

MAMADE TROARE et al., Informants, *v.* **HIS HONOUR JAMES K. BELLEH**,
Assigned Circuit Judge presiding over the June Term of the People's Civil Law Court for the
Sixth Judicial Circuit, Montserrado County, **FOKO DIEUDONNE** et al., Respondents.

INFORMATION PROCEEDINGS

Heard November 4, 1985. Decided December 18, 1985.

1. Where the beneficiaries of a court's judgment swear to an affidavit that they have been compensated and are therefore not entitled to the award of the judgment, the judgment will be reversed and the defendant relieved of any further liability.
2. Where a party fails to refute allegations of fact set forth in an affidavit, by means of an affidavit denying the allegations or setting forth facts to the contrary, the allegations set forth will be deemed to be true.
3. Where a company which is not named as a party to a suit alleges that it is a separate and distinct entity from the defendant company and exhibits its articles of incorporation in verification of the assertion, it becomes incumbent upon the party claiming the contrary to present some evidence in support of the claim, preferably the articles of incorporation showing the two entities to be one and the same, in order to have a judgment against the defendant company enforced against the second entity.

The informants, employees and the management of Talk Lumber Company, and the Liberian Industrial and Trading Enterprises, Inc., filed a bill of information, with the support of affidavits duly executed by them, alleging: (a) that the employees in whose favor the Supreme Court had affirmed an award in a previous action had not authorized the institution of the previous action, (b) that the said employees were not entitled to the award made in the previous action as they had already been justly and fully paid what was legally due them by their employer, Talk Lumber Company, (c) that the previous suit was fraudulently instituted in their names when they had not authorized anyone to commence any action in their behalf, and (d) that the Liberian Industrial and Trading Enterprises, Inc. was not liable to the complainants in the previous suit as it was never made a party thereto and was a separate and distinct corporate entity from the defendant in the said suit, but that notwithstanding this

fact, the trial court, in enforcing the mandate of the Supreme Court in the previous case was attempting enforcement on said company. The informants therefore prayed that the Supreme Court reconsiders its previous decision, disallow the award, and order the trial court to refrain from harassing co-respondent Liberian Industrial and Trading Enterprises, Inc.

Although in their returns the respondents stated that the allegations in the bill of information were false and misleading, the Court held that they, the said respondents, had failed to present evidence, by affidavit or otherwise, to refute the allegations that the co-informants/employees were the same persons whose names appeared in the previous action, that compensation had already been paid to them by co-respondent Talk Lumber Company, and that co-respondent Liberian Industrial and Trading Enterprises, Inc. was a separate and distinct corporate entity from co-respondent Talk Lumber Company. The Court opined that it was incumbent upon the respondents to produce affidavits showing the allegations in the information to be false, both as to the informants being the employees named in the previous suit and as to payment made by Talk Lumber Company. The respondents, it said, had the burden of proving the claim made by them that the previous suit was authorized by the employees, especially as the employees named in the previous suit were the same employees who had executed the affidavits in the information proceedings. The Court also held that the respondents should have produced the certificate of incorporation of the co-informants corporate entities showing them to be one and the same entity.

The Court observed that it would be unfair for the co-respondent Talk Lumber Company to be made to pay, and for the employees to receive compensation twice, especially in the absence of the required evidence by the respondents. Accordingly, it *granted* the information, *declared* its previous *judgment ineffectual* and unenforceable, *ordered* that as the Liberian Industrial and Trading Enterprises, Inc. had been unjustly made a party to the action, its goods and chattels unjustifiably seized be returned to it, and *declared* the previous suit abated, never to be resurrected.

M. Fabnbulleh Jones appeared for the informants. *E. Winfred Smallwood* appeared for the respondents.

MR. JUSTICE SMITH delivered the opinion of the Court.

This bill of information is a “backfire” to the opinion and judgment of this Court

rendered during its March 1985 Term in the case *Talk Lumber Company v. Foko Dieudonne, The Board of General Appeals et. al.*, 33 LLR 280 (1985) in an action for unfair labor practices, in which this Court affirmed the judgment of the trial court adjudging the appellant company liable to pay to the appellees the total amount of \$90,978.45. It was during the process of enforcing the mandate of this Court, in an attempt to satisfy the judgment of the court below, that this bill of information was filed.

The 24 co-informants/employees named in the bill of information have each submitted affidavits alleging that they and other employees of Talk Lumber Company who complained before the Ministry of Labor have been justly compensated and the matter closed; that they had no knowledge of how the same matter got back to the courts; that they had neither authorized co-respondent Foko Dieudonne to file any claim in their behalf nor did he, Foko Dieudonne, obtain informants' consent prior to filing the claim. Count 3 of the bill of information alleges as follows:

"That Mr. Foko Dieudonne, one of the appellees in the above entitled cause out of which this information proceed-ings grew, took upon himself to proceed to institute this action of unfair labour practices against Talk Lumber Com-pany, one of the informants herein, without our knowledge, will and consent, knowing fully well that he himself, together with all of us whom he has named as complain-ants, had been justly compensated in the office of the late A. Sawie Davies at the Ministry of Labour. We have therefore sworn to affidavits in this respect and herewith profert same to form a part of this information, the batch of which is marked exhibit 'A' and is self-explanatory."

We deem it appropriate to quote also one of the 24 affidavits which were taken before justices of the peace in Grand Bassa and Nimba Counties, respectively, by the co-Informants since indeed they all bear the same wordings:

"AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, a duly qualified Justice of the Peace for Nimba County at my office in the City of Gompa and being duly sworn deposes and says:

1. That I was or am an employee of Talk Lumber Company, appellant in the above-entitled cause of action.
2. That I never was, and am not, a party to the above entitled cause of action, because the matter was settled at the Ministry of Labour and I received my full and just compensation as calculated and agreed upon between Talk Lumber Company

and me.

3. That Mr. Foko Dieudonne took upon himself and without my knowledge, will and consent proceeded to institute this action against Talk Lumber Company knowing fully well that we had been justly and fully compensated.

4. That being no party to this fraudulent suit in law, simply to deprive and extort from Talk Lumber Company's money illegally, I am not entitled to any amount as adjudged by the Supreme Court of Liberia and hence the amount awarded should not be paid directly or indirectly because Mr. Foko Dieudonne was and is no representative of mine in any case or this case brought against Talk Lumber Company.

5. That the facts stated herein are true and correct”

The Liberia Industrial & Trading Enterprises, Inc., co-Informant herein, has in its defense alleged that it is a corporation organized and operating under the Associations Law of Liberia, distinct from co-informant Talk Lumber Company; that it has at no time ever been a party to the case between Talk Lumber Company and its employees; yet, contrary to law, the writ of execution issued against Talk Lumber Company not only mentioned the said Liberia Industrial & Trading Enterprises, Inc. as a party, but the sheriff, in the service of the writ, seized and took into his possession the following named equipment belonging to said enterprises: a) one Front-end Wheel Loader, serial No. 42FS476; b) one Mercedes truck, bearing license plate BT-1230; and c) one Mack truck with license plate BT-919. For the benefit of this opinion, we quote hereunder count 7 of the bill of information, as follows:

“7. Informants Talk Lumber Company and Liberia Industrial & Trading Enterprises, Inc. say that the sheriff for Montserrado County, in executing the writ of execution issued by the Acting Clerk of Court for the People's Civil Law Court, Montserrado County, elected to firstly have the clerk of court attach the Liberia Industrial & Trading Enterprises, Inc. (LITE) as party to the suit and whereupon has levied on the goods and chattels of the Liberia Industrial & Trading Enterprises, Inc., who is no party to the cause of action out of which the information grows. And this is evidenced by the bill of costs prepared, taxed and approved by the respondent judge. Copy of the bill of costs and the writ of execution are hereto attached and marked exhibits "B" and "C", respectively."

The respondents filed a seven-count returns alleging sub-stancially, among other things, that the allegations contained in the bill of information are false and misleading. Respondents contended in the said returns that co-respondent Foko Dieudonne was

designated by Ramsford Monday, the first representative of the employees, to pursue the case on behalf of the employees; that based upon communications on file carrying the name of co-informant Liberia Industrial & Trading Enterprises, Inc., the said co-informant cannot now disassociate itself from Talk Lumber Company. They requested the court to take judicial notice of its own records in the case.

Counsel for respondents strenuously argued that the bill of information should be dismissed because it is misleading and that the very informants who were complainants in the labor case, are still in the employ of Talk Lumber Company and have been bought over by the company to file the information. Hence, respondents requested that the judgment of this Court be affirmed and that counsel for informants be fined for filing the information which, they say, was aimed at misleading the Court.

Considering the facts brought out in the bill of information and the argument of counsel for the respondents, we are at a loss to understand the rationale and legal support on which this Court could dismiss the information and affirm its judgment rendered during the March 1985 Term of this Court, and to require Talk Lumber Company to pay to the said employees, co-informants herein, the amount of \$90,978.45 awarded by the trial court, especially so, when the very employees, beneficiaries of the judgment sought to be enforced by the respondents, have come up and sworn to affidavits to the effect that the matter they had against their employer, Talk Lumber Company, has been settled, that they have been justly compensated, and that they have not at any time authorized co-respondent Foko Dieudonne to file any claim on their behalf.

The respondents have miserably failed to present any evidence in their returns to the effect that the 24 co-informants are not the same and that some of the employees of Talk Lumber Company who co-respondent Foko Dieudonne allegedly represented and in whose favor the amount of \$90,978.45 was awarded. They have also not presented any evidence by means of affidavits sworn and subscribed to by any of the employees in the action, in refutation of the facts sworn and subscribed to in the affidavits of the 24 other employees, co-informants herein. What is even more interesting is the fact that the Ramsford Monday who respondents alleged in their returns was the first representative of the workers, and who had allegedly designated co-respondent Foko Dieudonne by letter patent to pursue the case in court against Talk Lumber Company as the new representative of the complaining workers, was the self-same Ramsford Monday who deposed, swore and subscribed to the affidavit supporting the bill of information. This fact was neither attacked nor denied by the respondents. A relevant portion of the affidavit accompanying the information is herein

below quoted for the benefit of this opinion:

"AFFIDAVIT

Personally appeared before me, a duly qualified Justice of the Peace for Montserrado County, at my office in the City of Monrovia, Ramsford Monday, one of the informants in the above-entitled cause of action, and made oath according to law that all and singular the allegations of facts as are contained in the foregoing and annexed bill of information are true and correct to the best of his know-ledge and belief, and as to those matters of information he verily believes them to be true and correct”

As to the allegations of co-informant Liberia Industrial & Trading Enterprises, Inc. that it is a corporation distinct from Talk Lumber Company and that it was not a party to the unfair labor practices action as would have warranted its goods and chattels being levied upon, this Court says that respondents have not denied that the writ of execution was served on the Liberia Industrial & Trading Enterprises, Inc. and that its property was seized by the sheriff and taken into his possession. Respondents did not also deny the validity of co-informant, Liberia Industrial & Trading Enterprises' articles of incorporation proferted with the bill of information, to establish that it is a legal entity distinct from Talk Lumber Company.

In the opinion of this Court, it was incumbent upon the respondents to present some evidence along with their returns, preferably the articles of incorporation, to show that Talk Lumber Company and the Liberia Industrial & Trading Enterprises, Inc. were one and the same legal entity. It is therefore unreasonable for the respondents to ask the Court to accept their argument and contention or to request the Court to allow a judgment entered against Talk Lumber Company to include and bind the Liberia Industrial & Trading Enterprises, Inc., which was not a party to the action. It would also be unreasonable and unjustifiable for this Court to allow the judgment of the lower court, which was confirmed by this Court in its opinion delivered on June 28, 1985, to still stand when the beneficiaries of said judgment have come up and sworn by information that they did not authorize co-respondent Foko Dieudonne to represent them or to file any claim against Talk Lumber Company on their behalf, that the claim which they had against the said company had been settled by the company before the Ministry of Labour, and that they have been justly compensated. This being the case, it is our further opinion that Foko Dieudonne, and not counsel for informants, is the one who misled the courts and who there-fore ought to bear the full force of the law.

In view of the foregoing, the bill of information ought to be, and the same is hereby granted. The judgment of the court below, rendered against Talk Lumber Company to pay \$90,978.45, and which was affirmed by this Court, is hereby rendered ineffectual and non-enforceable to all intents and purposes. Co-informant Liberia Industrial & Trading Enterprises, Inc., which was unjustly made a party to the suit and its goods and chattels unjustifiably seized, is hereby relieved from the judgment and its goods and chattels should therefore be immediately returned to it by the sheriff of the trial court. The claims made against Talk Lumber Company by co-respondent Foko Dieudonne, out of which this bill of information grew is unjustified and is therefore ordered abated never to be resurrected by any person or persons whomsoever. All costs are ruled against co-respondent Foko Dieudonne. And it is hereby so ordered.

Information granted.

MR. JUSTICE MORRIS *dissents.*

I have withheld my signature from the judgment rendered by my colleagues for one simple reason, admitted by the majority in their opinion. The point of my disagreement hinges upon my abiding conviction that no person or persons can be bound by a judgment of which he or they are not parties. In the majority opinion, they maintain that:

"In the opinion of this Court, it was incumbent upon the respondents to present some evidence along with their returns, preferably the articles of incorporation, showing that Talk Lumber Company and the Liberia Industrial & Trading Enterprises, Inc. are one and the same legal entity. It is therefore unreasonable for the respondents to ask the Court to accept their argument and contention, or to request the Court to allow a judgment entered against Talk Lumber Company to include and bind the Liberia Industrial & Trading Enterprises, Inc, which is not a party to the action."

My colleagues have held that it would be unreasonable to accept the argument and contention of the respondents that the Court allows a judgment entered against Talk Lumber Company to include and bind the Liberia Industrial and Trading Enterprises, Inc., simply because the Liberia Industrial & Trading Enterprises, Inc. was not made a party to the action in the court below. Yet, in the same opinion, they have held that the judgment in the information should bind all those who were not parties. The question then is, could this be reasonable? My answer is in the negative.

One Foko Dieudonne, on behalf of the employees of the Talk Lumber Company, filed a complaint against the company. The case traveled from the Ministry of Labour to the Supreme Court, which confirmed the judgment in favour of the workers during the March 1985 Term of this Court. During this October Term, Talk Lumber Company and some of its employees, together with the Liberia Industrial & Trading Enterprises, Inc. filed a bill of information, contending that the employees in whose favor the judgment was rendered had all been paid. The employees attached sworn affidavits to the information stating that they never authorized Mr. Foko Dieudonne to file any complaint on their behalf and that Talk Lumber Company does not owe them any money. As for the Liberia Industrial and Trading Enterprises, Inc., it contended that the clerk of the lower court unauthorizedly issued an execution against it since it was not a party to the action. There were, however, only a few of the employees who filed the information. Indeed, it was specifically stated in the information and argued before us that the co-informants/ employees did not notify their co-workers about their information, but that they believed that the other employees were with them.

Predicated upon the above allegations, the majority granted the information. But they also included in the judgments that the judgment of this Court, rendered against Talk Lumber Company to pay \$90,978.45, is hereby rendered ineffectual and un-enforceable to all intents and purposes. The majority also held ". . . the claims made against Talk Lumber Company by co-respondent Foko Dieudonne, out of which this bill of information grew, is unjustified and is therefore ordered abated, never to be resurrected by any person or persons whomsoever."

I consider the conclusion of my colleagues, indicated in the above quotation, culled from the opinion and judgment, as illegal and arbitrary, for the same reason that the Liberia Industrial and Trading Enterprises, Inc. could not be reasonably bound by the former judgment because it was not a party to the suit. I firmly hold that Foko Dieudonne and other employees who are not parties to the information cannot and should not be bound by said judgment. For the benefit of this dissenting opinion, I give below the list of the employees with amounts received and balance remaining, as culled from receipts in the filed of the case:

"RECEIPTS

Niakoi Simon - Received \$1056.00 Balance - \$ 92.00

Poko Dieudonne - Received \$ 56.00 Balance \$506.00

Sunday Cooper - Received \$ 793.00 Balance \$162.00

John Smith - Received \$863.00 Balance -Final release will be
issued upon last installment

James Karimu - Received \$1,231.00 Balance - Final release
will be issued upon last installment

Sekeke Thomas - Received \$34.00 Balance Final release

will be issued upon last installment

J. Freeman - Received \$129.00 Balance Final release will be
issued upon last installment

Magnus Croker - Received \$3,676.00 Balance - \$1,151.60

Joseph Massaquoi

Stephen Whee

Johnson Paye”

My contention is that the action should be abated only as the co-informants/employees because the other employees are not parties to the information and therefore the judgment in the information cannot bind them. This Court has consistently held that a judgment is invalid against any person over whom the court lacks jurisdiction. *Schilling and Company v. Tirait*, 16 LLR 164 (1965). It is an elementary principle of law that courts acquire jurisdiction over persons through the service of precepts.

In the instant case, the employees have not taken any step that would confer jurisdiction of the court over their persons. There-fore, they cannot be affected by the judgment in the information since they are not parties to the proceedings. To hold otherwise is illegal and arbitrary, and is an infringement upon the rights of the other employees. I therefore dissent.