

KOKO JAYGAR and **HARRY ARTIS**, Alias **SAYPAYDAY**, Petitioners, v. **JUDUBAR, DEAYUGAR, et al.** and **HIS HONOUR M. FULTON YANCY**, Circuit Judge presiding by assignment over the People's Circuit Court for the Second Judicial Circuit, Grand Bassa County, et al., Respondents.

PETITION FOR A WRIT OF PROHIBITION TO THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Decided May 12, 1983.

1. The Marshal of the Supreme Court is under a duty to personally serve precepts emanating from the Court or in the alternative, to deputize one of the bailiffs of the Court to effect service of such precepts or have the said precepts forwarded to the Deputy Marshal of the county wherein the precepts are to be served, for him to make such service.
2. A trial judge's disobedience to a precept of the Supreme Court is against the law. The judge should acknowledge the receipt of the service of the process, and thereafter file returns thereto contesting the Court's jurisdiction.
3. The Supreme Court has authority to punish flagrant disobedience of its precepts.

The trial judge in the lower court refused to receive the alternative writ of prohibition from the Justice in Chambers on grounds that the same was served by the local sheriff and not the Marshal of the Supreme Court. The Chamber Justice held that while the Marshal of the Supreme Court had erred in having the writ served on the co-respondent judge by a sheriff in the circuit court wherein the co-respondent judge presided, the trial judge showed flagrant disrespect for the precept from the Supreme Court in refusing to receive and sign for the same. The Justice therefore granted the petition for prohibition, ordered the peremptory writ issued, set aside the trial judge's ruling, and ordered a new trial.

Joseph Findley appeared for petitioners. No one appeared for the respondents.

SMITH J., presiding in Chambers.

In our examination of the file in this case, we discovered that the petition for a writ of prohibition was filed in the office of the Clerk of this Court on the 10th day of December. A

Marshal's returns to the said writ. Therefore, no returns were filed to the petition by the co-respondent judge in these proceedings.

In our opinion, the Marshal of this Court was duty bound to proceed to Grand Bassa County or to have deputized one of the bailiffs of this Court to go and serve the within writ of prohibition on the co-respondent judge, His Honour M. Fulton W. Yancy, or to forward the same to the deputy marshal of that county to have the same served on the co-respondent judge. This was not done. Hence, the Marshal of this Court is responsible for such unnecessary delay in these proceedings. For the negligence of his duties, he is strongly warned and admonished against a repetition of this act; otherwise, drastic disciplinary measures will be taken against him.

Nevertheless, it is also our further candid opinion that the co-respondent judge's disobedience to the precept of this high Court was not in keeping with law and practice. The co-respondent judge should have acknowledged that service of the writ and made returns thereto, since indeed and in truth, the trial judge was the necessary party to the writ of prohibition. It is after complying with the law, i.e. receiving the process, that he may raise the issue of the irregular service of the precept so that the Court may have the opportunity to pass thereon. Indeed, the co-respondent judge should have fully known the fact that the Court granted the writ of prohibition and that the Court was not expected to have known how the writ had been served except the party challenging the service brings to the Court's attention the negligent or irregular manner in which the service of the writ was made. In this case, however, the co-respondent judge flatly refused to honor the writ and to thereafter raise his contention in his returns.

In view of the flagrant disobedience by the co-respondent judge of the precept from this Court, coupled with his failure to file returns thereto, the petition for a writ of prohibition is hereby granted and the peremptory writ of prohibition is ordered issued, commanding the judge presiding in the Second Judicial Circuit Court, Grand Bassa County, to resume jurisdiction over the ejectment case from whence these prohibition proceedings grew, set aside of the co-respondent judge's ruling, hear the case anew, and dispose of it according to law and the evidence adduced.

The Clerk of this Court is ordered to send a mandate to the lower court to this effect. Costs to abide at the final determination of the case. And it is hereby so ordered.