

**HENRY FALLAH**, Movant, *v.* **HIS HONOUR EMMANUEL KOLLIE**,  
Assigned Circuit Judge, Ninth Judicial Circuit, Bong County, et al., Respondents.

INFORMATION PROCEEDINGS.

Heard: December 2, 2004. Decided: March 1, 2005.

1. The Mandate of the Supreme Court shall be immediately and strictly complied with by the trial judge.
2. Mandates to the lower courts commanding the execution of judgments shall be transmitted immediately upon the adjournment of the term of court or immediately after the rendition of the opinion during the term.
3. To all Mandates of the Supreme Court returns shall be made, and they shall contain a clear statement of the manner in which they have been complied with and shall be verified, except such returns are made by judges.
4. Every judge, before the first day of the term immediately succeeding the term at which a Mandate shall be issued, unless directed to make returns to a Justice in Chambers, shall file a return showing the action taken by him in the premises.
5. Should the judge of any court fail to make a returns to the Mandate of the Supreme Court, such failure shall be recorded, and the clerk shall present the original of the returns made to the Court on the first day of the term, when a return calendar shall be read and disposed of.
6. A citizen desiring to purchase public land located in the hinterland shall first obtain consent of the tribal authority to have the parcel of land deeded to him by the government. In consideration of such consent, he shall pay a sum of money as token of his good intention to live peacefully with the tribesmen.
7. A citizen desiring to purchase public land in the county area shall apply to the land commissioner of the county in which the land is located, and the land commissioner if satisfied that the land in question is not privately owned and is unencumbered, shall issue a certificate to that effect.
8. An applicant for the purchase of public land, having received from the district commissioner or land commissioner a certificate, shall pay into the Bureau of Revenues the value of the land he desires at the minimum rate of fifty cents per acre.

The Informant filed a bill of information before the Supreme court alleging that the co-respondent judge presiding over the Circuit Court for the Ninth Judicial Circuit, Bong County, had refused to enforce the mandate of the Supreme Court in having one hundred acres of land in the said county surveyed and turned over the

informant, as had been mandated by the Supreme Court in its judgment. The respondents denied that there had been any refusal by the co-respondent judge to enforce the mandate to the Supreme Court. They exhibited documents showing that the enforcement of the Supreme Court's mandate was proceeding and they accused the informant of being the one creating obstacles to the enforcement of mandate.

The Supreme Court although reiterating its holding that judges of lower courts are under a duty to enforce the mandate of the higher court, it noted that in the instant case the records showed that the lower court judge was proceeding with the enforcement rather than refusing to enforce same. It observed that indeed the trial judge had submitted returns to the Supreme Court indicating the manner in which he was proceeding with the enforcement of the Court's mandate, and that the records indicated that surveyors were appointed by the judge to conduct the survey as mandated by the Supreme Court in its judgment. The Court noted that while the trial judge had experienced difficulties in enforcing the mandate, including issuing a writ of possession when the survey had not been concluded, there was no evidence of a refusal by the trial judge to enforce the Supreme Court's mandate. Under the circumstance, the Court said, it could not uphold the information and it therefore accordingly denied same.

*Emmanuel M. Mabande* of the Center for Law and Human Rights appeared for the informant. *Francis Y. S. Garlawolu* appeared for the respondent.

MR. CHIEF JUSTICE COOPER delivered the opinion of the Court.

Informant, Henry Fallah, filed this information before the Supreme Court on February 6, 2003, growing out of the alleged refusal of the Circuit Court Judge of the 9th Judicial Circuit, Bong County, to enforce the mandate of the Supreme Court in its judgment in an action of ejectment case, rendered during the March Term, A. D, 2001 of the Supreme Court, on July 5, 2001. The relevant part of the judgment is quoted hereunder.

“That the judgment of the trial court is hereby reversed and the case is remanded to the court below with the instructions that an impartial survey paid for by the parties through the court *shall be conducted by the Ministry of Lands, Mines and Energy of the 100 acres of land described by the metes and bounds in the public land sale deed from the Republic of Liberia to Henry Fallah in the presence of all interested parties, and that the trial court should subsequently place him in possession thereof.*” (Emphasis added).

The informant, in his bill of information, reported to this court that “...the mandate was read in open court . . . by orders of the judge, a writ of possession was issued and served on the concerned parties, they (defendants) vehemently not only

resisted the contents of said writ of possession, but challenged and defied the authority of the judge of the Ninth Judicial Circuit Court as well as the judgment of this Honourable Supreme Court.” The informant also stated that the matter was reported to the trial judge who, in the opinion of informant, “has not exerted any effort in carrying out your mandate to the fullest extent, most likely because his judgment was reversed by Your Honour”. The informant therefore requested this Court to have the trial judge appear to show reasons for his alleged refusal to execute the Supreme Court’s mandate and for this Court to compel the respondent judge to enforce its mandate.

In their returns to the bill of information, the respondents alleged that the information with respect to the judge’s failure to execute the said mandate was false and misleading. The respondents reported that consistent with the mandate of the Court, the judge directed the county surveyor of Bong County to conduct a survey of the property in question and to submit a report to the circuit court; that while conducting the survey, the surveyor discovered that the 100 acres of land did not exist as described in the deed; that the work of the surveyor was obstructed by informant/plaintiff; and that this matter had been reported by defendant to the trial judge who found that indeed the alleged obstruction had occurred. The respondents also stated that following further investigation conducted by the trial judge, he ordered the informant/plaintiff to cease carrying out any activities in the disputed area pending the completion of the execution of the Supreme Court’s mandate; and it was after such ruling of the trial judge that the informant filed the information. The respondents argued that since it was the informant who circumvented the enforcement of this Court’s mandates, he is *estopped* from seeking relief from this Court. The respondents further argued that it was impossible to completely enforce the mandate of this Court by placing informant in possession of the 100 acres of land, “because said land does not physically exist on the ground.” The respondents prayed the Court to modify its opinion, relying on the case *Chase Manhattan Bank v. Baker*, 37 LLR 203 (1993).

The issue to be decided in this case is whether or not the respondent trial judge refused to execute and enforce the mandate of the Supreme Court, so that information will lie.

This Court says, in response to the request of the respondents to modify its opinion, that the *Chase Manhattan Bank* case, relied on by respondents, was a petition for re-argument, and this Court held therein that its authority to modify its own judgment and grant a re-hearing was being exercised before a mandate had been issued and the matter remanded to the trial court. We therefore conclude that the holding in that case cannot be applied in this matter, since a mandate was long ago

sent to the trial court, immediately following the issuance of the Court's judgment on July 5, 2001.

According to the Rules of Court, the mandate of the Supreme Court shall be immediately and strictly complied with by the trial judge. Mandates to the lower courts commanding the execution of judgments shall be transmitted immediately upon the adjournment of the term of court or immediately after the rendition of the opinion during the term. To all mandates of this Court, returns shall be made, and they shall contain a clear statement of the manner in which they have been complied with, and shall be verified, except such returns are made by judges. Every judge, before the first day of the term immediately succeeding the term at which a mandate shall be issued, unless directed to make returns to a Justice in Chambers, shall file returns showing the action taken by him in the premises. Should the judge of any court fail to make a return, such failure shall be recorded, and the clerk shall present the original of the returns made to the Court on the first day of the term, when a return calendar shall be read and disposed of. Rule XII, Mandates & Returns, Rules of Court (1999), 74.

A review of the Supreme Court records shows that returns to assignment, dated October 23, 2001, for the August A. D. 2001 Term of Court, were filed in the Office of the Chief Justice by the then assigned circuit judge, His Honour Emmanuel M. Kollie. The returns show that the Supreme Court's mandate in this case had been ordered read in open court and the clerk had been ordered to prepare a "writ of possession after the survey of plaintiff's land in keeping with his title deed by the Ministry of Lands, Mines and Energy."

The records show that following the reading of the man-date, the trial judge appointed the resident county surveyor for Bong County, Ministry of Land, Mines and Energy, to carry out a survey of the property, as ordered by this Court. Herein below are excerpts from the report of the Surveyor, dated January 21, 2002, which was filed on January 23, 2002, as follows:

"Per the Court's mandate at 2:00 PM on Friday, 4<sup>th</sup> of January, A. D. 2002, that I proceed and re-survey one hundred (100) acres of farm land in Salala District in favor of Mr. Henry Fallah, according to the metes & bound of his deed, *and all related documents* and that the disputed parties were informed of the survey...."

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"I briefed the parties on the Court's mandate and later asked Mr. Henry Fallah for his documents. *He presented a deed containing (100) one hundred acres and a Tribal Certificate for one hundred (100) acres and named one Mr. Henry K. Lamadine, resident surveyor of Margibi County as his representative.*"

“I then asked Mr. Henry Fallah to identify his commencement point. He took us to the Northwestern corner of S. Edward Peal’s property marked by a concrete monument (S.E.P.) near the Febenkpala Creek and *said his one hundred (100) acres commenced from there. The Elders & Citizens of Salala District* were asked if they are aware of the point identified by Mr. Henry Fallah. They all *agreed with Mr. Henry Fallah’s commencement point.*”

“Since the deed and the certificate mentioned S. Edward Peal’s property, I commenced the survey with the re-opening of S. Edward Peal’s boundary line.”

“*The interpretation of these documents (deed, certificate) to ground started on Thursday. The certificate says the one hundred (100) acres given Mr. Henry Fallah is situated between Febenkpala Creek and Nyanfor Creek, touching S. Edward Peal’s property and the deed says the one hundred (100) acres commenced 1,719.46 from the Northwestern corner of S. Edward Peal’s property and runs along said S. Edward Peal’s property.*”

“The South 87 East line of Mr. Henry Fallah which divides the disputed area also most in half was cut and measured giving a distance of 3,000 feet instead of 2,653.61 feet per deed’s description.”

“I then came to the Northwestern corner of S. Edward Peal and commenced the location of the Febenkpala Creek *in order to give a clearer picture of the Tribal Certificate’s description.*”

“*Mr. Henry Fallah, his wife, daughter and sons came and stopped me from the detailing on grounds that I was not mandated by the Court to do so and his deed described the area as being developed.*”

“I then asked Mr. Henry Fallah for the owner of the area of which they stopped me. He said that area belongs to the late Collins and the rubbers were planted by him, and if the Salala citizens want the area, they can have it but pay for his rubber trees.” (Emphasis added)

The surveyor observed that the area in dispute comprises about 200 acres of land and he concluded by recommending to the Court that the administrator of the estate of the late Collins be cited to court to give some clarifications deemed necessary for continuing the survey. It is not clear from the records before us what happened after the surveyor’s report was submitted, but the records show that on February 20, 2002, following investigation of a complaint on information filed by the other respondents in this matter, the co-respondent judge found that the informant herein had been carrying out activities within the disputed area and he issued an order forbidding such activities, pending completion of enforcement or execution of this Court’s mandate. The trial judge also pronounced that the court will “serve and monitor on the said parties involved to ascertain complete neutrality on the part of all parties from

causing any inconveniences or disturbance until this matter is finally determined by court.”

The records show that on March 6, 2002, the respondent judge ordered the issuance, by the clerk of court of a writ of possession whereby the sheriff was “commanded to remove McGill Brown, Gormah Vah, Madam Kortoe, Alfanso, Fahnlon, Binda Darkor and Flomo Gbakin, the above named defendants to be identified, from the below described deeded property of the above named plaintiff and put said plaintiff, Henry Fallah, into possession of said property containing the hundred (100) acres of land and no more, based upon the mandate of the Honourable Supreme Court of Liberia, dated 5th day of July, A. D. 2001, in the above entitled cause of action, on the 8th day of March, A. D. 2002, from sun rise to sun set.” There followed in the writ of possession the description of the 100 acres of land described by metes and bounds. The sheriff’s return shows that he served the writ on the parties, but that some of the respondents/defendants refused to be removed and made threats to harm him.

Based on the information and arguments of counsels for both sides before this Court, it does not appear that the trial judge is refusing or had refused to carry out the Mandate of the Supreme Court, and we so hold. It does appear, however, that the trial judge experienced much difficulty in executing the Court’s mandate. We understand the mandate to have required the trial judge to (1) have conducted an impartial survey of the property according to the deed, and (2) that after completion of the survey, to put informant in possession of his 100 acres of land. Since the records show that the impartial survey had never been completed due to several causes, including interference by the informant, it is not clear to this Court what led the respondent judge to order the issuance of the above mentioned writ of possession. Perhaps he did so out of frustration, resulting from the acts of either one or both parties. Whatever the reason or reasons, it does not appear that this Court’s mandate has been completely enforced since it is apparent that the informant is still not in complete possession of his 100 acres of land.

This Court takes judicial notice of Chapter 3, Section 30 of the Public Land Law. Vol. 3. Title 32 of the LCL (1956). This law provides, as follows:

*“A citizen desiring to purchase public land located in the hinterland shall first obtain consent of the tribal authority to have the parcel of land deeded to him by the government. In consideration of such consent, he shall pay a sum of money as token of his good intention to live peacefully with the tribesmen. The paramount or clan chief shall sign the certificate, which the purchaser shall take to the office of the district commissioner who acts as land commissioner for the area. The district commissioner shall satisfy himself that the parcel of land in question is not a portion of the tribal reserve, and*

*that it is not otherwise owned or occupied by another person and that it therefore may be deeded to the applicant.* He shall thereupon issue a certificate to that effect.”

“A citizen desiring to purchase public land in the county area shall apply to the land commissioner of the county in which the land is located, and the land commissioner, *if satisfied that the land in question is not privately owned and is unencumbered*, shall issue a certificate to that effect.”

“An applicant for the purchase of public land, having received from the district commissioner or land commissioner a certificate as provided in the foregoing paragraphs, shall pay into the Bureau of Revenues the value of the land he desires at the minimum rate of fifty cents per acre. He shall obtain an official receipt from the Bureau of Revenues which he shall attach to this application to the President for an order directed to the surveyor of that locality to have the land surveyed. If the President shall approve the application, he shall issue the order to the surveyor to have the land surveyed. The applicant shall then present the order to the named surveyor who shall do the work. The applicant shall pay him all his fees. A deed shall thereafter be drawn up in the office of the land commissioner, authenticated by him, and given to the purchaser who shall submit it with all the accompanying certificates to the President for signature. The deed shall then be probated.” (Emphasis added)

We have mentioned the above quoted Section of the Public Land Law, which is still applicable in Liberia, to show that it is the clear intention of the Legislature that care must be taken by public officers not to execute any Public Land Sale Deed except upon prior investigation and confirmation by competent tribal and/or local authorities that the land to be sold (in the words of the statute just quoted) “is not otherwise owned or occupied... and that it therefore may be deeded to the applicant”, the consent of the tribal or local authorities to be firstly obtained in each such case.

It does not go unnoticed that at the start of the survey, appellant Fallah presented to the surveyor both his title deed and the relevant tribal certificate. This Court is of the belief that if the provisions of the quoted statute have been fully complied with in this case, the government county surveyor in the absence of the interferences and disturbances from any party or parties, under court supervision, will properly conduct and complete the required impartial survey. In this connection, notice is taken of the order of the co-respondent judge enjoining any such interferences or disturbances by all parties. Notice is also taken of the surveyor’s recommendation to the court to cite the adjoining property owners to appear at the survey with clarification of certain matters relating to the survey. This Court believes that in the context of what has been brought to the attention of this Court and with judicial notice taken of the above quoted law, an impartial survey of the land that is in dispute, according to the metes and bounds of the deed of the informant, as was ordered in the Court’s

mandate, can only be possible if the surveyor appointed by the court is permitted to carry out a fair and impartial survey to the end without any interference or disturbance by either of the parties.

The operative word in the mandate has to be “impartial”. The parties must recognize that county surveyors are trained and learned professionals, persons having experience sufficient to suggest a high degree of expertise in their field of work. Our surveyors must be presumed to be familiar with the relevant laws, regulations and policies of government relating to their profession, including methods of adjudicating land disputes involving unclear descriptions in deeds. We therefore expect that upon completion of the survey the trial judge will receive a comprehensive report from the surveyor, whose contents will permit the court to bring this matter to a close.

In view of the above, we have decided that the trial judge has not refused to enforce the Court’s mandate, as alleged. We see that this trial judge has experienced difficulties in enforcing the said mandate. We therefore consider it most important that in continuing to enforce the mandate, impartiality or fairness should be emphasized in the conduct of the entire enforcement proceedings, including the survey, before any writ of possession is re-issued; and the surveyor(s) should be given wide latitude to conduct and complete their duties without any interferences or disturbances from any party, as the trial judge has already ordered.

Wherefore, and in view of the laws that we have cited, the bill of information is denied. The Clerk of this Court is therefore ordered to send a further mandate to the judge presiding in the 9th Judicial Circuit Court to resume jurisdiction in this matter, to quash the writ of possession already issued, and to order the continuation or re-conducting of the impartial survey of 100 acres of land in favor of informant Fallah, as earlier mandated by this Court, to a logical conclusion. Costs are disallowed. And it is hereby so ordered.

*Information denied.*