IN RE: The Report of the Judicial Inquiry Commission in the Matter of The Investigation of the Judicial and Ethical conduct of Judge Emery S. Paye's

LRSC 3

HEARD: JANUARY 28, 2013. DECIDED: FEBRUARY 20, 2013.

MR. JUSTICE BANKS DELIVERED THE OPINION OF THE COURT.

The Judiciary, legal luminaries of our Supreme Court Bench have proudly boasted, is the bedrock of our democracy, the anchor of our justice system, the cornerstone of our justice system. When our people feel aggrieved and see little or no hope for redress, they turn to the Judiciary, the last beacon of hope, set up by our Constitution to ensure that wrongs committed to our people and those who venture into our jurisdiction, are addressed. This is why we continue to remind ourselves that we can never, and we must never, engage in conduct which would cause our people to lose that hope, and to view this core system with gloom, desolation, despair and disgust. This is why when we see that at transgressions have been committed and that the act has resulted a travesty of justice, we must take the measures, duty bound as we are to do, painful and embarrassing as they may be, to ensure that those within our midst and shown to be responsible for exposing our system to ridicule and disrepute our people to the dangers of injustice, are held accountable for the acts and action complained of. This case presents one such situation in which we feel compelled to inflict pains upon our outer integrity and shame upon our inner integrity in order that we address a wrong committed from within our ranks, so that the public may see the goodness of our inner integrity and our unflinching resolve to remain the beacon of hope.

This matter before us grows out of an investigation conducted and recommendations made by the Judicial inquiry Commission, a critical component of the Judiciary, established to review complaints brought against judges in the conduct of trials had before them and said to be tainted with ethical transgressions or to review other ethical and disorderly conduct unbecoming of a judge. Ordinarily, the genesis of such proceedings are lodged in complaints filed by a party aggrieved by the conduct of a trial judge in the course of a trial or other conduct indulged in by a judge, but which not befitting of a judge. The instant proceedings, however, is the direct result of a case determined by the Honorable Supreme Court on appeal from the ruling of the Justice in Chambers, in which the Court determined that the records showed the commission of such gross ethical transgressions by the respondent trial judge and one of counsels for one of the parties that (a) a judicial enquiry was warranted by the Judicial Inquiry Commission, as to the respondent trial judge, and (b) an investigation was warranted by the Grievance and Ethics Committee into the conduct of counsel, a member of the Liberia National Bar Association in the same matter. In both situations, although the Court felt that the conduct, shown by the records before it, brought shame and disgrace to the dignity, integrity and sanctity of the Judiciary, it also felt that the persons named

therein should be given the opportunity to defend against the allegations or provide justifiable reasons for the conduct.

The events necessitating the inquiry and the investigation, culled from the records before this Court, and narrated by the Justice in Chambers in her ruling granting the petition for a writ of prohibition, the opinion of this Court in the appeal taken from the said ruling, and the findings of the Judicial Inquiry Commission entrusted by the Court to investigate the unethical conduct stated in the Supreme Court's Opinion, show the following to have occurred.

Mrs. Cecelia Harper, in 1968, filed an action of ejectment in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, against Rev. Chauncey D. Karngar regarding a disputed parcel of land. The case was regularly tried and a judgment entered on the verdict of the empaneled jury awarding the said property to the plaintiff in the action. As no appeal was taken from the judgment, Mrs. Harper was placed in possession of the property.

Thirteen (13) years thereafter, with the advent of the military coup in Liberia in 1980, which saw the overthrow of the constitutionally elected government of President William R. Tolbert, Rev. Chauncey D. Karngar decided to resurrect the case by seeking the intervention of the new military government. In that regard, Rev. Karngar wrote a formal complaint to the then Head of State, Samuel K. Doe, in which complaint he alleged that his property was illegally taken from him during the Tolbert Administration. President Doe, upon receipt of the complaint, referred the matter to the Ministries of Justice and Land, Mines and Energy, with instruction that same be investigated. Following a probe, the then Justice Minister, Counsellor Chea Cheapoo, replied President Doe that the matter of which Rev. Chauncey Karngar had complained was the outcome of a judicial exercise. Minister Cheapoo therefore advised that the Executive Branch not interfere with what was clearly the outcome of a regularly had judicial proceeding.

Notwithstanding the foregoing position of the Minister of Justice, Counsellor T. C. Gould, 15 years thereafter, in 2005, while serving as Solicitor General of Liberia, cited the heirs of the late Cecelia Harper to a conference at the Justice Ministry in connection with the same case.

Upon being notified of the conference called by Counsellor Gould, regarding the mentioned property, adjudged by the court to belong to the late Cecelia Harper, counsel for the Intestate Estate, in person of Counsellor M. Kron Yangbe, wrote a letter to the Solicitor General informing him that the matter had already been decided by the court. Counsellor Yangbe also informed Counsellor Gould that Rev. Karngar had resurrected the matter when the PRC was in power by forwarding a complaint to the then President Samuel K. Doe and that Mrs. Harper had prevailed for the second time, on a full determination made by the then Minister of Justice, Counsellor Chea Cheapoo.

Counsellor Yangbe attached documentary evidence in support to his communication and advised the then Solicitor General, Counselor Theophilus C. Gould, to allow the legal principle of res judicata to prevail.

Upon receipt of the letter from Counsellor Yangbe, Counsellor Gould had his Administrative Assistant, Mr. A. Dairus Dillon, Sr., reply Counsellor Yangbe, in a manner that conveyed the impression that the conference would be held and that the case would be reopened. It isn't clear, however, whether or not the scheduled conference was held. What is clear, and what the records do reveal is that during the June 2005 Term of the Circuit Court for the Sixth Judicial Circuit, Montserrado County, Counselor Theophilus C. Gould, who was no longer Solicitor General of Liberia, filed an action of ejectment on behalf of Rev. Chauncey D. Karngar against the heirs of the late Cecelia Harper and Trafina Goll, Administratrix of the Intestate Estate of the late Cecelia Harper and others, seeking to have them ejected from the subject property which the court had awarded to Cecelia Harper and in respect of which he had held or had attempted to hold a conference while serving as Solicitor General of Liberia.

The records further reveal that at a sitting of the trial court on October 18, 2006, presided over by Judge Emery Paye, Counsellor Gould informed the court, on the minutes of the court, that the writ of summons which should have been served in the action filed by him for Rev. Karngar was not served, and hence, that a writ of re-summons was issued on June 25, 2005. He impressed upon the court that although the writ was served, no answer had been filed up to the day and date of that sitting of the court on October 18, 2006.

The Counsellor further informed the court that although the case was assigned for the disposition of law issues on October 18, 2006, at 9:00 a.m., the Sheriff's Returns showed that the defendant, Cecelia Harper, had refused and neglected to sign the notice of assignment. He, Counsellor Gould, therefore requested that the court pass on law issues and rule the case to trial on its merits for trial Jury by a petty jury.

The records reveal the further unfolding of a very frightening series of events in the court. Counsellor Gould, who had just asked the court to pass upon the law issues and to rule the case to trial by a jury, proceeded to make additional records on the minutes of the court for the trial of the case on the same day and without any notice of assignment having been issued for such hearing. Making records on the minutes as if to give the impression that he was speaking on a date subsequent to October 18, 2006, the date on which he had requested the court to rule the case to trial by a jury, Counsellor Gould, on the self-same day and date on which the law issues were supposed to have been disposed of, i.e. October 18, 2006, proceeded to state the following: "Today, at the call of the case, the defendants and their counsels are not present in court" and hence, that judgment by default should be entered against the defendant.

The minutes of the court also show that the request for the entry of default judgment was granted by the court and immediately that thereafter a petit jury was empanelled to

hear the case. Two witnesses, Rev. Karngar and Mr. Joseph E. Delvee were produced to testify for the plaintiff. No questions were asked of the witnesses, either from the court or from the jury. At the conclusion of the evidence, a verdict was brought in favor of the plaintiff, Rev. Karngar, wherein he was awarded the property and an amount of US$100,000.00 as damages. The trial judge, His Honor Emery S. Paye, in a ruling made on the same day and date, confirmed the verdict brought by the empanelled Jury and ordered the defendant evicted, ejected and ousted from the plaintiff's property, which was done.

When the administrator of the Intestate Estate of the late Cecelia Harper, the late Edwin J. Goodridge, learned about the judgment that had been rendered against the Estate, he filed a petition for a writ of prohibition, naming Judge Emery S. Paye as First respondent, Rev. Chauncey D. Karngar as second respondent, and Counselor Theophilus C. Gould, Solicitor General of the Republic of Liberia, as third respondent. In order that we capture the full appreciation of the magnitude of the problem we have been called to deal with, we believe that it is appropriate to recount the several allegations set forth in the petition verbatim, as follows:

"1. That petitioner in these proceedings is the administrator de-bonis non for the Intestate Estate of the late Cecelia Harper Daniels, owner of the property located in Oldest Congo Town, the subject of these proceedings. Copy of the petitioner's letters of administration de-bonis non is hereto attached and marked as petitioner's Exhibit "P/1" to form a cogent part of this petition.

2. That sometimes in 2005, the former administrator of the Intestate Estate, Edwin J.R. Goodridge, Sr. through Counsellor M. Kron Yangbe, filed the original petition for prohibition which was issued, but never heard because the said former administrator of the Intestate Estate was ill and subsequently died.

3 That the counsel for the new administrator of the Intestate Estate, having realized that the original petition has remained undetermined beyond the period required by the rules of the Supreme Court, resolved to withdraw the original petition and file this amended petition as in keeping with our Law. The Court is most respectfully requested to take judicial notice of the relevant Supreme Court's rules.

4.That petitioner also petitions and says that the late Cecelia Harper filed an action of ejectment in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, in its September Term, A.D. 1968 against Chauncey D. Karngar. The case was judicially decided by the Court on the 17th day of September, A . D. 1968. Notwithstanding, this fact, during the administration of the late President Samuel K. Doe in 1980, Chauncey D. Karngar, the defendant re-opened the case when he complained to the late President Samuel K. Doe who referred the matter to the Ministries of Justice and Lands, Mines & Energy. After a probe, the Ministry of Justice confirmed that the case was decided in the Civil Law Court, Montserrado County, on the 17th day of September 1968 and that the Executive Branch should not interfere. Dossier of communications in support of

this allegation are hereto attached, marked Exhibit "11/2" in bulk to form an integral part of this petition.

5. That the petitioner also petitions and says that the co-respondent judge in complete disregard of the fact that the Ejectment action for the self-same property was adjudicated and concluded between the late Cecelia Harper and Rev. Chauncey D. Karngar in 1968 by the same court, proceeded and reopened the said case, thereby proceeding by the wrong rule which forbade that a Judge of concurrent jurisdictions from reviewing the act of another judge of concurrent jurisdiction for which a petition for prohibition will lie.

6. Petitioner also petitions and says that, co-respondent, Trafina Goll was never an administrator of the Intestate Estate of the late Cecelia Harper but that she is a mere girlfriend of the late Preston Goll, who was never the owner of the property in question. The service of Summons and the conduct of the hearing using a stranger to the property of the late Cecelia Harper as the owner of the said property to deprive the children of the late Cecelia Harper their rights to their late mother property was irregular and illegal for which prohibition will lie.

7. That the failure by the co-respondent judge to take judicial notice of the fact that the matter has been decided by the same court means that the Court proceeded by the wrong rule for which prohibition will lie.

8. That, in the year 2005, co-respondent Chauncey D. Karngar again proceeds to the Ministry of Justice and again appealed to the Solicitor General, Theophilus C. Gould to re-open the case although in 1980, the Ministry of Justice had refused to re-open the case since the matter had been determined by the Court.

9. That further to count eight (8) above, the counsel for the petitioner, Cllr. M. Kron Yangbe, communicated with the Solicitor General, Theophilus C. Gould, submitted to his office, all the relevant documents regarding the matter including communication from the office of the former President, Samuel K. Doe and those from the Justice Ministry placing him on notice that the Ministry of Justice had dealt with this matter before. Copies of these communications are hereto attached in bulk and marked as petitioner's Exhibit "P/3" to form a cogent part of this petition.

10. That despite all the information to the Solicitor General, Cllr. Theophilus C. Gould, the said Solicitor General, proceeded to the Civil Law Court after he left the Ministry of Justice in 2006, and filed an action of Ejectment for the selfsame property through his private law firm against the girlfriend of the foster son of the late Cecelia Harper, Trafina Goll (girlfriend of the late Preston Goll). Copy of the summons in the case are hereto attached and marked as petitioner's Exhibit "P/4" to form a cogent part of this petition.

11. That although Cllr. Theophilus C. Gould was the Solicitor General and handled this matter at the Ministry of Justice, he personally appeared in the Civil Law Court in complete contravention of our Law which prohibits State prosecutor from participating in civil matter

especially a matter which Cllr. Theophilus C. Gould had participated in at the Ministry of Justice. Copy of the Court's minutes are hereto attached and marked as petitioner's Exhibit "P15" to form a cogent part of this petition.

12. That the simultaneous handling of this matter by Cllr. Theophilus C. Gould, as both state prosecutor and at the Civil Law Court, was contrary to the professional code of conduct for lawyers and that same was irregular and illegal for which prohibition will lie.

13. That prohibition will lie to u n d o what has b e e n illegally and irregularly done."

We believe also that in aid of the analysis which we will be making hereinafter and to also appreciate the position taken and the conclusions reached by the Judicial Inquiry Commission, there is need to highlight verbatim the response of the respondents to the allegations set forth in the petition for the writ of prohibition. The returns, which advances as the defense of the respondents the theory that no proper legal and factual justification was presented by the petitioners to warrant the issuance of the alternative and peremptory writs of prohibition, states as follows:

"1. Because as to count one (1) of petitioner's amended petition, respondents say and submit that petitioner is not the owner of the property subject of these proceedings as co-respondent Chauncey Karngar filed a complaint in the Civil Law Court predicated upon an Investigative Survey conducted by the Ministry of Lands, Mines and Energy, which complaint was served on the petitioner, then defendant, and she failed and neglected to file an answer. Your Honor is respectfully requested to take judicial notice of the case file in addition to a copy of the investigative report hereto attached and marked as Exhibit "RR/1 in bulk" to form cogent part of this returns.

2. Also because as to count two (2) of the petitioner's amended petition, respondents say that the issuance and non-issuance of a remedial writ is in the discretion of the Justice and since the petition was not acted upon, to mention same is irrelevant.

3. And also because as to count three (3) of the amended petition same is irrelevant.

4. And also because as to count (4) of the amended petition, respondents say that it would appear that upon reviewing the records, the then President His Excellency Samuel K. Doe directed a resurvey of the subject premises which led to the investigative report hereto attached above. Moreover, respondents say that those were issues to be raised in the answer by the petitioner then defendant failed to file an answer and now elects to provide an answer through a petition for a writ of prohibition to cure the waiver. Again, Your Honor is respectfully requested to take judicial notice of the records in these proceedings.

5. And also because as to count (5) of the amended petition, the petitioner then defendant failed to file an answer by way of which issues now raised could have been brought to the attention of the court hence the allegation of one disregarding a previous action is false and merely intended to mislead this Honorable Court. Further, the office of prohibition is never used to cover up for a waiver. Count (5) of the amended petition should be ignored and the entire amended petition dismissed.

6. And also because as to count (6) of the amended petition, respondents say that the Honorable Supreme Court has in some opinion said that when one has knowledge of a pending case that would affect his/her interest, the appropriate action should be taken to obtain the desired re- dress. Co-respondent Karngar submit that Trafina Goll was in possession of the premises and petitioner is fully aware.

7. And also because as to count (7) of the amended petition; respondents say that assuming without admitting that the case had been heard on its merit, the method to employ was to file and answer along with the relevant motion and not to wait for the enforcement of the judgment and then to come by way of prohibition. Respondent submits that that is not the office of the writ of prohibition. The entire amended petition should be ignored and dismissed and respondents so pray.

8. And also because as to counts (8-12) of the amended petition, co- respondent Cllr. Gould says that although Cllr. Yangbe wrote but there was no attachment and this request was made and never honored by Counselors Yangbe until co-respondent Gould left the Ministry of Justice. Respondents say that said counts are totally irrelevant and should be ignored and respondents so pray.

9. And also because as to the entire amended petition, respondents say that same is a clever way of depriving the co-respondent of his property as it would appear that at the time justice was not done. Co-respondent Karngar submit that the matter involves real property and the documents are available, hence he is ready to submit to a re-survey for the purpose of determining the fact and who owns the property.

10.And also because respondents deny all and singular the averments in the amended petition not made subject of special traverse herein."

These were the pleadings, exchanged between the parties, and the background facts enumerated before, as culled from the records and file of the trial court, upon which Her Honor Gladys K. Johnson, the Associate Justice, then presiding in Chambers, entertained arguments and made a ruling in favor of the petitioner and indicting the co-respondent Judge, His Honor Emery Paye, of proceeding by the wrong rules, a ground which, under the law, justified the issuance of the writ of prohibition. We herewith quote the relevant portions of the Chambers Justice's ruling, delivered on the 21st day of January, 2010:

"We shall determine this case on the following two issues: (1) Whether Judge Paye who heard and determined the ejectment action filed before him by Rev. Karngar proceeded by wrong rules and not by rules that ought to be observed at all times and as a result prohibition sho.uld lie to undo the judgment. (2) Whether the property matter between Rev. Karngar and the late Cecelia Harper had been decided in the same Civil Law Court by a judge of concurrent jurisdiction, Judge Morris, and that hearing plaintiff's ejectment action and undoing the eviction of Rev. Karngar and dispossessing Cecelia Harper of the property, Rev. Karngar, some 38 years after the writ of possession

was executed in favor of Cecelia Harper, is a fit subject for correction by a writ of prohibition?

In addressing issue number one whether Judge Paye proceeded by wrong rules and that prohibition should lie, was the reason we took recourse to the trial proceeding of Rev. Karnga's action of ejectment. During this exercise the following procedural steps proposed by counsel for plaintiff and granted by the presiding judge were alarmingly disturbing to this Justice: (1) Counsel for plaintiff in his submission after he had announced representation, said among other things, that the assignment for the day October 18, 2006, was for disposition of law issues but that the defendants were not in court. He then requested for application of some rules twenty eight (a), seven, as well as 42.1 without stating the full source of the rules on which he relied. The judge then granted a partial default judgment, granted request for jury empanelling, qualification of his witnesses and the trial commenced. These in the opinion of this Justice, these procedures were all contrary to the law and procedure In this jurisdiction. According to the practice in this jurisdiction, the defendant should have been notified of the trial on a regular notice of assignment for trial after the disposition of the law issues on October 18, 2006. (b) The Sheriffs returns stated that Cecelia Harper refused to receive and sign the notice of assignment. The judge before whom this returns of the Sheriff was made should have wondered and therefore investigated how the deceased, Cecelia Harper could have refused to sign for the notice of assignment? Yet the judge granted the default judgment on the basis of that false allegation that the deceased defendant refused to receive the notice of assignment and that she was called three times at the door but did not answer. (c) The jury brought a verdict in favor of the plaintiff and the judge proceeded shortly thereafter by making his ruling without assigning counsel to take the ruling on behalf of the .defendants who were not notified of the trial to announce an appeal from the final judgment. In this jurisdiction the trial judge has an obligation to appoint counsel to take the ruling on behalf of an absentee party especially in a case where the party had no notice or had notice but filed a valid excuse. (d) There was not mention made of the other defendants were they served and they all refused to appear? There is no showing on the records. The Sheriffs returns only said that Cecelia Harper refused to accept and sign. So if the other defendants were not served why were they evicted, ousted and ejected without a hearing? The law in this jurisdiction requires that the defendant must be allowed his day in court before judgment can be binding on him (e) In the ejectment action plaintiff named Trafina Goll as administratrix of the estate of the late Cecelia Harper without any showing that Trafina Gall was in fact the administratrix and therefore the proper person to sue since Cecelia Harper had long since died.

In the opinion of this Justice sitting in Chambers, the trial judge, His Honor Emery Paye, moved to dispose of this matter like fire brigade, except that in so moving he headed in directions contrary to rules that should be observed at all times. The judgment growing out of that ejectment action that dispossessed the defendant and repossessed the plaintiff, Rev. Karngar, is hereby undone by issuance of the permanent writ of prohibition.

The second issue which was the foundation for the writ of prohibition filed by Edwin J. Goodridge, administrator of the intestate estate of Cecelia Harper against Judge Emery Paye is whether by entertaining Rev. Karnga's ejectment action against Cecelia Harper and others was a review of the actions of the judge with whom he had concurrent jurisdiction, who decided this case and put Cecelia Harper in possession since 1968. In the opinion of this Justice the answer is yes. The major players in this case, Rev. Karngar, Counsellor T. C. Gould and to a lesser degree, Judge Paye were in one way or the other aware of the fact that at point in time, His Honor Judge Morris ordered issuance of the writ of possession that put Cecelia Harper in possession of the property. For example Rev. Karngar, who instituted the new litigation in 2005, was the defendant in 1967 when the action of ejectment was instituted against him by Cecelia Harper for encroaching on 44 feet of her land. They were and still are adjacent property owners in Oldest Congo Town according to the records. The record reveals no proof that an appeal was taken. When the case ended and the defendant was ordered evicted. Yet Rev. Karngar kept his secret to either himself or confessed it to his counsel, but they decided to proceed with their ejectment action any way and because the case did not reach the Supreme Court, it is recorded and published in the Liberian Law Reports covering that period. The unappealed judgment therefore remains final res judicata attaches. On the other hand, Counsellor T. C. Gould, as Solicitor General, conducted investigation when Rev. Karngar brought the same land matter, after Samuel Doe and the PRC Government refused to interfere in judicial matters in the particular case, to the attention of the Gyude Bryant administration. Solicitor General Gould requested to see the judgment in spite of all the communications from Doe's time onward. So Counsellor Gould had enough notice from all the records presented him, but because the judgment was not among the re-cords presented for his investigation he seemed to have decided that the matter could not be said to have been decided, notwithstanding the writ of possession in favor of Cecelia Harper, and other indications to support a finding that the said land case had been dealt with before in the Sixth Judicial Circuit. He therefore filed this new action of ejectment ignoringandwithholding that information and proceeding in collaboration with Rev. Karngar to have Judge Paye overrule the ruling of his predecessor to obtain a judgment in favor of Rev. Karngar. Also Judge Emery Paye should have observed and made keen note of the testimony of the plaintiff's testimony in which the witness said that President Tolbert, because of some acquaintance with the late Cecelia Harper, gave plaintiffs land to Cecelia Harper who had been wrongfully withholding plaintiff's building consisting of four bedrooms for the past 30 plus (+) years. Why didn't Judge Paye try to [secure] any further information pertaining to this Tolbert connection and its effect on the case? Why didn't the jury have any comments or questions for this witness if they truly intended doing their fact finding task honestly and responsibly and in the spirit of patriotism and justice? In the considered opinion of this Justice Counsellor, Gould and his client Rev. Karngar won their ejectment suit through misrepresentation and concealment, which actions on their parts led to the trial judge rehearing a case that had been laid to rest from 1968 to 2005, the said judge by so doing, reviewed the acts of his predecessor of concurrent jurisdiction. If nobody on the planet knew that there was an ejectment action filed in the Sixth Judicial Circuit

by Cecelia Harper against Rev. Karngar, plaintiff herein, Rev. Karngar knew, and yet concealed that fact, proceeded quietly but to swiftly setting aside all the rules, legal and moral, to attain his desired. The writ of prohibition will lie to undo any decision or judgment arrived at under such circumstances. The writ of prohibition is therefore hereby granted."

The respondents, not being satisfied with the ruling of the Justice in Chambers, appealed the case to the Supreme Court *en bane* for a final review and determination. The Court, having heard the appeal, handed down its opinion on the 22nd day of July, A. D. 2011. As with the findings made by the Chambers Justice, Her Honor Gladys K. Johnson, we believe it is similarly important to note the findings of the Supreme Court, gathered from the records, as well as the conclusion of the Court. We quote the relevant portions of the Supreme Court's Opinion, as follows:

"During the argument of this case before us, Counsellor T.C. Gould finally conceded the point that this matter had been decided by court in 1968 and it was an error for him to have filed another action of ejectment on behalf of Rev. Chauncey Karngar in 2006. But his concession did not come about until series of questions were posed to him by this bench. Here are excerpts from the questions and answers and the submission subsequently made by Counsellor Gould:

"Ques: Why did you name the defendant [Cecelia Harper] in the writ of re-summons when you knew she was dead...?"

"Ans: Your Honors that was a mistake, the complaint did not carry her name."

"Ques: Did you come across any writ of possession in the case file?"

"Ans: Your Honors, we never saw that writ."

"Ques: You are informed now that this matter was decided in 1968. What is your position now in relation to the ejectment action you filed?"

"Ans: Your Honors, the subsequent action was filed in error."

"Ques: When did you discover that a ruling was made by the Civil Law Court in [this case]?"

Ans: Recently, Your Honors.

"Ques: If you send notice of assignment for disposition of law issues and one party appears ... can the court proceed immediately to trial?"

"Ans: No, You Honors."

"Ques: Was this a jury trial?"

Ans: Yes, Your Honors.

"Ques: How many days in a jury trial before a judge can render final judgment?"

"Ans: Four days."

SUBMISSION: "At this stage, Counselor Theophilus C. Gould says that his recent review of the court's file reveals communication and information that this case involving the same party has been judicially disposed of and information which, if he had earlier, could have placed him in a position to withdraw his representation and this cause of action. Accordingly, Counselor Theophilus C. Gould begs to inform Court that his participation now in these proceedings was under the belief that there was no judgment.Having realized that the contrary is true, he is hereby respectfully requesting this Court to have the second matter set aside for mistake of fact on the part of the counsel and in recognition that this is a real property case and that the parties would be forever neighbors an appropriate settlement be made in the premises. And submits."

We must now comment on the involvement of Counsellor T. C. Gould in this case. He handled the case while in public service. Though he said he did not make any decision in the case as Solicitor General, there is no way of knowing whether or not he formed an opinion. As we see it, it was best that he remained above reproach by not handling the same matter as a private lawyer.

Secondly, Counsellor Gould had enough notice from all available records in this case from which he should have discerned and determined that the property case between Rev. Karngar and the late Cecelia Harper had been decided in court in 1968. Counsellor Yangbe forwarded the bulk of the records to him, including the letter quoted hereinabove, written by Counsellor Chea Cheapoo, when he was Minister of Justice. The second paragraph of that letter states: "We have examined the records, including the final judgment of the Court,and found that the court decided the case in favor of Mrs. Harper." Counsellor T. C. Gould claimed that copy of the judgment entered in the case was not sent to him by Counsellor Yangbe. What he did not say is whether he made a diligent search of the trial court's file when he was informed that the matter had been decided by court before filing the second action of ejectment. We believe that had he done so at the time,he would not have filed the second ejectment suit in this case.

When asked when he discovered that ruling had been made by the Civil Law Court in favor of Cecelia, he answered that he discovered this “recently”. He did not state any time period, whether three months, one month or two weeks more or less prior to the hearing of the case before us. Whatever the case, we hold that it was incumbent upon the Counsellor to have immediately informed this Court of his discovery that the matter had been previously decided and taken step(s) to withdraw this case from this Court. This would have had some mitigating effect. His concession made during the argument of the case in which he urged us to set aside the second ejectment suit filed by him come offensive late. As a result of the illegal judgment entered by the trial court from the second ejectment suit filed by Counselor Gould, the heirs of the late Cecelia Harper were wrongfully evicted, ejected and ousted from the subject premises about 11 years ago and Rev. Karngar was placed in possession.

As for the trial judge, His Honor Emery S. Paye who presided over the second trial in 2006, his actions in the case leave much to be desired. He, also, ought to have known that the case had been decided in the same Civil Law Court, Sixth Judicial Circuit, Montserrado County in 1968 between the same parties involving the same subject matter. It is no excuse that he did not decide the case in 1968 and had no way of knowing that the matter had been decided. Courts are required to know their own records. And he ought not to have confirmed the jury's verdict the same day it was brought and entered judgment against the petitioner/appellee. His action is in contravention of Section 41.2(1), 1 LCL Revised, Civil Procedure Law.

Besides, the judge failed or neglected to take note of the so called sheriff's returns in the case which said that the defendant, Cecelia Harper, a dead person, refused to sign the notice of assignment. He should have known that Cecelia Harper was not living. This is because the Ejectment suit before him was filed against "Edwin J. Goodridge, administrator of the intestate estate of the late Cecelia Harper" and not against Cecelia Harper herself. One cannot be alive and at the same time be the owner of an intestate estate. It is upon the flawed service of notice of assignment that the trial judge proceeded to enter default judgment against the petitioner/appellee. These actions of the trial judge were not only contrary to rules ought to be observed at all times, they were quite reprehensible.

IN VIEW OF THE FOREGOING, the ruling of Madam Justice Johnson granting the petition for writ of prohibition is affirmed. The ruling of the trial judge entered in 2006 in favor of Rev. Karngar evicting, and ousting the petitioner/appellee is hereby reversed. The petitioner/ appellee is ordered repossessed in accordance with the ruling of the Civil Law Court, Sixth Judicial Circuit, Montserrado County made in 1968.

For his involvement in the trial of this case the Clerk of this Court is ordered to send a copy of this opinion, as well as the records in this case, to the Grievance & Ethics Committee with instruction that the Committee should cite and investigate the conduct of Counselor T. C. Gould to determine whether he is in breach of the Code For The Moral And Ethical Conduct Of Lawyers. The Committee shall submit a report with recommendations to the Supreme Court through His Honor Johnnie N. Lewis, Chief Justice, in three months as of today.

The Clerk of this Court is ordered, also, to send a copy of this opinion as well as the records in this case to the Judicial Inquiry Commission with instruction that the Commission should cite his Honor Judge Emery Paye and investigate his conduct in the trial of this case to determine whether he is in breach of any Judicial Cannon For The Moral & Ethical Conduct Of Judges. The Judicial Inquiry Commission, like the Grievance & Ethics Committee, shall submit a report with recommendations to the Supreme Court through His Honor Johnnie N. Lewis, Chief Justice, in three months as of today. Costs are ruled against the respondents/appellant. It is so ordered. Appeal denied."

The foregoing formed the premise upon which the Supreme Court charged the Judicial Inquiry Commission, chaired by Mr. Justice Kabineh M. Ja'neh, with the task of investigating the conduct of the trial Judge, His Honor Emery Paye, and the Grievance

and Ethics Committee, chaired by Counselor Pearl Brown Bull, with the further task of also investigating the conduct of Counselor Theophilus C. Gould, and to make their findings and recommendations to the Supreme Court on appropriate action to be taken against the mentioned persons, should conclusion be reached by the Commission and the Committee that ethical transgressions had been committed by them. In compliance with the directive and mandate of the supreme Court, the Judicial Inquiry Commission's Report was submitted to supreme court for its endorsement of the findings and recommendation. As reprehensible as the entire episode is, we have determine to focus our attention in these proceedings only on the acts of Judge Paye, for we deal herein with the conduct of Judge Paye, investigated by the judicial Inquiry Commission, and not with the matter submitted to the Grievance and Ethics Committee, which is separate and is not before the Court en banc.

We therefore proceed to review and highlight the findings and recommendations of the Judicial Inquiry Commission, as contained in the Report submitted to the Court en banc as per its mandate. The Report said the following, beginning with the findings of the Justice in Chambers:

"1. Although the case was assigned only for the disposition of law issues on October 18, 2006, Judge Emery S. Paye proceeded to jury trial, notwithstanding the fact that the sheriff's returns alleged that defendant Cecelia Harper (who was dead and buried and fro whom an administrator in person of Edwin Goodridge had been appointed) refused to sign a notice of assignment.

2. Judge Paye proceeded to evict other defendants who the records does not indicate, were served the writ of summons in the ejectment action brought by Rev. Karngar.

3. Judge Paye knew, or had reason to know, that Judge D.W.B. Morris, with whom he concurrent jurisdiction, had decided the case and put defendant Cecelia Harper in possession of the contested property in 1968, yet they proceeded to review and undo what Judge Morris had done."

Following the Commission's summary of the findings of the Chambers Justice, it then proceeded to make its own findings and recommendations, as follows:

"When Judge Paye was cited to appear before the Judiciary Inquiry Commission, Judge Emery S. Paye filed a written response in which he attributed his wrongful actions of hearing the case a second to "ignorance."

Judge Paye informed the Commission that he was not aware that Mrs. Cecelia Harper was deceased or that it was wrong procedurally to render judgment the same day a verdict is brought. Following a lengthy question and answer period, Judge Paye asked the Commission for forgiveness, Still attributing his wrong actions in the case he handled to ignorance and

error*;* but the Commission is of the opinion that the errors which attended the trial under the gavel of judge Paye were too serious to be brushed aside.

Firstly, according to the record, the case was assigned for law issues on the day it progressed into trial, the bringing of verdict, and the pronouncement of Final Judgment.

Secondly, final judgment was rendered immediately after the bringing of the verdict when it should have been at least four days thereafter.

Thirdly, although the record does not indicate that other defendants were served with the writ of summons, yet they too were evicted by order of Judge Paye. Thereby snubbing the settled law in this jurisdiction that no judgment can properly be enforced against a person who was never brought under the jurisdiction of a court of justice.

The motive for the speed with which Judge Paye disposed of the case which was referred to by Her Honor Justice Gladys Johnson as "fire brigade" raises suspicion especially when he is one of the longest serving circuit judges of our Judiciary. This Commission finds it difficult to accept that his behavior was due to ignorance of the law and that it was not unethically influenced. Behavior of this nature have a tendency to subject, not only the trial court, but the entire Judiciary to ridicule and aspersion and must therefore be dealt with decisively.

RECONIMENDATION

So as to discourage acts of this nature by Judge Paye and act as a deterrent to other judges, the Commission recommends that Judge Paye be suspended for six (6) months, and that he forfeits his salaries and all benefits during the period of his suspension.

This recommendation is made in consideration of Judge Paye's involvement in a previous matter involving the Late Counselor Richard F. McFarland filed by one of his client's for unethical behavior in the case: “The Complaint of Mr. Karel Sochor, President/Chairman of FIDC Inc. vs. Clir. Richard F. McFarland” This case was decided August 10, 2007 whereby the Supreme Court suspended the Late CIIr. McFarland for three (3) years due to his unethical conduct of procuring two (2) favorable decisions for contending parties, one after the other under the gavel of Judge Emery S. Paye. The Supreme Court observed that the second judgment, which rescinded the first, was procured by one and the same lawyer, CIIr. McFarland.

During the investigation before the Supreme Court, CIIr. McFarland who procured both judgments for opposing parties could not produce copy of motion to rescind which he filed before Judge Paye to secure the second judgment.

For his apparent complicity in the matter, the Supreme Court ordered Judge Paye investigated by the Judiciary Inquiry Commission (JIC), while Cllr McFarland was being investigated by the Grievance & Ethics Committee, the report of which led to his disbarment until his death a few years ago. Judge Paye is yet to be investigated by the JIC in this matter.

The conduct of Judge Paye represents a case of serious magnitude of ethical, moral and legal transgression. It must attract a penalty commensurate with that magnitude. In recommending

Judge Paye's suspension, the Commission is supremely confident that the Supreme Court of Liberia indeed has the authority as granted under the Liberian Constitution to take such an action. The case: In Re: Judicial Inquiry Commission's Report on His Honor Logan Broderick, Resident Circuit Judge, Sinoe County, R.L.— 40 LLR 263 (2000), supports the Commission's position."

The Supreme Court, believing, as it should, that notwithstanding its previous Opinion and the findings and conclusions reached therein, the respondent judge was still entitled to the further due process avenue mandated by the Constitution before deprivation of any rights, whether to life, freedom, property, privilege, etc., had copy of the Judicial Inquiry Commission's Report served on the respondent judge, with the order that he file returns to the Report and appear before the Court and defend against the Report, if he so desired. The Court also designated Counsellor Emmanuel B. James, a standing member of the Supreme Court bar, to act as Amicus Curiae, a friend of the Court. The respondent judge, in contrast to the returns filed by him in the proceedings for the issuance of the writ of prohibition, but consistent with returns filed by him before the judicial inquiry Commission , filed, on January 28, 2013 returns to the report of the Judicial Inquiry Commission basically seeking forgiveness from the Court. For purpose of the records, and because the return throws new light on what the respondent judge believed transpired in the courts than presided over by him, we quote the said returns:

“Your Honors, the respondent, His Honor, Emery S. Paye stands before your throne of question for mercy. And prays for mercy because the records of the case for which the said respondent is before you bears his signature as the trial judge. But the respondent cannot remember sitting on that case in open court, even in chambers, to have committed those reckless and tainted blunders as if it was his first time handling a case. The JIC Report says that His Honor, Judge Emery Paye knew or had reason to know that his colleague had disposed of the case in 1968. Frankly and as an assigned Judge it would have been difficult for the Judge to know if none of the parties in the case raised the issue and this is on the premise that he actually tried the case for which records his signature appears. Further, there is no showing as to how the JIC came to this conclusion. Counsels submit and say that the Respondent is indeed aware that judges of concurrent jurisdiction cannot review or tamper with a case already disposed of by their colleague, save the Supreme Court. The principle of res judicata is known to even someone who might not have had the privilege of attending Law School; but in the case of His Honor Judge Emery S. Paye, he had prior to this case at bar been a judge trying very difficult cases over the years.

The records from the court below show that Respondent handled the case to its consummation in a single day. That is to say he disposed of the law issues, empanelled trial jurors who brought a guilty verdict against the defendant, and he rendered final judgment on the verdict awarding 100,000.U.S.D to the plaintiff represented by Cllr.T.C. Gould in one day.

What a novelty! How possible could that be? What happens to respondent’s reputation? Whatever a judge does in the court below is subject to review by the Supreme Court, and knowing this fully well could have the respondent engaged in such a behavior so that the Supreme Court will question his competence?

Your Honor, the year 2005 was the very first time that respondent Judge Emery S. Paye took up any assignment at the Civil Law Court. AS such, was also his very first time coming into contact with many lawyers, some of whom are God fearing while others are tainted with corrupt activities. Those corrupt ones are always busy finding ways to trick the judges for their own selfish purpose(s). This Honorable Court may on its own know some of those tricky lawyers. So it may likely be possible that the records under review were prepared by CIIr. T. C. Gould with the aid of a clerk in the civil law court and placed on respondent's desk with other documents and he sub-consciously signed the records which are subject of this matter. Realistically, respondent remains in complete doubt as to whether or not he did actually handle the case at issue. But he as a responsible person presiding then over the Civil Law Court coupled with his signature affixed on the record in issue takes the blame because his signature is affixed to the judgment, when he ought to have been mindful and read anything before signing. As such, he is caught in a spider web because of his negligence.

Your Honors, counsels submit and request to say a very popular story known in our country. This request is made in that our client, the respondent finds himself in a similar situation with similar story. It has to do with the late J. Henric Pearson, former Circuit Judge of Bong County. Once upon a time, the late Judge Pearson unintentionally signed his own letter of resignation when Tolbert was president. The story has it that unknown persons wrote the resignation letter to the president and sneaked it under some documents for his signature. When the president received the letter, he immediately called him at the mansion. Upon arrival, the letter of resignation was placed before him, asking him why he resigned. When he saw the letter bearing his genuine signature, he was astonished. He immediately got on his knees and begged the president for mercy. Of course, the president being a compassionate father had mercy upon Judge Pearson and told him to be careful.

Your Honors, this is the same shoes that our client, the respondent judge, His Honor Emery S. Paye is before you today. That is why we as counsels continue to ask for mercy, not because we are convinced that our client actually did what all are alleged against him; but because the respondent had no reason to sign document without reading it. Since indeed his signature is appended to the document at issue, we pray that Your Honors will grant his plea for mercy and purge him of any wrong doing as the JIC report is strongly recommending Your Honors to suspend our client for Six (6) long and painful months without salary and or benefit. Your Honors, having read portion of the JIC Report, counsels along with respondent gathered that Cllr T.C. Gould admitted before this Honorable Supreme Court of the Republic of Liberia during its investigation that respondent erred in hearing the matter one wonders why Cllr. Gould had kept silent when the judge was handling a case which he was aware that the same had already been decided by the same court. Interestingly, Cllr. Gould was counsel who brought the case at issue to court on behalf of the plaintiff. The reason to assign to why Cllr. T. C. Gould brought this case to court was to seek redress in favor of his client. So, realizing that the respondent judge was following the wrong rule, which would have affected his client before the Supreme Court under a remedial process, why he elected to have remained quiet and raised no objection there and then? What Cllr. Gould wanted to have achieved by his silence, realizing that the respondent judge was spoiling his case when the said judge began to

follow the wrong rule. One would think that Cllr. Gould, as a senior attorney would have taken the necessary corrective measures in the interest of his own client. It is our understanding that the Supreme Court determine his fate by him $500.00 U.S.D and that being the case, respondent prays to be treated even with more sympathy than Cllr. Gould and, should Supreme Court desire to fine the respondent, the same should be of lesser amount.

Finally Your Honors this is one matter that respondent has the honor to face such an embarrassing situation squarely and request further that in as much as his negligence is so open and cannot be refuted, the counsel who for whatever reason when serving as Solicitor-General of Liberia had the opportunity to hear parties in the very case and was informed that due to the demand of the principle of res judicata, there was no need to proceed any further went ahead as private counsel to file an ejectment action in the very case, thereby exposing the Civil Law Court to the very embarrassment that grabbed respondent while assigned in the said Court. On this note and as respondent prays for mercy, he also is of the. Candid opinion that in order for these kinds of activities to be firmly curtailed, your Honors should examine such matter holistically and on a case by case basis so that innocent individuals who become preys of such evil do not lose all they have ever earned as reputation and credibility; and so prays."

For his part, the Amicus Curiae, filed a brief with the Court, stating that the findings of the Judicial Inquiry Commission were clearly supported by the facts and the records in the case and employing the Court, in the circumstances, to endorse the recommendations of the said Commission and suspend the respondent judge from service with the Judiciary for a period of six (6) months without pay, benefits and emoluments.

After reciting the history of and -facts in the case, which we have extensively dealt with herein before, the Amicus Curiae stated the following as the issues for the determination of the Court;

"1. Whether Judge Emery Paye violated the principle of res judicata hearing a case involving the same parties and the same subject matter where said case has once before been judicially determined by a court of competent jurisdiction?

2. Whether the action of Judge Emery Paye to dispose of law issues, rule the case to trial, conduct a jury trial, and the rendering of final judgment on the verdict all within the same day is a flagrant violation of the law and the Constitution?"

The Amicus Curiae, Counsellor Emmanuel B. James, then advanced the following discussions in support of the position taken by him in response to the questions.

With respect to the issue of whether Judge Emery Paye violated the principle of res judicata in hearing a case involving the same parties and the same subject matter where said case has once before been judicially determine by a court of competent jurisdiction? Amici Curiae says judge Paye did violate the principle of Res Judicata when he elected to hear a case involving the same parties and the same subject matter when the identical mater had already been judicially determine not only a court of competent jurisdiction but interestingly by the same Civil Law Court, which had earlier heard and made a final determination of the case. The Supreme Court of Liberia opined in the case Mary Morris v. Rebecca Johnson, 26 LLR 73, syl.

3, " that the principle of res judicata will apply in a case involving the same parties and the same subject matter where the case has once before been judicially determined; that is to say, where the merits of the issues involved have previously been tried and judgment rendered thereon". The Supreme Court in defining res judicata stated that "res judicata" is a principle of law which forbids re-litigation of issues in a case involving the same parties and the same subject matter where the case has once before been judicially determine" Mary Pearce v. Alfred B. Flomo. Ibid., D. 299.Sly.5). Amici Curiae submits and says further that judge Paye, being one of the longest serving judges and expect to be well versed in the law, should have known that a case involving the same parties and the same subject matter which has once been judicially determined by the same court he was presiding over cannot be re-litigated for the second time based on the doctrine of res judicata.

Further as to the above, a court has no power to interfere with the judgment of another court of concurrent jurisdiction as was done by Judge Paye in the instant case. "EVERY JUDGE SHOULD AT ALL TIMES BE ALERT IN HIS RULINGS AND IN THE CONDUCT OF THE BUSINESS OF THE COURT, SO FAR AS HE CAN." It is apparent and clear that Judge Paye was not alert in conducting the business of the Court thereby bringing serious embarrassment to the judiciary. The admission by Judge Paye that his action in this matter was out of ignorance and error goes without saying that Judge Paye was not alert and which act on his part brought not only the trial court which he presided over but the entire judiciary to public ridicule. According to judicial canon #8 of the judicial Canons for the Moral and Ethical Conduct of judges in the Republic of Liberia, "COURTS EXIST TO PROMOTE JUSTICE THUS TO SERVE THE PUBLIC INTEREST. THEIRS IS THE ADMINISTRATION OF JUSTICE WHICH THEY MUST DO WITH SPEED AND CARE. EVERY JUDGE SHOULD AT ALL TIMES BE ALERT IN HIS RULINGS AND IN THE CONDUCT OF THE BUSINESS OF THE COURT, SO FAR AS HE CAN".

Regarding the second issue of whether the action of judge Emery Paye to dispose of law issues, rule the case to trial, conduct a jury trial resulting into a verdict and the rendering of final Judgment on the verdict all within the same day is a flagrant violation of the law and the Constitution? Amici Curiae says that Judge Paye's action as indicated herein is indeed a flagrant violation of the law and Constitution of Liberia. Article 11 (c) of the Constitution of Liberia provides that "All persons are equal before the law and are therefore entitled to equal protection of the law" Amici Curiae says that the re-litigation if this matter that had been judicialy determine by a court of competent jurisdiction was not only a violation of the law but was intended to deprive the defendant of his equal protection under the law and to make matter worse, judge Emery Paye's action to dispose of the entire matter in one day was also intended to deprive the defendant of his day in court which is against the Constitution which affords everyone the right to due process. According to the records, there is no evidence that the re-summons was served on the defendant and Jugde Paye should have taken judicial notice of this fact rather than pursuing the matter in such a hasty manner and even more so when one is being deprived of his/her property. Furthermore, the statue regarding the procedure in obtaining default judgment as was done in the instant case was never complied with 1 LCLR, Chapter 42.6 (Proof). D. 216.

The Amici Curiae says further that judge Emery Paye's action to hastily enter judgment on the same of the jury verdict is in violation of the statute which provides: "All judgments shall be announce until four days after verdict" 1LCLR. Section 41.2(1) Rendition and Entry of Judgment Page 211). The Supreme Court in the case Momo Korvan v. Kaaba Korvavan, 30 LLR 246, at 256 stated that "this court should under no circumstances allow anything/anyone to take it from the centuries old doctrine of judicial neutrality, which is founded on the principles of impartiality, disinterestedness and above all fairness in the administration of legal justice. The said doctrine can be interpreted to mean that every litigant, and this includes the State, is entitled to nothing less than the cold neutrality of an impartial judge". The Supreme Court said further in said opinion that it is therefore of great importance that our courts of law and all other legal forums, be free from reproach or the suspicion of unfairness, so as to afford the judiciary the age-long enjoyment of an elevated rank in the estimation of mankind". The action of Judge Paye exhibited partiality, interest and unfairness which act on the part of Judge Paye's against the law cited herein.

The Judicial Canons set standards of behavior for all judges in Liberia. These rules attempt to ensure that judges are honest, act with integrity, rule fairly on civil and criminal matters by forbidding behaviors that are not only considered to be morally wrong but which are likely to influence judges' decisions. Impropriety is any inappropriate behavior on the part of a judge, especially behavior that tarnishes his reputation or interferes with his ability to be impartial. Avoiding impropriety has primary importance in the judicial canons because improper behavior by a judge calls the integrity of the entire judicial system he works for into question. The judicial system requires judges to aid in enforcement of the judicial code of ethics. Without enforcement, the code becomes a set of guidelines rather than a set of rules, resulting in judges and lawyers being free to engage in unscrupulous behavior without consequence.

The Amici Curiae submits and says that judicial misconduct is any action by a judge that is deemed unethical or an abuse of the judge's impartiality. There are many different ways a judge can commit misconduct, ranging from taking bribes, to interfering in a matter that has already been determined by another judge of current jurisdiction, or even being influence by lawyers or collogues. Although the Canons set standards that are different from case to case, it usually reflects a moral code set in place to dictate a Judge's action. While there is no evidence that the Judge Emery Paye action was influenced by the other party, there is dear evidence that the judge acted in the interest of the plaintiff which brought the judiciary into disrepute with the public. The act on the part of Judge Paye brought the Constitution, the statute and the entire judiciary into question and therefore such act should not be tolerated by this Honorable Court for to tolerate such action would bring into question the qualification of Judges. As Sir Francis Bacon stated in describing the essential qualities of a judge that: "Judges ought to remember that their office is Jus Dicere and not Jus Dare, to interpret the law and not make the law, judges ought to be more learned than witty, more reverend than plausible, and more advised than conflicting virtue". The fact that Judge Paye admitted "That his action was done out of ignorance and error does not augur well for the qualifications of judges and goes to show that he was not attentive in the handling of matters brought before him especially when his action is against the public interest and the law.

WHEREFORE AND IN VIEW OF THE FOREGOING, it is the advice of the Amici Curiae that Judge Emery Paye be suspended as recommended by the Judicial Inquiry Commission and hope that this brief will serve a useful purpose and guidance in having this Honorable Court reach a judicious decision."

We thank Counsellor James for his great and analytic insight into the matter before the Court and for responding positively to the call of the Court.

In the face of all that we have said above, the core issue for us is whether the conduct of Judge Paye, as evidenced from the facts and the records of all of the proceedings prior to the instant proceedings and the report of the Judicial Inquiry Commission, shows a violation by the Judge of the Judicial Canon and the Code of Ethics as contained in the Rules of the Supreme Court, adopted in 1999? We hold, as did the Judicial Inquiry Commission, and as advanced by the Amicus Curiae of the Court, that the judge's conduct was violative of the Code and of the Judicial Canon, sufficiently to warrant punitive action by this Court.

And while, had the judge not shown remorse of conscious, as late as that may have been, it is sufficient to serve as a mitigating factor such that we sustained rather than increase the penalties recommended by the Judicial Inquiry Commission, as we otherwise would have been disposed to do had he not shown such penitence. In sustaining the conclusions reached by the Judicial Inquiry Commission, also concurred with by the Amicus Curiae, we are cognizant of the fact that the matter of Judge Paye's conduct and actions not only defied the Rules of Court and were in gross violation of the law, but also that the actions inflicted grave and irreparable harm on the petitioners and others who were in legal occupancy of the property at the time of the judge's action. We cannot, under the circumstances, entertain any contemplation of reducing; the penalties recommended by the Judicial Inquiry Commission, for to do so would be tantamount to conveying a message that could not serve as a deterrent to similar or worse acts being engaged in by other judges of our courts. To the contrary, we would have the message go forth that in matters of further transgressions by judges of our courts, the penalties will be made increasingly more severe, including the recommendation for removal from office.

Let us take recourse to the Revised Rules and the Judicial Canons for the Governance of the Courts in Liberia, inclusive of the Code of Moral and Professional Ethics, adopted by the Supreme Court on the 22nd day of January, A, D. 1999, and which remain the governing rules, canons and ethical code for the conduct of judges and lawyers, as well as the statutory laws and cases decided by this Court, to see the rationale for the conclusion we have reached in this matter. The Judicial Canon states firstly at Number Eight that: "Courts exist to promote justice, thus to serve the public interest. Theirs is the administration of justice which they must do with speed and care. Every judge should at all times be alert in his rulings and in the conduct of the business of the court, so far as he can." Then at Canon Number Nine, it is stated that: "It is the duty of all judges in the Republic to uphold and support the Constitution and the laws of the land, and in so doing they, as custodial of the Constitution, should fearlessly observe and apply fundamental rights and guarantees." Further, at Canon Number Ten, we find the following: "A judge should be temperate, attentive, impartial, and since he is to

administer the law, interpret it and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts."

We hold that Judge Paye was in violation of all of the Judicial Canons quoted above. As to Canon Number Eight, while it encourages a judge to administer justice with speed, it also cautions a judge to handle such administration of justice with care. It imposes upon him/her a duty an obligation to be alert in his or her ruling and in the conduct of the business of the court. Indeed, the Canon is clear that courts exist to promote justice. The judge failed in meeting any of the standards set out in the foregoing. He did not promote justice; he showed no alertness in his ruling or in the conduct of business of the court in the particular case, one in which the result could deprive a person of a critical property right, which happened in the instant case, and by his own confession, he failed to exercise due care which the law imposes on him and expects of him.

In the brief filed before the judicial Inquiry Commission and this Court en banc in these proceedings, he admits to being mislead or to have allowed himself to be mislead by counsel for the plaintiff into hearing and disposing of the issues of law and ruling the case to trial by a jury; empanelling of a jury to try the case immediately thereafter on the same day; confirming the verdict of the jury on the same day; entering a final judgment on the verdict on the same day; and ordering the issuance and execution of a writ of possession dispossessing the petitioner in prohibition of their property on the same day; all against the statutory laws, Judicial Canons of this land, and the decided cases of this Court.

We can say similarly for the Judicial Canon Number Nine that Judge Paye, rather than upholding and supporting the Constitution and laws of the land, or acting as custodian of the Constitution, or fearlessly observing and applying the fundamental rights and guarantees of the parties to the proceeding, as enshrined in and required by the Constitution and the laws of the land, embarked instead on a course that had and was seemingly intended to have the direct opposite. The case was assigned for the disposition of the law issues. The counsel for plaintiff had indicated that service had been made and that the defendant in the case had refused to receive and sign for the assignment. The counsel had also alleged that the defendant had failed to appear or file an answer, or to be in court on the assigned date for hearing of the law issues. He had therefore prayed the court to have the law issues disposed of. The judge complied with and granted the request. Yet, and under almost the same breadth, and immediately following the first request, counsel for the plaintiff proceeded to make a second request, this time for the entry of judgment by default, since, according to him, the defendant had not appeared in court. How could the defendant have appeared in court when no notice of assignment had been issued and served on the defendant for its appearance in court for trial of the case? Did not the judge know that upon disposing of the law issues and ruling the case to trial by a jury, a new assignment was required for the jury trial of the case? Notwithstanding, the trial judge granted the plaintiff's request and entered default judgment against the defendant. He allowed the plaintiff to present evidence, following which the jury retired to its room of deliberation, from whence the jury returned a verdict of liable against the defendants. Immediately following the return of the verdict, the judge proceeded to confirm same and to

enter judgment against the defendant. Did the judge not know that the statute required and the Rules of the Circuit Court required that he could not enter judgment on the verdict in less than four days of the date of the verdict? More than that, how could he, on the same day and date, have a writ of possession issued against the defendants and have them immediately ousted from the property, a condition they remained in, suffering at the hands of the forum that was supposed to accord them justice, but which had broken the oath, causing them to suffer irreparable harm and injury for more than twelve years. This we hold was a clear violation of Judicial Canon Number Nine.

Then there is Judicial Canon Number Ten which, as we have said, Judge Paye also clearly violated. That canon requires that he be impartial in the administration of the law, that he interprets the law judiciously and studiously, that he applies the principles of the law to the facts, and that he be diligent in endeavoring to ascertain the facts. In all of those, Judge Paye failed to meet the standard of the Judicial Canon. He was less than diligent in ascertaining and applying the facts; he showed no studiousness in applying the principles of the law, and if one were to judge his action, he was far off course in his interpretation of the law. Had he shown the slightest inclination to meet the standard imposed by the Judicial Canons and the law, he would have discovered that the dispute regarding the property in question had already been handled and disposed of by the court presided over by a predecessor judge and that therefore he was without authority to review or undo what his predecessor had done. Civil Procedure Law, Rev. Code 1:25.1 and 2; Lamco J. V. Operating Company and the Ministry of Labour v. Garmoyou*,* 34 LLR 712 (1988); Dopoe v. City Supermarket, 34 LLR 215 (1986). Had he shown the slightest inclination to ascertain the facts or taken the time to inspect the records in the case, he would have discovered that although the complaint was brought against the estate, the returns indicated that it was served on a person who had died many years prior to the institution of the suit. See Rev. Chauncey D. Karngar v. the Intestate Estate of the late Cecelia Harper et al., Supreme Court Opinion, March Term, 2010. Had he cared for the law he would or should have known that the principle of res judicata was clearly applicable under our law and that under the said principle he was forbidden from trying the matter anew. Dorbor and Dickson v. Liberia Opportunities Industrialization Center *(LIOC),* 42 UR 302 (2004). Had he cared for the sanctity of his court, he would have shown the impartiality and the neutrality required by the law. Camer Liberia Corporation v.A. H. Basma and Sons (Liberia) Inc., 32 LLR 100 (1984); Roberts et al. v. Kaba et al., 42 LIR 228 (2004). Had he cared for the law, he would have appreciated the many decisions of this Court that a trial judge of concurrent jurisdiction cannot review and/or reverse the acts of his predecessor. Donzo v. Tate*,* 39 LLR *72*(1998); Buchanan-Horton v. Belleh et al., 39 LLR 169 (1998); The international Trust Company of Liberia v. Cooper and Cooper-Hayes*,* 39 LLR 202 (1998); Knowlden v. Johnson *et* at, 39 LIR 345 (1999);Teah v. Andrews et al*.,* 39 LLR 493 (1999); The United Methodist Church and Consolidated African Trading Corporation v. Cooper et al., 40 LLR 449 (2001); Emirates Trading Agency Company v. Global Import and Export Company, 42 LLR 204 (2004). Had he known or have appreciation for the law, he would or should have known that he could not convene a jury trial on the same day he ruled on and disposed of the issues of law, and without the issuance of an assignment. In Lamco J. V.Operating Company

v. Belleh et al., 34 LLR 692 (1988), this Court said: "Judgment without citation and opportunity to be heard is judicial usurpation and oppression and cannot be upheld." Had he known or cared for the law, he would have appreciated that he could not rendered judgment on the same day and date a jury returned a verdict against a party defendant and that he was required to wait for four days before entering such judgment. Ajami and Ajami v. Koroma and Saleeby, 30 LLR 742 (1983); Super Cold Services v. Liberia American Insurance Corporation, 42 LLR 321 (2004). Our Civil Procedure Law is equally emphatic about when a judgment can be entered following a jury trial. Section 42.1 states: "Rendition and entry of judgment. 1. Time and manner of rendition. All judgments shall be announced in open court. The judgment in a jury case shall not be announced until four days after verdict." [Emphasis supplied].

It is clear therefore that no judgment could have been legally entered, as was done by Judge Paye, on the same day the jury returned their verdict and execution of the writ of possession carried out on the same day. The only conclusion that can be drawn from this behavior is that there was a determined course by the judge to ensure that the defendants were deprived of the day in court and of justice, of their right to the enjoyment of the constitutional bedrocks that informed them that they have no need to fear the courts and the law, that we will accord to them, even at our own risk, the rights guaranteed them by the constitution and other laws of the land, and that the promise we have made under our oath to uphold the laws of the land and not allow them to be thwarted and abused regardless of the consequences to us.

In all of the above, Judge Paye should have known that there would be serious repercussions and unimaginable consequences growing out of his illegal actions, done, in our view with impunity; he should have known that by his actions, he was seeking to turn the wheels of justice upside down on its face; he should have known that by his actions, the parties against whom he had acted would suffer irreparable injury and their constitutional rights were violated with impunity; he should have known that the administration of justice by this noble institution, the Judiciary, would be exposed to serious issues of integrity, ridicule and the loss of public confidence; he should have known that the neutrality of the court, a hallmark of our justice system, would be seriously compromised and impaired.

What is even more disconcerting is that until the Supreme Court determined the property case and, discovering the transgressions of Judge Paye, had forwarded the matter to the Judicial Inquiry Commission for investigation of the respondent judge, he held the view that what he had done was correct, indeed, that he had the right to deprive the defendant in the property suit of the property, notwithstanding all that was said regarding the facts in the matter. In their returns, filed in response to the petition filed against them and the writ of prohibition issued by the Justice in Chambers, the respondents, of which Judge Emery Paye was a part, denied, in the face of such mounting facts and evidence, that the petitioner was the owner of the property or that proceedings were ever held in the lower court previously on the mattes, choosing thereby to completely ignore that the lower court had several decades earlier entered judgment awarding the property to the petitioner. In fact, they contended that even if the matter had been previously determined by the court, the defendant named in the latter suit should have filed an answer and a motion to dismiss being fully aware that service had not

been made on the defendants, but instead on a dead person. How, under such circumstances, was an answer to be filed by the defendants, along with a motion? Perhaps the judge's stance on the matter at the time may have been due to the fact that he filed joint returns with the other respondents named in the prohibition proceedings.

But whatever the reasons may have been, and we do not believe that we can reached the conclusion that the action was due necessarily to incompetence on the part of the Judge for such a conclusion would warrant his immediate removal from office, they do not relieve the judge of the many transgressions stated herein, unbecoming of a judge, and the injury which those transgressions caused the petitioner in prohibition for more than a decade. Suffice to say also that we view the response in the prohibition as clearly disingenuous, both by Judge Paye and the other co-respondents, in light of all of the facts. This, in our view, is more reason to endorse and impose upon Judge Paye the penalty recommended by the Judicial Inquiry Commission. It is impossible to reach any other conclusion than that the judge, under some form of influence, intended to and did circumvent the administration of justice. No one can believe, and certainly not this Court, that a judge would go through a trial, as Judge Paye did, relying on returns which stated that service was made on a dead person, to enable the court to pass upon the law issues, proceed with trial without any further assignment, confirm the verdict of the jury, enter judgment thereon, issue a writ of possession, and dispossess the aggrieved party of their property, all within a single day. This was not moving like a fire brigade; this was moving like a supersonic jet aircraft that had no regard for the mechanical controls put in place and for the safety of passengers. This Court will never allow such acts to be perpetrated by our courts upon any of our people or those with which we are given the responsibility under the law to protect. To condone such attitude would be tantamount to participating in acts designed to plunder and desecrate our Judiciary and our legal system. In the case Walker et al. v. Tenants and Occupants of MBC Compound, 37 LLR 780 (1995), this Court said that a court should not be too hasty in disposing of a case, especially where the case involves real property. But the respondent judge showed no regard for this vital principle consistently pronounced by this Court.

We cannot and we will not allow our judges, not even ourselves, to enjoy the luxury of abusive behavior and acts or conduct designed to or which has the effect of threading against the guaranteed rights of our citizens, with impunity. We insists and will demand the highest degree of accountability and we will not hesitate to impose such penalties, as we deem to be warranted in the circumstances, to address acts of injustice, as was displayed by Judge Paye. We, none of us, are above the law and we must be held accountable when we transgress the law, especially in the performance of our sacred duties owed our people.

wherefore, and in view of the above, the facts narrated, and the laws cited and relied upon, it is the holding of this court that Judge Paye did violate, by his conduct of the trial in the ejectment case, the statutory laws, the Rules of Court, and the Code of Ethics, *and* that the violations are of such magnitude that he is deserving of the penalty recommended by the Judicial Inquiry Commission. As the Commission stated, "the conduct of Judge Paye represents a case of serious magnitude of ethical, moral and legal transgression. It must attract

a penalty commensurate with that magnitude." Accordingly, the findings of the Judicial Inquiry Commission, being fully supported by the facts, the records and the law, the same are herewith confirmed and upheld. In like manner, the recommendations made by the Commission, being commensurate with the transgressions committed by Judge Paye, and the injuries suffered by the petitioners as a result thereof, same are also hereby endorsed and adopted. Judge Paye is therefore hereby ordered suspended as *a* judge for a period of six (6) months.

We further hold that during the period of his suspension, Judge Paye receive no salaries, benefits and other emoluments which he would otherwise be entitled to, including the vehicle currently assigned to him. We also seriously warn Judge Paye that upon a repeat of any acts or violations of the Judicial Canon or Code of Ethics, the appropriate recommendations will be made by the Judiciary for his permanent removal from office. Costs of these proceedings are disallowed. AND IT IS HEREBY SO ORDERED.