

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2023

BEFORE HER HONOR.....SIE-A-NYENE G. YUOH.....CHIEF JUSTICE
BEFORE HER HONOR.....JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONORJOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR.....YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HIS HONOR.....YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

Paye Flomo, James Flomo and Oliver Flomo, all of Sokopa,)
Nimba County, Republic of Liberia..... Informants)
Versus) BILL OF INFORMATION
His Hon. Roland F. Dahn, and Zawolo Gbonblee and)
Chester Gbonblee, Administrators of the Intestate Estate)
of the late Jonny Gbonblee of Sokopa, Nimba County,)
Republic of Liberia Respondents)

GROWING OUT OF THE CASE

Zawolo Gbonblee and Chester Gbonglee, Administrators of)
the Intestate Estate of Jonny Gbonglee of Sokopa, Nimba)
County, Republic of Liberia.....Movant)
Versus) MOTION TO DISMISS
Paye Flomo, James Flomo and Oliver Flomo, all of Sokopa,) APPEAL
Nimba County, Republic of Liberia..... Respondents)

GROWING OUT OF THE CASE

Zawolo Gbonblee and Chester Gbonglee, Administrators of)
the Intestate Estate of Jonny Gbonglee of Sokopa, Nimba)
County, Republic of Liberia.....Plaintiff)SUMMARY PROCEEDING
Versus) TO RECOVER
Paye Flomo, James Flomo and Oliver Flomo, all of Sokopa,) POSSESSION OF REAL
Nimba County, Republic of Liberia..... Defendants) PROPERTY

HEARD: April 4, 2023

DECIDED: May 19, 2023

MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

The facts gathered from the certified records before this court revealed that an action of Summary Proceeding to Recover Possession of Real Property was filed by the Intestate Estate of Johnny Gbonblee by and through, its administrators Zarwolo Gbonblee et al., Respondent herein, against Paye Flomo, James Flomo and Oliver Flomo, both of Sokopa, Nimba County, Informants herein, on August 26, 2011, at the 8th Judicial Circuit Court, Nimba County. The record revealed that pleading rested and trial commenced on October 7, 2011. The Respondent paraded three witnesses, who essentially testified to its title deed, supporting documents and possession of the contested property; The Respondent thereafter rested with the production of oral evidence and the instruments testified to were marked by the court, confirmed and admitted into evidence to form an integral part of the case.

The certified records before us revealed that, when the case was called for continuation of trial to give an opportunity to the Informants to take the witness stand to testify and produce evidence in support of their case, they continue to baffle the trial and accordingly failed and neglected to appear in court, take the witness stand and testified on their own behalf. The court entertained argument from the counsels representing the parties and entered its final judgment, holding that the Informants were liable in the action of Summary Proceeding to Recover Possession of Real Property; and ordered that the Informants be ousted and vacated from the Respondent's property. The Respondent was also awarded damages in the amount of Five Thousand United States Dollars (US\$5,000.00) for wrongful withholding of the Respondent's property. The Informants' counsel excepted to the court's final judgment and announced an appeal to this Court sitting in its March Term, A.D. 2012.

We observed from the records that certain procedural steps were taken by the Informants' Counsel in the perfection of his client's appeal, to include the announcement of the taking of the appeal, the filing of the bill of exceptions within ten (10) days after the rendition of the court's final judgment, and the filing of the appeal bond. However, the Informant failed and neglected to serve and file the 'notice of completion of appeal' as required by law. The failure of the Informants' counsel to fully comply with the appeal statute, the Respondent's counsel filed with this Court a motion to dismiss the appeal on October 28, 2021. The motion to dismiss was assigned by this Court; and during hearing, the Informants' counsel, Cllr. S. L. Lofen Keneah, Jr., by leave of this Court, informed the Court that he conceded to the legal soundness of the movant's motion. He made the following submission on the minutes of this Court:

"At this stage, counsel for Respondent says that he concedes [to the legal soundness the Movant's motion to dismiss the Defendants' appeal] and [most respectfully] request this Court to order the court below to place the movant in possession of the property for which this motion was filed in according with the metes and bounds of the said title deed and the location of the said property. And respectfully submits."

Consistent with the submission of the Informants' Counsel, this Court delivered a Judgment without opinion in this case, and ordered the Informants' appeal dismissed and ordered stricken from the dockets of this Court. The trial court was ordered to resume jurisdiction in the case and enforce its final ruling. The certified records further reveal that following the reading of the Supreme Court's mandate in the court below, the court instructed the sheriff to utilize the expertise of the resident surveyor for Nimba County to proceed to site of the land and place the Respondent in possession of its property based on the metes and bounds of Respondent's deed. We note that at the execution of the writ of possession, the Informants appeared at the survey site and raised several issues to include the following:

1. That the surveyor was using different title deed, separate and distinct from the deed pleaded by the Respondent;
2. That the surveyor was commencing the survey in different place other than the place indicated in the Respondent's deed;
3. That the surveyor should be dismissed and replaced, contending that after it was the Informant who paid for the survey.
4. That the Informant's technical representative filed a report to the trial court contrary to the court designated surveyor's report;
5. That the Informant's surveyor also excused the court's appointed surveyor of unethical practice, and that the defendant James Flomo interest was not recognized during the survey and that the appellant was asked by the surveyor to leave the survey site.

We observed further that based on these issues raised by the Informants on the site of the property, the writ of possession was not properly executed; that is, the Respondent was not placed in full possession of the property as mandated by this Court. Thereafter, the Informants subsequently filed a Bill of Information before the 8th Judicial Circuit Court, Sanniquellie, Nimba County alleging, amongst other things, the same issues quoted supra. The 8th judicial circuit court heard the bill of information and ruled, denying the Informants' bill of information and ordered the sheriff and the surveyor to proceed to complete the survey and place the Respondent in possession of its property.

It is from the ruling of the trial judge that the informants did not except or appeal, but have filed this Bill of Information before this court en banc, basically contending that the lower court is improperly executing the mandate of this Court. Accordingly, from the careful perusal of the Bill of Information filed before this Court, we see that it contains the same issues raised before the trial court and mentioned hereinabove.

This Court has determined that from the above facts and circumstances as narrated hereinabove, two issues have been identified to be determinative of this case.

1. Whether or not the trial Judge proceeded irregularly when he ordered a surveyor to place the Respondent in possession based on the metes and bounds of his deed which is absent from the trial Judge final ruling?
2. Whether or not from the above the facts and circumstances a bill of information will lie?

We will address the issues by the order in which they were presented; beginning with, whether or not the trial Judge proceeded irregularly when he ordered a surveyor to place the Respondent in possession based on the metes and bounds of his deed. The matter before

the Court is, Summary Proceeding to Recover Possession of Real Property. *Chapter 62, § 62.21.1LCLR, Right to maintain summary proceeding to recover real property* states that,

“Where title is not in issue, a special proceeding to recover possession of real property may be maintained in a Circuit Court or a court of a justice of the peace or a magistrate. The court of a justice of the peace or magistrate shall have jurisdiction only of cases in which the amount of the judgment demanded does not exceed three hundred dollars”.*[Emphasis supplied]*

In the case, *Farhat v Dehkee et al [1998] LRSC 22; 39 LLR 66 (1998) (5 August 1998)*, The Supreme Court said “Where title is not in issue, a special proceeding to recover possession of real property may be maintained in a circuit court or a court of a justice of the peace or a magistrate” In obedience to these provisions of the statute, the Respondent properly instituted this action of Summary Proceeding to Recover Possession of Real Property against the Informants, who it believed had no title to the property which they were occupying. The certified records show that the Informants were served with the Writ of Summons and the complaint and were properly brought under the jurisdiction of the court; they subsequently filed their responsive pleading consistent with law. But at the trial of the case, after the Respondent has rested evidence, the Informants failed and neglected to appear in court and testify for and on their own behalf. As the consequence of Informants’ failure to appear in defense of their possessory right to the property, and in response to Informants’ legal counsel’s application based on the non-appearance of his clients, the court entered final judgment against Informants; from which they announced an appeal to the Honorable Supreme Court. The record further revealed that the informants failed and neglected to complete the mandatory steps in the appeal process. Again, a motion to dismiss the appeal was filed before the Honorable Supreme Court.

When the motion to dismiss was called for hearing, Informants’ counsel again conceded to the legal soundness of the motion to dismiss his client’s appeal. Predicated upon the concession of Informants’ counsel, this Court dismissed the Informants’ appeal and confirmed the final judgment of the lower court in its totality; and ordered the court below to resume jurisdiction and enforce its final ruling by placing the Respondent in possession of its property. In obedience to the Supreme Court’s mandate, the Judge of the trial court instructed the sheriff of the court to use the expertise of the resident surveyor of Nimba County to have the Respondent placed in possession of its property, consistent with the metes and bounds of the deed. It was at this point, that the informants retained a surveyor who appeared at the survey site and raised several issues as contained in the Bill of Information. The trial court heard and disposed of the Bill of Information, and ordered the sheriff and the surveyor to proceed to complete their work by placing the Respondent in possession of its property. We note that

the Supreme Court's instruction to the trial court was to place the Respondent in possession of its property consistent with the ruling of the trial court. The Informants, who failed to introduce a counter instrument and appeared in court; and who also failed to complete the appeal process for which said appeal was dismissed, have denied themselves the opportunity to be heard. Consequently, the Informants have no legal basis to be present at the possession of the Respondent and had no legal basis to retain a surveyor to be present to file an objection. We hold that the informants who were adjudged liable by the trial court do not have the right to retain a counter surveyor to file a counter report with the court against or in favor of the court's appointed surveyor, considering the fact that they did not exhibit any title deed nor testify on their own behalf. We hold further that the action of the Informants was offensive and wrongful; thus, illegal and a form of obstruction of this Court's mandate. It is intended to baffle and frustrate the ends of justice and deprive the Respondent of their property rights. This Court had held in a long line of cases that the obstruction and disobedience of its mandates, orders or instructions, is contemptuous. For reliance, see: *Alpha v. Tucker*, [1964] LRSC 12; 15 LLR 561(1962); *In re Moore*[1913] LRSC 5; , 2 LLR 97, 101 (1913); 17 C. J. S., *Contempt*, § 12.

Under our law, one who keeps silent when he/she/it ought to speak suffers waiver and lashes as a matter of law. Waiver is the intentional or voluntary relinquishment of a known right or such conduct as warrants an inference of the relinquishment. Lashes is the neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to an adverse party, operates as a bar in a court of equity. *Williams et al v Smith et al* [1983] LRSC 21; 30 LLR 633 (1983) (4 February 1983); *Catholic Relief Services v Junius et al* [1999] LRSC 5; 39 LLR 397 (1999) (22 January 1999). The failure of the Informants to exert their claims to the property at the appropriate time when the opportunity was afforded to them, demonstrates that they kept silent; thus, they suffer waiver and lashes. Such claim, if any exists, cannot be exerted now.

Moreover, the Informants' Bill of Information before the trial court was denied and that no appeal was announce therefrom. Therefore, the Informants have no legal basis to file another Bill of Information before the Honorable Supreme Court. The failure of the Informant to announce an appeal from the ruling of the lower court on the bill of information, renders the ruling of the trial court on the bill of information final and conclusive. We note further that from the facts and circumstances herein, it appears that the Informants who did not rely on any instrument during the hearing and determination of the case in the court below, are mere trouble shooter and their attention is to harass the peaceful citizens who purchased their

properties and have in their possession their title deeds. It is the holding of this Court that the Informants have no claim to exert after the rendition of final judgment from which there was no appeal announced.

We shall now proceed to address the next issue; same being, whether or not from the above the facts and circumstances in this case, bill of information will lie? We answer in the negative. This Court has held that the office of a bill of information is to inform the Supreme Court that its mandate is being executed improperly or contrary to its mandate, as rendered. Moreover, this Court defined the role or office of bill a bill of information in *Kromah v. Pearson and British Petroleum Mobil West Africa (Liberia) Ltd.*, [1987] LRSC 3; 34 LLR 304 (1986), delivered in the October Term A. D. 1986. Further, this Court has said: "When an issue has reached the point of executing a mandate of the Supreme Court, a remedial writ was out of question. If anything went wrong at that stage, it was the duty of the party who felt he was wronged to in some way bring the action of wrong against whoever was committing the wrong to the court en banc. From time immemorial, it has been the practice to come by bill of information to this Court in cases like these, and therefore 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..." *Jawhary v. Jones and Housseine*, 38 LLR 572 (1998), delivered during the October Term A. D. 1997; *NPA v Retirees and Employees of NPA* [1998] LRSC 35; 39 LLR 244 (1998) (4 December 1998). Further the Supreme Court has repeatedly held that in order for a "Bill of Information" to be granted, the matter forming the basis of the information must have been pending before the Court, or decided by it; there must be an act to usurp the province of the Court; there must exist some irregularities or obstruction in the execution of the Supreme Court mandate; or there must have been a refusal to carry out the Supreme Court's mandate. *Intestate Estate of the late Sarah Sirleaf v. El-Bim et al.* [2013] LRSC 35 (July 15, 2013) citing *Liberia Aggregate Corporation v. Taylor et al.* [1988] LRSC 31; 35 LLR 3, (1988); *Massaquoi Fahnbulleh v. Urey and Massaquoi* [1977] LRSC 5; 25 LLR, 432, 435-6 (1977); *Barbour-Tarpeh v. Dennis* [1977] LRSC 11; 25 LLR 468, 470 (1977); *Kromah v. Badio and Hill* [1986] LRSC 11; 34 LLR 85, 86 (1986); *Butler-Abdullah v. Pearson et al.* [1989] LRSC 46; 36 LLR 592, 597-8 (1989); *Jawhary v. Jones*, [1998] LRSC 9; 38 LLR 584, 593-4 (1998). From the facts and circumstances in this case, the Judge below did not deviate in any manner and form from the mandate of the Honorable Supreme Court. Therefore, bill of information cannot lie. It is the holding of this Court that the lower court properly proceeded to execute the mandate of this Court; the bill of information filed by the Informants is filed in bad faith and intended to obstruct the execution of this Court's mandate for which penalty should apply.

WHEREFORE AND IN VIEW OF THE FOREGOING, the Bill of Information will not lie in the premises. The said Bill of Information is hereby denied and dismissed. The Clerk of this Court is hereby ordered to send a mandate to the court below to resume jurisdiction over this case and proceed with the enforcement of its final ruling. Costs are ruled against the Informant. IT IS HERBY SO ORDERED.

Information denied

When this case was called for hearing Counsellor S. L Lofen Keneah, Jr. appeared for the Informant. Counsellor James N. Gilayeneh appeared for the Respondent.