

**ELOUISE C. DUNCAN**, by and thru her Attorney-In-Fact, AARON MILTON and CHAWKI BESAIBES, Informant, *v.* **JOSEPH N. CORNOMIA**, Respondent.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,  
MONTSERRADO COUNTY AND INFORMATION PROCEEDINGS.

Heard; April 21, 2004. Decided: August 17, 2004.

1. The moment an entire action of ejectment is withdrawn together with the writ of summons, there is no complaint left before the trial court to be amended; and when the plaintiff refiles the complaint, it becomes a new action.
2. Where an entire action is withdrawn, together with the writ of summons, a new complaint filed by the plaintiff must be accompanied by a new writ of summons and served on the defendant; otherwise the defendant is not brought under the jurisdiction of the court.
3. When a complaint is filed with the clerk of court, a written direction must be attached to the complaint and the clerk must issue a writ of summons based on the written directions, which must be delivered to the sheriff for service on the defendant.
4. A writ of summons is the instrument used to commence a civil action or special proceedings and is a means of acquiring jurisdiction over a party.
5. Where no writ of summons is served on a party, the court does not acquire jurisdiction over that party.
6. The withdrawal of plaintiff's entire action deprives the court of jurisdiction over the case as the previous writ of summons and the entire action are no longer before the trial court to be amended.
7. A bill of information will lie to prevent a judge or any judicial officer who attempts to execute the mandate of the Supreme Court in an improper manner from doing so.
8. A bill of information will also lie to prevent anyone whomsoever from interfering with the judgment and/or mandate of the Supreme Court.
9. In order for a bill of information to be granted, it must be shown that the respondents have disobeyed or obstructed the enforcement of the Supreme Court's mandate.
10. A bill of information which seeks to withdraw a case pending before the Supreme Court is totally out of place and cannot be granted.

11. Any counsellor who files information before the Supreme Court assigning reasons therefor other than the reasons expressly prescribed by the Rules of the Supreme Court shall be penalized by the imposition of a fine, suspension or disbarment.
12. Whenever the appellant and appellee or their counsels sign and file a written agreement of withdrawal with the clerk of the Supreme Court, specifying the terms thereof and paying the requisite fees, it shall be the duty of the clerk to enter the case withdrawn upon approval of the Chief Justice or any Justice of the Court and give to the parties a certificate of withdrawal.
13. Ejectment involves contest over title to real property, where the plaintiff claims right to a real property and the defendant also asserts ownership to the very same property.
14. In ejectment the court examines the respective titles of the parties and the party with the superior title wins.
15. The chain in a claim of title must be firmly linked and anchored to the grantor's title to make the grantee's title superior.
16. Where an important link in the chain of title is broken, as where the grantor's title is cancelled by court, the grantee is in effect rendered without title.
17. Where only one party has presented title, and the title presented by the other party has been nullified by court, ejectment will not lie.
18. A case is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy.
19. Generally courts render decisions to adjudge real controversies between parties and not to discuss abstract positions.
20. Moot cases give rise to advisory opinions and the Supreme Court does not give advisory opinions in the Liberian jurisdiction.
21. Where a question presented has become moot, a judgment or order may be affirmed without consideration of the merits of the case.
22. Courts have the authority, and often duty, to dismiss a moot case on their own initiative, without any application from a party.

The appellant filed an action of ejectment against the appellee to evict and eject him from a parcel of land to which she asserted ownership. Thereafter, following the filing of an answer by the appellee, the appellant filed a notice of withdrawal of her complaint with reservation to refile. On the same day the appellant filed an amended complaint, which was followed by

the appellee's filing of an amended answer and a motion to dismiss. In the motion to dismiss the appellee contended that the trial court lacked jurisdiction over his person in that the appellant having withdrawn her action with reservation to refile, she should have prayed the court for a writ of summons to be issued and served on him, the appellee, to bring him under the jurisdiction of the court. This, the appellee said, was never done, and hence he had not been brought under the jurisdiction of the court.

The trial court granted the motion and dismissed the appellant's action. From this dismissal, an appeal was taken to the Supreme Court. While the appeal was pending, the Ministry of Foreign Affairs filed a petition to cancel the deed relied upon by the appellee for claiming ownership to the parcel of land sued for by the appellant. This latter case was heard by the Supreme Court and the three deeds upon which the appellee was relying in the ejectment suit were cancelled. Additionally, while the appeal in the ejectment suit was still pending before the Supreme Court undetermined, the appellant filed a bill of information seeking to withdraw the appeal. The bill of information stated that as the appellee's deeds had been cancelled by the State, there was no contest regarding title to the property.

The Supreme Court affirmed the judge's dismissal of the appellant's action of ejectment, reasoning that once the entire action, along with the writ of summons, was withdrawn by the appellant, there was no complaint left before the trial court to be amended. Therefore, the Court said, when the appellant refiled her complaint, it became a new action and the appellant should have filed written directions praying for the issuance of a writ of summons to be issued and served on the appellee. The appellee, the Court held, was therefore not brought under the jurisdiction of the trial court.

On the issues of the bill of information, the Court denied the same. The Court noted that a bill of information can only be granted on a showing that the enforcement of its mandate has been disobeyed, obstructed or interfered with. A bill of information could not be used to effect a withdrawal of an appeal. Hence, the Court held that the bill of information be denied. Notwithstanding, the above holdings, the Court determined that the appellee could not contest the appellant's ownership to the land in question in view of the cancellation of the appellee's deeds by the State, the grantor, in the cancellation proceedings. The Court noted that where the title deed relied upon by the defendant is nullified by the court, ejectment will not lie and cannot be entertained by the courts, the suit having become moot by the nullification.

*Jerome J. Verdier* of Stubblefield & Associates appeared for the plaintiff/appellant. *Snonsio E. Nigba* and *James N. Gilayeneh* of Legal Aid Inc. and Legal Services, Inc. respectively appeared for defendant/appellee.

MR. JUSTICE KORKPOR, SR., delivered the opinion of the Court

This case is before us for the second time. The first time it was here, this Court, in its opinion of December 17, 1997, reversed the ruling of the trial judge granting preliminary injunction and permanently restraining the defendant/appellee in the action of ejectment and evicting him from the disputed property. This Court, at that time, ordered that the defendant/ appellee be placed in possession of the subject property pending the outcome of the ejectment action. The trial court was also mandated to resume jurisdiction over the ejectment suit and proceed with a hearing on its merits.

We find the case again before us on appeal from the ruling on the motion to dismiss the action of ejectment filed by defendant/appellee, which motion to dismiss was granted by the trial judge, thereby necessitating this appeal.

The facts in the action of ejectment are that: Elouise C. Duncan, acting by and through her attorneys-in-fact, Aaron Milton and Chawki Bassaibes, of the City of Monrovia, Republic of Liberia filed an action of ejectment against defendant/appellee, Joseph N. Cornomia, in the Sixth Judicial Circuit, Montserrado County, on May 11, 1998. The writ of summons and the complaint were served on defendant/ appellee and returned served.

The plaintiff/appellant, Elouise C. Duncan, alleged in her complaint that she is the owner of the parcel of land on which the Mamba Point Hotel is situated; that she also owns the portion of land in front of the Mamba Point Hotel, across the street from the hotel and that the defendant/appellee was wrongfully occupying the said parcel of land. Plaintiff/ appellant attached to her complaint copy of a warranty deed dated August 15, 1958 from William E. Dennis to Elouise C. Duncan.

The defendant/appellee filed an answer denying that he was wrongfully occupying the plaintiff/appellant's land. The defendant/appellee stated that the land covered by plaintiff/ appellant's deed attached to the complaint does not extend to the beach through the street opposite the Mamba Point Hotel to include the defendant/appellee's property. The defendant/ appellee claimed title to the subject property through an administrator's deed from the Intestate Estate of the late Jarboe Sartee, represented by and thru its

administrators, Robert Sartee and Peter Sartee. The administrator deed is dated January 19, 1998. Copy of the said administrator deed was attached to the Answer. A certified copy of a public land sale deed dated April 15, 1865 from the Republic of Liberia for ten acres of land signed by President Daniel B. Warner and issued to the late Jarboe Sartee was also attached to the answer. Pleadings rested in the case with the filing of the plaintiff/appellant's reply.

On the 3rd day of March, A. D. 2000, the plaintiff/ appellant, through her counsels, filed a notice of withdrawal with the clerk of the trial court, withdrawing the action of ejectment with reservation to refile. On the same day the plaintiff/appellant filed an "amended complaint", this time, by and thru Aaron Milton and Chawki Basaibes, as attorneys-in-fact.

The defendant/appellee filed an "amended answer" along with a motion to dismiss the "amended complaint" contending among other things that the Court lacked jurisdiction over the person of the defendant/appellee because the plaintiff/ appellant, having withdrawn her action of ejectment with reservation to refile, plaintiff/appellant should have prayed for a writ of summons to be issued and served on the defendant/ appellee when she refiled the action.

The motion to dismiss was resisted, argued and granted by the trial court, dismissing the entire action of ejectment. The plaintiff/appellant announced an appeal from the ruling dismissing the action of ejectment and all jurisdictional requirements were met in perfecting the appeal.

While the appeal was still pending undetermined, the Ministry of Foreign Affairs, by and through the Ministry of Justice, filed a petition for the cancellation of three certified copies of title deeds issued to the late Jarboe Sartee from which the defendant/appellee derived his title to the property in dispute. The case traveled to the Supreme Court and this Court, on December 13, 2002, cancelled the three certified copies of deeds issued to the late Jarboe Sartee for reason of fraud.

Also, while the appeal was still pending undetermined from the ruling of Judge Kontoe dismissing the action of ejectment, a bill of information was filed by plaintiff/appellant seeking the withdrawal of the appeal. At the call of the case, the bill of information, the returns thereto, as well as the appeal from the ruling dismissing the action of ejectment were consolidated.

The plaintiff/appellant argued in the bill of information that there is no need to further litigate the matter of the ejectment in view of the Supreme Court's decision cancelling the three certified copies of title deeds on which the defendant in the action of ejectment

derived his title to the disputed property; and that there was no more contest of title between the parties, hence, there is no need to continue the action of ejectment. The plaintiff/appellant also contended in the bill of information that “granting the bill of information and rendering judgment without opinion ... will in effect be sustaining the dismissal of the action of ejectment filed in the court below without examining the merits of the case.” In essence, the bill of information prayed that the appeal announced from the ruling of Judge J. Boima Kontoe dismissing the action of ejectment be withdrawn and the action of ejectment be dismissed.

The counsels representing the defendant/appellee, contended that a bill of information can not be used to withdraw a matter before the Supreme Court and therefore prayed that the bill of information, together with the appeal be dismissed. Count 8 of the returns to the bill of information states in part: “As to count 7 of the information, respondent prays Your Honours and this Honorable Court to render an opinion by dismissing both the informant’s baseless and frivolous bill of information, and appellant’s appeal...”

The defendant/appellee further argued that the trial court lacked jurisdiction over the person of the defendant/ appellee because plaintiff/appellant withdrew her entire action of ejectment with reservation to refile, but when the complaint was refiled, Plaintiff/appellant did not pray for a writ of summons to be issued and served on the defendant/appellee so as to bring the defendant/appellee under the jurisdiction of the trial court. For this reason, the defendant/appellee prayed this Court to dismiss the bill of information. The defendant/ appellee also prayed this Court to deny and dismiss the appeal taken from the ruling of Judge J. Boima Kontoe.

From the facts and circumstances of this case, the issues presented for our consideration are:

1. Whether or not the ruling of the trial judge dismissing the action of ejectment based on the motion to dismiss filed by the defendant/appellee is proper?
2. Whether or not a bill of information can be used to withdraw a case pending before the Supreme Court?
3. Whether or not there is need for the continuation of the ejectment suit before our Courts?

We will discuss the issues in the order as presented. The first issue raises the question whether or not the ruling of the trial judge dismissing the action of ejectment is proper. The records in the case show that the plaintiff/appellant withdrew her action of ejectment and

filed an “amended complaint” and served same on the defendant/appellant without a writ of summons. We hold that the moment the entire action of ejectment was withdrawn together with the writ of summons, there was no complaint left before the trial court to be amended. This was not a situation where the complaint in an action was withdrawn leaving the writ of summons which had been previously served and returned served. In the case before us as seen from the records, the entire action filed was withdrawn along with the writ of summons. Hence, when the plaintiff/appellant refiled her complaint, it became a new action, in the contemplation of the law. Therefore, she should have filed a written directions with the clerk of court based on which a writ of summons would have been issued to be served on the defendant/appellee. To the contrary, the plaintiff/ appellant only filed what she termed as an amended complaint and served same on the defendant/appellee. There being no writ of summons subsequently served on the defendant/ appellee, we agree with the defendant/appellee that he was not brought under the jurisdiction of the trial court.

The practice in our jurisdiction is that when a complaint is filed with the clerk of court, a written directions is attached to the said complaint and the clerk issues a writ of summons based on the written directions and delivers it for service to the sheriff or to the person specifically appointed to serve same on the party defendant. Thus, a writ of summons is the instrument used to commence a civil action or special proceedings and is a means of acquiring jurisdiction over a party. It follows therefore, that where no writ of summons is served on a party, the court does not acquire jurisdiction over that party.

The Supreme Court has held that “the withdrawal of plaintiff/s entire action deprives the court of jurisdiction over the case where the previous writ of summons and the entire action are no longer pending before the trial court to be amended.” *Baaklini and Metropolitan Bank s.a.l. v. Henries, Younis et al.*, 39 LLR 303 (1999). We therefore hold that the plaintiff/appellant not having served a writ of summons on the defendant/appellee when the action of ejectment was subsequently refiled, the defendant/appellee was not brought under the jurisdiction of the court and he could not therefore, be legally held to answer to the action of ejectment. Hence, the ruling of the trial court presided over by His Honor J. Boima Kontoe dismissing the action of ejectment on the strength of the motion to dismiss filed by the defendant/ appellee, being grounded in law, should not be disturbed.

Concerning the second issue, i.e. whether or not a bill of information can be used to withdraw a case pending before the Supreme Court, we say no. Under our law “A bill of information will lie to prevent a judge or any judicial officer who attempts to execute the

mandate of the Supreme Court in an improper manner from doing so. A bill of information will also lie to prevent any one whomsoever, from interfering with the judgment and/or mandate of the Supreme Court.” (See *Revised Rules of the Supreme Court, Rules For Procedure In The Courts*.)

Consistent with the above cited provision of the Rules of the Supreme Court governing bill of information, this Court has held that in order for a bill of information to be granted, it must be shown that the respondents have disobeyed or obstructed the enforcement of the Supreme Court’s mandate. *Intrusco Corporation v. Firetex Incorporated*, 32 LLR 36 (1984), Syl. 2; *Nimley, Seke et al. v. Yancy et al.*, 30 LLR 403 (1982), Syl. 1. In the case before us, there is no showing that there was obstruction to, or interference with the execution of a mandate of this Court. To the contrary, the bill of information seeks to withdraw a matter pending before this Court. Given the restrictive confines of a bill of information as clearly seen from the Rules of the Supreme Court and in the many cases decided by this Court, we hold that the bill of information before us which seeks to withdraw a case pending before this Court is totally out of place, and therefore cannot be granted.

Under the Rules of the Supreme Court, it is provided that “Any Counsellor who files information before this Court assigning reasons therefor other than the reasons expressly prescribed by these rules shall be penalized by the imposition of a fine, suspension or disbarment.” However, this Court will not impose any penalty on the counsel for the plaintiff/ appellant at this time. We only warn him to pay heed in the future!

The Supreme Court has a set procedure through which parties or either party in a pending case before it can discontinue or withdraw a case.

The Revised Rules of the Supreme Court provides with respect to continuance and withdrawal as follows:

“Whenever the appellant and appellee, or the petitioner and respondent shall in vacation by themselves, or either counsel, sign and file with the clerk an agreement in writing directing the cause to be withdrawn and specifying the terms on which it is to be withdrawn as to costs, shall pay to the clerk any fees that may be due to him and the ministerial officers, it shall be the duty of the clerk to enter the case withdrawn upon the approval of the Chief Justice or any Justice of the Court, and to give to either party requesting it a certificate of withdrawal.”

The foregoing procedure is what the counsellor for the plaintiff/appellant ought to have followed to withdraw the appeal before this Court, instead of filing a bill of information.



Because a bill of information can not be used to withdraw a case before this Court, the bill of information filed by plaintiff/appellant is hereby denied and dismissed.

This brings us to the third and last issue, i.e. whether or not the matter of the ejectment action should continue before our courts. To this question, our answer is no. As stated in the summary of facts, while the action of ejectment was still pending on appeal before this Court, the Ministry of Foreign Affairs, by and through the Ministry of Justice filed a petition for the cancellation of the three certified copies of title deeds issued to the late Jarboe Sartee. Those were the title deeds on which the defendant in the action of ejectment derived his title to the disputed property. This Court says that ejectment involves contest over title to real property, where the plaintiff claims right to a real property and the defendant also asserts ownership to the very same property. In ejectment, the court examines the respective titles of parties and the party with superior title wins. The chain in a claim of title must be firmly linked and anchored to the grantor's title to make the grantee's title superior. It follows, therefore, that where an important link in the chain of title is broken as in the instant case, where the title of the defendant/appellee's grantor is cancelled by Court, the defendant/appellee is in effect rendered without title. And where only one party has presented title, and the title presented by the other party has been nullified by Court, ejectment will not lie.

What then is the usefulness of delving into the positions and contentions of the parties in an action of ejectment in the face of the cancellation of the title deeds out of which one of the parties to the action of ejectment derived his title. To our mind, there is no practical effect of deciding the action of ejectment on its merits, since by the cancellation of the title deeds issued to the late Jarboe Sartee from which defendant/ appellee derived his title, there now exists no controversy of title to be resolved on the appeal. We therefore hold that the matter of the ejectment suit has become moot. A case is moot when a determination is sought on a matter which, when rendered cannot have any practical effect on the existing controversy. BLACK'S LAW DICTIONARY 909 (5<sup>th</sup> ed).

Generally, courts render decisions to adjudge real controversies between parties and not to discuss abstract positions. Moot cases give rise to advisory opinions, and in this jurisdiction, our Supreme Court does not give advisory opinion. Where a question presented has become moot, a judgment or order may be affirmed without consideration of the merits of the case. 5 AM JUR 2d., *Appeal and Error*, §932. Courts have the authority, and often duty,

to dismiss a moot case on their own initiative, without any application from a party. 20 AM JUR 2d, *Courts*, § 81.

We hold therefore that the title deeds from the grantor of the defendant/appellee in the ejectment action relied on having been cancelled, the question of title between the parties cannot be entertained further in our courts.

Wherefore and in view of the foregoing, it is our opinion that the defendant/appellee was not brought under the jurisdiction of the trial court, hence he could not be held to answer in an action of ejectment. The action of ejectment brought against the defendant/appellee is therefore dismissed. Further, we hold that the ejectment action having been rendered moot by the petition of cancellation filed by the Ministry of Foreign Affairs by and through the Ministry of Justice and this Court having confirmed and affirmed the cancellation of the certified copies of three title deeds issued to the late Jarboe Sartee, defendant/appellee's grantor, this ejectment action can no longer be entertained in our courts. On this basis, the ejectment action is also dismissed. The Clerk of this Court is hereby ordered to send a mandate to the court below to give effect to this judgment. Costs are ruled against the plaintiff/appellant. And it is hereby so ordered.

*Judgment affirmed; action dismissed.*

