

**JULIANA AND COMFORT TEAH**, Appellants, v. **HIS HONOUR JOSEPH ANDREWS**, Assigned Circuit Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, **HIS HONOUR K. K. ZOGAN**, Associate Magistrate, New Kru Town Magisterial Court, and **SAM A. NETTEY**, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL  
CIRCUIT, MONTSERRADO COUNTY.

Heard: April 19, 1999. Decided: July 1, 1999.

1. One judge cannot review or reverse the ruling or action of another judge of concurrent jurisdiction.
2. Appeals in cases of summary proceedings to recover possession of real property do not serve as a stay to the enforcement of a judgment in the circuit court; however, appeals to the circuit court in cases of summary proceedings against the arbitrary or illegal conduct of magistrates serve as a stay to enforcement of an adverse judgment.
3. The relief sought or the remedy to be accorded in an action to recover possession of real property is the eviction of the defendant, whereas in an action complaining against the illegal or arbitrary act of the magistrate, the solution is to correct the magistrate's erroneous conduct and remand the case with instructions for his further proceedings.
4. It is not sufficient to merely allege that one has title; he must show or produce it to be examined and inspected by the court and traversed by the adverse party.
5. He who alleges the existence of a fact must prove it and must do so by the best available evidence.
7. The law requires that complaints for summary proceedings against illegal or arbitrary conduct of magistrates and Justices of the Peace are cognizable before the circuit court within the appropriate jurisdiction.

Appellees instituted an action of summary proceedings to recover possession of real property in the New Kru Town Magisterial Court against appellants, Juliana and Comfort Teah, and obtained a default judgment in an *ex parte* trial due to the failure of the appellants to appear. Consequently, appellants filed a complaint for summary proceedings against the magistrate in the Civil Law Court of the Sixth Judicial Circuit, who heard the complaint, reversed and set aside the default judgment, and ordered a new trial by the magistrate. When the case resumed at the New Kru Town Magisterial

Court, the defendants filed a motion to dismiss the action or to refuse jurisdiction over this case because title was in issue. The magistrate heard the motion, but before he could rule, the defendants filed a complaint for summary proceedings in Criminal Court B, which upon hearing ordered that the documents be transferred to the Civil Law Court since the defendants were contending that title was involved. The Civil Law Court subsequently dismissed the petition for summary proceedings and ordered the magistrate to resume jurisdiction and enforce the earlier judgment. When the magistrate was in the process of enforcing this mandate, defendants filed another petition for summary proceedings, alleging that the judgment sought to be enforced had earlier been set aside by the Civil Law Court, hence it was non-existent. The Civil Law Court heard and denied the petition, from which ruling, petitioner announced an appeal to the Supreme Court. The appeal was granted but the judge ordered the ruling enforced since the matter grew out of an action of summary proceedings to recover possession of real property. Not satisfied with this ruling, appellants/petitioners petitioned the Chambers Justice for a writ of prohibition.

The Chambers Justice declined to issue the writ, but ordered the Civil Law Court to resume jurisdiction and proceed according to law. Upon receipt of this mandate, the judge of the Civil Law Court again mandated the magistrate to enforce the earlier default judgment. After filing two complaints for summary proceedings in Criminal Court "B" and Criminal Court "C", respectively, without success, appellants filed a bill of information before the Full Bench of the Supreme Court.

The Supreme Court refused to issue the writ and have the information docketed, but rather ordered appellants to proceed and perfect their appeal from the judgment of the Civil Law Court. Upon perfection of their appeal, and after argument by the parties and review of the records, the Supreme Court noted that there was no ruling which could have been enforced as the first default judgment was set aside by Judge Reeves then presiding over the Civil Law Court and that when the retrial was called, a motion to refuse jurisdiction was filed on which the court has yet to rule. Hence the Court held that the order of Justice Henries to have the default judgment enforced after it had already been set aside by Judge Reeves was illegal and void *ab initio* and concluded that it was error and a travesty of justice for Judge Henries to have insisted on enforcing the judgment and evicting the appellants even though appellants had appealed from their respective judgments. Accordingly, the Supreme Court *granted* the appeal, *reversed* the judgment rendered by Judge Henries, *reinstated* the ruling made by Judge Reeves, mandated the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, to resume jurisdiction and to return the case and parties to the New Kru Town Magisterial Court by a mandate, ordering the magistrate to resume

jurisdiction and conduct a new trial commencing from the re-hearing and determination of the defendants' motion to refuse jurisdiction.

*Thompson Jargba* appeared for the appellants. *Cooper W. Kruab and James C.R. Flomo* of the Henries Law Firm appeared for appellee.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

This case is on appeal from a ruling of His Honour Joseph W. Andrews, assigned circuit judge of the Civil Law Court, after a circuitous and roller coaster ride from Criminal Court B twice, to the Civil Law Court, then to Criminal Court C, and then twice to the Chambers Justice of the Supreme Court and back to the Civil Law Court, all at the instance of the appellants and their Counsel.

The facts, briefly stated, are that on January 24, 1998, Mr. Sam Nettey instituted an action of summary proceedings to recover possession of real property, in the New Kru Town Magisterial Court against Juliana and Comfort Teah. After several assignments duly acknowledged by both parties, the case was heard *ex parte* and a judgment by default rendered against defendants on January 28, 1998 by Magistrate Moses Tandanpolie.

A complaint for summary proceedings against Magistrate Tandanpolie was filed in the Civil Law Court before Judge Charlene Reeves, who heard the complaint and granted summary proceedings and reversed and set aside the default judgment. Judge Reeves, in a Mandate dated March 4, 1998, ordered a new trial by the magistrate. The parties conceded this ruling, and returned to the New Kru Town Magisterial Court and the case was regularly assigned for this new trial. By this time, Magistrate Tandanpolie had been succeeded by Magistrate K. Karvin Zogan. At the call of the case for the new trial, the defendants filed a motion praying the magistrate to dismiss the action or to refuse jurisdiction over this case because title was in issue. Magistrate Zogan heard the motion but before he could rule, appellants, through their counsel, Counsellor Thompson Jargba, filed a complaint for summary proceedings in Criminal Court B, then presided over by Resident Judge Timothy Z. Swope, whose term expired without having heard the summary proceedings.

Judge Wynston O. Henries succeeded Judge Swope in Criminal Court B, and heard the summary proceedings, and on April 17, 1998 ordered Magistrate Zogan to transfer the case to the Civil Law Court since the complainants, now appellants, were contending that title was in issue. The magistrate obeyed and transferred the records

to the Civil Law Court on April 21, 1998; by then, Judge Henries was assigned to the June 1998 Term of the Civil Law Court, succeeding Judge Reeves who had presided over the March Term. Judge Henries assigned this case several times but appellants and their counsel failed to appear and the Judge dismissed the summary proceedings on July 15, 1998 and mandated the magistrate to resume jurisdiction and enforce the earlier judgment placing appellee in possession of the subject premises. When this mandate was being enforced, i.e. the appellants were being evicted, appellants again returned to the Civil Law Court with another complaint for summary proceedings against Magistrate Zogan on the ground that the judgment sought to be enforced had earlier been set aside and reversed by Judge Reeves during the March Term, hence non-existent.

Judge Henries, after several assignments, heard and denied the summary proceedings in a ruling dated October 20, 1998. Defendants excepted to the ruling and announced an appeal to the Supreme Court. The appeal was granted but the judge ordered the ruling enforced since the matter grew out of an action of summary proceedings to recover possession of real property in which an appeal does not operate as a stay to enforcement.

Appellants fled to the Chambers of the Supreme Court with a petition praying for a writ of prohibition. The parties were cited to a conference and Mr. Justice Sackor, then presiding in Chambers, declined to issue the writ but verbally ordered the parties to return to the Civil Law Court and have the defendants perfect their appeal. A mandate from Justice Sackor, dated December 16, 1998, was sent down ordering the Civil Law Court to resume jurisdiction and proceed with the case in keeping with law. Defendants had Judge Henries approve their bill of exceptions on October 30, 1998. By this time, Judge Joseph W. Andrews had succeeded Judge Henries for the December Term of the Civil Law Court, and, upon receiving the said mandate, Judge Andrews had same read on February 12, 1999. On February 24, 1999, the case was assigned for ruling on February 26, 1999.

At the call of the case as per assignment, which was duly signed by both parties, Counsellor Thompson Jargba was absent and the court deputized Counsellor James W. Zotaa, Jr. to take the ruling for Counsellor Jargba. Judge Andrews ruled that the ruling made by Judge Henries on October 20, 1998 should be enforced. Defendants filed a bill of information to inform Judge Andrews that the judgment of Magistrate Tandanpolie, dated January 28, 1998, had been set aside and reversed by Judge Reeves on March 4, 1998 and that Judge Henries had erroneously ordered it enforced on October 20, 1998. Judge Andrews heard and denied the information on the

ground that he could not review the act of Judge Henries, and he held Counsellor Jargba in contempt for attempting to have him review his colleague and predecessor's ruling. Judge Andrews ordered the enforcement of the ruling for the eviction of the appellants.

To avoid being evicted, appellants fled back to the Chambers of the Supreme Court with another petition for a writ of prohibition. By this time, Mr. Justice Sackor had been succeeded by Mr. Justice Jangaba as Chambers Justice, and he also declined to issue the writ but had the parties cited to a conference wherein they were verbally told to return to the Civil Law Court and have the defendants proceed with their appeal. A written mandate, dated February 3, 1999 from Justice Jangaba, was sent down to the Civil Law Court ordering Judge Andrews to resume jurisdiction and proceed with the case according to law. In obedience to the mandate, Judge Andrews sent a mandate to the magistrate ordering the enforcement of the judgment.

Counsellor Jargba then filed a complaint for summary proceedings in Criminal Court B, against Magistrate Francis Fayiah who had then succeeded Magistrate Zogan in New Kru Town. Judge Varney Cooper dismissed the summary proceedings and ordered the magistrate to resume jurisdiction. Counsellor Jargba then filed a complaint for summary proceedings against the Magistrate in Criminal Court C, presided over by Judge Yussif Kaba, who likewise heard and dismissed the summary proceedings on March 22, 1999 and held Counsellor Jargba in contempt and ordered the magistrate to resume jurisdiction and enforce the judgment.

At this point, having exhausted all the circuit courts, Counsellor Jargba then filed a bill of information before the Full Bench of the Supreme Court on March 24, 1999. The Chief Justice on March 27, 1999 cited the parties to a conference on March 30, 1999. During the conference, the Chief Justice, like the other Justices before her, declined to issue the writ and have the information docketed, but rather ordered the appellants to proceed and perfect their appeal. Based on the above, the case was duly assigned for argument before the Full Bench and the parties filed their respective briefs. The case was argued on April 19, 1999 and even though the parties raised several issues, many of which are not decisive of this case, there are certain points this Court determines to be relevant to the disposition of this case.

First of all, we observe that this case is on appeal in this Court from a ruling of the Civil Law Court wherein Judge Henries first, then Judge Andrews later, sought to enforce the eviction of the defendants growing out of a default judgment entered by Magistrate Tandanpolie on January 28, 1998. When the said judgment was first

sought to be enforced, the defendants filed summary proceedings against the magistrate before Judge Reeves on February 7, 1998, and Judge Reeves set aside and reversed the magistrate's default judgment and ordered a new trial. None of the parties appealed but rather conceded and returned to the magisterial court for the new trial. It was when the new trial was commenced that defendants moved the court to dismiss the action because title was involved, contending that they too had title to the same property claimed by appellee. The magistrate heard defendants' motion but never ruled until defendants brought him on summary proceedings.

Hence, from the foregoing facts and the records, it is clear that there is or was no ruling which could have been enforced as the first default judgment was set aside by Judge Reeves and when the retrial was called there was the motion to refuse jurisdiction on which the court has yet to rule. Two questions then come to mind: (a) What judgment was it that Judge Henries ordered enforced on October 20, 1998? (b) If it were the default judgment of January 28, 1998, how could he order it enforced when Judge Reeves had earlier set it aside on March 4, 1998? Did he have legal authority to enforce said judgment?

The answer to these questions are obvious. As far as the records show, there was no enforceable judgment which Judge Henries could have enforced as has been discussed above, and his order of October 20, 1998 to have the default judgment enforced after it had already been set aside by Judge Reeves was illegal and void *ab initio*. The age old overused assertion that one judge cannot review or reverse the conduct or action of another judge of concurrent jurisdiction squarely comes into play, and therefore the ruling of Judge Henries is hereby reversed for want of legal authority. *Republic v. Aggrey*, 13 LLR 469 (1960); also *Kiazolu v. Conneh*, 18 LLR 369 (1968).

The second point worthy of comment and raised by appellants in this Court is that there is a difference between an appeal from an adverse ruling in the case of summary proceedings against the illegal or arbitrary act or conduct of a magistrate, as opposed to an appeal from an adverse ruling in an action of summary proceedings to recover possession of real property. Appellants concede that appeals in cases of summary proceedings to recover possession of real property do not serve as a stay to enforcement of a judgment in the circuit court; however, it is appellants' contention that appeals from the circuit court in cases of summary proceedings against the arbitrary or illegal conduct of magistrates definitely serve as a stay to enforcement of an adverse judgment.

This Court wholly agrees and is in complete concurrence with the contention of the appellants, and says therefore that it was error and a travesty of justice for Judge Henries first, and later Judge Andrews, to have insisted on enforcing the judgment and evicting the appellants even though appellants had appealed from their respective judgments.

The facts must be clearly set forth and the case understood in its proper perspective. It must be remembered that the action before the Civil Law Court (and for that matter in all the criminal circuits) was merely an action of summary proceedings complaining against the illegal act of the magistrate in attempting to enforce a ruling set aside by Judge Reeves. There was never an action of summary proceedings to recover possession of real property filed and pending before the circuit court(s). Therefore, an appeal from the circuit court's rulings was not on the parent case of ejecting the appellants but on the illegal enforcement of a reversed judgment. In that event, the appeal should have operated as a stay to the enforcement of the circuit court's rulings. The right of appeal is preserved inviolate. LIB. CONST., Art. 20(b); Civil Procedure Law, Rev. Code 1. 51.2.

The relief sought or the remedy to be accorded in an action to recover possession of real property is the eviction of the defendant, whereas in an action complaining against the illegal or arbitrary act of the magistrate, the solution is to correct the magistrate's erroneous conduct and remand the case with instructions for his further proceeding.

Thus, when the defendants felt offended by Magistrate Tandanpolie's default judgment, they brought a complaint for summary proceedings and Judge Reeves in her wisdom decided to reverse and set it aside and order a new trial. When Judge Henries, in Court B, ordered all the records transferred to the Civil Law Court and, by coincidence, he too was assigned to preside over the Civil Law Court, if he wanted, he could have conducted a trial *de novo* or remand the case for a new trial by the magistrate but he could not order the magistrate to enforce a judgment which had earlier been set aside. And therefore the defendants' appeal from Judge Henries' ruling was not the result of a trial *de novo* conducted by Judge Henries on the merits as regards the eviction of the defendants but was because of his attempt to enforce a ruling which his predecessor had set aside and reversed. The relief to be sought and obtained in these two situations are different.

One other point worthy of discussion relates to the question of raising the issue of title in the magistrate court.

In other words, how should an objection to jurisdiction be raised in the magisterial court where the defendant contends that title is in issue?

In the instant case, when Judge Reeves set aside the January 28, 1998 default judgment on March 4, 1998, the parties returned to the magisterial court and at the call of the case for the new trial, the defendants moved the court to refuse jurisdiction and dismiss the case because they also had title to the same property as did the plaintiff.

During oral arguments before this Court, and also in their brief, appellees contended that from the time the case was called for the new trial and throughout all the various proceedings in all the respective courts, the appellants have never produced any title document or other form of evidence to establish their title, other than their verbal assertion that they had title. Appellees have argued that it is not sufficient to merely allege that one has title; he must show or produce it to be examined and inspected by the Court and traversed by the plaintiff. We are in agreement with the appellees that appellants were under obligation to present copy of their title documents to convince the magistrate that title was in issue. He who alleges the existence of a fact must prove it and must do so by the best available evidence. Civil Procedure Law, Rev. Code 1: 25.5 and 25.6.

Even though the magistrate court cannot try a real property case on the merits where title is contested, yet it is not sufficient for the defendants to merely allege that they have title, but they must show it. The magistrate is not determining the genuineness or validity of the title but just to be able to see that something exists, which would then form the basis for him to forward the matter to the proper forum.

One last point to discuss in this opinion is the circuitous path taken by appellants in getting this case to where it is now. Specifically, reference is made to the several complaints for summary proceedings against the magistrate of the New Kru Town Magisterial Court filed by defendants in Criminal Court B (twice) and the Civil Court (twice).

This conduct of the defendants' counsel is illegal and unethical; it violates the law which requires that complaints for summary proceedings against illegal or arbitrary conduct of magistrates and justices of the peace are cognizable before the circuit court with the appropriate jurisdiction, i.e. In the Civil Law Court for civil matters and in the appropriate division of the First Judicial Circuit in matters of a criminal nature (i.e. criminal Courts A, B, C, and D). Judiciary Law, Rev. Code 17: 7.4 ; also, Rule 30



of the 1999 Amended and Revised Rules of Court Governing Magisterial Courts. The parent case out of which all these summary proceedings arose, was an action to recover possession of real property. Obviously the proper course of conduct was to have complained against the magistrates in the civil law courts and not in any of the criminal courts, as was done.

However during oral arguments before this Bench, appellants' counsel addressed himself to this issue when he said he could not have gone back to the Civil Law Court because it was the Civil Law Court, by and thru Judge Henries and later Judge Andrews, which was insisting that the default judgment which had been set aside by Judge Reeves be enforced anyhow, and therefore defendants felt that had they gone back to the Civil Law Court, they would not have been granted the desired relief in having the magistrate desist from enforcing the judgment.

Earlier in this opinion it was observed that the conduct of counsel for appellants violated the law and has the tendency of bringing confusion among circuit judges. But going below the surface, it is to be noted that the Civil Law Court judges were vehement in their quest to have the judgment enforced even though they were informed that Judge Reeves had set the judgment aside. Ordinarily, Counsellor Jargba would have been liable to discipline or punitive action from this Court but considering the attitude of the judges of the Civil Law Court, we are constrained to look with leniency on his conduct; this is not to sanction and give credence to his methods but the larger interest is that of the parties. This Court, in many of its opinions, has been consistent in holding that matters involving possession of real property should be treated with care.

In view of all that has been said, it is the ruling of this Court that the appeal, being consistent with law, be and the same is hereby granted and the judgment rendered by Judge Henries which was sought to be enforced by Judge Andrews is accordingly reversed for being illegal and the ruling made by Judge Reeves ordered reinstated and enforced. In that connection, the parties are to return to the magisterial court and present whatever evidence of title they may have to enable the magistrate to determine whether title is indeed in dispute and hereafter let the law take its course.

Accordingly, the Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, ordering the judge presiding to resume jurisdiction and return the case and parties to the New Kru Town Magisterial Court by a mandate, ordering the magistrate to resume jurisdiction and conduct a new trial commencing from the re-hearing and determination of the

defendants' motion to refuse jurisdiction, thereby requiring both parties to produce evidence establishing their respective title to the disputed property. Costs are to abide final determination. And it is hereby so ordered.

*Judgment reversed; case remanded*