

ELIZABETH T. NORRNEH, Appellant, *v.* **JOHN NAKLEN, FRANCES NAKLEN, ELLEN NAKLEN and VICTOR NAKLEN**, Appellees.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING OF
THE PETITION FOR A WRIT OF PROHIBITION.

Heard: March 29, 2004. Decided: August 16, 2004.

1. The possessory right or title of a lessee to leased property terminates upon the expiration of the terms and conditions of the lease.
2. Upon the expiration of a lease, the lessor has the right to institute an action of summary proceedings to recover possession of real property against the lessee occupying the premises beyond the lease period.
3. The failure of the lessee to vacate the leased premises after the expiration of the terms and conditions of the lease is tantamount to wrongful and unlawful withholding of the subject property.
4. The judgment of a trial court putting lessee into possession of leased premises in an action commenced by the lessors to have the lessee vacate the premises prior to the expiration of the lease does not bar the lessor from asserting his or her right under the lease agreement after the expiration of the lease and by virtue of their title deeds.
5. Prohibition will lie where a trial judge unwarrantedly assumes jurisdiction over a land not constituting part of the matter in dispute and proceed by wrong rule.

Appellant, who had been leased a parcel of land by the Kru Governor Naklen, Sr., his wife and their son, for a period of fifteen years with the proviso that she construct a three-room house thereon, one of which rooms would be given the Governor for his use, sued out an action in summary proceedings to recover possession of real property in the magisterial court against John Naklen, son of the Governor who had occupied the room following the death of the Governor. A motion filed by the defendant for the dismissal of the case on the ground that title was at issue having been denied, the magistrate entered a judgment in favor of the plaintiff, holding that the defendant, who was not a party to the lease agreement concluded between the Naklens and the plaintiff, had failed to show that he held letters of administration to the property of his late father. An appeal from the magisterial court's judgment also having been dismissed by the circuit court, a writ of possession was ordered issued placing the plaintiff in possession of the property.

Subsequently, prior to the expiration of the lease agreement under which the appellant held the property, a writ of arrest was issued by a justice of the peace against the plaintiff in the summary proceedings case, Elizabeth T. Nornneh, appellant herein, for criminal

mischief, based on the allegations of the co-appellees that the appellant had damaged their property. On summary proceedings to the Circuit Court, the Court ruled dismissing the criminal charges on the ground that the appellant was lawfully in possession of the property based on the lease agreement. Thereafter, shortly after the expiration of the lease agreement, the appellees instituted an action of summary proceedings against the appellant to recover possession of real property. Although there were no records to show that this action was not heard or that the appellant was ejected or ousted from the property, the Circuit Court judge proceeded to order the deputy sheriff to evict from the property all tenants who he said had been illegally placed on the property by the justice of the peace growing out of the summary proceedings to recover real property. Based on the said orders, the deputy sheriff proceeded to evict other tenants of the Estate of the late Governor from property not covered by the lease agreement concluded with the appellant.

The appellees then filed before the Justice in Chambers a petition for issuance of a writ of prohibition. The petition was granted on the ground that the trial judge had assumed jurisdiction over the matter before the justice of the peace when no complaint had been filed before the circuit court, and also that the circuit court judge had proceeded by wrong rule.

On appeal to the Full Bench the ruling of the Chambers Justice was upheld and the petition granted. The Supreme Court held that prohibition would lie to prevent the enforcement of a judgment growing out of a trial that had proceeded by wrong rules and to undo acts that were unlawfully done. The Court opined that the trial judge had assumed jurisdiction wrongfully since there was no complaint before him growing out of the summary proceedings before the justice of the peace court. Summary proceedings, the Court noted, had only been issued against the justice of the peace in the malicious mischief case. The summary proceedings to recover possession of real property, the Court observed, was still pending before the justice of the peace when the circuit court judge issued the eviction order against the tenants. In so acting, the Supreme Court held that the appellees had been denied their day in court.

The Court also opined that while the appellant had the right to the premises during the period of the lease, that right was lost by the expiration of the lease, and thereby the failure of the appellant to vacate the premises upon notice was tantamount to wrongful and unlawful withholding. In such circumstance, the Court said, the appellees, upon the expiration of the lease held by the appellant, had the right to institute summary proceedings to recover real property against the appellant and to have her evicted and ousted from the property. Hence, based on the foregoing, the Court affirmed the ruling of the Chambers Justice.

James W. Zotaa, Jr. of Liberty Law Firm appeared for the appellant. *Joseph H. Constance* of Green and Associates Inc. appeared for the appellees.

MR. JUSTICE CAMPBELL delivered the opinion of the Court.

This case is before us on an appeal from the ruling of Mr. Justice Jangaba, Chambers Justice, during the March Term, A. D 1999, granting the petitioners/appellees' petition for a writ of prohibition.

According to the records, the Late Kru Governor, John Naklen, Sr., acquired a curator's deed as a result of an auction on the 2nd day of November, A. D. 1938, under the signature of Thomas C. Lomax, Curator of Montserrado County, for a parcel of land located and lying in Cooper Farm area, now on New Port Street, Monrovia. The said parcel of land had formed part of the Intestate Estate of the late Freeman Anthony. The deed was probated and registered according to law. The late Governor Naklen, Sr. deeded the subject property to Victor Nakien and Ellen Naklen on January 25, 1979. The second deed also was probated and registered.

The records also reveal that the Late Governor Naklen and his wife, Frances Naklen, and his son, Edward Naklen, entered into and executed a lease agreement with Elizabeth Nornneh allegedly for the property on the 18th day of July, A. D. 1983, for a period of 15 years, commencing from July 18, 1983 up to and including the 18th day of July, A. D. 1998. The parties agreed that the lessee would construct on the property a three (3) room concrete building within a period of seven (7) years and that one (1) room therein shall be given to the Governor for his use. Accordingly, the three room concrete building was constructed, of which one room was used by the Governor. After the death of the Governor, his son, John Naklen occupied said room.

The records further show that co-respondent/appellant Nornneh instituted an action of summary proceedings to recover possession of real property on August 20, 1993, against the Governor's son, John Naklen, at the Monrovia City Court, before Associate Magistrate Joseph S. Fayiah. She instituted this suit basically alleging that John Naklen illegally withheld a room within her house. On the 13th day of October, A. D. 1993, counsel for John Naklen moved the magisterial court to dismiss the suit on ground that title was in issue due to the lease agreement entered into and executed by the Naklens and Elizabeth T. Nornneh. The motion was resisted by counsel for Elizabeth T. Nornneh, contending that the plaintiff had instituted the suit based upon the possessory right vested in her. On the 28th of October, A. D. 1993, Associate Magistrate Fayiah denied co-petitioner/co-appellee John Naklens' motion to dismiss the suit on grounds that he was not a party to the lease agreement entered into between the Naklens and co-respondent/appellant Nornneh and that Co-petitioner/co-appellee John Naklen did not show to the court that he was an administrator of the Intestate Estate of his deceased father. The City Court rendered final judgment against co-petitioner/co-appellee John Naklen. Co-petitioner/ co-appellee John Naklen excepted to the ruling and announced an appeal to the Sixth Judicial Circuit Court, which appeal was heard and dismissed by the circuit court. A writ of possession and a writ of execution were

duly issued placing Co-respondent/appellant Elizabeth T. Nornneh in possession of the property.

On the 13th day of July, A. D. 1998, Justice of the Peace Solomon issued a writ of arrest for criminal mischief upon the oath and complaint of co-petitioners Victor Naklen and Ellen Naklen against co-respondent Elizabeth T. Nornneh for allegedly damaging their property. The Naklens, through their counsel, Counsellor Joseph H. Constance, also notified co-respondent Nornneh on July 17, 1998 to vacate the subject property at the expiration of the lease agreement on July 18, 1998, stating that they had no intention of renewing the said agreement.

On July 22, 1998, co-respondent/appellant's counsel filed summary proceedings against Justice of the Peace Solomon before Judge Timothy Z. Swope, presiding over Criminal Court "D", alleging that Justice of the Peace Solomon had refused to dismiss the case despite the said property being given to co-respondent/appellant Nornneh by the Sixth Judicial Circuit Court. The summary proceedings was resisted and granted on the 27th day of August, A. D. 1998 by Judge Swope on grounds that Justice of the Peace Solomon should not have issued a writ of arrest for criminal mischief against co-respondent/appellant Nornneh for allegedly damaging her own property or land given her by the Sixth Judicial Circuit Court. Judge Swope therefore ordered the criminal charge dismissed. No appeal was taken by the court appointed counsel, Counsellor Oct avious Obey.

The Naklens instituted an action of summary proceedings to recover possession of real property on July 24, 1998, against co-respondent/appellant Elizabeth T. Nornneh before Justice of the Peace Sam T. Solomon to recover possession of the lease property after the expiration of the lease. A writ of summons was duly issued, served and returned served. Several notices of assignments were issued, served and acknowledged by counsels for both parties. The last assignment in the case was issued on September 3, 1998 for hearing on Saturday, September 5, 1998 at 9:00 a.m. The records are devoid of any evidence that the action of summary proceedings to recover possession of real property was ever heard and that co-respondent Nornneh was ever ejected or ousted from the property.

While this case was pending before Justice of the Peace Solomon undetermined, Judge Swope ordered the deputy sheriff for Criminal Court "D", Edward V. Ricks, to proceed on the alleged premises of co-respondent/appellant Elizabeth T. Nornneh to remove all illegal tenants allegedly placed therein by Justice of the Peace Sam T. Solomon, in the absence of a complaint before him growing out of the summary proceedings to recover possession of real property.

As a result of this order, the deputy sheriff proceeded to oust and evict other tenants of the Intestate Estate of the late Governor John Naklen, Sr., located on New Port Street, that were not covered by the lease agreement between the late Governor and co-respondent/appellant Nornneh.

The appellees applied to the Chambers Justice for a writ of prohibition. The writ was issued and the Chambers Justice heard the proceedings in prohibition and ruled granting the petitioners' petition on grounds that the co-respondent judge unwarrantedly assumed jurisdiction without a complaint being filed against Justice of the Peace Solomon in the action of summary proceedings to recover possession of real property. The Justice further held that the judge had proceeded by a wrong rule in evicting the Naklens and their tenants from the property of the Intestate Estate of the late John Naklen, Sr.

It is from this ruling that the case has come before the Court *en banc* for final determination. After having heard arguments on both sides, the appellant, by and thru her counsels, conceded to the soundness of the Chambers Justice's ruling, as mentioned in the Brief filed with this Honourable Court that "prohibition would lie to prevent the enforcement of a judgment growing out of a trial which proceeded by wrong rules or to undo what was unlawfully done; that co-respondent/co-appellant Judge Timothy Z. Swope assumed jurisdiction wrongfully when there was no complaint growing out of the summary proceedings to recover possession of real property brought against co-respondent/co-appellant Elizabeth Nornneh; and that the eviction of tenants by the judge from the Intestate Estate of the late Governor Naklen, a property separate and distinct from the one in dispute between the Naklens and Elizabeth Nornneh, was an error for which prohibition would lie to prevent the illegal eviction or undo the illegal eviction of the Naklens and tenants from their late father's estate".

From the above circumstances and considering the ruling of the Chambers Justice to be in line with law, it is our considered opinion that the ruling of Mr. Justice Jangaba in this case should and same is hereby incorporated in this opinion.

The facts and circumstances in this case present the following issues for the determination of this case:

1. Whether the co-respondent judge legally obtained jurisdiction over the summary proceedings to recover possession of real property which was pending before Justice of the Peace Solomon for which he ordered the tenants of the Nakien Estate evicted.
2. Whether co-petitioners Victor Naklen and Ellen Naklen have the legal right, by virtue of their title deed for the leased premises, to institute summary proceedings to recover possession of real property against co-respondent Nornneh upon the expiration of the lease agreement?

We shall decide these issues in a reverse order. As to the issue relating to the legal right of Victor and Ellen Naklen, we observed from the records in this case that the Late Kru Governor, John Naklen, acquired these premises from a judicial sale in 1938 and subsequently deeded said property to his children, Victor and Ellen Naklen, on January 25, 1979. The Late Governor Nakien and his wife, Frances Naklen, as well as his son Edward Nakien, entered into a lease agreement with co-respondent/appellant Nornneh on July 18, 1983, leasing said property to her for the period of 15 years from July 18, 1983 up and

including July 18, 1998. Thus, co-respondent/appellant Nornneh was legally placed in possession of the leased property in 1994 and 1995 by the trial court until the expiration of the lease agreement on July 18, 1998. The Naklens, upon the expiration of the lease agreement on July 18, 1998, had the legal right to institute the action of summary proceedings to recover possession of real property.

The possessory right or title of co-respondent/appellant Nornneh to the leased property terminated upon the expiration of the terms and conditions of said lease. Her failure and refusal to vacate the premises upon notice is tantamount to wrongful and unlawful withholding of the subject property. In this regard, the judgment of the Sixth Judicial Circuit Court does not bar the Naklens from asserting their right under the lease agreement and by virtue of their title deed.

With regard to the issue of whether co-respondent Judge Swope obtained jurisdiction over any summary proceedings against Justice of the Peace Solomon, growing out of the action of summary proceedings to recover possession of real property, this Court notes that a petition for summary proceedings was filed against Justice of the Peace Solomon on July 22, 1998, growing out of criminal mischief, which the said judge granted and ordered dismissed without an appeal being taken. This Court also observed from the records in the case that the action of summary proceedings to recover possession of real property was instituted by the Naklens against co-respondent/appellant Nornneh on July 24, 1998, two days after the filing of the petition for summary proceedings against Justice of the Peace Solomon by co-respondent/appellant Nornneh before Judge Swope in the criminal matter.

The records are devoid of any evidence showing that a petition for summary proceedings was ever filed against Justice of the Peace Solomon by co-respondent/appellant Nornneh before Judge Swope in a civil matter. This Court further observed from the records that the trial judge never summoned Justice of the Peace Solomon and co-appellees Victor Naklen and Ellen Naklen herein in any civil suit, wherein co-respondent/appellant Elizabeth Nornneh's right had been allegedly abridged by Justice of the Peace Solomon in contemplation of section 8.12 of the New Judiciary Law, Rev. Code 17, strongly relied on by Judge Swope.

This Court, moreover, observed from the records in this case that the action of summary proceedings to recover possession of real property was still pending when Judge Swope ordered his deputy sheriff to oust and evict all illegal tenants from the alleged premises of co-respondent/appellant Nornneh and place her in possession of the said property. Co-petitioners/co-appellees Frances Naklen and John Naklen, administratrix and administrator of the Intestate Estate of the Late John Naklen, Sr. contended in the petition that the deputy sheriff of Criminal Court "D", Edward V. Ricks, also ousted and evicted them and their tenants from the said Estate which is not covered by the leased property between the Naklens and co-respondent/appellant Nornneh, defendant in the action of summary

proceedings to recover possession of real property instituted by Victor Naklen Ellen Naklen, co-petitioners/ appellees.

Thus, this Court holds that the trial judge denied the petitioners/appellees their day in court, in that he never obtained jurisdiction over any complaint in the action of summary proceedings to recover possession of real property. He therefore acted without assuming jurisdiction over the subject matter and the petitioners/appellees herein, when he ordered them and their family as well as their tenants ousted and evicted during the pendency of the civil matter before Justice of the Peace Solomon. There is no showing in the records before this Court of any arbitrary and illegal act or acts committed by Justice of the Peace Solomon upon which Judge Swope acted to have evicted petitioners/appellees.

The respondents' counsel strongly relied on the case *Carter v. Massaquoi*, 24 LLR 511 (1976), Syl. 3, wherein this court held that "prohibition will not issue where there is no attempt to proceed by a wrong rule." In that case, a writ of replevin was issued to the sheriff to replevy chattels in possession of appellee Massaquoi. The bailiff served the writ and immediately placed appellant Carter in possession of the chattels. The sheriff demanded the return of the chattels from appellant Carter, plaintiff in the court below, on ground that he (sheriff) should have retained possession of said chattels until the statutory period of ten days before delivering same to plaintiff Carter upon orders of the trial judge. Carter applied for prohibition which was denied by the Chambers Justice and she appealed. This Court, on appeal, affirmed the ruling of the Chambers Justice on the ground that there was no attempt to proceed by a wrong rule.

In the instant case, the co-respondent judge unwarrantedly assumed jurisdiction without a complaint having been filed against Justice of the Peace Solomon in an action of summary proceedings to recover possession of real property, and also ordered the petitioners/appellees evicted from the leased property. Notwithstanding, co-respondent/appellant Nornneh was and is still in possession of the premises and in the face of the pendency of the civil suit.

Furthermore, co-petitioners/co-appellees Frances Naklen and John Naklen, their family and tenants were evicted from the Intestate Estate of the Late John Naklen, Sr. which was never part of the leased property in the civil matter pending before Justice of the Peace Solomon. Moreover, the case was never heard and therefore co-respondent/appellant Nornneh was never evicted from the leased property, when Judge Swope ordered the petitioners/appellees evicted, thereby dismissing the action of summary proceedings to recover possession of real property. This Court finds that the facts in the *Carter* case and the instant case are not analogous. Thus, the trial judge indeed unwarrantedly assumed jurisdiction and proceeded by wrong rule, for which prohibition will lie. *Dweb v. Findley*, 15 LLR 638 (1964).

The eviction orders of the trial judge are hereby ordered vacated and co-petitioners/co-appellees Frances Nakien and John Naklen are ordered repossessed of the Intestate Estate

of the late John Naklen, Sr. on New Port Street. The action of summary proceedings to recover possession of real property is re-instated, and the bonafide owners of the subject property by virtue of the title deed are entitled to oust, evict and eject Co-respondent/appellant Nornneh from the leased property upon the expiration of the lease agreement. Co-petitioners/co-appellees Victor and Ellen Naklen are at liberty to recover possession of the leased property either at the Monrovia City Court or at the Civil Law Court, Sixth Judicial Circuit, Montserrado County, since Sam T. Solomon before whom the civil suit was filed is no longer functioning as justice of the peace.

WHEREFORE and in view of the forgoing, the petition for the writ of prohibition should be, and same is hereby granted and the peremptory writ ordered issued. The Clerk of this Court is hereby ordered to send a mandate to the Court below informing the judge presiding therein to resume jurisdiction and give effect to this ruling. Costs are ruled against respondents. And it is hereby so ordered.”

Our review of the records in the case file show that the lease agreement entered into between John Naklen, Sr., his wife Frances Naklen and his son Edward Naklen, as lessors, and Elizabeth Nornneh, as lessee, for the property located on New Port Street, Monrovia, Liberia, has expired and since title is not in issue, an action of summary proceedings to recover possession of real property is the proper action to be instituted by co-appellees Ellen Nakien and Victor Naklen, owners of said leased property against Elizabeth Nornneh, co-appellant.

In view of the circumstances and law citations contained in the ruling of Mr. Justice Jangaba being sound, we have no alternative, but to affirm the ruling of the Chambers Justice. The Clerk of this Court is hereby instructed to send a mandate to Criminal Court “D”, commanding the judge presiding therein to resume jurisdiction over this matter and give effect to this opinion in conformity with the ruling of Mr. Justice Jangaba. Costs are ruled against co-respondent/co-appellant Elizabeth T. Nornneh. And it is hereby so ordered.

Petition granted.