

In re: HONOURABLE PRINCE QUAYE TOE, Assistant Minister For Internal Security, Ministry of National Security, and **COL. THOMAS K. JOHNSON**, Director of the Inspection Division, Ministry of National Security, Republic of Liberia

CONTEMPT PROCEEDINGS.

Heard: December 8, 1999. Decided: December 17, 1999.

1. The Supreme Court does not have any control over the decision of whether or not a person should be charged and prosecuted for the commission of a criminal offense. It is a power and authority reserved to the Executive Branch of Government.
2. Even though contempt proceeding may arise out of the same facts and circumstances for which a criminal charge might be preferred against the contemnor, the contempt proceeding shall not be placed in abeyance, awaiting the outcome of the criminal case.
3. The Supreme Court shall exercise original jurisdiction for contempt over acts and conduct in violation of the constitutional doctrine of separation of powers and/or in violation of the constitutional immunities reserved for judicial officers in the performance of their duties and powers, and/or in usurpation of the authority and powers of the Supreme Court.
4. A person who engages in acts and conduct in violation of the constitutional doctrine of separation of powers and/or in violation of the constitutional immunities reserved for judicial officers in the performance of their duties and powers, and/or in usurpation of the authority and powers of the Supreme Court to affirm, reverse or modify the judgment of a lower court is guilty of contempt of the judiciary.

The relator in this contempt proceeding is the Associate Magistrate of the Gardnersville Magisterial Court; the contemnors are officials of the Ministry of National Security.

Based on the complaint of a private prosecutor, the defendant was arrested upon the orders of the associate magistrate and because she could not post bail bond, she was ordered imprisoned pending the trial of the case. Apparently, the defendant beared some relationship to the contemnors, because shortly after the imprisonment of the defendant, the contemnors, using their official stationery as commissioned officials of

the Executive Branch of Government, requested the relator to turn the private prosecutor over to them to undergo another investigation. At the time of writing this letter, it also appears that contemnors were unaware that the defendant was in prison.

When contemnors became aware that the defendant was in prison, they, accompanied by several security personnel, converged at the Magisterial Court and placed relator under arrest. When relator invoked his constitutional immunities as a judicial officer and also pleaded the doctrine of separation of power, contemnors became agitated and forcibly arrested and took him away. In the process, they severely beat and brutalized him.

At the contemnors' offices, they tortured the relator as a means of subduing him and forcing him to order the release of the defendant, who was still in prison. The torture was so inhumane and unbearable that relator yielded and signed the order for the release of the defendant. Thereafter, relator was released.

Relator brought this matter to the attention of the Supreme Court and prayed that, as a judicial officer, the Supreme Court should give him relief for the inhumane acts and torture meted out to him by contemnors only because relator was performing his duties as a judicial officer. The Supreme Court therefore summoned contemnors in contempt of the Judiciary of Liberia.

At the hearing, in one voice, contemnors prayed for mercy; in another voice, contemnors contended that they had already been charged for the commission of a criminal offense and so the disposition of the contempt proceeding would be prejudicial to a fair and impartial trial of the criminal charge when that proceeding matures. They therefore prayed the Supreme Court to suspend the entire contempt proceeding pending the trial of the criminal case.

The Supreme Court ruled that it has no control over the decision of whether a person should be charged and prosecuted for the commission of a criminal offense; and in any event, the legal basis of the contempt proceeding, even though growing out of the same facts and circumstances, is different from any criminal charge, which might be preferred against contemnors under the Penal Law. The Supreme Court said that the contemnors were being attached in contempt of the judiciary for acts and conduct in violation of the constitutional provisions, which reserved the judicial powers of the Government exclusively to the Supreme Court and subordinate courts created by statute. The Court observed that the acts of the contemnors were in violation of the doctrine of separation of powers; that the acts had the intention of

subjugating the judiciary to the whims and caprices of officials of the Executive Branch of Government; and that the said acts were in violation of the immunities reserved to judicial officers by the Constitution for acts and conduct in the course of the performance of their judicial duties. The Court noted that as there was no offense in the Penal Law for the acts and conduct of the contemnors and therefore no legal basis for which a criminal charge could be preferred against the contemnors, its action would be different from the legal basis of the contempt proceeding.

The Supreme Court also held that where a person's conduct is calculated to violate the constitutional doctrine of separation of powers with the view of subjugating the judiciary to the whims and caprice of officials of the Executive Branch of Government, and/or where the acts and conduct complained of constitute a violation of the immunities reserved by the Constitution for judicial officers in the performance of their judicial duties and responsibilities, and/or where the acts and conducts are calculated to usurp the rights and powers of the Supreme Court, the person shall be guilty of contempt of the Judiciary and the Supreme Court shall exercise original jurisdiction to attach such person in contempt of the judiciary.

Finally, the Supreme Court found that the contemnor did not deny or refute the allegations against them; but instead asked for mercy. Having admitted that they committed the acts and conduct complained of, the Supreme Court *adjudged* the contemnors guilty of contempt of the judiciary and *sentenced* them to imprisonment in the common jail for one (1) calendar year as of the date of rendition of the judgment.

E. Seeku Koroma and Flaangaa McFarland appeared for contemnors. *J. Emmanuel Wureh, Marcus Jones, H Varney G. Sherman and Frederick Cherue* appeared as *Amici Curiae*.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

This Court instituted these contempt proceedings based upon the written complaint of His Honour Joseph S. Doe, Associate Magistrate of the Gardnersville Magistrate Court, relator, against Honourable Prince Quaye Toe, Assistant Minister for Internal Security, Ministry of National Security and Col. Thomas K. Jackson, Director of Inspection Division, Ministry of National Security, Republic of Liberia, contemnors.

The relator brought to the attention of this Court that on November 5, 1999 he ordered the issuance of a writ of arrest against Ms. Zoe Gboie based upon a complaint filed at the Gardnersville Magisterial Court by Mr. James Stevens, who alleged that Ms. Zoe Gboie had unauthorizedly taken from his control items

amounting to the value of L\$6,165.00 (Six Thousand One Hundred Sixty-Five Liberian Dollars). The writ of arrest was served on Ms. Zoe Gboie and returns served. Due to her inability to file a bail bond, Ms. Zoe Gboie was incarcerated on November 12, 1999 pending the filing of a bail bond.

Relator further complained to this Court that on November 11, 1999 he received a letter, which is quoted hereunder verbatim:

"Republic of Liberia
Ministry of National Security
P. O. Box 10-1453 1000 Monrovia
Liberia, West Africa
TEL. 227106 TLX. 44514)MINASEC

"Hon. Clerk of Court
Gardnersville Magisterial Court
Township of Gardnersville
Montserrat County

"Hon. Clerk of Court:

"This is to officially inform you that a formal complaint was filed in my office on 3 November, 1999 by Miss Zoe Gboie Stephen against Mr. James Stephen on the charge of threatening of life.

"While we were in pursuit of Mr. James Stephen for this issue, he (Mr. Stephen) issued a writ of arrest dated November 5, 1999 on Miss Zoe Gboie Stephen just to have your office and ours confused.

"As we are working for the same Government, we ask your honorable office to exert every effort to arrest and escort Mr. James Stephen and turn him over to our office for interrogation.

"I look forward for your kind cooperation.

Sincerely yours,

Col. Thomas K. Johnson

Director/Insp. Division

Approved

Prince Quaye Toe

ASSISTANT MINISTER/INTERNAL

SECURITY/MNS"

The relator went on to inform this Court that in an apparent reaction to the incarceration of Ms. Zoe Gboie, Assistant Minister Prince Quaye Toe and Col. Thomas K. Johnson, contemnors, along with several personnel of the Ministry of National Security went to the Gardnersville Magisterial Court in two vehicles and informed relator that he (relator) was under arrest on the order of Honourable Philip Kamah, Minister of National Security. Relator refused to be placed under arrest and to enter any of the vehicles, which contemnors had arrived in. Instead, relator advised contemnor that he is a judicial personnel and could not be arrested for performing his judicial functions and duties. However, after some time relator decided to accompany contemnors, but requested that he be allowed to inform his superior, the Stipendiary Magistrate of his arrest and that he was being taken to the Ministry of National Security.

In an apparent response to this simple request made by relator, the security personnel, acting upon the orders of contemnors, began to beat, brutalize and physically assault relator. The severity of the brutality, beating and physical assault led to relator being thrown to the ground and to bleeding.

Eventually, relator was subdued, placed in one of the vehicles brought by contemnors, and taken to the Ministry of National Security. These events of November 13, 1999 took place in the presence and full view of Counsellor Tiawan Gongloe, Attorney William K. Ware, Honourable James E. Brooks, Commissioner of the Township of Gardnersville, and Mr. Roland Sambolah of the Ministry of Justice, among many others.

At the Ministry of National Security, co-contemnor Prince Quaye Toe demanded that relator sign an order releasing Ms. Zoe Gboie from prison; but relator refused to comply with the order. Thereupon relator was taken into a room, forced to remove his pants and a candle was lit and placed under his scrotum, thereby torching the relator's scrotum. Due to the excruciating and tortuous pain, relator involuntarily defecated; and at that point, relator signed the order for the release of Ms. Zoe Gboie, as demanded by contemnors.

Relator remained under the detention of contemnors until Ms. Zoe Gboi was physically released from prison and taken to the Ministry of National Security.

Hence, relator brought this complaint to the Supreme Court seeking redress due to the fact that he suffered brutality, physical assault, torture, indignities and detention as a result of the performance of his duties and responsibilities in keeping with his position as an Associate Magistrate of the Gardnersville Magisterial Court, a judicial office of the Judiciary of Liberia.

This Court after receipt of this complaint, ordered the Clerk to issue a writ of summons for contempt ordering contemnors to appear and show cause why they should not be held in contempt of the Judicial Branch of Government for acts in violation of the constitutional doctrine of separation of powers and for the specific acts complained of, which are in total disregard of the constitutionally guaranteed protection against beating, brutalizing, torturing and injuring a judicial officer only because he performed his duties and responsibilities in keeping with his judicial office.

The Court appointed four (4) counsellors of its Bar as amici curiae. The four lawyers are Counsellors Frederick D. Cherue, J. Emmanuel Wureh, Marcus R. Jones and H. Varney G. Sherman.

At the call of this case on the day of December A.D. 1999, contemnors appeared without counsel. Upon inquiry by the Court, contemnors replied that they do not have a lawyer because they do not need a lawyer. Contemnors admitted their guilt in open court and pleaded for the mercy of this Honourable Court.

This Court then informed contemnors that due to the constitutional implications of the acts complained of, it was very necessary that they be represented by counsel. This Court then appointed the following counsellors of its Bar to represent contemnors during these contempt proceedings. The lawyers so appointed are Counsellor E. Seeku Koroma, Counsellor R. Flaawgaa McFarland, Counsellor Benedict F. Sannoh, and Counsellor Frederick A. B. Jayweh

Two out of the four court-appointed counsel, in persons of Counsellor E. Seku Koroma and Counsellor R. Flaawgaa McFarland, appeared on December 6, 1999, the re-scheduled date of this hearing. These two lawyers then and there made two separate and contradicting representations on behalf of contemnors.

Counsellor E. Seeku Koroma pleaded for the mercy of the Court and said that under the doctrine of *respondet superior*, even though contemnors themselves did not inflict

the abominable pain and suffering on the relator, they accepted responsibility for the acts committed by the security men under their command.

Counsellor McFarland, on the other hand, pleaded with the Court to suspend and postpone the contempt proceedings due to the fact that contemnors had been indicted by the Grand Jury of Montserrado County and were awaiting trial for the crime of aggravated assault. Counsellor McFarland went on to plead that a decision which finds contemnors guilty of contempt of the Judiciary will make it difficult for contemnors to receive a fair trial in the lower court on the charge of aggravated assault.

The *amici curiae* in their advice to this Court contended that contemnors had used force and other illegal and inhumane methods to compel the relator, Associate Magistrate Doe, to countermand his orders issued in the regular performance of his judicial duties and responsibilities. By this conduct, the *amici curiae* advised, contemnors had illegally and improperly assumed the role and function of the Honourable Supreme Court; which alone has the final power and authority to order a magistrate or lower court judge to countermand his order. The *amici curiae* also advised this Court that it is therefore duty bound to protect its dignity and authority and to both prohibit and deter the usurpation of its powers and functions by functionaries of the Executive Branch of Government, as in the instant case, or by any other person, who might want to do similar things.

Further, the *amici curiae* contended that normally a lower court may cite an official of the Executive Branch in contempt for acts and conduct such as disobedience to a court's writ and order, or any other conduct, which is a direct affront to the specific court, or calculated to embarrass, impede or obstruct the court in the administration of justice. The *amici curiae* submitted that for this contempt proceeding at bar, the acts complained are not merely embarrassment to or impediment or obstruction of a single court in the administration of justice; instead, these acts constitute a direct affront to the very powers and function of the Judiciary; that is the power to state what the law is, to hear and decide cases according to the facts and the law, to issue the relief provided by law, and in general, to interpret the law. In other words, the acts complained of constitute interference in the Judiciary by officials of the Executive Branch and also constitute an attempt at usurpation of the constitutional powers and the authority of the Judicial Branch of Government.

The *amici curiae* went on to contend that whenever an official of the Executive Branch assumes and asserts the constitutional powers and authority of the judiciary, in parti-

cular, the Supreme Court, and employs torture, abuse, force, brutality, assault and battery and such other violent means to compel a judge to reverse his order or decision, the Supreme Court has original jurisdiction to determine whether or not the constitutional doctrine of separation of powers has been breached or violated and to punish any such constitutional breach or violation.

Therefore, the issues determinative of these contempt proceedings are:

1. Whether the acts and conduct of the contemnors, as complained of by the relator, constitute contempt of the Judiciary?

2. Whether or not a decision of guilty of contempt by the Supreme Court would violate contemnors' rights to a fair and impartial trial of any crime for which they have allegedly been charged, growing out of the same facts and circumstances as the contempt proceedings.

3. Whether or not the Supreme Court has original jurisdiction in contempt proceedings for intentional acts and conduct of violence perpetrated by an official of the Executive Branch upon the person and body of a judicial officer to compel the judicial officer to countermand his order or reverse his decision.

We prefer to consider these issues in the reverse order, instead of the numerical order.

A review of contempt proceedings in this jurisdiction reveals that the recorded cases are for acts of disobedience to courts' orders, or disrespect for judicial officers. There is no instance where hands have been violently laid upon the person or body of a judicial officer, or for such judicial officer to suffer torture and detention as the means of compelling him to reverse his judicial act or decision. This is the first case in the history of the Judiciary of this nation. Accordingly, a thorough examination of the acts complained of will aid this Court in the determination of whether it has original jurisdiction or not.

First, contemnors wrote a letter to the Magisterial Court requesting that court to relinquish jurisdiction and turn over the private prosecutor in a criminal case pending at the Magisterial Court to the Ministry of National Security for interrogation. The letter is dated November 10, 1999. Three (3) days later, contemnors, using two vehicles and accompanied by security personnel, arrived at the Magisterial Court with the intention, which was expressed, to remove and carry the judicial officer from the

premises of the court to their offices. Thereupon relator informed contemnors of the constitutional declaration of separation of powers, which prevents him (the relator) from accompanying contemnors. Contemnors became impatient and physically assaulted and subdued relator, a judicial officer, placed him in their vehicle, and carried him away.

The judicial officer was now under the complete control of contemnors. Outnumbered and over powered notwithstanding, the judicial officer still refused to countermand his order made in the performance of his judicial duties, even though contemnors ordered him to do so. Contemnors, being determined to interfere in the judicial process and to control and subjugate the judicial officer to their whims and caprices, resorted to methods of torture and inhumane treatment to compel compliance with their orders and instructions.

Clearly, the nature of the events, the time lag in between each event, and the extent of the recklessness of each act exhibit the gross disdain and disregard which these officials of the Executive Branch hold for the Judiciary. These acts also show contemnors' complete disrespect for the rule of law, even though they are security personnel of the Government, who have taken an oath to defend and protect lives, property and the person of citizens and residents, alike. The acts and conduct of contemnors also manifest and exhibit their intention to assume judicial authority and power conferred by the Constitution on the Judiciary.

The acts of torture, brutality, and detention by the contemnors, in their capacity as officials of the Executive Branch of Government and clear signs that they will tolerate no resistance from the judiciary or its officers, whenever they decide to interfere in judicial matters or exercise judicial powers and authority, in violation of the constitutional doctrine of separation of powers.

This Court is therefore of the view and we hold that the Supreme Court shall have original jurisdiction over all alleged acts of contempt, which violate the constitutional principle of separation of powers and which tend to undermine and render the authority and power of the Judicial Branch of Government impotent and useless, and thereby jeopardize the existence and function of a democratic government.

Therefore, and in view of the constitutional implications of the acts and conduct complained of and the grave consequences and repercussions to the effective administration of justice, we hold that the Supreme Court has original jurisdiction to hear and determine these contempt proceedings.

We shall now determine the first issue, which is whether a determination by the Supreme Court in these contempt proceedings might prejudice the rights of contemnors, as defendants in a pending criminal trial, to a fair and impartial trial.

To determine this issue, we need to consider whether the Supreme Court has the authority and control to determine whether an alleged criminal offence will be tried or not. The answer is clearly NO.

It is elementary legal knowledge that pursuant to the Penal Law and the Criminal Procedure Law extant in this jurisdiction, the authority to decide whether or not an accused may be prosecuted for an offense, is reserved to the Attorney General and the prosecuting attorneys of the Ministry of Justice.

During arguments when this question was propounded to the *amici curiae*, the counsel presented a very interesting scenario. Should the Supreme Court decide to link and make contingent these contempt proceedings to, and on the pending criminal trial, what happens if the prosecution decides to delay the criminal trial indefinitely? What happens if the prosecution decides to enter a plea of *nolle prosequi* in defendants' favor? What would happen if the defendants are acquitted at the criminal trial, which would not be dwelling on the acts and conduct which are contemptuous of the Judiciary, but would be dwelling only on the criminality of the acts and conduct as defined by the revised Penal Law?

We hold that the decision regarding whether or not to prosecute an offense is a decision reserved to functionaries of the Executive Branch of Government over which the judiciary has no authority whatsoever. Therefore, and in view of the foregoing, this Court shall neither suspend these proceedings nor refuse jurisdiction merely because the same acts and conduct for which the contempt proceedings have been instituted may be culpable under the Penal Law or subject the contemnors to criminal trial, or to civil actions for damages for wrong, whether simultaneously or in the future. This Court holds that given the gravity of the acts and conduct of the contemnors, which have been brought to the attention of this Supreme Court, aspersions will be cast on the entire Judicial Branch of Government and the judiciary would effectively be rendered impotent and ineffective, if the matter were left undetermined.

The final question for this Court to determine is whether the acts and conduct complained of are contemptuous of the Judiciary.

Are contemnors guilty of contempt of the judiciary by the violation of various provisions of the 1986 Constitution regarding the exclusive powers reserved to the judiciary to be the interpreters of the laws of Liberia and also regarding the doctrine of separation of powers? The answer is YES.

As stated *supra* in this opinion, the letter of November 10, 1999 signed by the contemnors and quoted verbatim herein, the acts of brutality and torture, and the illegal and unlawful detention of the relator (a judicial officer), and the coercion meted on him to reverse his judicial acts and orders, are clear evidence, not only of the violation of the constitutional provisions regarding the separation of powers of the three branches of Government, but also of the immunity for judicial officials in the performance of their duties and responsibilities. LIB. CONST. (1986) Arts. 3, 65, 66 and 73.

All of the acts and conduct complained of by the relator and which the contemnors are accused of committing were never denied by contemnors. Instead they pled for the mercy of the Court. Hence, we find the contemnors guilty of the offense of criminal contempt for their deliberate usurpation of the authority and jurisdiction of the Supreme Court, for their violation of the constitutional doctrine of separation of powers, and for their violation of the constitutional immunity granted to judicial officers in the performance of their duties.

Wherefore, and in view of the foregoing, contemnors are adjudged guilty of contempt of the Judiciary and are hereby sentenced to imprisonment in the common jail for a period of one (1) calendar year commencing as of the date of the rendition of this judgment.

The Marshall of the Supreme Court is hereby ordered to give immediate effect to this judgment. Cost disallowed. And it is hereby so ordered.

Adjudged guilty of contempt of the Judiciary.