RAYMOND INTERNATIONAL (LIBERIA) LTD., Petitioner, *v.* JOHN A. DENNIS, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, et al., Respondents.

PETITION FOR A WRIT OF PROHIBITION

Argued May 3, 4, 1976. Decided June 17, 1976.

1. Prohibition cannot be resorted to when adequate and ordinary remedies are available.
2. Enforcement of a Supreme Court mandate cannot be restrained by prohibition.
3. Any act or conduct is contempt of the Supreme Court which obstructs or is calculated to embarrass or hinder the Court in the administration of justice, or constitutes an offense against the authority and dignity of the Court.
4. Where the execution of a mandate of the Supreme Court to a lower court is impeded by the institution of proceedings to prevent the execution of the mandate, the parties and counsel instituting the proceedings are in contempt.
5. The petition in a prohibition proceeding must be verified by the party himself.
6. If a judge or any judicial officer attempts to execute the mandate of the Supreme Court in an improper manner, the correct remedy is by bill of information to the Court.
7. A judge may modify or rescind a ruling or judgment in the term in which he is sitting, but only upon notice to the parties.

Petitioners withdrew an appeal, and thereupon the Supreme Court sent a mandate to the lower court to execute a ruling it had made in a labor dispute. The petitioner then sought a writ of prohibition, alleging that the judge in the lower court was proceeding in a wrong manner. The Justice in chambers forwarded the petition to the full bench.

The Court ruled that prohibition was not the proper remedy and a complaint should have been made in a bill of information. The Court also held that seeking a writ of prohibition contemned the Court in that it sought to frustrate a mandate. It held counsel for petitioner in *contempt*. The petition was *denied*.

Clarence L. Simpson, Jr. and *Henry Reed Cooper* for petitioner. *O. Natty B. Davis* and *U. Townsend J. Brooks* for respondents. *John A Dennis pro se.*

MR. JUSTICE HORACE delivered the opinion of the Court.

In June 1975 the CIO, a labor union operating under the labor laws of Liberia, filed a complaint with the Ministry of Labor, Youth and Sports, against Raymond International (Liberia) Ltd., on behalf of some of the employees of said company, for compensation for rest days provided in the labor laws, which they claimed had been denied them. The substance of their complaint was that they had not been allowed a day of rest each week as provided by law and they should, therefore, be paid in keeping with law for those days, from the date of their employment.

The complaint was heard by Mr. A. Sawie Davies, a Senior Labor Inspector and field coordinator of the Ministry of Labor, Youth and Sports. After hearing evidence on both sides in the matter, the hearing officer ruled that the Raymond employees, presumably those who had complained, were entitled to compensation for rest days denied them from June 1975, the time of filing their complaint, to August 1975, the time the ruling of the hearing officer was entered. To this ruling both sides excepted and appealed to the Board of General Appeals of said Ministry.

After hearing of the matter by the Board of General Appeals, the said Board on October 2, 1975 ruled, reversing the ruling of the Senior Labor Inspector who had originally heard the matter. The last two paragraphs of the ruling of the Board of General Appeals read as follows:

"In view of the above, the Board cannot uphold the decision of the Senior Labor Inspector, which ordered

retroactive payments to complainants/appellants as of June 1975 to the date of the ruling. We, therefore, hereby reverse said decision.

"Because appellants/company did not appeal from the Sakoh decision but complied therewith and for reason of industrial relations, the Board hereby orders appellant company to complete payment to all of its employees who were denied a day of rest within six days after performing work on their regular day of rest."

Being dissatisfied with this ruling, Raymond International (Liberia) Ltd. appealed to the Sixth Judicial Circuit Court, Montserrado County. The appeal was heard by said court and the following ruling entered by John A. Dennis, on November 21, 1975.

"This matter originated in the General Appeal Board of the Ministry of Labor, Youth and Sports in which the respondents complained against the petitioner of having deprived them of a day off in keeping with the Labor Law. That from this complaint some of the employees were paid, that is to say, the first group received payments, while the second also received payment but the third group, some were paid and others were not. Those that were not paid were employees of the Air Port of Roberts Intercontinental.

"This matter referred to Mr. Bass, also Carter, of the CIO who failed to investigate the same. Mr. Sawie Davies, Sr., Labor Inspector and Field Coordinator, investigated this matter respecting the violation of the rest day of the said respondents.

"The complaint was originally filed with Mr. Sackor, who stated that the list was incomplete. Later to Miss Nelson of the Ministry, and the petitioner was ordered to comply, which was done. She had nothing to do with the third group of employees who as aforesaid comprised those of the Air Port of Roberts Intercontinental.

"In Chap. 9 of the Labor Law regarding weekly rest

days and public holidays, section 801, the contention of the respondent is supported.

"We come now to review the evidence of the witnesses who testified at the General Appeal Board, among them being Peter Yoke, Peter Dolo, and Roy Sinvia.

"The evidence is conclusive that the last group did not receive compensation and were not allowed the one day of rest within the week.

"In view of which ruling of the General Appeal Board is hereby affirmed, and the petitioner is hereby ordered to make payment from the date the issue raised being June 1975, to August of the same year, and from now on, to allow the respondent the usual one day rest as provided by law. And it is so ordered.

"To which ruling petitioner respectfully excepts and announced an appeal to the Supreme Court, in keeping with law and submit.

"The Court: Appeal granted and the enforcement of this judgment is hereby ordered stayed, matter suspended."

In keeping with the announcement of an appeal, a duly approved bill of exceptions was filed with the clerk of the Civil Law Court for the Sixth Judicial Circuit, but none of the other jurisdictional steps for perfecting the appeal was taken.

On March 16, 1976, during the present term of this Court, counsel for appellants for reasons unknown to us, unreservedly withdrew their appeal. Consequently, on April 23, 1976, the Court handed down a judgment without opinion, directing the clerk of this Court to send a mandate to the court below to enforce its ruling. Coincidentally, when the mandate was sent down, the same judge who had ruled on the matter when it was heard at its trial stage was presiding over the Civil Law Court, Sixth Judicial Circuit, Montserrado County.

When Judge Dennis attempted to enforce the mandate

of the Supreme Court, counsel for Raymond International (Liberia) Ltd. objected to his enforcement of a judgment upholding the ruling of the Board of General Appeals. It appears that subsequent to entering the ruling quoted *supra,* the judge had modified it and a second ruling was made:

"Friday, November 21st, 1975.

"This matter originated in General Appeals Board of the Ministry of Labor and Youth in which the respondents complained against the petitioner of having deprived them of a day off in keeping with the Labor Law. But from this complaint some of the employees were paid, that is to say, the first group received payment while the second also received payment but the third group, some were paid and others were not. Those that were not paid were the employees of the Air Port of Roberts Intercontinental.

"This matter was referred to Mr. Boss, also Carter, of the CIO who failed to investigate the same. Mr. Sawie Davies, Sr., Labor Inspector and Field Coordinator, investigated this matter respecting the violation of the rest day of the said respondents.

"The complaint was originally filed with Mr. Sackor, who stated that the list was incomplete. Later, to Miss Nelson of the Ministry and the petitioner was ordered to comply, which was done. She had nothing to do with the third group of employees who as aforesaid comprised those of the Air Port of Roberts Intercontinental.

"In Chap. 9 of the Labor Law regarding weekly rest day and public holiday, section 801, the contention of the respondents is supported by this citation of Law.

"We come now to review the evidence of the witnesses who testified at the General Appeals Board, among them being Peter Yoke, Peter Dolo, and Roy Sinvia.

"The evidence is conclusive that the last group did

not receive compensation and were not allowed the one day rest within the week.

"In view of which the ruling of the General Appeals Board is hereby affirmed.

"Minutes of the previous day's Session stand approved with necessary corrections. And it is hereby so ordered.

"To which ruling petitioner respectfully excepts, announcing an appeal to the Supreme Court in keeping with law and submit.

"The Court: Appeal granted and the enforcement of this judgment is hereby ordered stayed, matter suspended."

It should be noted here that counsel for Raymond were aware of this second ruling because it had been saved for appellate review in count 7 of their approved bill of exceptions which reads: "Because Your Honor erred in modifying substantially the judgment in court predicated upon your ruling, in violation of the statutory provision in such cases made and provided." Counsel, instead of perfecting their appeal, withdrew it.

In an effort to arrest the carrying out of the mandate of this Court, counsel for Raymond International (Liberia) Ltd. applied to the chambers of Mr. Justice Henries for a writ of prohibition. The petition reads as follows:

"And now comes Raymond International (Liberia) Ltd., by and thru its Resident Manager, Edwin Dunbar, and most respectfully prays this Honorable Court for the issuance of the alternative writ of prohibition and for cause showeth the following, to wit:

"1. Because His Honour Judge John A. Dennis having jurisdiction did hold a full Hearing of this matter as provided under Section 8 of the Act of Legislature Creating the General Appeals Board, i.e., Chapter One of an Act to Amend the Labor Practice Law with respect to Administration and Enforce-

ment, approved May 26, 1972, published October 2, 1972."

Because of the principle laid down in *Smith* v. *Stubblefield,* 15 LLR 582 (1964), that a Justice of the Supreme Court cannot issue a writ of prohibition restraining execution of a prior mandate by the full Court to an inferior court, the Chamber Justice ordered the matter sent to the full bench.

We have reviewed in some detail the circumstances out of which the prohibition proceedings emanated, not to pass on the merits of the issues involved in the main case, because we have been prevented from doing so by the withdrawal of the appeal by petitioner. Rather, the point we are making is that if counsel for petitioner had proceeded as they should, this exercise would be totally unnecessary.

The real issues before us to be resolved are, (1) whether prohibition will lie to prevent execution of a mandate of the Supreme Court, and, (2) whether the party instituting the prohibition proceedings is guilty of contempt of Court.

With respect to the first issue, under the common law rule, prohibition cannot be resorted to when ordinary and usual remedies provided by law are adequate and available. Accordingly, if there is complete remedy by appeal, writ of error, writ of review, certiorari, injunction, mandamus, *or in any other manner,* the writ should be denied. 63 AM. JUR. 2d, *Prohibition,* § 8 (1972).

Counsel for petitioner contended in their argument before this Court that prohibition will lie to prevent an inferior court from enforcing a void judgment and relied particularly on *Kanawaty* v. *King,* 14 LLR 241 (1960), which held that prohibition will lie to restrain enforcement of a void judgment *where no other remedy is available.* But do the circumstances of that case square with those of the instant case? In that case the court was attempting to reopen a case that had been concluded by a

court of concurrent jurisdiction and compel a surety to a payment bond to satisfy a judgment that had to all intents and purposes been concluded by a court of concurrent jurisdiction. Surely, it cannot be said that those circumstances are the same as attempting by prohibition to restrain a lower court from enforcing a mandate of the Supreme Court.

Moreover, petitioner had a remedy at law which they neglected to use, that is, review by appeal. After petitioner had excepted in count 7 of the bill of exceptions to the modified ruling of the trial judge, they of their own volition withdrew an appeal from the Supreme Court. But more than this, this Court has unequivocally held that the enforcement of its mandates cannot be restrained by prohibition.

Counsel for petitioner also argued that they had no other adequate remedy; therefore, they resorted to prohibition. From time immemorial, this Court has given relief in cases such as this when an information has been filed pointing out that this Court's mandate was being wrongly enforced. But rather than follow that course, petitioner decided to affront the Court by bringing prohibition.

The second point which we consider of great importance is whether counsel by instituting these prohibition proceedings have contemned this Court. On that point both the common law and our law are quite clear. It is a well-settled rule that any act or conduct is contempt which obstructs or is calculated to embarrass, hinder, or obstruct the court in the administration of justice, or which is calculated to lessen its authority or its dignity, or to bring the administration of law into disrespect or disregard, or any conduct which in law constitutes an offense against the authority and dignity of a court or judicial officer in the performance of his judicial functions. To constitute a contempt, there must be improper conduct in the presence of the court or so near thereto as

to interfere with its proceedings; or some act must be done not necessarily in the presence of the court which tends to adversely affect the administration of justice. *King* v. *Moore,* 2 LLR 35 (1911); *White* v. *Russell,* 3 LLR 198 (1930); *In re Johnson,* 6 LLR 50 (1937). Contempt of court is a disregard of, or disobedience to, a court by conduct or language, in or out of the court which tends to disturb the administration of justice, or tends to impair the respect due the court. *Watts-Johnson* v. *Richards,* 12 LLR 8 (1954).

In the case at bar, counsel for petitioner did not only obstruct the court and a judicial officer in the performance of his judicial functions, but willfully and without any justifiable reason whatsoever attempted to bring the administration of law and its dignity into disrepute.

In *In re Coleman,* 11 LLR 350 (1953), this Court stated the rule that where the execution of a mandate of the Supreme Court to a lower court is impeded by the institution of proceedings to prevent the execution of the mandate, the parties instituting the proceedings are guilty of contempt.

Similarly, in *Smith* v. *Stubblefield, supra,* the Supreme Court made it clear that any attorney who attempts to frustrate the execution of a mandate of the Supreme Court by applying to the Justice in chambers for a writ of prohibition, will be punished for contempt.

Quite a few interesting things came out during argument before us. One of the points raised in the return of respondents was that the petition for a writ of prohibition had not been verified by the petitioner as required by statute. One of the sections cited as shown in the minutes required verification of a pleading by the party or "by the attorney of such party; provided, however, that the complaint in an action to secure an injunction or *in a prohibition proceeding shall in every case be verified by the party himself."* [Emphasis supplied.] Rev. Code 1:9.4(2b). When during argument Counsellor Cooper's

attention was called to this point, he contended that he had made diligent search of all authority he could think of on the point and being the legal representative of the petitioner, he was legally justified in verifying the petition as counsel. The section quoted covers the point.

Another interesting argument, put forth this time by Counsellor Simpson when asked why he came by prohibition, was that the statutes do not name any other remedial writs than the five named therein, mandamus, certiorari, error, prohibition, and quo warranto, and that outside of regular appeals there is no provision made in the statutes for the filing of any other writs such as submission or information. What the learned counsel seemed to have forgotten is that when an issue had reached the point of executing a mandate of Supreme Court, a remedial writ was out of the question. If anything went wrong at that stage, it was the duty of the party who felt he was being wronged to in some way bring the action of whoever was committing the wrong to the attention of the Court *en banc*.

As stated before, from time immemorial, it has been the practice to come by bill of information to this Court in cases like these. There are numerous cases reported on the point. In *Porte* v. *Dennis,* 9 LLR, 213 (1947), the text states, p. 224: "An information having been filed before this Court on October 4, 1946." The same words can be found in *In re Dennis,* 9 LLR 389, 390 (1947). *Caranda* v. *Porte,* 13 LLR 57 (1957), was an appeal on a bill of information before the Probate Court. *Alpha* v. *Tucker,* 15 LLR 561 (1964), concerned contempt proceedings based on information to the Supreme Court. But even more interesting is the fact that when the learned counsel was a Justice on the Supreme Court bench, during the March 1966 Term, the Court adjudicated contempt proceedings in *Dweh* v. *Morris,* 17 LLR 410 (1966) on information. Again, at the October 1966 Term, the

Court adjudicated contempt proceedings on a bill of information in *Obeidi* v. *Simpson,* 17 LLR 606 (1966).

It is obvious that if the judge or any judicial officer was attempting to execute this Court's mandate in a wrong manner as alleged in the petition for a writ of prohibition, the proper way to bring it to the Court would be by Information. There is ample precedent for this. The *Liberian Law Reports* are a part of the body of laws of this Country.

It is the opinion of this Court that counsel for petitioner, having acted in violation of unequivocal pronouncements of the Court with respect to an attorney instituting prohibition proceedings to restrain the execution of a mandate of the Supreme Court, are guilty of a gross contempt of Court and should be severely punished therefor.

It should have been mentioned before that the Court viewed the contempt aspect of these proceedings with such grave concern that, when the case was called for hearing, Counsellors M. Fahnbulleh Jones and Joseph J. F. Chesson were requested by the Court to serve as *amici curiae.* One important aspect of these proceedings we cannot overlook, and it is the most unsavory aspect of the whole matter. We have already quoted in this opinion the two rulings of the trial judge, both dated November 21, 1975, as well as the Clerk of Court's certificate with respect to the said rulings. During argument before this Court, petitioner's counsel argued with great emphasis that the ruling that the Raymond employees should be paid for the rest days denied them from June 1975 to August 1975 was given in open court and signed by the judge. An inspection of the photostatic copy of this ruling which was attached to the petition as one of its exhibits shows the judge's signature thereon. Counsel for petitioner also contended that they were not in court when the second ruling was supposed to have been made

and they had no knowledge of it until some days afterwards when the court had been adjourned *sine die*. The Clerk's certificate in our opinion verifies the position of petitioner's counsel.

The trial Judge, a co-respondent in these proceedings, who signed the return and appeared in person to represent himself, argued that it is obvious that some mistake was made in the dates because the first ruling showed that after rendering it, when exceptions had been taken and an appeal announced, the matter was suspended, and that was the 9th day's chamber sitting, whereas the second ruling shows that after rendition of it the court was adjourned *sine die*. We have carefully looked at these two rulings because they constitute the crux of the whole matter, and we definitely do not like the picture this situation presents, especially in the face of the Clerk's certificate.

Certainly the law, both statutory and common, permits a judge to modify or rescind any ruling or judgment he renders in the term in which he is sitting, but this must be done properly, that is, upon notice duly served on the parties to the litigation. We are not convinced that this was done in this case.

After argument, the *amici curiae* were asked if they had any observations to make. Both stated emphatically that the act of the petitioner in bringing prohibition to restrain the execution of the Supreme Court mandate was wrong and contemptuous, but requested the Court not only to temper justice with mercy but to take into consideration the rather dubious situation that was created by the entering of two rulings, and that in order to clear up the matter once and for all the Court should state which of the rulings the Court's mandate relates to. That we shall do.

Taking all the facts and circumstances of this case into consideration, we hold:

1. That the petition for a writ of prohibition being unmeritorious is hereby denied.

2. That counsel for petitioners are guilty of contempt of Court and because of Counsellor Henry Reed Cooper's arrogant attitude in his argument at this forum, he is fined $500; that because of Counsellor Simpson's more objective and respectful presentation of his case he is fined $200. These fines are to be paid immediately and revenue flagged receipts exhibited to the Justice in chambers. Until the fines are paid these counsellors are debarred from the practice of law in any of the courts of Liberia.

3. That being convinced that the only valid judgment entered in the labor dispute case is the one entered in open court on November 21, 1975, directing petitioners "to make payment from the date the issue was raised, being June 1975 to August of the same year, and from now to allow respondents the usual day of rest as provided by law," that judgment is to be enforced.

The Clerk of this Court is hereby directed to send a mandate to the Court below to the effect of this judgment. Costs ruled against petitioner. And it is hereby so ordered.

Writ denied.