

HELENA ROBERTS, KEBEH ROBERTS and ANTHONY ROBERTS,
representing the Interstate Estate of the late ZAYZAY ROBERTA, Petitioners/ Appellants,
v. **HIS HONOUR YUSSIF D. KABA,** Assigned Circuit Judge, Civil Law Court, Sixth
Judicial Circuit, Montserrado County, 1st Respondent, HIS HONOUR B. S. TAMBA,
Justice of the Peace for Montserrado County, 2nd Respondent, and KORNASSA SUMO,
by and thru His Attorney-In-Fact, JAMES ARKU, 3rd Respondent, Appellees.

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

Heard: April 28, 2004. Decided: August 17, 2004.

1. A party cannot be concluded by a judgment without having his day in court.
2. Prohibition will lie to prohibit the unlawful act of a trial court and to undo what has been unlawfully done.
3. A trial judge cannot order a justice of the peace to resume jurisdiction and enforce judgment in a matter that is beyond the jurisdiction of the justice of the peace.
4. Prohibition will lie where a trial judge proceeds by wrong rules rather than rules which should be observed at all times.
5. Where documents presented to a justice of the peace raise issue of title to real property, the justice of the peace should refuse jurisdiction over the matter, as he lacks jurisdiction over the subject matter.
6. Where title is not in issue, a special proceeding to recover possession of real property may be maintained in a circuit court or a court of a justice of the peace or a magistrate.
7. The court of a justice of the peace or magistrate has jurisdiction only of cases in which the amount of the judgment demanded does not exceed three hundred dollars.
8. A justice of the peace court is without jurisdiction to try a summary ejectment action wherein title to real property is at issue.
9. The trial by a justice of the peace of an action of summary ejectment wherein title is involved constitutes a usurpation of jurisdiction and prohibition will therefore lie.
10. A writ of prohibition will be granted to prevent or enjoin inferior courts or tribunals from assuming jurisdiction which is not legally vested in them.
11. Prohibition will lie where a justice of the peace has proceeded by wrong rule which should be observed at all times.
12. The Supreme Court will grant a writ of prohibition where it appears that a subordinate court or tribunal has exceeded its jurisdiction or attempted to proceed by a wrong rule different from those which ought to be observed at all time.
13. Prohibition not only prohibits the doing of an unlawful act but goes to the extent of undoing what has already been done.

14. A writ of prohibition will not only prevent whatever remains to be done by the court against which the writ is directed, but will give complete relief by undoing what has been done.
15. Where the procedure and method adopted is illegal and unwarranted, prohibition will lie to prevent what remains to be done.
16. The President is given the authority by the Judiciary Law to designate the geographic area, such as a city, township, settlement or other similar area, over which each justice of the peace shall have territorial jurisdiction and within which he shall hold court for the trial of actions.
17. A justice of the peace does not have jurisdiction over an area outside of his assigned territorial area and over which another court is given territorial jurisdiction.

The petitioners/appellants, administratrix and administrators of the intestate estate of the late Zayzay Roberts, appealed from a ruling of the Justice in Chambers denying their petition for a writ of prohibition against the judge presiding in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, a justice of the peace whose action had been challenged in the Civil Law Court by the petitioners/appellants on ground that he lacked jurisdiction to handle the action filed before him, and the plaintiff who had instituted the action of summary proceedings to recover real property before the justice of the peace. The basis for the petitioners/appellants motion before the justice of the peace to dismiss the action was the assertion that title was involved and that the justice of the peace could not hear such a case, but rather the circuit court.

The plaintiff in the proceedings before the justice of the peace had opposed the motion to dismiss, stating that petitioners/appellants' reliance on a mandate from the Supreme Court which was never enforced did not constitute title to the disputed property or title deed to the said property. The justice of the peace, without issuing any assignment for the hearing of the case, had a writ of possession issued and served on the appellants. From this action and the subsequent ruling by the justice of the peace denying the motion to dismiss, the appellants sought review by the circuit court on summary proceedings.

The circuit court judge, on the strength of a conference held with the parties and without going into the merits of the case ordered the justice of the peace to resume jurisdiction over the case and enforce his judgment. It was from this action by the circuit court judge that the petitioners/appellants petitioned the Justice in Chambers for a writ of prohibition. The Justice in Chambers heard and denied the petition. It is from this ruling that an appeal is taken to the Full Bench.

The Supreme Court reversed the ruling of the Chambers Justice, holding: (a) that the petitioners/appellants had not had their day in court since there was absent any evidence that the petitioners had been summoned or served with any assignment for the case and no hearing was had in the case before they were evicted; (b) that the justice of the peace had

exceeded his jurisdiction since the matter, involving title, was beyond his jurisdiction; (c) that the circuit court judge was in error in ordering the justice of the peace to resume jurisdiction over the case and enforce his ruling in view of the fact that the matter was beyond the jurisdiction of the justice of the peace.

The Court further opined that the procedure followed by the justice of the peace in not summoning the petitioners and not conducting a hearing before rendering a decision and ordering the petitioners evicted was in violation of rules which the justice of the peace should have followed at all times. Moreover, the judgment growing therefrom could therefore not be conclusive with respect to the petitioners. The Court noted also that once documents were presented to the justice of the peace and the issue of title arose, the justice of the peace should have refused jurisdiction over the matter as provided by law rather than assume jurisdiction and oust the petitioners/appellants from the property without a trial. The Court therefore held that in such a case, not only will prohibition lie to prevent any further action by the lower court but that it will also serve to reverse all illegal actions taken by the lower court.

MADAM JUSTICE COLEMAN delivered the opinion of the Court

This appeal grows out of a ruling of the Justice in Chambers, denying a petition for a writ of prohibition.

Mr. Justice Elwood L. Jangaba presiding in Chambers of this Honourable Court during its March Term, A. D. 2002, heard and denied a petition for a writ of prohibition filed by the petitioners/appellants herein., Helena Roberts, Anthony Roberts and Kebeh Roberts, administratrix and administrators of the Intestate Estate of the Late Zayzay Roberts, against His Honour Yussif D. Kaba, Assigned Judge of the Sixth Judicial Circuit Court for Montserrado County, Justice of the Peace B. S. Tamba, and Komassa Sumo by and thru her Attorney-In-Fact, James Arku. The appellants excepted to the ruling of the Justice in Chambers and announced an appeal to the Full Bench. Hence, this appeal.

According to the certified records transmitted to this Court, appellee Sumo is alleged to have purchased a parcel of land on February 28, 1979 from the late Willie Hinneh, which is situated and lying in Point Four, Montserrado County, and containing 325 sq. ft. of land. The grantor, Willie Hinneh, is said to have executed and signed a deed in favor of Appellee Sumo, which said deed was probated and registered in accordance with law in Vol. 301-78, page 745, and re-transcribed according to law in Vol. 21-2001, pages 3-5, and filed in the Center for National Documents and Records/ National Archives, R L.

Appellee Sumo, an alleged lover of the late Zayzay Roberts instituted an action of summary proceedings to recover possession of real property before justice of the peace B. S. Tamba against Helena Roberts, Anthony Roberts and Kebeh Roberts, administratrix, administrators and heirs of the late Zayzay Roberts. There is no evidence that a writ of

summons was issued, served and returned served. The records show only that a writ of possession was first issued on the 4th day of January, 2002 and served on the appellant. After attempted eviction of the appellant, their counsel prevailed on the justice of the peace not to evict the appellant without a trial. The justice of the peace ordered the appellants to be repossessed of the said property and a notice of assignment was issued and served for the hearing of the matter on February 13, 2002.

The appellants appeared before the justice of the peace as a result of the February 13, 2002 notice of assignment served on them. They were represented by the Henries Law Firm, in person of Counsellor James C. R. Flomo, who requested the justice of the peace to dismiss the action on grounds that title was involved. Counsellor Flomo contended that appellants' title to the subject property was a mandate of 1979 from former Chambers Justice George Henries and a judgment of the Civil Law Court rendered in favor of appellants' late father, Zayzay Roberts, in an action of specific performance to compel Willie Hinneh to sign a deed in favor of Zayzay Roberts for which Willie Hinneh had received money from Zayzay Roberts. These documents, appellants' counsel alleged, related to the identical property claimed by appellee Sumo and therefore presented an issue of title, which placed the trial of the case beyond the trial jurisdiction of the justice of the peace court.

Counsellor Joseph H. Constance, who represented the appellee, in counter argument, requested the justice of the peace to deny the motion to dismiss the complaint, as a judgment or a mandate in an action for specific performance which was never enforced, cannot be used as title deed to real property. Appellee's counsel also contended that title to the subject property was never vested in appellants' father, Zayzay Roberts, by the issuance or signing of a deed. Hence, as title was not in issue, the justice of the peace court had trial jurisdiction.

The justice of the peace, B. S. Tamba, ordered the issuance of a notice of assignment for February 21, 2002, for a ruling on the motion to dismiss the action. However, prior to the rendition of the ruling, the appellants filed a petition for summary proceeding before the Civil Law Court to review the ruling of justice of the peace Tamba on the motion to dismiss the complaint for lack of trial jurisdiction. Co-respondent B. S. Tamba, in his returns, alleged that summary proceedings could not lie against him because he had not made any ruling for which the trial court could review. His Honour Wynston O. Henries, presiding over the Civil Law Court, held a conference, after which he mandated justice of the peace Tamba to resume jurisdiction and make his ruling and proceed in keeping with law.

The justice of the peace resumed jurisdiction over the matter and ruled on March 22, 2002, denying appellants' motion to dismiss the action, for reasons that title was not in issue, noting that appellants did not exhibit any deed to show title and that a mandate or a judgment which was never executed could not confer title.

There is no record to show whether the justice of the peace issued another notice of assignment for the hearing or had a hearing on the summary proceeding to recover

possession of real property after he made his ruling denying appellants' motion to dismiss the complaint. However, a second writ of possession was issued on March 23, 2002, based on an alleged judgment of March 22, 2002, which ordered that appellant be ousted and evicted.

Subsequently, on March 23, 2002, the appellants, by and through their legal counsel, Counsellor Ignatius Weah, filed another summary proceedings against the justice of the peace stating that they were being illegally evicted and ousted from their property without notice of a hearing or a hearing being conducted. The trial court issued a citation for a conference which was attended by Counsellor James R. C. Flomo and Counsellor Ignatius Weah as counsels for the appellants, and Counsellor Joseph Constance representing the appellee. After the conference, His Honour Yussif D. Kaba, presiding over the Civil Law Court, mandated the justice of the peace court to resume jurisdiction and enforce his judgment.

On April 15, 2002, the appellants, thru Counsellor James W. Zotaa, now representing the appellants, filed a four-count petition for a writ of prohibition, which was amended on May 20, 2002. The amended petition contained eight-counts.

Appellant contended in their amended petition: That the justice of the peace denied them their day in court, in that they were not served with a writ of summons and brought under the jurisdiction of the justice of the peace court; that title was involved which placed the matter beyond the trial jurisdiction of the justice of the peace; and that the circuit court judge proceeded by wrong rule for which prohibition would lie since the trial judge did not hear the merits of the summary proceedings when he illegally mandated the justice of the peace to enforce his judgment.

The then Chambers Justice, His Honour Elwood L. Jangaba, ordered the issuance and service of the alternative writ, which was issued, served and returned served. The appellee filed a fourteen-count returns on June 12, 2002, to the appellant amended petition, contending, among other things: That the appellant had their day in court, that they were served with a writ of summons and brought under the jurisdiction of the justice of the peace court; that title was not in dispute, in that the appellants never exhibited any title before the justice of the peace; that the letters of administration presented to the court was to only administer the interstate estate of appellants' late father; that the deeded property of appellee Sumo could not be administered by the appellants as part of the interstate estate of their late father; that Counsellor James Flomo of the Henries Law Firm and Counsellor Ignatius Weah attended and actively participated in the conference, after which the trial judge, His Honour Yussif D. Kaba, mandated the justice of the peace to enforce his judgment.

The Justice in Chambers heard and denied the petition. We hereunder quote a relevant portion of the Chamber Justice's ruling for the benefit of this opinion:

“Rule 33 of the Revised Circuit Court Rules provides that upon the application of a party petitioner for summary proceedings against a magistrate or justice of the peace the

judge shall cite the parties to a conference prior to issuing the writ which contains a stay order. It is not denied by the petitioners that a conference was never held, but they contended that the trial judge did not hear the merits of the summary proceedings when he man-dated the justice of the peace to enforce his judgment.

We agree that prohibition is the proper remedy where a trial judge proceeds by different rules from those which ought to be observed at all times. *Parker v. Wornell*, 2 LLR 525 (1927); *Mensah v. Tecquab*, 12 LLR 147 (1954)

In the instant case, the trial judge cited the parties to a conference attended by them without the issuance of a writ in conformity with Rule 33 of the Revised Circuit Court Rules. Thereafter, the trial judge mandated the justice of the peace to enforce his judgment. This Court holds that the trial judge never proceeded by different rules which ought to be observed at all times. Hence, prohibition will not lie.”

From this ruling of the Justice in Chambers, appellants appealed to the Full Bench. However, prior to the appeal being heard, appellant filed a motion before the Full Bench captioned “motion to dismiss for lack of jurisdictions”, wherein they challenged the justice of the peace’s jurisdiction over the subject matter and the person of the appellants, and also raised other issues which would lead to discussing the merits of the case as though on regular appeal.

Since the motion has not challenged the jurisdiction of the Full Bench over the appeal emanating from the ruling of the Chambers Justice on the petition for issuance of a writ of prohibition, this Court will not deal with said motion since we are not considering the merits of the case.

The salient issues for our consideration in these prohibition proceedings are as follows:

1. Whether or not the justice of the peace and the trial judge proceeded by wrong rule, for which prohibition will lie?
2. Whether or not prohibition will lie where the justice of the peace exceeds his trial jurisdiction?

We shall decide the above stated issues in descending order. Did the justice of the peace proceed by wrong rule when the appellants and their counsels first appeared before the justice of the peace and request him to refuse jurisdiction and dismiss the complaint as title was involved? The justice of the peace denied the motion to dismiss and without any evidence that a trial was held, ordered that the appellants be ousted and evicted. Even though there is a second writ of possession, which was served on the petitioner, there are no returns to show whether or not the writ of possession was ever carried out and the appellant ousted and evicted. This procedure adopted by the justice of the peace was clearly illegal and did not afford the appellants their day in court.

This Court is of the view that the appellants did not have their day in court in the justice of the peace court because neither is , as there is no evidence that a writ of summons was

served on them nor . Neither was any hearing held before they were ordered evicted. But will prohibition lie where a party claims not to have his day in court?

This Court held in the case *Sawan v. Cooper et al.*, 39 LLR 598 (1999), “A party cannot be concluded by a judgment without having his day in court; and prohibition will lie to prohibit the unlawful act of a trial court and to undo what has been unlawfully done.”

Following the conference held by the trial court, even though being in conformity with Rule 33 of the Revised Circuit Court Rules (1999) which empowers a circuit court judge to have a conference prior to the issuance of a writ of summons in a summary proceeding which is against a magistrate or justice of the peace, however the circuit court judge, after the conference, should not have ordered the justice of the peace to resume jurisdiction and enforce a judgment over a matter that was clearly beyond his jurisdiction. The judge should have instead either issued the writ of summons in the summary proceedings or alternatively ordered the justice of the peace to refuse jurisdiction over the matter as it was beyond his jurisdiction. Failing to have done so, the trial judge proceeded by wrong rule, which should be observed at all times. Hence, prohibition will lie.

Now we come to the issue of whether or not prohibition will lie where a justice of the peace exceeds his trial jurisdiction. Let us first determine whether the justice of the peace had trial jurisdiction. A recourse to the records in this case shows that the subject property was allegedly deeded to Appellee Sumo on February 28, 1979 by the late Willie Hinneh. This deed was probated and registered according to law and was presented to the justice of the peace by appellee Sumo to show her ownership to the property. The appellants, in their motion to dismiss, exhibited to the justice of the peace letters of administration issued to them to administer the intestate estate of their late father, Zayzay Roberts, and a copy of Chambers Justice Henries’ Ruling which ordered the Civil Law Court to enforce its judgment in an action of specific performance to compel Willie Hinneh to sign a deed in favor of the appellants’ late father, Zayzay Roberts for the same property. The Civil Law Court had never enforced its judgment in the action of specific performance up to the time of the death of the grantor, Willie Hinneh, in the 1980’s, and the death of the grantee, Zayzay Roberts, in the 1990’s, and up to this date. The letters of administration and the aforesaid rulings are the documents which the appellants contended constituted their title to the subject property which placed the subject matter beyond the jurisdiction of the justice of the peace.

The records also contained an unsigned deed from Willie Hinneh to Zayzay Roberts and a judgment from the Justice in Chambers ordering Willie Hinneh to sign the deed in favor of Zayzay Roberts. A careful inspection of the unsigned deed and the deed from Willie Hinneh to appellee Sumo revealed the identical metes and bounds on both deeds; the exact amount of Dollars Three Thousand Dollars (\$3,000.00) paid by both parties for the property and both deeds contained 325.0 sq ft. area of land and no more.

When these documents were presented to the justice of peace by the appellants and the issue of title arose, the justice of the peace should have refused jurisdiction over the matter, because as title was involved which could not be determined by him. He did not have trial jurisdiction over the subject matter and therefore exceeded his jurisdiction when he proceeded with the matter and ordered the appellant ousted and evicted without a trial, and we so hold. Our Civil Procedure Law states that:

“Where title is not in issue, a special proceeding to recover possession of real property may be maintained in a circuit court or a court of a justice of the peace or a magistrate. The court of a justice of the peace or magistrate shall have jurisdiction only of cases in which the amount of the judgment demanded does not exceed three hundred dollars.”

Civil Procedure Law, Rev. Code 1: 62. 21.

The contention of appellants is based on the above quoted statutory provision. They argue that the 2nd respondent herein, justice of the peace B. S. Tamba, had no trial jurisdiction over the subject matter because the letters of administration and the copy of the ruling of the then Chambers Justice George Henries, growing out of the specific performance action against the late Willie Hinnah vested title into the appellants' late father, Zayzay Roberts. Thus, ; and that because title was involved, the justice of the peace court lacked trial jurisdiction.

Having decided that title was in issue and the justice of the peace court did not have trial jurisdiction, the next issue to determine is whether or not prohibition will lie where the court lacks jurisdiction over the parties and the subject matter?

The Supreme Court has held that “a justice of the peace is without jurisdiction to try a summary ejectment action where-in title to real property is at issue. *Younis and Howard v. Tecquah*, 11 LLR 331 (1953). The Court further said that “for a respondent justice of the peace to try an action of summary ejectment wherein title is involved would constitute usurpation of jurisdiction; and prohibition would lie.”

This Court has also held in several cases that a writ of prohibition will be granted to prevent or enjoin inferior courts or tribunals from assuming jurisdiction which is not legally vested in them. *Gaignae v. Jallah*, 20 LLR 163, syl.1. (1970); *Nasser v. Smith*, 26 LLR 115, syl. 3 (1977); *Lamco J. V. Operating Company v. Flomo*, 27 LLR 52 (1978), text at 58-59 (1978).

In the instant case, the justice of the peace neither did not first acquire personal jurisdiction over the party by the service of a writ of summons which is required in all civil action; nor neither did the justice of the peace court have trial jurisdiction over the subject matter as title was in issue. And, there isn't any record to indicate that a trial was conducted before the appellees were ordered evicted. The justice of the peace having proceeded by wrong rule which should be observed at all times, prohibition will lie, and we so hold.

Let us now consider whether or not prohibition is the pro-per remedy where a court exceeds its jurisdiction or proceeds by wrong rule? It is evident from the facts gathered and the records certified to us that besides the many irregularities committed by the justice of the

peace in the handling of this case, the lower court failed to correct these obvious irregularities and errors. Instead, it permitted the justice of the peace to preside over a matter in which he, firstly, did not acquire jurisdiction over the persons, and secondly, did not have trial jurisdiction over the subject matter as title to the subject property was raised and was in issue. We therefore conclude that the court below also proceeded by wrong rule which should be observed at all times.

This Court will grant a writ of prohibition where it appears that a subordinate court or tribunal has exceeded its jurisdiction or attempted to proceed by a wrong rule different from those which ought to be observed at all time. *Parker v. Worrell*, 2 LLR 525 (1925); *Mensah v. Tecquah*, 12 LLR 147 (1959), text at 150-151.

Mr. Justice Shannon, speaking for the Court in the *Mensah v. Tecquah* case, in which he relied on the *Parker v. Worrell* case, said: "It is true that, generally, prohibition will not lie where a court has jurisdiction. There is no gainsaying that Magistrate Tecquah has jurisdiction to try and determine cases in summary ejection. But where it appears that there is an excess or abuse of that jurisdiction, or where the court attempts to proceed by a rule different from those which ought to be observed at all times, prohibition does lie. *Parker v. Worrell*, 2 LLR. 525 (1925). In such case, it does not only prohibit the doing of the unlawful act, but goes to the extent of undoing what has already been done. See 22 R. C. L., *Prohibition*, § 8."

Mr. Justice Shannon concluded by saying: "In this case, Magistrate Tecquah acted irregularly by attempting to proceed by a rule different from those which ought to be observed at all times. In the first place, he should not have been willing to act as judge in a matter wherein he had acted as agent or representative for one of the parties.

In the second place, he should not have gone into the case in the absence of the defendants or without first having given them notice to appear to have their day in court. His conduct, therefore, in acting as judge in the matter despite the above-stated facts, and in entering and disposing of same to the extent of issuing a writ of possession, are denounced; and we are undoing the unlawful acts complained of and directing the said Magistrate Tecquah to cancel, vacate and void all of the proceedings had in the summary ejection case before him, including the writ of possession."

The *Mensah v. Tecquah* case is analogous to the instant case, in which justice of the peace Tamba, without issuing a writ of summons to bring the appellants under the jurisdiction of the court; without giving them notice to appear and have their day in court, disposed of the matter to the extent of issuing a writ of possession, even when the issue of title was raised challenging his jurisdiction. The judge proceeded by wrong rule which ought to be observed at all times. Therefore, as was held in the *Tecquah* case, prohibition will lie and will also undo the unlawful acts. See also *Fazzab Bros et al. v. Collins*, 10 LLR 211 (1950) and *Scott et al. v. The Job Security Scheme Corporation, Inc.* 31 LLR 552 (1983), syl.1 & 2. In the *Fazzab Bros.* case, the Court held, as far back as 1950 that "A writ of prohibition not only prevents whatever

remains to be done by the Court against which the writ is directed, but gives complete relief by undoing what has been done.” In the *Scott* case, the Court upheld the *Fazzab Bros.* case and further said that “Where the procedure and method adopted is illegal and unwarranted, prohibition would lie to prevent what remains to be done as well as undo what has already been done.”

In passing, this Court takes judicial cognizance of the records before us and observe that Justice of the Peace Tamba also lacked territorial jurisdiction over the subject matter. The property in dispute is situated and lying in the Point Four area of Bushrod Island, Montserrado County. Justice of the Peace Tamba conducts his court on Old Road, in Congo Town. It is inconceivable that J. P. Tamba will assume jurisdiction over property in an area not within his jurisdiction and that is clearly within a magisterial area. The New Kru Town Magisterial Court has territorial jurisdiction over property in the Point Four area.

The New Judiciary Law of Liberia specifies that the President will designate the geographic area, such as the city, township, settlement or other similar area, over which each justice of the peace shall have territorial jurisdiction and with-in which he shall hold court for the trial of actions. If Justice of the Peace Tamba was commissioned for the Township of Congo Town where he conducts his court, then it is clear that he does not have territorial jurisdiction over property in Point Four where the Newkru Town Magisterial Court has territorial jurisdiction, because a magistrate and a justice of the peace cannot have the same territorial jurisdiction. Again, justice of the peace B S. Tamba acted outside his territorial jurisdiction.

Wherefore, and in view of the facts and circumstances of this case and the laws relied on, the ruling of Mr. Justice Elwood L. Jangaba denying the issuance of a writ of prohibition is hereby reversed, the petition is granted, and the peremptory writ ordered issued. The Clerk of this Court is hereby ordered to send a mandate to the trial court informing the judge presiding therein to resume jurisdiction over the case and send a mandate to justice of the peace B.S. Tamba to cancel, vacate and void all of the proceedings in the summary ejectment case, including the writ of possession, without prejudice to the aggrieved party to file the appropriate action in a court of competent jurisdiction. Costs are ruled against the appellee. And it is hereby so ordered.

Petition granted.