

WESSEH GBEH, Petitioner, v. JUDGE ALFRED B.
FLOMO, et al., Respondents.

PETITION FOR WRIT OF MANDAMUS TO THE CIRCUIT COURT, SIXTH
JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 28, 1976. Decided April 23, 1976.

1. A writ of possession is required to be executed in accord with its instructions.
2. A writ of mandamus will be issued to command an inferior court, officer, or person when he is required to perform a particular duty that is incumbent upon him to do.
3. Mandamus will issue when ordinary proceedings are powerless to afford relief to the petitioner.

Gabriel N. Nah, the plaintiff in an ejectment action, appealed the ruling of a Board of Arbitrators, to whom the parties had submitted. The court awarded plaintiff a final judgment. The defendants both appealed the judgment and sought a writ of mandamus against the respondent judge who had refused approval of certain appeal documents. Both remedies were refused by the Supreme Court which sent its mandate to the lower court.

The judge who issued the writ of possession made it a point therein that the sheriff was to employ a surveyor when he found its execution difficult due to the complicated map. The sheriff did not do so and the presiding judge did not make his returns as required, after Wesseh Gbeh, one of the defendants had been deprived, she claimed, of part of her property which the plaintiff acquired. She thereupon sought a writ of mandamus to compel the sheriff to properly execute the writ of possession and to have the judge make his proper return thereto.

The Supreme Court found that the writ of possession had not been executed in accord with its instructions. The petition was *granted* and a mandate embodying the findings was referred to the Circuit Court.

Nete-Sie Brownell for petitioner. *Momo F. Jones* for respondents.

MR. JUSTICE AZANGO delivered the opinion of the Court.

According to the record, Wesseh Gbeh and Henry G. Russell were sued in an action of ejectment by Gabriel N. Nah in the March 1972 Term of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. By stipulation of the parties, the case was submitted to a panel of surveyors constituting a Board of Arbitrators to survey the area in dispute. Gabriel N. Nah, plaintiff in ejectment, filed his objections to the report of the arbitrators thereto, which were disposed of and final judgment rendered in favor of plaintiff on February 15, 1973, to which ruling defendants announced an appeal to this Court for review; but because of their failure to perfect the appeal and the trial judge's refusal to approve certain of the appeal documents, they prayed for mandamus against the respondent judge in order to compel him to approve the appeal papers. The mandamus proceedings were dismissed and a mandate was sent to the court below ordering it to resume jurisdiction over the cause of action and enforce its judgment based on the arbitrators' award. Before acting on the mandate of this Court, the court below observed that the surveyors had submitted to it a map or diagram of the area in dispute, which carried a legend for its guidance in the adjustment of the respective boundaries. Judge MacDonald Krakue, to whom the mandate was transmitted, perceived that to intelligently conform to the findings of the Board of Arbitrators it would be necessary for a surveyor to go on the spot and delineate the respective boundaries of the disputants, in keeping with the award. Hence, in ordering the writ of possession issued, he specifically directed the sheriff of Montserrado County that where he found it difficult in the execu-

tion of his writ of possession to determine metes and bounds, he should use the deed of the plaintiff with a qualified Public Land Surveyor, at the expense of plaintiff in keeping with the court's final ruling. The sheriff, instead of adhering to the orders of the court as contained in the writ of possession, neglected to carry out the directive of the court in that respect. Consequently, he made the following returns on the back of his writ:

"On the 22nd day of February, 1973, P. Edward Nelson II served the within writ of possession on the within named appellants by placing a copy of the writ in the hand of Mrs. Wesseh Gbeh and placed a copy on Mr. Henry G. Russell's desk in his office, because he was not in at the time the plaintiff went on the spot and placed Mr. Gabriel N. Nah on the said property. And I now make this as my official return to the office of the Clerk of Court."

Because there was no delineation of the metes and bounds of the property in question, respondent Gabriel Nah transcended the bounds laid down in the map of the arbitrators and proceeded to construct a house covering the area belonging to petitioner Wesseh Gbeh, without due regard to her property rights as determined by the court and based on the arbitrator's award. Consequent upon this action of respondent Gabriel Nah, petitioners Wesseh Gbeh and Henry G. Russell filed a submission in the Circuit Court for the Sixth Judicial Circuit, Montserrat County, sitting in its December 1973 Term, praying the court to order the sheriff to employ the services of a surveyor in keeping with the directive of Judge MacDonald Krakue as contained in the writ of possession. According to respondent Gabriel Nah, without denying the allegation of encroachment set forth in the submission, he resisted said submission on the grounds of jurisdiction and agreed that the Supreme Court was the proper forum to appeal for the relief sought.

From the contentions raised by counsel for the parties,

it appears to us there is but one issue which claims our attention for adjudication. That is, has the mandate of this Court been fully executed, and in accord with the law governing executions of judgments? In other words, did the judge, or for that matter the sheriff of Montserrado County, use ordinary skill and diligence in carrying out our command? We shall address ourselves to these questions later. However, before proceeding to do so, we would like to remind parties of the law.

“The command of an alternative writ of mandamus is equivalent to a conclusion of law, deducible from the facts alleged, showing the particular act which the law specifically enjoins as a duty resulting from an office, trust, or station; the failure, neglect, or refusal of the defendant to comply therewith; and the right of the relator to insist on its specific performance. It is the mandatory part of the writ, moreover, to which the defendant must look to discover the specific act which he is commanded to perform, and hence the particular thing or things required to be done must be clearly and distinctly specified therein. It is only necessary, however, to describe the thing to be done with reasonable certainty, with such certainty that the defendant will know what is required of him. And it is held that this rule is peculiarly applicable to public officers who are commanded to perform a public duty, and especially where the facts constituting the act are within their personal knowledge. The mandatory part of a writ of mandamus should conform to the allegations of the writ, and it should not, in general, require more to be done than is justified by such allegations.” 18 R.C.L., *Mandamus*, § 298 (1917).

We must express our disagreement with the issues raised in counts 1 to 7 of the respondents' returns, for we found them untenable in law. Recourse to the record in the case reveals that on February 6, 1973, this Court commanded Judge MacDonald J. Krakue that in keeping

with the accompanying copy of the judgment handed down on February 1, 1973, he should execute the foregoing judgment immediately and file his official returns to the mandate as to its execution.

Irrespective of this command, the record shows that on February 19, 1973, the sheriff of Montserrado County was commanded to put Gabriel N. Nah in possession of the described premises.

“Commencing at the Northwest angle of $\frac{1}{4}$ acre owned by Gabriel N. Nah on Lynch Street and running on magnetic bearing North 25 degrees East 132.0 feet to wall fence of the Public Health to a point, hence running 65 degrees West 62.5 feet to a point; thence running North 65 degrees East 82.50 feet to the place of commencement and containing $\frac{1}{4}$ acres of land and no more.

“The said Gabriel N. Nah of Monrovia, Liberia, being the above-named plaintiff is entitled to the said premises by virtue of judgment duly made by this Court on the 15th day of February, 1973, in the above-entitled proceedings.

“Further, whereas you find it difficult as to the metes and bounds you will use the deed of the plaintiff with a qualified Public Land Surveyor at the expense of plaintiff as in keeping with the Court’s final ruling.

“And you are further commanded to return this writ of possession to my office at this present session of Court, December 1973 Term.”

And the record further shows that on February 22, 1973, P. Edward Nelson II, sheriff of Montserrado County, served a writ of possession on Gabriel Nah by placing a copy of it in the hand of Mrs. Wesseh Gbeh and placing a copy on Mr. Henry G. Russell’s desk in his office because he was not in at the time, and that he found no other person living on the said property. However, Judge MacDonald Krakue has failed to file any official return to this Court informing it as to how he executed

the mandate's instructions transmitted to him from this Court. It is, therefore, reasonably concluded that the mandate of this Court, dated February 6, 1973, has not been executed and the accompanying judgment still remains unenforced. The rule of this Court provides:

"Mandates to the courts below commanding the execution of judgments shall be transmitted immediately upon the adjournment of the term of court. To all mandates of this Court, returns shall be made, and they shall contain a clear statement of the manner in which they have been complied with, and shall be verified except such returns are made by judges. Every judge, before the first day of the term immediately succeeding the term at which a mandate shall be issued, unless directed to make his returns to a Justice in chambers, shall make and file a return showing the action taken by him in the premises. Should the judge of any court fail to make a return as required, he shall be deemed guilty of contempt. All such returns recorded, and the clerk shall present the original to the Court on the first day of the term, when return calendar shall be read and disposed of." Revised Rules of the Supreme Court, XI, Part 1.

However, respondents' counsel has contended that the mandate has been executed and the plaintiff was put in possession of his property.

Even though there was a description of the metes and bounds in the writ of possession by which the sheriff should have been guided, and even though he was ordered to put the plaintiff in possession of the premises, by virtue of the judgment duly made on February 15, 1973, and though he was told that if he found it difficult to follow descriptions he should use the deed of plaintiff together with a qualified Public Land Surveyor in keeping with the final ruling that substantially relied on the report of the Arbitrator Surveyors who clearly and distinctly drew up a map, nevertheless, for unknown reasons, the return of the

sheriff failed to show in detail how he served the writ of possession and put Gabriel N. Nah in possession of his one-quarter acre of land. Nor did the sheriff meet two of the parties to the suit, nor did he employ the services of any surveyor who could have assisted him to point out the markers of the parties so as to avoid further confusion. It appears to us that since there were three parties to this action, he should have required them all to be present while he put Gabriel Nah in possession of his property.

Moreover, he should have confined himself to the final judgment which is supported by the summary report of the Board of Arbitrators, dated February 20, 1971, and refer if necessary to the minority report which is dated March 23, 1971.

Considering the technical observations made by the arbitrators and reduced to the form of a diagram or map, the sheriff should have carried out the instructions of Judge Krakue by seeking the aid of the surveyors who could have aided and assisted him in pointing out the markers or delineating the metes and bounds on the ground as are indicated on the diagram, since he is not a technician in this field. And should this have proved impossible, he should have made this known to Judge Krakue. This he failed to do, and has made an irregular return to the writ of possession.

Respondents' counsel has also contended that petitioner had a right to appeal from the decision of Judge Alfred B. Flomo and, therefore, cannot use mandamus. However, the issue before us is improper performance of a duty as well as the refusal to properly execute the mandate of this Court. Did or did not the sheriff of Montserratado County execute the order of Judge Krakue which was given in implementation of the mandate, is the question for consideration.

As to petitioner's right of appeal, was the decision of Judge Flomo an appealable judgment, order, or decree?

That is, was this decision of Judge Flomo of a nature that was capable of being subjected to an appeal? We hesitate to answer. Moreover, it is common knowledge that mandamus is to command an inferior court, officer, or corporation or a person requiring the performance of a particular duty that is incumbent upon his office to do. On his failure to do so, he will be compelled, if it is within the pale of law. Judge Flomo was requested to perform an official act, but refused on grounds stated. Could the party be required to pursue an appeal? We think it proper to have resorted to a writ of mandamus in the circumstances.

Respondents' counsel has argued also that mandamus cannot be resorted to when there is an adequate and complete remedy available at law. On this point we wish to observe that while it is true in cases of lower courts of original jurisdiction that the existence of another adequate remedy will preclude the higher court from granting a writ of mandamus, it is not true in this case, since no other remedy was adequate to afford the relief required. Furthermore, mandamus is an extraordinary remedy in cases where the usual and ordinary modes of proceedings are powerless to afford remedies to the parties aggrieved, and when without its aid, there would be a failure of justice.

The submission made to the court below was in the nature of an express request to the respondent judge to perform in accordance therewith, and hence any neglect or other conduct that was equivalent to a refusal to act rendered further demand and refusal unnecessary.

"Whilst we are prepared to agree that mandamus will lie to compel performance of an act requested and refused, we also hold that the performance of a plain duty necessary to the just determination of a cause, in other words, a certain class of duty, should never have to be requested of a judge. And, whether or not a request for its performance is made and refused, man-

damus will still like to compel the neglected performance of it.” *Perry v. Richardson*, 14 LLR 116, 130 (1960).

It is our opinion that the mandate of this Court together with the ruling of Judge Krakue have not been fully executed and returns made thereto accordingly. The act of the sheriff of Montserrado County in respect to executing the writ of possession in favor of Gabriel N. Nah is irregular and void to all intents and purposes. The petition is therefore granted. The Clerk of this Court is hereby ordered to immediately send a mandate to the court below informing it of this judgment, and to resume jurisdiction over the cause of action, proceed to have a writ of possession issued in favor of the successful party in this case strictly in accordance with the diagram or map submitted by the arbitrators-surveyors, the original ruling of the court below, and to have the original members of the board of arbitrators or any three competent public land surveyors employed to proceed to the premises in question with all parties in interest present while the plaintiff is being put in possession of his land. Costs are disallowed. And it is hereby so ordered.

Petition for writ of mandamus granted.