

The **Intestate Estate of Strayga Mayson** represented by and thru its Attorney-In-Fact Rocky Marshall of the City of Monrovia **PETITIONER** Vs. His Honor **Emery S. Paye**, Assigned Circuit Judge Six Judicial Circuit, September Term, A.D. 2006 and **Henrietta Johnson** of London and thru her Attorney-In-Fact, Graham Chase of Borough of Enfield England, United Kingdom, respectively **RESPONDENTS**

LRSC 5 (2011)

PETITION FOR WRIT OF MANDAMUS

HEARD: November 3, 2010 DECIDED: January 20, 2011

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

During the September Term 1997, of the Sixth Judicial Circuit, Montserrado, plaintiffs Henrietta Johnson, Saga Johnson Chase et al. of London, by and thru their attorney in fact, Moses Kawah, filed a summary proceeding to recover possession of real property located on Mechlin Street, Waterside against Mohammed Bah, Tijan Bah, Varley B. Kamara et al. said to be occupying plaintiffs' property. We shall attempt to detail the facts in chronological order as per records found on the file, clearly outlining the decisions taken leading up to this opinion.

The records reveal that one Sally Johnson Cole represented herself to Trokon International as attorney- in- fact for Henrietta and heirs of T.O. Dusumu Johnson with authority to exercise general supervision and management over this piece of property belonging to the plaintiffs, and she leased the property to Trokon International who in turn leased to the defendants.

Sally Johnson Cole requested the trial court to join her as party defendant on October 2, 1997; counsel for plaintiffs conceded and on October 2, 1997, Her Honour, C. Aimesa Reeves granted the motion.

Thereafter, the Judge heard the law issues and ruled that the issues were mixed issues of law and facts and therefore ruled the case to trial.

The defendants who did not except to the ruling on the law issues later made application to court for the Judge to rescind her ruling. The Judge denied the application. Thereafter, on February 10, 1998, the respondents, tenants, filed petition for a writ of certiorari before His Honour Justice John N. Morris, presiding in Chambers. The defendants alleged that the judge had made an erroneous ruling by refusing to dismiss the plaintiffs complaint in face of the evidence that they had subleased the property from Trokon International who also leased the property from Sally Johnson Cole based on a Power of Attorney given to her by T.O. Dusumu, Henrietta Johnson, et al.; that title being involved, summary proceeding to recover possession

of real property would not lie. Besides, plaintiff had alleged that the agreement with Trokon was a product of fraud, and in such case, a jury trial was necessary to determine whether fraud had been perpetrated.

Justice Morris issued the alternative writ of certiorari and ordered the plaintiff/respondents to file their returns and to show cause why the preemptory writ should not be issued.

On March 3, 1998, the plaintiff/respondent filed their returns stating that the property in issue was not part of T.O. Dosumu Johnson's intestate estate but was property deeded by T.O. Dusumu Johnson before his death to Henrietta Johnson, his widow, and her three children, Saga, Edward, and Robert Johnson, on April 3, 1962. The respondent proffered a certified copy of a deed to the effect showing said transfer and a ruling of the Probate Court evidencing the property as distinct and separate from that of the intestate estate of T. O. Dusumu Johnson, ordering the curator who was managing the intestate estate of T. O. Dusumu Johnson to transfer to the plaintiffs/ respondents' attorney-in-fact, Moses Kawah the property specifically deeded to the respondents. In addition, the plaintiffs/respondents said that the alleged Power of Attorney issued to Sally Johnson is void ab initio because the late T. O. Dusumu Johnson could not have issued a Power of Attorney to Sally Johnson to manage the property that he had earlier in 1962 parted with by way of a WARRANTY DEED to his wife and children.

Having heard and traversed the legal issues raised in the petition for the writ of certiorari, on August 6, 1998, Justice Morris ruled denying the writ and quashing the alternative writ. The petitioners/tenants excepted and announced an appeal to the Full Bench.

The Supreme Court on the 16th day of December 1999, ruled affirming the Chambers Justice's ruling with modification as follows:

Adjudged:

"That certiorari does not and will not lie, and therefore the ruling of the Chambers Justice appealed from be, and the same is hereby affirmed and confirmed with the modification that the trial be had with the aid of a jury, which is to be specifically requested by either or both parties; the petition is denied, the preemptory writ refused, and the alternative writ quashed.

Accordingly, the Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Monsterrado County, ordering the Judge presiding to resume jurisdiction and proceed with the trial of this case on the merits and join Trokon Int'l as party defendant and finally dispose of the issue of fraud with the aid of a jury which must be specifically demanded by the parties or any one of them. Costs to abide final determination. AND IT IS HEREBY SO ORDERED."

A final decision was made in favor of the Respondents Henrietta et al. on August 29, 2005.

Between 1999 and 2005, the court's file is replete with various applications made to both the Supreme Court and the court below by the parties. One of such application was a motion to intervene filed by Strayga Mayson on March 13, 2001, requesting the trial court to join him as party defendant. The motion reads:

Movant in the above entitled cause of action, intervenes in manner and form as follows, to wit:

1. "Movant is the bonafide owner of the property under dispute as is evidenced by movant's title deed. Photo copy hereto attached and marked as exhibit "M/1" to form a part of this motion.
2. Movant says and contends that he has leased the subject premises to codefendant, Trokon International Corporation by and thru its President and Chief Executive Officer, J. Melvin Page, II. Photo copy of the Lease Agreement is hereto attached and marked as exhibit "M/2" to form a part of this motion.
3. Movant says further and contends that without his participation/intervention in the subject case, his legal interest in the said property will be jeopardized, prejudiced and damaged.

Wherefore, and in view of the foregoing, movant prays court to grant his motion to intervene so as to enable him to intervene in this proceeding to protect his own interest and defend the right of his lessees and grant unto movant all and further relief as justice demands."

Respondents, Henrietta Johnson et. al countered that the motion to intervene was solely intended to delay and baffle the action. Further, that they having been in possession of the subject property for more than twenty (20) years, they are entitled to same as a matter of law and movant and his purported lessees are estopped from pleading ownership. Appellees therefore prayed the trial court to deny the motion.

The motion to intervene was denied by Judge Metzger who presided at the time, and we are unable to see from his ruling, clear reasons why the motion was denied. We observed that the petitioner, Strayga failed to announce and take an appeal as required by law.

Be what it may, the matter proceeded without Strayga being a party, and a final ruling was made and a writ of possession issued which was obstructed as a result of which the trial Judge had to write the National Police Force requesting assistance to put the plaintiffs in possession of the property.

On September 5, 2005, Strayga Mason, now petitioner in the petition for a writ of mandamus before us, represented by and thru his attorney-in-fact, Rocky Marshall of the city of Monrovia,

filed a bill of information before the co-respondent, His Honor, Wynston O. Henries, Resident Circuit Judge of the Sixth Judicial Circuit. His Bill of Information reads:

INFORMANT'S-INFORMATION

"Informant in the above entitled cause of action, most respectfully informs Your Honor against the attempt of the respondents to evict, oust and eject occupants of informant's property who has separate and distinct property from the one in the Summary Proceedings to Recover Possession of Real Property so as to halt same, for legal and factual reasons, in manner and form as showeth to wit:

1. That informant is the Attorney-In-Fact to Strayga Mayson who duly executed a Power of Attorney in favor of informant to administer his property while he is away. From 1998, up to and including the filing of this information, informant has been managing same in complete tolerance until quite recently when informant observed that the respondent Sheriff acting upon a possessory mandate which does not include informant [who did not participate in any suit neither was served with any precept relative to any proceedings as in the instant case, has gone to informant's property to oust, evict and eject informant's therefrom without due process. Photocopies of the power of attorney and the writ of possession are herewith attached, marked exhibit "1/1" in bulk to form a cogent part of this information.

2. Informant says further and submits that he holds a title deed through honorable purchase for his property which is separate and distinct from that of the property in dispute in the Summary Proceedings to Recover Possession of real Property, and that informant has never participated in any suit/action before this Honorable Court involving his property nor did the Possession Order carry informant's name but the respondent Sheriff is vigorously attempting to evict, oust and eject informant. Photo copy of informant's title deed is herewith attached, marked exhibit "1/2" to form a cogent part of this information. Informant gave notice to court to take judicial cognizance of the parties involved in the Possession Order.

3. Informant further contends and says that he not made party nor participated in any proceedings from which a mandate was ordered and sent to the Sheriff of Your Honor's Court for eviction, the Sheriff had inadvertently gone out of the scope of the Possession/Eviction Order and is attempting to oust, evict and eject informant whose name is not on the said order, and if not corrected, informant shall suffer serious damages which will be irreparable and incurable.

4. Informant says this information is filed in good faith and not intended to baffle speedy justice.

WHEREFORE, and in view of the foregoing, informant most respectfully bring this action of bill of information against the respondents, praying Your Honor to order the respondent

Sheriff to revert with the mandate from this Honorable Court for proper description and enforcement so as to avoid encroaching on informant's property who was never made a party nor participated in any suit, his name neither being on the possession order; informant further prays Your Honor that said eviction [be halted] until informant's property is dully demarcated by means of arbitration, and to order the respondent to stay all further proceedings pending the determination of this information and grant unto informant any and all further relief as the end of justice directs."

The respondents filed their returns contending that the Bill of Information was a calculated attempt by informant and one of the defendants, Mohammed Barry, who had earlier posed himself as the Attorney-In-Fact of Henrietta Johnson et al. to obstruct the implementation of the mandate of this Honorable Court with the sole intent and purpose of making this Honorable Court look powerless in enforcing its ruling, and that the court should not allow such obstruction of justice as this would compromise the integrity of the Court. The respondents Henrietta et al. therefore prayed the trial court to dismiss the Bill of Information as follows:

MOVANT'S-MOTION

"AND NOW COMES MOVANT IN THE ABOVE ENTITLED CAUSE OF ACTION and most respectfully prays your Honor and this Honorable Court to deny and dismiss respondent's Bill of Information for the following legal and factual reasons to wit:

1. Because as to the entire bill of information, same is dismissible because respondent/informant lack standing to file a bill of information in a proceeding in which she was not a party and final judgment has been rendered and mandate given for enforcement of judgment. Your Honor is respectfully requested to take judicial notice of the records in these proceedings and also attached hereto is a copy of the final ruling in these proceedings marked as EXHIBIT "M/1" to form a cogent part of movant's motion.
2. Also because respondent/informant has adequate remedy at law; that is to say, to institute a separate suit before this Honorable Court to protect her property.

WHEREFORE AND IN VIEW OF THE FOREGOING, movant most respectfully prays this Honorable Court to deny and dismiss respondent's bill of information and enforce the judgment of the Honorable Court and grant unto movant all that is just and equitable under the circumstances."

We shall also quote the Informant's counts 3 and 7 of his reply to the bill of information which we find worth noting:

"That as to count (1) of the Returns, informant denies ever attempting to bring this Court into disrepute but rather to secure his property and lessee from being evicted from an action which

he has no knowledge of or participate in. It is respondents who are attempting to bring this Honorable Court into disrepute by influencing the Sheriff to perform outside the scope of his authority, thereby evicting, ousting and ejecting occupants who are not named in the captioned of the Possession Order. Therefore, count (1) is saturated with dishonesty and misrepresentation, as such, same should be denied and dismissed.

That as to count five (5) of the Returns, informant contends and says at no point of time did the Sheriff act in consonance with the possession order but rather has elected to evict, oust and eject innocent occupants like: Trokon International Corporation, information's lessee and her lessee's Trokon International Corporation's sub-lessee: Unity Business Center, V.B.K. Business Center, Kumba Bendu & Son, Ent., L.M.S. Business et. al who were never party to the suit nor named in the caption of the possession order or had their days in court. [emphasis ours] Count five (5) of the Returns should be dismissed."

Before the bill of information was heard in the court below, Strayga Mayson filed a petition for a writ of prohibition before her Honour Felecia V. Coleman in an attempt to stop the execution of the writ of possession. Justice Coleman initially put a stay order on the proceeding pending a conference but thereafter lifted the stay order and sent a mandate for the court below to proceed with the eviction.

On October 31, 2005, when the trial court convened for the reading of the mandate from the Chambers Justice, counsel for Strayga made the following application:

"Counsel for petitioner most respectfully begs to submit that on September 5, 2005, at the hour of 1:25 p.m, they filed a four count Bill of Information before this court and attached a copy of a deed vesting title to one lot of land in the Mayson and informing this court that the Maysons are not parties to the Summary Proceedings to Recover Possession of Real Property Action, but that they the Maysons and their tenants were being ousted, evicted and ejected from the premise in question owned by them because the metes and bounds of the property claimed by the respondent is not indicated in the writ of possession. Petitioners therefore request Your Honor to assign the Bill of Information for hearing before the enforcement of the Supreme Court's mandate or if this Court pleases that the Supreme Court's mandate to be enforced before the hearing of the Bill of Information then, and in that case, petitioner requests Your Honor to order the Clerk of this Court to include in the Writ of Possession the metes and bounds of the property claimed by the respondent and the Surveyor from the Ministry of Lands, Mines and Energy to assist the Sheriff of this Court in carrying on said Writ of Possession after the said surveyor would have demarcated the land owned and/or claimed by the respondent according to the metes and bounds of the respondent's property, since, the Maysons have a title deed and the respondent also has a title deed especially so where the Maysons are not parties to the Summary Proceedings to Recover Possession of Real Property Action. And respectfully submit [emphasis ours]

Resisting this application, the respondents brought to the attention of the court that informant Strayga had raised the very same issues in the prohibition proceedings which were denied by the Supreme Court and for the court below to do otherwise beyond the reading of the mandate and enforcement of this Court's Judgment was re-litigating the matter already concluded by final judgment of this Court. Besides, if the petitioners have a title deed, ejection is the rightful form of action.

The Court after the reading of the mandate, ordered the Sheriff to proceed with the execution of the writ of possession.

In face of the Supreme Court's order and the trial court enforcement order, Strayga persisted in thwarting the orders of court and refused to follow legal procedures as advised by Judge Kaba on April 27, 2002, when he ruled on a consolidated motion for arbitration and a bill of information, in which he stated that since Strayga was not allowed to intervene, and therefore making him a none party to the present dispute, any judgment/ruling emanating from the proceedings would not be binding upon him. Strayga's right of action, Judge Kaba said, could not be established by any provision adopted by the conclusion of the case since the issue involved in the matter was clearly demarcated by the Supreme Court as to whether or not the lease agreement executed by and between Trokon International and Sally Johnson Cole as agent for Henrietta Johnson was a product of fraud and therefore illegal and due to the illegality, Henrietta Johnson et. al. are entitled to recovery of the real property.

On November 3, 2005, Strayga filed yet again a petition for a writ of certiorari before her Honor Felicia V. Coleman, reiterating for the up-tenth time identical issues of contention that were alleged in his both previous bill of information and petition for prohibition.

Justice Coleman issued another stay order and called for a conference on November 15, 2005. At the conference, an understanding was reached between the parties and the following mandate sent down to the court below:

"By directive of Her Honor Felicia V. Coleman, Associate Justice presiding in Chambers, you are hereby mandated to resume jurisdiction over the above entitled cause of action and conduct an investigative survey to determine the land of Henrietta Johnson and the Maysons based upon their respective deeds as contained in the records of this case.

Each party has agreed that they shall constitute a Board of Surveyors, each party appointing a surveyor and the Court will name the third surveyor who will chair the Board. They have also agreed that the fees of the Chairperson of the Board of Surveyors shall be borne by both parties.

A report of the Board shall be made on the findings within one month after the reading of this mandate and the Johnsons shall be placed in possession of their property consistent with the Court's ruling in the Summary Proceedings to Recover Possession of Real Property matter. [emphasis ours] The findings of the Board of Surveyors shall be final. The decision was made in agreement with counsels representing both parties.

The Stay Order of November 3, 2005, is hereby lifted.

Kind regards.

Very truly yours,

Martha G. Bryant CLERK, SUPREME COURT OF LIBERIA"

The survey was conducted and this majority report was filed with the court:

"To: His Honor

The Assigned Circuit Judge

The Sixth Judicial Circuit Court

Monrovia, Liberia

From: Members, Board of Arbitration

Yarkpawolo T. Kollie — Chairman

Moses T. Tehswen — Member

Jonathan G. Monger — Member

Situated at: Mechlin Street, Waterside, Monrovia

Date: September 4, 2006

The Board constituted March 23, 2006 to carry out the Supreme Court's mandate faces series of problems from the beginning till the reporting date.

The first reconnaissance survey was delayed by the Johnson's party for more than 3 weeks. Due to this, we have conducted reconnaissance survey twice, March 26, 2006 and April 9, 2006

During the reconnaissance survey, both parties identified the same spot to be the area of contention, and they were represented by their respective agents, Mr. Kamara for the Mayson and Henrietta Johnson represented herself.

Following the reconnaissance, there was another delay for the cost of the survey to be paid. The Johnson again caused another delay and the presiding Judge intervened upon our appeal to him.

We served notices on print and electronic media from May 8th, 2006 — May 13th, 2006.

The survey exercise commenced on May 14, 2006 at the hour of 10:30 A.M. Present at the site to witness the exercise were the following personalities:

1. Strayga Mayson et. al
2. Mohammed Kamara
3. Henrietta Johnson and Mr. Barry

Technical Observation:

1. That both parcel of land commenced from the same point according to deeds presented.
2. That according to the land described in the deed presented by Strayga Mayson, there exists an encroachment on the land of the Coopers and Mr. Keita who are the next adjoining owners, (see attached surveyors site plan).
3. That due to the settlement of boundaries during the land registration exercise, boundaries described in both deeds are not in conformity with present ground location. (see attached surveyor's site plan).
4. That according to the official Registry Map of Monrovia, Strayga Mayson does not exist (shown) (see attached, a section of the Registry Map of Monrovia in which the land dispute is situated).
5. That according to existing records at the Adjudication Section of the Ministry of Lands, Mines & Energy, this identical parcel of land was owned by the late T.O. Dusumo Johnson at the time of the Land Registration exercise, (These records can be inspected at the Ministry of Lands, Mines & Energy, Adjudication Section).
6. That according to the situation on the ground, only one of the two parties is represented on the grounds by development and boundaries.
7. That no records was found for Strayga Mayson's parcel of land in the area.
8. That the area in dispute is situated and declared "Adjudicated Area One of Monrovia", in which all land or parcels of land are demarcated, their title investigated (Adjudicated) according to law.
9. That all land owners in the area in which this disputed land is situated, were issued Land Certificates after the Land Registration exercise and as such, anyone who was not issued a certificate was not recorded on the map as land owner, (see the registered Land Law of 1974 — LCR vol. 5, Chapter 8).

The practical survey revealed the following (Map)

1. Area bordered green (ABCD) represents one (1) lot of land claimed by Strayga Mayson according to deed.
2. Area bordered blue (F.G.H.J) represents half 1/2 lot claimed by Henrietta Johnson according to deed.
3. Area bordered green (L.M.N.O.A.K) represents the parcel of land claimed by Henrietta et. al according to ground location.

Documents Used

1. Warranty Deed from T.O Dusumo Johnson to Henrietta Johnson probated 5 th , April 1962 and registered in volume 86-C, pages 51-52 and containing 1/2 lot of land and no more
2. Public Land Sale Deed from Republic of Liberia to Strayga Mayson recorded in volume 88-C, pages 252-253.

Recommendation

In view of the observations made, the Board hereby recommends the following, which in our opinion when implemented, will quiet the pending dispute.

As earlier stated in our observations, the area in which this dispute is situated, is declared "Adjudication Area One of Monrovia" in which all land or parcels of land are demarcated, their titled investigated (Adjudicated) according to law (see the Registered Land Law, LCR Vol. 5, Chapter 8).

Property or parcel boundaries in this particular area has been settled since 1974, and that anyone for that matter who can say he or she does not have any prior knowledge of the adjudication proceedings or the Land Registration process is at liberty to appeal to the Supreme Court directly for a redress, and based on the adjudication records, a decision can be reached.

In our opinion, we believe when decision in this case is rendered in accordance with the Registered Land Law of 1974, the pending dispute will be quieted once and for all.

Signed: Yarkpawolo T. Kollie (RLS) Chairman of the Board

Moses T. Tehswen, Sr. (RLS)/ Member

Jonathan G. Monger (RLS)/ Member"

Petitioner Strayga filed a motion to vacate the majority award and respondents Henrietta et. al. resisted the motion stating that the petitioner was not a party to the action, and what the petition was urging, that the trial court decide title during the enforcement of a final judgment, was improper and inconsistent with the procedure hoary with age in our jurisdiction.

On October 24, 2006, the motion to vacate was heard and denied by the trial court and the majority report upheld. The petitioner excepted to the ruling and announced an appeal to the Honorable Supreme Court. The appeal was denied by the trial judge on the grounds that the report was not a final judgment from which the petitioner could appeal as the final judgment in the matter had been made since August 29, 2005. Besides, the Justice in Chambers had stated in her mandate to the trial court that the arbitration report would bring finality to this matter.

It is from this ruling that the petitioner filed before the Chambers Justice a petition for the issuance of a writ of mandamus as follows:

"Petitioner in the above entitled cause of action petition prays Your Honor to grant its petition and orders the alternative writ issued against the respondents for the following reasons, to wit:

1. Petitioner in the above entitled petition submits that it is a party to the Board of Arbitration constituted by the Civil Law Court, 6th Judicial Circuit, Monsterrado County, in obedience to the Justice in Chambers of the Supreme Court of Liberia mandate dated November 21, 2005, predicated upon an erroneous execution of a writ of possession in summary proceedings to recover possession of real property instituted by correspondent, Dusumo Johnson/Henrietta Johnson to which petitioner was not and is not a party.

2. Petitioner submits that predicated upon the execution of the writ of possession in the summary proceedings to recover possession of real property by Judge Wynston Henries of sainted memory to place correspondent, Henrietta Johnson in possession of the property in question without stating the metes and bounds of the said property to be repossessed, the Sheriff of the Civil Law Court proceeded to dis-possess petitioner of its legitimate property, it not being a party to the said summary proceedings to recover possession of real property. This illegal eviction of petitioner from its legitimate property prompted petitioner to file petition for a writ of certiorari to the Supreme Court's Justice in Chambers to correct said error.

3. The then Justice in Chambers in person of Justice Felicia Coleman, convened a conference, at which conference, all parties agreed to submit to a board of arbitration to prevent a blood bath. Both parties further agreed that the arbitration award would be final and that the board of arbitration should conduct an investigative survey, using the deeds of the parties on the records of the Civil Law Court to determine the demarcation of Henrietta Johnson's property, to place her in possession in keeping with the ruling in the summary proceedings to recover

possession of real property to which petitioner is not a party, having been denied two motions to intervene.

4. Petitioner submits that the board of arbitration was constituted on March 23, 2006, to conduct the said survey. Following the conduct of the survey, the board of arbitration submitted its majority report on September 4, 2006, following a writ of summons for contempt.

5. Petitioner submits that the majority report and the minority report were read on September 29, 2006, following readings, petitioner informed court of its intention to file a motion to vacate the majority's report and requested the court/co-respondent Judge to order the majority and minority members of the board to serve copies their reports on petitioner for the purpose for utilizing petitioner's rights under chapter 64 of 1 LCLR Title.

1. Petitioner's requests was granted and accordingly, petitioner filed its motion to vacate the majority award on October 3, 2006, and on October 12, 2006 arguments pro et con were entertained on the motion and resistance thereto, and ruling reserved upon assignment to be made.

6. Petitioner submits that the co-respondent Judge assigned the ruling on the motion for October 24, 2006, and that at the rendition of his ruling on the assigned date, denying petitioner's motion to vacate the majority award, petitioner excepted and announced an appeal. The co-respondent Judge denied petitioner the right to appeal and retained his ruling on the motion and refused to grant petitioner's counsel his copy when counsel requested for same. The co-respondent Judge stated to petitioner's counsel that its copy of the ruling will not be released to petitioner's counsel until he shall have made his final judgment on the majority award. This behavior of the Judge can be attested to by a very full court with lawyers and parties litigant as well as court officers.

7. Petitioner submits that its lawyer remained in court under false imprisonment by the co-respondent Judge and after the co-respondent Judge made his final judgment confirming the majority report of the board of arbitration, ordering the eviction of petitioner from its legitimate property which was deeded to petitioner since 1935 by the Republic of Liberia as against co-respondent, Henrietta Johnson's 1960 and 1962 deeds from the Republic of Liberia for the same property, petitioner's counsel excepted and announced an appeal, since petitioner is not, and was never a party to the said summary proceedings to recover possession of real property.

8. Petitioner submits that never before in the dispensation of Justice in this country has petitioner experienced the unexplainable behavior of the correspondent Judge when he denied

petitioner's right to appeal as guaranteed by the Constitution of Liberia under article 20(b) thereof which states that:

"The right of an appeal from a judgment, decree decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. The legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal."

This right is to be held inviolate and cannot be violated by any court of justice in Liberia as was done by Judge Emery S. Paye. Petitioner requests court to take judicial notice of the minutes of court of the Sixth Judicial Circuit as recorded on October 24, 2006, 32nd day's sitting, September Term, A.D. 2006 at sheet 6, paragraph 6 and sheet 8 paragraphs 2 and 3 of the records hereto attached and marked exhibit "A" in bulk.

9. Petitioner submits that mandamus will lie to compel the co-respondent Judge to grant petitioner's appeal as prayed for, the right to appeal being a constitutionally protected right which cannot be denied by any court of justice especially so when petitioner is not a party to summary proceedings to recover possession of real property and the court has ordered petitioner to be dispossessed of its legitimate property contrary to law without the opportunity to legally protect its rights.

a) Petitioner submits that Your Honor now in Chambers, having at sometimes acted as counsel for co-respondent, Henrietta Johnson, and as such, should Your Honor feel otherwise in disposing of the mandamus, then and in that case, petitioner most respectfully prays Your Honor Justice Francis Korkpor, Sr. to be kind enough and issue the alternative writ of mandamus, and forward the said petition to the full bench because the petition raises a constitutional issue on the right to appeal which a single justice cannot pass upon and as such, and even more reason why the petition for mandamus should be forwarded to the full bench in keeping with our practice and procedure or,

b) Grant the alternative writ of mandamus, directing/mandating the correspondent Judge to stay all further proceeding pending the hearing of the petition and to further order the Clerk to instruct the respondents herein to file their returns to the petition herein on a date and time to be determined by Your Honor,

c) And/or request the Chief Justice to appoint another Justice of the Supreme Court to handle the said petition in the event that Your Honor feel otherwise that Your Honor conscience will not permit Your Honor to handle this matter,

d) And rule costs against respondents and grant unto petitioner any and other further relief deemed just and legal under these circumstances."

Count 12 of respondents returns being relevant to the petition for the writ of mandamus filed, we herein quote same:

12. respondents say the mere fact that the word "appeal" is used does not in and of itself raise a constitutional issue. There is no knowledge in this jurisdiction that appeal is a matter of right but that appeal can only be taken from a final judgment. Respondents contend that the ruling of the Trial Judge on the Motion to Vacate award was not a final judgment but merely interlocutory. Respondents say that the final judgment being enforced in this case was rendered in 2005 and ordered enforced by Judge Wynston O. Henries. Respondents say it is that judgment which is or was subject to appeal and which appeal, though granted, was abandoned and never perfected. Respondents strongly contend that there are two reasons why the appeal by petitioner's counsel was properly denied; the first is that the ruling denying the Motion to Vacate was not a final judgment and secondly, the ruling was in obedience to a mandate from the Justice in Chambers in which mandate petitioner acquiesced and participated."

Justice Korkpor who participated in this case on behalf of Respondent Henrietta Johnson et al. recused himself from entertaining the petition. Justice Gladys Johnson was therefore assigned by the Chief Justice, Johnnie N. Lewis, to chambers for the purpose of hearing the petition for mandamus. Justice Johnson issued the alternative writ and ruled on December 5, 2010 as follows:

"Now according to the rules governing the procedures and ethics of our practice which has become common knowledge, no succeeding Judge or Justice has the authority to review or revoke the decision of his predecessor: In Re: The application of His Honor Harper S. Bailey 36LLR 803, 826 (1990). Being fully cognizance of this provision of the law and practice, and also having determined that no judicial determination of the issues raised in the motion out of which this mandamus grew can be made without a review of Justice Coleman's mandate and the subsequent ruling of the Judge which was based solely on said mandate, it is my decision that only the Supreme Court en banc has the authority to review and pass on the legality or illegality, the wisdom or folly of the Judicial decisions that triggered the filing of the this petition for a writ of mandamus.

It is therefore my considered decision not to tamper with the issues herein raised, but forward the petition for determination by the Supreme Court en banc which forum alone has the authority to review this case, the act of Justice Felecia V. Coleman on whose mandate the trial Judge ruled denying the movant the right to appeal from his ruling.

The clerk is therefore ordered to forward this petition for a writ of mandamus for the determination of the Honorable Supreme Court en banc, IT IS HEREBY SO ORDERED."

This matter having appeared before the Full Bench for review, the sole question determinative of this matter before us is whether under the facts and circumstances herein narrated, the trial judge was duty bound to grant the petitioner's appeal?

Mandamus is one of five remedial writs. It commands performance of a legitimate duty imposed by law, performance of which must have been neglected or refused by a public officer responsible for such performance. *Mitchell and Sons Distillery vs. Nelson*, 22LLR 67, 69 (1973).

The Judge's ruling on the arbitration report from which the writ of mandamus is sought, reads:

"Records before us in this case revealed that the plaintiff, Henrietta Johnson obtained a final judgment in a Summary Proceeding to Recover Possession of Real Property, in this Court against Trokon International, on August 29, 2005. In an attempt on the part of this Court to place Henrietta Johnson in possession of her property, Strayga Mayson, not a party, moved on several remedial processes contending that the enforcement of this court's decision affects him. After every legal process available to the informant was exhausted, on the 30 th day of November, A.D. 2005, the Honorable Supreme Court, thru the Justice in Chambers, mandated this Court to resume jurisdiction over the entitled cause of action and conduct an investigative survey to determine the land of Henrietta Johnson and the Strayga Mayson based upon their respective deeds as contained in the records of this Court. In the mandate, it is stated that the report of the Board of Arbitration is final.

The Board of Arbitration having been formed proceeded to conduct the aforesaid investigative, and having conducted said survey filed its report on September 11, 2006.

In the Board's report, it informed this Court that in the conduct of its investigative survey it considered the deed of both petitioners, Strayga Mayson and that of T.O. Dusumo Johnson/Henrietta Johnson. That, having moved on the land at issue, the Board observed although Strayga Mayson has a deed but that said deed cannot be found on the land in dispute that is to say, there is no land to conform to Strayga Mayson's deed.

Based upon the oath of the Board of Arbitration, this Court is of the opinion that T.O. Dusumu Johnson/Henrietta Johnson's property exists evidenced by the said report.

Wherefore and in keeping with the mandate of the Honorable Supreme Court, Henrietta Johnson's property being located as in keeping to the metes and bounds of the surveyors' report, said Henrietta Johnson is entitled to her property. The Clerk of this Court is hereby order to issue out a writ of possession, placed in the hands of the Sheriff of this Court who is

also ordered to proceed to the land at issue and place respondent, Henrietta Johnson in possession of her property as in keeping with the Board's report within 72 hours. AND IT IS HEREBY SO ORDERED.

Counsel for petitioner excepts and announces an appeal to the Honorable Supreme Court of the Republic of Liberia, sitting in its March Term, A.D. 2007. And respectfully submit.

The Court: In the mandate of the Honorable Supreme Court out of which said mandate the Board of Arbitration was established, it is indicated therein that all counsels before the Supreme Court at that time consented to the effect that the report of the Board of Arbitration will lay this matter to rest. Under this circumstance, this Court will not entertain any exception to this ruling least to say an appeal, for in doing so, this Court will be acting contrary to the mandate of the Supreme Court. An attempt on the part of any counsel to act on the contrary is highly contemptuous. AND SO ORDERED."

Petitioner herein states that when the co-respondent Judge denied his application for appeal, the Judge violated petitioner's constitutional right to appeal for which a writ of mandamus will lie because "co-respondent Judge is duty bound to grant appeal to anyone announcing an appeal." [emphasis ours].

This Court recognizes the constitutional right of party litigants to an appeal, and has said no Judge has the authority to refuse or facilitate an appeal from his ruling. *Amierable vs. His Honor Cole*, 13LLR 17, 20 (1957); *Weeks vs. Weeks* 13 LLR 223, 227 (1958). However, we must ask who is a party litigant who as a matter of right is entitled to granting of an appeal by our courts?

Volume 1 of our CPLR, Chapter 5 designates parties to an action. Section 5.1 states that generally a person who brings a civil action in court against another shall be called the plaintiff, and the other person against whom it is brought is called the defendant. Section 5.54 states that additional parties may be brought in by order of any court except the Supreme Court on motion of any party or on court's own initiative at any stage of the action on any terms that are just. For relief as to counterclaim, when the presence of persons other than parties to the original action is required for the granting of complete relief as to the counterclaim, any court except the Supreme Court may on application in a proper case order them to be brought in as parties to the action if jurisdiction can be obtained over them.

Clearly, under this provision of our statute the petitioner was not a party litigant since he did not bring the action and the action was not brought against him; nor was he joined or allowed to intervene in the trial court. Under the statute, the Supreme Court could not have added him as a party, more especially after a final ruling had been rendered by the court below.

What then could be made of the Justice in Chambers mandate on the petition for certiorari dated November 30, 2005?

We say that clearly Justice Coleman had no right to entertain the petition of certiorari. She might have been tempted to reach an understanding which had no effect on the Judgment of the summary proceeding action. The Justice knew that the Supreme Court could not have entertained the petition where final Judgment had been rendered or add the petitioner as a party. Besides arbitration could not have been resorted to where there had been a court hearing and a final determination made. We surmise the Chambers Justice endorsed the understanding reached hoping that with the aid of surveyors the respondents 1/2 lot would be clearly demarcated and the respondents put in possession as per her deed, especially as the petitioner Strayga had said the defendant did own half lot which was adjacent to his one lot.

The Justice's instruction that the Board of Surveyor's decision would be final was clearly an indication that whatever decision that had been made in her Chambers was an understanding which did not affect the final judgment of the trial court since clearly certiorari will not lie in a matter that has been conclusively adjudicated or be substituted for an appeal. *Cooper vs. Dunbar and Reeves*, [1972] LRSC 43; 21 LLR 295, 305 (1972).

With this mandate of November 30 2005, being sent down to the trial court from the Justice in Chambers, how else could the trial Judge have ruled? This Court has said that Lower Courts have the duty to respect and honor the perquisites of the Supreme Court and one such duty is to comply with all orders emanating from the Chambers Justice or the Full Bench. *Lewis and Dolo vs. Trokpoa* 28LLR 23, 28 (1979); *Morris et. al. vs. Saad and Cooper* 13 LLR 135 (1958). In face of this mandate of November 30, 2005, an attempt by the Judge to grant the appeal would have been contemptuous.

Strayga is not a party to the proceedings before the trial court and therefore has no standing to take part in or to control the proceedings. The most he could have done after the trial court upheld the majority surveyors' report was to file a bill of information before the Chambers Justice if he found the survey to be contrary to the Justices' mandate on the understanding reached in her Chambers, and in which case, the Justice would not have been under a legal obligation to act and he would not have been able to appeal since she did not issue a writ and it is settled rule in our jurisdiction that no appeal can be taken from the refusal of a Justice presiding in Chambers to order issuance of an alternative writ upon presentation of a petition for a remedial writ.

Contained in the prayer of the petitioners brief filed before us, petitioner prays us to grant the peremptory writ of mandamus to afford petitioner the right to appeal nunc pro tunc. Interestingly, petitioner also warns this Court immediately thereafter that the granting of the writ will not and cannot solve the problem and as such petitioner prays that we mandate the

Ministry of Justice to "immediately initiate cancellation proceedings again T. O. Dosumo Johnson/Henrietta Johnson so-called title deeds of 1960 and 1962 respectively in obedience to president Tubmans' 1961 directives and quiet Strayga Maysons estate title once and for all and forevermore."[emphasis ours]

It is interesting to note that the letters referred to in petitioner's brief and argument before us were never pleaded. A reading of the numerous application made by the petitioner/Straya, some of which are incorporated herein, do not make mention of any such letters or dispute as alleged in President Tubman's letter found in the file. The petitioner, Stayga Mayson, acknowledges throughout his various applications filed before the courts that the plaintiffs/respondents have half lot of land adjacent his property of one (1) lot. How these letters allegedly signed by President Tubman are in the Court's file is a puzzle. One of these letter said to be signed by President Tubman is dated September 6, 1957, three years before the land was even deeded to T.O. Dosumo Johnson who acquired the property in 1960. The other letter is dated November 2, 1961, a year before the property was deeded to Henerietta and her children. We also see no evidence that any action was taken after the alleged letters were written by President Tubman. Henrietta Johnson alleges that they have lived on the property for more than twenty (20) years and left only left the property because of the civil crisis.

The board of surveyors report says that no record is found for Strayga Mayson's parcel of land in the area. Also in the record is a request by co-respondent Henrietta's counsel to the Bureau of Archives asking it to authenticate the existence of the certified copy of land sale deed reportedly issued to Strayga Mayson by the Republic of Liberia In 1935. The Director of Archives November 20, 2005 responded that Volume 88-D exists and that pages of the Volume, 252-253 contain no information on the said deed, but rather the continuation of a "cancellation of Sub-lease agreement between C. Helou Saad and Adeel Nasour", which was duly probated on October 22, 1963.

As Justice Gladys Johnson stated in her ruling *supra*, when she forwarded the matter to the Full Bench, there are serious factual issues raised in the records which ought to be adjudicated by the finders of facts if the land dispute is to be fairly and justly concluded.

However, the main issue before us is whether a writ of mandamus would lie to grant petitioner Strayga the opportunity to appeal from the ruling of the trial Judge on the motion to vacate the board of Surveyor's report.

We say no, Mandamus will not lie for the following reasons:

1. Because Petitioner/Strayga failed to take steps necessary to appeal the ruling of the Judge when he was denied the motion to intervene.
2. Because the Justice's mandate was in error and merely intended to accommodate the petitioner/Strayga persistent request, because even if the arbitration had established petitioner possessory right over the disputed property, it would not be binding on the respondents neither disturb the ruling of the trial court.
3. Petitioner was not a party to the proceedings in the trial court, and was estopped from appealing a judgment therefrom. The Justice in Chambers could not have in a certiorari proceedings made him a party after the trial court had made final judgment. Certiorari affects only orders and judgments made by trial court before rendition of final judgment. *Reeves vs. Mukhi Impex*, 35LLR 706, 707((1988).
4. Because a writ of mandamus will only be issued where there is an arbitrary abuse of discretion and there is no other adequate remedy. *Estate of Gave vs, Her Honor Scott and Ecobank*, 37LLR 337, 349 (1993). The counsel for petitioner himself has said, "An appeal will not solve the problem."

This Court says here that it observes Petitioner Strayga's deliberate attempts at portraying the courts as being ineffective when he failed to follow the advice of Judge Kaba but insisted on filing unwarranted applications before our courts. This court will not tolerate this behavior by individuals and counsels who insist on using improper legal procedures for addressing their concerns and thereby delay adjudication of matters and enforcement of courts' judgment on matters.

We therefore denied the peremptory writ of mandamus and uphold the Judge's ruling denying the appeal. We further order the Clerk to send a mandate lifting our interlocutory mandate for all rents of tenants on the adjudicated property be put into escrow pending the determination of the writ of mandamus. The petitioner Strayga may move the court below for proper relief if he so desires. AND IT IS HEREBY SO ORDERED.

THE APPELLANT WAS REPRESENTED BY COUNSELLOR MARCUS R. JONES.
THE APPELLEE WAS REPRESENTED BY COUNSELLORS BETTY LAMIN BLAMO
AND GOLDA A. BONAHE OF THE SHERMAN & SHERMAN, INC.