

MAMADEE SESAY, Petitioner v. **JUDGE HALL W. BADIO, SR.**, Assigned Circuit Judge, Sixth Judicial Circuit, and **TEDDY ROBERTS et al.**, Respondents.

PEI 1 ION FOR A WRIT OF PROHIBITION TO THE CIRCUIT COURT FOE
THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: October 25, 1993. Decided: February 18, 1994.

1. The only grounds on which a motion for relief from judgment can be granted are those enumerated by statute.
2. The Court will not grant a motion for relief from a final judgment from which no exception was taken or an appeal announced.
3. An exception to a ruling of an inferior court is the correct step to confer jurisdiction on the Supreme Court to pass upon said ruling.
4. A motion to vacate or open a judgment should not be granted unless it is shown that the judgment is unjust, as to the moving party, as it stands, or that he is actually or prospectively injured or prejudiced by it, that he will be benefitted by the granting of the relief asked for and the motion can be granted without material prejudice or injury to the opposing party or prejudice to the intervening rights of third parties.
5. For a motion for relief from judgment to be granted, the moving party must show sufficient reason why he did not exert and enforce his right at the proper time and in the proper manner, and that his own conduct throughout has been free from fraud and any turpitude and, he must free himself from all imputation of negligence or lashes. For the judgment will not be disturbed if it appears to have been entered as a result of his own heedlessness, sloth, or lack of diligence in protecting his own interests.
6. Where the term of an attorney's license has expired, he is barred from practicing as a lawyer until it is renewed.
7. No person shall practice law or appear before any court as an attorney or counsellor without a valid license as a lawyer.
8. Prohibition is the proper remedy not only to prohibit the doing of an unlawful act by a trial court but also for undoing what has already been done without authority.
9. Prohibition does not only restrain acts to be done but also those illegally done.

11. A judge of the trial court has no legal authority to entertain and grant a motion for relief from judgment when none of the statutory grounds for its issuance is shown.

The petitioner and respondents entered into a lease agreement as lessee and lessors respectively, for a period of ten years certain with an optional period of five years. Due to the civil crisis in Monrovia, petitioner temporarily left the premises. Upon his return in 1993, he discovered that respondents had placed occupants in possession of the premises without his knowledge. Consequently, the lessee instituted an action of summary proceedings to recover possession of real property against the occupants. The respondents intervened. After pleadings rested, the trial judge ruled for the petitioner but reduced the amount of special damages prayed for from \$12,000.00 to \$3,275.00. Interestingly, the respondents neither excepted to the ruling nor announce an appeal therefrom but, instead, requested time to vacate the premises, which was granted. Thereafter, respondents filed a motion to stay the execution of the judgment of the trial judge. After hearing arguments, the trial judge granted the motion over the vehement contention of the petitioner that the same should not be granted because an unlicensed lawyer interposed it. Upon petition for a writ of prohibition, properly filed, the Supreme Court reversed the ruling of the trial judge granting the motion for relief from judgment and affirmed his earlier ruling. The Court held that none of the grounds specified by the statute for the granting of relief from judgment had been shown, and that the trial judge had therefore acted erroneously in granting the motion. The Court noted that the prerogative of prohibition was not only to restrain and prohibit the doing of an act, but also to undo acts which had been done illegally done. Hence, it reversed the ruling on the motion for relief from judgment and reinstated the prior judgment of the trial court.

Marcus R. Jones appeared for petitioner. *Theophilus C. Gould* appeared for respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The petitioner leased real property situated on Benson Street, City of Monrovia, from Teddy Roberts and M. C. Roberts for 10 years certain with an optional period of 5 years on terms and conditions to be agreed upon. While this agreement was in force, the civil war broke out and the petitioner left Monrovia to seek refuge. Reportedly, the petitioner returned to Monrovia in July 1992.

The petitioner visited his leased premises and discovered that there were people residing therein, who informed him that they were placed on the premises by Mr. Anthony Roberts. Upon approaching Mr. Anthony Robert, the petitioner was told the occupants were placed in the building in order to prevent it from being looted. The petitioner was further informed that the occupants had expended some money for the repairs of the building, even though there was no receipt produced to confirm said expenditures.

As a result, the petitioner instituted summary proceedings to recover possession of real property against the occupants of the premises in which he claimed both special and general damages for the illegal possession of the premises. The lessors of the petitioner then intervened. After pleadings rested, the judge heard the summary proceedings and finally ruled that:

"Because we are satisfied that oral and written evidence adduced by the plaintiff justify the requests prayed for, and also because we are convinced that the plaintiff herein holds genuine leasehold rights, he is entitled to the possession of the premises.

In view of the foregoing facts and the law controlling, the defendants are hereby ordered evicted from the subject premises. Now plaintiff Sesay requests \$12,000.00 as special damages but has, in fact, clearly established and proven \$3,275.00, which we hereby award him.

We repeat that the defendants and the interveners must be evicted from the premises and the total special damages of \$3,275.00 paid to the plaintiff by the intervenors.

The clerk of this court is hereby ordered to issue a writ of possession to be served by the sheriff directing or commanding that he evicts the defendants and have the plaintiff placed in possession of the property. AND IT IS HEREBY SO ORDERED".

After the final judgment, it was only the plaintiff, the petitioner in this case, who excepted in part. The defendants then made the following request:

"At this stage, counsel for defendants respectfully requests Your Honor and this Honorable Court that due to the prevailing circumstances in the country, most especially the displacement of citizens in the Monrovia area, counsel begs that the defendants be given time, to be specific up to the 10th of January 1993, to find a place so that they can vacate the premises, and submits."

The judge granted the request by saying:

"We are aware of the inconveniences everybody is experiencing, including the vast displacement of citizens and all other attending inconveniences, therefore the request of the defendants is (sic) hereby granted and the eviction exercise is now postponed by this court to January 6, 1993. AND IT IS HEREBY SO ORDERED."

Later, on January 6, 1993, Teddy Roberts, M. C . Roberts and Anthony Roberts filed a motion to stay the execution of the final judgment delivered on the 15th day of December 1992, even though they were the same people who requested the postponement of the execution of the final judgment. This motion was resisted, argued, and granted. Hence this prohibition proceeding.

It is also revealed by the different pleadings in this case that there is a cancellation proceeding instituted by the lessors against the petitioner for the same premises. Besides, there is also an action of debt filed by the lessors against the lessee. The question now is, final judgment having been rendered with no exception or appeal taken therefrom, was the judge correct in entertaining a motion to stay the enforcement of the final judgment in this case?

Our statute provides that the only grounds upon which relief from judgment will be allowed are the following:

"(a) Mistake, inadvertence, surprise, or excusable neglect;

(b) Newly discovered evidence which, if introduced at the trial, would probably have produced a different result and, which, by due diligence could not have been discovered in time to move for a new trial under the provisions of section 26.4 of this title;

(c) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(d) Voidness of the judgment; or

(e) Satisfaction, release, or discharge of the judgment or reversal or vacating of a prior judgment or order on which it is based, or inequity in allowing prospective application of the judgment". Civil Procedure Law, Rev. Code 1: 41.7.

The motion filed in this case has not indicated any of the above stated grounds for relief from the final judgment of December 15, 1992. Yet, the motion was granted and the service of the writ of possession ordered withheld until the clerk of court, who was absent on that day, returns to court and the judge checks the date of the filing of the motion to ascertain whether he was within the pale of law. Counsel for respondents then excepted to the ruling of the judge and gave notice that he would take advantage of the law in such cases made and provided.

This Court has held in no uncertain terms that:

"An exception to a ruling of an inferior court is the correct preliminary step to confer jurisdiction on this Court to pass upon the same." *Stubblefield v. Nassab*, 25 LLR 155-156 (1976).

This Court has also held, as follows:

"Right to Relief A motion to vacate or open a judgment should not be granted unless it is shown that the judgment is unjust, as to the moving party, as it stands, or that he is actually or prospectively injured or prejudiced by it, that he will be benefitted by the granting of the relief asked for, and that the motion can be granted without material injustice or injury to the opposing party or prejudice to the intervening rights of third persons.

Further, to entitle himself to this relief, the moving party must show a sufficient reason why he did not assert and enforce his right at the proper time and in the regular manner, and that his own conduct throughout has been free from fraud or any turpitude, and he must free himself from all imputation of negligence or laches, for the judgment will not be disturbed if it appears to have been entered as a result of his own heedlessness, sloth, or lack of diligence in protecting his own interests." *Ibid*, page 165-166.

To uphold the action of the trial court in refusing to execute its own judgment is tantamount to the interference with the petitioner's constitutional property right.

The question is, was it necessary to bring the matter before us on appeal taken from the granting of the motion for relief from judgment when appeal could have been taken earlier from the final judgment? It is not our intention to complicate our appellate procedure by burdening ourselves with unnecessary extension, when and

where this can be avoided. If an appeal had been announced from the final judgment rendered on the 15th day of December 1992 and the other jurisdictional steps taken within statutory time, there would have been no need for a motion for relief from judgment. Furthermore, no motion can take the place of the announcement of an appeal.

Referable to the contention of the respondents that the lease was not extended to the years 1993, 1994 and 1995 through the payment of \$2,000.00, this would have been decided if an appeal had been taken from the final judgment rendered on the 15th of December 1992. Unfortunately, it cannot be decided in these prohibition proceedings.

With reference to the contention of the petitioner that the motion was filed by an unlicensed lawyer, the respondents maintained that according to the Revenue and Finance Law, there is a three-month grace period for business trade renewal and having been licensed to practice law in 1992, the counsellor was qualified to file the motion on January 6, 1993, even though he did not cite the Revenue and Finance Law, which he relied upon.

This Court has held that "Where the term of an attorney's license has expired he is barred from practicing as a lawyer until it is renewed." *Kamma v. Smith*, 24 LLR 359 (1975). The Judiciary Law also provides:

"No person shall practice law or appear before any court as an attorney or counsellor at law without a valid license as a lawyer." Judiciary Law, Rev. Code 17: 17.9(1).

The contention of the respondents in this case is therefore not conceded.

"Prohibition is a proper remedy, not only to prohibit the doing of an unlawful act by lower court but also, for undoing what has already been unlawfully done under authority of the court." *Boye v. Nelson et al.* 27 LLR 174 (1978). Prohibition not only restrains acts to be done but also those illegally done may be restricted by it. *Ayad v. Dennis*, 23 LLR 165-166 (1974).

The judge of the trial court was without legal authority to entertain and grant a motion for relief from judgment when none of the statutory grounds were shown. Hence, prohibition will lie not only to restrain the enforcement of that judgment but also to order said judgment vacated.

In view of the foregoing, it is the opinion of this Court that the petition for prohibition should be, and that same is hereby granted. The Clerk of this Court is hereby instructed to send a mandate to the court below ordering the judge residing therein to resume jurisdiction over the subject matter and not only restrain the execution of said judgment, but to have it vacated, and the final judgment in the summary proceeding to recover possession of real property ordered executed by the service of the writ of possession as issued, with costs against the respondents. And it is hereby so ordered.

Petition granted with modification