiazoe-Tolbert through her husband, Jesse Tolbert, against Mr. Peter Dahn. A judgment of default was entered against Peter Dahn because of his failure to file an answer. When the writ of possession and bill of costs were served on him, he filed a bill of information before the presiding judge contending that he was not served with notice of assignment for the hearing. This information was heard and denied, to which ruling an exception was noted. Subsequently, Peter Dahn and others who were included on the writ of possession fled to the Chambers of this Honourable Court to prohibit the enforcement of the judgment against Peter Dahn and others whose names did not appear on the writ of summons for want of jurisdiction. The Chambers Justice denied the prohibition with modification that those whose names were included on the writ of possession without being summoned should be excluded except defendant Peter Dahn who has duly summoned. No appeal was taken from this ruling and Peter Dahn was finally evicted and Jenneh Kiazoe-Tolbert was placed in possession.

The facts further reveal that subsequently on January 20, 1998 and March 9, 1998, an alternative writ of prohibition and bill of information were filed respectively and served on Malissa Dahn, attorney-in-fact for Jenneh Kiazoe-Tolbert, by Alfred Sawan of the City of Monrovia. During the hearing, both petitions and returns were consolidated. The information was denied and the alternative writ of prohibition granted. The respondents excepted and appealed to this Court *en bane* for a final determination.

The petitioner substantially claims *inter alia* to be the administrator of the intestate estate of Moses Dahn and that the final judgment in the ejectment proceedings could not be legally enforced against him and the intestate estate since neither him nor the intestate estate was brought under the jurisdiction of the court. Therefore he having not had his day in court, prohibition will lie to halt the enforcement against him.

The respondents in traversing petitioner's contention, argued that the petitioner was not a party in the court below and could not proceed to the Supreme Court for the first time on a remedial writ of prohibition, raising issues which the Supreme Court does not exercise original jurisdiction to determine. Furthermore, petitioner cannot speak of not having his day in court because both him and the intestate estate of the late Moses Dahn were not parties/defendants in the action of ejectment. Respondent also denied that the judge proceeded by a wrong rule and in fact the enforcement of possession proceedings in favour of respondent is complete. Consequently, prohibition can not lie to restrain the court below from enforcing its judgment.

The cardinal issues for determination of this case in our review are as follows:

1. Was the trial judge aware of the existence of the intestate estate of the late Moses Dahn when the action of ejectment was filed and final judgment thereof rendered against Peter Dahn, thereby denying the said estate its day in court?
2. Whether or not prohibition will lie under the facts and circumstances in the instance case.

The germane issue before this Court to be resolved is the trial court's jurisdiction over the intestate estate of the late Moses Dahn in the action of ejectment instituted by Jenneh Kiazole-Tolbert by and thru her husband, Jesse Tolbert, against Peter Dahn. This Court is mindful of the Decedents Estate Law that an intestate estate, as in the instant case, can only sue and be sued by and through its administrator or administratrix. This brings us to the question of whether or not the trial judge was

aware of the existence of the intestate estate of the late Moses Dahn when the action of ejectment was filed and final judgment rendered in favor of plaintiff and against Peter Dahn. In other words, did the trial judge deny the aforesaid estate its day in court notwithstanding his awareness of the existence thereof?

A recourse to the records reveals that the plaintiff filed her action of ejectment on May 20, 1997, claiming ownership of a land in Sinkor with three buildings thereon which she alleged Peter Dahn entered into and occupied without any color of right. There was no responsive pleading filed even though Peter Dahn acknowledged the service of a writ of summons. The plaintiff obtained default judgment from the trial court. Peter Dahn, by and through his counsel, Counsellor Roland Dahn, filed a bill of information before the lower court acknowledging the service of the summons but contended that he was not served with the notice of assignment for hearing of this case. The informant requested the trial court to halt the eviction exercise and conduct a proper trial in order to profert evidence of his claim to the aforesaid property. This information was denied and there was no appeal taken. The trial court was never informed by counsel for the defendant in the court below and one of counsels for petitioner herein that Peter Dahn entered and occupied the intestate estate of the late Moses Dahn. It is indeed clear from the records that the trial Judge had no knowledge of the existence of an intestate estate of the late Moses Dahn as of the institution of the ejectment suit and the rendition of his final judgment as well as the denial of the bill of information. It was therefore the obligation of defendant's counsel to have informed the trial judge in his bill of information that the property occupied by Peter Dahn was the intestate estate of the late Moses Dahn, and that the said estate should be excluded from the judgment of the trial court since it was not brought under the jurisdiction of the court. The learned counsel should have appealed from the ruling denying his bill of information for appellate review by this Court with relevant document to substantiate the claim of his client. We note with regret that defendant Peter Dahn, through his counsel, failed to seek a redress from this court.

It is interesting to note herein that the petitioner obtained letters of administration from the Probate Court for Montserrado County to be the administrator of the intestate estate of the late Moses Dahn on September 5, 1997 and a clerk's certificate on September 29, 1997 subsequent to the final judgment of the trial judge on June 24 1997, two months some weeks after rendition of the final judgment and the eviction of Peter Dahn. The alleged intestate estate of the late Moses Dahn has its personal representative as of September 5, 1997 upon his appointment by the probate court after rendition of the final judgment and subsequent eviction and ousting of Peter

Dahn from the subject property. We therefore wonder how could the trial judge acquire jurisdiction over the aforesaid estate without knowledge of its existence and personal representative at the time of trial and rendition of judgment in affording the said estate its day in court. The records in this case are also devoid of any evidence indicating that the intestate estate, by and thru its administrator, ever filed a motion for relief from judgment in the trial court, profering his documentary evidence establishing his claim to the property in question. This Court therefore holds that the judge did not deny the petitioner his day in court under the given facts and circumstances in this case.

As to the issue whether or not prohibition will lie under the facts and circumstances in the instant case, this Court answers this question in the negative. During the argument of this case before us, petitioner strongly argues that he was denied his day in court by the trial court and should therefore be excluded from its judgment. The petitioner cited this Court to its decision in *Boye v. Nelson*, 27 LLR 174 (1978), wherein this Court held that a party cannot be concluded by a judgment without having a day in court and that prohibition will lie to prohibit the unlawful act of a trial court as well as undoing what has already been unlawfully done. In the *Boye* case, one James W. Sims brought an action of ejectment against R. Henri Gibson, grantor of Mokoh Boye, who purchased a land from her grantor in 1967 and built thereon a house in which she lived for several years. Gibson withdrew his answer and a judgment was rendered against him and a writ of possession issued for his eviction from the subject property. The sheriff, however, attempted to evict petitioner Boye from the land which she owned by purchase without being made a party to that suit. She sought the aid of prohibition from this Court profering her title deed in establishing the ownership of the property she acquired from Defendant Gibson. The Chambers Justice granted the writ of prohibition and the respondents appealed. This Court on appeal affirmed the ruling of the Chambers Justice on grounds that petitioner did not have her day in court and could not be bound by the judgment of the trial court.

In the instant case, the petitioner alleges to be administrator of the intestate estate, but he did not file said petition in his representative capacity as administrator of said estate. He also profered a copy of his letters of administration appointing him as the personal representative of the estate without annexing any documentary evidence establishing the ownership of the subject property by the late Moses Dahn. The petitioner cannot only allege the ownership of the property by the decedent whose property he claims to be the administrator thereof without a title deed in the name of the deceased. The object of the letters of administration is to sue and defend suits against the estate as well as to administer its affairs, but such letters of administration

does not constitute a title to the decedent's estate. The facts and circumstances in the *Boye* case and the case at bar are not analogous.

The collateral issue of importance raised and argued by counsel of petitioner before this Court is that the trial judge committed a reversible error when he failed to set aside the verdict of the trial jury, in that, the said jury rendered two verdicts contrary to law which the trial judge confirmed in his judgment. The counsel for respondents strongly argued that prohibition will not lie as a substitute for a regular appeal. This Court observes from the records in this case that Peter Dahn, defendant in the action of ejectment in the trial court, did not take an appeal from the judgment of the trial court as well as the ruling of the Chambers Justice ordering the trial judge to exclude from the writ of possession, those whose names were not included in the writ of summons except Peter Dahn. The petitioner herein basically contends that he was not made a party defendant in the ejectment suit, and should therefore be excluded from its judgment. We are taken aback by petitioner requesting this Court to reverse the judgment of the trial court for confirming the verdict of the jury, and at the same time contending in his petition that he never had his day in court. In other words, petitioner contends that the trial court did not acquire jurisdiction over him. This case is not before us on appeal by Peter Dahn for our review and final determination of the ejectment suit. Hence, we cannot review the final judgment of the trial court in this remedial process. The alleged irregularities committed by the trial court can be reviewed and corrected by this Court on a regular appeal, writ of error or certiorari, for the writ of prohibition only extends to prohibit an inferior court from assuming jurisdiction not legally vested in it and cannot be sought and granted as a substitute for an appeal as in the instant case. *Fazṣah v. National Economy, et. al*, 8 LLR 85, 89-90 (1943). The contention of petitioner is therefore not sustained.

This Court is therefore reluctant to disturb the judgment of the court below and declines to grant a writ of prohibition under the given facts and circumstances in this case. The writ of prohibition is therefore denied without prejudice to the petitioner to establish the decedent's title to the subject property in the court below.

Wherefore and in view of the foregoing, it is the considered opinion of this Court that the ruling of the Chambers Justice is reversed, and the petition is denied without prejudice to the petitioner in seeking redress in the court below. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge therein to resume jurisdiction and enforce its judgment in the ejectment action. Costs are disallowed. And it is hereby so ordered.

*Petition denied*

