

ALHAJI MOMO SHERIFF, Informant, v. **HIS HONOUR J. HENRIC PEARSON**, Assigned Circuit Judge, December A. D. 1986 Term, Sixth Judicial Circuit, Montserrado County, **HIS HONOUR NAPOLEON B. THORPE**, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, June Term, A. D. 1987, and **SENESSEE CAREW**, Respondents.

INFORMATION PROCEEDINGS.

Heard: July 4, 1988. Decided: July 29, 1988.

1. The returns of the ministerial officers the court is presumed correct.
2. The mere allegation that a party was placed in possession of property only contradicts the contrary evidence but does not overcome it; in order to overcome such evidence, the party making the allegation must file with the pleading a sworn statement in support of the allegation.
3. An application based upon facts in a court of record should be in writing and be supported by an affidavit.
4. Every person is entitled to take full advantage of the law in defense of his right, but the law gives no protection to him who abuses his own rights.
5. He who is silent when he should speak assents.
6. The unreasonable delay by a party in seeking redress in a cause amounts to laches, and a judgment resulting therefrom will not be disturbed, especially where the status quo cannot be restored.

Informant filed a bill of information before the Supreme Court alleging that the trial judge had improperly carried out the mandate of the Supreme Court, in that the trial court had placed the co-respondent in possession of three lots when in fact the co-respondent had sued for only one lot and the Supreme Court judgment had covered only one lot.

The information grew out of an action of ejectment instituted against the informant by Co-respondent Senessee Carew. A verdict was returned in favor of the co-respondent and judgment was rendered thereon against the informant. On appeal, the Supreme Court affirmed the judgment in a judgment without opinion and ordered enforcement thereof by the trial court. When the trial court placed the

co-respondent in possession of the subject premises, informant file a bill of information against the lower court.

The Supreme Court denied the information, holding firstly that the sheriff's returns were presumed correct unless shown to be otherwise. The informant, the Court said, had failed to show that the returns were incorrect, except to merely allege, without proof, that the returns were incorrect, or that in fact the co-respondent had been placed in possession of more land than had been sued for.

The Court held secondly that the informant was guilty of laches, in that he had waited for more than one year and two months after the execution of the Supreme Court mandate to bring the information. The Court observed that during the long period of time, the co-respondent had entered various lease agreements and had received rents for the subject parcel of land. The Court noted that it would be prejudicial to the co-respondent to disturb his possession and the acts taken by him in consonance with the possession because of the delay by the informant in bringing the information. The Court therefore denied the information.

H. Varney G. Sherman and M Fahnbulleh Jones appeared for the informant. James G. Bull and Pearl Bull appeared for the respondents.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

The facts culled from the file of this case reveal that Senessee Carew brought an action of ejectment against Alhaji Momo Larmie Sheriff, informant, in the Sixth Judicial Circuit Court, Montserrado County on December 3, 1981, to have informant ejected from lot No.58 located on Randall Street, Monrovia, Liberia. Co-respondent Carew obtained a verdict in his favor, awarding him title to lot No. 58, as well as general damages in the amount of \$700,000.00.

On March 10, 1986, the trial judge rendered final judgment wherein he affirmed and confirmed the verdict of the empanelled jury. To this judgment, informant excepted and announced an appeal to this Court, sitting in its October Term, 1986.

On January, 23, 1987, this Court rendered a judgment without opinion confirming the trial court's judgment, and mandated the judge presiding therein to resume jurisdiction over the case and to enforce its judgment rendered on March 10, 1986. On February 18, 1987, His Honour J. Henric Pearson, the presiding judge, executed the said mandate of the Supreme Court. Pursuant to the said execution, the presiding

judge, on February 19, 1987, ordered the clerk of the said court to issue a writ of possession for Lot No. 58 and to place the same in the hands of the sheriff for Montserrado County to evict the informant from the subject premises and to place Co-respondent Senessee Carew in possession thereof. The sheriff having served the writ of possession, made his official returns that he had accordingly served the writ of possession, with the aid of a public land surveyor. The records further show that after Co-respondent Carew had been placed in possession of his property, without any objection, and thus being so possessed, he entered into a lease agreements with several tenants for Lot for the aforementioned lot No. 58, and accordingly received rentals from them. Several attempts were thereafter belatedly made by the informant to file a bill of information but all of them were later abandoned.

However, one year and two months after the trial court's execution of the Supreme Court's mandate, informant finally filed this bill of information alleging, among other things, that Judge J. Henric Pearson had failed to properly carry out the Supreme Court's mandate, in that Co-respondent Carew was placed in possession of the M.I.C. Building and premises, namely, lot Nos. 55/56 and lot No. 58, the subject of the mandate.

Informant also alleged that Judge Pearson had failed to include in his orders that the sheriff be assisted by a public land surveyor, as contained in Judge Hall W. Badio's original judgment of March 10, 1986. In his returns, the co-respondent denied all the allegations contained in the bill of information and accused the informant of waiting too long to bring the bill of information. From the above, there are two issues raised by the information and the returns. They are:

1. Whether or not the informant waited too long to bring this information and thereby waived his rights to bring the said action?
2. Whether or not the trial judge correctly executed the mandate of the Supreme Court ordering that court to resume jurisdiction over the case and to enforce its judgment.

We shall discuss these in the reverse order. A perusal of the records shows that the writ of possession mentioned Lot No. 58 situated on Randall Street, Monrovia, Liberia. The writ was apparently acknowledged by the informant or his authorized representative, who affixed his at the bottom of the certified copy of the writ. The sheriff said in his returns that the corespondent was placed in possession of his property with the assistance of a surveyor in keeping with the metes a bounds as

instructed by Judge Badio's judgment. Informant in no way objected and/or excepted to any of these acts in any form or manner.

According to the well settled practice in this jurisdiction, "the returns of ministerial officers of the court are presumed correct. *Perry and Azango v. Ammons*, 16 LLR 268 (1965); *Eitner v. Sawyer*, 26 LLR 247 (1977). Informant's mere allegation that the co-respondent was placed in possession of Lot Nos. 55/56 only contradicts the contrary evidence, but does nothing to overcome it. In order to do so, informant needed to file, along with this information, a sworn statement in support of the said allegation.

This Court has held repeatedly that an application based upon facts in a court of record should be in writing and be supported by an affidavit. *Yah River Logging Corporation v. United Logging Corporation*, 24 LLR 57 (1975). Hence, the presumption arising out of the sheriff's returns to the effect that the writ of possession was properly executed stands.

On the last issue, we say that informant is guilty of laches and waiver, for he supinely and conveniently waited one year and two months, during which time the co-respondent's position had changed substantially by the latter's leasing of lot No. 58 to tenants whose rental payments he had already received before the filing of this information. "Every man is entitled to take full advantage of the law in defense of his right, but if he fails to do so, the law gives no protection to him who abuses his rights." *Pongay v. Obey Korlubah*, 29 LLR 500 (1981).

It has also been held that he who is silent when he should speak assents. *Clarke et al. v. Lewis*, 3 LLR 95 (1929); *Vietor & Huber v. Thatcher*, 2 LLR 80 (1912). The unreasonable delay of a party in seeking redress in a cause amounts to laches, and the judgment rendered under those circumstances will not be disturbed, especially where the status quo cannot be restored.

According to public policy, there must be an end to litigation. This Court has held that to require courts to consider and reconsider cases at the will of litigants would deprive the courts that stability which is necessary in the administration of justice. We believe that to grant this information will be prejudicial to Co-respondent Carew's interest. We therefore dismiss this information on the ground of unjustified delay.

This holding is in consonance with the basic principle of our law that a court may refuse equitable relief to a plaintiff who has unjustifiably delayed bringing an action to

the detriment of a defendant although the period within which the action must be commenced. .. has not yet expired. Civil Procedure Law, Rev. Code 1: 2.4.

Wherefore and in view of the foregoing, the information is hereby denied. The Clerk of this Court is hereby ordered to send a mandate to the lower court to resume jurisdiction over the case and give effect to this judgment. Costs are disallowed. And it is hereby so ordered.

Information denied.