

CASES ADJUDGED
IN THE
SUPREME COURT OF THE
REPUBLIC OF LIBERIA

AT
NOVEMBER TERM, 1937.

W. B. GRAY, Secretary of the Local Bar Committee for the Fifth Judicial Circuit Court, Grand Cape Mount County, Petitioner and Relator, *v.* A. DONDO WARE, a practicing Attorney-at-law and Member of the Circuit Court Bar of the Fifth Judicial Circuit, Grand Cape Mount County, Respondent.

PETITION FOR ORDER TO INSTITUTE DISBARMENT PROCEEDINGS.

Argued November 23, 1937. Decided December 10, 1937.

1. Under the Act of November 30, 1928, section 4, subsection (d), the Supreme Court cannot assume original jurisdiction in disbarment proceedings against attorneys for unprofessional conduct, except for contempt.
2. The Supreme Court can, however, in the proper case issue an order to a Local Bar Committee to institute disbarment proceedings against an attorney.
3. In certain cases a Local Bar Committee may and should *sua sponte* take notice of the professional misconduct of a lawyer and cite him to appear and answer for notorious acts even though no complaint has been made.

The petitioner, secretary of the Local Bar Committee for the Fifth Judicial Circuit, requests this Court to issue an order to said Bar Committee to institute disbarment proceedings against the respondent. *Petition granted.*

W. B. Gray for petitioner. No appearance for respondent.

MR. JUSTICE TUBMAN delivered the opinion of the Court.

This is a matter brought before this Court by the petition of W. B. Gray, Secretary of the Local Bar Committee of the Circuit Court of the Fifth Judicial Circuit for the County of Grand Cape Mount, showing that A. Dondo Ware, a practicing attorney-at-law, member of the bar of the Circuit Court of the Fifth Judicial Circuit, had been indicted by the grand jury for said County for the crime of embezzlement, and that at the November term of said court, 1934, the said A. Dondo Ware had been convicted of said crime in the aforesaid Circuit Court. Said petition therefore prayed that this Court would order the necessary proceedings to be taken in the premises, and that said respondent be dealt with in keeping with law, in order that the dignity of the legal profession may be upheld, and that the high standard which characterizes the profession may be maintained.

The respondent filed an answer to the petition of petitioner defending against same and alleging *inter alia*:

1. That under the provision of the Constitution, every man charged is presumed to be innocent until the contrary is proven.
2. That although as alleged in the petition, he was indicted, tried, and convicted in the Circuit Court of the Fifth Judicial Circuit, he had since then appealed to the Supreme Court from said judgment of conviction, and that the judgment of said Circuit Court is not final, nor enforceable until passed upon and affirmed by final judgment of this Court.
3. That the petitioner had filed a similar complaint before the Local Bar Committee of the Circuit Court of the Fifth Judicial Circuit, and that same remained undetermined.
4. That the affidavit to the petition is materially defective in that it does not state the settlement or district within the County of Montserrado in which it was taken, nor does the title of the cause appear in the caption, nor in the body of said petition.
5. That the petitioner should first obtain the decision

of the Local Bar Committee of the Circuit Court of the Fifth Judicial Circuit.

With this answer the respondent filed a copy of a letter written by petitioner to the Chairman of the Local Bar Committee, which is in the nature of a complaint, as well as the reply of the Chairman of the said Bar Committee to the letter of complaint.

Besides the answer filed by respondent, he also filed a motion praying for the dismissal of the petition for the reasons laid in his answer.

As the respondent at the time when the petition was filed before this Court was appellant in a prosecution for embezzlement pending here on appeal from the Circuit Court of the Fifth Judicial Circuit, out of which had grown the petition now being disposed of, the consideration thereof was suspended until after final decision and disposition of the cause. This having been done, we now proceed to dispose of the issues raised and joined by the petition of petitioner and the answer of the respondent.

The answer of the respondent is not responsive to the prayer of petitioner in respect of the jurisdictional plea, as the petitioner prays that an order would issue from this Court to the Bar Committee of the aforesaid Circuit Court, ordering necessary proceedings to be taken in the premises so that if the allegations laid in the petition be found true and correct, the said A. Dondo Ware, attorney-at-law, may be dealt with in keeping with law; but the answer pleads the jurisdiction of the Supreme Court to hear said petition, holding that we would be assuming original jurisdiction in the matter of his professional conduct and relies on the Act of the Legislature regulating the admission of lawyers to the bar approved November 30th, 1928, sub-section (d) of section 4, which refers to the duties of the Bar Committee, in matters of unprofessional conduct of lawyers, and is written:

“To hear and determine all complaints or charges brought against lawyers, whether practising or not,

for unprofessional or immoral conduct; their decisions and findings being subject to review only by the Liberian Supreme Court on appeal.”

While the contention of respondent with reference to the legal inability of the Supreme Court to assume original jurisdiction in cases of unprofessional conduct of lawyers, except for contempt, under the provision of the above recited act is correct, it does not respond, however, to the prayer made in the petition, for the petition does not ask the Court to take up, investigate, or dispose of the matter complained of against respondent; but asks this Court to issue an order to the Local Bar Committee to do so; and the said petition is therefore in the nature of an application for a remedial process which falls squarely within the jurisdiction and proper functions of this Court, and this Court only, to grant.

The submission made in the third count of the answer, that the petitioner had filed a similar complaint before the Local Bar Committee of the Circuit Court for the Fifth Judicial Circuit, and that same remained undetermined, is not borne out by the letters passed between the petitioner and the Chairman of the Local Bar Committee of the aforesaid Circuit Court, which respondent filed with his answer as a part thereof, and which we recite here:

“ROBERTSPORT,
GRAND CAPE MOUNT COUNTY,
January 9, 1945.

“HONOURABLE J. A. H. JONES,
ATTORNEY-AT-LAW,
CHAIRMAN OF THE BAR COMMITTEE,
COUNTY OF GRAND CAPE MOUNT.

“DEAR ATTORNEY JONES:

“As a member of the Bar Committee of this County which is affiliated with the National Bar Association of the Republic of Liberia or a subsidiary to the same, I wish to call your attention to the following facts to wit:

"During the last regular sitting of the 5th Judicial Circuit Court of this County, Attorney A. D. Ware charged with the commission of the crime of embezzlement was duly tried by a jury legally convoked to try the issue then joined. The petit jury after a careful trial of the offence brought a verdict of guilt against him which necessitated his imprisonment for the period of five or more days for want of adequate security in the common jail; in consequence of which he appealed to the Honourable the Supreme Court of the Republic of Liberia after the rendition of final judgment in keeping with the verdict of the petit jury which appeal is now pending. The fact being apparent and indisputable, I request that you convene a meeting of the members of the Committee in order that Attorney Ware might be suspended from the privileges of the Bar. This question has already been brought to the notice of the court on yesterday and I would suggest that the meeting be held this afternoon in order that the question might be disposed of as there is a case pending for tomorrow in which Attorney Ware is representing one party.

"The law is quite clear on this point, vide B.L.D. on Disbarment of Attorneys and also on rulings of the Honourable the Supreme Court of Liberia, pages 506-7 and 530 to 531,—32 and 33.

"I have the respect to submit,
Your Colleague,
[Sgd.] W. B. GRAY,
Member of the Bar Committee."

"THE WAKOLO LAW OFFICE,
(JONES)
ROBERTSPORT, GRAND CAPE MOUNT,
January 9, 1935.

"SIR:

"Your communication of even date received. In the first place I wish to call your attention to the fact

that, the Bar Committee and the National Bar Association are two separate organizations.

"In reply to the subject matter, if I correctly construe the rules of the Bar Committee and its functions they are quasi judicial subject to be reviewed only by the Honourable the Supreme Court of the Republic of Liberia. If this assumption is correct, then in a case like this to which you called my attention, it would be judicial that a regular complaint be filed before the Committee which alone would warrant the issuance of a summons to the defendant to meet the Committee and defend himself. In the event this is done, it will be my delight to summon the Committee to dispose of the matter and submit our findings and recommendation to the proper authority.

"I would further observe in the meantime that as far as my knowledge goes, there were only three persons (lawyers) appointed by the Chief Justice on this Committee. In the event you become complainant, it would appear necessary to have another lawyer temporarily appointed on the Committee to make up a just number to try the issue, not having the authority to make such substitution, it shall then become my duty to notify His Honour the Chief Justice to make the necessary temporary appointment. The citation of law made therein has my careful attention.

"Yours very truly,

[Sgd.] J. A. H. JONES,

*Chairman, Liberian Bar Committee,
Fifth Judicial Circuit."*

It is clear from the letter, last recited above, from the Chairman of the Local Bar Committee to the petitioner that the Chairman did not recognize a complaint to exist, for he claimed in his letter that it was necessary to have a formal complaint filed, as he insisted that the functions of the Local Bar Committee are quasi-judicial.

The Chairman of said Bar Committee further main-

tained that if petitioner made the formal complaint against respondent, he being one of the members of the said Local Bar Committee, he would become thereby disqualified and that His Honor the Chief Justice would have to be applied to for another attorney to substitute for him on the Committee during the hearing of the complaint against respondent.

From the records before us, it appears that the petitioner did not file the formal complaint, nor was a meeting of the said Local Bar Committee ever convoked by its Chairman. His decision in the matter as mentioned in his letter to petitioner of January 9, 1935, therefore became final, and petitioner thereupon made his petition to this Court for the purpose mentioned in his said petition and quoted in a former part of this opinion.

The facts mentioned therefore in the third count of the respondent's answer not being borne out by the record, are without merit and cannot be considered by this Court as actually existing.

We feel it necessary, however, before passing from the treatment of respondent's answer by this Court, to pass upon the position taken by the Chairman of the Local Bar Committee of the Circuit Court of the Fifth Judicial Circuit, where he contends in his letter that in every case it is necessary to have a formal complaint made by someone as complainant against a member of the profession to the Bar Committee before it can call upon such member of the profession to answer for professional misconduct. Such a position is entirely without the reason of law, and it has been held that where the reason of the law ceases, the law itself ceases, and whatever appears to be within the reason of the law should be considered within the law itself. *Review of a Writ for Contempt Issued against Judge J. J. Cheeseman*, 1 L.L.R. 209 (1887).

There are cases in which a Bar Committee may and should *sua sponte* take notice of the professional misconduct of a lawyer and cite him to appear and answer for

notorious acts, even if no complaint be otherwise made within reasonable season; more especially in a case where a member of the profession is convicted of a felony, that being a crime which disfranchises him, or judgment is entered against him in some action at law which brings him into public disrepute growing out of a judicial trial where the record of the trial and conviction is available to the Committee.

Turning at this point to the fourth count of the answer of the respondent, where he alleges that the affidavit to the petition is materially defective because it does not state the settlement or district within the County of Montserrado in which it was taken, and as he further alleges that the title of the cause does not appear in the caption of the affidavit nor in the body thereof, an inspection of the affidavit to the petition in the records reveals the fact that the jurat shows that the said affidavit was taken in Montserrado County, and as the justice of the peace is one for Montserrado County, it was not entirely necessary for the settlement or district where the affidavit was taken to have been stated. In the body of the affidavit the title of the cause is stated. We recite the contents of the body of the affidavit in verification hereof:

“Personally appeared before me, a qualified Justice of the Peace for the County of Montserrado, and Republic of Liberia, W. B. Gray, Attorney-at-law, and Secretary of the Local Bar Committee for the County of Grand Cape Mount, and made Oath according to law, that the allegations of facts, all and singular as are contained in the within and foregoing petition for the institution of disbarment proceedings against A. Dondo Ware, respondent, are true and correct, both in substance and in fact, to the best of his knowledge and belief.”

With reference to the constitutional question raised in counts one and five of the answer, it was in solemn regard

for these provisions of the Constitution that this matter as hereinbefore mentioned has been suspended and not disposed of before now, for under this Constitution, as respondent contends, "every person shall be presumed to be innocent until the contrary is proven."

The judgment of the Circuit Court of the Fifth Judicial Circuit against respondent having been reversed for irregularities attending the trial by this Court, the cause was remanded for retrial, which retrial has now been had, and the said respondent finally convicted of the crime of embezzlement, and the conviction upheld by this Court so that he is now serving sentence. The prayer of petitioner as laid in his petition should therefore be granted, and the Clerk of this Court should be ordered to issue a mandate to the Local Bar Committee of the Circuit Court of the Fifth Judicial Circuit, requiring the said Committee to take cognizance of the record of conviction of Attorney A. Dondo Ware for embezzlement, and to take such further action as the law in such cases demands; and it is so ordered.

Petition granted.