

Edward Mwach, Alice Mwach et. al., Administrators of the Intestate Estate of the late M. W. Mwach of the City of Monrovia Petitioners versus His Honor **Sebron J. Hall**, Assigned Circuit Judge of the Civil Law Court, Temple of Justice, and **George S. Wiles, Sr.** and occupants, also of the City of Monrovia Respondents

PETITION FOR A WRIT OF CERTIORARI

Heard: 7 November 2006 Decided: 22 December 2006

MR. CHIEF JUSTICE LEWIS DELIVERED THE OPINION OF THE COURT.

Petitioners were plaintiffs in an action of summary proceedings to recover possession of real property filed against "George S. Wiles, Sr. and occupants in the Gardnersville Magisterial Court before Associate Magistrate Joseph Sackor Doe. A writ of summons, issued on 12 July 1995, commanded the defendants to appear for trial on 14 July 1995. On the same day of issuance and service of the writ of summons, Counselor M. Kron Yangbe allegedly wrote Associate Magistrate Doe informing him that title was involved, and that therefore the court should refuse jurisdiction over the subject-matter and allow the plaintiffs to resort to a court of competent jurisdiction.

On 14 July 1995, a notice of assignment was issued out of the magisterial court scheduling the case for trial on 17 July 1995. The trial must not have been had on that day; for on the same day, a notice of assignment was issued scheduling the trial for 21 July 1995. It appears that neither the defendants nor their counsels were present for trial on 21 July 1995; an *ex parte* trial was therefore had. At the conclusion of the trial, the court entered judgment in favor of the plaintiffs. On 25 July 1995, a writ of possession was issued, and served on the defendants on 28 July 1995, evicting them from the premises. Plaintiffs were placed in possession of the property.

On 21 July 1995, the same day of the *ex parte* trial, counsel for co-defendant George S. Wiles, Sr. wrote a letter to His Honor Judge Hall W. Badio, Sr., then assigned Judge presiding over the Civil Law Court, complaining that upon receipt of the writ of summons from the Gardnersville Magisterial Court, he had informed Associate Magistrate Doe that co-defendant Wiles "had a deed for the subject property, and that therefore the magisterial court should refuse jurisdiction over the subject-matter. Counsel for co-defendant Wiles alleged further that without any notice of assignment being served on the parties, Associate Magistrate Doe had proceeded with trial of the case, had entered final judgment against the defendants, and had ordered their ouster and eviction from the property, subject of the summary proceedings.

In response to the letter, Judge Badio ordered Associate Magistrate Doe, by writ, to place co-defendant Wiles in immediate possession of the property, and to appear before the Civil Law Court on 31 July 1995. The returns of the Sheriff indicate that the writ was not served on Associate Magistrate Doe because he was ill and not in office. Judge Badio thereupon ordered Stipendiary Magistrate William F. Satto to execute the orders contained in the writ. Stipendiary Magistrate Satto ordered the execution of the orders, but the plaintiffs allegedly refused to accept or receive the writ of possession from the magisterial court, and the defendants were not placed in possession of the property.

On 31 July 1995, Judge Badio entertained arguments, with both sides present. On 4 August 1995, before Judge Badio could render a decision, Associate Magistrate Doe ordered the eviction of co-defendant Wiles from another building, not subject of the summary proceedings then pending before Judge Badio, but situated on the same property. Judge Badio ordered Associate Magistrate Doe to place co-defendant Wiles in immediate possession of that property also, and to appear before the Civil Law Court on 7 August 1995 for hearing. Associate Magistrate Doe apparently failed to place codefendant Wiles in possession of the property, subject of the second order of Judge Badio.

The trial must not have been had on 7 August 1995; for on the same day, Judge Badio cited the parties to appear for hearing on 29 August 1995. The hearing was not had on 29 August 1995 either. Another notice of assignment dated 4 September 1995 scheduling the hearing for 6 September 1995 was issued and served; no hearing was had on that day, however. The case remained unheard up to Judge Badio's elevation as Associate Justice of the Supreme Court of Liberia. He was replaced in the Civil Law Court by Judge Sebron J. Hall.

On assuming jurisdiction over the Civil Law Court, Judge Hall attempted to enforce the orders contained in the writ ordered by Judge Badio but ignored by Associate Magistrate Doe. These certiorari proceedings were filed before then Associate Justice James G. Bull, presiding in chambers, as a result of Judge Hall's attempt to enforce the orders of Judge Badio.

On 13 November 1995, Associate Justice Bull cited the parties to a conference on 17 November 1995; before the conference could be had, however, Associate Justice Bull was succeeded in chambers by Associate Justice M. Fulton W. Yancy, Jr. On 16 November 1995, Associate Justice Yancy ordered the alternative writ of certiorari

issued, and ordered the respondents to file their returns on or before 28 November 1995. The filing date of respondent's returns was extended to 5 December 1995, at the request of counsel for the respondents.

On 19 February 2004, Associate Justice Francis S. Korkpor, Sr., presiding in chambers, ordered the petition assigned for hearing on 3 March 2004 at 10:30 a.m. The parties were also ordered to file their briefs on or before that date. Both parties failed to appear for hearing; counsel for respondents, however, filed its brief, albeit belatedly, at 11:00 a.m. on the morning of 3 March 2004. Associate Justice Korkpor imposed fines of L\$500.00 each on the counsels for failure to appear. The case was not heard until Associate Justice Korkpor left chambers.

The petition was subsequently assigned for argument on 25 January 2005 at 11:00 a.m. before Associate Justice John L. Greaves. The notice of assignment was served on both parties, according to the returns of the Marshal of the Supreme Court.

At the call of the case, only counsel for the respondents appeared. Upon application of counsel for the respondents that the matter should be proceeded with since counsel for petitioners was served with the notice of assignment but has failed to appear or send an excuse, or to file a brief as ordered by Associate Justice Korkpor, Associate Justice Greaves granted the application and entertained argument.

A notice of assignment was issued on 28 February 2005 and served on counsels for both parties to appear for the Court's ruling on 1 March 2005. Again, counsel for petitioners did not appear. The Court deputized a counsel to take the ruling on behalf of the absent counsel.

Associate Justice Greaves ruled denying the petition for certiorari, dismissed the proceedings and ordered that the case be remanded to the trial court for a new trial on the original writ of summons, setting aside all the previous proceedings and ordering that respondent Wiles be placed in immediate possession of the property. The court appointed counsel excepted to the ruling, and announced an appeal to this Court *en banc*.

Two issues, from the respective briefs of the parties, are presented in this case. The first issue is whether Judge Hall erred in attempting to enforce the order of Judge Badio, his predecessor, for which certiorari will lie?

Section 3.3 of the Judiciary Law, L.C.L.Rev., tit. 17 (1972), on Power of Circuit Judges to issue Writs of Injunction and Writs for Summary Proceedings in nature of Prohibition, provides:

"The Circuit Judges shall have the power, authority and jurisdiction, exclusively, to issue or order the issuance of writs of injunction, and writs for summary proceedings in the nature of prohibition addressed to inferior courts and their officers in exercise or aid of their appellate jurisdiction over them."

Of this exclusive power, authority and jurisdiction, rule 33 of the Circuit Court Rules as Revised (1999) provides that "[u]pon the application of a party by petition for summary proceedings against a magistrate or justice of the peace, the judge shall cite the parties to a conference *prior to issuing the writ which contains a stay order.*" (Emphasis supplied).

The certified records in this case do not reveal that Judge Badio cited the parties to a conference *prior to issuing the writ which contained an order requiring A. Esociate Magistrate Doe "to undo what had already been done."*

We recognize that the order contained in the writ is in the nature of prohibition, notwithstanding it required Associate Magistrate Doe "to undo what had already been done;" for this Court has held in numerous opinions that prohibition will not only prohibit the doing of an unlawful act but will undo what has already been done. *Boye vs. Nelson*, 27 LLR 174, 179 (1978); *Aminata Shipping Lines, Inc. vs. Hellenic Cruising Holidays*, 37 LLR 87, 95-6 (1992); *Sesay v. Badio*, 37 LLR 359, 365 (1993).

The irony in this case, however, is that it was Judge Badio who was engaged in an unlawful act. Judge Badio erred when he ordered Associate Magistrate Doe to place co-respondent Wiles in immediate possession of the property *prior to citing the parties to a conference*. Respondent Judge Hall erred, also, when he attempted to enforce those orders which were in violation of rule 33 of the Circuit Court Rules as Revised (1999).

The second issue is whether the payment of accrued cost is a mandatory requirement and precondition in certiorari proceedings?

We hold, as has been held in numerous opinions by this Court, that the payment of accrued costs is not a mandatory requirement for the issuance of the writ of certiorari. *Reeves vs. Johnson*, 28 LLR 30, 43-4 (1979); *American Life Insurance Company vs.*

Sarsib, 34 LLR 64, 67-8 (1986); *JIDCANS Inc. vs. Pearson*, 35 LLR 742, 751-2 (1988); *Monrovia Breweries Inc. v. Hilton*, 37 LLR 396, 400-2 (1994).

We recall, therefore, any and all opinions of this Court which have heretofore held that payment of accrued costs is a mandatory requirement for the issuance of the writ of certiorari.

In view of the foregoing, the ruling of Associate Justice Greaves is hereby reversed, and the peremptory writ granted, on the sole ground that Judge Hall Badio, Sr. erred when he ordered Associate Magistrate Doe to place co-respondent Wiles in immediate possession of the property *prior to citing the parties to a conference*, and that co-respondent Judge Sebron J. Hall was equally in error when he attempted to enforce those orders which were in violation of rule 33 of the Circuit Court Rides as Revised (1999). The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court commanding the judge therein to resume jurisdiction, and to give effect to this decision. Costs are disallowed. It is so ordered.

Petition granted.