

PETER BLANYOU WASHINGTON, Petitioner, v. **HER HONOR LUVENIA
ASH-THOMPSON**, Judge, Monthly and Probate Court, Montserrado County, and
T. K. WASHINGTON, et al., Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING
THE PETITION FOR A WRIT OF PROHIBITION.

Heard: July 10, 1986. Decided: July 31, 1986.

1 Prohibition will not lie to correct errors and irregularities committed by an inferior court.

2 A writ of prohibition is ineffective where the act complained of has been completed. This is especially true where the proceeding in the lower court has ended and the court has nothing further to do in completion of its order.

3 Prohibition is a prerogative or extraordinary writ that will not lie for grievances which may be redressed in the ordinary course of judicial proceedings by other remedies provided by law.

4 Prohibition will not issue where there is another legally adequate remedy, as by appeal or otherwise.

The petitioner claimed to be the lineal heir of Major Alexander Washington who died intestate and, consequently, claimed to be entitled to the intestate estate by virtue of that relationship. The Monthly & Probate Court of Montserrado County conducted a hearing into the matter and, based upon evidence presented in court, ordered the petitioner evicted from the premises. Petitioner was also ordered to turn over all personal and real property of the deceased and submit a report to the court within one week on how monies collected from the said estate had been expended. Whereupon petitioner announced an appeal to the Supreme Court which, for some reason, is not noted in the court's records. Petitioner therefore petitioned the

Chambers Justice for a writ of prohibition to correct irregularities committed by the trial court including, *inter alia*, the refusal of the judge to grant a request by petitioner to subpoena witnesses.

The writ was issued and after formal hearing same was granted and the respondents appealed to the full bench of the Supreme Court.

Upon appeal, the ruling of the Chambers Justice was reversed and the alternative writ of prohibition quashed by the full bench, holding that the irregularities complained of by petitioner cannot be corrected by a writ of prohibition. The petition was therefore denied.

Stephen B. Dunbar appeared for respondents. *Francis Torpor* appeared for petitioner.

MR. JUSTICE TULAY delivered the opinion of the Court.

Peter Blanyou Washington, petitioner in these proceedings, claims that he is a lineal heir of one Major Alexander Washington who died intestate in 1972; that he had been living on the estate of decedent Washington when in January, 1983, he was summoned and ordered to appear before the Monthly & Probate Court, Montserrado County. We quote herein below the summons:

"WRIT OF SUMMONS

Republic of Liberia to Major John T. Woodson, sheriff for the People's Monthly and Probate Court, Montserrado County, R. L., GREETINGS:

You are hereby commanded to summon the below named person to appear in the People's Monthly & Probate Court, Temple of Justice, Monrovia, on the 31st day of January, A. D. 1983 at the hour of 2:00 p.m. for matters relating to the said estate.

You are further commanded to summons the below named *persons* to appear before the said court with your returns endorsed on the back of the original copy as the

manner of the service. And have you there and then this writ of summons.

Given under my hand and seal of court this 31st day of January, A. D. 1983.

Sgd. Mary M. Howe ACTING CLERK, PEOPLE'S PROBATE COURT
MONTSERRADO COUNTY, R.L."

In obedience to the summons, petitioner appeared and, immediately upon his arrival, he was committed to jail where he remained until a petition for a writ of prohibition was filed on his behalf.

Subsequently, the case was called up for regular trial but even then complainants/informants, now respondents, with their witnesses, testified but petitioner's application to the court for a writ of subpoena for his witnesses to appear and testify before the court on his behalf was denied. We incorporate here said application:

"APPLICATION FOR WRITS OF SUBPOENA THE FOLLOWING NAMED
WITNESSES

And now comes Peter Washington, the applicant herein above named and prays this Honourable Court to issue out subpoenas for the following named persons as his witnesses, to wit:

1 Hon. James N. Nagbe BROTHER-IN-LAW to the late ALEXANDER Q.
WASHINGTON

2 Hon. John Toh Pratt RESIDENT OF GARDNERSVILLE

3 Rev. J. D. Robertson GAYE-TOWN, OLD ROAD, SINKOR

4 The Former Tax Court Sheriff, J. B. GRANT, prior to Sheriff Johnson

5 Tax Court's Sheriff MR. SIMEON W. JOHNSON

6 Madam Sayee-di otherwise called: MRS. ESTHER PASSAWAY, RESIDENT
ELWA ROAD.

May It Please Your Honour, in order to give my side of the case now under investigation before your good self, and in keeping with the mandate you are now executing, I most humbly pray that these witnesses be made available to testify in this case for transparent justice which is your only endeavor.

Respectfully submitted,

Peter Blanyou Washington....APPLICANT

COUNSEL: LEWIS K. FREE, SR. COUNSELLOR-AT-LAW

Dated 22nd April, 1985 Monrovia, Liberia \$3.00 REVENUE STAMP AFFIXED
HERE TO THE ORIGINAL"

According to him, without permitting him to testify for himself, and in the absence of his witnesses named in his application quoted above, the court ruled against him, ousting him out. Petitioner excepted to the court's adverse ruling and announced appeal. Here in part is the judgment:

The court's judgment entered on the 22nd day of January A. D. 1986 reads in part:

"The court having had a meticulous study as well as a thorough perusal of the exchanged documents, testimonies of the witnesses relating to who is the next of kin to the late Alexander Washington, the testimony of several witnesses clearly indicated that Peter Washington is not and has never been related to the deceased. Besides, he admitted residing on the premises prior to the demise of Alexander Washington but has no written documents confirming that said property was conveyed to Peter or anyone prior to his death. Therefore, Peter Washington is ordered to vacate the premises forthwith without delay and turn over all personal and real properties to the administrators and the deed is to be surrendered to them through this court without delay. He is to submit a comprehensive report to this court on all the monies he has collected from the estate from the time of the demise until the present time no later than January 31, 1986. AND IT IS HEREBY SO ORDERED."

Given under my hand and official seal of the court, this 22nd day of January A. D.

1986. Signed: Luvenia V. Ash-Thompson Luvenia V. Ash-Thompson

Matter suspended"

It was argued before us that petitioner announced an appeal from this judgment and the averment was not denied though the announcement is not on the record.

It is to be noted that a letter of administration was issued in favor of one Turn K. Washington in 1980, and another was issued to Messrs Abraham and T. K. Washington in March 1983 prior to the institution of this suit in point.

To correct the irregularities committed by the trial court, petitioner petitioned the Chambers Justice for a writ of prohibition. The writ was issued and after formal hearing same was granted. Respondents appealed, bringing the case before the full bench for final review.

On February 26, 1986, petitioner filed an eight-count petition for the writ of prohibition, which substantially states that:

(a) the trial judge entertained arguments in a motion relative to the main suit and reserved her ruling, but without further notice to petitioner she ruled on the motion and simultaneously entered final judgment against him;

(b) the trial judge refused to subpoena his witnesses for whose appearance and presence in court he had made written application to the court;

(c) that the trial judge proceeded in a manner contrary to the rules that ought to be observed at all times;

(d) that the trial judge refused to admit his documentary evidence marked as "F", "G", "H", "I", "J", and J2 even though they were all made part of petitioner's pleadings and filed.

Counsel for respondents filed a four-count returns, and the ruling by the Chambers Justice appealed from is now under review.

The court asked counsel for petitioner if the irregularities named above can be corrected by a writ of prohibition. His answer was yes, because prohibition is the more expeditious writ.

And the questions we must ask ourselves are: Will prohibition lie to remedy irregularities committed by the trial judge? The judge proceeded without notice of assignment to rule on the motion argued before her and simultaneously entered a final judgment in the main case, thereby evicting him from the premises. The judge's refusal to issue the writ of subpoena for petitioner's witnesses when a formal application was made to her, as well as her refusal to accept petitioner's documentary evidence which were pleaded and filed with his answer, were irregularities committed by her which cannot be cured by a writ of prohibition. In the case *Sodatonou v. The Bank of Liberia, Inc.*, 20 LLR 512 (1971), this Court held that prohibition will not lie to correct errors and irregularities committed by the Probate Court (inferior court). But will prohibition obtain where the act complained of has been completed and the issue closed?

The trial judge not only entered final judgment in the case in which she ruled that petitioner must give account of all monies he had collected for the premises, but also evicted him from the premises before petitioner filed this petition. In the case *Sinoe v. Nimley* 16 LLR 152,163 (1965), this Court held that: "Where prohibition would be ineffectual it will usually be disallowed, as where the act sought to be prevented is already done, or where, if the act were performed, it would be void and could not affect the rights of the party. This is certainly true to the extent that where the proceeding in the lower court has ended . . . prohibition is not an effectual remedy." And may prohibition lie where the trial court had proceeded in a manner different from what must be observed at all times? The answer to this question is certainly in the affirmative. We do not, however, see how this was done as every act of the judge complained of is an irregular one.

Taking recourse to the common law, we find in volume forty-two 42 American Jurisprudence, the following: "(Prohibition) being a prerogative or extraordinary writ, it does not lie, as a rule, for grievances which may be redressed in the ordinary course of judicial proceedings by other remedies provided by law." This law continues to say in another place: "It is the settled rule that ordinarily it (prohibition) will not issue where there is another legally adequate remedy, as by appeal or otherwise." In the case at bar, petitioner properly announced an appeal from the judgment entered against him. We think he should have followed the appeal.

Because of all we have stated herein above, it is our holding that the ruling of the Chambers Justice be reversed, and the same is hereby reversed, and this Court denies the petition for writ of prohibition and orders said writ quashed with costs against the petitioner. The Clerk of this Court must send down a mandate to the court below commanding it to resume jurisdiction over the cause and enforce its judgment. And it is so ordered.

Petition denied