

BANKALA KARNEH, et al., Informants, v.
GALIMA BAYSAH, Judge presiding over the
Eighth Judicial Circuit, Nimba County, MUSA
KARNEH, et al., Respondents.

INFORMATION PROCEEDINGS.

Argued October 18, 1976. Decided November 19, 1976.*

1. No court should include persons in a ruling or judgment who have not been brought within its jurisdiction in accordance with law.
2. Institution of proceedings which are without any foundation and are brought to obstruct enforcement of a mandate of a court constitute an act of contempt of court for which the counsel responsible may be punished.

An appeal before the Supreme Court resulted in its issuance of a mandate directing enforcement of the judgment of the lower court judge, Judge Draper of the Eighth Judicial Circuit, Nimba County, that property be turned over to the respondent in these proceedings, Musa Karneh, on his payment to informants of an amount in settlement. Informants in the proceedings now before the Court filed an information against Musa Karneh and also against the Circuit Court Judge now presiding over the Eighth Judicial Circuit, charging them with contempt of the Supreme Court for proceeding with enforcement of that judgment after they had challenged it in information proceedings previous to these. The Supreme Court found no element of contempt in respondents' actions and therefore dismissed the information against them, but fined counsel for informants for obstructing the enforcement of a mandate of the Supreme Court by instituting the proceedings here. *Information dismissed.*

M. Kron Yangbe for informants. *J. Dossen Richards* for respondents.

* Mr. Chief Justice Pierre did not participate in this decision.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

The mandate of this Court dated December 31, 1975, was issued under the seal and over the signature of the Clerk of the Supreme Court of Liberia to enforce the judgment of Judge Draper. Informants obstructed enforcement thereof by filing an information, now under consideration, in which they contended that they had previously filed an information in this case, to which a return was made by respondents, but that notwithstanding these pending proceedings, the respondent Judge, who was at that time presiding in the Circuit Court, Eighth Judicial Circuit, Nimba County, proceeded with enforcement of the mandate of the Supreme Court by "ordering the land in point to be surveyed, and that informants must pay . . . \$450 as cost of litigation incurred by co-respondent Musa Karneh." Informants charged that the act of the respondent judge in enforcing the judgment after being notified that the matter was before the Supreme Court for its determination was contemptuous and "designed purposely . . . to render its judgment ineffectual in the information proceedings" then before it. Informants therefore prayed that respondents be ordered to show cause why they should not be held in contempt and fined the maximum sum for their "gross disrespect" to the Supreme Court.

Respondents filed a return which we have incorporated in part:

"1. Because respondents say that the Supreme Court *en banco* at its October 1975 Term, having by unanimous decision of the Justices who heard the case disposed of it, a Justice in chambers cannot reopen the case and make any decision contrary to or in any way affecting the unanimous decision or judgment of the Court except to see to it that the judgment of the Court is enforced by its mandate.

"2. And also because respondents say that the entire

proceedings are irregular and baseless because, in the first place, an information lies primarily for some contemptuous act to the Supreme Court; secondly, if the so-called informants had any legitimate interest or right that would have been affected adversely by the judgment of the court, they should have availed themselves of their right under the law by intervening in the proper manner and at the proper time and cannot now in this manner and form do so.

"3. And also because respondents say the informants are again guilty of waiver because if any judgment was rendered by the Circuit Court in Nimba County to the prejudice of their interest and rights then they should have appealed to this Court for redress where the Court would have been in the position to review the case on the records in keeping with law and practice. To seek to have the Justice in chambers review the judgment of a court of information is grossly irregular and improper.

"4. And also because respondents say that the so-called information aside from being baseless, is also contemptuous because it was filed for the mere purpose of preventing or obstructing the enforcement of the mandate of this Court handed down during the aforesaid October 1975 Term.

"5. And also because respondents further resisting this unmeritorious information submit that there is no basis for contempt because as already observed in count 2 hereof, there is no showing of contempt to this Court either directly or indirectly, nor is there any matter pending before this Court out of which these proceedings could have grown, and therefore on the basis of the facts stated in the information the so-called informants seek to have this Court take original jurisdiction which is contrary to the law.

"6. And also because respondents wish to inform this Court that up to now its mandate has not been

obeyed and enforced, obviously due to the filing of this unworthy and unfounded information. This Court by its judgment and mandate ordered the Judge of the Eighth Judicial Circuit Court, Nimba County, to enforce the judgment of Judge Draper, and an attempt indirectly or directly to obstruct the enforcement of that mandate is a flagrant and outrageous contempt of this Court for which the parties concerned should be attached in contempt of Court."

In his argument before this Court, counsel for the informants contended that the trial judge enforced the mandate against the heirs who had not been made parties to the litigation; and further, that the lower court judgment by Judge Draper ordered that an amount be paid informants prior to the turning over of the property; but contrary to the mandate of the Supreme Court ordering the strict enforcement of Judge Draper's judgment, the respondent had not paid the amount although he acquired the property. Counsel for informants continued "that he did not raise this point long since and before reaching this Court, because he was not a counsellor originally, but he simply wanted this Court to observe the circumstances hence his information."

Coming to the question of parties against whom the mandate was being enforced, but who had not been parties to the litigation, meaning the heirs, it is elementary that no judgment of a court can include persons who have not been placed under the jurisdiction of the Court. This issue was not raised by appellant in the appeal in this case which was disposed of during the October 1975 Term of this Court; hence it was not legally possible for the Court to have given consideration or to pass on it. In no case do the opinions of this Court affect parties who have not been brought under the jurisdiction of the court, nor is it intended that any court, as to that matter, should include persons in a ruling or judgment who are not brought under the jurisdiction of court in keeping with law. How-

ever, the alleged heirs may seek redress by whatever legal means or course they may elect without prejudice.

With respect to the alleged failure of the respondents to make payment in settlement of the property which was ordered to be turned over by Judge Draper to respondent Musa Karneh pursuant to the records in this case, we find that the amount was paid in full to the informants in keeping with the judgment above referred to; therefore the contention of informants that the amount had not been paid for the property was misleading and untrue.

In his argument before this Court, counsel for informants stated that the information proceedings were not intended to stop the enforcement of the mandate of the Court, but that because of "the glaring advantage taken of the informants" he wished to bring this to the Court's attention through these proceedings without any ulterior motive of disrespect to the Court.

With reference to the apologetic statement of counsel for the informants, counsel for respondents said that "the action of Counsellor Yangbe is very contemptuous; they are before the court on information against Judge Baysah and not Draper's ruling; to attempt to review Draper's ruling is to have the Court reopen the case already decided; and this is a contemptuous act for which the informant's counsel should be penalized as in other cases of similar circumstances."

It is obvious that counsel for informants has used his office in this case in a contemptuous manner in obstructing the enforcement of the mandate of this Court.

The assigned Circuit Judge presiding at the time the mandate arrives, as a result of these information proceedings, should cause the legal representatives of both parties to tax the bill of costs in this case, and if a dispute arises, he, the presiding judge, should carefully scrutinize the said bill of costs, correct it in accordance with law and approve it for collection.

In view of the circumstances set forth in the informa-

tion and return in these proceedings, the information is unfounded or baseless and, to all intents and purposes, is contemptuous of this Court. The information is hereby dismissed with costs against informants, and for the contemptuous act on the part of informant's counsel in instituting legal measures which obstructed the enforcement of a mandate in the proceedings, he, counsel for informants, is hereby fined in the sum of \$50 to be paid within forty-eight hours as of the date of this opinion, and the official receipt therefor exhibited to the Marshal of this Court. The Clerk is hereby ordered to send a mandate to the trial court to enforce immediately the mandate referred to above, and make its returns without delay. And it is so ordered.

Information dismissed.