

Mohammed Houssenini of the City of Monrovia, Liberia
PLAINTIFF/INFORMANT VERSUS **Hafez M. Jawhary**, also of the City of
Monrovia DEFENDANT/RESPONDENT

BILL OF INFORMATION. INFORMATION GRANTED

HEARD: August 4, 2005 DECIDED: SEPTEMBER 16, 2005

JUSTICE COLEMAN DELIVERED THE OPINION OF THE COURT

This is the third time that a Bill of Information has been filed before this Court, growing out of the enforcement of the same debt action from the Debt Court of Montserrado County. Two of such Bill of Information were filed by the Defendant/Respondent Hafez Jawhary to seek release from prison after his failure to satisfy the Judgment debt that was confirmed and affirmed by this Honorable Court.

The first Bill of Information was filed by Defendant/Respondent, to seek his release when he failed to make stipulated deferred payment in satisfaction of the debt and he was detained on order of the Debt Court. In ruling on the first Bill of Information, the Supreme Court on March 29, 2001, ordered the Defendant/Informant to pay the full sum of US\$50,000.00 (United States Dollars Fifty Thousand) on March 29, 2001 and upon failure to pay same, the said Defendant/Informant shall be committed to the common jail until the full sum is paid.

The Court in that ruling also warned Counselors of the Supreme Court not to use the Court system as a tool of manipulation to frustrate the rights of parties' litigants and thereby render the entire system ineffective, thereby bringing it to disrepute and Supreme Court ended its ruling by imposing a fine of L\$2,500.00 (Liberian Dollars Two -Thousand Five Hundred) on counsel for Appellant.

The Defendant/Informant Jawhary failed to pay the full debt US\$50,000.00 (United States Dollars Fifty Thousand) on March 29, 2001, but paid only US\$8,000.00 (United States Dollars Eight Thousand); and he failed and refused to make payment of the balance U.S. \$42,000.00 (United States Dollars Forty-Two Thousand).

A second Bill of Information was filed before the Full Bench of the Supreme Court, again to seek Informant's release from jail for his failure to pay the balance US\$42,000.00 (United States Dollars Forty-Two Thousand). On May 3, 2001 when the 2nd Information was called for hearing, this Court ruled as follows: "This Court

says that as regards the order of this Court to Informant to satisfy the mandate or final judgment of this Court, this Court hereby orders that the remaining balance of US\$42,000.00 should be paid within forty-five (45) days.

And upon failure to so pay, the Marshal is hereby ordered to automatically remand the Informant herein to the common jail until said amount is paid. Further, the Clerk is hereby ordered to send the appropriate communication to the appropriate security authorities within this Republic preventing the Informant herein from leaving the Republic of Liberia until said amount is paid as per these -" orders. AND IT IS HEREBY SO ORDERED. MATTER SUSPENDED"

At the expiration of the 45 days, and Defendant/Respondent had still not comply with the order of the Supreme Court, he was remanded to jail until he could comply with order of the Supreme Court, given on May 3, 2001.

At the request of the Defendant/Respondent, a letter dated July 12, 2001, signed, by Minister of Finance and attested to by the Minister of Justice was addressed to Her Honour, the Chief Justice of the Supreme Court of Liberia, informing the Court that payment had been approved by the Minister of Finance to be made to the Marshal of the Supreme Court. The letter further stated that payment could not be made now due to urgent national security payment and payments of salaries arrears to Government employees for the July 26, season. The letter concluded, that payment to the Marshal will be of high priority; and the Defendant was again released from prison.

When the balance US\$37,000.00 (United States Dollars Thirty-Seven Thousand) was not paid, after almost four years, the Plaintiff/Informant filed a Bill of Information on May 27, 2005, praying this Honorable Court to cause the Alternative Writ of Information to be issued and served on the Respondent to show cause why the Respondent should not be made to fully satisfy the mandate of this Court and to order the Defendant/Respondent to satisfy the balance of the Judgment under the mandate of this Court in the amount of US\$37,000.00 (United States Dollars Thirty-Seven Thousand) .

The Defendant/Respondent filed a Seven (7) Count Returns. We herewith quote all Seven (7) Counts of the Returns.

"1. Respondent says that whilst it is true that he was the Judgment Debtor as an outcome of the Judgment of the Debt Court of Montserrado County, which

judgment was confirmed and affirmed by this Honorable Court, he verily believes that he has no more obligation and that the judgment has since been honored and settled and by chin [change] of sequence, the mandate of the Supreme Court has been complied with or satisfied by him."

"2. Further to count one (1) hereinabove and the entire Returns, Respondent says that following his release from jail, he made an irrevocable assignment of money and/or funds due him by the Government of Liberia to the Court to the effect that the Government would discharge and settle_ his indebtedness in the above captioned case totaling the amount of US\$42,000.00 (Forty-two Thousand) United States Dollars. This assignment was accepted by the Informant and the Honorable Court. The Debtor/Obligor, the Republic of Liberia made or executed an irrevocable commitment and unconditional promise to fully pay and settle the said amount. This is fully shown and proven from the face, content and text of copies of the instrument hereto attach in bulk as exhibit R/1."

" 3.Respondent says not only was an irrevocable promise made or an unconditional guaranty executed by the Debtor/Obligor, the Republic of Liberia, as evidence by exhibit 1/1 referred to in count two (2) hereinabove, but the Debtor/Obligor practicalized its promise by making an actual partial settlement in the amount of US\$5,870.32 (Five Thousand, Eight Hundred Seventy United States Dollars and Thirty-two United States Cents), which was paid to Mr. Houssenini, leaving the balance payment of US\$36:129.68 (Thirty-six Thousand, One Hundred Twenty-nine United States Dollars and Sixty-eight United States Cents). See Exhibit R/2."

"4. Respondent says that what was issued by the Government is an unconditional guaranty, and the Informant was and is, under the principle of law, duty bound to look up to the Debtor/Obligor or the guarantor, the Government of Liberia/Ministry of Finance and not to Respondent. Therefore, Respondent maintains that the Information will not lie against him, because what was required of him in settlement or satisfaction of the subject judgment and its attendant mandate has been done and nothing is left to be done by him."

"5. Respondent says an assignment is generally considered as the transfer of a right: It is more in the nature of irrevocable power of attorney to collect a debt or claim with the right of the Assignee to retain the proceeds when collected. Respondent says that what he made is an effective assignment and by the execution of such, his right to performance. That is, by making' the assignment and its acceptance by the Assignee supported by the irrevocable promise and the unconditional guaranty given by the

Debtor/Obligor, the GOL, his right to performance has extinguished."

"6. Further to count five (5) hereinabove, Respondent says under an effective assignment, the Assignor does not guarantee that the Debtor will perform but does warrant that the right assigned exists and is free of defenses. Therefore, the Informant has no recourse against the Respondent for any delay in the settlement by the Debtor."

"7. And Respondent says that the Information should be dismissed because he is not the proper party; the GOL/Ministry of Finance will be the proper party and because of the reasons stated above."

The only issue raised by the Defendant/Respondent is whether or not, information will lie in the face of the assignment by him?

The issues raised by the Plaintiff/Informant are:

1. Whether or not the letter of July 12, 2001 jointly signed by the Minister of Finance and Justice of the Republic of Liberia exonerated the Defendant/Respondent from further responsibility in complying with the orders of this Court?
2. Whether or not the orders of the Honorable Court as found on page four of the sitting of May 3, A.D. 2001 has been complied with?

After listening to the arguments of both parties and considering all the facts in this case, we have determined that the issues determinative of this matter are:

1. Whether or not the letter of July 12; 2001 signed by the Minister of Finance and attested to by the Minister of Justice can be accepted to be an assignment of the debt to the Republic of Liberia thereby exonerating the Defendant/Respondent from further obligation of the Judgment Debt, as claimed by Respondent?
2. Whether or not Information will lie against the Defendant/Respondent under the facts and circumstances of this case?

We will discuss the issues in the chronological order.

In disposing of the first issue, whether or not the letter of July 12, 2001 signed by the Minister of Finance and attested to by the Minister of Justice can be accepted to be

an assignment of the debt to the Republic of Liberia thereby exonerating the Defendant/Respondent from further obligation of the Judgment Debt, as claimed by Respondent? It is important to quote verbatim the letter dated July 12, 2001 signed by the Minister of Finance and attested to by the Minister of Justice, the basis by upon which the Respondent now claims that an irrevocable promise or unconditional guaranty was executed by the Republic of Liberia which is now the Debtor/Obligor and not , the Defendant/Respondent; that the Informant should, under the principle of law, be duty bound to look up to the Republic as the Debtor/Obligor or guarantor for satisfaction of the debt; that there was an irrevocable assignment of money due the Defendant/Respondent by the Government of Liberia to the Court to the effect that the Government of Liberia would discharge and settle Respondent Jawhary's indebtedness; and that this alleged assignment was accepted by the Informant and the Honourable Court, thereby extinguishing the obligation of the Defendant/Respondent to Informant.

"REPUBLIC OF LIBERIA
MINISTRY OF FINANCE
MONROVIA, LIBERIA

MF/2-4/ CBA-edm/jnsg/067/=01 July 12, 2001

Her Honour
The Chief Justice of the Supreme Court
Temple of Justice Building
Monrovia, Liberia

RE: MOHAMMED HOUSSEINI VERSUS HAFEZ M. JAWHARY

Upon the request of Mr. M. Jawhary who we understand is a Defendant in the above matter, US\$42,000.00 (FORTY-TWO THOUSAND UNITED STATES DOLLARS) PAYMENT HAS BEEN APPROVED BY THE Ministry of Finance to be made to the Marshall of the Supreme Court of Liberia.

Documents with respect to the above, are in progress. Unfortunately, the payment can not be made now to the Marshall of the Supreme Court due to urgent National Security payments and payments of salary arrears to Government employees for the July 26, Season.

Madam Clerk, we assure you that the payment to the Marshall will be of high priority

following the settlement of what is mentioned herein above.

Kind regards,

Very truly yours,

Sgd. M Nathaniel Barnes

M. Nathaniel Barnes

MINISTER OF FINANCE Sgd. Eddington A. Varmah

ATTESTED Hon. Eddington A. Varmah MINISTER OF JUSTICE"

The Respondent in support of its allegation and argument that there was an assignment of the debt to the Republic of Liberia thereby relinquishing Respondent Jawhary from further payment of the debt, relied on "Assignment: Business Law Uniform Commercial Code, 4' edition pages 249 -255." which does not exist as quoted. More beside, Respondent did not state the article or section under assignment in the Uniform Commercial Code (UCC) from upon which he is relying. The Uniform Commercial Code (UCC) is a statute of the United. States of America which governs commercial transactions or is a set of standard rules adopted in almost every State of the United States that govern commercial transaction which cannot be applicable to Liberia, because, our jurisprudence relies on the statutes and laws of Liberia; and if there is no statute or law on a particular subject matter, we fall back on the common law of England and the United States as defined in the general construction Law of Liberia.

Our statute as found in Volume 2, Section 40 of the General Construction Law, Liberian Code of Laws (1956), provides as follows:

"Except as modified by law now in force and those which may hereafter be enacted and by the Liberian Common Law, the following shall be, when applicable, considered Liberian Law:

(a) the rules adopted for chancery proceedings in England, and

(b) the Common Law and usages of the Courts of England, and of the United States of America, as set forth in case law and in Blackstone's and kent's commentaries and in other authoritative treaties and digest."

The Uniform Commercial Code (UCC), as stated earlier, is a statute of the United States of America and does not fall within the law stated in the reception statute and therefore can not be applicable to the issue at bar.

The Respondent argued strenuously before this court that the Government of Liberia by its letter of July 12, 2001, quoted earlier, guaranteed the payment of the debt thereby becoming the guarantor. Further, that there was an irrevocable assignment of the debt. The question that comes to our mind is, was there an assignment of the debt? It is generally held that "to make an assignment valid it must comply with the fundamental requisites which are applicable to contracts, with respect to capacity of party, consent and consideration" 6 Am Jur 2d Section 82 page 263.

Assignment is defined in Blacks Law Dictionary, 6th Edition page 118 as the r "act , of transferring to another all or part of one's property, interest or rights." The Informant argued that there was no assignment of the debt to the Government of Liberia that will exonerate the Respondent. Informants contends that the letter of July 12, 2001 was clarified by a letter of January 2, 2002 which was attached to the Information addressed to the Ministry of Finance over the signature of the Minister of State, Hon. Jonathan Taylor, stating in part "that the Executive reprieve granted or clemency granted Mr. Jawhary, was not intended to negate payment of funds due to him or by him with respect to the matter at hand. Rather, it was intended to restore his rights and release him from detention so as to facilitate just settlement of the claim between the parties" (emphasis ours)

It is clear from these letters of July 12, 2001 and January 2, 2002 that the Government of Liberia only intended to inform the court that it did owe some money to the Respondent and to have him released from prison. This letter was never to facilitate settlement of the claim between the parties nor intended to be an assignment or to make the Government of Liberia the debtor/obligor as argued by the Respondent.

The Respondent also argued that the assignment was accepted by the Informant and the Supreme Court, thus extinguishing the obligation of the Defendant/Respondent. The Respondent did not say or show any evidence how the alleged assignment was accepted by the Informant and the Supreme Court.

Generally, the law will not enforce an assignment of the nature of this alleged assignment which Counsel for Respondent say exists. In this arrangement, Respondent would be the assignor and Informant would be the assignee. The Government owes Respondent and Respondent alleges that he has made a partial assignment of his rights against the Government to Informant; that Informant

consented to this partial assignment by accepting part payment of the debt owed to him by Respondent when he received US\$ 5,000.00 (United States Dollars Five Thousand) through the court; and that Respondent's obligation to pay Informant was thereby extinguished.

The trouble with this argument is that the Informant had never consented to release Respondent from his obligation. The other problem is that consent of the Informant can not be inferred from his act of accepting the partial payment made through the court, since Informant did not receive any negotiable instrument endorsed by the Respondent thereby transferring rights and title to the Informant.

The promise to pay the debt as stated in the letter of July 12, 2001 to the Chief Justice of Liberia from the Minister of Finance cannot be accepted as any assignment to the Informant of the debt of the Government of Liberia to Respondent; neither did the Government in any way guarantee the payment of the debt so as to relieve Respondent Jawhary from his legal obligation to Informant. We therefore conclude that no assignment was made and the letters from the Ministers of State and Finance was not an assignment of the debt or a guarantee to pay the debt so as to make the Government of Liberia the debtor/obligor, thereby releasing Defendant/Respondent Jawhary from payment of his legal and just obligation to Informant.

The second issue to determine in this Bill of Information is whether or not a Bill of Information will lie under the facts and circumstances of this case?

The Informant stated in his Bill of Information, Brief, and during argument, that the Bill of Information will lie because the mandate of the Supreme Court has not yet been fully complied with. That it was on the request of the Respondent Jawhary that the Executive Branch of Government intervened, and therefore Respondent Jawhary remains answerable to this Court as a matter of law until the entire mandate of the Supreme Court is complied with. Informant relied on Revised Rules of the Supreme Court Bill of Information in January 1999 states in part "A Bill of Information will lie to prevent anyone whomsoever from interfering with the Judgment and or mandate of the Supreme Court of Liberia."

The Respondent in counter argument stated that a Bill of Information will not lie against Respondent Jawhary, as he is not the proper party, but the Government of Liberia/Ministry of Finance will be the proper party. Respondent counsel further argued that the Respondent was required to pay the money due under the Judgment of the Debt Court, which was the mandate of the Supreme Court, but, subsequently,

the Respondent made an assignment of funds due him by the Government of Liberia in full settlement of his obligation to the Informant and the Court. The Respondent in its Brief and argument before the court further stated that under the law, the mandate of the Supreme Court was fully complied with by the alleged assignment made by the Respondent; his rights to whatever funds due him by the Government of Liberia, was extinguished; and Respondent had no more obligation to the Informant. Therefore, he argued, the subject Information will not lie against Respondent Jawhary, but rather the Government of Liberia (Ministry of Finance)

Respondent relied on the case *Kpoto Vs. Kpoto* 34 LLR page 371, text at 377 which states "A Bill of Information is a Special Proceeding in the form of a complaint before a court where a matter is pending or court which has earlier passed upon a cause, informing the court of a failure of a party to do that which was ordered done."

The Revised Rules of the Supreme Court 13111 of Information page 71 provides in part " A Bill of Information will also lie to prevent any one whatsoever from interfering with the Judgment and or mandate of the Supreme Court."

From the records before us, it is obvious that the mandate of the Supreme Court in an Opinion rendered in 2000, ordering the Defendant/Respondent to pay the amount of US\$ 50,000.00 (United States Dollars Fifty Thousand) has not been fully complied with, and the Respondent has since then employed all kinds of tactics to interfere with or refuse to fully comply with the mandate of the Supreme Court. Two times the Respondent filed Bill of Information before the Supreme Court when he failed to pay the funds and the Lower Court had him incarcerated. The last tactic to frustrate the payment of his obligation was to involve the Executive Branch of Government in a court matter and request it to make the payment on his behalf based on funds allegedly owed the Respondent by the Ministry of Finance. In our opinion, this request to the Government of Liberia by the Respondent and the promise to pay the funds by the Ministry of Finance, is just another ploy to disobey the orders of the Supreme Court.

We cannot accept the contention of Respondent's counsel that Information will not lie against the Respondent, but rather the Government of Liberia, who failed to pay the funds, based on the request of Respondent Jawhary. Involvement of the Executive Branch of Government upon obvious request in this matter through the Respondent Jawhary is an interference with the mandate of the Supreme Court by Respondent Jawhary in our opinion. The Government of Liberia, did not on its own,

promise to pay the funds due. The promise to pay was based on the request of Respondent Jawhary as stated in the letter of July 12, 2001 from the Ministry of Finance.

It is the Respondent who was adjudged liable to pay the Informant; it is the Respondent who was to ensure that his debt and the mandate of the Supreme Court was fully satisfied; it was his request to the Ministry of Finance to pay to the Informant whatever was due him and afterwards Respondent did nothing to ensure that the Ministry of Finance paid the funds as promised since 2001. In our view, the act of the Respondent is an interference with the mandate of the Supreme Court by Respondent which had ordered the Respondent to pay the funds immediately. The Respondent being fully aware that processing of documents from the Ministry of Finance takes many weeks, sometimes months or even years, decided to frustrate compliance with the mandate of the Supreme Court, and sought to involve the Ministry of Finance which failed to pay the money due since 2001, the date of the last Supreme Court mandate ordering the Respondent to pay the funds, effective as of May 3, 2001.

In our view, it is the Respondent and not the Ministry of Finance that interfered with the execution and compliance with the mandate of the Supreme Court and therefore Information will lie against Respondent Jawhary; and we so hold.

The Informant Houssenini claims that the balance due is US\$ 37,000.00 (United States Dollars Thirty-seven thousand) because of the previous balance of US\$ 42,000.00 (United States Dollars Forty-Two Thousand), the Respondent caused the Ministry of Finance to pay US\$ 5,000.00 (United States Dollars Five Thousand).

The Respondent Jawhary claims that the balance due is US\$ 36, 129.68 (United States Dollars Thirty-Six Thousand, One Hundred Twenty-Nine, Sixty-Eight Cent) and not US\$ 37,000.00 (United States Dollars Thirty-seven thousand) since the Ministry of Finance paid US\$ 5, 870.32 (United States Dollars Five thousand, eight hundred seventy, thirty-two cent).

After a careful review of the records attached to the Information and the Returns, the Court is convinced that the balance amount owed is US\$ 37,000.00 (United States Dollars Thirty-seven thousand) as evidenced by a memorandum dated March 25, 2002, from the Deputy Minister of Expenditure, Ministry of Finance to the Comptroller General, Republic of Liberia. We quote a portion of that letter. "You are to prepare a voucher in the amount of US\$72,000.00 as evidenced by the attached

documentation of this amount, forty-two thousand (\$42,000.00) United States dollars is to be paid to Mr. Mohammed Houseini in settlement of an action for debt and the balance to be paid to Holiday Inn. Payment to Mr. Housseini is to be in installment of US\$5,000.00 monthly commencing April 5, 2002." (Emphasis ours) Another memorandum dated April 29, 2002 from the Director General/BGA to the Comptroller General, Republic of Liberia states in part " The Bureau of General Accounting observes that the voucher for payment is not supported by any invoice to justify the Government of Liberia=s obligation to Holiday Inn Hotel as claimed. However, the Holiday Inn Hotel has voucher #04 147FA(2002) for US\$2,208.25 and voucher #04-147FA(2002) for US\$3,906.67. After the 4% withholding tax has been effected from the two, the cumulative amount is US\$5,870.32. Payment authorized for Jawhary, at this time, is US\$5,000." (Emphasis ours) These two (2) memoranda confirm the allegation of the Informant that only US\$5,000.00 was received from the Ministry of Finance leaving a balance of US\$ 37,000.00 (United States Dollars Thirty-seven thousand) owed to Informant by Respondent Jawhary.

Wherefore and in view of the facts and the laws we have cited, it is the opinion of this Court that Bill of Information will lie and the said Bill of Information is hereby granted.

The Clerk of this Court is hereby ordered to send this very last mandate to the Court below ordering the judge presiding to resume jurisdiction and immediately collect the full sum of US\$ 37,000.00 (United States Dollars Thirty-seven thousand) with 6% (Six Percent) per annum from the Respondent, and upon his failure to immediately settle his debt to Informant in keeping with law, the Respondent is to be committed to common jail until the full sum is paid. Costs are ruled against the Respondent. AND IT IS HEREBY SO ORDERED.

COUNSELOR ROGER K. MARTIN, SR. OF THE MARTIN LAW OFFICE
APPEARED FOR THE INFORMANT.

COUNSELOR FREDERICK D. CHERUE OF THE DUGBOR LAW FIRM
APPEARED FOR THE RESPONDENT.