

Cece Netty-Blanquett of Banjour, Virginia, Montserrado County, Liberia
APPELLANT VERSUS **Government of the Republic of Liberia** by and thru the
Ministry of Justice and His Honor J. Boima Kontoe Assigned Circuit Judge, Criminal
Assizes "C", First Judicial Circuit for Montserrado County, February Term, A.D. 2007
APPELLEES.

APPEAL

Heard: March 17, 2009 Decided: July 23, 2009.

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

The National Security Agency (NSA), on August 17, 2006, applied for a warrant of search and seizure to His Honor, Stipendiary Magistrate Milton D. Taylor of the Monrovia City Court at the Temple of Justice.

Thereupon Magistrate Taylor ordered issued warrant number 4707. Warrant # 4704 authorized the search of two locations situated in Fiamah and Virginia/Hotel Africa, respectively. Pursuant thereto, the magistrate police searched said two areas. Appellant's premises, Cece Beach at Banjol, in the Township of Virginia, was one of the two areas searched and properties seized therefrom.

An uncontested inventory listing of seized properties from appellant's Banjol premises included cash and jewelry. Certified records from Monrovia City Court did not show that the executing magistrate police provided appellant any inventory or listing of the seized properties. This fact was also undisputed.

Aggrieved by the search and seizure of properties, and citing jurisdictional grounds, appellant filed a motion before the stipendiary magistrate praying the court to return the seized properties and to suppress evidence. Although His Honor Milton D. Taylor in his ruling conceded want of territorial jurisdiction, yet he denied the motion. Thereupon the magistrate was summoned before Criminal Assizes "C", First Judicial Circuit for Montserrado County. Following hearing, His Honor, William Ware, presiding by assignment, mandated the Monrovia City Court to resume jurisdiction and first *"establish as provided by statute whether or not you have authority; if it is established that you do not have jurisdiction, those items should be returned from where they were seized, since the State Prosecuting Attorney did not object to the application (to return said items)"*. [Emphasis mine]

The case resumed and Magistrate Taylor determined that the Monrovia City Court lack territorial jurisdiction. But rather than returning the properties, as directed by the First Judicial Circuit, "*from where they were seized*", the magistrate ruled that the seized items be forwarded to Brewerville Magistrate Court, whose territorial jurisdiction encompasses the Township of Virginia.

For the second time, appellant took the magistrate on summary before the same court, Criminal Assizes "C", but this time, before a succeeding Circuit Judge, His Honor, J. Boima Kontoe. To what Judge Kontoe styled as to "*give meaning and effect*" to the mandate of his colleague predecessor, he set aside Magistrate Taylor's ruling. Judge Kontoe then ordered the magistrate to resume jurisdiction and "*determine ownership to the seized items...*" Appellant has also assigned error to Judge Kontoe's conduct, contending that said ruling, in effect, amounted to review of a colleague judge of equal judicial ranking.

It is from these proceedings this appeal emanates, presenting the following issues to be passed upon by this Apex Court:

(1) Whether the Magistrate, in ordering issued a warrant of search and seizure at the instance of National Security Agency (NSA), acted consistent with his duty as imposed by law?

(2) Was the order by Monrovia City Court to search at Virginia and seize properties thereat, lawful?

(3) Did the Circuit Judge commit reversible error by mandating Monrovia City Court to investigate and determine ownership of the ceased items in these proceedings?

(4) Whether the Circuit Court judge's mandate to Monrovia City Court to transfer the search and seizure case to Brewerville Magistrate Court constituted review of his colleague of concurrent jurisdiction?

These questions will be answered in the order in which they were presented.

The first issue is: "*Whether in ordering issued the warrant of search and seizure on application by NSA, the magistrate properly discharged his duty as imposed by law*"?

It is well to examine the limitations stipulated by statute which clearly seek to regulate the conduct of a judicial officer empowered to order issuance of warrant of search and seizure. But it is also important to the logical conclusion of these proceedings, to

determine the legal competence of the National Security Agency as it is NSA's application for a warrant of search and seizure that has prompted these proceedings.

Criminal Procedure Law, I L.C.L.Rev., title II, section 11.3 (1973), regulates the conduct of an issuing authority and spells out the characteristic contents of warrant for search and seizure. Part of said section provides:

"A search warrant shall issue only on an affidavit or written complaint made upon oath establishing the grounds for the issuance of the warrant. If the magistrate, justice of the peace, or the judicial officer empowered to perform such function is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched "[Emphasis supplied]."

The statutory language of section 11.3 is clear and unambiguous. Without subjecting it to unreasonable debates, this law imposes a clear duty on every judicial officer to whom an application for a warrant of search and seizure has been submitted. That duty is to judicially inquire into the application and by that means determine whether factual and legal bases exist for granting said application. To be "*satisfied that grounds for the application exist*", as directed by statute, is discharged only when the judicial officer subjects the application to reasonable inquiries. The inquiries shall include critical examination at the applicant's legal competence; in other words, whether the person or entity seeking warrant of search and seizure is legally, or better still statutorily competent to make such application.

The inquiry also does not exclude posing and soliciting answers to all relevant questions which would aid the judicial officer to form a reasonable belief that probable grounds exist for issuing the warrant of search and seizure.

This position is supported by common law. For an application to be considered valid in federal cases in the United States, said application for the warrant "*must state the applicant's authority*" for making the application. Am Jur 2d, Searches and Seizures, Section 363.

In the case at bar, the search and seizure warrant was ordered issued based on application made by the National Security Agency (NSA) for search warrants, for the express purpose of finding stolen items or "diverted relief items" which NSA described to include: "lap tops, computers and other relief materials" [emphasis supplied]. It is therefore well and appropriate to inquire into applicant's statutory functions in order to determine the Agency's legal competence to apply for such a

warrant for the purpose of retrieving stolen and diverted items as herein listed.

Review of our laws reveals that on August 30, 1974, the Ministry of Foreign Affairs published an Act of the Legislature approved May 20, 1974, titled: *"An Act Repealing Subchapter D of Chapter 1, Part 1 and Sub-chapter B of Chapter 22, Part II of the Executive Law In Relation to the Executive Action Bureau and the National Bureau of Investigation and Creating the National Security Agency?"*

Section 2.52 of the Act defines the functions of the National Security Agency (NSA) as follows:

"The functions of the National Security Agency (NSA) shall be:

(1) to develop plans;

(2) collect, analyze and disseminate overt political, economic, cultural and sociological intelligence for the Republic of Liberia, and

(3) Provide all possible means for the adequate protection of the Government and the people of the Republic against subversion, espionage, sedition, adverse propaganda and sabotage."

Also provided under the same section is that:

"...the Minister of Justice shall issue orders and regulations with the approval of the President with regards to the performance of such additional functions as circumstances may dictate for securing the safety of the State."

Further detailing the authority of the Agency, Section 2.54 of the Act directs that:-

"In order to perform its duties effectively, the National Security Agency, shall, whenever it shall deem it necessary and subject to the approval of the President or his designee, have free and immediate access to all officials and employees of the Government and to all files, records and documents of any agency of the Government.

The National Security Agency shall also be the recognized National Body of the Government of Liberia with the sole authority to co-ordinate the activities of all national Intelligence collecting services and receive, evaluate and disseminate the data as directed.

The members of the Agency shall have police subpoena or law enforcement powers in view of the fact

that their jurisdiction includes the internal security of the Nation. No activities of this Agency will be publicized unless so directed by the President or his designee."

No where in the establishing statute is National Security Agency authorized to be in the business of going after stolen properties which, as in the instant case. This is more so where there is no showing that property(ies) being searched for bear on matters of intelligence and national security. Nor was there any evidence that NSA was requested by the Minister of Justice to apply for this warrant of search and seizure as a special assignment, allowed under the statute. The Act creating NSA is its full and complete authority. As any national security and law enforcement agency of the state, the legal competence and authority of NSA and its conduct are strictly limited by the statute creating it. As in the case at bar, where a law enforcement entity, or security agency engages in conduct not expressly its authorized function by law, such conduct, when ever properly questioned, risks being declared by this Court, without hesitations, as *ultra vires*.

Diligent search notwithstanding, this Court has been unable to find the legal competence of the National Security Agency in seeking and applying for warrant of search and seizure for the purpose of retrieving, in its own words, "*huge quantity of drugs*" and for retrieval of "*diverted relief items (Lap tops, computers and other relief materials)*". Simply put, and so we declare, the application made by NSA for warrants of search and seizure for the declared purpose of retrieving stolen properties, being void of legal authority or competence, was unlawful.

Our holding is further supported by the certified records before us. The National Security Agency (NSA) communication of August 17, 2006, referred to herein, applied to Monrovia City Court, Temple of Justice, for two warrants of search and seizure.

NSA letter reads inter alias:-

"May It Please Your Honor: The National Security Agency (NSA) writes to apply for two (2) Search Warrants for the purpose of searching two different areas located in Fiamah and Virginia/Hotel Africa respectively.

We gathered that Mr. Fayiah Formoh, a resident of Airfield Junction, Sinkor, is in the constant habit of illegally obtaining huge quantity of drugs from the National Drugs Service, and John F. Kennedy Hospital to be shipped out of the country, as well as supplying] pharmacies in Liberia. Mr. Formoh, has stored such drugs in a white two floor building, with black Iron Gate occupied by

one Jacob, an SSS officer, located opposite Good Shepherd Funeral Home, Fiamah.

Secondly, Mr. Peter Blanquette, a German National heading the operations of the Lutheran World Federation (LWF) in Liberia, has diverted relief items (Lap tops, computers and other relief materials) to the home of his wife, Mrs. Cece Blanquette a Liberian, on the Cece Beach located in Virginia, for marketing." This letter was signed by the chief of General Investigation Branch, Nelson S. Jallah, and approved by Assistant Director/Special Services Department, Honorable J. Henric Pearson.

It was on the strength of this application that warrant of search #4704, dated August 17, 2006, was ordered issued out of Monrovia City Court, commanding the Magistrate Police, Captain Fofie V. Kamara or his deputy to *"Search from 6:00a.m-6:00p.m. two different areas lying and situated in Fiamah and Virginia/Hotel Africa respectively, City of Monrovia, Montserrado County, Republic of Liberia, for the purpose of finding thereat illegal quantity of drugs obtained and stored in a white two floor building, with black iron gate occupied by one Jacob, an SSS officer located opposite Good Shepherd Funeral Home, Fiamah, City of Monrovia."* [Emphasis mine].

The same warrant Numb 4704 further commanded the Magistrate Police to *"search from 6:00a.m.-6:00p.m. the home of Mrs. Cece Blanquette, wife of Mr. Peter Blanquette, a German National heading the operations of the Lutheran World Federation (LWF), which said premises are located on the Cece Beach, located in Virginia for the purpose of finding thereat relief items diverted (Lap Top, computers, and other relief materials)."*

But it is important to indicate that during the proceedings, Peter Blanquett, who also filed a motion for return of properties, was in agreement and accepted that ownership to the properties be determined by the magistrate court. He also vehemently disputed the material allegations contained in the NSA written application for the issuance' of the warrant of search and seizure. Peter Blanquett disagreed that the seized properties were diverted items or that same were properties illegally taken away from Lutheran World Service. In support thereof, Peter Blanquett attached to his motion, two communications, dated March 21, 2005 and February 10, 2006 respectively, signed by Peter Blanquett, in his capacity as Finance & Administrative Officer of Lutheran World Federation, (L.W.F).

The said communications were addressed to Charles Pitchford, Country Representative of the Lutheran World Federation, Department for World Service Liberia Program, *"Requesting for relief items for further distribution to the needy people of Liberia"* and the other, seeking permission for *"Office Equipment to be used at Geneva*

Village, Finance Officer's Residence". Amazingly, these two communications were never contested by the Applicant National Security Agency during the entire proceedings. Mr. Blanquett however agreed with Magistrate Taylor's ruling to proceed to determine "ownership of the seized properties" even in the face of said court want of jurisdiction. He thereafter became co-appellee along with Magistrate Taylor.

It is equally important to note also that at the hearing on the motion to return the seized properties and suppress evidence, City Solicitors Gabriel G. Wleh and Zakama W. Harris, announced representation on behalf of the Ministry of Justice, as respondent, and then spread the following submission on the record:

"1. That as in keeping with practice and procedure, the state always prays for search warrant to be executed and served on the accused; but in the instant case, it never happened that prosecution from the Ministry of Justice representing the State in this jurisdiction was informed prior to the issuance of this search warrant and therefore the motion filed by movant be granted; that the property be returned to the rightful owner.

"2. That in this jurisdiction, all search warrants are prayed for by the Ministry of Justice and executed by court officers; and no private citizens [should ask the] court for the issuance of a search warrant without the knowledge of the Ministry of Justice who is the sole representative and assigned at this court."

"3. That the prosecution is finding it difficult to respond to the motion for return of property and suppression of evidence issued on August 22, 2006, because they (prosecution attorneys) were not informed and it was difficult to even answer the motion; and up to present, the agency that prayed for such search warrant has not been able to get in touch with the State. For this reason, prosecution prays your Honor that the motion filed by movant (to return seized properties and suppress evidence), be granted and the rightful persons take their properties

To the mind of this Court, had the Magistrate complied with the commanding language of the statute that he/she be "satisfied", the magistrate would have launched proper inquiries and determined whether NSA's application was wanting of any probable grounds, factual or legal, to necessitate issuance of the warrant. These inquiries would have included ascertaining from the duly accredited legal representatives of the Ministry of Justice, assigned at the Magistrate Court, whether there was any basis in the first place.

This Court therefore holds that the magistrate glaringly failed in his judicial duty, as required by law, to enquire into every application for warrant on issues such as the legal competence of applicant, as NSA in the case instant. The Magistrate's reversible erroneous ruling in this respect.

This is further evidenced by representation duly made by representatives of the Respondent Ministry of Justice at the hearing on the motion. Notwithstanding the request by the Ministry of Justice to grant the motion to return the properties and suppress evidence, Magistrate Taylor denied said motion. But this is an issue we shall subsequently deal with in detail in this opinion.

This Court further holds that the Magistrate's neglect and failure to conduct such inquiries and failing which he ordered issued a warrant of search and seizure, constitutes both a dereliction of judicial duty and abuse of his authority as a judicial officer.

Addressing the second question, *whether the order by Monrovia City Court to search at Virginia and seize properties thereat, was lawful*, we take recourse not only to the case file and the law extant, but we shall also examine related questions in respect of the validity of search warrant. These shall include requirements directed by statute for specificity and particularity as well as providing a person subjected to search and seizure an inventory itemizing all items seized and removed from the premises on the strength of the executed warrant.

Records before this Court reveal that warrant of search #4704 was issued out of Monrovia City Court on August 17, 2006, accordingly commanding the Magistrate Police Captain Fofie V. Kamara or his deputy as therein indicated.

Returns of the Magistrate Police to the warrant executed at Cece Beach in Virginia, dated August 30, 2006, informed the Monrovia City Magistrate Court in the following words:-

'Bailiff Joseph S. Reeves and Patrol John N. Zanier of the Liberia National Police duly served writ of search warrant No.# 4704 on the living body of Pa James and was furnished copy. The search was delayed due to the refusal of Pa James and Mrs. Blanquette to open the doors for the search to be carried out. After waiting and talking to these people without success for three hours, we [were] constrained to force the doors open because they refused to co-operate with us to open the doors. The list of items [attached].

The case file indicate that various items were seized and removed from the Virginia premises of Appellant Cece Blanquette. Items seized and removed from appellant's store room in Virginia were listed to include:

- (1) Fifteen (15) set Televisions
- (2) 12 (Twelve) Cartoons dishes set
- (3) One (1) photocopy machine
- (4) One (1) cartoon broken plates
- (5) One (1) set fire plug
- (6) Twenty-two (22) cartons drinking glasses
- (7) Two (2) pieces Electronic iron
- (8) Nine (9) cartoons lamp for house
- (9) Two (2) cartoons forks
- (10) One (1) cartoon teaspoons
- (11) Twenty-three (23) dozen eating spoons
- (12) Three (3) cartoons mix coffee
- (13) Two (2) Lipton tea
- (14) One (1) cartoon black label gin
- (15) Six (6) bottles Hennessy gin
- (16) One (1) cartoon bailey (Irish Cream)
- (17) Five (5) bottles Gordon gin
- (18) Seven (7) sets cooking pots
- (19) Two cartoons milk
- (20) Two (2) tins gas stove
- (21) Four (4) cartoons candles
- (22) One (1) cartoon liquid soap
- (23) Four (4) cartoons Klim soap
- (24) Water proof line

FROM CECE BED ROOM, ITEMS SEIZED AND REMOVED WERE:

- Four (4) set jewelry (gold)
- Two (2) bracelets (gold)
- Eighteen (18) finger rings (gold)
- Fifty-two bathing towels
- US\$3,700.00 (Three Thousand Seven Hundred United States Dollars) cash
- L\$68,000.00 (Sixty Eight Thousand Liberian Dollars) Cash
- Three (3) perfumes
- Six (6) pairs slippers
- Twelve (12) pieces bedding

FROM THE CHILDREN ROOM

Two (2) play stations portable games

One (1) camera

Two (2) cell phones (MOTOROLA V31 & NOKIA 6600)

Three (3) timber lands (Foot wear)

Eight (8) jeans trousers

Six (6) parks Hans T-shirts and under wears

One (1) desktop computer (Pentium Four)

Two (2) back bags

FROM THE GUEST HOUSE

One (1) cartoon of disco light

One (1) Christmas tree

Three (3) big digital televisions and Four (4) small ones

Six DVD Disc players

Eight (8) remote control (AC)

One (1) set volley net

Two (2) cartoons poll balls

Twelve (12) poll sticks

Six (6) grass cutters

Six (6) shovels

Six (6) pars rain boots

Ten (10) sets rain coats

Nine (9) damaged doors (panel)

Fourteen (14) cartoons key board

One (1) small cartoon mouse

One (1) flat screen (TV)

Aggrieved by the search and seizure ordered by His Honor, Stipendiary Magistrate Milton

D. Taylor, appellant filed before the said magistrate, a five count motion for return of property and to suppress evidence growing out of the search warrant.

The motion essentially contended that the Monrovia City Court was without jurisdiction to carry out and execute a warrant of search and seizure in Banjor, township of Virginia in the face of existence of Brewerville Magisterial Court, Montserrado County. The motion contended that Monrovia City Court violated the New Judiciary Law of Liberia as well as the Criminal Procedure Law, title II of 1

LCL Revised by issuing the said warrant.

The motion further argued that the court's officers who conducted the search and seizure took away items and cash in United States and Liberian Dollars, in gross violation of the statutes controlling when they bluntly failed and neglected to give to the appellant, as required by the statutes extant, receipt for properties seized and taken away.

Further contending, the movant averred that the properties seized and taken away were not those of the Lutheran World Service as alleged, nor did Peter Blanquette reside at Cece Beach as reported in the written complaint from the National Security Agency under the signatures of Nelson S. Jallah, Chief of General investigation Branch, and J. Henric Pearson, Assistant Director for Special Services Department.

It is equally important to state that following execution of the warrant and seizure of these items, a three-count motion to return properties and to suppress evidence was also filed by the Henries Law Firm on August 23, 2006, praying for the return of the seized items to Peter Blanquett. The motion was interestingly captioned: "*Peter Blanquett & Cece Blanquett*" as movants and named movants' resident address to be: "*Virginia, Montserrado County*".

This Court also observes with keen interest that the motion to suppress evidence reportedly filed by *Peter Blanquett & Cece Blanquett* through the Henries Law Firm against *Republic of Liberia by & thru N.S.A...*" was designated as growing out of a criminal proceedings where the charge of rape was made against Peter Blanquett as defendant.

Further hereto, and as we had indicated that we will deal with this point in details, this Court this stage, takes due note of the submission made City Solicitors Gabriel G. Wleh and Zakama N. Harris representing the Respondent Ministry of Justice at the hearing on the motion to return the seized properties and suppress evidence. The city solicitors spread the following on the record:

"1. That as in keeping with practice and procedure, the state always prays for search warrant to be executed and served on the accused; but in the instant case, it never happened that prosecution from the Ministry of Justice representing the State in this jurisdiction was informed prior to the issuance of this search warrant and therefore the motion filed by movant be granted; that the property be returned to the rightful owner.

"2. That in this jurisdiction, all search warrants are prayed for by the Ministry of Justice and executed by court officers; and no private citizens [should ask the] court for the issuance of a search warrant without the knowledge of the Ministry of Justice who is the sole representative and assigned at this court."

"3. That the prosecution is finding it difficult to respond to the motion for return of property and suppression of evidence issued on August 22, 2006, because they (prosecution were not informed and it was difficult to even answer the motion and up to present, the agency that prayed for such search warrant has not been able to get in touch with the State. For this reason, prosecution prays your Honor that the motion filed by movant be granted and the rightful persons take their properties
"

As this Opinion seeks to address some of the issues raised in the ruling rendered on August 30, 2006 by Magistrate Tailor, denying the motion to return the properties to the appellants, we here quote verbatim said ruling:

"The application by prosecution conceding, with that of movant's counsel [that] caution be given by this court as it relate to the sheriff executing search warrant is noted. On the issue of the motion by the prosecution conceding with that of movant to have the motion of movant granted, this court says that indeed this court received a communication from the National Security Agency signed by two officers, N.S.Jallah, Chief, General Investigation Branch of said Agency, approved by Honorable J. Henric Pearson, Asst. Director/ Special Services Department of the said agency, praying court for a writ of search & seizure on the person of one Peter Blanquette, [a] German national heading the operation of the Lutheran World Service in Liberia. In the said [application], the Agency complained and informed this court that the said Peter Blanquette had] diverted relief items (Laptops, computers and other relief to the home of his wife, Mr. Cece Blanquette, a Liberian, on the Cece Beach, located in Virginia for marketing purposes. Following the application, the said writ was granted and] officers of this court were appointed to have the said writ of search [served]. That on August 18, 2006, the returns was made by the sheriff informing this court of items that were the outcome of the search & seizure and a long list of items were made and presented to this court."

"While it is true that court's officers on said mission of search & seizure, and by law, have no obligation to leave a copy or receipt of items seized growing out of this order, [it is] the belief of this court that the sheriff did act in line with law. But should in case it is established that the receipt of the search warrant of those items seized from the home of the movant was not supplied to the movant, this court will be in line with the movant's caution. [In which case], all officers effecting such order [will be cautioned] to do and execute their duties in accordance with law."

"On the issue of the motion by the movant, this court finds it difficult to grant this motion as it has

been acknowledged by the prosecution, simply on ground that the parties to this motion are two; that is, the first motion carried Cece Netty Blanquette, Benque, Virginia, movant versus the Government of Liberia [and signed by Counselor Charles Abdullai of the Watch Law Chambers]; [while] the second motion is filed by Counselor Cooper W. Kruah of the Henries Law Firm, which carries the heading Peter Blanquette and Cece Blanquette of Virginia, Montserrado County, Movant versus Republic of Liberia by and thru NSA, represented by its Director, etc...." "The denial of this court to grant this motion as acknowledged by the prosecution is not done in bad faith, but is in the interest of justice. Since indeed the two movants have separate counsel, this court will be at a loss to grant the motion in part; that is, suppressing evidence and discharging the properties to Madam Cece Blanquette and leaving out her husband who may, in the future, question this court for items growing out of the search and seizure. Rather, this court suggests that the two motions be consolidated so as to have this matter treated once and for all."

WHEREFORE, and in view of the foregoing, this court says while it is in agreement with the prosecution, but because of confusions, which this court sees that may arise in the future should one party receive these items and later other party come to this court and raise issue, this court will see itself in an embarrassing situation and therefore maintains that the parties, that is the two movants consolidate their motions since indeed they are husband and wife so as to give a conclusive decision once and for all. AND IT IS SO ORDERED."

This ruling by the magistrate raises a number of salient legal questions. Let us examine some of those questions as set forth in his ruling. According to the magistrate, NSA as Applicant Agency complained and informed the court that one Peter Blanquette had diverted relief items including computers and relief items. A writ was simply granted and the search ordered, least according to the magistrate, on the basis of this application.

One may therefore ask whether the application by NSA, assuming the agency was, and we hold it was not vested with legal competence to conduct such a search, would the warrant, as issued have been sufficient on its face. This Court holds that it did not. The current Constitution of this Nation (1986) is clear in its directives to all competent authorities; that warrant of search and seizure shall describe with specificity and particularity the object/s of the search. Article 21(a) of the Liberian Constitution states:-

"No person shall be made subject to search or seizure of his person or property, whether on a criminal charge or for any other purpose, unless upon warrant lawfully issued upon probable cause supported by a solemn oath or affirmation, specifically identifying the person or place to be searched

and stating the object of the search "[Our emphasis].

To the mind of this Court, the order contained in the warrant to the magistrate police to retrieve relief items and drugs, reportedly stolen and diverted, miserably failed to meet the specificity and particularity standard requirements for objects of search, contemplated under the quoted provision of the Liberian Constitution.

In common law jurisdictions, Liberia being no exception, it is settled law that:

"A search warrant must describe the items to be seized with particularity. The purposes of the search warrant particularity requirement are to prevent general searches, to prevent the seizure of objects on the mistaken assumption that they fall within the issuing magistrate's authorization, to prevent the issuance of warrants on loose, vague, or doubtful bases of fact, and to prevent general exploratory rummaging in a person's belongings by law enforcement officials while looking for evidence of a crime."

"To avoid being an impermissible general search warrant, in violation of the Fourth Amendment, a warrant must enable the executing officer to ascertain and identify with reasonable certainty those items that the magistrate has authorized him to seize, by describing the objects of the search with reasonable specificity; however, it need not be elaborately detailed." 68 Am Jur 2d, Searches and Seizures, Section 167, at page 760. 68 Am Jur 2d (Searches and Seizures).

In *Davies v. Rif*, 25 LLR 144, 147-8 (1976), this Court also adopted this common law principle. Mr. Justice Henries speaking for a unanimous Court on a similar provision in the 1847 Constitution with amendments through 1972, said:

"The purpose of this provision [as Article 21 (b) prohibiting search without warrant save limited circumstances] is to restrain police officers from roaming at will wherever they choose, in search of persons or contraband. A search warrant serves an important function. Prohibiting a search without warrant is permitted not to shield criminals, nor to make the home a safe haven for illegal activities, but rather that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy has been deemed too precious to be left solely to the discretion of those whose job is the detection of crime and the arrest of criminals. This is why the Constitution requires a judicial officer to pass on the desires of the police before they violate the privacy of home. The search warrant evidences a judicial determination that there is probable cause to believe that the person or thing to be seized is within the premises to be searched..." [Our emphasis].

Consistent with the common law standard already referenced in this Opinion, Criminal Procedure Law, title II 1L.C.L. section 11.10, provides numerous grounds in this regard. Aggrieved by an unlawful search, this provision may be invoked by a party to compel return of property and suppression of evidence on any of the following grounds:

(a) The warrant is insufficient on its face; or

(b) The property seized is not that described in the warrant; or

(c) The purported grounds set forth in the application for the warrant do not exist; or

(d) There was not probable cause for believing the existence of the grounds on which the warrant was issued; or

(e) The warrant was illegally executed; or The property, if seized upon an arrest, was illegally seized;

(g) The property was seized without a search warrant having been issued therefore except when the property was lawfully seized in connection with a lawful arrest...."

This Court also notes with utter disappointment that immediately following the search and seizure, the executing magisterial officer informed the court in his returns dated August 18, 2006, of a long list of seized items. The seized items, which should have been relief items and drugs, surprisingly included jewelry and cash in US and Liberian dollars, seized from appellant's premises. This apparent authorized conduct as inferred from issuance of warrant number 4704, speaks volume to the illegality and total unlawfulness of the entire search and seizure exercise.

We also take a keen note of another important issue raised in the magistrate court's ruling of August 30, 2006, Magistrate Taylor said in said ruling:

"While it is true that court's officers on said mission of search & seizure, and by law, have no obligation to leave a copy or receipt of items seized growing out of this order, fit is] the belief of this court that the sheriff did act in line with law. But should in case it is established that the receipt of the search warrant of those items seized from the home of the movant was not supplied to the movant, this court will be in line with the movant's caution; [In which case] all officers effecting such order [will be cautioned] to do and execute their duties in accordance with law." [Emphasis supplied].

This Court disagrees. In the face of the clear and unambiguous language of the statute, the magistrate's holding was simply a reversible error. Criminal Procedure Law, title II, I L.C.L. Rev., Section 11.6, mandates inter alia as follows:-

"...The officer taking property under the warrant shall give to the person from whom or from whose premises is taken a copy of the warrant and receipt for the property taken or, if such person is not present, he shall leave the copy of the warrant and the receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken...."

From this clear language, this Court holds that there was pure and simply no statutory support for the position assumed by the magistrate in these proceedings.

Having denied the motion to return the seized properties, it was not surprising that appellant, on September 1, 2006, caused Magistrate Taylor to be summoned at Criminal Assizes "C" First Judicial Circuit for Montserrado County, before His Honor William K. Ware, presiding.

Of importance in this case, counts 3, 4, 5 and 7 of the nine count summary proceedings complained Magistrate Taylor in the manner following to wit:

"3. After the search and seizure, petitioner filed and served a Motion for Return of Property and to Suppress Evidence basically contending that the Monrovia City court, Temple of Justice lacks territorial jurisdiction over Banjor, Lower Virginia, Montserrado County and the Republic of Liberia.

"4. A Notice of Assignment was prayed for and obtained for hearing of the petitioner herein and movant down below on August 30, 2006 and during hearing, the state prosecutors conceded to soundness of movant's motion.

"5. That contrary to position of the state prosecutors' position as contained in the records of the proceedings photocopy hereto attached and marked as Petitioner's Exhibit P/2, the Respondent Magistrate His Honor Milton D. Taylor ruled denying the motion and the returns spread on the minutes of court contending that the petitioner herein and her husband filed separate motion.

"7. Further as to counts three, four and six hereinabove, petitioner submits and says that Honorable Supreme Court of the Republic of Liberia in numerous opinion as held that before a judicial forum elects to go into any complaint, it must first determine as to whether it has jurisdiction of the matter

or over the person; [however]...., Monrovia City Court being cognizant there is a court in Brewerville elected to search and seize properties in Lower Virginia which is contrary to statutes and case laws extant."

It is important to remember that the magistrate conceded in his ruling herein quoted that "...it is evidenced that indeed this court did not have jurisdiction over Virginia from where the properties were seized. Having so determined, this Court is totally at loss having so admitted to error, how the magistrate could thereafter properly exercise any authority which he attempted to so exercise by issuing further orders in these proceedings. In the face of lack of jurisdiction, and having so accepted, the only proper and lawful order the magistrate could have given was simply to act as s directed by Judge Ware; and that is, to return the seized items to where they were taken. In *Barclay v. Thompson*, 17 LLR, 351,356 (1966), the opinion of this Court was to the effect that:

"Where want of jurisdiction over the cause appears upon the records, it may be taken advantage of by a plea in abatement or objection made to the jurisdiction at any stage of the proceedings; for any act of a court beyond the jurisdiction conferred upon it by law is null and void "[Emphasis mine].

For hoary with age in this jurisdiction has been that: *"Where judicial tribunals have no jurisdiction of the subject matter on which they assume to act, their proceedings are absolutely void in the strictest sense of the term; A court will recognize want of jurisdiction over the subject matter even if no objection is made. Therefore, whenever a want of jurisdiction is suggested, by the court's examination of the case or otherwise, it is the duty of the court to consider it, for if the court is without jurisdiction, it is powerless to act in the case."* *Union National Bank of Harper City v. Abraham*, 20 LLR 525, 5301 (1971).

This principle is supported by tons of opinions of this Court and further accentuated by this Court, in *Vargas v. Morris, et al.* 39 LLR 18, 23, (1998), when Mr. Justice Wright stated: "jurisdiction is conferred by law and not by the parties because of the issues presented by them." [Our Emphasis].

The issue of jurisdiction is of such significance that this Court has directed that when ever it is questioned in judicial proceedings, as in the instance, it is only but "... *proper for the court to first determine its own status from a jurisdictional point, and to refuse to hear the case if it determines that it does not have jurisdiction.*" *Chebo v. Caranda*, 33 LLR 452, 457(1985).

This Court, providing an answer to the question whether a judge acted properly when he granted the motion for new trial, given that his colleague of concurrent

jurisdiction had already ruled discharging defendants on the basis of a unanimous verdict of not guilty, Mr. Justice Korkpor, Sr., speaking for this Court without dissent, said: [A] judge who succeeds another judge in any court has no authority to tamper with any judgment or ruling of his predecessor." Gould et al. v. Republic, October Term, A.D. 2007. In the same opinion, this Court also said: "No circuit judge has the power to review, modify, or rescind any decision by another judge who is of the same official hierarchy on any point already passed upon by his predecessor, however, erroneous the act of his colleague may be."

We hold that the judgment rendered by Monrovia City Court, not having jurisdiction, is *coram non iudice* and *ipso facto void*.

On the fourth and final issue, that is: "Whether the Circuit Court judge's mandate to Monrovia City Court to transfer the search and seizure case to Brewerville Magistrate Court constituted review of his colleague of concurrent jurisdiction?", again we briefly refer to the records.

As earlier indicated in this opinion, Magistrate Taylor's denial of the motion to return seized properties precipitated the filing by appellant of a nine count summary proceedings, dated September 1, 2006, against the magistrate before His Honor, Judge William K. Ware.

Counts 2 through nine complained Magistrate Taylor in the manner to wit:

"2. That on August 17, 2006 the Monrovia City Court, Temple of Justice presided over by His Honor Milton D. Taylor ordered the issuance of a Writ of Search Warrant to search her premises and seize lab top computers and other relief materials as can be shown by photocopy of a letter addressed to the respondent herein by Nelson S. Jallah and J. Henric Pearson hereto attached and marked as Exhibit P/1 to form a cogent part of petitioner's petition.

"3. After the search and seizure, petitioner filed and served a Motion for Return of Property and to Suppress Evidence basically contending that the Monrovia City court, Temple of Justice lacks territorial jurisdiction over Banjor, Lower Virginia, Montserrado County and the Republic of Liberia.

"4. A Notice of Assignment was prayed for and obtained for hearing of the petitioner herein and movant down below on August 30, 2006 and during hearing, the state prosecutors conceded to soundness of movant's motion.

"5. That contrary to position of the state prosecutors' position as contained in the records of the proceedings photocopy hereto attached and marked as Petitioner's Exhibit P/2, the Respondent Magistrate His Honor Milton D. Taylor ruled denying the motion and the returns spread on the minutes of court contending that the petitioner herein and her husband filed separate motion.

"6. Petitioner further complaining of the Respondent Magistrate says that her husband lived on Payne Avenue, Sinkor while she is living at her business center in Banjor, Lower Virginia and the search and seizure was carried out at her business center. Court is requested to take judicial cognizance of the Respondent Magistrate's ruling as exhibited on P/2 hereinabove.

"7. Further as to counts three, four and six hereinabove, petitioner submits and says that Honorable Supreme Court of the Republic of Liberia in numerous *opinion has held that before a judicial forum elects to go into any complaint, it must first determine as to whether it has jurisdiction of the matter or over the person and the Monrovia City Court being cognizant [that] there is a court in Brewerville [nevertheless] elected to search and seize properties in Lower Virginia, contrary to statutes and case laws extant.*

"8. *That also, the Respondent Magistrate is fully aware that the petitioner herein by and thru the Government of Liberia prayed and obtained a Writ of Arrest for the Crime of Rape against her husband for allegedly raping the younger sister even though the writ was quashed and therefore, the contention by the magistrate petitioner and her husband filed separate motion was made in bad faith as the parties do not live together since March, 2005 when she saw her junior sister in their bedroom.*

"9. *That after the search and seizure, the ministerial officer failed, neglected and refused to provide an inventory of items taken from the premises searched as provided by law in this jurisdiction and the officers seized and took away items not named in the letter of complaint as can be shown by the list of both personal properties to include cash hereto attached and marked as Exhibit P/3 further form a cogent part of this petition.*

WHEREFORE AND IN VIEW OF THE FOREGOING facts and circumstances, petitioner files the petition praying Your Honour to order the Clerk of Court to summon the within respondent to appear before you and show cause if any, why petitioner's petition cannot be granted; the respondent be ordered to stay all further proceedings pending the outcome of this petition and grant unto your humble petitioner any and further relief that Your Honor may deem just, legal and equitable."

Judge Ware heard the summary proceedings and thereafter sent a mandate down to Magistrate Milton D. Taylor. Judge Ware's mandate dated September 8, 2006, substantially reads as follows:

MANDATE:

"May it please your honor:

"By directive of His Honor William K. Ware, Sr. assigned Circuit Judge presiding over the First Judicial Circuit, Criminal Assizes "C" for Montserrado County, Republic of Liberia, sitting in its August Term, A.D. 2006 you are hereby ordered to resume jurisdiction over the subject matter in which the above mentioned conference grew, that is to say, go over the two motions, but first you should establish as provided by statute whether or not you have authority, if it is established that you do not have jurisdiction, those items should be returned from where they were seized, since the State Prosecuting Attorney did not object to the application."

In the aftermath of Judge Ware's mandate and in apparent obedience thereto, Magistrate Taylor by a ruling dated March 15, 2007, observed inter alia:

"Indeed as per chapter 11, sub-section 11.1, captioned" authority to issue warrant," states specifically," that a search warrant may be issued by a Magistrate and JP or any other judicial officer empowered to perform such function whose jurisdiction encompasses the area within which the property sought is located." By this reading it is evidenced that indeed this court did not have jurisdiction over Virginia from where the properties were seized..". [Emphasis supplied].

Yet for the second time, Magistrate Taylor denied the motion to return the seized properties. In apparent justification of his position, the magistrate by a ruling dated March 15, 2007, stated as follows: *"On August 17, 2006, this court received an application from the National Security Agency (NSA) signed by one Nelson S. Jallah, Chief General Investigation Branch and approved by Honorable J. Henriess Pearson, Assisting Director/Special Services department requesting this court for permission to search for relief items, laptops, computer from the Cece Beach naming Mr. Peter Blanquette, a German national heading the operation of the Lutheran World Federation of the items just named above, which were allegedly diverted from the Lutheran World Federation by Mr. Peter Blanquette. Following this application, this court issued out the said writ of search warrant and the sheriff of this court proceeded at Virginia searched for the items and the same as per the search warrant and application thereof was brought under the jurisdiction of this court. Subsequently thereafter, Madam Cece Blanquette by and thru her lawyer, Cllr. Charles Abdullai filed a five count motion for return of property and to suppress evidence. Among other counts in the said motion, movant averred that in count three that this court lacks jurisdiction to search for properties located and lying at Virginia." "This application/motion was received and filed on the August 20, 2006. Following this motion, Mr. Peter Blanquette and Cece*

Blanquette filed a join motion to suppress and return properties dated August 3, 2006. In the second motion movant among other things stated and informed this court that Peter Blanquette is an executive of the Lutheran World Federation and that the relief supplies that were found at his business place/resident were intended for the local community, which is part of his function as an authority of the Lutheran World Federation, further, he averred that the items or equipments seized were authorized thru the Country Director to be removed and placed under the custody of co-movant, Cece Blanquette and therefore movant prayed this honorable to suppress and release these items to the movant."

"During the first hearing thru a regular notice of assignment the parties appeared thru their respective counsels with Cllr. Abdullai representing Madam Cece Blanquette while Cllr. Cooper W. Kruah representing Mr. Peter Blanquette, the husband. This court in hearing the motion decided that being that the parties were husband and wife and that a motion has been filed thru motions be consolidated so that this court turn the properties to the parties jointly.

This ruling was hover challenged, and this court was taken on summary by the counsel representing Madam Cece Blanquette before his Honor William K. Ware, sitting first judicial circuit, Criminal Court "C" on September 2006, invited this court for a conference and that, that conference a mandate was handled down dated September 8, 2006, confirming that indeed if this court lacks jurisdiction the items seized should be returned from where they were seized and that the court should resume jurisdiction and if where it was established that it lacks territorial jurisdiction. This court in adherence to this mandate and instruction assigned this case after hearing arguments law citations pro and con for its final ruling today, the 15th day of February, A.D. 2007, at 10:00a.m.

"In passing, this court says that in an effort to ensure that all parties were satisfied did decide during its first sitting in these proceedings to have consolidated the two motions to return properties to the couple since indeed and in fact they are husband and wife. But to the almost dismay this has not been the case, both parties seem to be at different points, which this court has no jurisdiction to pass upon. This court again will take note of the request made by the National Security Agency to the effect that the Agency was specific as to naming Mr. Peter Blanquette as the person who in the mind of the Agency has diverted properties belonging to Lutheran World Federation and that in any case motion to suppress evidence and to return property made by the counsel in these proceedings in the mind of this court would have been prudent that the items so seized be returned to person named in the application."

"Indeed as per chapter 11, sub-section 11.1, captioned" authority to issue warrant," states specifically," that a search warrant may be issued by a Magistrate and JP or any other judicial officer empower to perform such function whose jurisdiction encompass the area within the property sought is located."

By this reading it is evidenced that indeed this court did not have jurisdiction over Virginia from where the properties were seized. [Emphasis supplied].

An excerpt of your Honor's directive, His Honor William K. Ware, presiding over the Criminal Court "C" for Montserrado County, sitting in its August Term, 2006, [stated], "you are hereby mandated to resume jurisdiction over the subject matter in which the above mentioned conference grewn, that is to say, go over the two motions, but first you should establish as provide by statute whether or not you have authority; if it is established that you do not have jurisdiction, those items [should] be returned to where they were seized." This court wants to underscore the phrase where they were seized, implies territorial jurisdiction. Since it is established that this court did not have jurisdiction over the territorial limits of Virginia, the properties so seized are to be returned to the jurisdiction in which they were seized; that is, the Township of Virginia to the Magisterial court which has jurisdiction over such area."

"WHEREFORE, AND INVIEW OF THE FOREGOING, it is our ruling of this court that the properties so seized are to be returned to the Magisterial court in Virginia which has absolute jurisdiction over the area and that the clerk of this court is hereby ordered to do a communication informing the Judge of the said court as to the ruling of this court with respect to the items in question, and that the items be turned over to the sheriff so that same be turned over to the said court along with all items, records as contained in this case. The parties are to proceed to the Township of Virginia to establish ownership of the properties. AND SO ORDERED."

Believing, and rightly so, that Magistrate Taylor did not obey Judge Ware's order, appellant summarized Magistrate Taylor but this time around, before His Honor, J. Boima Kontoe, a succeeding circuit judge at First Judicial Circuit, Criminal Assizes "C" for Montserrado County.

Succeeding Judge Boima Kontoe entertained the summary proceedings and properly set aside Magistrate Taylor's ruling. Judge Kontoe ordered the magistrate to resume jurisdiction and "*determine ownership to the seized items...*" in order, Judge Kontoe said, "*to give meaning and effect*" to the mandate of his colleague predecessor. The material bone of appellant's contention is that Judge Kontoe's ruling mandating Magistrate Taylor to proceed and "*determine ownership to the seized items*" amounted to review of his colleague of similar judicial ranking.

This Court is inclined to sustain appellant position in this respect. Judge Ware's instruction to Magistrate Taylor was clear and to the point. Judge Ware's mandate was

that the magistrate court resume jurisdiction and immediately "...establish as provided by statute whether or not [the court has] authority". Judge Ware's mandate was also abundantly clear that the moment Magistrate Taylor determined that Monrovia City Magistrate Court did not have jurisdiction, the objects of the search, *"those items should be returned from where they were seized..."*

The succeeding judge's instruction to the magistrate to thereafter proceed to establish ownership to the seized properties, an act the magistrate could not properly execute for want of jurisdiction, it also contravenes Judge Ware's ultimate decision that upon determination of want of jurisdiction, the seized properties be sent back henceforth to where they were taken. We therefore hold that Judge Kontoe's mandate not only contravenes that of his predecessor's. It also amounted to vacating the previous order of Judge Ware.

Re-affirming the long held legal principle, with this case not being one of the limited exceptions, that a judge of same ranking shall not review his colleague, Mr. Chief Justice Gbalazeh, speaking for this Court in *Brisco et. al. v. Smith and Denco Shipping Lines*, stated:

"A Circuit Court judge of concurrent jurisdiction cannot review, modify or rescind any decision of another Circuit Judge who is of the same official hierarchy on any point already acted upon by him. However, the only remedy is an appeal, there is no rule which prevents one Circuit Judge from ruling on a motion not passed upon by his colleague ..." 33 LLR 145, 152 3 (1985).

Also speaking for this Court in *Francis v. Mesurado Fishing Company, Ltd.*, Mr. Chief Justice Pierre indicated:

"...As between courts of co-ordinate jurisdiction, such as two county courts or Circuit Courts of the same state, the rule is that neither has power to vacate a judgment rendered by the other which is not void upon its face." 20 LLR 542,550 (1971).

Also, in the case: *R.L. v. Aggrey* reported in 13 LLR 469, 478-479 (1960), where a judge of concurrent jurisdiction attempted to correct an erroneous ruling of his colleague, this is what the Supreme Court of Liberia held:

However sound the ruling of His Honor, Judge Weeks might seem to be in substance, it cannot be upheld by any authority of legal jurisprudence; and, however, erroneous or sound might be the ruling of His Honor, Judge Samuel B. Cole,.... The only judicial tribunal that would have been clothed with legal authority to review the same was an appellate court; and Judge Weeks..., exercising

concurrent jurisdiction with Judge Cole, was without legal authority to review his acts as such. Courts have no power to interfere with the judgments and decrees of other courts of concurrent jurisdiction.

WHEREFORE and in view of the foregoing, the ruling of the Monrovia Magistrate Court and all subsequent judgment upholding same are hereby reversed.

The Clerk of this Court is ordered to send a mandate to the circuit court below commanding the judge therein presiding to resume jurisdiction and order the magistrate court to return the seized properties to Appellant Cece Netty-Blanquett. IT IS SO ORDERED.

Reversed.

Charles Abdullai of the Watch Law Chambers, Inc., for the appellant. Solicitor General Tiawan S. Gongloe in association with Cooper W. Kruah, for appellee.