

FRIENDS OF LIBERIA ASSOCIATION, INC., by and thru its Authorized Agent, COMFORT T. MYERS, CHEA CHEAPOO, GEORGE DWEH, et al., Appellants, *v.* **HIS HONOUR WILLIAM METZGER**, Presiding Judge, Sixth Judicial Circuit Court, Montserrado County, and **PETRO CHEMICAL INDUSTRIES, INC.**, by and thru its Authorized Agent, A. N. CHARIF, Appellees.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE PETITION FOR ISSUANCE OF THE WRIT OF PROHIBITION AND BILL OF INFORMATION.

Heard: March 30, 2004. Decided: August 13, 2004.

1. It is improper for a judge to order eviction of a party to an ejectment suit based on a bill of information which had not been heard and in the absence of a hearing on the action of ejectment.
2. A party must be heard before judgment is rendered against him or her.
3. A party cannot be bound by a judgment without being allowed a day in court.
4. The issue of title is foreign to an action of injunction and the nature of injunction and ejectment actions are so distinct that the two forms of action cannot be combined or blended.
5. The sole object of preliminary injunction is to preserve the status quo until the merits of a case are heard.
6. Only ejectment can determine the merits to title of real property.
7. Any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof.
8. Ejectment action may be brought when title to real property as well as the right to possession thereof is disputed.
9. An injunction is not a possessory action and therefore cannot serve the purpose of an ejectment action which determines title and places the rightful owner in possession.
10. An injunction has only a restraining or prohibitive power.
11. As a general rule, a preliminary or interlocutory injunction will not be issued to take property out of the possession of one person and put it into the possession of another, especially where legal title is in dispute and the party in possession asserts ownership in himself or other.
12. No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the result of a hearing and judgment consistent with the provisions laid down in the Constitution and in accordance with due process of law.
13. The right of no one shall be concluded by a judgment rendered in a suit to which he or she is not a party.

14. The office of ejectment cannot be usurped by injunction, prohibition or information.

Co-appellee Petro Chemical Industries, Inc., which in 1989 had leased from Mai Barclay Roberts a parcel of land on 9th Street, Sinkor, was forced in 1990 to abandon the property because of the Liberian Civil War. Thereafter, in April 1992 co-appellant Friends of Liberia Association, Inc. leased the subject property from the Estate of the late John Francis Marshall. When co-appellee returned to Liberia but was denied permission to enter the property by the co-appellant, it entered into a sixteen month lease agreement with the co-appellant for lease of the property. When the check issued for the said lease could not be encashed by the co-appellant, it refused to turn the property over to the co-appellee and decided to deny the said co-appellee entry to the property.

As a result of the refusal and denial, the co-appellee commenced an action of ejectment and filed a motion for preliminary injunction against the co-appellee. Thereafter, the co-appellee filed a bill of information with the court, alleging that the co-appellant had violated the injunction. The trial court then summoned the co-appellant for contempt. However, without first disposing of the ejectment suit or hearing the injunction action, the court proceeded, on the basis of the bill of information, to order the sheriff to evict the co-appellant from the premises, subject of the ejectment and injunction suits.

Whereupon, the co-appellant filed before the Supreme Court Justice in Chambers a petition for a writ of prohibition. However, the succeeding Justice in Chambers, Justice M. Wilkins Wright, on the basis of a bill of information filed before him by co-appellee Petro Chemical Industries, Inc., alleging that the co-appellant had disrespected the orders of the predecessor Justice, and solely on the strength of a conference held with the parties, without hearing either the bill of information or the petition for a writ of prohibition upon which the predecessor had already ordered the issuance of the alternative writ, ordered the Clerk of the Supreme Court to send a mandate to the lower court to evict co-appellant Friends of Liberia, Inc. from the premises and to put co-appellee Petro Chemical Industries, Inc. into possession of the premises. From this ruling an appeal was taken to the Court *en banc*.

The Supreme Court reversed the ruling of the Justice in Chambers and granted the petition for the writ of prohibition. It ordered the issuance of the peremptory writ, holding that neither a bill of information nor an injunctive action was the appropriate action to determine title or possession to real property; and that the province for determination of title was action of ejectment. The Court held that the trial court could therefore not, in contempt proceedings growing out of the filing of a bill of information, order the eviction of a party without adjudication of the ejectment suit. The injunction action, the Court opined, not being a possessory action, is strictly to maintain the status quo and not to determine title or right of possession in real property or to serve the purpose of an ejectment action.

The actions of the trial court and the Justice in Chambers, the Supreme Court, said were tantamount to a denial of due process of law and a violation of the appellants' constitutional

rights. As such, any judgment rendered without affording the opportunity for a party's day in court was not binding on such party. The Court stated further that after the issuance of the alternative writ of prohibition and the bill of information, the Justice could not send a mandate to the trial court to evict the co-appellant from the disputed premises, especially when there had been no hearing by the Justice on the two actions. The prohibition was therefore ordered granted.

Chea Cheapoo and *Elijah Cheapoo* of Cheapoo Law Firm appeared for the respondents/appellants. *Cyril Jones* of Jones and Jones Law Firm appeared for the informant/appellee.

MR. JUSTICE CAMPBELL delivered the opinion of the Court.

The records in this case reveal that on December 15, 1989 co-appellee Petro Chemical Industries, Inc. executed an agreement of lease with Mai Barclay Roberts for a piece of property containing a gas station, lying and situated at the junction of Tubman Boulevard and 9th Street, Sinkor, Monrovia, Liberia, for a period of twenty (20) calendar years, commencing from December 15, 1993 and ending December 16, 2013. The property remained under the control of co-appellee as lessee until 1990 when co-appellee was forced to leave Liberia due to the civil war, and therefore said property was left un-attended to.

The records further reveal that Friends of Liberia Association, Inc., co-appellant leased the subject property from the Estate of the late John Francis Marshall, by and thru its administrator, Edmond B. Coleman, on April 27, 1992.

In the year 1996, co-appellee Petro Chemical Industries, Inc., wanting to do business on the property but realizing that appellants were occupying same, requested co-appellant Friends of Liberia Association, Inc. for permission to enter the premises and assess the extent of damage done to the property and with an understanding that a lease agreement would be executed between the parties. The request was granted on August 10, 1996. On August 12, 1996 co-appellant Friends of Liberia Association, Inc. revoked the permission on ground that co-appellee had gone contrary to the understanding by unlawfully locking doors and other entrances to said property in the absence of the execution of a lease agreement. As a result of this Notice of Revocation of Permission to enter the premises, the co-appellee entered into a lease agreement with co-appellant Friends of Liberia Association, Inc. on August 12, 1996, for the property for a period of Sixteen (16) calendar months for a consideration of LD400,000.00 for the entire lease period. The parties agreed that during the signing of the lease agreement, LD200,000.00 would be paid by the sub-lessee to the sub-lessor. Co-appellee Petro Chemical Industries, Inc. issued two checks in the amounts of LD\$200,000.00 each, representing the total lease payment, one of which was postdated while the other was to be presented to the bank for encashment the day following the signing of

the lease agreement. Upon presentation of the check to the bank, the check could not be encashed for lack of funds. Consequently, co-appellee Petro Chemical Industries, Inc. was informed about the worthless check, but failed to make good the check.

Co-appellant Friends of Liberia Association, Inc. then refused to turn the property over to co-appellee, for which co-appellee Petro Chemical Industries, Inc. filed ejectment action and a motion for preliminary injunction with the Sixth Judicial Circuit Court on grounds that co-appellee Petro Chemical Industries, Inc. is entitled to the right of occupancy and possession by virtue of the sub-lease agreement executed by and between co-appellee Petro Chemical Industries, Inc. and co-appellant Friends of Liberia Association, Inc. on August 12, 1996, and also by virtue of the lease agreement entered into by and between co-appellee Petro Chemical Industries, Inc. and Mai Barclay Roberts on December 15, 1989. Appellants filed an answer denying co-appellee's right of occupancy and possession of the subject property and a resistance to the motion for preliminary injunction with an injunction bond; and a motion to vacate the preliminary injunction.

While the hearing on the motion to vacate the preliminary injunction was pending, co-appellee Petro Chemical Industries, Inc. filed a bill of information at the Civil Law Court alleging that appellants had violated the injunction order. The Civil Law Court Judge ordered the issuance of a writ of summons for contempt growing out of the bill of information and inserted in said writ an order for the sheriff to evict the appellants from the subject property. The order states thus: "You will also remove any and all such persons named herein whom you will find on the premises following receipt and notice of the writ of injunction from the said premises, subject of these proceedings".

Following the service of the writ of summons for contempt, the appellants filed a petition for a writ of prohibition before Chambers Justice, His Honour Karmo Soko Sackor, who issued the alternative writ with a stay order on September 14, 1996. While hearing into the prohibition proceedings was pending, co-appellee filed a bill of information on September 17, 1996 before Justice Sackor alleging that appellants had misinterpreted the meaning of the stay order and the *status quo* as at the day and time of the issuance of the writ by going on the same property to obstruct the operations of co-appellee, thereby disturbing the *status quo* of all the actions taken in the court below prior to the issuance of the alternative writ of prohibition.

Based on the bill of information, Justice Sackor ordered the issuance of a second writ on September 17, 1996, ordering the parties to maintain the *status quo ante* as at the date and time of the issuance and service of the alternative writ of prohibition and to stay all further proceedings. The prohibition and bill of information proceedings had not been passed upon when Justice Sackor left Chambers. When Justice Micah Wilkins Wright got in Chambers, co-appellee filed another bill of information before Chambers Justice Wright, alleging that co-appellants disrespect-ed the orders of the Honourable Supreme Court despite the orders

of Justice Sackor to have the *status quo ante* maintained, which, according to co-appellee, means that co-appellee should have possession of the subject property.

Following a conference with the parties on January 10, 2003, Justice Wright ordered the Clerk of the Supreme Court to send a mandate to the judge below to resume jurisdiction and implement the orders of Justice Sackor as contained in the writ of prohibition of September 17, 1996 and place co-appellee in possession of the subject property. Consequently, appellants were evicted as a result of the mandate. Thereafter, appellants filed a bill of information before Justice Wright praying rescission of the Justice's mandate on ground that there is no record or order issued by Justice Sackor wherein he stated that the co-appellee should be placed in possession of the subject property. The prohibition and the three (3) bills of information were consolidated, argued and the Chambers Justice ruled denying the petition for a writ of prohibition, thereby quashing the alternative writ issued earlier and further denied the bill of information filed by appellants. From this ruling, appellants appealed.

This Court considers the following issues determinative of this matter:

1. Whether or not the judge in the court below erred when he ordered the eviction of appellants based upon contempt proceedings growing out of a bill of information in the absence of a hearing in the action of ejectment?
2. Whether or not after the issuance of an alternative writ of prohibition and bill of information a Chambers Justice can send a mandate to the court below to evict a party without hearing the prohibition and bill of information proceedings pending before him?

The first issue for our consideration is whether or not the judge in the court below erred when he ordered the eviction of the appellants based upon contempt proceedings growing out of a bill of information and in the absence of a hearing in the action of ejectment.

A recourse to the records certified to this Court reveals that while the motion to vacate the preliminary injunction and the initial action of ejectment were pending before the lower court, the Sixth Judicial Circuit Court, Co-appellee Petro Chemical Industries, Inc. filed a bill of information with said court below alleging that appellants had violated the injunction order by restraining and prohibiting appellee from entering the subject property. The presiding judge then issued a writ of summons for contempt and ordered the sheriff to oust appellants from the subject property.

In the absence of a hearing in the action of ejectment, it was improper for the presiding judge to have ordered the eviction of appellants based on a bill of information which was also not heard. Our laws provide that "a party must be heard before judgment is rendered against him or her". In the case *Tubman v. Murdoch*, 4 LLR 179 (1934), this Court held that "a party cannot be bound by a judgment without being allowed a day in Court".

The issue of title is foreign to an action of injunction. The respective nature of an injunction action and an ejectment action are so distinct that the two forms of action cannot be combined or blended. See *Fiske et al. v. Artis et al.*, 11 LLR 334 (1953). It goes without

saying that the sole object of a preliminary injunction is to preserve the status quo until the merits of a case are heard and only ejectment can determine the merits to title of real property.

Our statute provides also that “any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Such an action may be brought when the title to property as well as the right to possession thereof is disputed.” See Civil Procedure Law, Rev. Code 1: 62.1. This Court held in the case *Tweb v. Koffa*, 28 LLR 89, syl. 4 (1979), text at page 97, that “an injunction is not a possessory action and therefore cannot serve the purpose of an ejectment action which determines title and places the rightful owner in possession. An injunction has only a restraining or prohibitive power”. It is clear therefore that the presiding judge erred in ordering the eviction of the appellants in the absence of a hearing in the ejectment action. This position is further buttressed by 42 AM JUR 2d, *Injunctions*, section 53, wherein it is precisely stated that “as a general rule, a preliminary or interlocutory injunction will not be issued to take property out of the possession of one person and put it into the possession of another, especially where the legal title is in dispute and the party in possession asserts ownership in himself or other”.

The last issue for our determination presents the question whether or not after the issuance of writs of prohibition and bill of information, a Chambers Justice can send a mandate to the court below to evict a party without the hearing of the prohibition and bill of information proceedings pending before him.

The answer to this is NO. The records show that the appellants filed a petition for a writ of prohibition with Chambers Justice Sackor after the receipt of the writ of summons, ordered issued by the court below, to have co-appellants evicted from the premises based on a bill of information filed in the court below by the co-appellee. The alternative writ was issued along with a stay order on all proceedings. While the prohibition proceedings were pending, co-appellee filed a bill of information alleging that co-appellants had misinterpreted the prohibition order to mean that co-appellants should be put in possession of the subject property. The Justice issued another writ ordering the parties to remain in *status quo ante* as at the date and time of the issuance of the writ of prohibition.

The prohibition and information proceedings were not heard until Justice Sackor left Chambers. When Justice Micah Wilkins Wright got in Chambers, co-appellee filed another bill of information alleging that co-appellants had violated the order of Justice Sackor by remaining on the premises contrary to said order. Following a conference of the parties with Justice Wright, the Justice ordered the Clerk of the Supreme Court to issue a writ growing out of the bill of information and insert therein that the appellants be evicted since they had violated the orders of Justice Sackor. Hence, appellants were evicted without a hearing in the prohibition and the two bills of information proceedings.

We are convinced that the eviction order against appellants was violative of their rights. The Constitution of the Republic of Liberia provides that “no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the result of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law”. See Article 20(a), Constitution of Liberia (1986).

This Court held in the case *Liberia Industrial Development Corporation (LIDC) v. Thorpe*, 31 LLR 714 (1984), syl. 2, that “the right of no one shall be concluded by a judgment rendered in a suit to which he is not a party, and a party cannot be bound by a judgment without being allowed his day in court”.

One wonders the rationale for the eviction, especially so when the ejectment action out of which the ancillary action of injunction, motion to vacate, bill of information, and contempt grew had not and is yet to be determined by the trial court. We believe that only a determination of the action of ejectment can settle the rights of the parties to the subject property and we so hold. Moreover, the office of ejectment cannot be usurped by injunction, prohibition or information.

Wherefore and in view of the foregoing, the ruling of the Chambers Justice denying the writ of prohibition is hereby reversed, the petition is granted and the peremptory writ is ordered issued. The Clerk of this Court is hereby ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction, put the appellants in possession of the subject property, hear the bill of information, and the motion to vacate preliminary injunction in the ejectment action, Mrs. Mai Barclay Roberts and Edmond Coleman are to be joined as parties *sua sponte*, and thereafter the court is to proceed to hear the action of ejectment. Costs are ruled against appellee. And it is hereby so ordered.

Petition granted.