

REPUBLIC OF LIBERIA and WILLIAM SLEWRO, District Attorney, Juarzon Statutory District, Sinoe County, Petitioners, v. **G. SAYDEE POWOE**, District Judge, Statutory District, Sinoe County, Respondent.

PETITION FOR A WRIT OF PROHIBITION TO THE DISTRICT COURT FOR
JUARZON STATUTORY DISTRICT, SINOE COUNTY.

Decided July 1, 1983.

1. Where there are two or more petitioners to a petition, one of them may properly verify the petition.
2. Prohibition will not lie where a judge does not exceed his jurisdiction or proceed by any wrong rules, but acts properly in investigating a summary proceeding matter in which a complaint was duly filed against the magistrate.

The Republic of Liberia and the District Attorney for Juarzon Statutory District brought prohibition proceedings against the judge of the monthly and probate court for allegedly behaving ultra vires in intervening in a matter which petitioners said had not been properly brought before him and which was not a part of his trial jurisdiction. The matter to which the petitioners made reference concerned an alleged assault and battery in which the defendants had been charged.

The Justice in Chambers denied the petition, holding that the matter over which the respondent judge had assumed jurisdiction was properly within the court's authority since the matter over which the judge had summoned the parties' concerned acts committed by the magistrate and not the assault and battery case. The Justice opined that the respondent judge had not acted by any wrong rules in investigating the conduct of the magistrate, the matter being one for summary proceedings. The justice noted further that the district attorney had been properly summoned to give evidence in the matter. The Justice therefore denied the petition and ordered that the main action of assault and battery be transferred to a proper forum since the offense was beyond the trial jurisdiction of the respondent judge. The Justice also ordered that the weapon involved in the criminal act be turned over to the county attorney since he was the appropriate prosecuting attorney in the assault and battery case.

A. W. Octavius Obey, Acting Solicitor General and D. Caesar Harris, Acting Assistant Minister of Justice, appeared for petitioners. S. Edward Carlor appeared for respondent.

SMITH, J., presiding in Chambers.

The Republic of Liberia and the district attorney, William Slewro, petitioners, represented by the Acting Solicitor General Octavius Obey, and Acting Assistant Minister of Justice Caesar Harris, sought redress from the Chambers of this Honourable Court by a petition for

the issuance of a peremptory writ of prohibition to enjoin, restrain and prohibit the judge of the Provisional Monthly and Probate Court for the Statutory District of Juarzon, Sinoe County, His Honour G. Saydee Powoe, from harassing, embarrassing and inconveniencing the said petitioners in respect of acts alleged to be ultra vires and contrary to the authority of the said respondent judge.

In the nine-count petition, the petitioners substantially alleged, and their counsel argued before this Court, that one Tommy Tiah, a relative of the respondent judge, had shot and wounded one David Torkor with a single barrel shot gun and had therefore been charged with the crime of assault and battery with intent to kill; that while the matter was pending before the stipendiary magistrate for preliminary examination, the respondent judge, whose court had no trial jurisdiction over the matter, ordered the single barrel shot gun to be forwarded to his court, as per letter dated April 20, 1983, addressed to the District Attorney for Juarzon District; that because the district attorney, co-petitioner in these prohibition proceedings, refused to give up the gun, which, if he did would have defeated the prosecution of the defendant for the crime of assault and battery with intent to kill, the respondent judge ordered the arrest of the said district attorney, and his imprisonment even though no complaint had been filed against the said district attorney in the court of the respondent judge. This is the substance of the allegations contained in the nine-count petition.

The respondent judge, represented by Counsellor S. Edward Carlor, also filed a nine-count returns, proferting with said returns a copy of a complaint made to the respondent judge by the defendant, Tommy Tiah, against Associate Magistrate Joseph Kanyen, who had arrested the defendant in the assault and battery case which was pending before the said magistrate court but which apparently had been somewhat compromised in keeping with the letter of complaint to the respondent judge. Also proferted with the returns were the writ for summary proceeding issued from the District Court against the said magistrate, based on the letter of complaint, together with a writ of subpoena and portion of the minutes of court of December 2, 1982, containing the testimony of the respondent magistrate in the summary proceeding. In his testimony, the magistrate named the district attorney as having joined with others to compromise the matter and in whose presence an amount of \$60.00 was allegedly paid. Tommy Tiah, the accused, listed in his complaint sundry amounts alleged to have been collected from him and some members of his family, including bond fees, etc., all amounting to \$157.50. The victim who was shot was alleged to have also been fined by the magistrate in the sum of \$50.00. It was further alleged in the complaint in the summary proceeding that after the payment of the various amounts, the gun was to be delivered to the defendant. However, the magistrate reportedly refused to return the gun, which was still in his possession or in the possession of the district attorney.

It was predicated upon this complaint and the testimony of the stipendiary magistrate and his associate that the respondent judge subpoenaed the district attorney and required him to produce the gun.

The respondents averred further in the returns, and his counsel argued before this Court, that the district attorney had disobeyed the writ of subpoena to appear and testify as a witness in the summary proceeding which was instituted against the magistrate; and that it was only after he had refused to produce the gun that a fine of \$25.00 was imposed on him, with the judge ordering that he be incarcerated until the fine was paid. The returns further averred that the district superintendent had intervened and, hence, the fine was not paid and the district attorney was not put in jail.

The respondent further averred in the returns that the petition was not verified by the district attorney, but rather by Counsellor D. Caesar Harris who signed as affiant. Since, according to the title of the petition, the Republic of Liberia and William Slewro were named as petitioners, in our opinion, any one of them could have properly verified the pleading; hence, this contention is not sustained.

Having listened to the arguments and studied the records as made available to us, it is our opinion that the respondent judge did not exceed his jurisdiction or proceed by any wrong rule when he issued the writ for summary proceeding against the magistrate, based upon a complaint duly filed. It is our opinion also that the respondent had the authority to subpoena the district attorney in any matter in which he was needed as a witness, and that in the event of any disobedience to the subpoena, a fine could justifiably be imposed. However, the superintendent of the district, having intervened, which intervention was accepted, the issue of the fine should therefore be considered as having been closed.

With respect to the single barrel gun, we hold the view that it should not be delivered to Defendant Tommy Tiah in the assault and battery case, but that it be forwarded to the county attorney in Greenville, it being the fruit of crime in the charge of assault and battery with intent to kill, since the district court lacked jurisdiction to hear and determine indictable offenses.

It is our further opinion that since the summary proceeding had not been concluded and the question of exacting sundry amounts of money from the defendant was involved, the respondent judge should resume jurisdiction over the summary proceeding and proceed to determine the same with prejudice to no party, but in keeping with the evidence. The magistrate is to send forward the assault and battery case to the proper forum.

In view of the foregoing, the petition for a writ of prohibition is therefore denied and the alternative writ quashed. And it is hereby so ordered.

Petition denied.

