

ALHAJI SAIDU WAGGAY, Informant, v. **HIS HONOUR HALL W. BADIO**,
Assigned Circuit Judge, Civil Law Court, Sixth Judicial Circuit, sitting in its December Term,
VERONICA CORVAH, Clerk of the Supreme Court, the MARSHAL and all Officers
under him, and **HAFEZ M. JAWHARY**, Respondents.

INFORMATION PROCEEDINGS AND PETITION FOR A WRIT OF ERROR
GROWING OUT OF A PETITION FOR RE-ARGUMENT.

Heard: April 17, 1989. Decided: July 14, 1989.

1. While a concurring Justice may sign a motion for re-argument and order that the case be re-docketed for re-argument, the withdrawal of such order is not a matter of unrestricted right; rather, it is controlled by the principle of constructive filing and withdrawal to allow the movant time to contact another concurring Justice.

2. The Justice of the Supreme Court, presiding in Chambers, is unquestionably master of what happens in Chambers and in the Court during the recess of the Court *en banc*, as long as his acts do not endanger the dignity of the Bench or the authority of the Court.

In March, 1983, Hafez M. Jawhary, co respondent herein, instituted an action of ejectment against Alhaji Saibu Waggay, informant herein, to recover the Holiday Inn Hotel situated on Carey Street, Monrovia. Pleadings were exchanged and rested with the filing of an amended reply. At the disposition of the law issues, the presiding judge dismissed the complaint and ruled the plaintiff to costs. To this ruling, plaintiff/co-respondent excepted and prayed for an appeal to this Court, which prayer was granted. Upon hearing the appeal, this Court on June 20, 1985, rendered judgment reversing the ruling of the trial court and remanded the case for new trial commencing with the disposition of the law issues.

Prior to the disposition of the law issues in the case, as mandated by the Supreme Court, co-respondent Jawhary withdrew his action of ejectment and filed instead a bill in equity for the cancellation of the bill of sale which he had issued to informant, defendant in the ejectment action, as well as a stipulation of understanding. The defendant in the court below considered the withdrawal of the action of ejectment as a violation of the Supreme Court's mandate to the lower court ordering it to proceed to hear the ejectment case commencing with the disposition of the law issues. The defendant therein therefore filed a bill of information before the Supreme Court to this effect.

While the bill of information was pending, Alhaji Saibu Waggay, informant, filed a petition for a writ of error, alleging that the trial judge had resumed jurisdiction over the matter based upon a mandate from Justice Jangaba, then presiding in Chambers, to enforce the judgment of the Supreme Court handed down during its October 1985 Term. Subsequently, Alhaji Saibu Waggay, informant, filed an amended motion for re-argument, alleging that after the Supreme Court rendered its decision on December 20, 1985, a motion for re-argument was

signed by His Honour Isaac C. Nyeplu, one of the concurring Justices, and filed with the Court, and that this fact was overlooked by Justice Jangaba when he ordered the lower court to have the Supreme Court's mandate read and the judgment of said Court, rendered on December 20, 1985, enforced.

When the bill of information was called for hearing, the Court observed that while the signing of the petition for re-argument and ordering the case re-docketed for hearing by Justice Nyeplu, one of the concurring Justices, was in harmony with law, the withdrawal of his signature and the order to re-docket the case, done after a protracted period, was against the law. The Court ruled that the withdrawal of a concurring Justice signature in a re-argument proceeding must be done within the time allowed by law in order to enable the movant for re-argument to contact another concurring Justice. The Court held that in the face of the order for re-argument, the Justice presiding in Chambers, Mr. Justice Jangaba, acted without the pale of the law in ordering the lower court to resume jurisdiction and enforce the judgment of the Supreme Court. The Supreme Court therefore granted the information and ordered the re-argument.

Joseph Williamson appeared for informant. No one appeared for respondents.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

On the 7th day of March 1983, plaintiff, co-respondent herein, Hefez M. Jawhary, instituted an action of ejectment against Alhaji Siabu Waggay, informant herein, to recover Holiday Inn Hotel situated on No. 100 Carey Street, Monrovia, Liberia, which property the said Hefez M. Jawhary had transferred to Alhaji Saibu Waggay, informant, by virtue of a certain bill of sale. Pleadings in the case progressed as far as the amended reply. The trial judge, in disposition of the law issues, dismissed the complaint and ruled the co-respondent to cost. Hafez M. Jawhary, co-respondent herein, excepted to the ruling and announced an appeal to the Supreme Court. The Supreme Court, in its decision handed down on June 20, 1985, remanded the case for retrial commencing with the disposition of the law issues raised in the amended pleadings. Co-respondent Jawhary, plaintiff in the action of ejectment, acting in spite of and contrary to the Supreme Court mandate, withdrew the action of ejectment and in lieu thereof instituted a new action of bill in equity for the cancellation of the bill of sale, a stipulation of understanding and an assignment entered into by parties herein. From this act of corespondent, informant filed a bill of information before this Court, complaining about the violation of its instructions handed down on the 20th day of June, 1985 by Co-respondent Hafez M. Jawhary. While this information was pending, Alhaji Saibu Waggay, informant, filed a petition for a writ of error alleging that the trial judge had resumed jurisdiction over the matter based upon a mandate from Justice Jangaba to enforce the mandate of this Honourable Court emanating from the judgment or decision rendered by this Court during the closing ceremonies of its October 1985 Term. Subsequently, informant

filed an amended motion for re-argument alleging in substance that when this Court rendered its decision on this matter on December 20, 1985, re-argument was signed by one of the concurring Justices, in person of Justice Isaac C. Nyeplu, which was overlooked by Justice Jangaba when he ordered the reading of the mandate and the enforcement of the judgment as per the decision of this Honourable Court rendered on December 20, 1985.

When this case was called for hearing, Counsellor Joseph Williamson appeared for the informant but no counsel appeared for the respondents. Counsel for informant therefore requested this Honourable Court to allow him to argue his side of the case in view of the absence of respondents' counsel. The application was granted and counsel for informant argued as follows:

1. That this Honourable Court should hear and determine the motion for re-argument as amended which showed that inadvertent and palpable errors were committed for which re-argument will lie.
2. That the Court omitted to take into consideration the legal maxim that "he who comes to equity must do equity" and thus did not pass upon the question of unjust enrichment as was pleaded in the amended answer of the respondent (now informant) in the cancellation proceedings.
3. That this Honourable Court inadvertently omitted to pass on few of the law issues and facts in its opinion and judgment handed down on December 18, 1985 for which re-argument was prayed for. Further, that the Court omitted to take into consideration that the trial judge was sitting in the June Term of the Civil Law Court which commenced its jury session on the 17th day of June A.D. 1986 and ended on the 5th day of August A. D. 1986. The 10th day of chamber session of the trial judge commenced on the 6th day of June, A. D. 1986 and continued until August 7, 1986. The case not being one that is triable by a jury, the question of expiration of the term time was false and untrue. Your Honours also inadvertently failed to consider this issue of fact.
4. That as his motion for re-argument was timely filed and the case was ordered re-docketed, it was therefore a gross prejudicial error on part of Mr. Justice Elwood L. Jangaba to have ordered the Clerk of this Court not to file the information but to instead send a mandate to the trial court for the enforcement of the judgment, thus contravening the orders of Mr. Justice Isaac C. Nyeplu.
5. That on March 14, 1986, he filed an amended motion for re-argument which amended motion is still pending before the Honourable Supreme Court for disposition, but that notwithstanding the pendency of said motion, writs of execution and possession had been issued out of the trial court enforcing the judgment over the orders of His Honour Mr.

Justice Jangaba. This action, informant alleged, was not in conformity with the law and statute controlling.

A careful review of the records show that when the decision of this Honourable Court in this case was handed down on December 18, 1985, a motion for re-argument was filed and signed by Mr. Justice Isaac C. Nyeplu, one of the concurring justices on December 20, 1985. This was done within the time allowed by law for the filing of a motion for re-argument. Mr. Justice Isaac C. Nyeplu wrote an instruction to the then Clerk of this Honourable Court, Madam Veronica Corvah, withdrawing his approval of the motion for re-argument on December 23, 1985 and same was filed February 3, 1986. The withdrawal letter is quoted hereunder:

"December 23, 1985

Madam Veronica Corvah Clerk,

Supreme Court of Liberia

Temple of Justice

Monrovia, Liberia

Madam Clerk:

Alhaji Saibu Waggay, informant/plaintiff-in-error/ appellee v. Hafez M. Jawhary, respondent/defendant-in-error/ appellant, information and petition for error.

Consistent with the mandate of the Supreme Court in the above entitled cause of action, which was ordered sent to the Sixth Judicial Circuit by the Chief Justice, Emmanuel N. Gbalazeh, I hereby withdraw the motion for reargument which I ordered you to re-docket for reargument at the March, A. D. 1986 Term of the Honourable the Supreme Court of Liberia. You will therefore file these instructions in the case file.

Dated this 23rd day of December, A. D. 1985.

Sgd. Isaac C. Nyeplu

ASSOCIATE JUSTICE,

SUPREME COURT OF LIBERIA"

From the foregoing, there are two issues on which this case must be decided:

1. Whether the withdrawal by Mr. Justice Isaac C. Nyeplu of his signature from the motion for re-argument and his order for docketing of the case for re-argument were in conformity with law?
2. Did Mr. Justice Elwood L. Jangaba overstep his bounds when he ordered the enforcement of the judgment of this Honourable Court in this case handed down on December 18, 1985, alleging that the case was no longer on the docket for re-argument?

Our law on motion for re-argument says this:

". . .For good cause shown to the court by petition, a re-argument of a cause may be allowed when some palpable mistake is made by inadvertently over-looking some fact or point of law. ". . .

A petition for re-hearing shall be presented within three days after the filing of the opinion, unless in cases of special leave granted by the Court." *Gummah v. Republic*, 4 LLR 374 (1935), text at 376. See also parts 1 and 2 of the rules of this Court on re-argument.

It was clearly shown that Justice Isaac C. Nyeplu having signed the motion for re-argument and ordered the Clerk of this Court to re-docket the case he acted within the scope of law. However, he had no right to withdraw his order at the time that he did. Such withdrawal is governed by the rules governing constructive filing and withdrawal and must be done within the time allotted to enable the movant to contact another concurring Justice. Justice Nyeplu did not do so. Instead, he waited for a protracted period from December 18, 1985, to February 3, 1986. The law clearly states that he had no right to effect the withdrawal at the time he did.

Mr. Justice Elwood L. Jangaba, who was then presiding in Chambers, also had no right under the law to order the enforcement of the judgment of this Court in the face of the void withdrawal of Mr. Justice Nyeplu's order re-docketing the case. The law and procedure are hoary with age that the Justice in Chambers must supervise all legal matters of this Court while in Chambers and must see to it that all decisions/mandates emanating from the full bench must be enforced in accordance with law. As such, Justice Jangaba erred when he ordered the enforcement of the judgment after the case had been re-docketed for argument. "The Justice of the Supreme Court presiding in Chambers is unquestionably master of what happens in Chambers and in the Court during vacation so long as his acts do not endanger the dignity of the bench or the authority of the Court." *Montgomery v. Findley and Haddard*, 14 LLR 463 (1961).

Having stated that the revocation by Justice Isaac C. Nyeplu of his signature and the ordering of the enforcement of the judgment are not in conformity with law, the motion for re-argument is still pending before this Honourable Court.

From the above analysis there is no need to probe into the other issues enumerated by counsel for informant which relate to issues that he claims were overlooked inadvertently by this Court. The re-argument is hereby granted and the Clerk is hereby ordered to re-docket the case.

In view of the foregoing, the information is hereby granted. Costs to await final determination. And it is hereby so ordered.

Information granted.

