

In re TOM N. BESTMAN, FRED V. B. SMITH,
and JAMES WARD.

CONTEMPT PROCEEDINGS.

Argued February 7, 1972. Decided February 18, 1972.

1. A Justice of the Supreme Court in chambers may not intervene in or disturb the action taken by the full Court.
2. An appeal is a resort to some higher power of final means, for sanction, proof or aid, and cannot be said to be, as a defense in contempt proceedings, when resort is made by letter to the Chief Justice.
3. He whose conduct tends to bring the authority and administration of the law into disrespect or disregard, interferes with or prejudices parties, or otherwise tends to impede, embarrass, or obstruct a court in discharge of its duties, is guilty of contempt.
4. The power to punish for contempt of court is intrinsic to the court, as an incident necessary to its existence under an orderly form of government.

On November 25, 1971, the Supreme Court handed down an opinion deciding a certiorari proceeding which culminated a long-standing dispute, waged in and out of the courts, between rival factions of the Bassa Brotherhood Industrial and Benefit Society. Despite the definitive ruling of the Supreme Court, counsel for one faction disputed, in effect, the terms by petition to the Court. The result thereof was reinforcement by the Supreme Court of its judgment, which had ordered the corporate body to be placed in possession of the acreage at issue, leaving its internal decisions as to membership to be resolved by the Society. Nonetheless, during the pendency of the circuit court's return to the mandate effecting the judgment, the respondents addressed a letter to the Chief Justice on January 28, 1972, to intervene and take the necessary action to avoid a riot which, the writers claimed, portended by the stated intention of the other faction to shortly thereafter enter upon the disputed land for the purpose of "cleaning up and development." The Chief Justice denied their request for intervention

and referred the matter to the full Court for its consideration of the propriety of such conduct and the attendant question of whether it constituted a contempt of Court. The writers were adjudged in contempt and fined \$500.00 each, though they alleged no malice and proffered their apologies if an act of contempt had been inadvertently committed.

Nete-Sie Brownell for respondents. *R.F.D. Smallwood* and *Toye Barnard* as *amicus curiae*.

MR. JUSTICE AZANGO delivered the opinion of the Court.

After many years of controversy and litigation among those who styled themselves members of the Bassa Brotherhood Industrial and Benefit Society, in an action of ejectment entitled *Bestman et al. v. Horton et al.*, this Court on November 25, 1971, handed down a definitive ruling in an opinion found in this volume, in which it denied certiorari and ordered the corporate body placed in possession of the land at issue, leaving to the Society the internal decision of membership.

In spite of the unequivocal nature of the decision and the opinion rendered therewith, which required the lower court to place the Society in possession and the Society and others concerned to abide by the terms of the Court's judgment, counsel in the certiorari proceedings disposed of petitioned the Supreme Court shortly thereafter.

The petition, in effect, sought actually to reopen the issues that had been adjudicated and which were provided for in the judgment of the Court referred to.

However, in deference to justice, since he contended that an order should be sent to the court below directing it to include the names of the petitioners who instituted the suit in their representative capacity for and on behalf of the Bassa Brotherhood Industrial Society, and that

they be placed in possession of their property, Judge Jeremiah Z. Reeves was invited to the Chambers of the Supreme Court, where he was ordered to enforce the mandate of the Supreme Court strictly in accordance with its final judgment and to make return to us as to how he had executed the mandate.

During the pendency of this return from the circuit court, Tom N. Bestman, signing himself Chairman, Board of Trustees, Bassa Brotherhood Industrial and Benefit Society, Fred V. B. Smith, as President, Board of Officers, and James C. Ward, as Secretary, in such capacities addressed a letter dated January 20, 1972, to the Chief Justice, which concluded, after reciting the facts of the final judgment and the purpose it contemplated, and raising again the division and contention in the Society:

"7. In view of the grave situation that will arise if any member of the above-mentioned group (i.e., the Horton group claiming possessive rights) entered the premises of the collective or individual premises of the Bassa Brotherhood Society, this letter is being sent to Your Honor to immediately intervene and take such action as to prevent a riot in Bassa Community on tomorrow, the 29th January, 1972, the date set (for occupancy) by the purported Bassa Brotherhood Society, chaired by Francis L. M. Horton, who has never been a member of the Bassa Brotherhood Industrial and Benefit Society from its founding to the present.

"And (we ask) for such other and further relief as exigency of the case demands."

To this letter, the Chief Justice replied by letter on January 31, 1972.

"Dear Sir:

"I acknowledge receipt of your letter of 28th January, 1972, with reference to the Bassa Brotherhood Society's ten acres of land, and your request that I in-

tervene to prevent what you have called 'the grave situation that will arise if any member of the above mentioned group enter the premises of the collective or individual premises of the Bassa Brotherhood Society.' From your letter it seems you had reference to Mr. Francis Horton and others who also claim to be members of the same Society.

"In the first place, the case in which the Bassa Brotherhood Society was a party, and to which you have referred in your letter, was finally determined by the Supreme Court. You have admitted in your letter now under reply that you asked to be placed in possession of the 'property adjudged in (your) favor by the Supreme Court.' (See first paragraph of your letter.)

"I cannot understand why, in view of the circumstances, you would ask me to intervene after the Supreme Court's judgment has been sent down, and by mandate ordered to be enforced; and especially is this confusing and pointedly contemptuous, when you threaten that unless I intervene a grave situation will arise. I regard this as contemptuous, and will refer your letter to the bench en banco for such appropriate action as it might deem necessary to take in the premises. I would like to inform you that no single Justice of the Supreme Court has the legal or constitutional right to intervene in or disturb the action taken by the full bench."

The Chief Justice's reply is supported by precedent.

"There is no doubt as to the right of a justice in chambers to protect the orders of the court and preserve the administration of justice from any who would assail them by direction or indirection, subject to an appeal to the court *in banc* upon such terms as he may fix. But a justice may waive the exercise of this right and send the matter to the court, as proceedings for contempt involve the very existence of the court.

Blackstone says: 'Laws without a competent authority to secure their administration from disobedience and contempt would be in vain and nugatory.' (4 Bk. Com. 286.) It is for this reason, namely, the preservation of the integrity of the courts and the orderly administration of justice, that there have been so few attempts on the part of executives to exercise the pardoning power in cases of contempt. . . . *In re Coleman*, 11 LLR 350, 351 (1953), quoting from *In re Moore*, 2 LLR 97, 101 (1913)."

The Chief Justice referred the matter to the Court for its consideration. In consequence the respondents were cited to appear to answer in contempt proceedings. Their return, in effect, disavows any intent to contemn this Court and apologizes if such was indicated by them. They set forth the nature of the peril they perceived as justification for their "appeal."

In reading the respondents' letter and the return, one gathers the impression that the letter was intended as an appeal, supported by reasons for the appeal as appear in the return. But an appeal is an earnest entreaty for aid, sympathy, or the like. It is a prayer, or supplication. It is a quality or manner which elicits sympathy or attraction. It is a resort to some higher power of final means, for sanction, proof or aid. It is the making of earnest supplication or request. It is to awaken a favorable response. With the following as our premise, could anyone consider these statements from their letter an appeal?

"In view of the grave situation that will arise if any member of the above-mentioned group enter the premises of the collective or individual premises of the Bassa Brotherhood Society, this letter is being sent to Your Honor to immediately intervene and take such action as to prevent a riot in Bassa Community on tomorrow, the 29th January, 1972, the date set by the purported Bassa Brotherhood Society chaired by Francis L. M. Horton."

Moreover, count two of the return continues the tenor.

"The letter which respondents felt compelled to address to the Chief Justice had reference to an imminent and present danger which arose from the judgment and the enforcement of the mandate growing out of the ejectment cases, as is fully stated in said letter. The judge of the court below called for the two contesting parties to file the names of all those who are the members of the Bassa Brotherhood Society, and the respondents complied as is apparent by the minutes of the circuit court, filed with said letter. As far as the respondents are informed, the opposing party failed to comply with the order of the assigned judge and have not filed the names of their people whom they claim are members of the Bassa Brotherhood Society, yet, on the 24th day of January, 1972, said faction issued the following circular letter, a copy of which was also filed with the letter to the Chief Justice, claiming that they were acting under the authority of judgment of the Supreme Court of Liberia and threatened to invade the premises of respondents for cleaning and development."

In their return respondents disavow their letter purported contempt of this tribunal.

"They never had nor will they ever have any intention to condemn the Supreme Court of Liberia, because they have always been taught to have the highest respect for that tribunal and the men who sit on that exalted court of last resort; and that in writing the letter in question, they were only availing themselves of their right to petition or appeal to any public functionary having charge of any given matter for redress; that said letter being an appeal for timely intervention in a threatening situation, did not, in the mind and opinion of the respondents, constitute any attempt to detract from the dignity of the Supreme Court of Liberia or the Chief Justice thereof."

Let us now look beyond the shadows of these excuses for the light of truth. What was the impending or anticipated grave situation, and the imminent and present danger which arose from the judgment and the enforcement of our mandate? Are the respondents saying that the final judgment in the ejectment proceedings is illegal, and to all intents and purposes, therefore, unenforceable? Must we assume that it was the intent of respondents to put the members of the Supreme Court of the Republic of Liberia in fear of grievous bodily harm, or was it a calculated intent to produce that effect upon the individual persons of the bench, unless the Chief Justice intervened? Or was violence or tumult premeditated by respondents, to incite riot in Bassa Community? Or are the respondents opposed to the development of Bassa Community in keeping with Government policy? What grave situation or threatening danger could have resulted from the execution of an appeal contained in a notice from Francis L. M. Horton, duly authorized by his faction, to all house owners in the community for the "cleaning up and development of Bassa Community?"

The respondents, it is true, have disclaimed any disrespect toward the Court and sought to show the reasons for the acts complained of.

"Disclaimer of intentional disrespect or design to embarrass the due administration of justice is no excuse, especially where the facts constituting the contempt are admitted, or where a contempt is clearly apparent from the circumstances surrounding the commission of the act. The old rule, however, was that where one charged with contempt denied under oath any wrongful intent, the contempt was purged, and in practice now, where it is apparent that no disrespect was intended, a disavowal of intention to commit a contempt will be considered in extenuation of, or sometimes even as purging, the contempt.'" *In re Garanda*, 8 LLR 249, 254 (1944).

Would it not have been better for respondents to have exercised prudence and waited to see whether or not Mr. Horton, in the execution of his plan, committed any wrongs on the ten acres of land belonging to the Society? And even if he had, were there not other legal remedies to pursue that would have granted them necessary relief? It is most unfortunate that respondents have permitted themselves to be misled for threats can be inferred from certain acts.

"In law, a threat is a declaration of an intention or determination to injure another person by the commission of some unlawful act. An intimidation is the act of making another person timid or fearful by such a declaration. If the act intended to be done is not unlawful, then the declaration is not a threat in law, and the effect thereof is not intimidation in a legal sense." *BALLENTINE'S LAW DICTIONARY*.

"Acts or words which in themselves may be innocent may be done or spoken in such a manner as to constitute a contempt." 17 C.J.S., *Contempt*, § 8(d).

We exceedingly regret that by force of circumstances we are called upon to discharge the painful duty of passing upon the conduct of three of our citizens who, unfortunately, must have been misled. But, we are sworn to protect the Constitution and laws of the Republic, and we must do so. We shall continue to vindicate and establish the authority of the Court as long as people continue to disregard and disobey its orders and to hold its authority up to public ridicule, and deny the dignity of the Court. For contempt is clear in the law's definition.

"Generally speaking, he whose conduct tends to bring the authority and administration of the law into disrespect or disregard, interferes with, or prejudices parties or their interests during a litigation, or otherwise tends to impede, embarrass, or obstruct the court in discharge of its duties is guilty of contempt." 12 AM. JUR., *Contempt*, § 2.

From ancient times, as early as the law extends, lawyers and citizens of this Country have persistently been reminded that contempt is an incident essential to the execution and maintenance of judicial authority. Some might argue that some judgments for contempt are generally rendered under circumstances of stress, and not infrequently when the court itself is hurt. And there is a strong temptation at times to strain the quality of mercy, and to give the fullest measure of righteous indignation. But we would like for those so minded to know that we are always reluctant to resort to such an exercise of power, except where it is absolutely necessary to the fair and orderly administration of justice, and not from an exaggerated regard for the dignity of form rather than for the essence of justice needed to maintain and uphold the dignity of the Supreme Court of the Republic of Liberia.

"The power to fine and imprison for contempt, from the earliest history of jurisprudence, has been regarded as a necessary incident and attribute of court, without which it could not any more exist than without a judge. . . . A court without the power effectually to protect itself against the assaults of the lawless or to enforce its orders, judgments, or decrees against the recusant parties before it, would be a disgrace and a stigma upon the age which invented it."

Watson v. William, 36 Miss. 331, 341.

The function of the power to adjudge in contempt has been stated by our Court.

"the law punishes one who commits contempt out of no personal consideration for the judge, nor is there in the law any malice against him who is punished. The power is exercised by the court simply as representative of the people of the country, and for their interest, their good and their protection. For them the maintenance of the authority of the judiciary is to all intents and purposes indispensable to the stability of the government, this government recognized

and considered to be of the people, for the people, and by the people." *In re Dennis*, 9 LLR 389, 398 (1947).

In view of the foregoing, and the circumstances surrounding these contempt proceedings, we hereby find and interpret the conduct of Messrs. Tom N. Bestman, Fred V. B. Smith and James C. Ward as highly contemptuous, for the letter to the Chief Justice was intended to hinder, delay, and obstruct the administration of justice in relation to the peaceful execution of the judgment of this Court, and, consequently, was an affront to the dignity of the Supreme Court.

They are, therefore, guilty of contempt of Court and are hereby amerced in a fine of \$500.00 each, to be paid within 24 hours from the judgment hereof, failing which they shall be imprisoned in the Common Jail in the City of Monrovia, Montserrado County, until the said fines are paid. The presentation of Revenue Receipts to the Marshal will be evidence that the amounts have been paid.

Contempt of court adjudged.