

**IN RE: GRIEVANCE AND ETHICS COMMITTEE INVESTIGATIVE REPORT  
ON ATTORNEY JAMES K. SAYBAY, GBARNGA, BONG COUNTY  
LRSC 20**

HEARD: January 29, 2013 DECIDED: February 20, 2013

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

While serving as Chief Justice of the Supreme Court, His Honor Johnnie N. Lewis received a letter of complaint dated November 14, 2011, from Mr. Mark A. Thomas, against Attorney James K. Saybay of Bong County. The complaint reads:

Ebony Business Enterprise, Inc.  
Baltimore Boulevard, Gbarnga City  
Bong County, Liberia

November 14, 2011

His Honor Johnnie N. Lewis  
Chief Justice  
Republic of Liberia  
Temple of Justice  
Monrovia, Liberia

May It Please Your Honor:

In tears, I most respectfully beg to bring to your Honor's official attention for your judicial and timely intervention into the attitude of one Atty. James K. Saybay, a practicing lawyer in Liberia who resides here in the City of Gbarnga, Bong County.

In August this year, in Gbarnga City, Atty. James K. Saybay came and met me at my home and indicated to me that he had a piece of land on which are erected two structures lying and situated on the left hand side of the Gbarnga-Ganta Highway, just after Far East junction, and which he was selling to enable him finance his campaign as he was running for the legislature.

Having expressed my interest, we agreed and concluded the price at 12,000.00USD Dollar (Twelve Thousand United States Dollar) for the property which he offered to me and immediately I advanced a part payment of \$9,000.00 (Nine Thousand United States Dollar) to him and he received it upon genuine receipt, leaving a balance of 3,000.00USD (Three Thousand United States Dollars) arranged to be paid within two (2) weeks after he shall have given me a transfer deed and all relevant documents pertaining to the property. Attached hereto are the receipts from Mr. Saybay for said transaction for Your Honor's perusal and consideration in this

complaint. This contract was concluded without pre-condition between us evident by these receipts.

A week after paying this amount to Atty. Saybay, I lost sight of the Lawyer and when I finally found him two weeks thereafter, he had me drill behind him for the deed and all efforts made by me to get the deed from him failed. I even presented him the balance \$3,000.00USD (Three Thousand United States Dollar) but he told me he was no longer selling the property. When asked to refund my money, he became very adamant and said or did nothing satisfactory about refunding the money.

Your Honor, I sought peaceful resolution of this matter by asking his Honor Alfred Y. Manigborlor, Stipendiary Magistrate of the Magisterial Court, Gbarnga City, Bong County, to advise Atty. Saybay to see reason to accept his balance \$3,000.00 USD (Three Thousand United States Dollar) and relinquish the property or refund my money in peace, but he posed a nonchalant attitude. His Honor, Judge Kontoe, the Resident Circuit Judge of Gbarnga, Bong County was also asked to intervene and the lawyer, there and then rejected the balance \$3,000.00 USD (Three Thousand United States Dollar). [He] promised to pay the \$9,000.00 USD (Nine Thousand United States Dollar) on November 20, 2011, but refused to make a comprehensive and obligatory promissory note to that effect even though Judge Kontoe gave him a sheet of paper to write the note.

Counselor Albert Sims, President of the Local Bar Association of Bong County, was asked to intervene in the presence of Magistrate Manigborlor, the Lawyer again refused to accept the balance \$3,000.00 USD (Three Thousand United States Dollar) and promised to pay the money on November 20, 2011. Counselor Sims then asked Magistrate Manigborlor to mediate the process but Atty. Saybay flatly refused to sign the promissory note I prepared which copy is attached for your perusal, Your Honor.

This unwarranted act which I could not and still cannot believe to have been perpetrated by one who claims to be a member of a noble profession has me in doubt. Atty. Saybay's unethical and criminal acts give rise to question the truthfulness of him being a qualified and a legally admitted Lawyer of the Liberia National Bar. I appeal that he be investigated by the Supreme Court or the Liberia National Bar Association under Your Honor's directive so that the dignity of the Legal profession can continue to be upheld.

Already the Bong County police have record on the Lawyer for Theft of Property and Receiving Money under False Pretense, a charge for which he was Jailed for several hours in the police cell and promulgated on the media (Gbarnga Radio Stations) for a week. In this light, Your Honor, I take God Alm1ghty to appeal to you that Your Honor intervene in this unethical attitude of Atty. James K. Saybay and that he be made to perform his side of the contract he initiated and concluded for which he received a considerable amount of my business money, and turn the property to me and receive his balance \$3,000.00 USD (Three Thousand United States Dollar) as I am not interested in refund but I need the property.

Very truly yours,  
Mark A. Thomas

Article 75 of the Liberia Constitution provides that:

The Supreme Court shall from time to time make rules of court for the purpose of regulating the practice, procedures and manner by which cases shall be commenced and heard before it and all other subordinate courts. It shall prescribe such code of conduct for lawyers appearing before it and all other subordinate courts as may be necessary to facilitate the proper discharge of the court's functions. Such rules and code, however, shall not contravene any statutory provisions or any provisions of this Constitution.

In line with his Constitutional provision, the Supreme Court cause to be adopted a Code for the moral and ethical conduct of lawyers, and Canons for the moral and ethical conduct of judges which were revised in January 1999. In order to enforce adherence to the Code and Canons of ethics for lawyers and judges, the rules provide for a Grievance and Ethics Committee to be set up in each county to investigate all lawyers accused of ethical transgressions in violation of the Code, and a Judicial Inquiry Commission to investigate complaints against judges of records and non record.

Upon receipt of this communication, His Honor, the Chief Justice wrote the Grievance and Ethic Committee the below letter, forwarding the complaint to it for an investigation into the matter.

November 15, 2011

Counsellor Pearl Brown Bull  
Chairman  
Grievance & Ethics Committee  
Temple of Justice  
Monrovia, Liberia

Dear Counsellor Bull:

I forward you herewith a letter of complaint from Mr. Mark A. Thomas, Ebony Business Enterprise, Inc., Baltimore Boulevard, Gbarnga City, Bong County, L1bena, against Attorney James K. Saybay of Gbarnga Bong, County, Liberia.

I request that your committee conduct an investigation into the matter, and following the investigation submit its findings to me.

Kind regards.

Very truly yours,

Johnnie N. Lewis

Chief Justice

Supreme Court

Chief Justice Johnnie N. Lewis, having resigned due to ill health on November 9, 2012, the Chairman of the Committee wrote to Justice Francis S. Korkpor, Sr., Chief Justice Ad Interim, forwarding to him the Committee's findings. The Report from the Committee reads as follows:

#### REPORT

Mr. Mark Thomas of Baltimore Boulevard, Gbarnga, Bong County, Republic of Liberia sent a letter of complaint on November 14, 2011, to Chief Justice, Johnnie N. Lewis against Attorney James S. Saybay.

Cllr. T. Dempster Brown represented the Complainant, Mark Thomas. Counsellor Lavala Supuwood and Atty. David Wah represented Attorney James K. Saybay at the hearings.

From the evidence revealed at the investigation held on December 2, 2011, Atty James K. Saybay, a practicing Attorney in Bong County, received from Mr. Mark Thomas, a businessman in Gbarnga City, Bong County, the amount of Nine Thousand United States Dollars (US\$9,000.00) as part payment of an amount of Twelve Thousand United States Dollar (US\$12,000.00) for a parcel of land situated and lying at the Far-East Junction on the Gbarnga, Ganta Highway, consisting of One (1) Three (3) Bed Room house; One (1) Two (2) Bed Room house similar to a boys quarter, and a Three (3) Bed Room Foundation. It was told that the parties agreed that upon the issuance of the Warranty Deed to Mr. Thomas for the above-mentioned property by Attorney James K. Saybay, Attorney James Saybay would receive the balance of Three Thousand United States Dollars (US\$3,000.00).

Upon hearing the facts, the Committee initially mandated both parties to amicably settle the matter and report their actions to the Committee during the first week of January 2012. Attorney James K. Saybay did not comply with the mandate of the Committee. The Committee resumed jurisdiction and commenced hearings of the investigation.

Another hearing was conducted on January 18, 2012. At that hearing, a Memorandum was signed by the complainant and the respondent on the following conditions: That Attorney James K. Saybay would pay to complainant, Mark Thomas the sum of (US\$10,500.00) Ten Thousand Five Hundred United States Dollar; Nine Thousand United States Dollar of said amount (US\$9,000.00) represents the amount paid by complainant Mark Thomas to respondent Atty. James K. Saybay for one (1) lot of land with two (2) structures situated thereon, in the City of Gbarnga Bong County and one Thousand Five Hundred United States Dollar (US\$1,500.00) representing cost and interest incurred by Mr. Mark Thomas.

It was further agreed that Attorney James K. Saybay would present to the Grievance and Ethics Committee on Friday, January 27th 2012, a signed Warranty Deed for the herein described land; failure on his part to pay the above amount stated in the Agreement, on January 27, 2012, the Warranty Deed issued by him in favor of complainant Mark Thomas would be given to complainant Mark Thomas.

Complainant, Mr. Mark Thomas, agreed that he would present a postdated check dated March 1, 2012, issued in the name of Atty. James K. Saybay, for the amount of Three Thousand United States Dollar (US\$3,000.00) representing full settlement for the parcel of land mentioned and which amount Attorney Saybay initially refused to accept; that the postdated check would be turned over to respondent Attorney James Saybay, upon his failure to pay the amount of ten thousand, five hundred United States Dollars (US\$10,500.00) to complainant Mark Thomas, the deed would be turned over to complainant Mark Thomas. The Committee requested one of its Committee Members, Counsellor Farmere G. Stubblefield and Mr. Michael Fayiah to witness the Voluntary Memorandum signed by the complainant and the respondent.

#### OBSERVATION(S):

Complainant Mark Thomas presented to the Grievance and Ethic Committee and check drawn on UBA Ganta Branch, Nimba County paid to the order of James K. Saybay, dated March 1, 2012, for the amount of Three Thousand United States Dollar (US\$3,000.00).

Attorney James K. Saybay presented to the Grievance and Ethics Committee a REPUBLIC OF LIBERIA TRANSFER DEED FROM James K. Saybay to Mark A. Thomas signed on the 15th day of February 2012, described as

Commencing at the South-western corner of James K. Saybay's property and thence running on these magnetic bearings and distances as follows: North 34 degrees East 51.0 feet to a point, North 70 degrees East 41.0 feet to a point, South 30 degrees East 91.0 feet to a point, south 60 degrees West 99.0 feet to a point South 70 degrees West 100.0 feet to a point due North 130.0 feet to a point South 70 degrees East 75.0 feet back to the point of commencement and containing 1.5 lots of acres of land and no more.

However, on inspection of the deed presented by Attorney Saybay, the Committee observed that Attorney James K. Saybay falsified the signature of a purported Land Surveyor (one Jackson). The Committee thereafter summoned the purported land surveyor, who Attorney Saybay represented surveyed the property he conveyed to Mr. Mark Thomas. It was revealed that his name was Jackson D. Mulbah. When presented with the Warranty Deed from Attorney Saybay to Mr. Mark Thomas, Mr. Jackson D. Mulbah confessed that he doesn't read and write and that he is not a land surveyor but instead a helper to the surveyors in Gbarnga, Bong County. Mr. Jackson D. Mulbah's statement was supported by a communication from Mr. Joseph Melin, Resident Surveyor for Bong County.

The Committee also discovered that Atty. James K. Saybay presented a Warranty Deed for a property other than the property which he initially promised to sell to Mr. Mark Thomas and for which he received Nine Thousand United States Dollar (US\$9,000). This act of Attorney Saybay is in violation of Rule 24 of the Rules for Procedure in the Courts, Code for the Moral and Ethical Conduct of Lawyers which states: A Lawyer's word of honor is sacred and his dealings in all matter, and on all occasions, should not be such as repugnant to his oath, and degrading to his profession; and Rule 25 of the Rules for Procedure in the Courts, Code for the Moral and Ethical Conduct of Lawyers which states: A Lawyer should always ensure the court records, minutes, percepts and other legal documents are legally prepared and handled. It is unprofessional, unethical and dishonorable for a lawyer to participate in, or initiate the illegal preparation or falsification of Legal Documents. A Lawyer found guilty of this act is unfit to be a member of the bar and shall be subject to suspension for a period of One year for the first offense and for the second offense, disbarment from the practice of law.

The Committee notes that on March 2, 2012, Mr. Mark Thomas presented a United Bank of Africa Check in the amount of Three Thousand United States Dollar (US\$3,000.00), in compliance with the Memorandum of January 18, 2012, entered into by Mr. Mark Thomas and Atty. James K. Saybay in the presence of the Committee members.

#### RECOMMENDATION(S):

The Committee recommends the following:

That Atty. James K. Saybay be ordered to issue to Mr. Mark Thomas a Warranty Deed for the one (1) lot of land with two (2) structures situated thereon, Land lying and situated at Far East Junction on the Gbarnga, Ganta Highway which he initially agreed and negotiated to sell to Mr. Mark Thomas, and for which he received the partial payment of Nine Thousand United States Dollar (US\$9,000.00).

Attorney James K. Saybay be suspended from the practice of law for the period of one (1) year in accordance with Rule 25 of the Rules for Procedure in the Courts, Code for the Moral and Ethical conduct of Lawyers for breaching, and Rules 29 (3) and 30, of the Rules for Procedure in the Courts, Code for the Moral and Ethical Conduct of Lawyers.

That Atty. James K. Saybay be also turned over to the Justice Ministry for investigation and prosecution for violating the Penal Law of Liberia, Liberian Codes Revised Volume IV, Section 15.70 Forgery or Counterfeiting.

#### PRESENT:

Counsellor Pearl Brown Bull Chairperson

Counsellor Cyril Jones Member

Counsellor Farmere G. Stubblefield Member

Counsellor Esther Seton Cee Member

The Supreme Court for the purpose of hearing and considering the recommendations made in this report sent up from the Grievance and Ethics Committee, cited Attorney Saybay for a hearing on January 29, 2013. We must state that this procedure is in line with the Constitutional right of appeal, ensuring that lawyers accused of ethical transgression are made abreast of the findings and recommendation(s) of the Committee and are given an opportunity to appear before the Supreme Court en banc to show cause why the recommendations of the Committee or Commission should not be endorsed.

The Court in consideration of this matter before it, appointed two counselors of the Supreme Court Bar to act as amici curiae (friend of the Court) to give advice on this matter before it. Counsellors Emmanuel B. James and Cooper W. Kruah, Sr., appointed for such purpose filed an amici curiae brief in which they raised the issue, whether or not the transaction between Attorney James Saybay and Mr. Mark Thomas falls within the Code of Ethics and Moral Conduct of lawyers and therefore the act complained of in violation of the Code.

The Amici Curiae said the do's and don'ts of the legal profession which ought to be observed by every lawyer have their basis in the oath which lawyers are required to take. The first three lines of the oath of admission as an attorney-at-law, the Amici Curiae said, stated are: I will always demean myself as a gentleman, and a respectable citizen of the Republic of Liberia the last three lines also state, I will avoid connection or association with any shady, dishonest or dishonorable transaction..." These provisions of the oath for lawyers, they said, are also buttressed by Rules 24, and 25 of the Code for Moral and Ethical Conduct of Lawyers. These rules state:

Rule 24. A lawyer's word of honour is sacred and his dealings in all matters, and on all occasions, should be such as repugnant to his oath, and degrading to his profession.

Rule 25. A lawyer should always ensure the court records, minutes, precepts and other legal documents are legally prepared and handled. It is unprofessional, unethical and dishonorable for a lawyer to participate in, or initiate the illegal preparation or falsification of court records, minutes, precepts or other legal documents (emphasis ours). A lawyer found guilty of this is unfit to be a member of the bar and shall be subject to suspension for a period of one year for the first offense, and for the second offense, disbarment from the practice of law.

The Amici Curiae said from both the oath that is required of every lawyer and the Code of Moral and Ethical Conduct of lawyers, it is clear that the actions of Attorney James Saybay were unethical and fall within violation of the Code of Moral Ethics Conduct of Lawyers. They therefore asked the Court to uphold the recommendations of the Grievance and Ethics Committee, that is to say, Attorney James Saybay:

- (a) be ordered to issue to Mr. Mark Thomas, a Warranty Deed for the one (1) lot of land with two (2) structures thereon since he had already received US\$9,000.00 from Mr. Mark Thomas,
- (b) be suspended from the practice of law for the period of one year,

(c) be turned over to the Ministry of Justice for prosecution in connection with Section 15.70 of the Penal Law of Liberia.

The respondent, Attorney James K. Saybay, appearing through his Counsel, Counsellors J. Lavela Supuwood and Koboi Johnson contended and maintained that the transaction between him and the complainant was entirely private, businesslike and did not develop out of a client and lawyer relationship to constitute violation of the Code of Ethics; that the complainant Mark Thomas, and one Ansu Sesy had already filed both criminal and civil actions against him, and these matters pending in Gbarnga, Mr. Mark Thomas cannot now come to the court to file another complaint. The argument by the respondent's counselors was based on his returns as follows:

#### RESPONDENT'S RETURNS

1. That in the first place the private transaction that took place between me and the complainant does not in any way present any unethical or criminal conduct as alleged to constitute violation of any ethical conduct or standard and therefore, this complaint should be dismissed.
2. That the complainant, Mr. Mark Thomas and one Ansu Sesey have already filed a criminal complaint against me before the Liberian National Police and I was subsequently charged and sent to Court and therefore he cannot now come again before this august body to file another complaint.
3. Further, respondent says that the complainant to all intents and purposes is bent on harassing intimidating and ridiculing me at all levels. His action of filing this case before a sitting Magistrate and thereafter referring same to the Honorable Chief Justice of Liberia, is deceptive and misleading; hence, same should be dismissed.
4. That the complainant deceived me in the first place, in that in June of this year as a friend, he appealed to me that he wanted a place to erect a clinic and that I should assist him. We discussed leasing one of my properties. As a friend, he gave me the sum of One Thousand United States Dollar (US\$1,000.00) and after a month, I heard that Hon. Benoni Urey wanted either to buy or lease a place in Gbarnga. Because he could not pay the balance Five Hundred United States Dollar (US\$500.00) to complete the one year's lease, he suggested that we see Hon. Urey for the purpose of offering the property to him so as to help finance my campaign since I was contesting the legislative seat in Bong County.
5. That after a month or so, because my friend saw that I was really jammed with the campaign, he came to me with another One Thousand United States Dollar (US\$1,000.00) and pleaded with me to buy the subject property because according to him, Hon. Urey was not making any effort. He pleaded with me so much as a friend, and to be honest, I agreed to sell the place and we agreed on the final price of Twelve Thousand United States Dollar (US\$12,000.00). He then demanded receipt for the total of Two Thousand United States Dollars (US\$2,000.00) against the sale for the previous sums he gave me, and I did. On or about August 30, 2011, he paid

Seven Thousand United States Dollar (US\$7,000.00) with the promise that the balance Three Thousand United States Dollar (US\$3,000.00) would be paid Monday September 5, 2011. Attached are copies of the receipts that I issued him herewith marked in bulk as exhibit D/1 and made a part of this response.

6. That the September 5th deadline expired and he defaulted on payment of the balance Three Thousand United States Dollars (US\$3,000.00) as promised. Instead of coming forward with the balance or explanation as to why payment could not be made as promised, complainant took his case to the airways. That is, complainant did broadcast for one (1) week on Gbarnga Radio that I had sold my property to one Ansu Sesay, an individual with whom I had no prior dealing with in connection with this transaction.

7. That I became very embarrassed in the community because the Campaign Manager, of one of my opponents, Chris Sankolo, was actually on radio for one (1) week giving details of the private transaction between me and complainant Mark Thomas. At this point I felt I had been deceived, misled, betrayed and embarrassed by my friend, the complainant. I felt that he had betrayed the confidentiality and long-standing trust between us when it became clear that he was trying to set me up and sell this property to Ansu Seysay for Thirty Thousand United States Dollar (US\$30,000.00) instead of using it for medical clinic that could be used to serve the community.

8. That immediately I called him and informed him that I could no longer continue this transaction conceived in fraud and deception and promised to reimburse his money. He then took me to the Police and turned me over to them for Three Thousand United States Dollar (US\$3,000.00) where I was intimidated and threatened me to issue a deed in favor of one Ansu Sesay, and I refused. The Ansu Seysay I do not know at all as far as the transaction was concerned became the Plaintiff before the Police and Mark as Co-Plaintiff and State Witness. They harassed me and finally the matter went to Court and is still pending.

9. That Mark Thomas went to the Magisterial Court in Gbarnga and informed the City Solicitor to hold on for three (3) days; he would come to either issue the writ or withdraw his case. During this period, he again went to the Magistrate and other friends and we agreed that on November 20, 2011, I should commence payment of his money. We agreed and in the interim he filed this complaint.

10. That based on all of these, I have decided to commence payment of his money and based on family advice, I am no longer willing to sell.

Wherefore and in view of the foregoing, respondent prays this Honorable body to dismiss this complaint for reasons stated hereinabove and grant unto respondent such other relief as may be just and equitable.

The single issue, counsel for respondent Attorney Saybay argued is, whether based on the facts summarized above, the respondent's conduct constitutes violation of any of the Code of Ethics as alleged by the Grievance and Ethics Committee?

We do not agree with the first contention of Attorney Saybay that the transaction is not cognizable before the Grievance and Ethics Committee as it was a private transaction between him and the complainant and did not derive from a client and lawyer relationship. Rule 24 of the Code of Ethics for lawyers requires that a lawyer word of honor is sacred and his dealings in all matters and on all occasions should be such as non-repugnant to his oath and degrading to his profession. In his oath of admission as an attorney at law, a lawyer pledge to demean himself/herself as a gentleman, and a respectable and honorable citizen of the Republic of Liberia and that he will avoid connection or association with any shady, dishonest or dishonorable transaction. A legal personality must therefore exhibit virtues of honesty, integrity and high ethical standard in all dealings regardless of whether it is with his client or the public. Where the allegation alleges that the transaction was instituted by Attorney Saybay with the intent to take money under false pretense and defraud the complainant of his money and with no intention of refunding same, this matter can properly be brought before the Grievance and Ethics Committee, as such behavior cast aspersion on the legal profession.

But the other issue raised by Attorney Saybay and worthy of our consideration is his contention that the matter before us be dismissed as the complainant and one Ansu Seysay had filed a criminal complainant against him before the Liberia National Police and he was subsequently charged and sent to court. Attorney Saybay says though he submitted himself to the investigation of the Grievance and Ethics Committee, while the matter was pending, the complainant again caused a new action of Specific Performance to be instituted against him and a writ of summons served on him. The complaint before the Grievance and Ethics Committee was therefore instituted in bad faith and for the mere purpose of harassment.

We observed from the records that Mr. Thomas did not deny that he had filed two separate suits, criminal and civil and that they are presently pending in Court; though during the investigation he promised the Committee to withdraw his actions, he failed to do so. However, he has in his letter to the Chief Justice requested the Chief Justice to intervene in the unethical attitude of Attorney Saybay and that he be made to perform his side of the contract by transferring the property as agreed.

This request to the Chief Justice posed a problem, where a criminal matter involving the same matter and parties remain pending in court, it would have been appropriate had the Chief Justice written back to Mr. Thomas advising him to pursue his action in court since the Grievance and Ethics Committee, an inferior tribunal, could not entertain an investigation of a matter already pending before a court of law and which had not been decided. The outcome of the criminal case would have determined whether Attorney Saybay did commit a crime and thereby violated

the Lawyers Code of Ethics. In which case, the court's findings would have been considered by the Grievance and Ethics Committee who would then make a recommendation to the Court to act on in regard to the Lawyers Code of Conduct. Rule 30 of the Code for the moral and ethical conduct of lawyers states: Any lawyer who shall be addicted to such ungentlemanly conduct as rioting, drunkenness, and other act forbidden by the code of professional ethics, or shall be convicted of crime, shall be tried in keeping with rules controlling unprofessional conduct, and if adjudged guilty shall be refused practice before any court, directly or indirectly.

However, based on the submission of the complaint to the Grievance and Ethics Committee, Attorney Saybay submitted himself to the investigation. We note the records of the Committee's investigation and the documentary evidence presented when the investigation was held. The records of the proceeding reveal that Mr. Mark Thomas explained that Attorney James Saybay intimated to him Thomas that he was selling his property with three structures thereon. Mr. Thomas expressed interest in purchasing the property, and a purchase price of twelve thousand United States dollars (US\$12,000.00) was concluded between the parties. Mr. Thomas paid Attorney Saybay an advance of Nine Thousand United States Dollar (US\$9,000.00) with the understanding that the balance would be paid in two weeks after Attorney Saybay present to Mr. Thomas a transfer deed and all relevant documents pertaining to the property; that Attorney Saybay failed to deliver the deed to him as agreed and he failed to return the money to Mr. Thomas when he was requested to do so.

Initially, when the Committee met with the parties and their lawyers, they were requested to go and try to amicably settle their matter and report their actions to the Committee during the first week of January 2012. However, on the 4th day of January 2012, before the Committee resumed hearing of the matter which was held January 18, 2012, Mr. Thomas had a writ of summons issued out on Attorney Saybay, in an action of Specific Performance. The following reflect the minutes of the Committee's investigation of January 18, 2013:

Chairman Cllr. Bull: Investigation into the Complaint against Atty. James K. Saybay resumed on January 18, 2012, after been suspended for over 4 weeks.

Cllr. T. Dempster Brown, Complainant's Counsel: The Complaint, Mark Thomas, is represented by Cllr. T. Dempster Brown who says that he is present along with the Complainant.

Respondent, Atty. James K. Saybay: I am present and I am represented by Cllr. Lavela Supuwood who is absent for today hearing. The Committee may however proceed with today's hearing.

Chairman Cllr. Bull: On December 2, 2011, this Committee commenced investigation into a complaint filed by Mr. Mark Thomas against Atty. James K. Saybay from the City of Gbarnga, Bong County. During that hearing, the Respondent, Atty. James K. Saybay was represented by Cllr. Lavela Supuwood. The Committee advised both parties to go and harmonize the matter and report to it after the season on how the matter was resolved.

Cllr. Farmere Stubblefield: The respondent in count two of his response to the allegation against him raised an important issue that Mr. Mark Thomas and Ansu Sesay have already filed a criminal complaint against him before the Liberian National Police and he was subsequently charged and sent to Court and therefore cannot now come again before this body to file another complaint while he has been charged criminally for a business transaction. Atty. James K. Saybay, does this Committee lack the jurisdiction to investigate you as per count two of your response?

Respondent, Atty. James K. Saybay: That is not what I am saying, my letter was meant to provide the Committee with information and the Committee can therefore decide on what to do. I further want to inform this Committee that during the early part of January 2012, the Complainant, Mark Thomas filed another Action of Specific Performance at the Ninth Judicial Circuit Court, in Gbarnga, Bong County. I therefore request that this Committee proceed with the investigation into the unethical aspect of the matter.

Chairperson Cllr. Bull: The Committee heard from both parties and observed that the Complainant, Mark Thomas, has retained the services of Cllr. T. Dempster Brown who filed an Action of Specific Performance at the Ninth Judicial Circuit Court, in Gbarnga, Bong County for its February 2012 Term of Court. This was done on the 4th of January 2012. From the evidence gathered, respondent Atty. James K. Saybay filed his returns on January 14, 2012, notwithstanding an understanding with both parties that no legal actions would be executed pending this investigation.

Cllr. Dempster Brown, Counsel for Complainant informed this Committee that he was not aware of the agreement reached at the December 2, 2011, hearing into the complaint when he filed the Action of Specific Performance on January 4, 2012.

Cllr. Bull: This Committee on this day asked the respondent, Atty. James K. Saybay, whether or not he was challenging the jurisdiction of this Committee to proceed with the ethical/unethical conduct alleged against him by the complainant, Mark Thomas. From his response, the Committee is convinced that he is not contesting the jurisdiction of this Committee but is surprised that the complainant, Mark Thomas, has taken the step to ignore the decision and agreement reached in the Committee hearing of December 2, 2011, when both parties agreed that the investigation by the Committee should pause to enable them endeavor to reach a compromise since both of them have been friends for over 20 years.

After 30 minutes of consultation, both parties have agreed that on March 1<sup>st</sup> 2012, Complainant will withdraw the Action of Specific Performance filed against Respondent at the Ninth Judicial Circuit Court in Bong County, Republic of Liberia.

Both parties have also agreed and affixed their signatures to an agreement as quoted below:

Both parties mutually agreed that respondent, Atty. James K. Saybay will pay to complainant, Mark Thomas, the sum of Ten Thousand Five Hundred United States Dollar (US\$10,500). Nine Thousand United States Dollar, (US\$9,000.00) the said amount represents the amount paid by

Complainant Mark Thomas to respondent Atty. James K. Saybay for one (1) lot of land with two (2) structures situated thereon, in the City of Gbarnga, Bong County and one Thousand Five Hundred United States Dollar (US\$1,500.00) which represents cost and interest on February 29, 2012.

It was further mutually agreed by both parties that respondent, Atty. James K. Saybay, shall be present at the Grievance and Ethics Committee on Friday, January 27, 2012, and signed a Warranty Deed for the herein described land and that failure on respondent Atty. James K. Saybay part to pay the above amount stated herein on the date mentioned above the Warranty Deed issued by him in favor of Mr. Mark Thomas shall be given to complainant Mark Thomas.

It is further mutually agreed that complainant Mark Thomas on January 27, 2012 shall be present at the Grievance and Ethics Committee with a postdated check dated March 1<sup>st</sup> 2012 issued in the name of Atty. James K. Saybay in the amount of Three Thousand United States Dollar (US\$3,000.00) representing full settlement for the parcel of land mentioned herein which respondent Atty. James K. Saybay initially refused to accept. The postdated check shall be turned over to respondent, Atty. James K. Saybay upon his failure to pay the said amount to complainant Mark Thomas during which time the Deed shall be turn over to Complainant Mark Thomas.

From the report, Attorney Saybay did not pay the US\$10,500 but brought a deed that was found to be fraudulent as the property said to be transferred was not the same place agreed on by the parties; besides, the name of the surveyor was forged. However, this Court ask, why did the Committee not insist on the withdrawal of all complaints before the court, especially the criminal complaints since the investigation being conducted was quasi criminal?

An essential portion of the procedure governing the proceedings of the Committee reads:

The Committee shall not be bound by the strict rules of evidence; however, every effort shall be made to accord the litigants due process, and any evidence offered or admitted shall be relevant material and within the RES GESTAE.

We ask the question of why the Committee did not insist on a withdrawal of the court cases instituted by the complainant before proceeding since a matter before the court takes precedent over any investigative forum. For the Supreme Court to assume jurisdiction to consider the findings and recommendation of the Committee, that Attorney James K. Saybay be ordered to issue to Mr. Mark Thomas a Warranty Deed for the one (1) lot of land with two (2) structures situated thereon and that Attorney James K. Saybay be also turned over to the Justice Ministry for investigation and prosecution for violating the Penal Law of Liberia would create a dichotomy as the investigation of the Committee is not bound by the strict rule of evidence and cannot be given precedence over a case on the docket of the court. Besides, the principle of pendency under our CPLR §11.2 (d) applies in this case.

The Committee itself stated that although convinced that Attorney Saybay was not contesting the jurisdiction of the Committee, it was surprised that the complainant, Mark Thomas had

ignored the decision and agreement reached at the investigation of December 2, 2011, to withdraw his action; the Committee said it would proceed to continue its investigation with the promise made by the complainant and his counsel that they would withdraw the actions brought against the respondent.

However, we see no record that the actions filed by the complainant were ever withdrawn, particularly, that the criminal charge was nolle prosequi. We therefore cannot uphold the recommendation of the Committee that Attorney Saybay be ordered to issue to Mr. Mark Thomas a warranty deed for the property allegedly agreed to be sold, and to turn him over for prosecution.

As we said, Attorney Saybay has already been criminally charged for theft of property and receiving money under false pretense; if the complainant pursue his criminal matter in court and Attorney Saybay is found guilty, besides being given a jail sentence, the Attorney will be ordered to restitute the amount allegedly taken from the complainant; on the other hand, where the complainant pursue his action for Specific Performance, if successful, the court will compel the issuance of a deed to complainant for the disputed property. In this regard, it is only but proper that Mr. Mark Thomas pursues his actions filed and are presently pending in the court in Bong County.

This brings us to the next issue, whether Attorney Saybay having submitting himself to signing a memorandum of understanding and presenting a fraudulent deed to the Committee, he can be held in violation of the Lawyers Code of Ethics?

We answer in the affirmative. A lawyer who set himself out to perform an act is expected to act honorably. There is no evidence that Attorney Saybay was put under duress to sign the memorandum. He having submitted himself to signing a memorandum and thereafter, in submission thereto, issued a fraudulent deed to the Committee, he was in violation of Rule 24 of the Code for the Moral and Ethical Conduct of Lawyers which states:

A lawyer's word is sacred and his dealings in all matters, and on all occasions should be such as not repugnant to his oath, and degrading to his profession, also Rule 25 which states: It is unprofessional, unethical and dishonorable for a lawyer to participate in, or initiate the illegal preparation or falsification of or other legal documents. A Lawyer found guilty of this act is unfit to be a member of the bar and shall be subject to suspension for a period of one year for the first offense and for the second offense, disbarment from the practice of law.

Attorney Saybay exhibited dishonesty in his dealings with the Committee when he presented to it a deed that did not cover the area of the disputed property, and further committed forgery when he signed the name of one Jackson who was not a licensed surveyor. The alleged surveyor, when called in by the Committee during its investigation stated that he could neither read nor write and that he was not a surveyor but an assistant to the Bong County surveyor. This act of

Attorney Saybay in preparation of the deed having been fraudulent, he was in violation of the Code of Ethics and must be suspended as per Rule 25, for a period of one (1) year.

In view of the foregoing, this Court rules that Attorney Saybay is suspended from the practice of law directly or indirectly for a period of one (1) year in Liberia for his dishonesty and fraudulent act in preparation of a deed; while the complainant, Mark Thomas, having elected to initiate court action, is advised to pursue his criminal matter of theft filed before the trial court in order to recover his nine thousand United States Dollars, or pursue his action for Specific Performance to have the trial court order Attorney James Saybay transfer the property to him. AND IT IS HEREBY SO ORDERED