

Bendu Kindii, James G. Mooney, Ignatius N. Clay and Florence K. Mooney all of the City of Monrovia, Liberia APPELLANTS VERSUS **John Foster** and the **Intestate Estate of Daniel Foster** by and thru Samuel Railey, Dunn Foster, David Forster, Moses J.E.D. Marpleh, Sr., and Lazzie G. Foster, Administrators and Administratrix also of the City of Monrovia, Liberia APPELLEES.

LRSC 23

APPEAL FROM THE CIVIL LAW COURT, SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY, REPUBLIC OF LIBERIA.

Heard: March 22, 2010. Decided: June 29, 2010.

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT.

This appeal is a classic example of a lawyer baffling the execution of mandate emanating from the Supreme Court of Liberia.

Culled from the certified records, the history of this case reveals the following: On May 11, 1995, the Informant Bendu Kindii, appellant in the proceedings before us, filed an ejectment cause against the herein appellees/defendants in the court below.

In her complaint against John Foster, and the intestate estate of Daniel Foster, Appellant Kindii claimed ownership to a parcel of land lying on the Roberts Field Highway, Montserrado County, Republic of Liberia.

The certified records further show that when pleadings rested, the parties, upon application duly made and granted by the trial court, submitted to arbitration. Accordingly, a survey was conducted and consequent thereupon, a report was filed with the court on September 30, 2004.

In the report, the surveyors submitted the finding that *"the Fosters [defendants in the ejectment suit] have better root title compared to Bendu Kindii."* Neither appellant nor appellees' lawyers objected to the surveyors' report. This was notwithstanding a fact not in dispute that both the report and award were subject of open court proceedings and the lawyers also receiving copies thereof. The only contention raised by appellant/informant's surveyor in his minority report was the non-payment of his survey fees by the very Appellant Kindii herself.

The records also reveal that the arbitration report was confirmed by the trial court with

His Honor, Yussif D. Kaba presiding, evidenced by the minutes of court dated December 13, 2004. [See minutes of court, 10 th Day's Special Chambers Section, sheet four, December Term A.D. 2004].

Thereafter, notices of assignment for the final ruling were issued and returned served on both counsels. And on January 26, 2005, almost ten years as of the date the case was filed, Judge Kaba rendered final ruling confirming the arbitration award and adjudging appellant liable to appellees. The judge also ordered the Clerk of court to issue a writ of possession describing the property awarded. To carry-out this order, Judge Kaba directed the Sheriff to engage the services of surveyors preferably the same surveyors who composed the board of arbitration to aid the sheriff's office in repossessing appellees of the premises awarded.

It must be observed here that appellant/informant's lawyer however neglected and failed to appear at the final ruling. The lawyer also neglected to take any legal action thereafter. But when the trial court attempted enforcement of its judgment, the lawyer fled with a petition to the Justice in Chambers for a writ of prohibition.

This Court must avail itself of this opportunity to say that we clearly frown on this sort of conduct. The lawyer's conduct was unarguably bent on circumventing the enforcement of the trial court's judgment, he having woefully derelicted to take the steps required by statute.

Almost four years ago, the Supreme Court en banc settled the question whether the final ruling, the attempted enforcement of which prompted the filing of a petition for writ of prohibition, was properly reviewable by the Supreme Court. The highest court answered in the negative.

In this Court's opinion delivered on December 22, 2006 by our distinguished colleague, Mr. Justice Francis Korkpor, Sr., the Supreme Court first detailed the facts informing the filing of said petition and said as follows:

"Regarding the contention of appellant/petitioner that the final ruling in the case was not served on her counsel, as a result of which no bill of exceptions was filed, appellees/respondents maintained that the counsel for appellant/petitioner was served notice of assignment but without excuse, he failed to be present for the final ruling, thus prohibition cannot be used to cure his own negligence. Having abandoned the cause, according to the appellees/respondents, the trial court had no further obligation to the appellant/petitioner "

"The question is whether or not prohibition will lie in this case. In other words, assuming arguendo, that the trial judge indeed committed wrongs as contended by the appellant/petitioner, is prohibition the proper remedy to correct said alleged wrongs? Our answer is no! "

The Supreme Court thereafter quashed the alternative writ of prohibition, denied and dismissed the peremptory writ prayed for by the then Petitioner/Informant and now Appellant Bendu Kindii. Most importantly, this Court then ordered that the lower court be caused to *"resume jurisdiction in this case and enforce its ruling"*.

On January 18, 2007, the Supreme Court's mandate aforementioned was read under the gavel of His Honor, Emery S. Paye, presiding by assignment who ordered the clerk of court to *"proceed and enforce the judgment of this Honorable Court out of which the aforesaid mandate grew with costs against the appellant/petitioner... .."* [Emphasis supplied].

As to what truly transpired following Judge Emery Paye's order to the Clerk of court is not clear in the certified but disjointed and disorganized transmitted records to this court.

In the face of Judge Paye's order of January 18, 2007, however a bill of information was discovered appearing on its face to have been filed on its face recorded filed with the same court on January 11, 2007. This group of informants included James G. Mooney, Ignatius N. Clay, Comfort H. Mooney, and Florence K. Mooney. This group is before us as part of the second appeal proceedings now before us, emanating from decision rendered by Judge Paye. The second category of appeal proceedings now before us emanates from the decision rendered by Judge Paye in first information proceedings before the trial court. This constitutes the first of two appeals.

The substantial argument raised in the January 11, 2007 bill of information was that the informants were not a party to the original ejectment suit; as a result thereof, they could not be bound by a judgment emanating therefrom. The informants relied on the law hoary with time in this jurisdiction that no judgment can conclude especially the property right of a person not a party to a suit. In support of their argument, informants cited: *Badio v. Cole-Lartson* 33 LLR 125 (1985) Syl. 12; *Liberia Industrial Development Corp. v. Thorpe*, 31 LLR 714 (1984), Syl. 2 and *Dennis v. Wright*, 37 LLR 702 (1994), syl. 4.

The informants also claimed adverse possession and contended that they have openly and notoriously occupied their respective properties for over twenty-nine (29) years without molestation or hindrance from anybody including the appellees.

But countering the averments contained in the bill of information, Appellees John Foster and the Intestate Estate of Daniel Forster in a ten count resistance explained that on the 10th day of January 2007, respondents went to the court and requested the judge to make an assignment for the reading of said mandate; that it was at that time they discovered copy of the bill of information in the case file. Although the information, respondents said, appears on its face to have been filed since January 11, 2007, same was never served on the respondents or their counsels, contrary to law requiring simultaneous service of same. This conduct, appellees contended, was employed by the informants simply to delay the execution of the Supreme Court's mandate.

Respondents also vehemently argued that in the instance where a judge or any judicial officer attempted to improperly execute the mandate of the Supreme Court, the correct remedy was to file a bill of information before the Supreme Court. This is so because a circuit judge is not competent to review, correct and reverse any ruling or judgment of the Honorable Supreme Court at any stage; informants not having filed this information in the Honorable Supreme Court, respondents urged the lower court, that the bill of information should be overruled, denied and dismissed for lack of jurisdiction.

His Honor Judge Emery S. Paye heard arguments on the bill of information and the resistance thereto; and on January 23, 2007, ruled as quoted:

"...the records before this Honorable Court reveal that the ejectment action was regularly tried by this Honorable Court and ruled in favor of the defendants. It is from this ruling the plaintiffs petitioned the Honorable Supreme Court for a writ of prohibition and the Honorable Supreme Court upon the hearing of the petition denied the same and ordered that this court proceed to enforce its own judgment. The Supreme Court did not pass on the merits of the ejectment action. As such, this court says, that it has jurisdiction to determine the bill of information filed before this court. " [Emphasis ours].

"...this court says that the informants have informed this court that they were not parties to the ejectment action which was ruled against the plaintiffs. Further, the informants say that they are grantees and plaintiff their grantor from whom they legally purchased a property, with a valid document; that is to say, deeds; as such, the plaintiff did part with title to the informants for almost 29 years."
Judge Paye granted this bill of information.

An appeal was taken from this judgment to the Supreme Court of Liberia by Appellants John Foster and the Intestate Estate of Daniel Forster. This appeal from Judge Paye's

ruling of January 23, 2007, as earlier mentioned, has been predicated upon a six count bill of exceptions. The bill of exceptions essentially contended that the judge's holding that the Supreme Court did not pass on the merits of the ejectment suit and the lower court attempting to reopen the case, was erroneous.

His Honor, Yussif D. Kaba succeeded Judge Emery Paye as assigned circuit judge.

Pursuant to the Supreme Court's mandate of December 22, 2006, and the trial court having earlier resumed jurisdiction, a mandate over the signature of the Clerk of court, Ellen Hall, dated August 31, 2007 was issued. It reads as follows:

"By directive of His Honor, Yussif D. Kaba Assigned Circuit Judge presiding over the Sixth Judicial Circuit Court, Montserrat County, the Sheriff of this court is hereby ordered to proceed along with the members of the board of arbitration, to identify the property of the defendant in the above entitled cause of action, and place the said defendant in possession thereof in keeping with this court final judgment dated January 26, 2005, AND IT IS HEREBY SO ORDERED."

A note was inserted on the court's order indicating thus:

"All surveyors should be present on September 4, 2007 at the hour of 10:00 a.m. on the site of the subject property to identify the various points."

When the aforementioned order was just about being executed, appellant Kindii's counsel again appeared and filed a six count bill of information. Appellant reiterated her principal contention that her lawyer was not present when the case was called for hearing; that as a result, default judgment was granted by the trial court; that the final judgment was erroneously granted based on an inconclusive report submitted by the board of arbitrators; that in light thereof, *"the trial court should once again examine the surveyors report taking into account the court's own ruling portion of which reads as quoted:the Sheriff of this court is hereby ordered to engage the services of the surveyors who comprised the board of arbitration to aid the Sheriff to repossess the Defendants of the premises awarded Defendants; that is the respondents in this bill of information."* [Emphasis supplied].

Appellant Kindii claimed that the court's instruction was never executed; that the Sheriff simply went to the disputed site and began ousting people from the land without demarcation. As such, the exact acreage of land owned by the Fosters' Estate was not identified.

Appellant further argued that her grantees were never parties to the ejectment suit.

Having not had their day in court as such, a judgment from the ejectment suit could not be properly and legally enforced against said grantees.

Appellees filed a fourteen count resistance to the latest bill of information, denying any execution of the court's mandate at all. Accusing appellant's counsel of employing delay tactics, appellees again recounted that the Supreme Court having on December 22, 2006 dismissed appellant's petition for a writ of prohibition, ordered the trial court to resume jurisdiction and enforce its judgment of January 26, 2005. In light thereof, Appellant Kindii was estopped from attacking the execution of the judgment against her raising the same questions contained in the petition for writ of prohibition dismissed heretofore by the Supreme Court.

It was also appellees' position that appellant's grantees, having purchased the land in issue from Appellant Kindii, her grantees were equally estopped from raising any question of not having their day in court. The law in this jurisdiction, appellees have insisted, is that a person who is not a party but in privity with the party in action terminating in a valid judgment, is bound by and entitled to the application of the principle of *res judicator*, a principle enunciated by the Honorable Supreme Court in a litany of cases including: Jackson v. Mason, 24 LLR, 97 (1975).

Further review of the records indicates that a citation dated August 15, 2007 was issued and served on all parties. The purpose of said citation was to conduct *"an investigation as to whether or not in keeping with the final judgment of [the trial] court in the above captioned case, same was enforced as approved/mandated by the Honorable Supreme Court of Liberia."*

The court conducted said investigation and on August 22, 2007, Judge Kaba noted as herein indicated:

"The court observes that the Sheriff of the court made no returns as to the manner of execution of this court's order as provided for by law. The writ of possession, the subject of this investigation, commanded the Sheriff to proceed to have the defendants placed in possession of the subject property and to make returns as to the manner of execution of this order before the expiration of the December Term A.D. 2006. This is the last day of June Term A.D. 2007. The Sheriff has failed and neglected to make the returns as commanded by the writ of possession. This is tantamount to nonperformance of the order of this court. This court therefore fines the Sheriff five (US\$5.00) United States Dollars to be paid in the revenue of the Government of Liberia within 72 hours of the date of this order. The Clerk of this court is hereby ordered to re-issue a writ of possession and have same placed in the hands of the Sheriff for execution as provided for by this court's final judgment dated January 26, 2005. The Sheriff is ordered to ensure the enforcement of this order within ten (10) days as of today's

date. AND IT IS HEREBY SO ORDERED."

Hereafter, Appellant Kindii on November 13, 2007, again filed a three count bill of information informing the court that the sheriff disobeyed the court's order by putting appellees infact put in possession of land not depicted on appellee's deed. Informant vehemently contended that appellees' deed is calling for a land lying and situated in King Gray, and not Sugar Beach, where, according to informant, appellees were repossessed by the sheriff.

Appellees also appeared and filed an eight count resistance denying ever being put in possession of the property. To the contrary, appellees argued that the instruments ordered by the court to be used for the purpose of the repossession exercise, were those very instruments used in the investigative survey heretofore conducted by the board of arbitration. Appellees further argued that where a party complains that the judgment of the highest court of the land was being improperly executed by a court or officer of the court or any party, the correct procedure was to file a bill of information before the Supreme Court and not the trial court.

On January 14, 2008, Judge Yussif D. Kaba entered a final ruling in the over fifteen year old litigation denying and dismissing said bill of information.

The relevant portion of said ruling reads as follows:-

"The information now before this court is contending that in spite of the express order in this court's final judgment for the Sheriff to proceed to have the FOSTERS possessed of their property with the aid of the surveyors and using the deed of the FOSTERS, that the Sheriff proceed to possesses the Fosters' of their (informant 's) property which is not part and parcel of the land acquired by [Respondent] their title. This court says that the information as properly venued before this court. The issue in the information is not whether or not this court is interpreting the Supreme Court's opinion or is proceeding contrary thereto. The issue is that the Sheriff of this Court is proceeding wrongly in the execution of the judgment and order of this Court. Certainly, this court is properly situated and legally authorized to correct the wrongful execution of its order by the Ministerial Officer. Information calling the attention of the Court to the wrongful execution of its orders by the Ministerial Officer is indeed [cognizable] before this court. "

"With the regard to the issue of whether or not the Sheriff proceeded to execute this court's order and final judgment wrongfully, the court again takes judicial notice of the returns of the Sheriff: According to the Sheriff's returns, the office of the Sheriff along with the Surveyors constituting the Board of Arbitration proceeded on the subject property and placed the respondent in possession of the

property/land called for by the deed of the Respondent. The Informant denied this fact. The court however observes that there is no affidavit attached to the information in support of this allegation. It is the law [in this jurisdiction] that the returns of the Sheriff is presumed to be true. The court further observes that this said same issue was brought up by the informant and this court ordered that Surveyors participates in the execution of the Writ of Possession. In this case therefore, the Sheriff's returns, and in the absence of evidence to the contrary, this Court is inclined to go along with the Sheriff's returns..... " [Our Emphasis].

Appellant/Informant Bendu Kindii appealed this final judgment and has tendered a bill of exceptions containing four counts. This Court deems counts 3, and 4 as deserving our consideration and are here stated to wit:

"3. And also because informant also complained that the deed attached to respondents ' answer on which the Court entered Judgment against Plaintiff/Informant in favor of Defendant/Respondent should have been used to determine defendant's land and thereby place defendant in possession of same. Informant/Plaintiff complained that Defendant's deed was not used to identify the corners and know the exact metes and bounds and the exact acreage of defendant's property but was done at random with no professional demarcation. This vital information was overlooked by Your Honor in the ruling and you held that informant should have attached an affidavit to the information in support of this allegation. Informant says Your Honor did not take into account that this bill of information containing this allegation was supported by an affidavit and did not require a separate or specific affidavit; who would have executed such extra affidavit and to say what? For this legal blunder Your Honor's ruling ought to be reversed.

"4. Your Honor also erred when you noted what the complaint in the bill of information was, to the effect that Sheriff did not go by defendant's deed but placed defendant in possession of land owned by plaintiff not covered by defendant's deed, but yet in spite of this clear cut simple complaint; Your Honor still ruled that because informant did not attach an affidavit to the bill of information, then it means that the Sheriff acted properly. For this conclusion by Your Honor which is faulty as to law and reasoning informant excepts and says Your Honor committed reversible error in not investigating but inadvertently concluding with the legal provision that Sheriff Returns are presumed correct but Your Honor overlooked the ending portion of that law which makes an exception "unless the Returns are challenged."

Having surveyed the facts and circumstances of this case, the dispositive questions before this Court are:

(1) Whether the trial court presided over by His Honor Judge Paye erred in granting the bill of information filed by Appellant Kindii's grantees for reason that they did not

have their day in court?; and

(2) Whether Judge Kaba committed reversible error when he dismissed and denied appellant Kindii's bill of information on the ground that *no affidavit was attached thereto* to support appellant's allegations?

Addressing the first question, we must travel to the records. The records before us indicate of the two appeals under consideration by this Court ordered consolidated. Appellees in the first appeal proceedings were a group of informants in the court below. Certified record indicates that long after the ejectment case filed in 1995 had been determined by the trial court and upon which a mandate was issued from the Supreme Court ordering enforcement of said judgment, these appellees/informants on January 11, 2007, filed a bill of information substantially contending that they did not have their day in court.

Appellees/Informants, James G. Mooney, Ignatius N. Clay and Florence K. Mooney informed the trial court that they purchased a total of 2.47 acres of land between the period ranging from 1982 and 1997 from Bendu Kindii, appellant in the second appeal proceedings before us. Appellees claimed supported by the record before us that appellees were not parties to the ejectment suit and were never joined at any stage of the action. Based on this argument, the lower court granted the bill of information apparently to give this group an opportunity to be heard. The Fosters appealed this decision.

Clearly, and it is well to indicate, that both appellees as grantees and their grantor Bendu Kindii do not dispute that appellees' titles are as good as their grantor's; that their titles fatally crumble where the grantor's title is invalid. All appellees contended is that they should not be deprived of their property without having their day in court.

Ruling on this question on January 23, 2007, Judge Emery S. Paye said as follows:

"this court says that the informants have informed this court that they were not parties to the ejectment action which was ruled against the plaintiffs. Further, the informants say that they are grantees and plaintiff their grantor from whom they legally purchased a property, with a valid deed; that is to say, deeds; as such, the plaintiff did part with title to the informants for almost 29 years."

"The records before this Honorable Court reveal that the ejectment action was regularly tried by this Honorable Court and ruled in favor of the defendants. It is from this ruling the plaintiffs petitioned the Honorable Supreme Court for a writ of prohibition and the Honorable Supreme Court upon the

hearing of the petition denied the same and ordered that this court proceed to enforce its own judgment. The Supreme Court did not pass on the merits of the ejectment action. As such, this court says, that it has jurisdiction to determine the bill of information filed before this court." [Our Emphasis].

We cannot agree with the conclusion reached by the trial court on this question. The opinion of this Court as detailed in our December 22, 2006 opinion is succinctly clear. As stated in the said opinion, counsel for Appellant Kindii fatally failed to take the steps stipulated by statutes to perfect an appeal. Having so failed, counsel sought to substitute his major failure on perfection of appeal. The lawyer sought unsuccessfully to usurp and circumvent the province of a regular appeal and undermine the execution of a final judgment. Again when the Supreme Court dismissed said petition for being unwarranted and instructed the court below to enforce forthwith its final judgment, a new group of informants appeared. It is this group claiming that they have not had their day in court. To the mind of this court, the only thing remaining in this matter was the proper and complete enforcement of the Supreme Court's mandate of December 22, 2006.

But assuming, arguendo, that a party was aggrieved as a consequence of enforcement of the Supreme Court's mandate, what legal remedy there is available to that party? According to the Fosters, the proper remedy will be to file a bill of information before the Supreme Court, not the lower court, as an inferior tribunal lacks a scintilla of authority to review, in any form, shape or character, a decision rendered by the highest Court of the land.

Judge Paye in passing on this issue maintained:

"...this court says that the informants have informed this court that they were not parties to the ejectment action which was ruled against the plaintiffs. Further, the informants say that they are grantees and plaintiff their grantor from whom they legally purchased a property, with a valid document; that is to say, deeds; as such, the plaintiff did part with title to the informants for almost 29 years."

We hold that Judge Paye was in error. In the case *Kpoto v. Kpoto*, 34 LLR, 371 (1987), the analogous question was squarely raised before this Court; whether bill of information is the proper remedy available to a person claiming that he did not have his day in court. And this Court said no.

Speaking for a unanimous Court in the *Kpoto* case, Mr. Justice Jangaba defined the functions of a bill of information as follows:

"...We gather that a bill of information is usually a special proceeding in the form of a complaint before a court where a matter is pending, or before a court which had earlier adjudicated a cause, invariably informing said court of a failure to do what it was ordered to be done, or of something which ought to be done or undone for one who is a party, or for one who was a party in, or otherwise affected by a cause already adjudicated "

Having clearly stated the office of a bill of information, the Supreme Court proceeded to hold in the following words: *"A bill of information... ... is not a remedial writ which seeks the review of the acts of a court or its officials, as other writs are available for that purpose. A bill of information is [also] not the proper course open to one who alleges that he had not had his day in court."* [Emphasis supplied].

Elucidating further, the Supreme Court opined that *"It is an elementary principle in this jurisdiction that the proper course open to a litigant who had not had his day in court is the writ of error....."* Ibid, pp.377-8.

As detailed herein, the granting of the bill of information by Judge Paye filed by appellees James G. Mooney et al who invariably are grantees of appellant Bendu Kindii, was reversible error.

But it is well to state that earlier on January 18, 2007, Judge Paye presided over the reading of the Supreme Court's mandate, emanating from said Court's opinion delivered on December 22, 2006.

Following the reading of the mandate, the Judge ordered the clerk of court to *"proceed and enforce the judgment of this Honorable Court out of which the aforesaid mandate grew"*.

This Court wonders how Judge Paye could subsequently, on January 23, 2007 rule that *"the Supreme Court did not pass on the merits of the ejectment action"* and as such his court was ceased with jurisdiction to determine the bill of information.

We are perplexed by Judge Paye's ruling amounting to frustrating the enforcement of the highest court's judgment. We hold that only the Supreme Court has the authority in the like of this matter the trial court sought to entertain.

In the case, *The Bassa Brotherhood and Industrial Benefit Society v. Horton, et al.*, 29 LLR 554 (1982), this Court held that so long a judgment of the Supreme Court remains *"not fully enforced and legally satisfied"*, the Nation's Highest Court retains jurisdiction in any such case; and that appropriate relief will be granted by the Supreme Court *"for complete*

enforcement of the judgment upon information to the Supreme Court to this effect." Ibid. pp 562-3, [Emphasis supplied].

As to the second question, further recourse to the record reveals that contrary to the Sheriff's returns of September 4, 2007, reporting that the mandate of the trial court was executed, counsel for the Fosters informed the court quite to the contrary. In a letter dated October 27, 2007, counsel for the Fosters informed the court that the Sheriff infact simply informed *"the judgment/debtors and her grantees, the occupants of the premises that they should vacate the premises, served them with copies of the writ of possession and served other copies on the defendants, and the estate without evicting the judgment/debtors and the occupants from the premises and re-possessing the estate according to the writ of possession, law and procedure; as the result, the judgment/debtors, her grantees or occupants of the premises being stubborn, have refused to surrender the premises. Consequently, the estate is not in possession of the property. "*

But Appellant Kindii on November 13, 2007, again filed a three count bill of information maintaining that the sheriff disobeyed the court's order. Appellant/Informant Kindii vehemently contended that appellees' deed is calling for a piece of land lying and situated in King Gray, and not Sugar Beach, where appellees have been repossessed. His Honor Judge Yussif D. Kaba, on January 14, 2008, denying and dismissing said bill of information, observed:

"The information now before this court is contending that in spite of the express order in this court 's final judgment for the Sheriff to proceed to have the FOSTERS possessed of their property with the aid of the surveyors and using the deed of the FOSTERS, that the Sheriff proceed to possesses the Fosters ' of their (informant's) property which is not part and parcel of the land acquired by [Respondent] their title. This court says that the information as properly venued before this court. The issue in the information is not whether or not this court is interpreting the Supreme Court's opinion or is proceeding contrary thereto. The issue is that the Sheriff of this Court is proceeding wrongly in the execution of the judgment and order of this Court. Certainly, this court is properly situated and legally authorized to correct the wrongful execution of its order by the Ministerial Officer. Information calling the attention of the Court to the wrongful execution of its orders by the Ministerial Officer is indeed agreeable before this court."

"With the regard to the issue of whether or not the Sheriff proceeded to execute this court's order and final judgment wrongfully, the court again takes judicial notice of the returns of the Sheriff. According to the Sheriff's returns, the office of the Sheriff along with the Surveyors constituting the Board of Arbitration proceeded on the subject property and placed the respondent in possession of the property/ land called for by the deed of the Respondent. The Informant denied this fact. The court however observes that there is no affidavit attached to the information in support of this allegation. It

is the law [in this jurisdiction] that the returns of the Sheriff is presumed to be true. The court further observes that this said same issue was brought up by the informant and this court ordered that Surveyors participates in the execution of the Writ of Possession. In this case therefore, the Sheriff's returns, and in the absence of evidence to the contrary, this Court is inclined to go along with the Sheriff's returns..... "

We concur with the judge that as general rule under our practice, courts of justice are guided by the sheriff's returns. As he correctly stated, returns made by ministerial officers are presumed accurate for all intents and purpose. However, a notable exception to this general principle comes to bear where the returns is challenged. Along this line, appellant is seriously contending that the land which the sheriff put appellees in possession thereof does not correspond with said appellees' deed.

When a challenge has been mounted to the sheriff's returns, as done in the case at bar, especially in the instance of a sheriff who had once reported in a manner short of the truth in this same case under review, Madam Chief Justice Morris speaking for this Court held that in such a case, the trial court "*is to conduct investigation*" pursuant thereto. *Pentee v. Zoe*, 38 LLR 485, 495(1997).

Both in *MacCartey v. Gray et al.* 23 LLR 142, 147 (1974) and *Fagans v. Harris-Fagans* 23 LLR 190, 194-5 (1974), Mr. Justice Horace speaking for this court in both cases adopted the same principle and held that although the Sheriff's returns is prima facie evidence of the facts therein stated, where doubt is raised, said returns may be impeached by "*competent extrinsic evidence*".

Under the circumstances, we cannot agree with the final conclusion of the judge dismissing Appellant Kindii's bill of information, simply for reasons that an affidavit was not attached. Court's must disregard error or defect which does not affect substantial rights of the parties. *ILCL Rev., title I, section 1.5 (1973)*; *National Iron Ore LTD. v. Board of General Appeals*, 25 LLR 438, 441 (1977).

To proceed as the judge did without investigation, defeats the substantive principle held in *Duncan v. Fern*, [13 LLR 510,515 (1960)], and risks awarding possession of a property in dispute to that party whose chain of title is not so strong as to effectively negative his adversary's right to recovery.

Further review of the records before us reveals that earlier, the sheriff's returns dated September 4, 2007, indicated that the mandate of the trial court was duly executed. The returns stated as follows:

"...on the 4th day of September A.D. 2007, Bailiff's Daniel Rennie, Nimely Brown and Peter K Wheree of the Civil Law Court, Sixth Judicial Circuit carried out this writ of possession to have the defendants placed in possession of the said property, the said defendants were placed in complete possession of the subject premises along with the surveyors for the defendants; the plaintiff surveyors and the Chairman of the Board of Arbitration from Lands Mines and Energy Ministry showed the various points. Hence, this returns, dated this 4th day of September A.D. 2007."

It is important to observe also that returns aforementioned was signed by all the Bailiffs named in the returns and approved by Captain Ciapha Carey, Sheriff of the Sixth Judicial Circuit Court, Montserrado County. "

But quite to the contrary, counsel for the Fosters in a letter dated October 27, 2007, informed the court that the Sheriff infact simply informed *"the judgment/ debtors and her grantees, the occupants of the premises that they should vacate the premises, served them with copies of the writ of possession and served other copies on the defendants, the estate without evicting the judgment/ debtors and the occupants from the premises and re-possessing the estate according to the writ of possession, law and procedure; as the result, the judgment/ debtors, her grantees or occupants of the premises being stubborn, have refused to surrender the premises. Consequently, the estate is not in possession of the property. "*

Under these circumstances, an investigation into the conduct of the Sheriff as to the manner of execution of the Court's mandate was a manifest necessity. The judge was therefore in error when he dismissed the bill of information filed by Appellant Kindii without investigation of the serious allegation made by both parties to the Sheriff's conduct was reversible error.

Having carefully surveyed the facts in this case and in due consideration of the laws applicable thereto, it is the opinion of this Court as stated:

(1) That the ruling dismissing Appellant Bindu Kindii's bill of information, raising serious questions of improper execution by the Sheriff of the court's order for reason that "no affidavit [was] attached to support the allegations", said ruling being strict application of technicalities thereby risking defeat of the end of justice under the circumstances of this case, is hereby reversed

(2) That the appeal taken from granting the bill of information in favor of appellees James G. Mooney, Ignatius Clay and Florence K Mooney is hereby granted and said information ordered dismissed The exact metes and bounds being a matter of ongoing dispute, these informants/ appellees maybe properly evicted subject to full enforcement of completion of the said court's judgment of January 26, 2005,

and confirmed and affirmed by this Court's opinion of December 22, 2006. This position is informed by these informants being grantees of and therefore similarly situated under one color of title enjoyed by Appellant Bendu Kindii.

(3) That on the strength of the survey ordered in this judgment, Appellants Fosters et al. be placed in possession forthwith in keeping with the metes and bounds depicted in the Fosters ' deeds, attached to their answer in the original ejectment suit of 1995.

(4) It is also ordered that at the time of execution of this mandate, the sheriff shall employ the technical assistance of the same surveyors, and where not possible, other surveyors designated by the Ministry of Lands, Mines and Energy, upon application duly made by the trial court. "

(5) It is also decreed that the trial court make returns as to the execution of this mandate to the office of the Clerk of this Court in 30 days from the date of receipt of this mandate.

The Clerk of this Court is ordered to send a mandate to the Civil Law Court commanding the judge presiding therein to resume jurisdiction over this case and give effect to this decision. AND IT IS SO ORDERED.

Counselors J. Bayogar Junius of Legal Center for Human Right Defense Legal Services, Inc., and Musa Dean of the Dean and Associates Firm in association with Counselor Moses Kron Yangbe, Sr., appeared for two groups of appellants. Counselors Scheaplor R. Dunbar of Pierre Tweh and Associates as well as Musa Dean of the Dean and Associates Firm in association with Counselor Moses Kron Yangbe, Sr., and appeared for the two categories of appellees.