

In the Honorable Supreme Court of the Republic of Liberia  
Sitting in its March Term, A.D. 2013

Present: His Honor: Francis S. Korkpor, Sr. ....Chief Justice  
 Present: His Honor: Kabineh M. Ja'neh.....Associate Justice  
 Present: Her Honor: Jamesetta H. Wolokolie.....Associate Justice  
 Present: His Honor: Philip A. Z. Banks, III .....Associate Justice  
 Present: Her Honor: Sie-A-Nyene G. Yuoh.....Associate Justice

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Ahmadu V. Sirleaf, III and Bartu Dorley, Administrator  
 And Administratrix of the Intestate Estate of the Late  
 Sarah Sirleaf, all of the City of Monrovia,

Liberia .....INFORMANTS

Versus

Yessim El-Bim, John Ghrib, Nashat Eid, Shouki Edi and  
 Dilip Vassani, also of the City of Monrovia,  
 Liberia.....RESPONDENTS

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BILL OF  
INFORMATION

BILL OF INFORMATION DENIED.

Heard: April 3, 2013

Delivered: July 15, 2013

*Counsellors Theophilus C. Gould and Kathleen T. Makor appeared for the informants. Counsellor Nancy F. Sammy appeared for the respondents.*

**Mr. Justice Ja'neh delivered the Opinion of the Court.**

Our esteemed colleague, Her Honour Madam Justice Jamesetta Howard-Wolokolie, then Presiding in Chambers of the Supreme Court, convened a conference on account of a petition seeking the extraordinary writ of prohibition, filed on September 20, 2010, by Jones & Jones as Counsel for Yessim El-Bim, et al.

The nine- (9) count petition for the Writ of Prohibition substantially accused both the Circuit Judge of the Sixth Judicial Circuit and the Stipendiary Magistrate of the New Kru Town Magisterial Court of proceeding by rules different from those which ought to be observed at all times. The petitioners contended that the judge, His Honour Yussif D. Kaba, entertaining a summary proceeding filed before him against Stipendiary Magistrate John Gbetee, ignored a cardinal point of law; that a Magisterial Court has no subject matter

jurisdiction in an action of summary proceedings to recover possession of real property where title is in issue. The petitioners have further averred that the Circuit Judge had ordered the Magisterial Court to proceed with the matter, in incisive violation of this settled law in our jurisdiction.

The certified records to this Court indicate that Madam Justice Howard Wolokolie, acting on the petition, duly cited the parties and a conference was thus convened. Following the scheduled conference, Madam Justice Howard-Wolokolie, on September 21, 2010, ordered the Clerk of the Supreme Court, Mrs Martha Bryant-Henries, to issue the following directive:

***“The parties having conceded that the Magistrate has no jurisdiction of this subject matter, you are hereby mandated to order the Magistrate from further proceeding into this matter.”***

When Chambers Justice Howard Wolokolie issued the mandate, aforementioned, Kemp & Associates, counsel for and on behalf of Ahmadu Sirleaf, III, and Bartu Dorley, filed a bill of information. The informants Ahmadu Sirleaf, III, and Bartu Dorley, representing the Intestate Estate of Sarah Sirleaf as administrators principally contended in the bill of information that they were neither cited nor afforded the opportunity to participate in the conference reportedly held by the Chambers Justice, let alone ***“conceded”*** that the Magistrate lacked subject-matter jurisdiction. The informants claimed that the Justice’s mandate, complained of, was entered without the benefit of a hearing to the patent prejudice of informants’ property interest.

Count eleven (11) of the bill of information, constituting a succinct summary of the complaint, states;

***“That Informants say that they, although named in the Petition for a writ of Prohibition, were never cited as required by law. Her Honour the Chamber Justice only wrote a mandate ordering in effect the judgment against the Co-respondents El-Bim et. al this act of Justice Wolokolie deprives the Informants of due process or their day in court.”***

According to the informants, in the light of the circumstances under which the Chambers Justice issued the mandate, a bill of information was the only properly available remedy to the informants as an aggrieved party to bring their grievance to the pale of recognized realm of practice and procedure in order to seek relief therefor.

From a glance of informants' complaint, set forth in the information, it can be clearly recognized that the information proceedings at bar does not fit in the realm customary of bill of information. It also is not one where the informant is alleging irregularities in the execution of the Supreme Court's mandate.

Unlike an ordinary bill of information, the informants in these proceedings have also not appeared before us praying the Supreme Court to direct its reflection to any conduct on the part of the respondents to impede, undermine or frustrate the execution of the Supreme mandate.

The Supreme Court has repeatedly held, literally without number, that ordinarily, in order for a bill of information to be granted, the matter forming the basis of the information must have been pending before the Court, or decided by it; there must be an act to usurp the province of the Court; there must exist some irregularities or obstruction in the execution of the Supreme Court's mandate; or there must have been a refusal to carry out the Supreme Court's mandate. *Liberia Aggregate Corporation v. Talor et al.*, 35 LLR 3, 8 (1988); *Massaquoi-Fahnbulleh v. Urey and Massaquoi*, 25 LLR, 432,435-6, 1977); *Barbour-Tarpeh v. Dennis*, 25 LLR 468, 470(1977); *Kromah v. Badio and Hill*, 34 LLR 85, 86 (1986); *Butler-Abdullah v. Pearson et al.*, 36 LLR 592, 597-8 (1989); *Jawhary v. Jones*, 38 LLR 584, 593-4 (1998).

The information now before us certainly represents a departure from the ordinary. This bill of information, in effect, seeks to lodge a complaint against a mandate ordered issued by the Justice presiding in Chambers, for allegedly not citing the informants as party of interest to the conference and also without a hearing by the Chambers Justice. We note that although the grievance is directed against the Justice's mandate, our colleague was not named as a party respondent in the bill of information.

It must be remarked here that this Court has expanded the province of information beyond the customary scope. In the case, *The Liberia Petroleum Refining Company v. Tulay et al.*, 36 LLR 467 (1999), the Supreme ordered docketed a bill of information which presented grievances against the conduct of a justice. The information emanated from a petition for a writ of certiorari, filed before His Honour, Mr. Justice Frederick K. Tulay, presiding in Chambers of the Supreme Court. The writ of certiorari was sought against the Circuit Judge, Her Honour C. Aimesa Reeves and also against a member of the Bar, Counsellor Johnnie N. Lewis.

As in the information before us, the informant in *“The Liberia Petroleum”* case strenuously contended that informants’ counsel was cited by the Justice in Chambers who, in obedience thereto, appeared for the hearing of the petition for the writ of certiorari. It was further alleged that although the Chambers Justice postponed the scheduled hearing, counsel for informants *“surprisingly received a notice of assignment from the lower court for the reading of the Supreme Court’s mandate in the certiorari proceeding which had not been heard by the Chambers Justice up to and including the filing of the bill of information.”* In both the instant information proceedings and the cited case, the crux of the argument presented is that the Chambers Justice’s conduct *“deprived informants of their constitutional rights to be heard and to appeal if they were dissatisfied with the ruling of the Chambers Justice.”*

Also, in the cited case, which this Court dismissed and denied for want of jurisdiction as no writ of summons was issued and returned served on the respondents, informant prayed the Supreme Court *en banc* to order the trial judge *“to stay all further proceedings until the hearing and determination of the certiorari proceeding and to order the Chambers Justice to hear his petition of certiorari.”*

The *“The Liberia Petroleum”* case set forth the legal principle which implicitly expanded the province of information. Under this principle, a Justice presiding in Chambers could be summoned and properly brought before the Supreme Court *en banc* for the purpose of appellate review of the action taken by the Justice allegedly prejudicial to the interest of a party, subject to the threshold set by this court in *Bassam H. Jawhary, Executor of the Testate Estate of the late Milad R. Hage v. His Honour, Kabineh M. Ja’neh, et al.*, recently handed down by the Supreme Court during its March Term (2012).

In further expansion of the utility of the bill of information, the Supreme Court has infact issued a writ of summons therein naming a Justice of the Supreme Court, presiding in Chambers, as party *“Respondent”*. The Marshall returned the summons served on the Chambers Justice and the Supreme Court entertained the information proceedings, and in a unanimous decision, granted same. In granting the bill of information in *Jawhary*, The Supreme Court reasoned as follows:

*“...[W]e believe that the instant case presents a situation that is an exception to the general rule, for otherwise our justice system would falter and deprive many of the rights guaranteed them by the Constitution, not to mention the effect of depriving the Supreme Court, the full Court, the final arbiter of all issues and all appeals from grievance by a party, of the opportunity to hear the grievance of a party.”*

Travelling to the certified records, we have gathered that the informants, represented by Kemp & Associates, for the informants, dissatisfied with Madam Justice Howard-Wolokolie's mandate of September 21, 2013, on October 13, A. D. 2010, filed with the Clerk of the Honourable Supreme Court, a twelve (12) count bill of information. Because of its utmost relevance in the consideration of the main issue of concealment of vital information in these proceedings, we have deemed it appropriate to quote same in its entirety.

1. *That Informants are parties to an action of Summary Proceedings to Recover Possession of Real Property before His Honour John M. Gbetee, Stipendiary Magistrate of the Bushrod Island Magisterial Court. Your Honours are respectfully requested to take judicial notice of the Writ of Summons hereto attached and marked Exhibit "1/1" to form a cogent part of Informants Information.*
2. *That said property which was affirmed by the Probate Court Proceedings was willed to their Grandmother, the Late, Sarah A. Sirleaf and her heirs forever by her late husband (their Grandfather), Ahamadu V. Sirleaf, I. Your Honours are respectfully requested to take judicial notice of the last Will and testament of the Late Ahamadu Sirleaf and the ruling of the Probate Court hereto attached and marked Exhibit "1/2 in bulk" to form a cogent part of Petitioner's Petition.*
3. *That during the proceedings before His Honour Gbetee, Co-respondents Yessim El-Bim et. al. thru their Counsel filed a "Motion To Dismiss" indicating among other things that "Title" was in issue and submitted a copy of a lease agreement which lacks the specificity or the metes and bounds as required by law. Your Honours are respectfully requested to take judicial notice of the lease agreement hereto attached and marked Exhibit "1/3 in bulk" to form a cogent part of Informants' Bill of Information.*
4. *Further to count three (3) above, the motion was argued, denied and the action of "Summary Proceedings to recover Possession of Real Property" sustained since title was not in issue. The purported lease agreement proffered by the Defendant has no reference to the informants' property located on Bushrod Island. Article I of the lease agreement states: "that for and in consideration of the rents, mutual covenants, stipulations, privileges, rights and agreements herein contained to be paid, kept, exercised and performed by the contracting parties hereto, the lessor hereby grants, gives, leases, rents, bargains, demises and convey and by these presents has given, granted, leased, rented, bargained, and conveyed unto the lessee, City of Monrovia, County of Montserrado, Republic of Liberia". This description refers to the whole of Monrovia City and no particular property. The motion was denied and defendant's counsel filed a Petition for Summary Proceedings to the Sixth Judicial Circuit before His Honour Yussif D. Kaba. Your Honours are respectfully requested to take judicial notice of the Magistrate's ruling in the motion to dismiss, petitioner's petition and the returns of the respondent hereto attached and marked Exhibit "1/4 in bulk" to form a cogent part of Informants' Bill of Information.*

5. ***That His Honour Judge Kaba entered a judgment affirming the decision of the Magisterial Court that title is not an issue after a chambers conference with both parties. The Clerk was ordered to issue a mandate to the Magistrate of the Magisterial Court of Bushrod Island to resume jurisdiction and proceed with the case. Defendant's counsel did not except to the ruling, nor appealed from the ruling. Your Honours are respectfully requested to take judicial notice of the mandate in these proceedings which are hereto attached and marked Exhibit "1/5 in bulk."***
6. ***That thereafter, a notice of assignment was issued on June 9, 2010 and served on Defendant's counsel on June 10, 2010 for the reading of the mandate on June 15, 2010. Defendants and their counsel failed and neglected to appear or file an excuse. The mandate was read according to law. Your Honours are respectfully requested to take judicial notice of the records which are hereto attached and marked Exhibit "1/6 in bulk."***
7. ***Further to count six (6) above, a Notice of Assignment was issued on June 15, 2010 and served on Defendant's Counsel on June 16, 2010 for the hearing of the case on June 18, 2010. Counsel for Defendants filed an excuse to mislead the court as evidenced by the Clerk Certificate from the Eleventh Judicial Circuit. Your Honours are respectfully requested to take judicial notice of the letter of excuse and the Certificate in the records in these proceedings hereto attached and marked Exhibit "1/7 in bulk."***
8. ***Subsequent notice of assignment was issued on the 18<sup>th</sup> day of June 2010 and served on Defendant's Counsel on 21<sup>st</sup>, June 2010 for hearing of the case on 25<sup>th</sup>, June 2010. Defendants and their Counsel failed to appear and neglected to file an excuse. Counsel for Plaintiff/Informants thereupon applied to Court for default judgment and same was granted. Your Honours are respectfully requested to take judicial notice of the notices of assignment, minutes of the Magisterial Court and the Writ of Possession hereto attached and marked "1/8 in bulk."***
9. ***That the Defendants/Co-respondents following the judgment again petitioned the circuit Court alleging that they did not have their day in court consequently, a Stay order was issued and a hearing scheduled to investigate the allegation and at the conclusion, it was found that the parties had notice and therefore the petition was denied and the judgment ordered enforced. Again, Your Honours are respectfully requested to take judicial of the records hereto attached and marked Exhibit "1/9 in bulk" to form a cogent part of the Bill of Information.***
10. ***That strangely and without a hearing, on September 22, 2010, another mandate from the Justice in Chambers, Her Honour Justice Wolokolie through the Civil Law Court was directed to His Honour John Gbetee, Magistrate of the Bushrod Island Magisterial Court to the effect that he should not enforce his judgment because of an alleged agreement of the parties. Your Honours are respectfully requested to take judicial notice of the mandate from the Honourable Chamber Justice hereto attached and marked Exhibit "1/10" to form a cogent part of the Bill of Information.***

11. ***That Informants say that they, although named in the Petition for a writ of Prohibition, were never cited as required by law. Her Honour the Chamber Justice only wrote a mandate ordering in effect the judgment against the Co-respondents El-Bim et. al this act of Justice Wolokolie deprives the Informants of due process or their day in court.***
12. ***Further to count (11) above, Informants say that had they been cited, the issue about the improperly verified Petition for the Writ of Prohibition upon which Her Honour Justice Wolokolie acted would have been raised and therefore the only legal option was to affirm the judgment. Your Honours are respectfully requested to take judicial notice of a copy of the petition hereto attached and marked Exhibit "1/11 in bulk" to form a cogent part of Informants Information."***

Upon being informed that the bill of information, quoted herein above, had been filed with the Clerk of the Supreme Court, His Honour, Mr. Chief Justice Johnnie N. Lewis, ordered, and a writ was accordingly issued on November 22, 2010, by the Honourable Supreme Court.

The parties were duly served and commanded by the Supreme Court as follows:

***"You are hereby commanded to notify Yessim El-Bim, John Ghrib, Nashat Eid, Shouki Edi and Dilip Vassani, Monrovia, Liberia, Respondents in the above entitled cause of action to appear before the FULL Bench of the Honourable Supreme Court of the Republic of Liberia, Temple of Justice, on the 3<sup>rd</sup> Day of December, 2010, at the hour of 9:00 a.m., to show cause why INFORMANTS' BILL OF INFORMATION as prayed for should not be granted; and to require the RESPONDENTS herein above to send up to the Chambers of the Supreme Court a full and complete copy of the proceedings at issue..."***

Clearly, the core directive contained in the November 22, 2010 Writ issued and returned duly served on all the parties was unambiguous. The order from the Supreme was that all records in the matter be forwarded forthwith to the Supreme Court. Clearly, full compliance with this order requires that pending a review of the matter by the Supreme Court *en banc* no further proceedings, directly or otherwise, be taken by any court or individual. Taking any further action while the Supreme Court is seized of the case constitutes a violation of the law, practice and procedure hoary with time in this jurisdiction.

It must be said that the uncontested Returns filed by the Marshall of the Supreme Court reveals that except for Co-respondent Nashat Eid, who, according to the Marshall's returns, was without the bailiwick of the Republic, all the respondents were duly returned served on November 30, 2010.

Upon service of the writ, and in obedience to the order contained therein to file their returns, a fourteen count returns were filed by the respondents on December 3, 2010. The returns detailed respondents' reaction in the manner following:-

- "1. Your Respondents are Petitioners in the Petition for the Writ of Prohibition, and are also Defendants in the Action of Summary Proceedings to Recover Possession of Real Property, from which grows the Bill of Information filed by Informants herein.**
- 2. That as to the entire Informants' Bill of Information, Respondents say that same should be denied and dismissed for reason that Information will not lie in this instant case because, it is inappropriate, and does not constitute any of the basis upon which Bill of Information should be entertained.**
- 3. Further as to Count Two (2) above, Respondents say that the Honourable Supreme Court of Liberia has adhered to a long line of precedents with respect to Bill of Information, in which said Court held in several cases, to include:**

  - a. Liberia Aggregate Corporation, represented by its General Manager, Informant, v. Josiah Taylor, His Honour Frederick K. Tulay, Resident Circuit Judge, Sixth Judicial Circuit, et. al, Respondents, found in 35 LLR, Text at Page 6, "That from time immemorial, it has been the practice to come only by Bill of Information to the Court en banc if a Judge or any judicial officer attempts to execute the mandate of the Supreme Court in an improper manner..."**
  - b. Augustine Jappeh, Informant, v. Alpha and Aida Thian, Respondents, found in 35 LLR, text at P. 90, the Court held that "...ordinarily, a Bill of Information is resorted to only in answer to matters of contempt of the Supreme Court, in requests for the recusal of a Justice or Justices of the Supreme Court from hearing a particular matter before it, or more popularly, to bring to the attention of the Court irregularities or failure in the execution of an order emanating from this Court to some lower court or to some lower authority". Respondents say that no such allegations have been made against the Judge in the Court below and he has not been made a party to this Bill of Information. The ordinary course of event in this instant case is that, the Action of the Judge or Court below in the execution of the Court's mandate is the subject matter of the Bill of Information and therefore the said Judge should be made a party the information. In the case: Samuka Donzoe, Informant Vs. Napoleon B. Thormppe, et al, Respondents, (27 LLR), text at page 171, it is held, "...that a Court has no authority to enter a judgment or decree against anyone over whom it has no jurisdiction either by service of process or by voluntary appearance and submission to the Court's jurisdiction, and in order that he might have been made a party in the case, he must have been served with notice to appear to answer whatever charge had been made against him. Since the Sheriff, in our case the Judge (emphasis ours), was not made a party to these ...proceedings, we could not make any ruling or decision which would conclude him; and if what the Bill of Information alleges is correct, then he should have been named as the principal perpetrator of the alleged act to defeat the Court's Orders, according to the Informant."**



4. **Respondents say that notwithstanding the requirements mentioned hereinabove for the granting of a Bill of Information, however, the Informants have filed this unmeritorious Information without any legal justification. Hence, same should be denied and dismissed in its entirety.**
5. **That as to Count One (1) of the Bill of Information, Respondents say the same presents no traversable issue.**
6. **That as to Count Two (2) of the Bill of Information, Respondents say that the purported Will is not only a product of a deceit, fraud and falsehood, but same is also invalid and self-serving in that, the so-called Will is neither probated nor registered in keeping with law and the Will was never a subject of the proceedings in the Court below. Respondents say that the Informants cannot raise new issues before this Court for the first time, as this Court cannot take evidence and should not give credence to new matters raised before it for the first time.**
7. **Further as to Count Six (6) above, Respondents submit that assuming without admitting that the said purported Will is valid, nevertheless, the Late Ahamadu Sirleaf could not have willed the subject property to his wife, Sarah Sirleaf. The reason is that though Ahamadu Sirleaf was one of the sons of the Late Varfee Sirleaf, howbeit, the subject property was jointly owned by both Momolu Dukuly and Varfee Sirleaf as joint tenants. Further, the said Varfee Sirleaf predeceased his Co-tenant, Momolu Dukuly. Hence, under the Doctrine of Joint Tenancy, the Supreme Court held in the case: I.J. Hill, Named Executrices of an Instrument Offered for Probate as the Last Will and Testament of the Late Jestina A. Jackson Hill, Appellants, v. Selina Malinda Parker, Appellee, found in 13 LLR, text at Page 561, that; "where a joint tenancy exists, on the death of one of the joint tenants, the survivor takes the whole estate free from any charges on the property made by the deceased tenant; and on the death of the last survivor, the whole goes to his heirs or personal representatives. The Court also held that" it is a well settled principle of law that a joint tenancy cannot be severed by will of one of the tenants."**
8. **Therefore, Respondents say that under the same parity of reasoning, the said Varfee Sirleaf could not have willed this property to his son, the Late Ahamadu Sirleaf, neither could Ahamadu Sirleaf also, have willed it to his wife, the Late Sarah Sirleaf, as is being claimed by the Informants.**
9. **That as to counts three (3) through twelve (12) of the Bill of Information, Respondents say that during the trial of the Summary Proceedings to Recover Possession of Real Property filed by Informants/Petitioners, the Respondents challenged the Jurisdiction of the magisterial Court on the Subject Matter in that, Co-Respondent Yessim El-Bim has in his possession a valid Lease Agreement for the subject property which is a prima facie evidence of title. Said Lease Agreement was entered into since the 30<sup>th</sup> day of October, 2003, by and between the Administrator of the Intestate Estate of the Late Momolu Dukuly and Varfee Sirleaf, and Co-Respondent Yessim El-Bim, has been in possession of the subject property up to the institution of the Action of Summary Proceedings to Recover Possession of Real Property at the Magisterial Court. However, at trial, the Respondents filed a Motion to Dismiss on grounds that title was at issue but the Magistrate, His Honour John Gbetee, ignored, denied and set aside said Motion.**

*Attached hereto and marked as Exhibit R/1 is a copy of the said Lease Agreement. The simple issue is that title is involved in the case and was raised in the Magisterial Court which therefore put the matter beyond the jurisdiction of that Court. It is a rule in this jurisdiction, as found in 17 LLR, text at page 256, that, "But the defence that the Court lacks jurisdiction over the subject matter may be made at any time in the action until final judgment (on appeal if any appeal is taken), and the Court may at any time dismiss the action on that ground."*

10. *Further to Count (9) above, the Respondents say that on June 7<sup>th</sup> A.D. 2010, they filed a Summary Proceedings before His Honour Yussif D. Kaba, against the Magistrate His Honour John M. Gbetee, for proceeding wrongly. The Respondents herein contended in their Summary Proceedings that the Magistrate lacks trial jurisdiction over the subject matter to the effect that the Respondents herein, produced a Lease Agreement, and further that the Informants herein, also produced a purported Will as prima facie evidence of title. However, during the hearing of the Summary Proceedings, His Honour Yussif D. Kaba, ignored the fact that the Action of Summary Proceedings to Recover Possession of Real Property is beyond the subject matter jurisdiction of the Magisterial Court since title had been put in issue. Instead, His Honour Yussif D. Kaba sent a mandate to Magistrate Gbetee, ordering him to resume jurisdiction over said case. Therefore, the Magisterial Court resumed jurisdiction and entered a Default Judgment in favour of the Informants, knowing the fact that said Court is not legally competent to hear said case. Attached hereto in bulk and marked as Exhibit R/2 are copies of the Summary Proceedings, as well as the Mandate. The issue of subject matter jurisdiction, is firmly grounded in the laws of this Country and it is pronounced loudly in the case; Lamco J.V. Operating Company vs. James Verdier, (26 LLR, text at Page 448), that "Therefore a decision to hear the case on its merit does not preclude the raising of the jurisdictional issues, for 'to render a judgment binding, the court must have jurisdiction over the person and subject matter, otherwise the judgment is void and of no effect.'"*
11. *Further as to Count Ten (10) above, Respondents say that subsequently thereafter, the Respondents filed a Petition for a Writ of Prohibition, contending therein that whenever an Action of Summary Proceedings to Recover Possession of Real Property is instituted, and the question of title is put in issue, the case is taken from the category of Summary Proceedings to Recover Possession of Real Property to that of Ejectment. The Respondents also contended that the issue of subject matter jurisdiction is never waived, and can be raised at any stage of the trial, even up to the Supreme Court. Hence, the Respondents requested, in the Petition for Prohibition, for the Chamber Justice Her Honour Jamesetta Howard-Wolokolie to order that Judge Kaba should desist and be prohibited from issuing any Mandate in said case to the Magistrate to retain jurisdiction, or to take any further action thereto. Attached is a copy of said Petition and marked as Exhibit R/3.*
12. *Further as to Count Eleven (11) above, Respondents submit that predicated on the issues and the prayer contained in the Petition for the Writ of Prohibition, the Chambers Justice Her Honour Jamesetta Howard-Wolokolie cited both Magistrate John Gbetee and His Honour Judge Yussif D. Kaba to a conference.*

*During the conference, both Magistrate John Gbetee and His Honour Judge Yussif D. Kaba conceded that indeed the Magisterial Court lacked jurisdiction over the subject matter. Hence, as the result of this concession, Her Honour Wolokolie sent a Mandate to the Court below, specifically indicating therein that both Magistrate John Gbetee and His Honour Judge Yussif D. Kaba had conceded that the Magistrate has no jurisdiction over said case, and was therefore ordered from proceeding therein. Respondents request Your Honours to take Judicial Notice of Informants Exhibit 1/10 to verify the averments contained herein.*

- 13.** *Further as to Count Twelve (12) above, Respondents affirm and confirm that Her Honour Wolokolie cited both magistrates John Gbetee and His Honour Judge Yussif D. Kaba for a conference, and that the Informants are falsely inferring that Her Honour, the Chambers Justice, Justice Wolokolie, acted inappropriately which behaviour on the part of the Informants has the propensity of placing a dark cloud on the reputation of the Chambers Justice, and more so, impugning the dignity of the Honourable Court. (See also the citation in 27 LLR, text at 171.*
- 14.** *That as to the entire Bill of Information, Respondents deny all and singular the allegations not specifically traversed in these Returns."*

For the purpose of clarity, it is necessary at this point to organize these information proceedings into two sets of events. For the first part, it seems that a clear picture could be painted if we, first and foremost, chronicle the facts and circumstances surrounding the action of summary proceeding to recover possession of real property which was instituted in February, 2008, at the New Kru Town Magisterial Court. This first set of narratives illustrates the various back and forth movements by the parties and their lawyers between the New Kru Town Magisterial Court and the Circuit Court levels and from one assigned Judge over the Sixth Judicial Circuit to another. This will take us to the filing of the bill of information, now before us, the issuance by this Court of a writ thereon, and the filing of returns thereto, thereby completing the first set of facts.

Thereafter, we will proceed to the second set of facts. This would be a review of the proceedings, events and circumstances undertaken by the parties subsequent to the issuance of the writ on November 22, 2010, on account of the bill of information. It will seek to highlight all further actions undertaken by lawyers, contrary to the order of this Court contained in the writ of November 22, 2010. This would help us in our efforts to properly analyse and carefully examine the factual and legal grounds upon which these information proceedings have been instituted as well as arm us with an appropriate answer to the primary issue generated by these proceedings: whether there is sufficient basis, both in fact and in law, to authorize the granting of this information.

As to the first set of facts and events, we have gleaned from the certified records that Co-respondent in these proceedings, Essam El-Bim, et al., as plaintiffs, on February 28, 2008, instituted an ***“Action of Summary Proceedings to Recover Possession of Real Property”***. A writ of summons, venued before His Honour, Sylvester D. Rennie, Stipendiary Magistrate, was then issued out of the Bushrod Island New Kru Town Magisterial Court, naming Mr. and Mrs. Amadou T. Bundu, CEO, Door to Door Enterprises, (MNOSU Shipping), and all those under their authority, as party defendants.

In that complaint before the Magisterial Court, the plaintiffs complained that the named defendants, described as tenants-at-will, were wrongfully withholding their premises, a warehouse, lying and situated at Jamaica Road, Bushrod Island, Monrovia, Liberia. Plaintiffs further averred that though the named defendants were declared undesirable tenants and repeatedly notified to vacate the premise, said defendants had failed, refused and neglected to vacate the premises. Plaintiff had therefore come seeking the court’s assistance to have the defendants evicted and removed from the said premises and have the plaintiffs placed in full possession thereof. Plaintiffs also prayed the court to assess all the costs of the action against the defendants. The writ which was returned served ordered the defendants named therein to appear on Thursday, March 6, 2008, to answer to plaintiff’s complaint.

We must note here that the records transmitted to this Court are massively scanty in recounting the events which transpired following the issuance of the Writ of Summons of February 28, 2008, and its subsequent service on the parties defendant. We have also gathered from the transmitted records to this Court that a time interval of well over twenty (20) months existed between the periods, May 5, 2008, when Senior Associate Magistrate Faryen, Sr., issued a ***“court’s order”***, alluding to the conduct of a new trial, and March 19, 2010, the date when the Sixth Judicial Circuit Court ordered the New Kru Town Magisterial Court to conduct a ***trial de novo***. As to the time period between these two, May 5, 2008 and March 19, 2010, there is a conspicuous void of any significant account of the proceedings, if any, had in the original suit.

What is apparent from inspection of the minimum records available to us is that after a rather long agonizing wait, a trial de novo was ordered conducted by the Sixth Judicial Circuit Court on March 19, 2010. We have also discovered some records containing

a ***“mandate”***, issued under the signature of Ellen Hall, Clerk of the Sixth Judicial Circuit Court for Montserrado County, dated March 19, A. D. 2010, transmitting the following mandate:

***“By directive of His Honour, Yussif D. Kaba, Resident Circuit Judge presiding over the Sixth Judicial Circuit Court, Montserrado County, Republic of Liberia, the above named Respondent Petitioner (Magistrate John M. Gbetee), is hereby mandated to conduct a trial de novo, while the keys are in possession of the said Magistrate pending the outcome of the trial. AND IT IS HEREBY SO ORDERED.”***

We must remark here also that Judge Kaba’s mandate of March 19, 2010, referred to hereinabove, directed to Magistrate Gbetee, on its face, made no reference to the mandate previously ordered issued by Mr. Justice Kabineh M. Ja’neh, Madam Justice Howard Wolokolie’s immediate predecessor in Chambers. The Circuit Judge’s mandate nevertheless appeared to have emanated from that of Mr. Ja’neh. According to the records, a mandate dated February 19, 2010, was issued on the order of Chambers’ Justice Ja’neh by the Clerk of the Supreme Court.

The said February 19, 2010 mandate reads in substance as follows:

***“By directive of His Honour, Kabineh M. Ja’neh, Associate Justice presiding in Chambers, you are hereby mandated to resume jurisdiction in the above captioned case and order the Magistrate to conduct a trial de novo while the keys are to remain in possession of the Magistrate Court pending the outcome of the trial.”***

The Chambers Justice’s mandate of February 19, 2010, as quoted above, appears to have been the outcome of a mutual agreement reached by and between the parties. This settlement seemed to have been prompted by the utter lack of any evidence in the records to support a conclusion that a regular trial was ever conducted which accorded the parties the due process right to defend and protect their property interest. This appeared to be the reason why none of the parties excepted to, or registered any disagreement to the Chambers Justice’s mandate an issued that the Magisterial Court conduct a trial de novo in the cause of “Summary Proceeding to Recover Possession of Real Property”. However, it would seem that the Chambers justice’s mandate of February 19, 2010 as well as Circuit Court’s mandate of March 19, 2010 to the New Kru Town, directing that a trial *de novo* be conducted, was not immediately complied with by the New Kru Town Magisterial Court.

Further inspection of the records reveals that on May 5, 2010, forty four (44) days after the Supreme Court's mandate was issued, His Honour, Peter M. Faryen, Sr., Senior Associate Magistrate, issued the following *"court's order"* to the Magistrate Police or Deputy:

***"You are hereby commanded to proceed to the premises which are the subject of these proceedings and have the warehouse opened which was locked up by this Honourable Court. That the case in point is being tr[ied] de novo- a new basis- and therefore all the parties are to rerun to their status-quo-anti pending the hearing into this case anew.***

***You are further commanded to file your official returns as to the manner this service was carried out. And for so doing, this shall constitute your legal and sufficient authority..."***

It would appear that Jones & Jones, representing the respondents/defendants, was dissatisfied with the May 5, 2010 directive, aforementioned, issued by the Senior Magistrate.

Respondents/Defendants' Counsel, Jones and Jones, again fled to the Circuit Court, where His Honour Yussif D. Kaba, was presiding and on June 7, 2010, again filed a five (5) count "summary proceeding" against the Magistrate. To which Kemp & Associates, representing the herein Informants, Ahmadu V. Sirleaf, III and Bartu Dorley, also filed a seven (7) count returns, dated June 9, 2010.

In summary, Jones and Jones contended that the magisterial court did not have jurisdiction over the subject-matter for reason that title was at issue. Counsel to have an existing leasehold title and vigorously contended that the Magisterial Court could not therefore determine title controversy of the premises in issue as a matter of law.

But in their resistance, counsel for the respondents/plaintiff, Kemp and Associates maintained that petitioners' allegation that title was in issue had no legal basis. Counsel Respondents attacked the legal sufficiency of petitioners' purported lease which, according to counsel, indicated no metes and bounds and actual location of the premises said to have been leased. Respondents also claimed that the petitioners' power of attorney had been revoked; hence the occupancy terminated. Counsel therefore submitted that the magistrate ruled properly on the motion to dismiss the proceeding because it was solely intended to delay the case.

The records are unclear whether any hearing was had on the petition and returns thereto by Judge Yussif D. Kaba. We gather nevertheless from our inspection of the records that on June 9, 2010, the below mentioned mandate was sent to the Stipendiary Magistrate, New Kru Town Magisterial Court, His Honour John M. Gbetee. It reads thus:

**"Court's Mandate**

***By orders of His Honour, Yussif D. Kaba, Resident/Assigned Circuit Judge, Sixth Judicial Circuit, Civil Law Court for Montserrado County, sitting in its March Term, A.D. 2010, you are hereby MANDATED to resume jurisdiction over the case from which the above named summary grew and proceed in keeping with law."***

Aggrieved once again with Judge Kaba's mandate, mentioned herein above, Jones & Jones, as counsel for Yessim El-Bim, et al., on September 20, 2010, again filed a petition seeking a Writ of Prohibition before the Justice in Chambers, Her Honour, Jamesetta Howard Wolokolie. The action taken by the Chambers Justice on the nine- (9) count petition for a Writ of Prohibition has triggered the information proceeding at bar. It would seem appropriate therefore, and for the benefit of this Opinion, to reproduce the said petition in its entirety.

- "1. Your Petitioners say that a Writ of Prohibition is directed to the Judge and parties to a suit in any court, commanding them to cease from prosecuting the suit on the suggestion that either the original Action, or some collateral matter arising therein does not belong to that jurisdiction, but to the cognizance of some other court. Petitioners are filing this Petition and directing it against both the court and the parties to the cause. Hence Prohibition will lie (37LLR, Page. 131, syl. 3.text @ 133).***
- "2. Your Petitioners say that Prohibition is the proper remedial process to restrain an inferior court from giving a temporary order for the Magistrate to retain jurisdiction in a case which the magisterial court lacks trial jurisdiction, and has attempted to proceed by rule different from those that ought to be observed at all times. And that Prohibition is the proper remedy in this instant case.***
- "3. Your Petitioners are the Defendants in the Action of Summary Proceedings to Recover Possession of Real Property brought by the Co-Respondent the Intestate Estate of the Late Sarah Sirleaf mentioned herein above. At trial, the Petitioners challenged the Jurisdiction of the Magisterial Court on the Subject matter in that, the Petitioners herein have in their possession a valid Lease Agreement for the subject property which is a prima facie evidence of title, said Lease Agreement was entered into since 30<sup>th</sup> day of October A.D. 2003 and Petitioners put in possession of the subject property and have continued to be in possession up to the institution of the Action at the Magisterial Court. However, the Magistrate His Hon. John M. Gbetee, ignored, denied and set aside the Petitioners Motion to Dismiss, to which the Petitioners gave notice to Court that they would take advantage of the statute provided for in such cases. Attached hereto and mark as Exhibit P-1 is a copy of the Lease Agreement.***

- "4. Your Petitioners say further, that on June 7<sup>th</sup> A.D. 2010, they filed a Summary Proceedings before the Co-respondent Judge Yussif D. Kaba, against the Magistrate His Honour John M. Gbetee, for proceeding wrongfully. Petitioners contended in their Summary Proceedings that the Magisterial Court lacks trial jurisdiction over the subject matter to the effect that Petitioners produced a Lease Agreement, as prima facie evidence of title. However, during the hearing of the said Summary Proceedings, His Hon. Judge Yussif D. Kaba, ignored the fact that the Action of Summary Proceeding to Recover Possession of Real Property is beyond the subject matter jurisdiction of the Magisterial Court since title has been put into issue. Attached hereto and make as Exhibit P-2 in bulk are copies of the Petition and the Mandate.**
- "5. Your Petitioners say in furtherance thereof, His Honour Yussif D. Kaba sent a Mandate to the magistrate to resume jurisdiction and proceed in keeping with law. Therefore, the Magisterial Court resumed jurisdiction and granted a Default Judgment in favour of Co-Respondent, the Intestate Estate mentioned herein above, knowing the fact that said Court is not legally competent to hear the said case.**
- "6. Subsequently thereafter, the Petitioners filed another Summary Proceedings against His Hon. John M. Gbetee, on the 25<sup>th</sup>, day of June A.D. 2010 the matter was heard and determined. However, His Hon. Judge Yussif D. Kaba denied Petitioners' Petition giving a temporary Order for the Magistrate His Hon. John M. Gbetee to retain jurisdiction and enforce the Default Judgment that was early issued. Attached hereto and mark Exhibit P-3 is copy of the Summary Proceeding.**
- "7. Your Petitioners say that it is unequivocally stipulated in the case Sheik Kafumbah Konneh Vs. His Honour Hall W. Badio and Morris Jackson, found in 37 LLR, at page 584, "the rule which obtains in our jurisdiction in real property actions is that whenever an Action of Summary Proceedings to Recover Possession of Real Property is instituted, and the question of title is put in issue, the case is taken from the category of Summary Proceedings to that of an Action of Ejectment which, in most cases, contains both issues triable by a jury under direction of the court; but the Judge sitting alone lacks the jurisdiction to hear and decide the issue of title without the aid of jury, except he was so expressly requested by the parties who must expressly waive jury trial." In the instant case, relative to the facts, law and circumstances, Petitioners say that Prohibition is the proper and only remedy for relief.**
- "8. Your Petitioners say that in this jurisdiction the issue of subject matter jurisdiction is never waived and can be raised at any stage of the trial, even up to the Final Judgment of the Supreme Court. This case is no exception to the said law, in that at the Magisterial Court, Petitioners herein challenged the jurisdiction of the said Court over the subject matter, the Court denied same and the Petitioners went on Summary Proceedings at the Sixth Judicial Circuit Court, Montserrado County, which also denied the issue of subject matter jurisdiction.**



**“9. Your Petitioners say a Writ of Prohibition will lie to prevent an inferior court or other tribunal from assuming jurisdiction with which it is not legally vested, in cases where wrong, damages and injustice are likely to follow from the action (39 LLR, Page 549, Syl, 2 text @ 557).**

**“WHEREFOR AND IN VIEW OF THE FOREGOING, Petitioners most respectfully prays Your Honour to issue the Alternative Writ of Prohibition, ordering the Respondents herein to appear before Your Honour to show cause, if any, why the Petitioners Petition should not be granted and the Peremptory Writ issued, with cost against the Respondents. And to further order that the Co-Respondent His Hon. Judge Yussif D. Kaba, immediately desist and be prohibited from issuing any mandate in this case to the Magistrate to retain jurisdiction, or to take any other action until otherwise ordered by Your Honour; and following the hearing of this Prohibition, to dismiss the Action of Summary Proceedings to Recover Possession of Real Property as filed in the Magisterial Court without prejudice to the aggrieved party to bring the proper Action if so desired; granting unto Petitioner all other and further relief as may be deemed just, legal and equitable in keeping with law.”**

When Jones & Jones filed the aforementioned petition for a Writ of Prohibition, Madam Justice Jamesetta Howard-Wolokolie, acting thereon, ordered a conference. The records before us indicate that all parties were cited, although the Marshall’s returns provides inadequate showing of service of the citations on all the parties. The Chambers Justice, on September 21, 2010, following the scheduled conference, ordered, and the mandate, subject of these information proceedings, was duly issued.

As we earlier indicated, the propriety of the issuance of this mandate is the subject of these information proceedings. We note, however, that the Marshall’s Returns on whether all parties were duly served seem inconclusive. At the same time, it is of paramount importance to note that at the time the Chambers Justice entertained the petition for the Writ of Prohibition, lawyers for both parties, Jones & Jones as well as Kemp & Associates, were all with full knowledge that a writ had been issued on the bill of information by the orders of Mr. Chief Justice Johnnie N. Lewis. The two were fully aware also that the core directive contained in that writ directed all the parties to stay any and all further proceedings in the matter.

This Court must avail itself of this opportunity to emphasize a cardinal point of law. It is an elementary principle of law in this jurisdiction that mandates issued by the Honourable Supreme Court must be strictly executed by subordinate courts and all persons thereof. **Mr. & Mrs. Fofana v. Toe**, 39 LLR, 25, 29 (1998).

It is the law in this jurisdiction also that a mandate from a court, especially one from the Supreme Court, as in the case at bar, is a command that must be obeyed by all persons and inferior court judges. We must emphasize here further that the issuance and service of the Writ on the parties, as in the case at bar, *de jure*, effects a stay on all further proceedings. It therefore naturally follows that any subsequent actions taken by a party in the face of the 'Stay Order' would qualify that party as a contemnor before the Honourable Supreme Court of Liberia. The records reveal that one year following the issuance of the Supreme Court's stay directive, the respondent's counsel, Jones & Associates, in complete disregard of this mandate took further steps by placing a six count bill of information, dated November 11, 2011, before His Honour Peter W. Gbeneweleh, then presiding over the Sixth Judicial Circuit Court for Montserrado County.

In further disobedience of the Supreme Court's mandate, at the instance of Jones & Jones, His Honour Peter W. Gbeneweleh, on November 11, 2011, acted on the counsel's bill of information by ordering the issuance of the following "*court's Order*", addressed to the Sheriff of the Civil Law Court, *Captain Folie V. Kamara*.

**"GREETINGS:**

***Consistent with a Judge's orders dated and filed November 11, A. D. 2011, relating to the above captioned cause of action, you are hereby ordered to proceed to the property, subject of this Bill of Information and have same locked and keep the keys in your possession, pending the outcome of the hearing of this matter or until further orders of this Honourable Court.***

***The property is hereby known as Yazza, situated and lying on the Jamaica Road, Bushrod Island, Montserrado County, Liberia.***

***You are further ordered to make returns as to manner and form in which this is executed on/or before the 21<sup>st</sup> day of November, A. D. 2011. Hence, this our order."***

The filing by Jones & Jones of the bill of information as well as the order made thereon by Judge Gbeneweleh, was clearly in further violation of the mandate of the Supreme Court. It is further our considered Opinion that the filing of this bill of information by Jones & Associates, in the face of the November 22, 2010 mandate of the Supreme Court, was equally contemptuous.

The pivotal question therefore is whether the facts and circumstances attending to these information proceedings form an adequate basis to authorize the granting of the information before us.

Our answer to this question is a resounding no. In our Opinion, to grant information under the facts and circumstances herein detailed would amount to awarding a party's disregard and snubbing of the mandate of the Supreme Court. It would certainly be abetting obstinacy. We are under a legal duty never to sanction any such loathsome conduct especially by any member of this Bar, in any form, shape or character.

We will consider whether the acts by the lawyers to withhold and conceal vital information from the Justice in Chambers, thereby significantly frustrating the administration of justice, is a ground factually and legally to deny and dismiss the information and also attach the counsels in contempt of court.

This brings us to the second set of facts and the events that ensued subsequent to the issuing by the Honourable Supreme Court of the Writ of November 22, 2010.

We also gathered from the records transmitted to us that almost twelve (12) months after the issuance and service of the November 22, 2010 Writ by the Supreme Court, ordering that all papers in the case to be forwarded to the Full Bench, the New Kru Town Magisterial Court, on October 11, 2011, at the instance of the parties, represented by their respective counsel, issued Notices of Assignment in the original cause, Summary Proceeding to Recover Possession of Real Property. The parties were notified to appear before the said Magisterial Court on November 3, 2011 for "*regular hearing*". There is no showing that any of the counsels informed the Magisterial Court that the matter said court sought to hear was in fact squarely before the Honourable Supreme Court of Liberia. None of the parties made any attempt as a matter of record, to inform the magistrate court Circuit, let alone, the Honourable Supreme Court, that a court of law was seeking to interfere with a matter squarely before the Supreme Court. In our Opinion, the issuance of these Notices of Assignment by the Magisterial Court without any evidence of protest from any of the counsels, constituted further despicable disobedience of the mandate of the Supreme Court by all the parties involved.

As to question whether the September 21, 2010 mandate by Chambers Justice Wolokolie, having stemmed from a conduct of concealment to mislead the Court, could form a sufficient factual and legal basis to warrant the granting of information, we also answer in the negative.

Our careful review of the records reveals that the mandate prompting the informants to institute these information proceedings was issued by Madam Justice Howard Wolokolie, then presiding in Chambers, on September 21, 2010. We note that up to the filing of the petition for writ of Prohibition, neither the informants in these information proceedings nor the respondents brought to the attention of Justice Wolokolie that her immediate predecessor Justice presiding in Chambers, seven months earlier, on February 19, 2010, had issued a mandate in the matter.

The counsels' conduct was simply one of withholding and concealing of vital information from the Court. The various petitions filed at different periods by both counsels, as entered on the records certified to us, as well as their respective returns to those petitions had one common theme: their narrations of the facts were tailored substantially at the expense of full disclosure. Each side related the facts and attendant circumstances only to the extent the story supported the position the lawyers at that point sought to protect. None of the counsel attempted to inform the Chambers Justice that a mandate had in fact been issued on February 19, 2010, directing that a trial *de novo* be conducted in the original suit. No such information was disclosed even by fleeting reference. To the contrary, the records clearly reveal that Justice Wolokolie's attention was called to the February 19, 2010 for the first time on November 15, 2011, more than twenty months after the issuance of her predecessor's mandate, though the lawyers knew this all along.

For the benefit of this Opinion, we have deemed it most appropriate to reproduce word for word, the November 15, 2011 seventeen count-count bill of information filed by Jones & Jones, belatedly disclosing this important piece of information:

1. ***That is the plaintiff in the main Action of Summary Proceedings to Recover Possession of Real Property filed before the Bushrod Island Magisterial Court and Informant in the Bill of Information filed before the Sixth Judicial Circuit, Civil Law Court from which the Bill of Information grows.***
2. ***Informant informs this Honourable Court that at the conclusion of the Summary Proceedings to Recover Possession of Real Property, the Magistrate the, His Honour, John Gbetee, handed down a ruling which was contrary to law and also injurious to Informant.***
3. ***Informant says that predicated upon said erroneous Ruling, Informant filed a Summary Proceedings before His Honour Yussif D. Kaba, Resident Circuit Judge of the Sixth Judicial Circuit, Civil Law Court. Contending therein that the Magistrate's Ruling was contrary to law and injurious to the Informant and therefore informant prayed Court to have the said Magistrate restrained from further proceeding with said matter and that Informant/Plaintiff be possessed of his property.***

4. ***Informant says further to Count Three (3) above, the Sixth Judicial Circuit, Civil Law Court entertained arguments from both sides and ruled setting aside the Ruling of the Magistrate and ordered that Defendants be ousted and evicted and the Informant be repossessed of his premises.***
5. ***Informant says that to the Ruling of His Honour Yussif D. Kaba, Resident Circuit Judge, Sixth Judicial Circuit, Civil Law Court, the Magistrate His Honour John M. Gbetee subsequently filed before the Chambers Justice, His Honour, Kabineh M. Ja'neh, Associate Justice presiding in Chambers, a petition for a Writ of Prohibition for and on behalf of Co-respondent Mr. & Mrs. Amadu Bundu as their counsel.***
6. ***Informant says that His Honour Kabineh M. Ja'neh cited the parties herein for a Conference and during the hearing of the petition, Informant thru his counsel informed the Chambers Justice at the conference that the Magistrate, His Honour John M. Gbetee, was serving in dual capacities, as lawyer for the Co-respondent Mr. & Mrs. Amadu Bundu as evidenced of the Petition filed before this Court and [by] Magistrate. This fact was not denied by the said Magistrate however, the Chambers Justice proceeded with the Conference.***
7. ***Informant says at the conclusion of the said Conference, the Justice in Chambers, on the 19<sup>th</sup> day of February, A. D. 2011[2010], sent down a Mandate to His Honour Yussif D. Kaba, Resident Circuit Judge of the Sixth Judicial, Civil Law Court, to have the Magistrate Court resume Jurisdiction and the matter tried de novo while the keys of the property subject of this case be in possession of the said Magisterial Court pending the final outcome of the case. The Mandates of the Chambers Justice and the Civil Law Court referred to herein are attached hereto and marked in bulk as Informant's Exhibit I/1.***
8. ***Informant says that the Mandate of the Chambers Justice of the Honourable Supreme Court was subsequently sent down from the Sixth Judicial Circuit Court, to the Bushrod Island Magisterial Court. Further, upon the reading of the Mandate at the said Magisterial Court, His Honour John M. Gbetee recused himself from the case and assigned the matter to the Senior Associate Magistrate, His Honour Peter Faryen.***
9. ***Informant says that he prayed and secured a Notice of Assignment for the trial of the case de novo, while the matter was still pending undetermined, on the 5<sup>th</sup> of May, A. D. 2010, His Honour Peter Faryen without any subsequent Mandate and the participation of the Informant, ordered the Sheriff of the said Magisterial Court to proceed onto the premises unlocked same and place the Co-respondent Mr. & Mrs. Amadu Bundu in possession. The order referred to herein is attached hereto and marked as Informant's Exhibit I/2.***
10. ***Informant says that on the basis of this ultra-vires act of the said Magisterial Court, His Honour Peter Faryen, Informant again filed a Summary Proceedings, on May 12, 2010, essentially contending that the Magistrate acted in total disregard to the Mandate of the Chambers Justice of the Honourable Supreme Court. This Summary was heard and a subsequent Order was sent down to the Magistrate, His Honour Peter Faryen to resume jurisdiction and enforce the Mandate of the Chambers Justice of the Honourable Supreme Court.***

11. ***Informant says that upon receipt of this subsequent Mandate from the Sixth Judicial, Civil Law Court, the said Magistrate on the 10<sup>th</sup> day of October, A. D. 2011, ordered the Sheriff of the said Court to proceed to enforce the Mandate of the Chambers Justice of the Honourable Supreme Court. While the case was scheduled for hearing on Saturday, November 12, 2011, the Magistrate, His Honour Peter Faryen, on Friday, November 10, 2011, without any subsequent Mandate from the superior Courts, again ordered the Sheriff of the said Court to proceed to the property subject of this matter, have same unlocked and place Co-respondents Mr. & Mrs Amadu Bundu, in possession. Copies of the Mandate of the Civil Law Court and the Magisterial Court instruction of October 10, 2011 are attached hereto and marked in bulk as Informant's Exhibit I/3.***
12. ***Informant says that even though the act of the Magistrate is very injurious to him, the same is a gross disrespect and disregard to the Honourable Supreme Court and therefore he filed a Bill of Information before His Honour Peter W. Gbeneweleh, Assigned Circuit Judge of the Sixth Judicial, Civil Law Court, informing said Court therein that the Magistrate has again disrespected and disregarded the Honourable Supreme Court's Mandate. Subsequently, the said Circuit Judge, mandated the Clerk of the Circuit Court to order the sheriff of the Civil Law Court to proceed to the said property, have same locked and the keys be in the possession of the Civil Law Court pending the outcome of the case.***
13. ***Informant says that on the 12<sup>th</sup> day of November, A. D. 2011, while the Sheriffs of the Civil Law Court were at the premises enforcing said order, the Circuit Judge, His Honour Peter W. Gbeneweleh, without any subsequent order from the Chambers Justice of the Supreme Court or the acquiesce of the Informant, surprisingly ordered the said Sheriff to halt the enforcement of the Mandate of the Supreme Court. See attached hereto a copy of the Order of the Civil Law Court referred to herein and marked as Informant's Exhibit I/4.***
14. ***Informant says that a Bill of Information is the proper action opened to a party contending that a Mandate of the Supreme Court is being wrongly or erroneously enforced. In the instant case, the manner in which the Mandate of the Honourable Supreme Court is being disrespected and disregarded in its execution has the propensity to discredit the interiority of the Court and to ask if the rule of law is being upheld by those authorized by law to enforce them.***
15. ***Informant says that since the inception of the Action of Summary Proceedings to Recover Possession of Real Property which clearly states that title is not at issue and moreover the Co-respondents herein are tenants of the Informant. The Bushrod Island Magisterial Court has demonstrated a high level of interference and partiality as narrated herein above. Copies of receipts and letters from Co-respondents requesting for time to liquidate their rental payments are attached hereto and marked in bulk as Informant's Exhibit I/5.***
16. ***Informant says that the Supreme Court held in the case: Liberia Aggregate Corporation et al vs. Josiah Taylor (35 LLR) text at page 8, that in order for the Supreme Court to entertain Information, the case must have either been pending before or decided by it, there must appear to be a usurpation of the***

*province of the Court by the Respondents, there must exist some irregularities or obstruction in the execution of the Court's Mandate, or there must have been a refusal to carry out the Court's Mandate or order. As narrated herein above, in the instant case, Information is the proper remedy for the Informant herein to be granted the relief sought.*

17. *Informant says that the Court is the last place of hope for man on earth and therefore the judge therein presiding must live above reproach, as in the instant case, the Magistrates of the Bushrod Island Magisterial Court have baffled this case to the detriment of the Informant in that this case was filed before the said Magisterial Court since 2008 and has not been decided. Copy of the Writ of Summons from the Bushrod Island Magisterial Court, New Kru Town, referred to herein is attached hereto and marked as Informant's Exhibit I/6.*

***WHEREFORE, and in view of the foregoing law, facts and circumstances, Informant most respectfully prays this Honourable Court, to order the Clerk of this Court to cite the Respondents herein to appear and show cause why this Bill of Information should not be entertained and why this Court should not reaffirm the Ruling of the Sixth Judicial, Civil Law Court, that the Magisterial Court Ruling be set aside and ordered the Informant repossessed of his premises and grant onto your humble Informant all further relief that Your Honour and this Honourable Court may deem just and legal as justice demands."***

Closely examined, the bill of information filed by Jones & Jones, quoted herein above, for the first time sought to inform Chambers Justice Howard Wolokolie that this matter had earlier been brought before her predecessor Justice in Chambers; that a conference was had with the parties and a mandate dated February 19, A. D. 2010, sent down to His Honour Yussif D. Kaba, Resident Circuit Judge of the Sixth Judicial, Civil Law Court, which directed that the Magisterial Court resume Jurisdiction and have the action of summary proceeding for possession of real property tried *de novo*; that the February 19, 2010 mandate, has remained unenforced up to and including the November 15, 2011, the date of filing of the petition for a Writ of Prohibition.

In our judgment, the entire episode represents a classic case of concealment of vital information from the Court at the deliberate instance of the lawyers. Under these circumstances, this Court wonders how the complaint set forth in the bill of information against the Justice's conduct, triggered by that concealment, can be regarded as justified? It will be awesome if we did not take into account the immediate action taken by the Chambers Justice the very moment she was provided the requisite information. She wasted no time in ordering the parties cited to a conference. Even at that conference, convened on November 22, 2011, the records are again void of any showing that Kemp & Associates, representing the informants, or Jones & Jones, as lawyers for the respondents, in furtherance of their conduct of concealment, provided no scintilla of information to the

Justice in Chambers; the lawyers said nothing to Chambers Justice about the fact that the Full Bench of the Honourable Supreme Court was seized of this very matter as of November 2010 upon the issuance of a writ by the Chief Justice in which the entire case was ordered forwarded to the Supreme for appellate review. Both counsels, for whatever reason/s, neglected failed to bring this vital information to the Chambers Justice's attention. This is a disturbing conduct demonstrating a clear failing by both counsels to conduct themselves at all times in a manner that would not mislead a court of law, and in the instant case, to misinform a Justice of the Supreme Court.

Secondly, the mandate complained of, though a product of deliberate concealment, was in fact never ever enforced as the Justice herself overturned same when she learnt of the prior mandate issued on February 19, 2010 by her predecessor colleague. Her conduct was reaffirmation of the long held principle in this jurisdiction that no Justice of the Supreme, including the Justice in Chambers, could properly proceed to examine a matter the Supreme Court is seized of without being expressly authorized to do so by the Supreme Court *en banc*. *Larsannah et al. v. Shannon-Walser*, 30 LLR 268, 270 (1982); *Mahmoud v. Pearson*, 37 LLR 3, 11 (1992).

This standing principle of law is affirmed in *Management of Farrell Lines/Denco Shipping Lines and the Bureau of Labour Standards v. Judge Arthur K. William et al.*, 35 LLR 476, 484-S (1988). In that case, His Honour, Judge Arthur K. William, having been served a stay order issued on the orders of the Justice in Chambers proceeded with the case in disregard thereof. He went ahead entering a ruling and approving the bill of exceptions in the case.

Speaking to this conduct in the cited case, the Supreme Court said:

***“The judge below acted illegally when with due notice of the pendency of the case, before the Justice presiding in Chambers, proceeded to hear the case, ruled on it and approved the bill of exceptions, long after the receipt of the mandate, such acts are void ab initio and therefore had no legal validity.***

***Under these circumstances, we are constrained to uphold the position taken by our distinguished colleague in Chambers in respect to the fine \$500.00 imposed on Judge Arthur K. Williams of the National Labour Court.”*** Id. 485.



It is therefore our considered view that to grant this information under these facts and circumstances, as the informant urges us to do, would clearly amount to this Supreme Court aiding and rewarding incalcitrant party to engage in zealous snubbing of the Supreme Court's mandate. This Court can neither subscribe to, nor sanction any such despicable conduct. Further, having concluded that the lawyers on both sides of the aisle did not strictly obey the November 22, 2010 mandate, we shall now direct our reflection to the obvious dictates of the law where such disregard of the Supreme Court's mandate has been identified.

The position taken by the Justice in Chambers, even threatening to attach the respondent court officers in contempt of court if they fail to immediately enforce her predecessor Chambers Justice's mandate of February 19, 2010, expressly demonstrates that the "**Concession Mandate**", complained of by the informants' counsel, Kemp & Associates, was the outcome of concealment and lack of full disclosure to Madam Justice Howard Wolokolie and same cannot be a sufficient justifiable ground to grant the bill of information. In our considered Opinion, Justice Howard Wolokolie's earlier mandate was nothing but a direct consequence of infidelity and concealment thereby misleading the Court. Information will not be granted where a Justice's conduct was the direct outcome of lack of full and accurate disclosure to the Justice of the material facts and circumstances surrounding the case.

At various times, the lawyers for the parties took actions in this very cause of action long after being ordered by the Supreme Court to desist from any further engagement. Our inspection of the certified records clearly reveals that both counsels totally snubbed and disregarded the mandate of the Supreme Court, contained in the November 22, 2010 writ, to effectively stay all further proceedings in the entire cause. Contrary to this mandate, and as if no such mandate had been issued, and notwithstanding the irrefutable evidence that said mandate was duly served on all the parties, counsels for the parties, Kemp and Associates, Inc. for the Informants and Jones & Jones for the respondents, continued to pursue the cause unheeded, as if no mandate to forward all the instruments in the case to the Nation's Highest Court, had in fact been served on them.

Having painstakingly reviewed the records, the facts and circumstances as related in the records transmitted under the seal of the Supreme Court of Liberia, it is hereby concluded as indicated in the hereunder stated enumerations to wit:

- (1). The Chambers Justice Wolokolie's mandate of November 22, 2011, reaffirming and further ordering the enforcement of her predecessor Justice in Chambers' mandate of February 19, 2010, same being consistent with law, is hereby confirmed. Consequently, and consistent therewith, a trial de novo of the original suit: "Action of Summary Proceeding to Recover Possession of Real Property" is hereby confirmed as well as ordered to be proceeded without any further delay.
- (2). We have determined that the Chambers Justice's mandate of September 21, 2010, precipitating the information proceedings before us, was the direct result of concealment by both counsels of material information respecting the proceedings had both at the lower court as well as that the Justice in Chambers. This Court has said repeatedly that one who comes to equity or seeking the favour of the court must come with clean hands. The case before us clearly reveals the exact opposite. To grant a bill of information complaining of a mandate issued by the Chambers Justice induced by concealment of the parties, would amount to aiding a party in its wrong doing. Where there is a clear showing, as demonstrated in these proceedings, that the parties including the informants outrageously disregarded the Supreme Court's mandate and concealed material information from the Justice in Chambers, the Supreme Court will refuse to grant a bill of information. This information is hereby denied.
- (3). It is the law controlling that any person who disregards the mandate of the Honourable Supreme Court can be properly attached in contempt of court and a penalty imposed commensurate with such contumacious conduct. Consistent therewith, and having determined that both counsels, Jones & Jones and Kemp & Associates disregarded the November 22, 2010 mandate of the Supreme Court by engaging in further proceedings, the two lawyers are each fined the amount of **US\$300.00 (Three Hundred United States dollars)**. The fines are ordered paid in the National Treasury within 72 (seventy Two) hours as of the rendition of this Opinion and evidence of payment exhibited to the Marshal of the Supreme Court.

***The Clerk of this Court*** is ordered to issue a mandate directed to the judge presiding in the court below to resume jurisdiction over the case and give effect to this judgment. Costs are to abide final determination. **AND IT IS HEREBY SO ORDERED.**