

EVANGELIST SAMUEL FLOMO and **ELDER DAVID KARNGBE** of Liberia Free Pentecostal Church, Inc., Informants, v. **M. FULTON W. YANCY**, Assigned Circuit Judge, Eight Judicial Circuit, and **PASTOR JAMES K. BAIMBA SWEDISH FREE PENTECOSTAL CHURCH, INC.**, Respondents.

INFORMATION PROCEEDINGS GROWING OUT OF A PETITION FOR A WRIT OF PROHIBITION FROM THE CIRCUIT COURT FOR THE EIGHT JUDICIAL CIRCUIT, NIMBA COUNTY.

Decided June 24, 1983.

1 It is contemptuous for a trial judge to proceed with the trial of a case after the service upon him of the alternative writ of prohibition. It is equally contemptuous for a lawyer to participate in and proceed with the prosecution of his cause in the face of the writ from the Supreme Court, instead of informing the trial judge that to proceed with the case was contemptuous.

2 Injunction is a preventive action and not a possessory action; hence, a judge who rules on a motion for preliminary injunction wherein he evicts one party from and puts another party in possession of the disputed premises before the hearing of the summary ejectment suit, is deemed to have proceeded by wrong rule, for which prohibition will lie.

3 A judge acts wrongly in ruling in a matter which runs contrary to that made by his predecessor in the same matter.

Petitioner sought prohibition to prevent the trial judge from reviewing the decision of a concurrent judge, and for flagrant disregard of the Supreme Court. Prohibition was ordered issued, and the co-respondent judge and plaintiff's attorney were held in contempt and fined accordingly.

McDonald M Perry appeared for petitioners/informants. *M Fahnbulleh Jones* appeared for respondents.

SMITH, J., presiding in Chambers.

Based upon the petitioner's petition for a writ of prohibition in which it was alleged that the co-respondent judge was interfering with a case, in contravention of the ruling of his colleague, Her Honour Martha Massoud, with whom he had concurrent jurisdiction, an alternative writ of prohibition was issued and served on the respondents on the 14th day of May, 1983, notifying them to appear before the Chambers of this Court on or before the 28th day of May, 1983, to show cause why the petition for the issuance of a peremptory writ of

prohibition should not be granted. On the 19th day of May, 1983, that is to say, five days after service of the alternative writ on the respondents, while the prohibition proceeding was pending, the petitioners fled to the Chambers of this Court by a bill of information to the effect that despite the fact that the alternative writ of prohibition had been served on the co-respondent judge, the said co-respondent judge, in utter disregard to the authority of this Honourable Court, had undertaken to call up the summary proceeding case on the ground that the citation he had received from the Supreme Court did not order him to desist from further action in the case. The co-respondent judge was therefore cited to appear and show cause why he should not be attached in contempt of court for disobeying the precept of this Court. The respondents were required to appear on the morning of May 30, 1983, and to file their returns by that date.

On the 24th day of May, 1983, another information entitled "supplementary information" was filed by petitioners, alleging that despite the service of the precept for contempt upon the respondent judge and the pendency of the proceeding, the corespondent judge had proceeded to hear the ejectment action and had on the 20th day of May, 1983, entered judgment against the informants/petitioners and ordered the issuance and service upon them of a writ of possession. The writ of possession, the petitioners/informants said, was served upon them on the 21' day of May, 1983, by officers of court and other persons who broke into the premises of the informants and took away sundry belongings of the informants and other persons. Another writ of contempt was therefore ordered issued on the co-respondent judge for him to appear before us on or before the 4th day of June, 1983, to show cause for his continued defiance of the authority of this Court. Without the co-respondent judge filing any returns to the petition and the bill of information, the following radiogram was received from him:

"HON. FRANK W. SMITH CHAMBERS ASSOCIATE JUSTICE TEMPLE OF JUSTICE MONROVIA "RE PROHIBITION - INFORMATION - CONTEMPT PETITIONS NO FUNDS FOR STAMPS OR TRAVEL TO AND FROM MONROVIA SANNIQUELLIE DUE TO SALARY AND SUBSISTENCE CUTS AND REDUCTION STOP MURDER TRIAL IN PROGRESS STOP SHALL ABANDON TRIAL AND PROCEED MONROVIA IF ESSENTIAL IN SUMMARY EJECTMENT WHEN APPEAL DOES NOT SERVE AS SUPERSEDEAS STOP KIND REGARDS, M. FULTON W, YANCY, JR. ASSIGNED JUDGE

Following the above quoted telegram, the co-respondent judge filed a motion to dismiss the prohibition and the bill of information for contempt proceedings. Here is what he said in his motion:

"NOW COMES respondent Judge M. Fulton W. Yancy, Jr., in the prohibition - information

and contempt petitions pending before this Honourable Court and moves for a dismissal of all the spurious petitions and information on the following legal grounds, to wit:

1. That a writ of prohibition SHALL NOT BE GRANTED as a matter of right. Civil Procedure Law, Rev. Code 1: 16.27 (a) (b) (c).
2. That appeal is a matter of right, but does not serve as a stay or supersedeas in summary proceedings to recover real property tried in courts of record. Civil procedure law, rev. Code 1: 51.2.
3. That since an appeal, a matter of right, serves not as a stay in such cases, no prohibition ought to be sought by petitioners which is not granted as a matter or right. Civil procedure Law, Rev. Code 1: 62.24.
4. That the writs issued by the Clerk of the Honourable the People's Supreme Court have no orders couched therein for the staying of proceedings in the ejectment suit; and respondent judge begs court to take judicial notice of its records. Respondent judge avers that writs are literally construed. Civil Procedure Law, Rev. Code 1: 16.21(3).
5. Respondent judge says that it is not within the purview of any counsel or other person to suggest to a court when, how or by whom contempt has been committed and what punishment ought to be meted out. The power to hold in contempt is inherent in the Court, and ought not to be usurped by counsel or parties litigant. *In re Ricks*, 4 LLR 58, text at 63; *Raymond International (Liberia) Ltd. v. Dennis*, 25 LLR 131 (1976); *Richards v. Republic*, 12 LLR 161 (1954).

WHEREFORE, respondent judge prays the dismissal of the writs in the above entitled causes with costs against the petitioners.

Respectfully submitted:

M. Fulton W. Yancy, Jr., RESIDENT JUDGE & COUNSELLOR-AT-LAW
P. O. Box 436, Monrovia, Liberia."

When these proceedings were assigned for hearing, the following telegrams were received from the learned corespondent judge. They read thus:

"ASSOCIATE JUSTICE

FRANK W. SMITH CHAMBERS JUSTICE TEMPLE OF JUSTICE MONROVIA
HAVING BEEN ADJUDGED GUILTY OF CONTEMPT IN BONG MINES
PROHIBITION CMA CIRCUMSTANCES AND LAW IN REV. FLOMO PETITION
BEING SIMILAR CMA HAVE REQUESTED CLERK REFER TO RULE XIII PAGE
FORTY SIX PART TWO OF SUPREME COURT RULES AND ENTER A PLEA OF
NOLO CONTENDERS AND SUBMIT TO COURT'S RULING STOP KINDEST
REGARDS

M. FULTON W. YANCY, JR.

ASSIGNED JUDGE" "MRS. ETNA SCOTT-ACOLATSE CLERK SUPREME COURT
TEMPLE OF JUSTICE MONROVIA NOTICE BY TELEGRAM RECEIVED TODAY
STOP CIRCUMSTANCES IN BONG MINES PROHIBITION PETITION AND REV.
FLOMO PROHIBITION. SIMILAR STOP APPEAL SERVES NOT AS STAY CMA
WRIT SERVED CONTAINED NO STAY ORDER AS REQUIRED SUPREME
COURT XIII PART TWO PAGE FORTY SIX STOP ADJUDGED GUILTY OF
CON-TEMPT IN FORMER CMA FUTILE TO ARGUE LATER STOP PLEASE
ENTER PLEAS OF *NOLO CONTENDERS* ON RECORD AND MY SUBMISSION
TO COURTS RULING STOP KIND REGARDS, M. FULTON W. YANCY ASSIGNED
JUDGE, NIMBA COUNTY."

Because of the plea of *Nolo Contenders* entered by the corespondent judge, it is needless for us to belabor any further on the contemptuous act of the judge in disobeying the alternative writ of prohibition served on him from the Supreme Court. For the records, however, we quote hereunder relevant portion of the minutes of the trial court, May 19, 1983, being the 9th day's sitting of that court, when the case was resumed in flagrant disobedience of the precept of this Court:

REPRESENTATION: Plaintiff is represented by Attorney Morris M. Dabney and are all present and ready for trial.

At this stage, Attorney T. K. Akonsah, Sr., counsel for defendant, most respectfully submits to court that having gone on record informing this Honourable Court that by virtue of the petition for a writ of prohibition which they had filed before the Honourable Supreme Court of Liberia, which petition has not been determined by said Honourable Supreme Court of Liberia, necessitating his non-participation in cross-examination of witnesses adduced by the plaintiff, and plaintiff having rested evidence in and submitted his case for argument, he, Attorney T. K. Akonsah, Sr., counsel for defendant, finds it difficult to argue the case, contending that the petition for the writ of prohibition filed by them before the Honourable Supreme Court of Liberia is still pending, his participation in arguing this case might be tantamount to contempt of the People's Supreme Court, and respectfully submits."

On the previous day, May 18, 1983, after the service of the alternative writ on the co-respondent judge, he ordered the reading of the alternative writ of prohibition in open court. Yet, and notwithstanding this reading, the co-respondent judge ordered the trial proceeded with on the ground that the alternative writ was not a stay order and that the court was not reviewing the ruling of Judge Massoud. Counsel for defendants/petitioners/informants in these proceedings, noted exception and withdrew from further participation in the trial, but Attorney Morris Dabney, counsel for the plaintiff in the lower court, continued to prosecute his case. On May 19, 1983, when plaintiff had rested evidence and submitted the case for argument, and counsel for petitioners/informants made the above quoted record, wherein he noted his refusal to argue, the respondent judge again made the following record:

"Announcement is noted and the court registers its view that the writ of prohibition based on an information to an interlocutory ruling, growing out of our subsequent ruling, based on injunction proceedings, cannot serve as a stay to the trial of the summary proceeding where the law issues have been disposed of and especially so when the writ served on the respondent, being construed literally, has patently omitted any orders to the respondent judge to stay further proceeding in the summary ejection suit. Nor did the writ include any order to the judge to lift the injunction. Counsel for plaintiff will proceed with his argument. And it is hereby so ordered."

Based on the above record, counsel for plaintiff proceeded to argue his side of the case, thereby disobeying the alternative writ of prohibition, when he, as a lawyer carrying the interest of his client, should have informed the co-respondent judge that it was contemptuous to proceed with the trial after the service of the alternative writ of prohibition. He, Attorney Morris Dabney, cannot therefore go unpunished.

The records reveal that prior to the issuance of the alternative writ of prohibition, the

co-respondent judge entertained the injunction proceeding, wherein he ordered the petitioners/informants herein evicted from the premises, subject of the summary proceedings which had not been heard, and directed that the keys to the premises be taken from petitioners and turned over to the Co-respondent Baimba, plaintiff in the ejectment action. Judge Massoud had previously ordered that the parties remain in *status quo* until the ejectment action had been heard and decided. Yet, prior to the hearing of the ejectment suit, the co-respondent judge granted the writ of injunction and ordered the petitioners evicted from the disputed premises. This procedure of the learned judge necessitated the application for a writ of prohibition.

Injunction being a preventive action and not a possessory action, the co-respondent judge, in our opinion, had proceeded by a wrong rule when he, to the prejudice of the petitioners, defendants in the summary ejectment suit, and contrary to the order entered by his colleague, Her Honour Martha Massoud, ruled on the motion for preliminary injunction and evicted the petitioners from the disputed premises before hearing was had on the summary ejectment suit.

In view of the above, the petition for the writ of prohibition is hereby granted, and a peremptory writ of prohibition is ordered issued, commanding the judge in the trial court to resume jurisdiction over the case and set aside all of the proceedings of Judge Yancy, beginning with the injunction proceedings, up to and including the summary ejectment suit decided by Judge Yancy which are hereby declared null and void to all intents and purposes.

Pending the rehearing of the summary ejectment suit and the determination of the right of possession to the disputed premises, the parties are to return to the position they were in before the filing of the said ejectment action, and to remain in *status quo* as ordered by Judge Massoud.

For the wilful disobedience by the co-respondent judge, M. Fulton W. Yancy, Jr., of the remedial writ issued from the Supreme Court, he is hereby fined the amount of \$500.00 to be paid into the government revenues within two weeks from the date of this ruling. The Marshal of this Court is ordered to exhibit to our Chambers a revenue flag receipt issued to the corespondent judge on or before the expiration of the two-week period mentioned herein.

For his part, Attorney Morris Dabney who, after the service of the alternative writ of prohibition, and over the objection of the defendants' counsel, proceeded to prosecute his case before the respondent judge, in utter disregard of the precept of this Court, he is also fined in the amount of \$100.00, to be paid within two weeks from today's date. The Marshal

of this Court must report to our Chambers that the fines have been paid. Otherwise, disciplinary action will be taken against him for joining the respondents in ridiculing this Court. And it is hereby so ordered.

Petition granted.