

Rev. Chauncy D. Karngar of the City of Monrovia, Liberia APPELLANT Versus
Edwin J. Goodridge, the Administrator Of the Intestate Estate of the Late Cecelia
Harper City of Monrovia, Liberia APPELLEE

LRSC 31

HEARD: APRIL 6, 2011 DECIDED: JULY 22, 2011

MR JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

This case is on appeal to the full bench of this Court from the ruling of our retired colleague, Madam Justice Gladys K. Johnson, granting a writ of prohibition while presiding in Chambers. The petitioner/appellee, Edwin J. Goodridge, administrator of the intestate estate of the late Cecelia Harper, filed a petition for writ of prohibition against Rev. Chauncey D. Karngar, 1st respondent; His Honor, Judge Emery Paye, 2nd respondent; and Counsellor T.C. Gould, 3rd respondent. The petition for writ of prohibition grew out of an ejectment action filed by Rev. Karngar through his counsel, Counsellor Gould at the Civil Law Court, 6th Judicial Circuit, Montserrado County, during the September, AD 2006 term with His Honor Emery Paye presiding by assignment. The petition for writ of prohibition was withdrawn, amended and refiled.

To fully understand the facts and circumstances, it is important to give a sated background of this case as culled from the records certified to us. The late Cecelia Harper filed an action of ejectment in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, in its September term, A.D. 1967 against Rev. Chauncey D. Karngar. The ejectment action was heard and decided by the Civil Law Court on September 17, 1968 in favor of the complainant, Cecelia Harper. After the 1980 *coup d'etat* that toppled President William R. Tolbert's administration, Rev. Chauncey D. Karngar, the defendant against whom decision was made by court, complained to President Samuel K. Doe alleging that his property was illegally taken from him during the Tolbert administration. President Doe referred the matter to the Ministries of Justice and Lands, Mines & Energy. After a probe, the then Minister of Justice, Counsellor Chea Cheapoo, wrote a letter to President Doe informing him that the matter had been decided by court and advised that the Executive Branch of Government should not interfere in the matter. We quote the letter:

September 13, 1980 "Mr. Head of State:

I have the honour to acknowledge receipt of your letter No. PRC/1/M/505/'80 dated September 2, 1980, over the signature of Dr. G. E. Saigbe Boley, Minister of State for Presidential Affairs regarding Mrs. Giddings' complaint that the People's Redemption Council is attempting to reopen a land dispute that was decided by the Circuit Court on October 17, 1968 between her mother, Mrs. Cecelia Harper and Mr. Chauncey D. Karngar.

We have examined the records, including the final judgment of the Court, and found that the Court decided the case in favor of Mrs. Harper.

Consistent with our policy that one branch of Government ought not to interfere with matters that are squarely within the purview of another, especially those concerning judicial matters, I advise that any attempt to reopen the case in issue be avoided.

An order has been issued by the Director of Lands & Survey, Mr. Thomas A. Dundas, Bureau of Lands & Survey, to the effect that the land be resurveyed on Friday, September 19, 1980. A photocopy of said order is hereto attached. Her concern on this issue is that this land has been surveyed three times and the results have been the same in her mother's favor. Expenses are incurred each time a survey occurs and that since the matter was decided ten years ago, she ought not to be forced to undergo additional survey expenses unnecessarily.

Since this matter was decided twelve years ago and Mr. Karngar did not appeal, I advise that the survey order be cancelled and that Mrs. Giddings ought not to undergo unnecessary expenses. If Mr. Karngar wishes additional remedies, the courts are the proper forum.

Kindest regards, IN THE CAUSE OF THE PEOPLE, THE STRUGGLE CONTINUES:

Very respectfully yours,

Chea Cheapoo, Sr. MINISTER OF JUSTICE

M/Sgt. Samuel K. Doe

Chairman, People's Redemption Council

And Head of State of the Republic of Liberia

The Executive Mansion

Monrovia, Liberia"

Notwithstanding the foregoing letter from the Minister of Justice, which should have laid the matter to rest, at least from the perspective of the Ministry of Justice, it appears that in 2005, Counsellor T.C. Gould, at the time Solicitor General of Liberia, cited the heirs and representatives of the late Cecelia Harper to a conference at the Ministry of Justice in connection to the same case. Counsellor M. KronYangbe, representing the heirs and representatives of the late Cecelia Harper wrote to Counsellor Gould informing him that the matter had been decided by court. We quote the letter:

January 27, 2005

"Cllr. T. C. Gould

Solicitor General Republic of Liberia Ministry of Justice

Ashmun Street Monrovia

Dear Cllr. Gould:

This is to confirm in writing that I represent the heirs of the late Cecelia Harper in the old land case between her and Mr. Chauncey D. Karngar for land located in Oldest Congo Town.

Mr. Karngar is in the constant habit of reopening the land dispute whenever there is a change in the Government purposely to disturb and harass the children.

About 30 years ago, the case was judicially decided by the Civil Law Court, Sixth Judicial Circuit, Montserrado County with His Honour Judge D.W.B Morris presiding. The Final Judgment was in favor of Cecelia Harper against Mr. Karngar. The Defendant Karngar was evicted, ousted and Cecelia Harper was repossessed.

About 10 years later, Mr. Karngar resurrected the case when the PRC Government took over with President Samuel K. Doe, with the participation of the Ministries of Justice and Lands, Mines and Energy, again Harper was the winner and again Mr. Karngar was defeated. I am enclosing herein dossier records in support of these assertions with the firm belief that this matter will be put to a final rest. According to the behavior of Mr. Karngar there is no doctrine of *res judicata* and due process of law. This should not be encouraged at any time and this case is no exception. Kind Regards,

Very truly yours

M. Kron Yangbe COUNSELLOR-AT-LAW"

In response to Counsellor Yangbe's letter, Mr. A. Darius Dillon, Special Assistant to Counsellor T.C. Gould, Solicitor of Liberia, on instruction of Counsellor Gould, wrote as follows:

"February 3, 2005

Cllr. Yangbe:

We are directed by Cllr. Theophilus C. Gould, SOLICITOR GENERAL OF LIBERIA to acknowledge receipt of your letter of 27 th January 2005 with attachments, relative to the matter between Mr. Chauncey Karngar and your clients, the heirs of the late Cecelia Harper.

We wish to note that there is no attachment of the ruling of court, as mentioned in your letter under reply; thereby the need to finally determine the matter to avoid confusion.

In view of the above, we are further directed to cite you for a conference on Wednesday, February 10, 2005, at the hour of 3:00 p.m., along with your clients in a bid to find an amicable solution to the matter.

Your cooperation is anticipated.

Kind Regards.

Very Truly Yours,

A. Dairus Dillon, Sr.

SPECIAL ASSISTANT/SOLICITOR GENERAL

Cllr. M. Kron Yangbe

COOPER & TOGBA LAW OFFICE

Buchanan Street

Monrovia, Liberia"

The records do not show whether or not a conference was had with Counsellor Yangbe and his clients as directed by Counsellor Gould in the foregoing letter. When Counsellor T.C. Gould left the employ of the Ministry of Justice, he was retained by Rev. Chauncey Karngar to represent him in the same matter. During the June term, 2005 of the Civil Law Court, Sixth Judicial Circuit, Montserrado County he filed an action of ejectment on behalf of Rev. Karngar against the heirs of the late Cecelia Harper and Trafina Gould, administratrix of the estate of the late Cecelia Harper.

As gathered from a submission made by Counsellor Gould on the minutes of the trial court on October 18, 2006, the writ of summons was not served because, "the defendants were out of the bailiwick." According to Counsellor Gould, a resummons was issued and duly served on the defendants on June 25, 2005 but up to October 18, 2006, the defendants had not filed their answer. Counsellor Gould also said in his submission that a notice of assignment was issued for the hearing of the law issues on October 18, 2006 at the hour of 9:30 a.m. but according to the sheriff's returns, "the defendant, Cecelia Harper refused and neglected to sign the notice of assignment." Continuing his submission on the minutes of the trial court, Counsellor Gould said as follows: "This matter was heard on law issues and same passed upon thereby ruling this case to trial on its merits by a trial jury under the supervision of the court. Today, at the call of the case, the defendants and or their counsel are not present in court." He therefore requested the trial court to grant default judgment against the defendants. The trial judge ordered the sheriff to call the defendants three times at the entrance of the court. The sheriff carried out the order and reported that the defendants did not

answer. The trial judge then granted default judgment against the defendants. Thereafter, a petit jury was empanelled to sit on the case.

Two witnesses, Rev. Karngar himself and one Joseph E. Delvee testified. There were no jury or court questions posed to either of the witnesses. Thereafter, the jury brought a verdict in favor of Rev. Karngar and awarded him \$100,000.00; the trial judge confirmed the jury's verdict and ordered that the defendants be evicted, ejected and ousted from the plaintiff's property. All these happened on the same day, October 18, 2006. The occupants of the premises in question were evicted, ejected and ousted as ordered by the trial judge.

The petitioner/appellee filed this petition for writ of prohibition seeking to overturn the execution of the judgment of the trial court which evicted, ejected and ousted the heirs and representatives of the late Cecelia Harper from the subject premises.

In the petition for prohibition, the petitioner/appellee invoked the doctrine of *res judicata* and contended that the land matter between the late Cecelia Harper and Rev. Chauncey Karngar out of which these proceedings grew had been decided in the Civil Law Court, Sixth Judicial Circuit, Montserrado County since 1968 in favor of Cecelia Harper, and that Counsellor T.C. Gould, when he was Solicitor General of Liberia in the Ministry of Justice, presided over hearings pertaining to this same land matter which was resurrected at the time by Rev. Karngar. The petitioner/appellee maintained that Counsellor Gould should not be counsel in this case, he having handled the same matter while serving as Solicitor General in 2005.

The respondents/appellants, for their part, contended that the petitioner/appellee (defendant below) did not file an answer to the action of ejectment and did not attend trial, even though petitioner/appellee was duly notified, therefore, the trial judge was justified in granting judgment default judgment in the case. The respondents/appellants also contended that when Counsellor Gould attempted to investigate the matter while serving as Solicitor at the Ministry of Justice, he requested Counsellor M. Kron Yangbe who represented the heirs and representatives of the late Cecelia Harper to furnish copy of the court ruling said to have been entered in the

case, but Counsellor Yangbe failed to provide the judgment, therefore, Counsellor Gould had no knowledge that indeed, the land matter had been decided by court between the parties. The respondents/appellants further contended that there was no conflict of interest in the past and present involvement of Counsellor Gould in this case.

As already stated, Justice Johnson heard this case in Chambers and granted the petition for prohibition. She passed on two issues: a) whether the trial judge proceeded by wrong rules when he heard and determined the ejectment suit filed by Rev. Chauncey Karngar and 2) whether this case had previously been decided in court between the same parties involving the same subject matter. In other words, whether the principle of *res judicata* is applicable. On both questions, her answers were in the affirmative. We are in agreement with the issues considered by Justice Johnson and the conclusions she made in deciding this case. We shall highlight, analyze and elaborate on the following points made in her ruling with which we fully concur:

1. According to the submission by Counsellor Gould, the case was assigned for the hearing of law issues on October 18, 2006, but the sheriff's returns showed that "the defendant, Cecelia Harper refused and neglected to sign the notice of assignment." This statement, if indeed contained in the returns of the sheriff has to be a complete fallacy. Cecelia Harper died many years before Rev. Chauncey Karngar filed the ejectment suit. And this fact was known to Rev. Karngar and Counsellor Gould. This is why the ejectment suit was filed against "Edwin J. Goodridge, administrator of the intestate estate of the late Cecelia Harper" and not against Cecelia Harper herself. It is impossible for the deceased to have refused to sign for a notice of assignment. It is upon this flawed service of notice of assignment that the trial judge proceeded to enter default judgment against the petitioner/appellee. The trial judge proceeded by the wrong rule when he allowed returns from the sheriff which showed that notice of assignment in this case was served on a dead person.

2. Even assuming that the petitioner/appellee was indeed served with notice of assignment but did not attend upon the hearing of the law issues, another notice of assignment for the hearing of the main case was required, after the disposition of law

issues. But this did not happen. For some unexplained reason the records show that the law issues were heard the same day; the case was ruled to trial the same day; the jury arrived at a verdict the same day; and the trial judge confirmed the jury's verdict the same day and entered judgment against the petitioner/appellee. Under the law in this jurisdiction, the judgment in a jury case is not announced or entered until four days after the verdict. *Section 41.2(1), 1LCL Revised, Civil Procedure Law*. The trial judge proceeded by the wrong rule when he confirmed the jury's verdict the same it was brought and entered judgment against the petitioner/appellee.

3. Assuming, also, that notice of assignment was served on Cecelia Harper and she refused to sign and receive it culminating to default judgment and eviction, why were the other defendants evicted, since nothing was said about service of notice of assignment upon them?

4. From all indications, it is clear that the property matter between the late Cecelia Harper and Rev. Chauncey Karngar had long been decided by court long years ago. Records show that the case was decided at the Civil Law Court, Sixth Judicial Circuit, Montserrado County, in 1968 with the late Judge D.W.B. Morris presiding. About 38 years after the court had decided the case, Rev. Karngar, in 2006 filed another ejection action which the court had decided. So the principle of *res judicata* is applicable in this case. *Res judicata* refers to an issue that has been definitively settled by judicial decision. It serves as an affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transitions that could have been, but was not raised in the first suit. *Bility vs. Sirlief* 34LLR 552, (1988).

5. The court is master of its own records. The Civil Law Court, Sixth Judicial Circuit, Montserrado County, having decided this case in 1968 should have taken cognizance of that decision and applied the principle of *res judicata* to bar litigation of the second law suit on the same claim involving the same parties over the same subject matter. *Morris vs. Johnson*, 26LLR, 73 (1977). The trial judge proceeded by the wrong rule when he failed to take judicial notice of the first trial of the case conducted in 1968.

There are countless opinions of this Court which emphatically state that when a trial court proceeds by the wrong rule, prohibition will lie. In accord:

Meridien Biao bank Liberia Limited vs. Andrews et al 40 LLR, 111 (2000); *Commercial Fisheries Corporation vs. Puk Yang Fisheries Co. Ltd. et al*, 35 LLR, 534 (1988); *Mathais and Fima Capital Corp. vs. Alpha International investment Ltd*, 40 LLR, 561 (2001); *Baysah vs. Badio et al*, 36 LLR, 728 (1990); *Societa Lavori porto Della Torre vs. Hilton and Goelon* 32LLR, 444 (1984).

This court has also held that though generally a writ of prohibition will only issue before judgment to stay proceedings, the rule need not apply where judgment has been taken by default or jurisdiction is lacking upon the face of the record. *Koroma vs. Parker Paint Company Inc.* 23LLR, 133 (1974).

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

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

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

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

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

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

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

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

Ans: Recently, Your Honors.

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

"Ans: No, Your Honors."

"Ques: Was this a jury trial?"

Ans: Yes, Your Honors.

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

"Ans: Four days."

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

We must now comment on the involvement of Counsellor T.C. Gould in this case. He handled the case while in public service. Though he said he did not make any decision

in the case as Solicitor General, there is no way of knowing whether or not he formed an opinion. As we see it, it was best that he remained above reproach by not handling the same matter as a private lawyer.

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

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

As for the trial judge, His Honor Emery S. Paye who presided over the second trial in 2006, his actions in the case leave much to be desired. He, also, ought to have known

that the case had been decided in the same Civil Law Court, Sixth Judicial Circuit, Montserrado County in 1968 between the same parties involving the same subject matter. It is no excuse that he did not decide the case in 1968 and had no way of knowing that the matter had been decided. Courts are required to know their own records. And he ought not to have confirmed the jury's verdict the same day it was brought and entered judgment against the petitioner/appellee. His action is in contravention of *Section 41.2(1), 1LCL Revised, Civil Procedure Law*.

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

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

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

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

Appeal denied.

COUNSELLOR THEOPHILUS C. GOULD APPEARED FOR APPELLANT.
COUNSELLOR COOPER W. KRUAH APPEARED FOR APPELLEE.