

MADAM MASSA, represented by and thru her son-in-law, **HITLER GIBSON**, Informant,
v. **HIS HONOUR J. HAMILTON TRAVERS**, Resident Judge, People's Monthly and
Probate Court, Rivercess Territory, **MOSES K. WILLIAMS**, Sheriff, and **FRANCIS B.**
TATE, Respondents.

INFORMATION PROCEEDINGS.

Heard: December 13, 1982. Decided: February 4, 1983.

1. The Supreme Court has appellate jurisdiction in all cases, with the exception of a few. Information does not fall within those exceptions.
2. A clerk of court is amenable to the judge and lacks authority to issue commitment for imprisonment without orders from the presiding judge.
3. The Supreme Court takes cognizance of matters of record only and does not take additional evidence.
4. A party may only be imprisoned upon orders of court for failure to satisfy a bill of costs in a property case, after the returns of a writ of execution by the Sheriff to that effect.
5. The imprisonment of a judgment debtor in a case other than those enumerated under section 44.71(2) the Civil Procedure Law, Rev. Code 1 for non-satisfaction of a judgment in

This information proceeding emanated from the enforcement of a mandate of the Supreme Court in an error proceeding in which the Supreme Court denied the petition and instructed the lower court to resume jurisdiction and to enforce its judgment. Informant alleges in her bill of information that she was imprisoned upon a commitment signed by the clerk of court without orders of the judge, to remain in jail until the bill of costs was fully satisfied.

The Supreme Court, finding upon review of the records, that the bill of costs was not taxed and approved by the judge, held that the same was illegal. The Court also held that an action in tort for conversion of property is not within the category of cases in which a judgment debtor may be imprisoned; hence, the imprisonment of informant was illegal. Accordingly, the Supreme Court granted the information.

James Y. Gbarbea appeared for informant. S. Benoni Dunbar Sr. appeared for respondents.

MR. JUSTICE YANGBE delivered the opinion of the Court.

The facts in this case are thus: a bill of costs in the sum of \$140.05 was prepared by the clerk of court of Rivercess Territory, Grand Bassa County, in consequence of a final judgment rendered by that Court in "action of tort for conversion of property". Before the bill of costs could be settled, the informant fled to the Chambers of this Court for a writ of error. The petition was finally decided against the informant by this Court en banc, whereupon, a mandate was sent to the lower Court for enforcement of the judgment in the parent case. It is alleged in the information that instead of first collecting only the \$140.05 in the bill of costs, the clerk of the territorial court issued another bill of costs in the sum of \$839.40 which latter amount, the informant is alleged to have failed to pay, and as a result of which, she was imprisoned upon a commitment signed only by the clerk of the court and without orders of Court to

A bill of information filed as a result of alleged errors committed by the trial court during enforcement of our judgment is a peculiar case before Court and is solely against the respondent Judge, therefore, any irregularity complained of should be supported by the records.

A careful study of the records submitted by the parties in this case does not show that the bill of costs was ever taxed by either party and approved by the judge, or any records submitted by either party and approved by the judge, nor any record submitted by either side to the effect that the judge ordered the imprisonment of the informant for failure to settle the bill of costs. According to our statute on taxation of costs and enforcement of payment of costs, we have the following:

"After final judgment, the clerk of court shall prepare a bill of costs which he shall transmit to the attorneys for all the parties. The judge shall approve the bill of costs agreed upon by the attorneys, or, if they cannot agree, he shall settle the disputed items and approve the bill as settled." Civil Procedure Law, Rev. Code, 1: 45.5.

Execution may be issued by the Court in an amount to cover the costs in addition to the amount of the judgment. Other means available to the judgment creditor under chapter 44 of the Civil Procedure Law, 1 LCL Revised, to enforce a money judgment may be employed to secure payment of costs." Ibid., 1: 45.6

In this case, none of the procedures authorized by the statute as quoted hereinabove has been followed by the parties and there is no record that the attention of the trial court was ever called to the errors, now the subject of this bill of information.

b) Seduction of wife or child;

c) Illegally taking away or harboring a wife or child or ward under twenty-one years of age;

d) Enticing an incompetent away from his legally appointed trustee or guardian; or

e) Injury to the reputation when the words spoken or written are actionable per se." Civil Procedure Law, Rev. Code, 1: 44.71 (2). And it is obvious that "action of tort for conversion of property a bill of information does not fall within the categories of the cases specified supra; therefore, the imprisonment of a judgment debtor in a case other than those herein enumerated is illegal.

The bill of costs not having been taxed by the parties, and approved by the co-respondent judge and in the absence of any records to show the issuance, service and non-satisfaction of a writ of execution, as in keeping with the relevant sections of the statute, we have quoted hereinabove, this Court has no authority to assume jurisdiction in this case for, to do so, we will usurp the function of the trial judge and the duty of the parties, contrary to law and procedure. Therefore, the bill of costs in the amount of \$839.40 is ineffective.

In view of the above, the case is therefore remanded and the clerk of this court is instructed to send a mandate to the trial court to resume jurisdiction over the matter with the following instructions: a) The clerk of the trial court should prepare a bill of costs to be taxed by counsel on both sides, and if any disputed items appear thereon, the same to be decided by the co-respondent judge; b) thereafter, the co-respondent judge should approve the bill of costs; c) In case of disagreement with the decision of the trial court, the dissatisfied party may take the course available to him under the law; d) The judge of the Territorial Court of Rivercess,

Information granted.