

**SAMUEL WILLIAMS**, Informant, v. **HIS HONOUR JESSE H. BANKS JR.**,  
Presiding Judge, Sixth Judicial Circuit Court, Montserrado County, **MARY**  
**JACKSON LANGLEY**, and **JOSEPH JACKSON**, Respondents.

INFORMATION PROCEEDINGS.

Heard: December 8, 1988. Decided: December 29, 1988.

1. In an action of ejectment, a party not brought under the jurisdiction of a court may not be held in contempt in regards to possession of the real property involved in the ejectment action.

The Supreme Court had reversed and remanded an action of ejectment, with directions to the trial court to proceed in accordance with its opinion. During that process, the trial judge ordered the arrest of informant herein on contempt charges. Informant filed a bill of information before the Supreme Court indicating that he was not a party to the original ejectment suit but, nonetheless the trial judge had ordered the sheriff, without precepts, to demolish his house. There was no responsive pleading to the bill of information and no one appeared for respondents. In view of the circumstances apparent in the record before it, the Supreme Court vacated the entire proceedings, holding that the informant had not been properly brought under the jurisdiction of the court and, furthermore, the defendant in the original ejectment action had been dead for forty eight years prior to the current action. Information granted.

F. N. Toppor appeared for informant. No one appeared for respondents.

MR. JUSTICE AZANGO delivered the opinion of the Court.

According to the records before us, this Court on the 29th day of July, A. D. 1981 in the case *Ware v. Jackson and Jackson-Langley*, 29 LLR 133 (1981), we decided that the judgment of the trial court in an action of ejectment should be and the same was reversed and remanded to the court of origin with strict instructions that the resident or assigned judge presiding therein, resumes jurisdiction over the case, beginning with the hearing and disposition of the issues of law raised in the pleadings, and make a comprehensive and consistent ruling thereon, so as to embrace every material issue involved in this case without prejudice to either party.

According to records, on Monday, October 28, 1985, the case was called and representations were made as of record. Counsellor Francis Y. S. Garlawolo, representing the defendant, made the following record:

"At this stage, counsellor Francis Y. S. Garlawolo, says that from careful perusal of the records of this case, it has creditably discovered that the mandate of the Honourable Supreme Court of Liberia, rendered on the 29<sup>th</sup> day of July A. D. 1981, mandated this Honourable court, inter alia, `that the judgment of the court below should and the same is hereby reversed and remanded to the court of origin with strict instruction that the assigned judge presiding therein resumes jurisdiction over the case beginning with the hearing and disposition of the issues of law raised in the pleadings anew. From thence up to and including the present time, no law issue in this case has been disposed of. The so called ruling on law issues cleverly alluded to by counsel for plaintiff was the basis of the remedial process upon which this case was remanded by the Honourable the Supreme Court of Liberia. Wherefore and in view of the foregoing, counsel for defendant requests the court to disband the jury, based upon the misrepresentation of plaintiff counsel, since law issues must be disposed of prior to trial of facts. For reliance, counsel for defendant cites the opinion of the Honourable Supreme Court of Liberia given during the March Term, A. D. 1981, as well as the mandate dated July 29, 1981, of which we request the court to take cognizance. And respectfully submits."

To this submission, plaintiffs counsel requested the court below to deny the application on the ground that:

"Said application was made merely to further delay and baffle justice. A recourse to the court's file will show that the law issues were disposed of in keeping with the mandate, as well as the opinion cited and thereafter, a board of arbitration was set up by this august body comprising of three (3) arbitrators - one designated by the plaintiff, one by the defendant, while the court appointed the third person as chairman. The application should further be denied because after the appointment of the board of arbitration, the arbitrators performed their duty and made a written report in the presence of the parties, with counsellor S. Edward Carlor representing the plaintiff, and Judge Tulay representing the defendant. After the arbitration report, His Honour J. Henric Pearson, then assigned judge, ruled the report of the arbitration to jury trial, as evidenced by the court's record and the minutes of court presided over by Judge J. Henric Pearson. The plaintiff, therefore, requests your honour, to summon the clerk of court to produce the original records before court for verification. Plaintiff, therefore, requests your honor to deny the application and the case be proceeded with, especially so where at the outset of the trial, the plaintiff has prayed for a writ of subpoena duces tecum to produce the record of the arbitration by the clerk of court, as well as the deed offered in evidence and submit."

Whereupon, the Court made the following ruling:

"The court: Following the information given to the court and the application made therein by counsel for defendant, and the resistance made thereto by counsel for plaintiff, the court, in order to examine the situation, ordered the filing clerk to produce the court's file containing all of the records in this case. Seemingly, this is a gigantic task because for more than half an hour the office of the filing clerk has not been able to produce the court's file containing the documents/records made mention of in the information and application made by counsel for defendant.

Wherefore and in view of the foregoing, the empanelled jury, not having heard any evidence in the case, is hereby ordered disbanded and discharged until such time when the court is able to determine the facts relating to the information given by counsel for defendant, and weigh same against the resistance made by counsel for plaintiff.

The filing clerk is hereby ordered to produce the said records by Wednesday, October 30, 1985 at the hour of 2:30 p.m., and if this cannot be done, then it must be reflected upon the record of court. And so ordered. Matter suspended."

The records further show that on Monday, February 24, 1986, the case Jackson and Jackson-Langley v. Ware, an action of ejectment, was called for final judgment. Plaintiff was represented by counsellor S. Edward Carlor. Because of the absence of counsellor Garlawolo, counsel for the defendant, counsellor Supuwood was appointed to take the ruling of court's final judgment. Whereupon, His Honour Hall W. Badio, Sr. assigned circuit judge presiding, on the 24 th day of February, 1986, recorded the following final judgment:

#### "COURT'S FINAL JUDGMENT

Plaintiff instituted an action of ejectment against the defendant in these proceedings on June 2, 1979. Defendant answered and to that answer a reply was filed and served on the defendant on June 26, 1979.

The case was called for hearing during this term of court on Tuesday, February 18, 1986, during the 44 th day's sitting of this court. A jury was empaneled and the matter heard ex parte.

On February 17, 1986, an assignment was prepared and served on both parties, and their respective counsel acknowledged that assignment. Regrettably, Counsellor Garlawolo, counsel for defendant, failed to appear, therefore plaintiffs lawyer

requested the court to apply the relevant rule of law and proceed with the hearing of the case. The request was granted and the plaintiff was required to proceed with the presentation of her side of the issue after the defendant was called at the door three (3) times and he refused to answer.

Plaintiff established with the preponderance of evidence that the thirty (30) acres of land involved are her property which she inherited from her father.

The jury was charged and after deliberation, they brought a verdict of liable against the defendant and awarded the plaintiff general damages of Six Thousand (\$6,000.00) Dollars.

Because the verdict is in conformity with the evidence adduced at the trial, it is hereby confirmed and affirmed and the defendant is hereby adjudged liable. The plaintiff is also entitled to the possession and the complete ownership of the thirty (30) acres of land involved.

The clerk of this court is hereby ordered to prepare a bill of costs to be served on the defendant and also to prepare a writ of possession which will include the immediate metes and bounds of the property involved, and serve same on the defendant, thus placing plaintiff in possession of said property. The sheriff is hereby ordered also to request the assistance of a surveyor to help by identifying the corners of said land. And it is hereby so ordered.

GIVEN UNDER OUR HAND IN OPEN COURT

THIS 25TH DAY OF FEBRUARY A. D. 1986.

SGD. HALL W. BADIO, SR HALL W. BADIO SR,

ASSIGNED CIRCUIT JUDGE

PRESIDING"

There are no records before us indicating that exceptions were taken to this ruling of Judge Badio and an appeal announced to the Supreme Court of Liberia for a review of the trial. It must therefore be concluded that Josiah Ware conceded the regularities of the trial and that no error were committed by the trial judge to warrant our review. On the other hand, and what seems to us very strange is the fact that, according to records on the 13th day of April, A. D. 1988, a writ of arrest was commanded by His Honour Jessie Banks, Jr., growing out of the case Langley et al. v. Williams, in an action of ejectment, to have informant Samuel Williams brought before the civil law court without the least delay in order to answer to the charge of contempt. Samuel

Williams, who apparently played no part in the proceedings discussed, supra, flew to this forum on a bill of information stating:

"1. That although your humble informant was never a party to the ejectment case, he was arrested on an alleged charge of contempt of court, and was forthwith imprisoned and was still in jail when co-respondent Judge Banks Jr. ordered the sheriff and bailiff orally, without precept, to break down the house of informant.

2. That it is noteworthy that the alleged defendant, Josiah Ware, died November, 1931 and the writ of summons was issued in June 1979, together with the complaint, hence, no writ of summons was served on decedent Ware prior to his death in 1931 to enable decedent privies to defend his interest in the court of law.

3. That even if decedent Ware had executed a mortgage in favor of Laron F. Jackson for One Hundred and Fifty (\$150.00) Dollars for twenty five (25) acres of land payable within four (4) years certain, said alleged mortgage was and is still unavailable to Jackson's heirs and legal representatives which is indicative of laches and waiver. For how can a suit be successfully maintained on said mortgage after the mortgage had been completely satisfied as reflected by the lengthy period of acquiescence. The legal representatives of Jackson are barred by statute from recovery from decedent Ware.

4. That the mandate of this Honourable Court, remanding the case to the court below with strict instructions to resume jurisdiction and proceed, beginning with disposition of issues of law raised in the pleadings, has never been read. See both notices of assignment and the mandate hereto attached to form part hereof See also the minutes of court for October 1985 hereto annexed to form a cogent part of this information.

5. That there is no information or application filed or made before Co-respondent Judge Banks, Jr. and no copy of any such information or application served on informant respecting possession of the property subject of ejectment suit to give informant due notice as required by law. Hence there was nothing before His Honour Jesse Banks, Jr. which served as the basis of his authority to order the sheriff of the court below to break down the house of the informant

6. That where an interested party properly and regularly failed and neglected to assert his right he is estopped from recovery, and is further estopped from asserting title to real property when he has failed to act as the property was being acquired by another,

knowing that his rights were being invaded. That Aaron F. Jackson knowingly and of his own will neglected to avail himself of the benefit of the law, either to assert or establish his claim. Thus, the doctrine of estoppel will operate against him and his heirs.

7. That since defendant Ware died November 19, 1931, the writ of summons issued against him in June 1979 could not have been served against decedent in his grave. Hence, the court below had no jurisdiction over the person of Josiah Ware; consequently decedent Ware's privies cannot defend his interests in any suit at law. It follows that a writ of possession cannot be served against Ware's privies and heirs at law since the judgment is void ab initio.

Therefore and in view of the foregoing, your humble informant prays this Honourable Court to vacate or remand this case or order since defendant died forty eight (48) years ago, and since appellee Josiah Ware had never been under the jurisdiction of this court nor the trial court, especially so since the mandate of this Honourable Court had not been carried out fully, and to grant unto your humble informant any and all further remedy in the premises."

Recourse to the records reveal that there is no responsive pleading to this bill of information. The information was however assigned for hearing. No one appeared for respondents, neither did we have any showing that the motion for continuance was ever filed to claim our attention. The case however, was ordered assigned for hearing. The returns of the sheriff shows that respondents did not participate in the hearing of this bill of information, neither did they file a brief.

In view of the extenuating circumstances, and from records before us, we are of the considered opinion that the prayer of informant to the effect that he was never brought under the jurisdiction of this Court and that defendant died about forty-eight (48) years ago, the judgment against him should be vacated, the said prayer is hereby granted and the entire proceedings vacated to all intents and purposes. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction and vacate the entire proceedings. And it is hereby so ordered. Costs are disallowed.

*Information granted.*