

**JOHN H. RICHARDS**, Petitioner, v. **HIS HONOUR FRANCIS N. PUPO, SR.**, Debt Court Judge, **EDWARD SLOCUM**, Debt Court Sheriff, and **THE LIBERIAN BANK FOR DEVELOPMENT AND INVESTMENT (LBDI)**, a financial institution, represented by its Loan Recovery Officer, **C. MINOR**, Respondents.

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

Heard: May 3, 1983. Decided : July 6, 1983.

1. Where the statute provides a procedure for the sale of real property to satisfy a judgment of a court, the court must adhere to the statute and an aggrieved party has a remedy for any departure therefrom.
2. Where the lower court has adopted a novel procedure during the enforcement of the mandate of the Supreme Court, the two remedies available to the aggrieved party are prohibition or information; and the former should be addressed to the Chambers Justice, when the court is sitting en banc, whilst the latter should be addressed to the court en banc.
3. Any court, including the Supreme Court, which renders a decision retains jurisdiction until its judgment is fully satisfied and any aggrieved party during the enforcement of the judgment has remedy by resorting to that court for the appropriate relief.
4. The right to be heard by the court is one of the sworn duties of a tribunal and it should be enjoyed by litigants at any stage of a proceeding to mete out transparent justice to all parties.
5. Incorrect designation of the kind of motion applied for is not a legal ground for its denial without reference to the substance thereof.
6. Where a party withdraws a pleading reserving unto himself the right to refile, the court retains jurisdiction over the petition until the accrued costs are paid and an appended petition filed as a substitute.
7. Where a court, although having jurisdiction over the subject matter and parties, proceeds by wrong rules, prohibition is the proper remedy.
8. A motion for relief from judgment may be granted for: (1) mistake, inadvertence, surprise or excusable neglect; (b) newly discovered evidence; (c) fraud; (d) voidness of the judgment or (e) satisfaction, release, or discharge of the or reversal or vacating of a prior judgment.

Petitioner, judgment debtor in the lower court, filed a petition for a writ of prohibition upon denial of a motion for relief from judgment in the lower court. The Chambers Justice ruled denying the petition on grounds that the Full Bench had previously passed on the same matter and to do otherwise would be a review. On appeal to the Full bench, the Supreme

Court found that a review of the irregularities committed by the trial judge in the enforcement of the Supreme Court's mandate did not amount to a review of the Supreme Court's decision. The ruling of the Chambers Justice was therefore reversed and lower court was ordered to enforce judgment in keeping with statute.

S. Edward Carlor appeared for the petitioner. Clarence E. Harmon appeared for the respondents.

MR. JUSTICE YANGBE delivered the opinion of the Court.

The bases of the petition for prohibition in these proceedings are: (1) that a notice for the sale of realty to satisfy writ of execution must be placarded in conspicuous public places for at least a minimum of eight weeks (Civil Procedure Law, Rev. Code 1: 44.43 (1)), but that the publication of the notice for sale of the land in this case is less than even a month; (2) that the judgment creditor had agreed to satisfy the debt by installments and, accordingly, petitioner had paid one-fourth of the amount; and (3) that petitioner had filed a motion to stay the auction sale which is still pending, but the respondent judge had virtually refused to pass upon the motion and he continues to finalize the auction sale of the property of petitioner.

The respondents, contesting the issuance of the peremptory writ contended thus: (a) that there are two petitions before Court filed by the petitioner and one notice of withdrawal was filed, but no amended petition has been filed, (b) that the trial judge was enforcing a mandate of the Supreme Court and no single Justice of this Court can obstruct the enforcement of its mandate, (c) that respondents denied that agreement was reached between judgment creditor and the petitioner for installment payments of the debt, and that any part payment has been made against the debt, (d) that there is no penalty for violation of the statute requiring publications of notice of sale for at least eight weeks prior to the sale of the real property nor does such violation affect the title of the highest bidder and purchaser one Jackson Moore, hence, the auction sale had been closed since March 31, 1982, and (e) that a motion seeking relief from judgment does not affect the finality of the judgment, therefore, prohibition will not lie.

The petitioner withdrew his petitions. Therefore, the respondent contended that since the petitions were withdrawn, there is nothing before court; hence, the court has no jurisdiction in the case. We note also that the petitioner gave notice to file an amended petition as a substitute for the original petition in accordance with Civil Procedure Law, Rev. Code 1:9.10.

Assuming that the two petitions were withdrawn by mere filing of the notice of withdrawal, the questions which arise are: What are the significance of the notice given to file an amended petition, and the legal effect of petitioners' failure so to do? Should we only give

effect to the word "withdrawal" and disregard the words "with express reservation to amend", as stated in the notice of withdrawal

In our opinion, in construing a document, every word or phrase in the document, from the four corners thereof, should be given consideration in order to achieve its desired purpose and intent. The statute on amendment of pleadings unequivocally provides that a notice of withdrawal should be filed, accrued costs paid and another pleading filed as a substitute. Ibid. Of course, in the instant case, no complaint for nonpayment of accrued costs was made. There is, however, a notice of withdrawal, but no amended petition has been filed, consequently, the withdrawal is incomplete, thus the petition is not withdrawn under the notion that, that which is not done legally is not done at all. Therefore, this Court does have jurisdiction over this case.

Where the statute provides a procedure for a sale of real property to satisfy a judgment of a court, the court has no choice but to adhere to the statute fully and a departure therefrom, the aggrieved party has remedy therefor. The admitted violation of the statute by the trial judge is not only irregular, but prejudicial; for in our opinion, the object of requiring at least eight weeks publications of the notice for sale of real property is not a mere formality, but primarily to afford the judgment debtor ample opportunity to protect his property from such sale by complying with the judgment otherwise, and to provide for sufficient notice to the public for a highest bidder, thereby preventing the sale of the property for less price than what it is reasonably worth.

The respondents have contended that there is no penalty for violation of the statute in this respect and it does not affect the title of a purchaser who buys at the public auction.

The contention here is not the validity of the title of the purchaser at the auction sale, nor who should be penalized for flagrant disobedience of the statute, but rather whether the procedure required by the statute has been complied within reasons as stated earlier. Hence, the excuse given by the respondents for the wanton disregard of the statute is not sustained.

The records further revealed receipt for part payment, signed by W. A. Slocum, sheriff, Debt Court for Montserrado County, which amount was paid against the principal sum awarded by the trial court, but respondents have denied the payment.

The sheriff of the debt court is the collecting agent and ministerial officer of the court and may perform such other duties assigned him by the court, as in this case. Judiciary Law, Rev. Code 17: 15.2. Therefore, the sheriff having received the amount mentioned hereinabove during the process of the enforcement of the judgment under which the co-respondent bank is seeking to recover, the receipt is binding on the respondents. When the part payment was shown in the records, assuming that counsel for respondents was not aware of the payment, the normal thing to do was to ascertain from the sheriff the correctness of the payment,

which for unknown reason, counsel who also represented the co-respondent bank in the trial court including the very sheriff at this bar, apparently had refused so to do. We cannot ignore the receipt proferted by the petitioner since the authenticity thereof has not been attacked.

Respondents have contended also that the auction sale has been concluded; hence, nothing remains to be done, and therefore, prohibition will not lie. However, respondents have also admitted that the judgment in this case has not been completely satisfied. Therefore, it is obvious that something still remains to be done in connection with the full enforcement of the judgment; which are the execution of the appropriate deed to the alleged highest bidder and the payment of the balance due in accordance with the receipt we have mentioned supra. Thus, prohibition will lie. *Coleman et al. v. Cooper et al.*, 12 LLR 226, 231 (1955).

Respondents have also asserted that this petition is intended to prevent execution of the mandate of this Court en banc because the judge of the trial court was in the process of carrying out the instructions of this Court when the prohibition was filed.

Where the trial court has adopted a novel procedure during the enforcement of the mandate of this Court, there are two remedies available to the aggrieved party; namely, prohibition or information and the former should be addressed to a Justice in Chambers, when the court is sitting en banc, whilst the latter should be addressed to the Court en banc. We want to note here that both procedures have the same effect; for, the writs in both proceedings are usually ordered issued by the Court en banc, or a Justice in Chambers and the service of the writ in each case serves as a stay for further proceedings with the enforcement. In this case, the petitioner has elected prohibition when this Court was at recess at the time the petition was filed.

One of the cases cited by the respondents in support of their contention that prohibition was the wrong writ is *Raymond International (Liberia) Ltd. v. Dennis et al.* reported in 25 LLR 131 (1976). In that case, the petitioner withdrew an appeal, whereupon the Supreme Court sent a mandate to the lower court

to execute a ruling it had made in a labour dispute. The petitioner than sought a writ of prohibition, complaining against the lower court for proceeding in a wrong manner. The Justice in Chambers at the time forwarded the petition to the Full Bench.

The Court ruled that prohibition was not the proper remedy and the complaint should have been made in a bill of information.

The statute as well as the rule of the courts which regulate the procedures before the courts in this country have no provisions known as bill of information. However, what ushered this non-statutory practice known as bill of information in our court system cannot be traced and it should not override the statute. Notwithstanding, it is obvious that a court, including the

Supreme Court, which renders a decision, retains jurisdiction until its judgment is fully satisfied and any party aggrieved during the enforcement of the judgment has remedy by resorting to that court for the appropriate relief, which maybe by way of motion and/or bill of information and the latter tantamount to a motion. The irregularities committed by the respondent judge during the enforcement of the judgment in this case are patent and they are not denied by respondents. Further, the authorities agreed that where the court, although having jurisdiction over the subject matter and parties, but proceeds by wrong rules, prohibition is the proper remedy. *Parker v. Worrell* 2 LLR 525 (1924). In *Raymond International (Liberia) Ltd. v. Dennis, et al*, 25 LLR 131 (1976), petition for a writ of prohibition, the Chambers Justice felt that he alone could not entertain the petition because it grew out of the mandate of this Court, therefore, he forwarded it to the Court en banc. In this case, our distinguished colleague, the Chambers Justice, did not follow the procedure in the case cited above by sending the petition to the Full Bench, but he quashed the alternative writ, solely because he was of the opinion that to grant the peremptory writ, he, as a single Justice of this Bench, would be setting aside the decision of this Court en banc.

It is about time to draw a line between overruling the judgment of the Court en banc and granting a relief incidental to the principal relief sought in the main case for admitted gross irregularities committed by the lower court while executing the judgment of the trial court, predicated upon the instructions of the Supreme Court. There are several methods provided by statute to enforce a judgment, depending upon the kind of judgment and the nature of the case, in accordance with the Civil Procedure Law, Rev. Code 1:44.1-44.73. In the instant case, only the irregularities committed in the publications of the notice of sale were attacked and not the merits of the decision of this Court. As usual, the Supreme Court en banc did not order the trial judge as to what method he should adopt in carrying out its orders and instructions, and it is a sacred duty of the respondent judge to observe the statutory procedure in implementing the orders and instructions of this Court from which rules the court below departed.

The pendency of a motion to stay the writ of execution filed in the lower court by the petitioner is another admitted issue by the respondents, but they contended that the motion was designated as "motion for relief from judgment" and, therefore, it does not suspend the enforcement of the judgment.

The right to be heard by the court is one of the sworn duties of a tribunal and it should be enjoyed by litigants at any stage of a proceeding in order to mete out transparent justice to all parties concerned. *Wolo v. Wolo*, 5 LLR 423 (1937). In our opinion, it was most irregular and prejudicial to the petitioner when the respondent judge failed to pass upon the motion merely because it is designated as "motion for relief from judgment."

Before addressing ourselves to the contents of this motion filed in the lower court, we would like to note in passing, that a motion is an application for an order granting relief incidental to the principal relief in the action or proceeding in which the motion is filed, and an incorrect designation of the kind of motion applied for is not a legal ground for its denial or to ignore it, Civil Procedure Law, Rev. Code. 1:10.1 & 10.5 Therefore, the fact that the motion is denominated as "motion for relief from judgment", is not a valid reason for refusal of the court to grant aggrieved party a hearing without any reference to the substance thereof for the reasons stated infra.

Grounds for motion for relief from judgment as specified by the statute are thus: "mistake, advertence, surprise or excusable neglect; (b) newly discovered evidence which if introduced at the trial would probably have produced a different result and which by due diligence could not have been discovered in time to move for a new trial under the provisions of section 26.4 of this title; (c) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party (d) Voidness of the judgment or (e) Satisfaction, release, or discharge of the judgment or reversal or vacating of a prior judgment or order on which it is based, or inequity in allowing prospective application to the judgment. A motion under this section shall be made within reasonable time after judgment is entered. Ibid., 1:41.7(2)(3).

The substance of the motion which the trial court refused to pass upon, are not any of the grounds enumerated herein above, but rather it solely relates to the admitted irregularities committed by the respondent judge during the auction sale and no way attacked the validity of the judgment of this Court. Therefore, the reasons assigned not to pass upon the motion to stay the sale in our opinion is not valid and is untenable, Ibid., 1:3.44.

Consequently, the ruling of the Chambers Justice denying the issuance of the peremptory writ is reversed. The Clerk of this Court is instructed to send a mandate to the court of origin to resume jurisdiction over the case and to enforce its judgment in accordance with the relevant statute. Costs are ruled against the respondents. And it is so ordered

*Ruling Reversed, petition denied*