

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2022

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SRCHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIEASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE. ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

Karen Gaydou Sehkehporh, of City of Paynesville, Montserrado)
County, Republic of Liberia.....Informant)

VERSUS

) Bill of Information

His Honor Joseph Nagbe, Associate Justice, Supreme Court of)
Liberia, and the Management of John F. Kennedy Medical)
Center, represented by its CEO, Dr. Jerry F. Brown, and all)
authorized personnel, all of the City of Monrovia)
.....Respondents)

GROWING OUT OF THE CASE:

The Management of the John F. Kennedy Medical Center(JFK))
represented by its CEO, Dr. Jerry F. Brown, and all authorized)
personnel, all of the City of Monrovia..... Petitioners)

VERSUS

) Petition for the Writ of
) Certiorari

Karen Gaydou Sehkehporh, of City of Paynesville, Montserrado)
County, Republic of Liberia.....Respondent)

GROWING OUT OF THE CASE:

Karen Gaydou Sehkehporh, of City of Paynesville, Montserrado)
County, Republic of Liberia.....Plaintiff)

VERSUS

) Action of Damages for
) Wrong

The Management of the John F. Kennedy Medical Center(JFK))
represented by its CEO, Dr. Jerry F. Brown, and all authorized)
personnel, all of the City of Monrovia.....Defendants)

Heard: March 31, 2022

Decided: September 23, 2022

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The informant herein, Karen Gaydou Sehkehporh, is the plaintiff in an action of damages for wrong, wherein she alleged medical malpractice by the respondent, the John F. Kennedy Medical Center (JFK), defendant in the court below.

The action of damages for wrong, is still pending trial before the Sixth Judicial Circuit, Civil Law Court, Montserrado County.

The records show that on August 21, 2020, pleadings rested before the trial court. The case was called on October 22, 2020, for the disposition of law issues, and at which time, both parties raised certain issues for determination by the trial court. The plaintiff, now the informant requested that the case be ruled to trial as there were mixed issues of law and facts; while the respondent JFK contended that due to the fact it is wholly owned by the Government of Liberia, the latter be made a party to the action of damages for wrong; that the case is statutorily barred; and that same should be dismissed. The trial judge reserved ruling on these issues and on January 11, 2021, ruled that the respondent having failed to include the issues in its answer, the respondent cannot raise same at the disposition of law issues; and that the case being one of medical malpractice, raises issues of both law and facts, and therefore ruled the case to trial.

The respondent JFK noted exceptions to the said ruling and subsequently sought a review of said ruling by filing a petition for the issuance of the writ of certiorari during the October Term 2020, of the Supreme Court. On May 13, 2021, His Hon. Mr. Justice Joseph N. Nagbe, who was then presiding in the Chambers of the Supreme Court, cited the parties to a conference and at the conclusion thereof, declined to issue the alternative writ of certiorari as prayed for by the respondent JFK.

The records show that although Mr. Justice Nagbe declined the issuance of the alternative writ, however, on May 18, 2021, he ordered the Clerk of this Court to send a Mandate to the trial court and to include therein, that the Ministry of Justice be allowed to intervene. This mandate of Mr. Justice Joseph N. Nagbe which is cardinal to the bill of information, we deem necessary to quote verbatim as follows, to wit:

"His Honor Scheaplor Dunbar
Assigned Circuit Judge
Civil Law Court "B"
Temple of Justice
Republic of Liberia

May it Please Your Honor:

IN RE: The Management of the John F. Kennedy Medical
Center (JFKMC), represented by its CEO, Dr. Jerry F.
Brown, and all authorized personnel, of the City of Monrovia,
Mont. County, Republic of Liberia..... Petitioner

Versus

Petition for a
Writ of
Certiorari

His Honor Judge Scheaplor Dunbar, presiding Judge,
Civil Law Court "B", Temple of Justice, R. L, and Karen
Gaydou Sehkehporh, of the City of Paynesville, Mont.

County, Republic of Liberia..... Respondents

By directive of His Honor Joseph N. Nagbe, Associate Justice presiding in Chambers, you are hereby mandated to resume jurisdiction, allow the Ministry of Justice to intervene in the matter if adequate relief is to be considered, and proceed in keeping with law, as the Justice has declined to issue the writ prayed for.

Kind regards."

On June 4, 2021, the informant filed the present bill of information alleging *inter alia*, that Mr. Justice Nagbe having declined to issue the alternative writ of certiorari, he could not issue an order that the Ministry of Justice be allowed to intervene in the action of damages for wrong; hence, the informant prayed that this order by Mr. Justice Nagbe be removed from the Mandate sent to the trial court. Due to the relevance of counts 11 and 12 of the bill of information, which embody the informant's contentions as to the subject issue, we quote same below, to wit:

"...11. Informant says that the Justice in Chambers declined to issue the alternative writ but strangely instructed the judge below to allow the Ministry of Justice to file an intervenor's answer in the matter, something that the co-respondent/petitioner never prayed for in their petition for a writ of certiorari. Kindly find attached a copy of the Mandate of His Honor Justice Nagbe to His Hon Judge Dunbar, marked as I/6, for your reference.

12. Informant says further that the instructions issued by Justice Nagbe without having issued the alternative writ of certiorari prayed for by the respondent/petitioner violates her constitutional right to due process of law because Justice Nagbe's failure to issue the alternative writ denied her the right to appeal the Justice's decision to the full bench of the Supreme Court."

On October 26, 2021, the Supreme Court ordered the issuance of the writ commanding the respondent to file its returns on November 5, 2021. In compliance thereto, the respondent filed a twelve (12) count returns to the bill of information alleging *inter alia*, that the decision of the Justice presiding in Chambers to decline the issuance of the writ prayed for, although adverse to its interest, was not contrary to law because it was within his discretion to either issue the writ or decline to do so; that although the Justice presiding in Chambers reasoned that the issue raised in the petition was not sufficient to have warranted the issuance of the alternative writ, he found it necessary that the Ministry of Justice be allowed to intervene in the case if complete relief was to be had, and that said action was in consonance with section 5.64 of the Civil Procedure Law.

We are of the considered view that the bill of information and the returns thereto present a lone issue that is, whether this bill of information will lie given the fact and circumstances of the case?

The Rules of the Supreme Court Part 12 Captioned Bill of Information states:

"A bill of information will lie to prevent a judge or a judicial officer who attempts to execute the Mandate of the Supreme Court in an improper manner from doing so... A bill of information will also lie to prevent anyone whomsoever from interfering with the Judgment and Mandate of the Supreme Court... any Counsellor who files a bill of information before this Court assigning reason therefore other than the reason expressly prescribed by these rules shall be penalized by the imposition of a fine, suspension, or disbarment."

In litany of cases, the Supreme Court have opined that "generally, information before the Full Bench will lie and is the proper form of action where it grows out of a pending action before the Full Bench or where a matter has been decided by the Full Bench and the Mandate therefrom is being improperly executed by the lower court, or being impeded or obstructed by one or some of the parties... that in order for the Supreme Court to entertain information, the case must have either been pending before or decided by it and there must appear to be a usurpation of the province of the Court by the respondent or there must have been a refusal to carry out the Court's Mandate or orders... "*Nimley et al., v. Yancy et al.*, 30 LLR 403 (1982); *Samuel et al., v Logan et al.*, 32LLR 433 (1984); *Massaquoi v. Massaquoi*, 35LLR, 508 (1988); *Majority Membership of the United Church of the Lord Inc., v. The Minority Membership of the United Church of the Lord Inc.*, 39 LLR 692 (1999); *Intestate Estate of Chief Murphy Veh John et al., v. The Testate Estate of Bendu Kaidii.*, 41LLR 277 (2002); *Duncan v. Cornomia*, 42LLR 309 (2004); *Jawhary v. His Honor Ja'neh et al.*, Supreme Court Opinion, October Term, A. D. 2012.

It should be noted that although the Rules of the Supreme Court and the above cited cases limit the office and scope of a bill of information to only the irregular enforcement/obstruction of the Supreme Court Mandate, the Supreme Court pursuant to its Constitutional authority to make rules for the proper governance for the practice of law, expanded the office and scope of a bill of information in the cases *In re: The Effect of Section 2.2 of the New Judiciary and Article 20(b) of the 1986 Constitution*, Supreme Court Opinion (2005); *In Re: Ibrahim et al. v. Paye et al.*, Supreme Court Opinion, March Term, A.D. 2006; *Jawhary v. His Honor Ja'neh et al.*, Supreme Court Opinion, October Term, A. D. 2012. In these cases the Supreme Court expanded the office and scope of a bill of information by holding that a Bill of Information will lie against a Chambers Justice who issues orders without the issuance of the alternative writ.

In view of the aforesaid, will this bill of information lie given the facts and circumstances of this case? The cases cited immediately above are instructive in addressing this issue.

In the *Ibrahim case* and the *Jawhary case*, the Chambers Justice issued orders to the trial court without issuing the alternative writ, or holding a formal hearing or providing a ruling which would allowed the adverse party to appeal said orders. The Supreme Court in both of these cases reversed the Chambers Justice's orders and held that where a Justice in Chambers exercises his/her discretion not to issue a citation or the alternative writ, the Justice should go no further in the instruction to the trial judge other than to resume jurisdiction and to proceed in keeping with law; that a Chambers Justice exceeds his/her authority when he/she issues an order without first issuing the alternative writ and

entertaining a hearing and a ruling which will allow the affected party to appeal said decision to the full bench of the Supreme Court.

In the present case, the facts show that the Chambers Justice issued an order when he mandated the trial court to resume jurisdiction over this case and allow the Ministry of Justice to intervene without issuing the alternative writ, or conducting a hearing. This Court says while it recognizes the discretion of a Justice in Chambers to issue a temporary order pending the hearing and determination of a remedial writ however, the temporary order can only be issued when the alternative writ growing out of the remedial writ has been ordered issued.

We reaffirm our holdings in the cited cases and hold that where a Justice in Chambers declines to order issued the alternative writ, the Justice can go no further in instructing the trial judge other than to resume jurisdiction over the case and proceed in keeping with law. Hence, a bill of information will lie to reverse the said order.

WHEREFORE AND IN VIEW OF THE FOREGOING, the bill of information is hereby granted. The order by the Justice in Chambers, to allow the Ministry of Justice to intervene in the case absent the issuance of the alternative writ is hereby reversed. The Clerk of this Court is ordered to send a mandate to the Sixth Judicial Circuit, Civil Law Court "B", Montserrado County, commanding the judge presiding therein to resume jurisdiction over this case and proceed in keeping with law. AND IT IS SO ORDERED.

Bill of Information Granted

When this case was called for hearing, Counsellor Juah F. Lawson of the Renaissance Law Group and Counsellor Necular Y. Edwards appeared for the Informant. Counsellor J. Adolphus Karnuah, II of the Ministry of Justice, and Counsellors Jonathan T Massaquoi, Kunkunyon Wleh-Teh of the International Law Group appeared for the Respondent.