

**LOUFRAM CONSTRUCTION COMPANY AND/OR LOUFRAM ORGANIZATION, INC.**, represented by and thru its President, PRYDE DAVIS, Appellant/Petitioner, v. **HIS HONOUR JUDGE FRANCIS N. PUPO**, Judge, People's Debt Court, and **THE LIBERIAN BANK FOR DEVELOPMENT & INVESTMENT (LBDI)**, A Financial Institution operating under the laws of the Republic of Liberia, represented by and thru its President, DAVID K. VINTON and General Manager, MOBERT M. TITUS, Appellees/Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING  
ISSUANCE OF THE WRIT OF PROHIBITION.

Heard: November 17, 1983. Decided: December 22, 1983.

1. Mandatory procedural steps of a statute must be fully observed by a trial judge or else prohibition will lie.
2. Logic, which is the source of the law, would dictate that the sheriff must first levy the properties by a writ of execution before he notifies the public of the time and place of the sale of said properties.
3. The posting of a notice of sale by the sheriff must be after, and not prior to, the service of the writ of execution.

Co-appellee/respondent, The Liberian Bank for Development and Investment (LBDI), brought an action of debt by attachment against appellant/petitioner, Loufram Construction Company and/or Loufram Organization, Inc., for the sum of \$513,028.47 (Five Hundred Thirteen Thousand Twenty-Eight Dollars and Forty-Seven Cents) in the Debt Court of Montserrado County. As a result thereof, garnishment was placed upon appellant/petitioner's cash deposits in the TRADEVCO Bank. In the lower court, the petitioner/appellant confessed judgment and a payment stipulation was prepared and signed by both parties and approved by the Debt Court Judge. In his ruling, the judge stated that the appellant having admitted to the indebtedness and confessed judgment, it was thereby adjudged liable in the amount sued for, disallowing costs. The judge then instructed the clerk of court to write a letter to TRADEVCO Bank, informing the manager thereof that the attachment proceedings and the garnishment against appellant were lifted.

When the appellant failed to comply with the stipulations, a writ of execution was then issued and allegedly served on the appellant. Thereafter, a notice of sale was issued on the 1<sup>st</sup> of June, 1983, under the signature of the sheriff of the Debt Court for Montserrado County, for the sale of the properties seized pursuant to the writ of execution.

When the appellant learnt of the notice of sale through a publication in the Daily Observer Newspaper, it filed a five-count petition before the Chambers Justices, praying for the issuance of the extraordinary writ of prohibition to prevent the sale. The Chambers Justice

ordered the writ issued, heard the petition and denied same. The appellant appealed to the Full Bench.

The Court *en banc* reversed the ruling of the Chambers Justice and the judgment of the lower court, granted the petition for a writ of prohibition, and thereby restrained the lower court from proceeding with the sale of the properties. The Court held that the trial judge had acted not only contrary to the stipulation entered into between the appellant and the co-appellee, but also that he had acted contrary to rules and the provisions of the statute which should have been observed by him. The Court observed that the notice of the sale of the property of the appellant was issued and posted twenty-nine days prior to the issuance of the writ of execution, when indeed the reverse should have obtained. The Court noted that logic should have dictated that to the lower court that it should have first levied on the property before notifying the public of the sale of the property.

*Lewis K Free, Sr.* appeared for the petitioner/appellant. *Joseph Williamson and Joseph P. H Findley* appeared for respondents/appellees.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The Liberian Bank for Development and Investment (LBDI), Co-respondent/co-appellee herein, entered an action of debt by attachment against the Loufram Organization Inc., petitioner/ appellant herein, for the sum of \$513,028.47 in the Debt Court of Montserrado County. Garnishment was also placed upon petitioner's (Loufram Organization's) cash deposits in the Tradevco Bank. Petitioner/appellant confessed judgement and a payment stipulation was made, signed by both Liberian Bank for Development and Investment and Loufram Organization and approved by the Debt Court Judge. The judge then rendered the below final judgement:

"The court in rendering its final judgement in this case says that at the call of the said case, the defendant herein admitted being indebted to the plaintiff in the amount of \$513,128.47 sued for by the plaintiff and therefore defendant confessed judgement. Defendant having confessed judgement, he is hereby adjudged liable and he is required to pay the sum of \$513.028.47 to the plaintiff same being the amount sued for by the plaintiff. Costs in these proceedings are disallowed by the court. The clerk of this court is hereby asked to write and inform the Manager of the Bank of Tradevco that the attachment proceedings as well as that of the Garnishment against Loufram Organization Inc. and/or Loufram Construction Company is lifted based upon the judgement rendered in the said case by this court and stipulations prepared and signed by both parties concerned and approved by this court. AND IT IS HEREBY SO ORDERED.

Given under my hands and Seal of this Honourable Court, this 17th day of June, A. D. 1982.

Sgd. Francis N. Pupo /t/ Francis N. Pupo

JUDGE, PEOPLE'S DEBT COURT, MO. CO. R.L.

We also recite word for word the payment stipulation executed for the benefit of this opinion: "PAYMENT STIPULATION

WHEREAS, The Liberian Bank for Development & Investment, a financial institution organized and existing under the laws of the Republic of Liberia, hereinafter known and referred to as "LBDI", which term shall extend to and include its assigns and successor-in-business, granted loan to LOUFRAM ORGANIZATION INC., represented by its president, Pryde Davis of Monrovia, Liberia, and referred to as the defendant with an outstanding balance of \$466,389.52 including principal, accrued charges; and

WHEREAS, the defendant having defaulted to make payment, LBDI has entered an action of debt by attachment, to recover the amount of \$513,028.47 including counsel fees; and

NOW THEREFORE, the parties hereto mutually agree as follows to wit:

1. That the defendant hereby acknowledges its indebtedness to the plaintiff and confesses judgement in the sum of \$513,028.47, same being the amount sued for,
2. The defendant at the signing of this stipulation will make a down payment of \$20,000.00, the balance \$493,028.47 plus interest at the rate of 11 1/2% per cent per annum to be paid as follows:

July 31, 1982	\$35,000.00
August 31, 1982	20,000.00
September 30, 1982	55,000.00
November 30, 1982	17,868.00
December 31, 1982	55,975.00
January 31, 1983	10,000.00
March 31, 1983	30,000.00

Therefore, \$20,000.00 each and every calendar month following March 31, 1983, and \$5,000.00 additionally every calendar quarter.

Upon the signing of this stipulation, the defendant shall execute and deliver to the plaintiff an assignment of proceeds accruing from the Coast Guard Project and all future contracts, with full power and authorities for the plaintiff to collect said contractual proceeds and deduct the installment that is due and pay over to the defendant the residue.

A failure to notify the plaintiff of future contracts will constitute an event of default under this stipulation in which case, a writ of execution may be issued upon application of plaintiff for the enforcement of the judgement.

In witness whereof, the parties have hereunto set their hands and affixed their signatures on this 17th day of June, A.D. 1982.

WITNESSES: FOR: THE LIBERIAN BANK FOR DEVELOPMENT & INVESTMENT  
(PLAINTIFF)

Sgd. Signature not legible

By: D. K. Vinton Sgd. Signature not legible By: Signature not legible Sgd. Signature not legible For: Loufram Organization By: Pryde Davis - Defendant It/ Pryde Davis - Defendant

APPROVED: Francis N. Pupo JUDGE, DEBT COURT, MONT. COUNTY"

On February 7, 1983 Mr. Pryde Davis, the President of Loufram Organization wrote the below letter to the Minister of Public Works.

"February 7, 1983 Capt. James Burphy Minister of Public Works Ministry of Public Works (RECEIVED MARCH 31, 1983) Monrovia, Liberia Mr. Minister:

On June 24, 1982, we wrote to the Ministry authorizing an assignment of payment due us from the Coast Guard Project to The Liberia Bank for Development and Investment (LBDI). We are writing at this time to revoke that assignment.

We are taking this action because, although LBDI has the assignment of proceeds from this project, they have on several occasions refused to give us financial assistance, and have been deducting large sums of money from our payments each time to satisfy a previous obligation without regards to our financial needs for this project. We are therefore concerned that if this is permitted to continue we will be unable to complete this project for lack of funds.

Please find attached our latest appeal to LBDI and their response which is typical of all previous reactions.

Kindest regards,

Very truly yours, Sgd. Pryde Davis /t/ Pryde Davis PRESIDENT

Predicated upon this letter revoking the assignment, counsel for The Liberian Bank for Development and Investment then went to court on the 17 th day of May, 1983 and made the following record:

"Counsel for plaintiff says a payment stipulation was entered into on the 17th day of June A. D. 1982 between The Development Bank and Loufram Organization Inc., represented by its president, Pryde Davis, that the defendant corporation has failed to live up to the terms of the stipulation. Counsel prays court for a writ of execution to be issued against the corporation for the enforcement of the court's judgement. And respectfully submits."

The Court then ruled that:

"THE COURT: The above application of plaintiff's counsel is hereby granted, and the clerk is accordingly ordered to issue the writ of execution prayed for against the within named defendant for the satisfaction of the court's judgement rendered in the said case and to place in the hands of the sheriff a writ of execution after its issuance to be served on the within named defendant.

And the sheriff is hereby required to make his returns thereto as to the manner of service. AND IT IS HEREBY SO ORDERED."

Based upon the above ruling of the judge, a writ of execution was issued and allegedly served on the Loufram Organization and a notice of sale was also issued on the 1<sup>st</sup> of June, 1983 under the signature of William A. Slocum, sheriff, Debt Court of Montserrado County for the sale of the properties allegedly seized under the writ of execution. The notice of sale states that pursuant to the writ of execution, the Sheriff of the Debt Court for Montserrado County will expose to sale at public auction to the highest bidder the properties seized on Friday, July 29, 1983 at the precise hour of 10:00 o'clock in the morning.

Having read the notice of sale in the Daily Observer Newspapers, the petitioner (defendant in the court below) filed a five-count petition praying for the issuance of the extraordinary writ of prohibition, claiming in count 2 of its petition that the correspondent judge had proceeded contrary to rules to be observed at all times. The respondents maintain in their returns that prohibition will not lie because the court had jurisdiction and did not proceed contrary to rules. The Chambers Justice heard and denied the petition and it is now before us on an appeal. The only counts which we feel are pertinent for the determination of this case are count two of the petition and counts three, four, five and six of the returns. In count 4, the respondents contended that an order modifying or vacating an attachment does not affect the merit of the parent action. This point being tenable in law is conceded.

Respondents argue in count 5 that courts are bound to enforce stipulations which parties may validly make, when they are not unreasonable or against good morals or sound public policy. We also agree with this contention and hold that a stipulation like a contract should be governed by its terms. The payment stipulation makes only the following provision for the issuance of a writ of execution:

"A failure to notify the plaintiff of future contracts constitutes an event of default under this stipulation in which case, a writ of execution may be issued upon application of plaintiff for the enforcement of the judgement." The authorities on the subject maintain the following:

"Rules applicable to the construction of contracts, as discussed in contracts....have generally been held applicable in the construction of stipulations, and they have been construed in accordance therewith. The primary rule in the construction of stipulations is that the court

must, if possible, ascertain and give effect to the intent of the parties. The construction, however, is not dependent on the secret purposes, motives, or expectations of one of the parties. Also, the court will not, by construction, extend a stipulation so as to give it an effect beyond its terms and beyond what the parties intended. Its language will not be so construed as to give it the effect of an admission of a fact obviously intended to be controverted, or a waiver of a right not plainly intended to be relinquished." 83 C.J.S., *Stipulation*, § 11 (a) pages 26.27.

"When the language is plain and free from ambiguity, the understanding of the parties must be ascertained from its terms, and then whatever those terms fairly imply will be deemed embraced within it. However, the courts are strongly disinclined to import into an unqualified stipulation reservations or qualifications which might readily have been inserted by the parties if such had been their intention. In any event, it is never permissible for a court to do violence to a stipulation and indulge in inference of fact in direct contradiction to its express terms." *Ibid.*, § 11 (d). In counts 3 and 6, the respondents strongly contended that the writ of execution and the notice of sale were in strict compliance with the statute in such cases made and provided. Since this is the decisive issue in this whole case, we shall recite the relevant statutes:

#### "WRIT OF EXECUTION

"2. After a judgement is entered unless a stay of execution takes effect under section 51.20 or immediately after payment is due on such judgement or part thereof under section 44.22, and therefore a judgement is satisfied or vacated or the time limited for commencing an action upon the judgement expires, an execution may be issued by the clerk of the court in the county in which the judgement was first entered to the sheriff of the county where judgement was rendered directing him to levy upon the real and personal property of the judgement debtor. If a levy on real property is to be made under an execution issued by a court not of record, the execution shall be directed to the sheriff and not to a constable." Civil Procedure Law, Rev. Code 1: 44.39(2).

#### "SALE OF REAL PROPERTY

3. Notice of sale. A printed notice of the time and place of the sale containing a description of the property to be sold shall be posted at least eight weeks before the sale in three public places in the city or township in which the property is located, and, if the sale is to be held in another city or township, in three public places therein. Every judgement creditor having a judgement which was a lien for at least twenty days prior to the time fixed for the sale upon the real property to be sold shall be served with a copy of the notice personally or by registered mail, return receipt requested, at the address shown upon the judgement docket, at least ten days prior to the time fixed for the sale. If a newspaper is published in the county in which the property is located, a copy of the notice shall be published therein at least once in

each two-week period during the eight successive weeks preceding the time fixed for the sale. An omission to give any notice required by this paragraph, or the defacing or removal of a notice posted pursuant hereto, does not affect the title of a purchaser without notice of the omission or offense." *Ibid.* § 44.43(3).

It is our understanding of the above provisions of the statute that an execution duly issued is served by the sheriff prior to the posting of the notice of sale. Recourse to the writ of the execution we observe that although the writ was issued on May 17, 1983, yet it was not served until the 30th of June, 1983 according to the returns of the sheriff which is recited hereunder:

"On the 30th day of June, 1983 court's Bailiff James Payne carried out and served the within named writ of execution on the defendant, Loufram Organization, of which the company plant was executed. And the bailiff reported.

Therefore I now make this as my official returns to the Clerk of this Honourable Court this 30th day of June, 1983. Sgd. William A. Slocum Sheriff, Debt Court, Mo. Co."

The notice of sale is dated June 1, 1983, a period of 29 days prior to the service of the writ of execution on the appellant corporation. The notice informs the public that the properties as described therein which were levied by the sheriff would be sold to the highest bidder on July 29, 1983 at 10:00 o'clock in the morning. Although from the 1st day of June 1983 to July 29, 1983 may constitute the eight weeks required by the statute, yet we feel, and this is our considered opinion, that the eight weeks should commence after, and not before, the service of the writ of execution, for it is only then that the sheriff would with certainty know the properties levied to be exposed to the public for sale to satisfy the judgement. There is no other writ of execution in the records served on the petitioner prior to June 1st 1983, the date of the notice of sale, and the notice of sale specifically states in the second and last paragraphs that:

"WHEREAS, the defendant company failing to make payment, a writ of execution was issued and the Sheriff of the Debt Court for Montserrado County levied upon properties in Sinkor and Paynesville, Montserrado County on which is erected a five (5) bedroom split level unit and a wood workshop described as follows, to wit:..."

NOW, THEREFORE, the public notice is hereby given that pursuant to the writ of execution aforesaid, the Sheriff of the Debt Court for Montserrado County will expose to sale at public auction to the highest bidder, the above described properties on Friday, July 29, 1983 at the precise hour of 10:00 o'clock in the morning to raise the amount of \$403,028.47 now due and outstanding. Interested party may inspect the premises prior to the date of the sale.

We hold that this procedure is irregular and contrary to the provisions of the above statute. Secondly, from June 30, 1983 to July 29, 1983 is less than eight weeks in violation of the statute controlling.

The Justice in Chambers held that nowhere in the entire records had it been shown that the trial judge acted under void authority when he dissolved the attachment, entered final judgement in the debt case, approved the payment stipulation or, in the enforcement of its judgement, ordered the issuance and service of the writ of execution. Therefore, prohibition will not lie. While we agree in part with the Chambers Justice in his holding, yet, we strongly hold that the mandatory procedural steps of the statute must be fully observed or else prohibition will lie. Logic which has been characterized variously as the source of the law, dictates that the sheriff must first levy the properties by a writ of execution before he notifies the public as to the time and place of the sale of said properties. We also hold that the posting of the notice of sale by the sheriff must be after and not prior to the service of the writ of execution as is in the instant case. Therefore prohibition will lie.

For all these facts and circumstances narrated and the laws cited, it is the opinion of this Court that the judgement be reversed, the petition granted and the peremptory writ of prohibition ordered issued restraining the sale of the properties under the present writ of execution and the notice of sales. The Clerk of this Court is hereby instructed to send a mandate to the lower court commanding the judge presiding therein to resume jurisdiction over this cause and give effect to the judgment and opinion of this Court. Costs disallow. And it is hereby so ordered.

*Petition granted; judgment reversed*